

6 1 Q That's against the Palolo Gardens? 2 A Correct. 3 Q Now, I think you've heard your wife testify 4 as to where you folks physically reside? 5 A Yes. 6 Q Is -- what exactly was the address again? 7 A 2140 10th Avenue. 8 Q And that's at the Palolo Gardens 9 Condominium? 10 A Correct. 11 Q Are you an attorney? 12 A No. 13 Q Okay. Have you consulted with an attorney 14 in connection with this lawsuit? 15 A Yes. 16 Q Who have you consulted with? 17 A That's privileged. 18 Q It is not. 19 A I'm not telling you. 20 Q Have you retained an attorney? 21 A Not yet, no. 22 Q Okay. So let's be clear, the attorney you 23 may have consulted with is not your attorney at this 24 time for this lawsuit. Is that a correct statement? 25 A Correct.	8 1 have consulted is not your attorney because you 2 didn't retain them, correct? 3 A I don't need to repeat myself, but yes, 4 that's correct. 5 Q Okay. 6 A If you ask me again, the answer is still 7 not retained. 8 Q Is it your belief that they're licensed in 9 this state? 10 A It's not my belief. I know they are 11 licensed in the state. 12 Q Okay. And what fields of practice do they 13 engage in? 14 A I'm not answering that. 15 Q So you're not going to tell me what fields 16 of practice -- 17 A Correct, I'm not. 18 Q -- they practice? You understand that if 19 you can do -- well, since you've refused, we can go 20 to court at some point and get a court order for you. 21 A Please be my guest. 22 Q Okay. Let's talk about your education. 23 Where did you go to high school? 24 A Punahou. 25 Q What year did you graduate?
7 1 Q And you refuse to divulge that person's 2 name? 3 A I do. Persons, I'll tell you that. 4 Q Okay. 5 THE REPORTER: I'm sorry? 6 THE WITNESS: Persons, plural. 7 BY MR. KAYA: 8 Q Are any of these persons licensed to 9 practice in the state of Hawaii? 10 A Yes. 11 Q And when did you last consult with them? 12 A Recently. 13 Q Recently is kind of ambiguous, sir. 14 A That's what you've, got recently. 15 Q No, that's not what I got so when was the 16 last time you -- 17 A Recently is my answer. 18 Q So you're refusing to say when was the last 19 time? 20 A I said recently. 21 Q No, you're refusing to say that to tell me 22 when. 23 A I'm refusing to give you the exact date in 24 part because I don't know it. 25 Q So let's be clear, any attorney you may	9 1 A Sixty-six. 2 Q After high school, where did you go for 3 education? 4 A RPI which is Rensselaer, 5 R-E-N-S-S-E-L-A-E-R. 6 Q And what kind of degree did you obtain? 7 A I have a BS in economics, but I had two 8 years of engineering as part of the Rensselaer 9 program. 10 Q What type of engineering? 11 A Well, it covered everything, mechanical, 12 civil, nuclear, chemical, architectural. It's the 13 base of engineering. 14 Q Civil? 15 A Yes. 16 Q Electrical? 17 A Yes, mechanical, bit of nuclear, bit of 18 chemical. 19 Q And this is undergraduate study? 20 A Correct. 21 Q Back in the '60s then? 22 A Correct. I graduated in 1970. 23 Q What codes or building codes did you -- did 24 you have to study? 25 A Well, all of them pretty much.

3 (Pages 6 to 9)

1 **Q Okay. What do you mean by all of them?**

2 A And equally to expand on the answer for
3 example, The Poi Company, we bought a shell of a
4 building in -- Marjorie said Kihei by mistake. It's
5 Kalihi. It's actually on Kopke Street on Kalihi, and
6 I'm not the type to just let the engineers and
7 architects just go and design something on their own.
8 So I was always intimately involved with the issues
9 about the building codes and making decisions about
10 placements of stairways, drains, et cetera, with the
11 doors, and even --

12 **Q So who?**

13 A Even before going to university, my
14 grandparents owned numerous properties here on Oahu,
15 and gave it to me, the grandson, to deal with all the
16 issues having to do with the building and the people
17 but doing the building and planning permits.

18 So I haven't walked into the planning
19 department myself with drawings that I've done. I've
20 been intimately involved with the plans that have
21 been walked in on my or my grandparents' behalf.

22 **Q So during what years were you intimately
23 involved?**

24 A Well, I mean, the last -- the last time we
25 did construction any type of work would have been The

1 Poi Company, so that would have been from high school
2 until The Poi Company closed in 2002. So beyond that
3 it was really mostly in England and mostly having to
4 do with building permits. We owned a 70-acre farm in
5 England which -- of which the dog hotel was only
6 part.

7 **Q Now, with regard to The Poi Company time
8 period --**

9 A Yes.

10 **Q -- who was -- who were the engineers?**

11 A I don't remember. It was in the early
12 20s -- 25 years ago.

13 **Q Okay. You don't recall who the engineers
14 were, who were --**

15 A I could look it up.

16 **Q Who were the architects?**

17 A I don't recall.

18 **Q You don't recall -- you don't recall who
19 the engineers nor architects were?**

20 A Correct.

21 **Q Okay. Who was the contractor?**

22 A I don't recall that either. Again, 25
23 years ago.

24 **Q But you recall building codes?**

25 A I don't recall specific building codes, but

1 I have knowledge of the principles of building codes
2 and certainly, at the time, the building codes that
3 were relevant I was familiar with.

4 **Q Did any of those building codes deal with
5 drainage?**

6 A Yes, at The Poi Company, yes.

7 **Q So which -- which ones?**

8 A Twenty-five years ago.

9 **Q Again, which ones?**

10 A I don't recall.

11 **Q Okay. What Maui -- this is on Maui you
12 said?**

13 A No, Marjorie made a mistake when she said
14 Kihei. Marjorie and I worked at a bank in Kihei,
15 right. So I guess she had Kihei on the brain. The
16 Poi Company is in Kalihi on Kopke Street.

17 **Q So you can't tell me what building codes
18 provisions relative to drainage?**

19 A Correct.

20 **Q Okay. Did any of your experience with the
21 Poi Company deal with the type of drainage at Kahala
22 Mall?**

23 A We did not have a storm drain.

24 **Q And so just so we're clear, any engineering
25 education was back in the '60s, ended by 1970; is**

1 **that right?**

2 A Correct, about the same time you probably
3 went to law school.

4 **Q And as far as the engineering aspect
5 sitting here today, is there anything in particular
6 you recall?**

7 A I think that's a silly question. I don't
8 know what you mean.

9 **Q Well, what -- tell me what you can recall
10 about civil engineering then.**

11 A That's a dumb question. Tell me what you
12 can recall about Ferae Naturae, the law of wild
13 animals. I mean, it's crazy. You want me to
14 consolidate four years of education from --

15 **Q You just told me it was two years.**

16 A I went to Rensselaer from 1966 to 1970.
17 It's not two years ago. The engineering portion of
18 my four-year degree was largely the freshman and
19 sophomore year.

20 **Q Okay. So your knowledge is actually back
21 from the '60s?**

22 A Yeah, about the same time as your law
23 school time.

24 **Q And as far as -- so let's be clear. You
25 can't tell me anything in particular that you may**

1 have learned in any of these various engineering
2 classes that you say you've taken?

3 A Again, I think the question is
4 preposterous. I mean, this isn't a civil engineering
5 exam and I'm not a civil engineer.

6 Q So you're not claiming any expertise in
7 that area, correct?

8 A I'm claiming I have education in that area,
9 but I never was nor did I ever seek to be an
10 engineer. I went to -- I went to university to be an
11 engineer, and I decided I didn't want to be an
12 engineer and so I switched into economics.

13 Q And your experience in planning and
14 permitting would have been what other
15 professionals -- what professionals may have
16 submitted on behalf of your companies; is that right?

17 A Yes, but with me involved I was instructing
18 them. So I just didn't tell them to go run away and
19 do something and leave me out of it.

20 Q Okay. And as far as planning and
21 permitting, for sure we know that it didn't involve
22 any storm drains, right?

23 A It did not specifically involve storm
24 drains, correct.

25 Q Any experience with premises security?

1 A Yes.

2 Q And what is your experience?

3 A Well, for one I had a guard card. So I'm
4 instructed in the law about guards. But further I
5 mean, we were responsible for and had offices in
6 seven countries and we guaranteed checks. So we
7 dealt with the possibility of disgruntled people
8 whose check we declined. And more importantly if the
9 check bounced, it was our responsibility to collect
10 on it. It belonged then to us and it would be
11 disgruntled debtors who owed us money. So I dealt
12 with the security in all of our properties to keep
13 our staff safe.

14 Q With regard to this guard card, what state?

15 A Hawaii.

16 Q Okay. And when did you have it?

17 A I had it in 2000 -- either '16 or '17.

18 Q And for how long?

19 A A year. You get them for a year.

20 Q Okay. And you no longer have one?

21 A Correct. Well, I don't because it expired
22 and I didn't need it anymore.

23 Q Okay. And that's so that you can act as a
24 security guard, correct?

25 A Correct.

1 Q Okay. You didn't own a security company,
2 right?

3 A I did not.

4 Q You were a guard?

5 A Well, I was for a day.

6 Q That's the reason you -- why you got a
7 guard card, right?

8 A Correct.

9 Q Okay. And where were you a guard at?

10 A Where actually did I work?

11 Q Yes.

12 A It's the hotel that's sort of two blocks
13 Ewa of Kapahulu. I think it might be a Marriott now.
14 I'm not really sure what it is.

15 Q Two blocks Ewa of Kapahulu?

16 A Yes.

17 Q On Kuhio or Kalakaua?

18 A On Kalakaua. It might be the hotel after
19 the Marriott if you're driving down Kalakaua.

20 Q Okay. Is it a small hotel?

21 A Oh, no, no, no, big.

22 Q Two blocks, okay. And which guard company
23 were you working for?

24 A Securitas.

25 Q Okay. So actually the post that you had

1 would have been at this hotel, but your employer was
2 Securitas?

3 A Correct.

4 Q Okay.

5 A Yes, correct.

6 Q Any experience in custodial maintenance of
7 a building?

8 A You mean did I push a broom around, no, but
9 in all of our offices. I picked the company that did
10 push the broom around and evaluated their work and
11 made changes when necessary. But no, I'm not a
12 cleaner.

13 Q Okay.

14 A But I was the person that made sure that
15 they did their work that was part of their scope of
16 contract.

17 Q Okay. Now at one point you were with Otis.
18 Am I correct?

19 A I was.

20 Q Okay. And in what capacity?

21 A I was -- well, finance essentially. I was
22 called a senior coordinator, but I was never really
23 sure where the juror coordinators were.

24 Q And when did you stop working with Otis?

25 A Either late -- I think early 2021.

1 Q Were you let go from that position?

2 A I was not.

3 Q So your testimony is you retired?

4 A I left. I resigned. Retired implies you
5 get a gold watch.

6 Q Now, have you had any specialized training
7 in construction, plans and permitting, engineering,
8 security? Well, you mentioned security because you
9 had a guard card. But any specific training in
10 construction?

11 A Other than what I mentioned at Rensselaer,
12 no.

13 Q Anything in plans and permits?

14 A Other than what I mentioned, no.

15 Q Anything in engineering. This is training,
16 not education.

17 A Other than what I mentioned, no.

18 Q Any specialized training in custodian
19 maintenance?

20 A No.

21 Q Have you ever had any professional
22 licenses?

23 A No. Well, other than my guard card.

24 Q Have you ever been convicted of a crime
25 relating to dishonesty?

1 A No.

2 Q Now, as I understand your last employment
3 was Otis here in Hawaii?

4 A Correct.

5 Q And you're saying you ended that in 2021?

6 A I don't believe so, yes.

7 Q Okay. Before that you would have been
8 employed where?

9 A Well, by our own companies.

10 Q Okay. So before Otis, what was the
11 company?

12 A So there's the main employer was Transax,
13 Transax PLC in the UK.

14 Q Well, I'm trying to work backwards now, so
15 from Otis, what was the company before that?

16 A It's a company called Huge Mystery Deal
17 Productions, LLC.

18 Q And what did that do?

19 A It did accounting and finance work.

20 Q And where was that company located or
21 situated in?

22 A Well, it's a Hawaii company. But for nine
23 years, I was the CFO of a medium to large size firm
24 of litigation solicitors in London. And when we
25 moved back to Hawaii, I continued that for a while

1 but also took on a camera store and a television
2 movie production company for which we did the
3 accounting.

4 Q And so with regard to the Huge Mystery
5 Deal, LLC.

6 A Productions, LLC. Don't forget that.

7 Q What years were that?

8 A We sold Transax in 1996, and I became the
9 CFO of the law firm in 1998. So HMDP is really 1998
10 to about 2022, but it's more complicated than that
11 because during the Transax years, because of the way
12 income tax works, I earned part of my salary for work
13 done outside the UK through HMDP so Transax would pay
14 HMDP for my external to the UK work.

15 Q So --

16 A And HMDP also had other employees. So for
17 the law firm, I hired two CPAs here in Hawaii who
18 worked for HMDP, but I then sold their time to the
19 law firm.

20 Q Okay. But with regard to what you just
21 gone over Otis, HMDP?

22 A Huge Mystery Deal Productions.

23 Q Okay. None of those companies dealt with
24 construction?

25 A No.

1 Q Or engineering?

2 A No.

3 Q Or security services?

4 A No.

5 Q Or custodial, right, none of them that --

6 A That is not --

7 Q That's not part of their business, right?

8 A That's not what they do. But, for example,
9 with the law firm, we remodeled all the offices so it
10 was dealing with all those people you mentioned,
11 cleaners, construction company, people who get
12 permits and, you know, get electrical cables
13 installed with internet, so there was a lot of
14 dealing with that but as the client, not as the
15 licensed professional.

16 Q Okay. And with regard to Huge Mystery
17 Deal, where were these offices that you're talking
18 about?

19 A Which offices?

20 Q Huge Mystery Deal you just mentioned.

21 A I didn't -- I mean, I worked remotely
22 before it was fashionable. The law firm was
23 located -- is located at Gray's Inn in London.

24 Q Okay.

25 A Two or three times a year we would go to

1 London.

2 **Q So with regard to any of this --**

3 A I dealt with all the property issues of the
4 law firm.

5 **Q In London?**

6 A In London.

7 **Q In your lifetime, you've -- have you ever
8 fallen?**

9 A I fell at Palolo Gardens. I fell -- I
10 don't know if it counts as a fall -- I fell roller
11 skating at the roller skating rink in Kahala when I
12 was young, and I tripped on the bottom step of the LA
13 Airport Hilton when I was trying to get on the
14 courtesy bus to fly back to Hawaii. I think that's
15 about it.

16 **Q And you understand falls are things to be
17 avoided, right?**

18 A Yes.

19 **Q Okay. And you know falling can cause you
20 to be injured, right?**

21 A I'm not an idiot, yes.

22 **Q Okay. So you know that you should keep on
23 lookouts to avoid falling, right?**

24 A I know that.

25 **Q And how do you keep a lookout?**

1 A I don't know how to answer that question.

2 It's like how do you breathe? I mean, I follow
3 normal sort of things about looking and being
4 careful. I would also say that I didn't fall at
5 Kahala Mall. So I'm not sure why you're even asking
6 me this. I'm not sure that they're particularly
7 relevant questions in my case.

8 **Q And part of looking and being careful is
9 watching where you step, right?**

10 A Yes.

11 **Q With regard to the incident back in August
12 of 2023, that is the subject of this lawsuit, you
13 accompanied your wife to the hospital; is that right?**

14 A I did.

15 **Q Okay. Did you hear your wife describe to
16 any medical care providers what happened?**

17 A I did.

18 **Q And what did she say?**

19 A She said that she had fallen at Kahala Mall
20 and that was pretty much it. It was -- the emergency
21 room was extremely busy and Marjorie, for the longest
22 time, just was in a gurney in the hallway until they
23 got to her.

24 **Q Okay. And did you accompany her when she
25 spoke to -- strike that. When she spoke to**

1 **Mr. Nakasone?**

2 A On some -- on some of the visits, not all
3 of them because there were times when the doctor
4 would have seen her in the ER. I was with her in the
5 ER most of the time. But again, they had to move
6 rooms around and whatnot so not all of the time.

7 **Q So all you heard your wife tell the doctors
8 was that she had fallen at Kahala Mall?**

9 A Correct, and that's all they were really
10 interested in. I'm not even sure they were
11 interested in where.

12 **Q And at no time did your wife explain to
13 them where in the mall?**

14 A No, they weren't interested in that. They
15 were really, really busy.

16 **Q At no time did she describe how she fell?**

17 A Correct, no. She was in, as she's
18 explained, in considerable pain, a lot of pain. As I
19 recall, they didn't really want to give her the
20 painkillers until they had sort of figured out what
21 it was, so they had to wait to get her in to be
22 x-rayed. Fortunately they seem to have an x-ray room
23 right down there and everything seemed to change once
24 they figured out what it was because then they knew
25 what it was and they could sedate her or alleviate

1 the pain.

2 **Q Well, did they also run a tox screen?**

3 A I don't know. You have the medical
4 records. I can see them from where I'm sitting.

5 **Q So you don't know whether they did or they
6 didn't?**

7 A I do not know. I don't think they did. I
8 looked at her medical records, and I don't remember
9 seeing it.

10 **Q And they would typically question her about
11 whether she was on any medication. Did you furnish
12 any of that information?**

13 A She's a Straub patient. It's all under My
14 Chart. So yeah, they basically go through and say
15 are you taking this, are you taking that? And she
16 said yes, and -- I mean, in her case, yes and yes and
17 yes. The chart is kept up to date. I'm not a doctor
18 either, but I would understand why they would run a
19 tox screen.

20 They were concerned about her breaking the
21 largest bone in her body and trying to fix it. You
22 know, I don't think they were all that worried about
23 how it broke. They were just worried about making
24 her feel better.

25 **Q Well, typically before they furnish**

1 medication especially pain medication, they do run
2 tox screens?

3 A I disagree. I've taken Oxycodone for a
4 long while, and I've never had a tox screen in my
5 life. So you might -- in your world they might do
6 that; in my world they do not do that.

7 Q That's fine, sir.

8 A Okay.

9 Q Now, from five minutes before the incident
10 to the point that she exits your vehicle, tell me
11 what happened.

12 A Well, we drove up to Kahala Mall from the
13 entrance because we were coming from Waikiki and went
14 around Diamond Head, as I recall, we drove in the
15 entrance sort of over by the Starbucks and around
16 what is now I guess Planet Fitness and past Chili's.
17 There's no loading area at all around Whole Foods.
18 The curbs are all red. So I dropped her just before
19 the crosswalk so she could get out. So she opened
20 the passenger door and got out of the car and that's
21 the point before she fell.

22 Q Okay. So you mentioned that the curbs are
23 all red?

24 A Correct.

25 Q So you know you couldn't stop?

1 A Correct. I don't agree with that. I mean,
2 the curbs are all red, but there's no place to drop
3 people off and there was no parking. So the plan was
4 to drop her off so she could go shopping at Whole
5 Foods, and then I would drive around the parking lot.
6 And if I found the space, I would call her and let
7 her know where I was. And if I didn't, she would
8 call me and I would go and pick her up.

9 Q So are you telling me you did not under --
10 you don't understand that when something is marked
11 red that you can't stop there?

12 A Well, I do know that the law about parking
13 and not parking does not apply on private property.

14 Q Move to strike as nonresponsive. My
15 question to you -- please read back the question.

16 Whereupon, the record was read:

17 "QUESTION: So are you telling me you
18 did not under -- you don't understand
19 that when something is marked red that
20 you can't stop there?"

21 THE WITNESS: I don't understand that.

22 BY MR. KAYA:

23 Q So now you've stopped, you're short of the
24 crosswalk. Am I correct?

25 A Correct.

1 Q Okay.

2 A Because I didn't want to block people
3 crossing the crosswalk; so the nose of my car was up
4 to but not across the crosswalk.

5 Q As you approach that, you're able to see
6 the roadway?

7 A Yes.

8 Q Okay. So you saw the drain?

9 A No, I wasn't looking at the drain. I
10 didn't see the drain.

11 Q You did not see drain, okay. Even though
12 that -- was there anything obscuring your vision of
13 it?

14 A No.

15 Q Okay. And how many times prior to this
16 incident had you stopped there?

17 A I don't know, a dozen.

18 Q So on the dozen --

19 A I don't keep track, but yes, not more than
20 a few times.

21 Q Okay. So on the dozen times you didn't
22 notice that there was a storm drain there?

23 A Correct.

24 Q And there was never, for those dozen times,
25 anything obscuring your vision of that, right?

1 A Correct.

2 Q So you stopped and let your wife exit your
3 vehicle on the storm drain?

4 A I stopped and let my wife exit the vehicle
5 where I had stopped.

6 Q Which had to be on the storm drain?

7 A Yeah, but I didn't know the storm drain was
8 there.

9 Q When she opened the door, did you see the
10 drain?

11 A No, and also with the benefit of hindsight
12 I think even while I was looking there, I wouldn't
13 look down and I'm not sure with the passenger seat
14 that I would have been able to see it if I wanted to
15 look down.

16 Q Well, that -- that begs the question so let
17 me ask it to you this way: Did you look to your
18 right as she exited the vehicle?

19 A I looked to her getting out of the vehicle
20 to make sure that she was safely out of the vehicle.

21 Q Okay. And what exactly did you see?

22 A I saw her shut the door, and then I was
23 just getting -- I wanted her to be clear of the
24 vehicle. And just as I was getting ready to start to
25 the move and began -- took my foot off the brake,

1 people to the right front of me. So you see where
2 the car was roughly parked in that picture so people
3 in the line from me to the first disabled parking
4 space and where the carts go, there was an older
5 couple that were waving like stop, stop, stop, but
6 much like when somebody waves and you think they're
7 waving at you but they're waving at someone behind
8 you, I didn't think they were doing anything towards
9 me. And I sort of almost continued but then they got
10 really loud and they said stop, stop, stop so I
11 stopped. And by that point, there was a commotion on
12 the passenger's side of the vehicle as other people
13 came to -- to find Marjorie.

14 Q So how long from the point that the door
15 closed to the point that people started telling you
16 to stop, do you know about how much time went by?

17 A I'd probably just be guessing, 30 seconds,
18 20 seconds, seconds not minutes.

19 Q Okay. Again, you heard me explain don't
20 guess. But if you can furnish an estimate, please
21 feel free to do so. Now, 30 seconds seems to be
22 rather long, so I'm going to give you an opportunity
23 to think about it. You can count off one
24 one-thousandth, two one-thousandth in your mind too
25 if you want.

1 A Not long is the answer.

2 Q Okay. So I'm going to take that 30 seconds
3 was a wrong guess?

4 A Probably a wrong guess.

5 Q Okay. And are you able to furnish an
6 estimate as to how much time elapsed from the point
7 that the door closed to the point that people started
8 waving at you and telling you stop, stop, stop?

9 A Yes, not long that's the best I can do.

10 Q So no actual time frame, right?

11 A No.

12 Q Okay. And so at what point did you realize
13 your wife had fallen?

14 A Well, there was the commotion on the side
15 of the car. So I put the car into park. And put on
16 the brake, got out of the car, walked around the
17 front to the side and there she was lying on the
18 pavement.

19 Q Okay. Since you did not realize your wife
20 had fallen until you walked around the car?

21 A Yes.

22 Q That means, you didn't see her fall?

23 A I did not see her fall. I wouldn't have
24 started to drive off if I saw her fall. I saw the
25 door shut and her safely out of the car and not right

1 immediately next to it, and I was conscious that
2 there were cars behind me, so I wasn't racing off,
3 but I started to move forward when the people by the
4 trolley place in the disabled parking started to wave
5 at me.

6 Q And you agree that your wife exited, closed
7 the door and that her back was faced to the car?

8 A Correct.

9 Q Right?

10 A Yes.

11 Q You agree with that, you've heard that
12 description, right?

13 A Yes.

14 Q Okay. And --

15 A Well, I heard the description and also
16 that's when I saw her back to the door.

17 Q Okay. And so she would have had to have
18 turned to her left to walk toward the crosswalk,
19 correct?

20 A Yes.

21 Q Not the right but to the left, right?

22 A Yeah, she was going towards the crosswalk.

23 Q Okay.

24 A And also again, there were cars behind us.
25 I mean, they weren't tooting or any way upset but

1 there were cars behind us, so I would have
2 expected -- and we can have a discussion about
3 this -- that she would have wanted to get to the
4 crosswalk and move off.

5 Q Okay. We're talking about what you saw.

6 A I saw her get out of the car.

7 Q Okay. And so you didn't see her take that
8 step?

9 A I did not.

10 Q Okay. You didn't see her body fall to the
11 ground?

12 A I did not.

13 Q Okay. What you did find out later on was
14 that she was on the ground on her left side?

15 A I seem to recall her being on the ground at
16 this stage left side more back like -- there were
17 people already helping to move her because I guess
18 they wanted to get her away from the car. So there
19 was a time sort of middle-aged haole guy that had
20 already sort of started to move her and she was
21 shouting no, no, no, no, I can't stand on that.

22 Q Okay. So let's be clear then. So actually
23 you don't know where she may have fallen then because
24 you didn't see that either?

25 A I said I didn't see her fall.

1 Q Okay. And you don't know where she --
2 where her body came to rest also on the ground?

3 A When I got out, she was on the ground storm
4 drain sort of beneath her.

5 Q Okay. And where were her feet?

6 A I couldn't tell you. Well, they were away
7 from the crosswalk. But as to where they were in
8 relation to the car or curb, storm drain, I couldn't
9 tell you.

10 Q Okay. And you agree you heard your wife
11 describe that she was sort of diagonally placed?

12 A Yeah.

13 Q Okay. And to me that would mean legs maybe
14 pointed toward the red curb?

15 A No, pointed more towards the car behind.

16 Q Okay.

17 A She was more -- again, there were people
18 around, I was upset, she was screaming in pain. This
19 is not something where you record it in your brain
20 with any degree of accuracy. Her head was towards
21 the crosswalk, hand -- left hand sort of under --
22 near under the car and people were helping her with
23 her protesting.

24 I think the plan that the bald man had was
25 to sort of somehow get her over to the curb and to

1 A Okay.

2 Q So you cannot tell me the mechanics of her
3 fall, in other words --

4 A Correct.

5 Q -- which way her body went and things like
6 that?

7 A I cannot.

8 Q Okay. You can't tell me what she may have
9 tripped or slipped on, right?

10 A I cannot.

11 Q You can't tell me which foot is the foot
12 that actually lost grip, correct?

13 A I cannot.

14 Q You can tell me that there were people
15 around that may have seen things, correct?

16 A There were definitely people around that
17 may have seen things.

18 Q And you mentioned a bald individual?

19 A Yes.

20 Q Okay. Anyone else that comes to mind that
21 you actually, if you saw them again, you could say
22 hey, that's the guy?

23 A Well, the other people that played a big
24 part were the people that told me to stop, right,
25 stop-stop people because they then walked forward and

1 sit there, and she just -- she was having none of
2 that.

3 THE REPORTER: She was having?

4 THE WITNESS: None of that. She
5 didn't want to do that.

6 BY MR. KAYA:

7 Q Okay. And so --

8 A So I wasn't taking notes as to where her
9 feet were. I wanted to get her -- I wanted to find
10 out what had gone wrong and get her better.

11 Q Okay. No -- and no incrimination for that.

12 A None taken.

13 Q But I'm trying to get a clear picture of
14 what you know versus what we don't know. Okay?

15 A Yes, but you're trying to get a clear
16 picture of what at the time and the time is also a
17 year-and-a-half ago of what at the time was chaos.
18 It's hard to have a clear picture of chaos.

19 Q And again, if, you know, going over those
20 instructions, if you don't know or don't recall, that
21 is a valid response. Okay?

22 A I understand.

23 Q But you know, if you're able to tell me
24 some information, that's great. So let me go through
25 the questions and you can say I don't know that.

1 then they were assisting as well. Would I recognize
2 any of these people again, again, no, probably not.
3 To be honest, I probably wouldn't have recognized
4 them the next day. It's all just, at that point, a
5 big blur.

6 Q Okay. Now, my understanding of what
7 transpired is again, at some point rather than
8 getting -- rather than waiting for an ambulance, you
9 folks decided to go directly to the hospital; is that
10 right?

11 A You left out the security guard part.

12 Q Okay. We can get there.

13 A Okay.

14 Q But at some point you decided to go
15 directly to the hospital; is that right?

16 A Correct.

17 Q Okay. And before that, my understanding is
18 you said a guard came by?

19 A Yes.

20 Q Okay. And this is not a guard that
21 witnessed the event, right?

22 A The guard did not witness the event.

23 Q Okay. And you don't know the name of the
24 guard?

25 A I do know the name of the guard, but I only

1 know the game of the guard from the information you
2 disclosed.

3 **Q Okay. And so you have the name of the**
4 **guard. But as far as we know, the guard did not take**
5 **any witnesses' information?**

6 A As far as we knew, he did not.

7 **Q Okay. And we don't know whether the**
8 **witnesses stuck around and furnished that information**
9 **or didn't?**

10 A The witnesses stuck around until I drove
11 off. So the guard had ample opportunity to get it
12 had he desired to do so.

13 **Q Again, we don't know whether or not they**
14 **stuck around and were willing to furnish that**
15 **information?**

16 A We don't know.

17 **Q Okay.**

18 A We do know that they stuck around until he
19 left. They didn't all go running off and the bald
20 man, part of me almost thought but it was just
21 guessing the bald man was a doctor or a nurse or
22 something because, you know, Marjorie was doing the
23 British thing about saying oh, I'll be okay, I'll be
24 okay. And he was, like, not whispering to me but
25 sort of over her shoulder said take her, you know.

1 take her to the hospital. So he was definitely a, I
2 guess, what I would call categorically a carer. And
3 again, if my priority was not getting her help, I
4 would have asked for their names and addresses.

5 But to elaborate on the guard, the guard's
6 interest was in getting, to my amazement, a statement
7 from me and/or a statement from Marjorie. And I
8 could remember the guard with a sort of clipboard
9 with a note pad on it and some aluminum clipboard
10 wanting to get a statement. And when I said look,
11 I'm not trying to be evasive but I want to get her
12 help. And then with Marjorie at this point now
13 sitting in the passenger's seat of the car with the
14 window down and the guard not sticking his head in
15 but you understand what I'm trying to say with the
16 clipboard sort of bending down since I wouldn't give
17 him a statement, he's trying to get a statement from
18 Marjorie.

19 So with me standing on the front
20 passenger's side of the car by the front passenger's
21 headlight, I told the guard look, I'm not trying to
22 be difficult. I said I'm happy to give you a
23 statement or whatever but let me get her to her
24 doctor first, and I took the time to write my name
25 and the email address and Marjorie's name and email

1 address on his clipboard. And when I drove away, I
2 assumed -- remember, I have a guard card and it's
3 part of the guard rules, you know, get the names and
4 addresses of the witnesses. So I assumed as I drove
5 away, I believe prudently and sensibly attending to
6 my wife's injury, which I think anyone would have
7 done, I assumed the guard would have done his job and
8 would have obtained the names and addresses of the
9 witnesses who in my limited contact with them were
10 courteous, kind people. And I think they would -- I
11 don't know for sure -- but I think reasonably assume
12 that they would have been happy to have given that
13 information. But he didn't or at least we don't
14 think he did. You disclosed that he did not.

15 **Q Well, again, you were not present so you**
16 **don't know whether the witnesses were willing to**
17 **cooperate or not, correct?**

18 A But his report doesn't say that. The
19 report does not say I asked the witnesses and they
20 were unwilling to give their information.

21 **Q Well, again, you weren't there. So you're**
22 **speculating now whether or not the witnesses would**
23 **have been --**

24 A But half of the questions you've asked me
25 have sort of asked for me to speculate about things.

1 **Q No, I'm not asking for your speculation,**
2 **Mr. Walsh.**

3 A I don't know what he did. I know what I
4 read in his report.

5 **Q Again, I'm not asking you to speculate. If**
6 **you don't know, you are free to tell me I don't know.**

7 A I understand. I understand.

8 **Q Okay. Now, that day did you see anything**
9 **that caused your wife to fall?**

10 A No. Well, did I see anything like a log in
11 the road or something, no. I mean --

12 **Q Did you examine the area at all?**

13 A I did. I looked at it.

14 **Q Okay. And when you looked at it, you**
15 **didn't see anything that --**

16 A I saw the storm drain with bent tines and
17 deteriorated concrete so poorly that the rebars were
18 sticking out. I looked at the ground that she fell
19 on and that's what I saw.

20 **Q Okay. You saw the storm drain and what**
21 **portion of the storm drain was bent?**

22 A It is the -- I'm not sure if you call them
23 tines or rails or whatnot, but the method of bars
24 that constitute the actual, I guess, support of the
25 storm drain, they're the ones on -- hard to say,

1 Diamond Head or Ewa in that thing. They're the ones
2 on the Central Pacific Bank side of the storm drain.
3 Maybe not the first one but I think it's the second
4 or the third.

5 **Q I think you can go Koko Head and Ewa.**

6 **A** Maybe Koko Head. Diamond Head is
7 confusing. Yeah, I would say that Koko Head side
8 then. Maybe not the first one but the second and the
9 third one. But it really caught my attention which
10 I've never seen before. I don't care how many times
11 you say I've been to the Kahala Mall. I never looked
12 at the storm drains there.

13 The surrounding concrete around the storm
14 drain is really deteriorated. So I looked at that
15 and of course again, as I've said, my priority is to
16 get my injured wife to the hospital to get help. I
17 mean, we didn't know at this point that she had
18 broken her femur but we did know at this point she
19 was in real pain. And I looked at that and I thought
20 this is, in my opinion, likely culprit.

21 **Q And again, that's an uneducated opinion,**
22 **right?**

23 **A** Well, I'm not an uneducated man.

24 **Q But you're not an expert?**

25 **A** I'm not an expert in that narrow field, no.

1 **Q Okay. And did you take any photographs of**
2 **what you saw?**

3 **A** No. As I've explained, my wife was in pain
4 and my priority was to get her to the hospital as
5 quickly as I could. I did take pictures not the day
6 after but the following day when I came to Kahala
7 Mall and went into the management office.

8 **Q And we've been going -- I assume those are**
9 **part of the photographs that you --**

10 **A** They are. All those photographs as
11 Marjorie explained it, it's called metadata. They're
12 all meta tagged with the date and time they were
13 taken.

14 **Q Okay. Now, we're going to stop here, and**
15 **I'm going to explain to you what we're going to do.**
16 **Rather than renumber exhibits, we're going to use**
17 **some of the same exhibits from your wife's**
18 **deposition.**

19 **A** Okay.

20 **Q Okay. There will be two additional**
21 **exhibits. They are your Answers to Interrogatories,**
22 **and I think a portion of what was produced in that**
23 **Dropbox.**

24 **A** Okay. The only reason I withheld that from
25 your wife's deposition so we're clear is because it

1 appears to be emails between yourself and someone
2 else, okay. And your wife is not copied on them so I
3 would assume that those are questions I need for you.

4 **Q Okay. Now with that having been said -- by**
5 **the way, are you the person that trans -- that put**
6 **together the Dropbox and sent me the information?**

7 **A** Yup.

8 (Exhibit 6 was marked for
9 identification.)

10 (Exhibit 7 was marked for
11 identification.)

12 (Exhibit 8 was marked for
13 identification.)

14 BY MR. KAYA:

15 **Q Yes, okay. So first question I'm going to**
16 **ask you is take a look at the materials that I'm**
17 **going to give you. It's Exhibits 6, 7, 8. Let's**
18 **see, 4, 4-A -- strike that. Three, 4, 4-A, 5, 6, 7,**
19 **8, okay. And we're going to have this other marked**
20 **as exhibit -- is it nine? And the last one is, just**
21 **so we're clear, the last exhibit will be Exhibit 9**
22 **and that relates to the emails that appears you were**
23 **corresponding with different people. Okay.**

24 **A** All right.

25 **Q And just so we're clear because I'm going**

1 to ask you to review this stuff is the question
2 that's going to be pending is this all of the
3 materials you sent by the Dropbox, okay. So that's
4 going to be the question.

5 **A** Right. So I don't know here what I sent by
6 Dropbox or not. So if you want to know how this was
7 sent to you specifically whether it was sent by the
8 Dropbox or not, I can't do that. I'd have to look at
9 the Dropbox.

10 **Q Okay. Well, I don't know how you're going**
11 **to do that because all I have is your email and the**
12 **materials that were printed from that Dropbox. So**
13 **anyway, let's make this --**

14 **A** So in other words, you know the answer to
15 the question.

16 **Q Well, I want you to acknowledge that --**

17 **A** I can't acknowledge whether I sent it to
18 you by Dropbox or by email without looking at the
19 Dropbox. That seems to make perfect sense to me.

20 **Q Well, it doesn't make any sense to me so**
21 **anyway --**

22 **A** I'm sorry.

23 **Q Let's mark this.**

24 **A** You're just interested in the method that
25 was used to send it to you?

1 Q No, I want to know whether this is all of
2 the materials you sent.

3 A I can tell you that, but I can't tell
4 you -- and I know you want me to tell you this but
5 I'm telling you I cannot tell you whether I sent it
6 to you by Dropbox or email. I would have to look at
7 the Dropbox to tell you.

8 Q Well, just so you --

9 A Is that important?

10 Q Well, so you're clear, sir, Exhibit 3 --

11 A Right.

12 Q Is the email with the Dropbox link.

13 A Okay.

14 Q Okay. So --

15 A So wait, sorry to interrupt, so that means
16 that by definition exhibit, whatever you're holding
17 up there, was not sent to you by Dropbox.

18 Q Well, Exhibit 3 contained the Dropbox link.

19 A Right. So my only point for -- and I'm
20 doing this only for illustration -- is that I can
21 tell you, therefore, with certainty that Exhibit 3
22 was not sent to you by Dropbox but by email.

23 Q And I would agree with that.

24 A Okay.

25 Q Okay.

1 A As to the other things, I can't tell you
2 with no amount of wishing that I'm going to tell you
3 is going to make it true whether it was sent by
4 Dropbox or not without looking at the Dropbox.

5 Q Well, then my question to you then is it's
6 going to be so you're clear --

7 A Yes.

8 Q Okay. Is whether A, this is all the
9 materials that you sent via the Dropbox. And if
10 you're going to tell me I can't tell you that, that's
11 fine.

12 A I can't tell you that.

13 Q However, my next question will be is there
14 anything else that you recall sending. Okay?

15 A I can't tell you that either. So I
16 can't -- both of those questions I can't answer.

17 Q Then we're going to go through this
18 exercise and have your testimony.

19 A Okay.

20 Q So we can have this marked as Exhibit 9.
21 (Exhibit 9 was marked for
22 identification.)

23 BY MR. KAYA:

24 Q We'll take a short break and have him
25 review it and then we can go through -- you can tell

1 me what your actual testimony is. Okay? Off.

2 (Recess from 3:03 p.m. to 3:09 p.m.)

3 BY MR. KAYA:

4 Q Let's go back on the record. Now, remember
5 what the two pending questions were, sir?

6 A Yes.

7 Q Okay. So first question is that all you
8 sent?

9 A I don't know.

10 Q Okay. Do you know if any -- if -- if
11 there's anything missing?

12 A I don't know. That's the same answer to
13 essentially the same question.

14 Q Do you have any -- the next question is do
15 you have anything else that you wanted to send in
16 connection with the production of documents?

17 A No.

18 Q Okay. So let's talk about the photos
19 because that's the whole reason I went through this
20 with you.

21 A Okay. By the way, the Hawaii Pacific
22 Health, you said somebody put the page numbers on the
23 bottom. I just wanted to add I know who put the page
24 numbers on the bottom and that's Hawaii Pacific
25 Health.

1 Q That's fine.

2 A This was one single file which you kindly
3 printed out that we got from Hawaii Pacific Health,
4 just so you know where the page numbers came from.

5 Q Okay. I mean, that's fine but let's go
6 through the pictures. Now, I want you to tell me and
7 maybe we can use these yellow markies because then
8 we're going to number the pages. Which pages were
9 taken -- which photographs were taken of the drain
10 the day after as you've indicated?

11 A I can't tell you that.

12 Q You can't tell me --

13 A I can tell you if I looked at the metadata
14 of the images. I can give you the exact dates and
15 times, but not just from looking at them.

16 Q Okay.

17 A If you want that, I'm happy to send it to
18 you.

19 Q With regard -- well, unfortunately how
20 would that come? In other words, is it attached to
21 the photograph or --

22 A Right. So I assume -- I don't know for
23 sure -- but I'm guessing that these were from the
24 Dropbox, right, because that would have been the way
25 to send the images to you.