

There was no indication that it was specifically directed as an assault with an ability therefore to commit a battery on Mr. King, and Mr. King testified to that and also told the assistant district attorney that when he had the first opportunity to do so.

Regarding the question of disorderly person, you have a situation here where the entire part of this case involves the fact that Mr. King, who probably should have known better, gets himself involved as the aggressor in what was a verbal altercation between Mr. Schlener and Mr. Elbery.

Mr. Schlener admitted in testimony that he had made remarks that he probably shouldn't have made toward Mr. Elbery concerning the loss of Mr. Elbery's business that he had basically devoted his life to for the past eight or nine yearsⁱ that words were exchanged all as the result of that, but they were only words. Mr. Elbery was not threatening Mr. Schlener. Mr. Schlener was not threatening Mr. Elbery. There was no fighting.

Mr. Elbery was not asked, there was no demands made on him to leave the bar. If Mr. King had not gotten up off of his barstool, walked over