

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
1900 M Street Restaurant :
Associates, LLC : Show Cause
t/a Rumors Restaurant : Hearing
1900 M Street, NW :
Retailer CN - ANC-2B :
License No. 71717 :
Case #12-CMP-00155, :
Case #12-CMP-00155(a) and :
Case #12-CMP-00155(b) :
: :
(Substantial Change in :
Operation Without Board :
Approval) :
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March 20, 2013

The Alcoholic Beverage Control

Board met in the Alcoholic Beverage Control
Hearing Room, Reeves Building, 2000 14th
Street, N.W., Suite 400S, Washington, D.C.
20009, Chairperson Ruthanne Miller,
presiding.

PRESENT:

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- HERMAN JONES, Member
- MIKE SILVERSTEIN, Member

ALSO PRESENT:

- WALTER ADAMS, OAG
- FELICIA MARTIN, ABRA Investigator

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P-R-O-C-E-E-D-I-N-G-S

(10:22 a.m.)

CHAIRPERSON MILLER: The next case on our calendar is Case No. 12-CMP-00155, No. 12-CMP-00155(a) and 12-CMP-00155(b) all for Rumors Restaurant located at 1900 M Street, N.W., License No. 71717 in ANC-2B.

MR. ADAMS: Good morning.

CHAIRPERSON MILLER: Good morning.

MR. ADAMS: Walter Adams representing the District of Columbia. Yes, Walter Adams representing the District of Columbia.

MR. KLINE: Good morning, Andrew Kline on behalf of the licensee.

MR. CODDINGTON: Good morning, Russell Coddington.

MR. KLINE: Mr. Coddington is the president of the licensed establishment.

CHAIRPERSON MILLER: Okay. Mr. Adams did you -- you introduced yourself and then did you say something else?

1 MR. ADAMS: I said I represented
2 the District.

3 CHAIRPERSON MILLER: That's it?
4 Oh, okay.

5 MR. ADAMS: Just awkwardness, yes.

6 CHAIRPERSON MILLER: I thought
7 maybe somebody was coming.

8 MR. ADAMS: No.

9 CHAIRPERSON MILLER: All right.
10 So this is a Show Cause Hearing. Are there
11 any preliminary matters?

12 MR. ADAMS: There are no
13 preliminary matters, Madam Chair, for the
14 Board.

15 CHAIRPERSON MILLER: Okay. Then
16 we are ready to go forward with the hearing.

17 Mr. Adams, are you ready to go
18 forward with opening statement?

19 MR. ADAMS: Yes, I am.

20 CHAIRPERSON MILLER: Okay.

21 MR. ADAMS: The Board's
22 indulgence?

1 CHAIRPERSON MILLER: Yes.

2 MR. ADAMS: Madam Chair, Members
3 of the Board, this case here is a single
4 charge in which the charge is that the
5 establishment made substantial change to the
6 establishment without receiving approval from
7 this Board.

8 We noticed this case and, frankly,
9 the evidence of what we are going to prove in
10 this case is true to the notice that, in this
11 case, Investigator Martin went out to the
12 establishment and as part of a review of
13 sidewalk cafes for compliance with District
14 Law and licenses, that Investigator Martin
15 went to Rumors, to this establishment, that
16 she conducted an inspection of the sidewalk
17 cafe.

18 That at the time that she went
19 there, she was not able to -- the
20 establishment did not have a Certificate of
21 Use on the premises that stated what the
22 capacity was. But the time she was there,

1 that she counted that on the unenclosed
2 sidewalk cafe, because this establishment --
3 there is two sidewalk cafes an enclosed
4 portion and an unenclosed portion.

5 When she -- when the investigator
6 did a count of the seats that were there, she
7 counted 38 seats. However, that afterwards
8 she went back to the office, to the ABRA
9 offices, and she checked out the records and
10 according to ABRA records that this
11 establishment was approved to have 24 seats
12 within the sidewalk cafe.

13 That there has been no other
14 applications to amend such seating capacity
15 for the unenclosed sidewalk cafe area. And
16 that, therefore, that because there is a
17 different -- that there was a different
18 capacity that the establishment was set up for
19 on the occasion of April 10, 2012, that
20 essentially the establishment made a change to
21 the -- that what this proved is that the
22 establishment did make a change to the

1 interior -- or actually the exterior of the
2 establishment that that change substantially
3 changes -- changed the nature of the operation
4 of the establishment. More or less a very
5 simple matter.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Kline?

8 MR. KLINE: Madam Chair, we will
9 reserve our opening. I suspect that we will
10 be combining our opening with a Motion to
11 Dismiss at the close of the Government's case,
12 so we would reserve, at this point.

13 CHAIRPERSON MILLER: Okay. All
14 right. Do you want to call your first
15 witness, Mr. Adams?

16 MR. ADAMS: Yes.

17 CHAIRPERSON MILLER: Do you have a
18 witness?

19 MR. ADAMS: Yes, we do have a
20 witness.

21 CHAIRPERSON MILLER: Okay.

22 MR. ADAMS: We have one witness.

1 It's Investigator Martin.

2 CHAIRPERSON MILLER: Good morning.

3 MS. MARTIN: Good morning.

4 Whereupon,

5 INVESTIGATOR FELICIA MARTIN

6 was called as a witness by Counsel for the

7 Government, and having been first duly sworn,

8 assumed the witness stand and was examined and

9 testified as follows:

10 CHAIRPERSON MILLER: Okay. Thank

11 you.

12 DIRECT EXAMINATION

13 MR. ADAMS: Good morning.

14 INVESTIGATOR MARTIN: Good

15 morning.

16 MR. ADAMS: Can you, please, state

17 your name and spell it for the record?

18 INVESTIGATOR MARTIN: Felicia

19 Martin. Last name phonetically M, like Mary,

20 A-R-T-I-N, first name Felicia, F, like Frank,

21 E-L-I-C-I-A.

22 MR. ADAMS: All right. Ms.

1 Martin, you are an Investigator for the
2 Alcoholic Beverage Regulation Administration,
3 correct?

4 INVESTIGATOR MARTIN: Correct.

5 MR. ADAMS: How long have you been
6 an Investigator for ABRA?

7 INVESTIGATOR MARTIN:
8 Approximately, six years.

9 MR. ADAMS: All right. And within
10 those six years of you working for ABRA, have
11 you done inspections of different
12 establishments within the District of
13 Columbia?

14 INVESTIGATOR MARTIN: Yes, sir.

15 MR. ADAMS: Is that part of our
16 duties?

17 INVESTIGATOR MARTIN: It is.

18 MR. ADAMS: All right. As part of
19 your duties, have you conducted inspections
20 for various establishments for compliance with
21 occupancy of those establishments?

22 INVESTIGATOR MARTIN: Yes.

1 MR. ADAMS: And Ms. Martin,
2 turning to April 10, 2012, were you on duty?

3 INVESTIGATOR MARTIN: I was.

4 MR. ADAMS: Okay. And what were
5 your duties on that morning or that morning/
6 afternoon of April 10th?

7 INVESTIGATOR MARTIN: I was
8 enforcing sidewalk cafe compliance.

9 MR. ADAMS: Okay. And where were
10 you doing that?

11 INVESTIGATOR MARTIN: Between the
12 1000 and the 1900 Block of M Street.
13 Correction. Between the 1200 -- 1300 and 1200
14 Block of 19th Street, north by west.

15 MEMBER ALBERTI: Excuse me, Ms.
16 Martin, could you speak up just a little?

17 INVESTIGATOR MARTIN: Sure.

18 MEMBER ALBERTI: Thank you.

19 INVESTIGATOR MARTIN: Yes.

20 MR. ADAMS: And how many --
21 approximately, if you remember, how many
22 establishments did you visit on that day?

1 INVESTIGATOR MARTIN: Five.

2 MR. ADAMS: Now, in terms of the
3 establishments that you visited, did you have
4 any occasion to be upon the premises of Rumors
5 Restaurant?

6 INVESTIGATOR MARTIN: Yes.

7 MR. ADAMS: Okay. And why were
8 you there?

9 INVESTIGATOR MARTIN: I noticed
10 that the establishment had outdoor seating,
11 which was their sidewalk cafe.

12 MR. ADAMS: Okay. And what did
13 you find once you arrived there?

14 INVESTIGATOR MARTIN: When I went
15 inside, I identified myself to one of the
16 employees and asked to speak with the ABC
17 manager or owner.

18 MR. ADAMS: And at the time you
19 were there, can you describe what was -- I
20 mean, can you describe what was occurring at
21 the establishment? I mean, were they -- yes,
22 can you describe what was -- were they in the

1 middle of service, at that point?

2 INVESTIGATOR MARTIN: There was
3 some table service being offered. The --
4 inside the establishment, there weren't many
5 patrons. It was just a tad prior to
6 lunchtime.

7 MR. ADAMS: And, approximately,
8 what time was it that you went there?

9 INVESTIGATOR MARTIN:
10 Approximately 11:50 a.m.

11 MR. ADAMS: Okay. And okay, so
12 you asked to speak, I believe you said you
13 asked to speak, with a manager. What happened
14 from that point?

15 INVESTIGATOR MARTIN: An employee
16 came forward and identified herself as the ABC
17 manager. I believe her name was Sarah Verity.

18 MR. ADAMS: Okay.

19 INVESTIGATOR MARTIN: And I
20 explained to her the reason for my visit.

21 MR. ADAMS: All right. And after
22 you explained the reason for your visit, what

1 happened at that point?

2 INVESTIGATOR MARTIN: I asked to
3 review the outdoor seating permit for the
4 sidewalk cafe.

5 MR. ADAMS: Okay. And once you
6 made that request, what occurred at that
7 point?

8 INVESTIGATOR MARTIN: She advised
9 -- well, she looked in the immediate area
10 where their Certificate of Occupancy
11 certificates were located, which was behind,
12 I will describe as, the second bar as you go
13 up a few steps. She looked in that area and
14 returned with a board filled with a variety of
15 certificates and permits.

16 MR. ADAMS: Okay. And what was on
17 that board?

18 INVESTIGATOR MARTIN: Just
19 certificates and permits as it relates to
20 Rumors.

21 MR. ADAMS: Okay.

22 INVESTIGATOR MARTIN: But what she

1 was unable to locate was the certificate or
2 permits associated with the outdoor seating.

3 MR. ADAMS: Okay. And after you
4 looked at the board, you weren't able to make
5 that location, what -- of a permit for the --
6 a permit. What occurred at that point?

7 INVESTIGATOR MARTIN: Since she
8 was unable to locate it, I advised her that I
9 would return to ABRA and check our records to
10 determine what was on file with our office and
11 prior to leaving, I counted the outdoor
12 seating area.

13 MR. ADAMS: Okay. And you say you
14 counted, what were your findings once you
15 counted the outdoor seating area?

16 INVESTIGATOR MARTIN: I believe I
17 counted, approximately, 32 seats.

18 MR. ADAMS: All right. Is there
19 anything that -- okay. So you think it is 32
20 seats that you counted, at that time?

21 MR. KLINE: Objection. Asked and
22 answered.

1 CHAIRPERSON MILLER: I'm sorry,
2 what was the question?

3 MR. ADAMS: I was just asking for
4 confirmation of what Ms. Martin stated. The
5 question was is it your understanding that --
6 if it was 32 seats. That was the question.

7 CHAIRPERSON MILLER: Okay. She
8 can confirm it. You can answer the question.
9 I'm going to overrule the objection. Did she
10 answer?

11 MR. ADAMS: No, she did not
12 answer, an objection was raised.

13 CHAIRPERSON MILLER: Okay. That's
14 right. Okay. So I'm going to overrule the
15 objection and let her confirm it.

16 MR. ADAMS: All right. Can you
17 answer the question? Is your -- I mean, what
18 was your understanding? Was it that there was
19 32 years that you counted?

20 INVESTIGATOR MARTIN: Yes, sir.

21 MR. ADAMS: Okay. The Board's
22 indulgence.

1 Can I provide anything that might
2 refresh your recollection regarding the amount
3 of seats that you counted?

4 MR. KLINE: Objection. There
5 isn't any indication that her recollection
6 needs refreshing, at this point.

7 CHAIRPERSON MILLER: Right. She
8 did answer the question twice.

9 MR. ADAMS: Okay.

10 CHAIRPERSON MILLER: Okay. I
11 would like to refresh her recollection.

12 CHAIRPERSON MILLER: Okay.

13 MR. ADAMS: I'm going to provide
14 to Mr. Kline a document or I guess
15 investigative report.

16 Actually, you know what, that's
17 all.

18 Through -- okay. Let me see this,
19 at this point. So at this point, you made --
20 you counted a certain amount of seats. Is
21 that correct?

22 INVESTIGATOR MARTIN: Correct.

1 MR. KLINE: Objection. Three
2 times now we have counted the seats.

3 CHAIRPERSON MILLER: That's --

4 MR. ADAMS: It's not prejudicial.
5 I mean, I think it doesn't really add to where
6 the case is going to go.

7 So after you made this count, what
8 did you do?

9 INVESTIGATOR MARTIN: I believe I
10 continued with the rest of the duties for my
11 day and then eventually made my way back to
12 the ABRA office.

13 MR. ADAMS: Okay. Now, in terms
14 of this establishment -- well, actually, I'm
15 not going to go there.

16 Okay. Once you went back to the
17 office, what did you do as relates to this
18 inspection?

19 INVESTIGATOR MARTIN: To confirm
20 the outdoor seating capacity, I obtained
21 Rumors' file and reviewed their records and
22 came across a Certificate of Occupancy for the

1 outdoor seating, which stated that their
2 approved seating to be 24.

3 MR. ADAMS: All right. And when
4 you state that you looked at files. What --
5 can you describe what files you are talking
6 about?

7 INVESTIGATOR MARTIN: Yes, ABRA
8 keeps records of all licensed -- ABC-licensed
9 establishments and the documents that are
10 presented to us from the licensee.

11 MR. ADAMS: In terms of this
12 document that you said that had the occupancy,
13 based upon your position, what did that
14 represent for you?

15 INVESTIGATOR MARTIN: It
16 represented the actual count that -- the
17 occupancy that should be for the outdoor
18 seating area.

19 MR. ADAMS: Okay. And what did
20 you do with the investigation, at that point?

21 INVESTIGATOR MARTIN: I then
22 reached out to the establishment to speak with

1 Ms. Verity. However, she had left for the
2 day. I was able to speak with another
3 gentleman who identified himself as an
4 employee of the establishment. And I
5 explained to him my visit that day and I also
6 explained to him what our records indicated
7 for the outdoor seating area.

8 MR. ADAMS: All right. Now, did
9 you take any other actions as a part of this
10 investigation?

11 INVESTIGATOR MARTIN: Sometime
12 after the -- well, I did reduce my findings to
13 a written report. That report went through
14 this process and, subsequently, I was asked to
15 return to the establishment to document by way
16 of photographs the outdoor seating area.

17 MR. ADAMS: All right. And when
18 did you do that?

19 INVESTIGATOR MARTIN: I would need
20 to review my report to get the exact date for
21 the record.

22 MR. ADAMS: Okay. I would like to

1 provide to counsel what is marked for
2 identification purposes as Government Exhibit
3 1. Government Exhibits 1, 2 and 3.

4 (Whereupon, the documents were
5 marked as Government Exhibit 1, 2
6 and 3 for identification.)

7 MR. ADAMS: And upon his review, I
8 would like to provide -- I would like to
9 approach the witness with said documents.
10 Okay. I would like the witness to take a
11 moment to look through the three documents.
12 And when you are ready, Investigator Martin,
13 please, look at me. All right.

14 Ms. Martin, I'm going to start
15 with what is marked as Government's Exhibit 1.
16 Do you recognize the document?

17 INVESTIGATOR MARTIN: Yes, sir.

18 MR. ADAMS: And how do you
19 recognize the document?

20 INVESTIGATOR MARTIN: Exhibit No.
21 1 reflects the case report that I generated on
22 -- for the incident that I -- the violation I

1 observed on Tuesday, April 10, 2012.

2 MR. ADAMS: All right. And how do
3 you recognize this document?

4 INVESTIGATOR MARTIN: Through my
5 investigation and via my signature.

6 MR. ADAMS: Now, I want to look at
7 the first page of this document. At the first
8 page at the top left hand corner, what's there
9 in that top left hand corner, Investigator
10 Martin?

11 INVESTIGATOR MARTIN: An
12 investigation number.

13 MR. ADAMS: And what's the
14 investigation number?

15 INVESTIGATOR MARTIN: 12-C, like
16 Charlie, M, like Mary, P, like Paul, 00155.

17 MR. ADAMS: And are there any
18 exhibits that are included with this?

19 INVESTIGATOR MARTIN: Yes, sir.

20 MR. ADAMS: And what is it?

21 INVESTIGATOR MARTIN: It says copy
22 of Certificate of Use.

1 MR. ADAMS: Now, I'm going to turn
2 to what is marked as Government Exhibit 2.

3 Do you recognize that document?

4 INVESTIGATOR MARTIN: Yes, sir.

5 MR. ADAMS: And what is it?

6 INVESTIGATOR MARTIN: This is a
7 supplemental report based off the incident
8 that occurred on April 10, 2012.

9 MR. ADAMS: All right. And how do
10 you recognize that document?

11 INVESTIGATOR MARTIN: Because my
12 signature is affixed to the last page.

13 MR. ADAMS: And are there any
14 exhibits with this document?

15 INVESTIGATOR MARTIN: Yes, sir.

16 MR. ADAMS: And what is the
17 exhibit?

18 INVESTIGATOR MARTIN: Exhibit No.
19 1 is a copy of the regulatory inspection.
20 Exhibit No. 2 is a copy of Citation No. 6251.
21 And Exhibit No. 3 is the photograph of
22 sidewalk cafe.

1 MR. ADAMS: Okay. And there is --
2 what is identified as Government's Exhibit 3,
3 do you recognize that document?

4 INVESTIGATOR MARTIN: Yes, sir, I
5 do.

6 MR. ADAMS: And what is that
7 document?

8 INVESTIGATOR MARTIN: This, too,
9 is a supplemental report for the Rumors.

10 MR. ADAMS: And how do you
11 recognize this document?

12 INVESTIGATOR MARTIN: Because my
13 signature is affixed to the last page.

14 MR. ADAMS: And to your knowledge,
15 what's the purpose of this third document?

16 INVESTIGATOR MARTIN: Generally,
17 supplemental reports and, specifically to this
18 case, I generated a supplemental report to
19 clarify any errors or omissions was from the
20 original report.

21 MR. ADAMS: Okay. Now, for the
22 three documents collectively, are they true

1 and accurate representations of your
2 investigation report --

3 INVESTIGATOR MARTIN: Yes.

4 MR. ADAMS: -- regarding the
5 inspection?

6 INVESTIGATOR MARTIN: Yes, sir.

7 MR. ADAMS: Okay. Madam Chair, I
8 would like to have -- place into evidence the
9 three documents that are marked for
10 identification purposes as District's Exhibit
11 1, District Exhibit 2 and District Exhibit 3,
12 which are the -- No. 1 which is the
13 investigation report, 12-CMP-00155. The
14 second document is 12-CMP-00155(a). And the
15 third document is 12-CMP-00155(b).

16 CHAIRPERSON MILLER: Any
17 objection?

18 MR. KLINE: Madam Chair, before
19 the respondent opines on that, I would like to
20 voir dire the witness with respect to one of
21 the documents. Her testimony concerning one
22 of the documents was not clear to me. And

1 before we agree that it can be admitted, I
2 would like to question her on it.

3 CHAIRPERSON MILLER: Okay. Which
4 one is that?

5 MR. KLINE: On Government's
6 Exhibit No. 2.

7 CHAIRPERSON MILLER: I just want
8 to separate them out. Okay. The case report,
9 No. 2, okay, which is (a), right?

10 MR. KLINE: (a).

11 MR. ADAMS: I don't think --

12 CHAIRPERSON MILLER: Do you have
13 an objection?

14 MR. ADAMS: Yes, I do have an
15 objection. Voir dire isn't necessary in this
16 case. Essentially, the witness has already
17 established the -- that this is an accurate
18 representation of her investigation. It's a
19 pretty simple matter.

20 There is really -- I don't see why
21 voir dire would be necessary. I think a
22 foundation has already been laid to allow this

1 to be entered into evidence on the mere
2 question of whether an investigation was done
3 and what's the amount of seats that were
4 counted and whether a violation was found.

5 I just don't think any additional
6 questions are necessary, at this point.

7 CHAIRPERSON MILLER: Do you want
8 to respond to that, Mr. Kline?

9 MR. KLINE: Yes. Madam Chair,
10 perhaps I misheard, but -- and that's why I
11 want to question the witness. I don't believe
12 that it was established, at this point, based
13 on what I heard, that these are complete and
14 correct. And it is -- we frankly could have
15 been done with this in the time that we are
16 talking about the --

17 CHAIRPERSON MILLER: You think
18 this isn't an official report signed by the
19 witness?

20 MR. KLINE: I believe the witness
21 testified that there was a citation attached.
22 And if that's the case, I don't have that as

1 part of my Exhibit 2. So that's what I wanted
2 to clarify if there supposedly is one. That's
3 what I heard and that's what I wanted to
4 question her on.

5 If it's not, then I won't have any
6 objection. If it is, I want to make sure I
7 have the complete document, that's all.

8 CHAIRPERSON MILLER: You know, I
9 should really have the document that -- I
10 think I have the document here. I have a case
11 report, but, you know, (a) and (b) also, but
12 not the one that -- you know, I don't know
13 that my attachments also are the ones that are
14 being offered into evidence, so let me look at
15 the right one.

16 MR. ADAMS: Well, actually, you
17 know, this might be easier to do.

18 CHAIRPERSON MILLER: Okay.

19 MR. ADAMS: Madam Chair, if I -- I
20 might be able to do it and I think this will
21 avoid the issue.

22 Ms. Martin, in terms of --

1 MR. KLINE: Objection.

2 CHAIRPERSON MILLER: Wait a
3 minute.

4 MR. KLINE: We are still ruling on
5 my request to voir dire, that's what we are
6 doing.

7 CHAIRPERSON MILLER: We are still
8 looking --

9 MR. ADAMS: Okay, fine.

10 CHAIRPERSON MILLER: We are still
11 looking at whether they can be admitted into
12 evidence --

13 MR. ADAMS: Okay. Certainly.

14 CHAIRPERSON MILLER: -- without a
15 voir dire.

16 MR. ADAMS: Would it be helpful
17 for, I guess, the purposes of the Chair to --

18 CHAIRPERSON MILLER: Mr. --

19 MR. ADAMS: I apologize.

20 CHAIRPERSON MILLER: -- Kline --

21 MR. ADAMS: I didn't mean to
22 inconvenience respondent's counsel by just

1 making sure that you have the documents. I
2 apologize if this is creating some type of
3 hardship, at this point, but if it would be
4 helpful for you, I'm more than happy to, at
5 least for inspection purposes, provide the
6 exhibits for you so that -- so there is no
7 problems.

8 CHAIRPERSON MILLER: Otherwise, I
9 can tell you Mr. Kline seems to have raised a
10 question about what was attached to (a). Is
11 that correct, 00155(a)?

12 MR. KLINE: What I want to clarify
13 is I heard, and maybe I misheard it, I thought
14 the witness said that there was a citation
15 attached --

16 CHAIRPERSON MILLER: Right.

17 MR. KLINE: -- to Exhibit 2.

18 CHAIRPERSON MILLER: Well, let's
19 look at --

20 MR. KLINE: I don't have that as
21 part of my package and I want to make sure we
22 are talking about the same documents, that's

1 all.

2 CHAIRPERSON MILLER: That's fine.
3 I don't know if the witness has to do that.
4 I mean, we have -- you were handed a document
5 that is Exhibit 2.

6 MR. KLINE: Right. But --

7 CHAIRPERSON MILLER: Why don't we
8 look at it --

9 MR. KLINE: -- if the witness --

10 CHAIRPERSON MILLER: -- and see if
11 there is a citation attached to it or not?
12 Why do we need to voir dire the witness?

13 MR. KLINE: Because if the witness
14 thinks that there is a document that there is
15 a citation attached to, then we may not be
16 sure that she is properly authenticating
17 Exhibit 2.

18 MR. ADAMS: Well, if I may, I
19 would like to -- it might be easier for me
20 just to ask a different question regarding the
21 singular document. I think that would clarify
22 this for everybody and then we can move on

1 with this.

2 CHAIRPERSON MILLER: Okay. All
3 right. Let's do that.

4 MR. ADAMS: Turning to Document 2,
5 Investigator Martin, won't you look at the
6 exhibits very closely? For Document 2, what
7 is marked as Document 2, what exhibits are
8 attached?

9 INVESTIGATOR MARTIN: I'm sorry,
10 repeat the question.

11 MR. ADAMS: What -- in terms of
12 the documents you have that is marked as
13 Exhibit 2, what exhibits are attached to that
14 document?

15 INVESTIGATOR MARTIN: I have
16 inserted Exhibit No. 2 exhibit as being a copy
17 of Citation 6251.

18 MR. ADAMS: But in terms of what
19 you actually have, what do you have there as
20 an exhibit?

21 INVESTIGATOR MARTIN: The actual
22 exhibit is a photograph of the sidewalk cafe

1 for Rumors.

2 MR. ADAMS: All right. Now, are--
3 is there a citation with that document?

4 INVESTIGATOR MARTIN: No, sir.

5 MR. ADAMS: Okay. Is there -- is
6 Exhibit 1 or the regulatory inspection with
7 that document?

8 INVESTIGATOR MARTIN: No, sir.

9 MR. ADAMS: Okay. So in other
10 words, excluding Exhibit 1 and 2, is that a
11 true copy of your investigative report?

12 INVESTIGATOR MARTIN: Yes, sir.

13 MR. ADAMS: I would now like to
14 again -- this is going to be Exhibit 1 of the
15 Exhibit 2, which will be the supplemental
16 report with the exclusions of the attachments
17 1 and 2, which were the, I guess, regulatory
18 inspection form and a copy of a citation that
19 it is Exhibit 2. And Exhibit 3, which is
20 another supplement. I would like that to be
21 introduced into evidence.

22 MR. KLINE: Objection to Exhibit 2.

1 CHAIRPERSON MILLER: Okay. Let me
2 just make clear what I understand Exhibit 2 to
3 be.

4 MR. ADAMS: Yes.

5 CHAIRPERSON MILLER: The case
6 report dated June 6, signed by Ms. Martin June
7 6, 2012, a photograph of Rumors and then an
8 investigative history. Is that Exhibit 2 or
9 no?

10 MR. ADAMS: Exhibit 2 is -- it was
11 signed on June 7th or June 6th by Investigator
12 Martin and it has a photograph.

13 CHAIRPERSON MILLER: And a
14 photograph, that's it?

15 MR. ADAMS: That's it.

16 MR. KLINE: So there is no
17 citation? We are clear that there is no
18 citations --

19 CHAIRPERSON MILLER: Right.

20 MR. KLINE: -- for Exhibit 2?

21 CHAIRPERSON MILLER: Correct.

22 MR. KLINE: All right.

1 CHAIRPERSON MILLER: Exhibit 2
2 consists of four pages, the case report and
3 photographs.

4 MR. KLINE: No objection.

5 CHAIRPERSON MILLER: Correct?

6 MR. ADAMS: That's it, yes.

7 CHAIRPERSON MILLER: Okay. Are
8 you moving all your exhibits, 1 through 3, in
9 at this point?

10 MR. ADAMS: Yes, exactly.

11 CHAIRPERSON MILLER: All right.
12 Oh, if you're going to hand them to me, then
13 I'll see exactly. Okay.

14 MR. ADAMS: All right.

15 CHAIRPERSON MILLER: Wait. Do you
16 want to wait and I'll -- can I see it? Just
17 so there is no question of what each of these
18 exhibits are: Exhibit 1 is three pages
19 consisting of -- no, four pages?

20 MR. ADAMS: Exhibit 1 is four
21 pages consisting of investigator report along
22 with a single exhibit, which is a Certificate

1 of Use.

2 CHAIRPERSON MILLER: Okay. You
3 just did Exhibit 2.

4 MR. ADAMS: Yes.

5 CHAIRPERSON MILLER: And Exhibit 3
6 is?

7 MR. ADAMS: Is an additional
8 supplement.

9 CHAIRPERSON MILLER: How many
10 pages is that?

11 MR. ADAMS: It's two pages.

12 CHAIRPERSON MILLER: Okay. Any
13 objection, Mr. Kline?

14 MR. KLINE: No objection.

15 CHAIRPERSON MILLER: All right.

16 Then Government Exhibits 1 through 3 are
17 entered into the record.

18 (Whereupon, the documents marked
19 as Government Exhibit 1 through 3
20 were received in evidence.)

21 CHAIRPERSON MILLER: Okay.

22 MR. ADAMS: Ms. Martin, in terms

1 of this establishment had you conducted any --
2 well, actually, let me back up for a second.

3 Earlier in your testimony you
4 state that you had counted -- that you
5 recollect that you counted 32 seats. How many
6 -- based upon your investigative report, how
7 many seats did you count?

8 MR. KLINE: Objection. This
9 question has now been asked three times and it
10 has been answered twice. The report speaks
11 for itself.

12 CHAIRPERSON MILLER: Now --

13 MR. ADAMS: This question is
14 obviously necessary. There are some issues
15 regarding the accuracy of the amount of seats
16 that were counted. Instead of -- we could
17 have just refreshed recollection. You know,
18 it's not really that much -- that material, I
19 mean a huge point, but to make sure that we
20 have accurate records, you know --

21 CHAIRPERSON MILLER: Yes.

22 MR. ADAMS: -- the testimony

1 should be on the record.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: Madam Chair, I

4 disagree with Mr. Adams' assessment.

5 Refreshing recollection takes place in a
6 situation where the witness does not recollect
7 and doesn't remember. In this case, the
8 witness remembered, stated very clearly that
9 she observed 32 seats.

10 If there is some sort of
11 discrepancy, the record is what it is. There
12 is the report. There is her testimony. And
13 the Board will examine it from there and I
14 certainly will be given an opportunity to
15 cross-examine on that issue.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: At this point, for Mr.
18 Adams to get the witness to, in effect, revise
19 her testimony because it is inconsistent with
20 another document, it's just completely
21 improper.

22 MR. ADAMS: It is not improper. I

1 mean, this is frankly, in terms of this body,
2 I mean, it's very commonplace to make sure
3 that we have the accurate information. There
4 is nothing -- I mean, in terms of, again, the
5 argument, there is nothing violative of making
6 sure that the information that is testified
7 about is accurate and is consistent with the
8 investigation. So --

9 CHAIRPERSON MILLER: Okay. I am
10 going to overrule the objection and let her
11 look at the report she did and explain.

12 MR. ADAMS: And just for the
13 Board's purposes, I just want to make sure
14 that the witness remembers the question. Do
15 you remember the question I asked you?

16 INVESTIGATOR MARTIN: I do believe
17 you asked of me the number of seats that I
18 counted on --

19 MR. ADAMS: Right.

20 MR. KLINE: And it's that the
21 question, my objection is renewed that that
22 question has been asked and answered.

1 MR. ADAMS: I just --

2 CHAIRPERSON MILLER: So rephrase
3 the question.

4 MR. ADAMS: -- stated did she
5 remember what the question was.

6 CHAIRPERSON MILLER: Okay. Why
7 don't you rephrase the question?

8 MR. ADAMS: No, no, no. She --

9 CHAIRPERSON MILLER: Start again.
10 The only thing she stated was what she
11 remember the question to be.

12 CHAIRPERSON MILLER: Okay.

13 MR. ADAMS: There is really no
14 basis for an objection.

15 CHAIRPERSON MILLER: Yes, let's
16 move on on this.

17 MR. KLINE: Well, then why don't
18 we get the question rephrased?

19 MR. ADAMS: No. There is -- the
20 objection is overruled.

21 CHAIRPERSON MILLER: Is that your
22 question, Mr. Adams?

1 MR. ADAMS: The question, yes,
2 that's my question. The question -- the
3 objection has already been overruled.

4 INVESTIGATOR MARTIN: Okay.
5 According to Investigative No. 12 --

6 MR. KLINE: Objection. What's the
7 question that is pending? I don't think any
8 of us here know the question that is pending,
9 including the witness.

10 CHAIRPERSON MILLER: Okay. Let's
11 start -- okay.

12 MR. ADAMS: I apologize.

13 CHAIRPERSON MILLER: Okay. Just--

14 MR. ADAMS: You know, I think we--

15 CHAIRPERSON MILLER: Mr. Adams,
16 just repeat the question.

17 MR. ADAMS: Okay. I'll repeat the
18 question.

19 Based upon your investigation
20 report, Ms. Martin, what were the -- what was
21 the number of seats that you counted on April
22 10, 2012?

1 MR. KLINE: And we will preserve
2 our objection for the record.

3 CHAIRPERSON MILLER: Okay. Okay.

4 INVESTIGATOR MARTIN: The actual
5 number counted was 38 seats.

6 CHAIRPERSON MILLER: Okay.

7 MR. ADAMS: All right. So now, in
8 terms of -- and also looking at the -- your
9 first exhibit, now, you cited that you had
10 Exhibit 1, which is the Certificate of Use.

11 INVESTIGATOR MARTIN: Yes, sir.

12 MR. ADAMS: Okay. Earlier on, you
13 stated that you checked ABRA files. And where
14 did you find this document?

15 INVESTIGATOR MARTIN: Inside of
16 Rumors' file.

17 MR. ADAMS: Okay. And what other
18 documents did you find as relate to the
19 sidewalk cafe?

20 INVESTIGATOR MARTIN: I located a
21 copy of their Certificate of Use in public
22 space.

1 MR. ADAMS: And what, if any,
2 document -- I mean, what, if anything else,
3 deals with capacity for the unenclosed
4 sidewalk cafe?

5 INVESTIGATOR MARTIN: The
6 Certificate of Use No. 000203 states that the
7 unenclosed sidewalk count is to be 24.

8 MR. ADAMS: I apologize. Can you
9 repeat that?

10 INVESTIGATOR MARTIN: Yes. The
11 Certificate of Use Permit, which I located
12 inside of Rumors' ABRA's file, No. 000203
13 states that the unenclosed outdoor seating
14 count -- outside count should be 24.

15 MR. ADAMS: Okay.

16 MEMBER SILVERSTEIN: That the
17 outdoor seating count?

18 INVESTIGATOR MARTIN: To be 24.

19 MR. ADAMS: All right. Now, in
20 terms of inspections, how many times -- was
21 this occasion -- was this the first time that
22 you conducted inspection at Rumors?

1 INVESTIGATOR MARTIN: No, sir.

2 MR. ADAMS: Okay. And,
3 approximately, do you recollect how many times
4 you have conducted inspections at Rumors?

5 INVESTIGATOR MARTIN: I want to
6 say, approximately, four times.

7 MR. ADAMS: Okay. And during
8 those inspections, I mean, what did your
9 inspections involve?

10 INVESTIGATOR MARTIN: The
11 regulatory inspections, which came on the
12 heels of sometimes for investigations.

13 MR. ADAMS: To what extent have
14 your inspections involved the review of the
15 sidewalk cafe area?

16 INVESTIGATOR MARTIN: I want to
17 say I went to the establishment,
18 approximately, two times, two or three times,
19 for the outdoor seating sidewalk cafe.

20 MR. ADAMS: And to the extent you
21 can recollect, what were your findings on
22 those times?

1 INVESTIGATOR MARTIN: That on two
2 of the occasions, I found that the
3 establishment was operating a sidewalk cafe
4 beyond the approved 24 seats or 24 occupancy.

5 MR. ADAMS: All right. Okay. At
6 any point -- all right. I have no further
7 questions for Investigator Martin.

8 CHAIRPERSON MILLER: Okay. Mr.
9 Kline, do you have cross?

10 MR. KLINE: Yes.

11 CROSS-EXAMINATION

12 MR. KLINE: Investigator Martin,
13 you prepared three reports in connection with
14 this violation?

15 INVESTIGATOR MARTIN: Good
16 morning, Mr. Kline. Yes, sir, I did.

17 MR. KLINE: Why was it necessary
18 to prepare three reports?

19 INVESTIGATOR MARTIN: Well, the
20 initial report 12-CMP-00155, was prepared
21 based off of my observations on April 10,
22 2012. Case No. 12-CMP-00155(a) was prepared

1 to -- was an addition to the -- it is a
2 supplement to the April 10, 2012 observation
3 to show the outdoor seating area for Rumors.

4 MR. KLINE: So that added -- I
5 mean, the text in the reports are, basically,
6 identical, are they not?

7 INVESTIGATOR MARTIN: There are
8 some identical writings in there, that's
9 correct.

10 MR. KLINE: Okay. So what was
11 added in the second report, just so I'm clear?

12 INVESTIGATOR MARTIN: What was
13 added on the second report in error, what was
14 added was the Exhibit, that I have, No. 1,
15 Exhibit No. 2, which was in error, and the
16 third which was added was the actual
17 photograph of the outdoor seating area.

18 MR. KLINE: Okay. All right.
19 Now, during the course of your testimony at
20 one point you said when you went to the
21 establishment, that you were looking for a C
22 of O for outdoor seating? That's what you

1 stated.

2 INVESTIGATOR MARTIN: That --

3 MR. KLINE: Is that your
4 understanding what is required for outdoor
5 seating, a Certificate of Occupancy?

6 INVESTIGATOR MARTIN: No.

7 MR. KLINE: All right. So were
8 you mistaken when you testified to that
9 earlier?

10 INVESTIGATOR MARTIN: Yes, I was.

11 MR. KLINE: In your experience,
12 the licenses and permits for particular
13 establishment agree with each other in terms
14 of who the licensee is, correct?

15 INVESTIGATOR MARTIN: Yes, sir.

16 MR. KLINE: All right. Now,
17 directing your attention to your three
18 reports, you did three reports, because you
19 wanted to get it right, correct?

20 INVESTIGATOR MARTIN: Yes, sir.

21 MR. KLINE: You wanted to make
22 sure that this report was complete and

1 accurate, correct?

2 INVESTIGATOR MARTIN: Well, yes
3 and no.

4 MR. KLINE: Yes and no?

5 INVESTIGATOR MARTIN: Yes, sir.

6 MR. KLINE: You didn't want to
7 make sure that the report was complete?

8 INVESTIGATOR MARTIN: I wanted to
9 make sure the record was complete, that's --

10 MR. KLINE: And you wanted -- and
11 you didn't want to make sure that the record
12 was accurate?

13 INVESTIGATOR MARTIN: Yes, I
14 wanted to make sure it was accurate as well.

15 MR. KLINE: And that was the
16 reason for the three reports, correct?

17 INVESTIGATOR MARTIN: Yes, but may
18 I elaborate on that?

19 MR. KLINE: No, that's all I need
20 to know, at this point.

21 INVESTIGATOR MARTIN: Okay. Thank
22 you.

1 MR. KLINE: Turning your attention
2 to the Certificate of Use that is attached to
3 Government's Exhibit 1, do you have that in
4 front of you?

5 INVESTIGATOR MARTIN: Which
6 report? Could you tell me which report number
7 you are speaking of?

8 MR. KLINE: 155.

9 INVESTIGATOR MARTIN: Okay.

10 MR. KLINE: And there is two
11 documents there, correct, on the third page
12 labeled Exhibit 1 to Exhibit 1 of which is
13 Government's Exhibit 1 in this case?

14 So to clarify, the Government
15 introduced three exhibits. Exhibit 1,
16 Government's Exhibit 1, let's call it that.
17 Government's Exhibit 1 is Investigation No.
18 12-CMP-00155, a three page document. Let me
19 count, a four page document. I apologize.

20 Do you have that in front of you?

21 INVESTIGATOR MARTIN: I do.

22 MR. KLINE: All right. And there

1 is an Exhibit 1 to that Government's Exhibit
2 1, correct?

3 INVESTIGATOR MARTIN: Yes.

4 MR. KLINE: And that consists of
5 photocopies of what purport to be two licenses
6 or permits?

7 INVESTIGATOR MARTIN: No.

8 MR. KLINE: No?

9 INVESTIGATOR MARTIN: I see one.
10 I have one. I'm sorry, yes, yes, it's two.

11 MR. KLINE: And the one up top is
12 what? Read what it says.

13 INVESTIGATOR MARTIN: Certificate
14 of Use for a sidewalk cafe in public space.

15 MR. KLINE: And the date of that?

16 INVESTIGATOR MARTIN: March 28,
17 1994.

18 MR. KLINE: All right. Who is the
19 permit to? Who is listed as the owner of the
20 business?

21 INVESTIGATOR MARTIN: R, like
22 Robert, H, like Henry, T, like Tom, Inc.

1 MR. KLINE: All right. Who is
2 your licensee in this case that is listed on
3 your three reports?

4 INVESTIGATOR MARTIN: 1900 M, like
5 Mary, Street Restaurant Associates, LLC.

6 MR. KLINE: That's not who was
7 given permission under this Certificate of Use
8 is it?

9 INVESTIGATOR MARTIN: No.

10 MR. KLINE: So this really doesn't
11 relate to this licensee, does it?

12 MR. ADAMS: Objection. Calls for
13 the witness to make a conclusion regarding --
14 I guess, some type of legal conclusion
15 regarding to the relation of the Certificate
16 of Use.

17 MR. KLINE: Madam Chairperson,
18 this witness did the investigation.

19 CHAIRPERSON MILLER: Yes. I'm
20 going to overrule it. She has relied on this
21 certificate.

22 MR. ADAMS: Okay.

1 MR. KLINE: So this doesn't relate
2 to this licensee that is before the Board
3 today, does it?

4 INVESTIGATOR MARTIN: As your
5 question to me, no, it does not.

6 MR. KLINE: All right. So in
7 preparing the report, you filled in a section
8 that says alleged violations and Code
9 Regulation Citation, correct?

10 INVESTIGATOR MARTIN: Correct.

11 MR. KLINE: That's routinely part
12 of a report, right?

13 INVESTIGATOR MARTIN: Correct.

14 MR. KLINE: That requires, does it
15 not, that you have some familiarity with the
16 regulations and with the DC Code concerning
17 sale and service of alcohol, so that you can
18 make a determination as to whether you believe
19 a violation has been committed, correct?

20 INVESTIGATOR MARTIN: Correct.

21 MR. KLINE: All right. So
22 although you don't give opinions of law and

1 you are not the Board and you're not a lawyer
2 and you're not a Judge, you're not the
3 Government's attorney, you have to make
4 certain conclusions in preparing your report,
5 correct?

6 INVESTIGATOR MARTIN: Correct.

7 MR. KLINE: All right. And in
8 this case, you concluded that there was a
9 violation of DC Code Section 25-762. Is that
10 right?

11 INVESTIGATOR MARTIN: Correct.

12 MR. KLINE: All right. And I
13 don't think we need to do this, mark it as an
14 exhibit, in the law. We'll do it anyway.

15 I'll show you what is marked as
16 Licensee's Exhibit 1.

17 (Whereupon, the document was
18 marked as Licensee Exhibit 1 for
19 identification.)

20 MR. KLINE: There are two pages
21 here?

22 INVESTIGATOR MARTIN: Yes.

1 MR. KLINE: DC Code Section 25-762
2 is reproduced there? Take a minute and look
3 at it and let us know if that's what you are
4 familiar with as being DC Code Section 25-762.

5 INVESTIGATOR MARTIN: Yes, sir,
6 yes.

7 MR. KLINE: Yes?

8 INVESTIGATOR MARTIN: Um-hum, yes.

9 MR. KLINE: Okay. All right.
10 Now, Section A, read Section A for us, if you
11 would.

12 INVESTIGATOR MARTIN: Of 25-762?

13 MR. KLINE: Yes.

14 INVESTIGATOR MARTIN: "Before a
15 licensee may make a change in the interior or
16 exterior or a change in format of any licensed
17 establishment, which would substantially
18 change the nature of the operation of the
19 licensed establishment as set forth in the
20 initial application for the license, the
21 licensee shall obtain the approval of the
22 Board in accordance with subsection 25-404."

1 MR. KLINE: All right. Now, is
2 that the section or the subsection that you
3 believe that this licensee violated?

4 INVESTIGATOR MARTIN: Yes, sir.

5 MR. KLINE: That subsection
6 references a change in the nature of the
7 establishment as set forth in the initial
8 application, doesn't it?

9 INVESTIGATOR MARTIN: Yes.

10 MR. KLINE: We don't have before
11 us today the initial application, do we?

12 INVESTIGATOR MARTIN: No, sir.

13 MR. KLINE: In fact, you didn't
14 even look at the initial application in making
15 your determination that there was a violation
16 of this subsection, did you?

17 INVESTIGATOR MARTIN: That's not
18 true.

19 MR. KLINE: But you didn't find --
20 you did look at it?

21 INVESTIGATOR MARTIN: Yes, sir.

22 MR. KLINE: But you didn't find

1 anything in there that would lead you to
2 believe that there was a violation of the
3 subsection, did you?

4 INVESTIGATOR MARTIN: Repeat the
5 question.

6 MR. KLINE: In reviewing the
7 application, which you said you did, correct?

8 INVESTIGATOR MARTIN: Yes, sir.

9 MR. KLINE: You didn't find
10 anything in the application which led you to
11 believe that there was a change in the nature
12 of the operation which gave rise to a
13 violation under this subsection. Isn't that
14 correct?

15 INVESTIGATOR MARTIN: Yes, sir,
16 um-hum.

17 MR. KLINE: That's correct?

18 INVESTIGATOR MARTIN: Yes.

19 MR. KLINE: You agree with that
20 statement?

21 INVESTIGATOR MARTIN: Um-hum.

22 MR. KLINE: All right. So the

1 only thing that you relied on is a Certificate
2 of Use dated March 28, 1994 which grants
3 permission to someone who is not the applicant
4 in this case, correct?

5 INVESTIGATOR MARTIN: I used the
6 information that the licensee last presented
7 to our office, that's correct.

8 MR. KLINE: Is RHT, Inc. the
9 licensee?

10 INVESTIGATOR MARTIN: No, sir.

11 MR. KLINE: Okay. Do you have any
12 reason to believe that the licensee in this
13 case, 1900 M Street Restaurant Associates,
14 LLC, presented this Certificate of Use that is
15 in the name of RHT, Inc.?

16 INVESTIGATOR MARTIN: I believe
17 that the document that the licensee provided
18 ABRA was the last document he submitted to
19 ABRA to reflect his records.

20 MR. KLINE: So if 1900 M Street
21 Restaurant Associates, LLC didn't exist in
22 1994, it would be your position that 1900 M

1 Street Restaurant Associates, LLC submitted
2 this document?

3 INVESTIGATOR MARTIN: I'm not the
4 records keeper. I'm going by the information
5 that is in the file. That's what the licensee
6 provided our office as documentation for
7 outdoor seating.

8 MR. KLINE: Did you check the
9 records of DDOT to see what the correct
10 information was with respect to the use of the
11 particular sidewalk cafe?

12 MR. ADAMS: Objection. Beyond the
13 scope of the direct examination.

14 CHAIRPERSON MILLER: Overruled.

15 MR. KLINE: Did you check the
16 records of DDOT?

17 INVESTIGATOR MARTIN: On which
18 day?

19 MR. KLINE: Any day regarding this
20 sidewalk cafe.

21 INVESTIGATOR MARTIN: Yes, sir, I
22 did.

1 MR. KLINE: And what did you find?

2 MR. ADAMS: Again, I'm going to
3 object on terms of the checking of the DDOT
4 records. What is submitted here is what the
5 investigator has found and as part of her
6 violation. Any reference to whether or not
7 she made any findings from DDOT, that is not
8 presented as part of Government's case. So it
9 would go beyond what has been presented on
10 direct examination. So --

11 CHAIRPERSON MILLER: I guess I
12 don't think so, because I think we have an
13 investigative report and it is fair game to
14 ask what the basis is for that report.

15 MR. ADAMS: Okay.

16 MR. KLINE: So what did you find?

17 CHAIRPERSON MILLER: Within
18 reason.

19 MR. KLINE: Thank you. What did
20 you find from DDOT?

21 INVESTIGATOR MARTIN: Well, my
22 inquiry of DDOT was -- time frame wise was

1 nowhere clear or close to my investigation.

2 My inquiry of DDOT came this week.

3 MR. KLINE: Okay. And did you
4 find that there was a Certificate of Use
5 issued for this establishment?

6 INVESTIGATOR MARTIN: I found
7 quite a few issued.

8 MR. KLINE: Quite a few issued?

9 INVESTIGATOR MARTIN: Um-hum, yes.

10 MR. KLINE: And they have
11 different numbers on them, don't they?

12 INVESTIGATOR MARTIN: That I
13 didn't key on, but -- I didn't key on the
14 numbers associated with that.

15 MR. KLINE: In your experience,
16 and just in your experience --

17 INVESTIGATOR MARTIN: Um-hum.

18 MR. KLINE: -- have you found that
19 you can rely on consistency with respect of
20 documentation that comes out of the Department
21 of Transportation concerning seating numbers
22 on sidewalk cafes?

1 INVESTIGATOR MARTIN: Well, I
2 believe that I've only had two interactions
3 with DDOT, I find that it is not consistent.

4 MR. KLINE: That it's not
5 consistent?

6 INVESTIGATOR MARTIN: Yes, sir.

7 MR. KLINE: All right. So we
8 don't know whether even this RHT, Inc. permit
9 is accurate in terms of what existed at that
10 time, do we?

11 INVESTIGATOR MARTIN: Which time?

12 MR. KLINE: At the time that it
13 was purportedly submitted or issued.

14 INVESTIGATOR MARTIN: I couldn't
15 answer that. That would be --

16 MR. KLINE: All right.

17 INVESTIGATOR MARTIN: -- a
18 question for a DDOT rep.

19 MR. KLINE: Right. But you have
20 certainly given your experience that the
21 numbers don't always seem to be consistent in
22 the two cases that you have had, correct?

1 INVESTIGATOR MARTIN: Numbers
2 change when increases change. That is
3 correct.

4 MR. KLINE: Okay. But in terms of
5 whether there has been any physical change to
6 the cafe or not, that may or may not have
7 happened, correct, if you know?

8 INVESTIGATOR MARTIN: Say that one
9 again.

10 MR. KLINE: In other words, you
11 are saying when there have been increases --
12 did you request documents -- I'll withdraw
13 that question.

14 Did you request documents from
15 DDOT with respect to this establishment?

16 INVESTIGATOR MARTIN: It was not
17 needed at the time of my inspection or at the
18 time of my report.

19 MR. KLINE: I'm going to show you
20 what we are marking as Licensee 2.

21 (Whereupon, the document was
22 marked as Licensee Exhibit 2 for

1 identification.)

2 MR. KLINE: I'm going to ask you
3 if you recognize that document.

4 MR. ADAMS: I'm going to object on
5 -- for any testimony on this document. Number
6 one, it appears to be a document that was done
7 after the investigative report was done and,
8 frankly, after the inspection was done. And
9 number two, I mean, we are being -- she is
10 being asked to try to identify or to recognize
11 a document that was not used as part of her
12 investigation.

13 I don't -- I think that that is
14 not really relevant to her investigation. And
15 again, I renew that I believe it's beyond the
16 scope of the direct examination.

17 CHAIRPERSON MILLER: Okay. Mr.
18 Kline, do you want to respond to that?

19 MR. KLINE: The witness has
20 testified that she wanted her reports to be
21 accurate and complete. Apparently she has
22 done some other investigation. The Government

1 has examined her on her investigation.

2 The Government's position seems to
3 be that the witness is only supposed to
4 testify to things that are favorable to the
5 Government's case. That's obviously not the
6 case.

7 MR. ADAMS: That's not the --

8 MR. KLINE: Excuse me.

9 CHAIRPERSON MILLER: Okay.

10 MR. ADAMS: -- position. I just
11 want to state that. Go ahead.

12 MR. KLINE: This is a fact-finding
13 body. This is certainly relevant to the
14 investigation that was done. The witness has
15 testified that she contacted DDOT if she had
16 seen this document. It is certainly relevant
17 to this proceeding.

18 MR. ADAMS: Again, whether if it
19 was reviewed well after the fact, again, it
20 wasn't a part of the direct examination. And
21 it certainly wasn't part of the investigation.
22 So again, I -- the objection should be

1 sustained in this case.

2 CHAIRPERSON MILLER: Okay. I'm
3 going to overrule, because what is part of the
4 case report is a Certificate of Use and what's
5 at issue here is whether there were others out
6 there that she should have inquired about.
7 And I think that that's a valid --

8 MR. ADAMS: And that's where my
9 issue is.

10 CHAIRPERSON MILLER: -- point.
11 Okay.

12 MR. ADAMS: According to this, I
13 have a document that is dated on May 2, 2012
14 and the inspection was done on April 10, 2012.
15 So that would post-date her inspection.

16 CHAIRPERSON MILLER: See, you
17 might want to give me the document to look at
18 then, because my understanding is it -- and
19 maybe I don't understand. The document is May
20 2nd, but the information existed before or the
21 information didn't exist until May 2nd. I
22 don't know. I would have to see the document.

1 MR. KLINE: May I pass it up?

2 CHAIRPERSON MILLER: Yes, please.

3 Mr. Kline, okay, so now I have Exhibit 2 in
4 front of me, which is a Certificate of Use for
5 1900 M Street. And is there a date on this
6 that you want to bring our attention to?

7 MR. KLINE: Not at this point. I
8 have -- if the witness can identify the
9 document, then I'm done with it. If she
10 doesn't know it, then we will introduce it
11 later through another witness.

12 CHAIRPERSON MILLER: Here it is.
13 Right.

14 MR. KLINE: If that's where we
15 are, then we can talk about the date.

16 CHAIRPERSON MILLER: Okay. So I
17 do see a date on it. Actually, it is May 2,
18 2012.

19 MR. KLINE: Oh, right.

20 CHAIRPERSON MILLER: Yes. So this
21 investigation was April 10, 2012, correct?

22 MR. KLINE: Correct.

1 CHAIRPERSON MILLER: So then I
2 understand the objection by Mr. Adams because
3 this wasn't available to -- it may not have
4 been available to the witness.

5 MR. KLINE: The witness testified
6 she looked in the last week, not before that
7 date, that she questioned DDOT's records in
8 the last week.

9 CHAIRPERSON MILLER: So how is it
10 -- okay. Last week. So how is last week
11 relevant to her investigative report?

12 MR. KLINE: The issue is do we
13 rely on a 1994 Certificate of Use issued to
14 another entity or are we talking about
15 approvals for this licensee, which is who is
16 before the Board today.

17 And if I could examine the
18 witness, we can -- I mean, I know a number of
19 you are aware that if there were any change in
20 the cafe, then that would have to go through
21 a process. So the fact that it was issued on
22 May 2, 2012 and the investigation was done

1 4/10/2012, I think we all have common
2 knowledge that between 4/10/2012 and 5/2/2012,
3 no one would have been able to go through the
4 Public Space Committee and get an amendment to
5 their cafe in such a short period of time.

6 MR. ADAMS: Actually, I really --

7 CHAIRPERSON MILLER: Wait.

8 MR. ADAMS: -- I don't have a
9 problem with that argument. You are being
10 asked to make a judgment based upon common
11 knowledge.

12 If the establishment has to put on
13 testimony, then it has to put on testimony
14 regarding this document. He is trying to do
15 cross-examination based upon a witness who has
16 testified to a limited set of facts.

17 You know, to go beyond those set
18 of facts, especially with a document that
19 occurred after the investigation, certainly
20 doesn't provide anything helpful to the Board.
21 And regardless of whether or not she looked at
22 that document after the fact, like within a

1 week, the bottom line is it wasn't discussed
2 on direct examination.

3 Nor does it have relations to any
4 documents that were reviewed and alas we were
5 -- frankly, we only know what --

6 CHAIRPERSON MILLER: Okay. Mr.
7 Adams, let me just say this. I mean, I was
8 using the date of April 20th, but, in fact,
9 there were supplemental reports done in June
10 and August of 2012, which are after this date.
11 So I think we can let this proceed on a very
12 limited basis.

13 MR. KLINE: That's fine.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: Investigator, so have
16 you seen that document? Do you know what it
17 is?

18 INVESTIGATOR MARTIN: When you
19 presented to me, this is my first time seeing
20 this.

21 MR. KLINE: You have never seen it
22 before?

1 INVESTIGATOR MARTIN: No, sir.

2 MR. KLINE: Okay. Does it appear
3 to be a Certificate of Use?

4 INVESTIGATOR MARTIN: Yes, sir, it
5 is.

6 MR. KLINE: And is that what --
7 does it have the form of a Certificate of Use
8 that you would normally see?

9 INVESTIGATOR MARTIN: It varies in
10 size, but, yes.

11 MR. KLINE: Okay. All right.
12 Fine. Then I don't have any further questions
13 on that point.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: Let me just make sure
16 I don't have any other questions. Thank you.
17 I beg the Board's indulgence. I do have.

18 Investigator, have you had
19 occasion to be involved with Rumors
20 Restaurant? You said you had been there a
21 number of times and done investigations
22 concerning the sidewalk cafe, correct?

1 INVESTIGATOR MARTIN: Actually, I
2 believe I stated twice.

3 MR. KLINE: Twice.

4 INVESTIGATOR MARTIN: For
5 sidewalk.

6 MR. KLINE: All right. But you
7 also reviewed pursuantly the records of ABRA
8 and reviewed the investigative history,
9 correct?

10 INVESTIGATOR MARTIN: Yes, sir.

11 MR. KLINE: Have there been any
12 complaints concerning the number of seats in
13 the seating area, either enclosed or
14 unenclosed?

15 INVESTIGATOR MARTIN: I have not
16 received any complaints.

17 MR. KLINE: All right. And did
18 your review of the records of ABRA reveal any
19 such complaints?

20 INVESTIGATOR MARTIN: In order for
21 me to answer that, I would have to look at my
22 report to read the history.

1 MR. KLINE: Do you have your
2 report there in front of you?

3 INVESTIGATOR MARTIN: Yes.

4 MR. KLINE: Take a look at it.

5 INVESTIGATOR MARTIN: I'll be
6 reviewing 12-CMP-00155 for the record.

7 MR. ADAMS: I'm going to object on
8 -- in terms of relevance of the question about
9 whether or not there is a complaint or for --
10 there seems to be the idea that if there is a
11 complaint, that would be a basis for a
12 substantial change.

13 And, frankly, there is nothing
14 within the rules that state that there has to
15 be a complaint for their to be a substantial
16 change. So I don't think that whether or not
17 there is a complaint is relevant to
18 responding.

19 CHAIRPERSON MILLER: Do you have a
20 response, Mr. Kline?

21 MR. KLINE: Yes, I'm kind of
22 stunned because 25-762 is a finding of a

1 substantial change it says in (b) "In
2 determining whether the proposed changes are
3 substantial, the Board shall consider whether
4 they are potentially of concern to the
5 residents of the area surrounding the
6 establishment."

7 It's not enough for the Government
8 to prove that there has been a change. They
9 have to prove that there has been a
10 substantial change. And certainly the lack of
11 complaints is evidence as to whether there was
12 concern. If there was concern, then it would
13 be easy for the Board to say well, gee, we
14 completed the substantial change because it is
15 not only potentially a concern, it has been a
16 concern because we have heard complaints.

17 Without that, there is a missing
18 element from the Government's case.

19 MR. ADAMS: That's not true.
20 There is inaccuracy there, because, I mean,
21 essentially, what is being stated by
22 respondent's counsel is that a complaint is

1 some type of prerequisite, but that's not true
2 at all.

3 What is defined within the --
4 sorry, if I may go on?

5 CHAIRPERSON MILLER: Yes.

6 MR. ADAMS: What's is defined
7 within the statute states certain areas by
8 which the Board can make a determination of
9 what areas are of potential concern and when
10 those areas has already been, I believe,
11 defined within the notice of those areas that
12 are of potential concern.

13 I mean, obviously, there is many
14 times where establishments do things where
15 there is no complaint involved. I think the
16 Board can rely on common knowledge for that.
17 So again, whether or not there -- I mean,
18 whether or not, the point is irrelevant
19 because again what the statute states is --
20 states are areas of potential concern. And
21 furthermore, as it -- it gives set examples of
22 what would be areas of potential concern as

1 listed within the statute.

2 So I don't really --

3 CHAIRPERSON MILLER: I must
4 sustain the objection.

5 MR. KLINE: Investigator, do you
6 still have Exhibit 1 in front of you?

7 INVESTIGATOR MARTIN: I do.

8 MR. KLINE: Looking at 25-762(b),
9 would you tell the Board which of those
10 subsections you believe were violated if it is
11 found that there was an increase in the number
12 of seats without prior Board approval?

13 INVESTIGATOR MARTIN: Are you
14 speaking of your exhibits that you presented
15 me?

16 MR. KLINE: Which is DC 25-762,
17 correct? I mean, Mr. Adams has just argued to
18 the Board that you can make --

19 MR. ADAMS: I apologize.

20 MR. KLINE: Excuse me.

21 MR. ADAMS: The questions --

22 CHAIRPERSON MILLER: No.

1 MR. ADAMS: -- being -- has
2 already been stated to Ms. Martin and now
3 there is just argumentation about what I said.
4 I think the witness needs to be allowed to
5 answer the question.

6 CHAIRPERSON MILLER: What's the
7 question again?

8 MR. KLINE: The question is -- let
9 me rephrase the question.

10 Investigator Martin, Mr. Adams has
11 told the Board that you can make a
12 determination as to whether there is a
13 violation of 25-762 based upon the enumerated
14 specific provisions contained within that
15 statute. I believe I'm paraphrasing as to
16 what he stated to the Board.

17 So my question for you is, given
18 that, looking at 25-762(b), can you tell us,
19 tell the Board, which of those specific
20 provisions you believe was violated if it is
21 found that there was an increase in the
22 seating in the sidewalk cafe area?

1 INVESTIGATOR MARTIN: Okay. The
2 answer your question -- to answer your
3 question, I'll be using your own Exhibit No.
4 1.

5 MR. KLINE: Yes.

6 INVESTIGATOR MARTIN: Therefore,
7 25-762(b), I would say that the establishment
8 was in violation.

9 MR. KLINE: And which specific
10 subsection are you talking about?

11 INVESTIGATOR MARTIN: Subsection
12 (b).

13 MR. KLINE: (b), which number?

14 INVESTIGATOR MARTIN: (2).

15 MR. KLINE: (2)? Within the
16 operation of the licensed establishment
17 without permanent use of exterior public or
18 private space or summer garden. That
19 provision?

20 INVESTIGATOR MARTIN: Yes.

21 MR. KLINE: All right. Now, by
22 your own evidence, specifically, the

1 Certificate of Use that was introduced, this
2 establishment has been approved for sidewalk
3 cafe usage at least since 1994, correct?

4 INVESTIGATOR MARTIN: For 24
5 seats, correct.

6 MR. KLINE: All right. And there
7 isn't anything in No. 2 that talks about
8 capacity or number of seats. It simply says
9 to allow for use of exterior public space or
10 private space for summer garden.

11 INVESTIGATOR MARTIN: Correct.

12 MR. KLINE: So that would be the
13 only that you relied on?

14 INVESTIGATOR MARTIN: Yes, sir.

15 MR. KLINE: All right. I beg the
16 Board's indulgence. I must get these drawings
17 right. And I apologize.

18 CHAIRPERSON MILLER: Okay.

19 MR. KLINE: Here's one for you.

20 MR. ADAMS: Oh, thank you.

21 MR. KLINE: Investigator?

22 INVESTIGATOR MARTIN: Yes.

1 MR. KLINE: I want to show you
2 what we have marked as Licensee's Exhibit 3.

3 (Whereupon, the document was
4 marked as Licensee Exhibit 3 for
5 identification.)

6 MR. KLINE: Does that appear to
7 you to be a layout of the Rumors' sidewalk
8 cafe?

9 INVESTIGATOR MARTIN: A photograph
10 would have been used for me. I'm not an
11 architect.

12 MR. KLINE: But you can -- you see
13 tables and chairs drawn on there? What I have
14 handed you, for the record, is a drawing,
15 correct?

16 INVESTIGATOR MARTIN: It's a
17 drawing.

18 MR. KLINE: All right. So you
19 have looked at it?

20 INVESTIGATOR MARTIN: Yes, sir.

21 MR. KLINE: All right. Are you
22 able to see where the outside cafe area is?

1 MEMBER ALBERTI: I have a question
2 here and maybe this isn't proper, but have we
3 established that this is a drawing of the
4 cafe?

5 MR. KLINE: That's what we are
6 asking.

7 MEMBER ALBERTI: I apologize, Mr.
8 Kline, but you are asking her a question and
9 we haven't established it.

10 MR. KLINE: I'm trying to.

11 MEMBER ALBERTI: You said -- no.
12 You said do you see the -- your question was
13 do you see the drawing of the outdoor cafe?
14 We haven't established that this particular
15 document is a drawing of that cafe or --

16 MR. KLINE: Fair enough.

17 MEMBER ALBERTI: -- any cafe.

18 MR. KLINE: Fair enough, fair
19 enough, fair enough.

20 So are you able to look at that
21 drawing and recognize it as the layout, a
22 seating layout?

1 MR. ADAMS: I'm going to object,
2 at this point. It appears to me that in terms
3 of -- again, this is not part -- we are well-
4 beyond the scope of direct, at this point.
5 Obviously, the establishment has had -- has a
6 chance to do a cross-examination here, but the
7 fact of the matter is that, you know, this
8 drawing -- it's not clear that this witness is
9 qualified to make determinations based upon
10 what is being identified as Respondent's
11 Exhibit 3.

12 MR. KLINE: Madam Chair, I did not
13 ask her to make a determination. I asked her
14 a very simple question. And the simple
15 question is are you able to recognize that as
16 a layout of some particular establishment.
17 Perhaps I have rephrased it, but that's,
18 basically, the question. That's as far as I
19 have gotten, at this point.

20 CHAIRPERSON MILLER: I have to
21 say, again, I don't have it in front of me, so
22 I can't tell whether it is a reasonable

1 question, based on whatever this shows.

2 MR. ADAMS: And the basis of this
3 is that --

4 MEMBER ALBERTI: May I ask a
5 question of Mr. Kline? Mr. Kline, are you
6 going to present a witness to authenticate
7 what this is a drawing of?

8 MR. KLINE: Sure, if I need to,
9 but it seems to me the investigator has been
10 to the site, presumably, she can look at a
11 drawing and either say it is a depiction of
12 what is there, it is not a depiction of what
13 is there or I can't really tell, because I
14 can't read the drawing.

15 I mean, it's a pretty simple
16 question. It's not that hard.

17 CHAIRPERSON MILLER: I think it is
18 fair.

19 MR. KLINE: I'm happy to pass it
20 forward as --

21 CHAIRPERSON MILLER: I would like
22 to see what it looks like when you are asking

1 the question.

2 MR. KLINE: First of all, is there
3 -- let's ask a question. Are there labels --

4 MEMBER ALBERTI: Mr. Kline? Mr.
5 Kline, I would argue that without the witness
6 being present at the establishment, that it
7 would be difficult to anyone to recognize
8 whether it is a fair and accurate drawing of
9 the establishment.

10 MR. KLINE: Well, that's not where
11 I'm at yet. I haven't even gotten there yet.

12 MEMBER ALBERTI: Well, but you are
13 presenting into evidence a drawing here of the
14 establishment and if it isn't a fair and
15 accurate representation of what exists, then
16 I'm not sure what use it is to this body.

17 MR. KLINE: All right. Let me ask
18 it a different way.

19 Investigator Martin, do you see
20 various legends on the right of that drawing,
21 which identify it? All the way to the right.

22 INVESTIGATOR MARTIN: Yes, sir.

1 MR. KLINE: All right. And does
2 it identify a particular address or a
3 particular business that this drawing is
4 associated with?

5 INVESTIGATOR MARTIN: It does.

6 MR. KLINE: All right. And what
7 business is that?

8 MR. ADAMS: Again, I'm going to
9 renew this objection. Yes, there is a
10 drawing. The drawing has an address and
11 things of this sort, but, again, we are
12 talking about we -- the witness on this was
13 very direct.

14 Now, this is a document. I don't
15 know if it's a public document. I don't know
16 if it's a private document. We don't know
17 anything about this document. I mean,
18 obviously, there is a role for, you know,
19 impeachment in cross-examination.

20 Now, I know that the respondent
21 has stated that they want to ask for a
22 dismissal and, you know, obviously, they have

1 that prerogative, but I guess, essentially, if
2 they are trying to get their evidence in
3 through cross-examination or something that
4 really isn't appropriate for that witness to
5 testify about, you know, it really can't be
6 helped.

7 This is best -- this document is
8 inappropriate for -- really there is no
9 qualification for this witness to do testimony
10 based upon this document, which, again, was
11 not part of her investigation and again was
12 not -- and at this point again, I renew it's
13 just well-beyond the scope of direct.

14 CHAIRPERSON MILLER: Mr. Kline,
15 could you make a proffer as to why you are
16 seeking this witness' discussion of this
17 drawing?

18 MR. KLINE: Because the witness
19 was at the site. The whole case is predicated
20 upon a violation related to the unenclosed
21 sidewalk cafe area. This drawing is a
22 depiction of the unenclosed sidewalk cafe

1 area. I'm simply trying to ascertain from the
2 witness whether this represents what she saw
3 on the day she was there.

4 She can count the tables. She can
5 do whatever she wants in terms of if she can
6 say. If she doesn't remember or she doesn't
7 know, that's fair. But the question isn't
8 improper. She went out there. She did an
9 investigation.

10 CHAIRPERSON MILLER: Right.

11 MR. KLINE: She observed certain
12 things. You could have a photo. She has a
13 photo. This is a drawing. And the question
14 is okay, is this what you saw when you went
15 out there? It's pretty basic.

16 CHAIRPERSON MILLER: Okay.

17 MR. ADAMS: The difference between
18 the future of the drawings, the picture is
19 something that she actually may -- that she
20 actually took. And again, it's direct -- it's
21 actually evidence that is connected to the
22 witness.

1 This evidence or this document, I
2 should say, because it's not evidence yet, is
3 not really connected to the witness.

4 INVESTIGATOR MARTIN: Madam Chair?

5 CHAIRPERSON MILLER: I heard the
6 arguments. Okay. I'm going to overrule the
7 objection and just say to Ms. Martin you can
8 cut to the chase, too. You can say you have
9 difficulty reading this. It had nothing to do
10 with your investigation or whatever you want,
11 but as Mr. Kline said, if you can just respond
12 to a few questions and then we will move on.

13 So what is the question then?

14 MR. KLINE: All right. So we have
15 established that it is labeled and it says
16 1900 M Street, Rumors Restaurant, correct?

17 INVESTIGATOR MARTIN: Yes, it
18 does.

19 MR. KLINE: All right. And in
20 whatever experience you have in looking at
21 layout drawings, are you able to in any way
22 identify any area depicted on that drawing

1 that relates to your investigation in this
2 case of an outdoor seating area?

3 INVESTIGATOR MARTIN: My
4 experience in reviewing drawings and it's --
5 your drawing is marked outside seating, so
6 I'll take it as that.

7 MR. KLINE: Okay. So you see an
8 area on there that is marked outside seating?

9 INVESTIGATOR MARTIN: Yes, sir.

10 MR. KLINE: All right. And you
11 see tables? Are there tables laid out in that
12 particular area?

13 INVESTIGATOR MARTIN: Yes, sir.

14 MR. KLINE: All right. And based
15 on your recollection of your visit to the site
16 and the count that you did, is that consistent
17 with what you observed when you were there?

18 MR. ADAMS: Objection. I don't
19 think this question is clear. I -- there is
20 no clear -- it's completely unclear what his
21 question is in terms of what he wants the
22 witness to testify to.

1 MR. KLINE: I just want her to
2 tell the truth, that's all I want.

3 CHAIRPERSON MILLER: She can say I
4 can't tell.

5 MR. ADAMS: The question is not
6 clear.

7 CHAIRPERSON MILLER: She can say I
8 don't remember. She can say anything.

9 MR. ADAMS: I think it's an unfair
10 question.

11 CHAIRPERSON MILLER: Overruled.
12 Just can you answer his question in any way?
13 Do you remember the question?

14 INVESTIGATOR MARTIN: Can you
15 repeat the question, Mr. Kline?

16 MR. KLINE: Sure. You went to the
17 site. You saw the layout of the chairs and
18 tables, correct?

19 INVESTIGATOR MARTIN: Yes, sir.

20 MR. KLINE: You counted the chairs
21 that were there?

22 INVESTIGATOR MARTIN: Yes, sir.

1 MR. KLINE: You counted the tables
2 or no?

3 INVESTIGATOR MARTIN: No, sir.

4 MR. KLINE: All right. Based on
5 your investigation, based on your at least two
6 visits to the premises, is the layout of the
7 outdoor seating area depicted in that drawing
8 consistent with what you observed?

9 INVESTIGATOR MARTIN: The layout
10 to the best of my knowledge, yes, the seating.

11 MR. KLINE: That's pretty much the
12 way it was laid out, correct?

13 INVESTIGATOR MARTIN: Yes, sir.

14 MR. KLINE: All right. And can
15 you tell how many seats are depicted in the
16 unenclosed outdoor seating area in the
17 drawing?

18 INVESTIGATOR MARTIN: Yes, sir.

19 MR. KLINE: How many?

20 MR. ADAMS: Objection. This
21 appears to be an architectural drawing. I
22 mean, again, in terms of relevance, I'm not

1 sure how a depiction in an architectural
2 drawing will relate to whether or -- to what
3 was seen by the investigator on April 10th.
4 And furthermore, what she was -- she believed
5 was the authorized capacity during the course
6 of her investigation.

7 I think the idea of using the
8 architectural drawing, I mean, you know, you
9 could do architectural drawing of a stadium --

10 CHAIRPERSON MILLER: Okay.

11 MR. ADAMS: -- and things look
12 different.

13 CHAIRPERSON MILLER: You can argue
14 the validity later. I think --

15 MR. ADAMS: Sorry.

16 CHAIRPERSON MILLER: -- this is
17 one simple question. Is it consistent with
18 what she saw, if she remembers or whatever.
19 Is that the question? The number of seats?
20 Can you answer that question?

21 INVESTIGATOR MARTIN: Sure.

22 CHAIRPERSON MILLER: Okay.

1 INVESTIGATOR MARTIN: It states
2 34.

3 MR. KLINE: 34 seats?

4 INVESTIGATOR MARTIN: Yes, sir.

5 MR. KLINE: All right.

6 CHAIRPERSON MILLER: Okay.

7 MR. KLINE: All right. Now, in
8 Government's Exhibit 2 -- oh, I would move the
9 exhibits, since she has identified that it's
10 an accurate depiction of what she observed
11 when she was there.

12 MR. ADAMS: No.

13 CHAIRPERSON MILLER: The seating--

14 MR. ADAMS: That's not consistent
15 with her testimony on direct. I object to
16 that. Her direct examination testimony said
17 there were 38 seats.

18 CHAIRPERSON MILLER: But her
19 testimony --

20 MR. ADAMS: So I object to that.

21 MR. KLINE: Her testimony --

22 CHAIRPERSON MILLER: -- just now

1 is what Mr. Kline is talking about.

2 MR. ADAMS: Okay.

3 CHAIRPERSON MILLER: Is that
4 correct?

5 MR. ADAMS: I understand what he
6 is talking about, but I raise the objection --

7 CHAIRPERSON MILLER: Okay.

8 MR. ADAMS: -- to it being entered
9 into evidence on those grounds.

10 CHAIRPERSON MILLER: Mr. Kline, we
11 don't even know what this -- what is this
12 drawing of?

13 MR. KLINE: Oh.

14 CHAIRPERSON MILLER: I mean, I
15 don't --

16 MR. KLINE: I thought I handed it
17 up to you.

18 CHAIRPERSON MILLER: Okay. So we
19 don't --

20 MEMBER ALBERTI: It hasn't been
21 established.

22 CHAIRPERSON MILLER: We don't know

1 what this drawing is, but you are saying that
2 this drawing that Ms. Martin just addressed,
3 you want to put into evidence?

4 MR. KLINE: That doesn't matter.
5 It could be like a photograph and if the
6 witness says yes, this is what I saw, it
7 doesn't matter whether it is a photograph or
8 a drawing. If the witness says this is what
9 I saw when I visited the establishment, it
10 could be stick figures, it could be a
11 photograph, it could be a drawing, it doesn't
12 make any difference.

13 CHAIRPERSON MILLER: Okay.

14 MR. KLINE: And the Board can give
15 it whatever weight the Board wishes.

16 CHAIRPERSON MILLER: All right.
17 It's labeled.

18 MEMBER ALBERTI: Madam Chair, I --

19 CHAIRPERSON MILLER: It's labeled.

20 MEMBER ALBERTI: -- am confused
21 here. Mr. Kline, are you proffering that this
22 is a drawing of the establishment?

1 MR. KLINE: Am I proffering that
2 it's a drawing of the establishment? No, the
3 witness has now identified that the outside
4 seating layout depicted on that drawing is
5 consistent with what she observed.

6 MEMBER ALBERTI: So this could be
7 a drawing of some cafe in Minnesota?

8 CHAIRPERSON MILLER: No.

9 MEMBER ALBERTI: And she has said
10 that it is consistent. What happens by
11 coincidence, is consistent with what she saw?
12 Is that what you are trying to say? I mean,
13 is that your point?

14 MR. KLINE: That's a stretch, but
15 she certainly --

16 CHAIRPERSON MILLER: No. Excuse
17 me. It says Rumors Restaurant on it --

18 MR. KLINE: Yes, it does.

19 CHAIRPERSON MILLER: -- to the
20 right, which she identified. 1900 M Street,
21 N.W.

22 MEMBER ALBERTI: We have not --

1 Madam Chair, she read that. We have not --

2 CHAIRPERSON MILLER: Right.

3 MEMBER ALBERTI: -- established it
4 as a depiction of Rumors. So this, as far as
5 I know, could be a cafe in Minnesota.

6 MR. KLINE: Yes, sir. And if --
7 let's take a different example.

8 MEMBER ALBERTI: No, no, no, no.
9 I just need to know, is that a fair assessment
10 of this exhibit?

11 MR. KLINE: Partly. But I need to
12 address that.

13 MEMBER ALBERTI: No, that's fine.
14 That's fine.

15 MR. KLINE: Madam Chair, with all
16 due respect, I would like to address the
17 concern if I may be able to?

18 CHAIRPERSON MILLER: Go ahead.
19 Well, because I'm debating whether to admit
20 this into evidence.

21 MR. KLINE: Let's say if it were a
22 picture of a cafe in Minnesota, a photograph,

1 and it were shown to the witness and the
2 witness were asked does this depict what you
3 saw when you went there and she said yes, it's
4 identified. It's authenticated. It's an
5 accurate -- for what it is, it's an accurate
6 document. It's an accurate depiction, that's
7 what the witness has testified to.

8 MEMBER ALBERTI: Mr. Kline --

9 MR. KLINE: It wouldn't be --

10 CHAIRPERSON MILLER: Wait. Wait a
11 minute.

12 MEMBER ALBERTI: Another question.

13 MR. KLINE: It would be error for
14 the Board to say no, it doesn't come in.

15 CHAIRPERSON MILLER: No. Of
16 course not, but we would also ask, you know,
17 who took the picture or you know.

18 MR. KLINE: But under the Rules of
19 Evidence, who took the picture is no longer
20 the relevant standard. It hasn't been for 30
21 or 40 years. The relevant standard is is it
22 an accurate depiction of what was there the

1 date that you observed it?

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: Not who took the
4 picture.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: Mr. Kline? Mr.
7 Kline, in a picture taken, a color photo,
8 there are usually some identifying features
9 which help a person conclude whether or not it
10 is a picture of the relevant building that we
11 are talking about. All right?

12 What identifying features on here
13 give her confidence or me confidence, since I
14 have to use this in judgment, what identifying
15 features on here would give the witness
16 confidence that this depicts Rumors and not
17 some place -- some other place.

18 MR. KLINE: Mr. Alberti, it's no
19 different than if I gave the witness a blank
20 piece of paper and said, please, draw what it
21 was that you saw or if I took the blank piece
22 of paper, drew on it and said was this what

1 the layout looked like and she said yes,
2 that's what it looked like. That's the
3 testimony we have.

4 Fortunately, architects can draw
5 straighter lines than I can, so it's a better
6 drawing in terms of saying yes, that's what I
7 saw. And that's what she has testified to.

8 MEMBER ALBERTI: So the only
9 purpose of this is some theoretical drawing?
10 Because if you drew it, it would be a
11 theoretical drawing. In theory, this is what
12 you saw. I mean, this is, you know --

13 MR. KLINE: Mr. Alberti, I --

14 MEMBER ALBERTI: This is --

15 MR. KLINE: I'm sorry.

16 MEMBER ALBERTI: -- a sketch of
17 what you drew. This is not actually what
18 exists, because if you drew it, it wouldn't be
19 actually what exists. And so our
20 understanding is that this is not exactly what
21 exists. We don't have to conclude that that
22 is actually what exists in real life.

1 MR. KLINE: Mr. Alberti, you are
2 free to conclude what you want. The point is
3 the witness -- if I draw on a piece of paper
4 and the witness says yes, that's what it looks
5 like, it's not what I draw. It's what the
6 witness testified to.

7 MEMBER ALBERTI: Fine. For that
8 understanding --

9 MR. KLINE: The witness takes my
10 drawing and says no, no, no, that chair wasn't
11 there, it's actually over here, then that is
12 her testimony as to what she saw.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Silverstein, do you have a comment or
15 question?

16 MEMBER SILVERSTEIN: Mr. Kline,
17 this could have been moved much more quickly
18 had you simply told us what it was that is
19 being offered here.

20 CHAIRPERSON MILLER: He can't.

21 MEMBER BROOKS: He can't tell us.

22 MEMBER ALBERTI: He can't tell us.

1 MR. KLINE: Fine.

2 COURT REPORTER: Sir, could you
3 turn on the microphone?

4 MR. KLINE: Then I will proffer --

5 MEMBER SILVERSTEIN: Can we simply
6 accept --

7 MR. KLINE: I will proffer.

8 MEMBER SILVERSTEIN: -- this for
9 what it is and move forward?

10 MR. KLINE: And I will proffer.
11 If we get that far, I will tie it up later
12 that this is a drawing from records at DDOT,
13 which reflect the approvals for the sidewalk
14 cafe. And we will have a witness tie it up
15 later, if we get that far.

16 CHAIRPERSON MILLER: Okay. All
17 right. I'm going to admit it and give it the
18 weight that it deserves. And I understand
19 it's for the purpose of the witness to say
20 that it reflected what she saw with respect to
21 the outside seating with respect to the hairs
22 in particular.

1 But we will review the testimony
2 with respect to this.

3 (Whereupon, the document marked as
4 Licensee Exhibit 3 was received in
5 evidence.)

6 MEMBER ALBERTI: I don't think --

7 CHAIRPERSON MILLER: I thought she
8 did, but we will --

9 MEMBER ALBERTI: -- she did. No,
10 she counted the number of chairs. She said it
11 reflected her recollection of what she saw.
12 But I don't -- I didn't hear her say that it
13 reflected her count of the chairs.

14 MR. ADAMS: No, I did not.

15 CHAIRPERSON MILLER: Okay. I
16 don't testify anyway, so, you know, pay no
17 attention if you disagree with that.

18 MEMBER ALBERTI: Okay. That's
19 fine.

20 CHAIRPERSON MILLER: But still, we
21 are going to -- what number is it as
22 licensee's exhibit number? Is this No. 1?

1 MR. KLINE: No, 3.

2 CHAIRPERSON MILLER: 3? Did you
3 put in 1 and 2?

4 MR. KLINE: I have not moved 1 and
5 2. 1 is merely a replication of the statute.
6 I will move it just so the Board can confirm
7 for themselves that what the witness was given
8 is accurate and tracks with what the statute
9 actually is.

10 MR. ADAMS: No objection to
11 Exhibit 1.

12 MR. KLINE: I beg your pardon?

13 CHAIRPERSON MILLER: What did you
14 say?

15 MR. ADAMS: I have no objection to
16 Exhibit 1.

17 CHAIRPERSON MILLER: Okay.

18 MR. KLINE: Exhibit 2 was a
19 current Certificate of Use, which has not yet
20 been identified and I have not moved.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: Investigator, looking

1 at Government's Exhibit 2, which is --

2 INVESTIGATOR MARTIN: Mr. Kline,
3 could you give me the indulgence? Let me just
4 put this away.

5 MR. KLINE: Sure.

6 INVESTIGATOR MARTIN: It's kind of
7 a little more easy.

8 MR. KLINE: And I'm sorry I've
9 made a mess. I will clean up afterwards.

10 CHAIRPERSON MILLER: Thank you.

11 MR. KLINE: Investigator, do you
12 have Exhibit 2 in front of you?

13 INVESTIGATOR MARTIN: Yes, sir.

14 MR. KLINE: All right. And there
15 is a photograph attached to Exhibit 2?

16 INVESTIGATOR MARTIN: Yes, sir.

17 MR. KLINE: Can you tell from that
18 photograph how many seats are in the outside
19 seating area?

20 INVESTIGATOR MARTIN: Not
21 completely.

22 MR. KLINE: So partially?

1 INVESTIGATOR MARTIN: Yes, sir.

2 MR. KLINE: And how can you tell
3 partially? What do you observe that would aid
4 you in determining how many seats are there?

5 INVESTIGATOR MARTIN: Just by
6 counting through the slats.

7 MR. KLINE: And how many seats do
8 you count through the slats?

9 INVESTIGATOR MARTIN: I see six.

10 MR. KLINE: That's all I have.

11 CHAIRPERSON MILLER: Just for
12 clarification, you kind of stick what through
13 this glass?

14 INVESTIGATOR MARTIN: Six chairs.

15 CHAIRPERSON MILLER: Six chairs
16 through the glass?

17 INVESTIGATOR MARTIN: From exhibit
18 -- Government Exhibit 2.

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: Madam Chair, I don't
21 know if I previously passed up Respondent's
22 Exhibit 1. I do have a copy of it here. It's

1 the replication of the statute provision.

2 CHAIRPERSON MILLER: I don't think
3 so.

4 MR. KLINE: I don't have any
5 further questions of the witness. I thought
6 I said that, maybe I didn't. Maybe I just
7 thought it.

8 MR. ADAMS: No, you said it.

9 CHAIRPERSON MILLER: More
10 questions?

11 MR. ADAMS: I guess I do. Maybe I
12 don't.

13 CHAIRPERSON MILLER: Yes, please.

14 MEMBER ALBERTI: Investigator
15 Martin, good morning.

16 INVESTIGATOR MARTIN: Good
17 morning, sir.

18 MEMBER ALBERTI: Okay. Are you
19 familiar with ABRA licenses?

20 INVESTIGATOR MARTIN: Yes, sir.

21 MEMBER ALBERTI: All right. When
22 an establishment has been approved for a

1 sidewalk cafe, what information about that use
2 is recorded on the license itself?

3 INVESTIGATOR MARTIN: The
4 Licensing Division will insert the number of
5 seating on the actual license.

6 MEMBER ALBERTI: Are you sure
7 about that?

8 INVESTIGATOR MARTIN: In all
9 cases, no, I'm not sure, but in some cases--

10 MEMBER ALBERTI: So when you went
11 into this establishment, you looked on their
12 license, did you see the number of seats?

13 INVESTIGATOR MARTIN: I don't
14 recall I even asked for the license for the
15 establishment.

16 MEMBER ALBERTI: You asked for a
17 Certificate of Use, did you not?

18 INVESTIGATOR MARTIN: Yes, that
19 was my area of focus.

20 MEMBER ALBERTI: And they couldn't
21 find it?

22 INVESTIGATOR MARTIN: Correct.

1 MEMBER ALBERTI: Why didn't you
2 ask to see the license?

3 INVESTIGATOR MARTIN: I didn't
4 think to ask for the license.

5 MEMBER ALBERTI: Do you normally
6 ask for a license in your regulatory
7 inspections?

8 INVESTIGATOR MARTIN: Yes, but I
9 wasn't there for a regulatory inspection.

10 MEMBER ALBERTI: All right. Could
11 it be that you don't recollect correctly on
12 what is on the license?

13 First of all, okay, let me take
14 that back.

15 Are the hours of the use on the
16 license?

17 INVESTIGATOR MARTIN: Yes, sir.

18 MEMBER ALBERTI: All right. I'll
19 ask you again, are you absolutely positive,
20 absolutely positive that the number of seats
21 are listed on the license? The number of
22 seats for a sidewalk cafe. Not number of

1 seats for the interior. Number of seats for
2 sidewalk cafe are listed on the license?

3 INVESTIGATOR MARTIN: My
4 experience shows there is no number of seating
5 for the outside cafe listed on the licenses.

6 MEMBER ALBERTI: Listed -- there
7 is no seating listed on the license?

8 INVESTIGATOR MARTIN: There is
9 seating listed on the licenses, but not as it
10 pertains to the outdoor seating.

11 MEMBER ALBERTI: Oh, so you must
12 have misunderstood my original question then?

13 INVESTIGATOR MARTIN: Right.

14 MEMBER ALBERTI: So how do you
15 know how many seats are approved by the Board
16 for an outdoor cafe?

17 INVESTIGATOR MARTIN: For an --

18 MEMBER ALBERTI: For an outdoor
19 cafe. Let me clarify, for an outdoor cafe,
20 how do you determine how many seats have been
21 approved by the Board?

22 INVESTIGATOR MARTIN: Sometimes

1 that information is found through settlement
2 agreements. Also known as voluntary
3 agreements.

4 MEMBER ALBERTI: And if there
5 isn't a settlement agreement, how else would
6 you determine it?

7 INVESTIGATOR MARTIN: Absent a
8 Board order or a settlement agreement, there
9 is no other way that I can find out what the
10 Board has accepted.

11 MEMBER ALBERTI: Okay. If you see
12 -- in this case, when you see -- when you go
13 into the Board's records and you see a
14 Certificate of Use for a sidewalk cafe, what's
15 your assumption about what the Board has
16 approved or not approved?

17 INVESTIGATOR MARTIN: The Board --
18 I'm understanding that the Board approves
19 whatever number that the regulatory agency
20 provided to the licensee.

21 MEMBER ALBERTI: Okay. All right.
22 So it's your -- okay. So I think what I'm

1 hearing from you is -- is this correct? It's
2 your understanding that the number of seats
3 allowed, approved by the Board is documented
4 by the certificates that are included with the
5 licensee's record?

6 INVESTIGATOR MARTIN: Yes, sir.

7 MEMBER ALBERTI: Here at ABRA?

8 INVESTIGATOR MARTIN: Yes, sir.

9 MEMBER ALBERTI: Okay. I have no
10 further questions.

11 CHAIRPERSON MILLER: Mr. Jones?

12 MEMBER JONES: Thank you, Madam
13 Chair.

14 Investigator Martin, how are you
15 doing, ma'am?

16 INVESTIGATOR MARTIN: I'm fine.
17 Yourself? Good morning, sir.

18 MEMBER JONES: I just wanted to
19 check and it's probably my fault, so please
20 bear with me, but you indicated that on the
21 date, I think it was, April 10th date, was
22 that the date -- what was the date that you

1 first went to the establishment for the
2 initial investigation related to this case?

3 INVESTIGATOR MARTIN: April 10,
4 2012.

5 MEMBER JONES: Okay. All right.
6 On that date, did you record the number of
7 seats that you observed in the outdoor seating
8 area that is in question?

9 INVESTIGATOR MARTIN: Yes, I write
10 it down.

11 MEMBER JONES: How did you record
12 that?

13 INVESTIGATOR MARTIN: I wrote it
14 down.

15 MEMBER JONES: You wrote it down?

16 INVESTIGATOR MARTIN: Yes, sir.

17 MEMBER JONES: And when you write
18 it down, do you have a common place where you
19 record such things when you conduct
20 investigations or did you write it on the back
21 of a post-it note or on the back of a napkin?
22 How did you record that?

1 INVESTIGATOR MARTIN: Just on a
2 notebook that I had.

3 MEMBER JONES: On a notebook that
4 you had?

5 INVESTIGATOR MARTIN: Yes, sir.

6 MEMBER JONES: Okay. What is the
7 nature of that notebook? Is that a notebook
8 that is dedicated and reserved for the
9 purposes of conducting official ABRA-related
10 business or is that some other notebook that
11 you use for personal information as well?

12 INVESTIGATOR MARTIN: It's a
13 combination.

14 MEMBER JONES: A combination?

15 INVESTIGATOR MARTIN: Yes, sir.

16 MEMBER JONES: Okay. How do you
17 segregate and keep separate and distinct
18 information related to investigative purposes
19 from things other than investigative purposes?

20 INVESTIGATOR MARTIN: I generally
21 go to the back of the book for those.

22 MEMBER JONES: To the back of the

1 book?

2 INVESTIGATOR MARTIN: Yes, sir.

3 MEMBER JONES: Okay. Do you have
4 a process whereby you have a certain amount of
5 time that you allow at a maximum to lag
6 between the time that you conduct an
7 investigation and you record information in
8 said book and you report that information
9 elsewhere?

10 INVESTIGATOR MARTIN: No.

11 MEMBER JONES: No?

12 INVESTIGATOR MARTIN: No.

13 MEMBER JONES: Okay. At what
14 point did you pull that information from your
15 notebook and record it somewhere else, i.e.,
16 like your investigator report or somewhere
17 else in order to prepare yourself or ready
18 yourself to complete your investigative
19 report?

20 INVESTIGATOR MARTIN: For that
21 day, I recorded the information and
22 immediately on the day of the inspection, some

1 hours passed and then I responded to the
2 office, reviewed the records the very same day
3 of April 10th and made copies that day.

4 MEMBER JONES: Okay. So in less
5 than 24 hours from the time that you made your
6 initial observation, recorded your count, you
7 had then transposed or transcribed that
8 information from your notebook to some other
9 medium? Some other -- whether it was
10 electronic.

11 How did you -- you made a copy of
12 it and you took that copy and put it in a
13 file? I'm just trying to understand what does
14 that mean to you, because I don't understand
15 the process.

16 INVESTIGATOR MARTIN: Okay. I
17 noted the information on the scene at 1900 M,
18 did some other duties as relates to ABRA,
19 returned to ABRA office. I noted the
20 information as far as the photograph some
21 hours later. I placed that -- I made a copy
22 of the Certificate of Use, placed that on my

1 desk all within -- on April 10, 2012.

2 I made a telephone call to the
3 establishment advising them of my findings.
4 And within three days, I reduced my findings
5 to a written report.

6 MEMBER JONES: Okay. And on that
7 night, April 10th, how did you physically make
8 that count? Did you walk around and put a
9 finger on each chair? Did you do it standing
10 in a remote location and observe and look?
11 How did you make your count?

12 INVESTIGATOR MARTIN: Prior to
13 entering the establishment, because that was,
14 I want to say, my fourth stop that -- my third
15 stop that day. I counted the seats prior to
16 entering the establishment and I already knew
17 then going in how many seats it should be.
18 And then I asked for the Certificate of Use or
19 Occupancy for the outdoor seating.

20 MEMBER JONES: Okay. But how did
21 you make that count? So it sounds like you
22 weren't in the establishment when you made the

1 count of the number of chairs, so you were
2 standing in some location other than the
3 establishment to make the count? How did you
4 make that count? Were you standing on the
5 sidewalk immediately adjacent to -- I'm not
6 familiar with the layout, so I'm just trying
7 to understand.

8 How could you actually see and
9 count the number of seats if you weren't in
10 the establishment?

11 INVESTIGATOR MARTIN: Okay. The
12 establishment sits on the corner of 19th and M
13 on the northwest side. I was standing on the
14 northwest side as well, close enough to touch
15 the railing and I was able to count the seats
16 just using the top of my head.

17 MEMBER JONES: You were able to
18 count the number of seats just using the top
19 of your head. Is that what you said?

20 INVESTIGATOR MARTIN: Yes.

21 MEMBER JONES: Okay. So you were
22 able to observe and see clearly all of the

1 seats that you counted. Were you, at any
2 point, making an assumption or an
3 extrapolation based on an obstructed view of
4 any type whereas there may have been some
5 seats that were potentially behind a column
6 that you couldn't directly see, so you were
7 making an assumption or an extrapolation that
8 there are probably seats behind this
9 obstructed view area or were all of those
10 seats that you counted in plain view of your
11 eyes?

12 INVESTIGATOR MARTIN: They were in
13 plain view.

14 MEMBER JONES: Okay. So there
15 were no assumptions, no extrapolations that
16 were made?

17 INVESTIGATOR MARTIN: Correct.

18 MEMBER JONES: Okay. When you
19 were asked about the drawing that was
20 presented to you by Mr. Kline, and my
21 understanding from what you said about that
22 drawing was that it was representative of what

1 you remember seeing.

2 Were you implying, at that time,
3 that the exact count that you remember making
4 matched exactly the count that was noted on
5 that drawing?

6 INVESTIGATOR MARTIN: No, sir.

7 MEMBER JONES: Okay. Thank you.
8 Thank you, Madam Chair.

9 CHAIRPERSON MILLER: Other
10 questions? I just have a few.

11 With respect to Exhibit 1 attached
12 to Government's Exhibit 1, the Certificate of
13 Use dated March 28, 1994, and it says that
14 "Permission is hereby granted to RHT, Inc."

15 INVESTIGATOR MARTIN: Yes, ma'am,
16 I have it.

17 CHAIRPERSON MILLER: Okay. Did
18 you look any further into who RHT, Inc. was or
19 anything like that for purposes of your
20 investigation?

21 INVESTIGATOR MARTIN: No, ma'am.

22 CHAIRPERSON MILLER: Okay. And

1 how does ABRA usually know if a Certificate of
2 Use has been updated or replaced?

3 INVESTIGATOR MARTIN: By way of
4 the licensee.

5 CHAIRPERSON MILLER: The licensee
6 submits it to the Agency?

7 INVESTIGATOR MARTIN: Yes, sir.
8 Correction, yes, ma'am.

9 CHAIRPERSON MILLER: And do you
10 ever check with DDOT with respect to these
11 types of Certificates of Use in general in an
12 investigation? Do you -- are there any -- is
13 that part of the investigation usually or do
14 you do it ever?

15 INVESTIGATOR MARTIN: No, it's not
16 a part of my routine investigation, but I did
17 later.

18 CHAIRPERSON MILLER: And why did
19 you do it later? You mean later after --

20 INVESTIGATOR MARTIN: To prepare
21 for this, to prepare for today's case.

22 CHAIRPERSON MILLER: So this is

1 later. When you say later, you mean even
2 after you did all your supplemental
3 investigations, right?

4 INVESTIGATOR MARTIN: Yes. I
5 think it possibly would help if I explained
6 that. I generally go to a secondary or a
7 regulatory agency in the course of my
8 investigation if there is some sort of
9 discrepancy. And since the establishment had
10 no occupancy to show me on the day of the
11 investigation, I solely went by the record
12 that ABRA had.

13 CHAIRPERSON MILLER: Okay. And I
14 think -- and if I'm mistaken, correct me, but
15 I think that there was a discrepancy in your
16 testimony today between -- about the number of
17 seats. That you testified something like 32
18 at one point and then your memory was
19 refreshed by the investigative report and you
20 said 38.

21 Is there a reason that you said a
22 different number earlier?

1 INVESTIGATOR MARTIN: Yes, I know
2 it may not give time, at this point, for the
3 Board to have the recorder go back, but I did
4 use the word believe. I really didn't say
5 with 100 percent certainty, but I did say
6 believe. And it would have been best if I had
7 answered that question initially by asking
8 about -- by way of helping my recollection to
9 see the actual report.

10 CHAIRPERSON MILLER: Okay. Okay.
11 All right. I don't have any other questions.
12 Anybody else on the Board have questions?
13 Okay. Mr. Adams, do you have any questions on
14 Board questions?

15 MR. ADAMS: Yes, I do.

16 CHAIRPERSON MILLER: Okay.

17 REDIRECT EXAMINATION

18 MR. ADAMS: Turning --
19 Investigator, I'm trying to figure out what to
20 deal with first, but let's deal with -- do you
21 still have Respondent's Exhibit 1 in front of
22 you?

1 INVESTIGATOR MARTIN: Yes, sir.

2 MR. ADAMS: Okay. And that was
3 the statute that was laid in front of you.
4 Can you read for the Board subsection (b)(1)?

5 INVESTIGATOR MARTIN: Yes. (b)(1)
6 states "Increase the occupancy of the licensed
7 establishment or the use of interior space not
8 previously used."

9 MR. ADAMS: Okay. And to what
10 extent, if any, did that have a part of your
11 consideration of whether a violation occurred
12 in this case?

13 INVESTIGATOR MARTIN: I actually
14 did not entertain No. 1.

15 MR. ADAMS: All right. Can you
16 tell us -- based upon your review of the
17 investigation and the statute as is stated,
18 can you make any notations about whether or
19 not there was a violation based upon that
20 subsection?

21 INVESTIGATOR MARTIN: Of No. 1?

22 MR. ADAMS: Yes.

1 MR. KLINE: Objection. Calls for
2 a legal conclusion.

3 MR. ADAMS: Well, I --

4 CHAIRPERSON MILLER: Can I ask a
5 question? Mr. Adams, no, no.

6 MR. ADAMS: At this point --

7 CHAIRPERSON MILLER: No.

8 MR. ADAMS: -- this is exactly --

9 CHAIRPERSON MILLER: I know. I
10 agree. I just want to know and understand.
11 I thought you were going to ask questions
12 based on Board questions. But are you doing
13 redirect now? Is that what you are doing in
14 general?

15 MR. ADAMS: Yes.

16 CHAIRPERSON MILLER: Because we
17 didn't ask any questions based on the statute
18 that I heard.

19 MR. ADAMS: Oh, no, I was --

20 CHAIRPERSON MILLER: Oh, you --

21 MR. ADAMS: -- doing a redirect
22 based on --

1 CHAIRPERSON MILLER: Redirect.

2 MR. ADAMS: -- cross-examination
3 as well.

4 CHAIRPERSON MILLER: Okay. I just
5 wanted to know what --

6 MR. ADAMS: Yes.

7 CHAIRPERSON MILLER: -- you were
8 doing.

9 MR. ADAMS: Cross-examination
10 and --

11 CHAIRPERSON MILLER: Okay. Well,
12 that was raised by -- you asked her those same
13 kind of questions.

14 MR. KLINE: I asked her what she
15 looked at in writing in the report the alleged
16 violation. Now, we are going to try to
17 rewrite history and ask her to judge now what
18 she thinks should be relevant in terms of the
19 violation. That's your job.

20 And certainly had I said, well,
21 Jay, you know, what do you think a violation
22 is? Then an objection would have been proper.

1 But my questions related strictly to the
2 report that she prepared and her conclusion,
3 her conclusion, that this licensee was in
4 violation.

5 MR. ADAMS: All right. Well, it
6 was asked for --

7 CHAIRPERSON MILLER: Okay.

8 MR. ADAMS: No, okay. It was
9 asked for her to read the document. Actually,
10 you know what? I'm going to withdraw the last
11 question. The subsection is already read.

12 All right. Now, in terms of --
13 now, there was presented to you Exhibit 2 by
14 respondent, which was the Certificate of Use.
15 And my specific question is had you seen that
16 document at any point prior to today's
17 hearing?

18 INVESTIGATOR MARTIN: No, sir.

19 MR. ADAMS: And what -- regarding
20 this case, what documents regarding
21 Certificates of Use or anything regarding
22 occupancy or anything of that sort were within

1 the -- did you view within the ABRA records or
2 were existing within the ABRA records?

3 INVESTIGATOR MARTIN: I'm not
4 clear on that question.

5 MR. ADAMS: I apologize. What --
6 in terms of occupancy, what documents existed
7 within the ABRA records in total?

8 INVESTIGATOR MARTIN: According to
9 Government Exhibit No. 1, I relied on
10 Certificate of Use for sidewalk and public
11 space No. 000203.

12 MR. ADAMS: And what other
13 documents existed within the file as they
14 relate to occupancy?

15 MR. KLINE: Objection. Well
16 beyond the scope of direct or any cross-exam.

17 MR. ADAMS: Well, not really.

18 CHAIRPERSON MILLER: I'm sorry.
19 Would you repeat the question, please?

20 MR. ADAMS: So I asked her what
21 other documents were within the Board's
22 records as it related to occupancy.

1 MR. KLINE: I'll withdraw.

2 MR. ADAMS: And -- okay.

3 INVESTIGATOR MARTIN: ABRA records
4 did not reflect any other document associated
5 with the outside seating.

6 MR. ADAMS: All right. Now, but
7 actually, let me look at that Document,
8 certificate, 2. Now, looking at the document,
9 this -- can you read whether or to what extent
10 can you tell whether or not the licensee is
11 identified within this document or how can you
12 tell whether or not the licensee was -- is
13 identified within the document that was
14 provided by the respondent?

15 INVESTIGATOR MARTIN: Which
16 exhibit?

17 MR. ADAMS: This is Respondent's
18 Exhibit 2, the Certificate of Use.

19 INVESTIGATOR MARTIN: And your
20 question again, counsel?

21 MR. ADAMS: How can you -- to what
22 extent can you determine who is the identified

1 owner/licensee in that document?

2 INVESTIGATOR MARTIN: In the area
3 of the C of U for Exhibit No. 2, the count for
4 -- it's counsel and it states Rumors.

5 MR. ADAMS: Okay. Well, now,
6 specifically, where it states Rumors, what
7 does it state above it?

8 INVESTIGATOR MARTIN: It states
9 unenclosed sidewalk cafe.

10 MR. ADAMS: No, but in that box
11 where you say it states Rumors, what are the
12 words that are directly above it?

13 INVESTIGATOR MARTIN: Name of
14 business?

15 MR. ADAMS: Right. Okay. And
16 where is there any information that identifies
17 the licensee in this case, in this document?

18 INVESTIGATOR MARTIN: In the area
19 where it states permission is hereby granted
20 to.

21 MR. ADAMS: Okay. And who is it
22 granted to?

1 INVESTIGATOR MARTIN: Madison
2 Square Associates, LLC.

3 MR. ADAMS: Okay. Can you
4 describe your knowledge of who Madison Square
5 Associates, LLC is?

6 MR. KLINE: Madam Chair, I'm going
7 to object. This document is not in and the
8 Government has vehemently objected to it
9 coming in. If the Government wants to pursue
10 this line of questioning, I would hope that
11 the Government would withdraw its objection
12 and allow the document to come into evidence.

13 CHAIRPERSON MILLER: I don't think
14 the Government is required to do that though.
15 You used this document, did you not?

16 MR. KLINE: I understand that, but
17 it's not in. It hasn't been offered as an
18 exhibit. It hasn't been accepted as an
19 exhibit. She hasn't identified it, at this
20 point. I shouldn't have let it go this far.

21 I mean, my question was do you
22 know what it is? Do you recognize it? She

1 said no. That was that.

2 MR. ADAMS: No, we --

3 MR. KLINE: And now we are --

4 CHAIRPERSON MILLER: Oh.

5 MR. KLINE: -- well --

6 CHAIRPERSON MILLER: Wait a
7 second. Wait a second. Let me Kline finish.

8 MR. ADAMS: I apologize.

9 CHAIRPERSON MILLER: Then I'll
10 hear you. Go ahead.

11 MR. KLINE: Now, we are well
12 beyond that into what's on the document and
13 everything else. If the Board is going to
14 accept it as evidence, we are happy to have
15 him ask these questions. But if the Board is
16 not accepting it as evidence, it hadn't been
17 offered, he can move it. We won't object. We
18 would love to have it in. But otherwise, we
19 think this whole line of questioning is
20 improper.

21 MR. ADAMS: So let me make sure --
22 this is for respondent. Respondent has not

1 offered this into evidence.

2 CHAIRPERSON MILLER: Right.

3 MR. KLINE: No, we haven't offered
4 it.

5 MR. ADAMS: Okay. I'll withdraw
6 my question.

7 CHAIRPERSON MILLER: Okay.

8 MR. ADAMS: Now, within the --
9 your cross examination, you were asked
10 questions regarding -- I'm going to turn to
11 Exhibit 1 of your investigative report, the
12 Certificate of Use.

13 Now, you were asked to identify
14 who is -- who was the grantee for that
15 Certificate of Use. Is that correct?

16 INVESTIGATOR MARTIN: Yes, sir.

17 MR. ADAMS: Okay. In terms of
18 your -- I mean, I guess your knowledge of the
19 operations with the Board, what is your
20 knowledge? Now, it's also the knowledge of
21 this -- I apologize. Let me withdraw this and
22 step back.

1 It's also knowledge that this
2 document comes from 1994. Is that correct?

3 INVESTIGATOR MARTIN: Yes, sir.

4 MR. ADAMS: Okay. But for -- what
5 is -- and obviously, you are used to different
6 documents -- or what other documents are
7 admitted as -- in terms of licensees that may
8 be in records? I mean, are there other things
9 such as agreements or anything of that sort
10 that may track to a licensee?

11 INVESTIGATOR MARTIN: Yes, sir.

12 MR. ADAMS: All right. So in
13 terms of RHT, Inc., you stated that that is
14 not the licensee, the named licensee. So
15 explain your words. Why did you rely on this
16 document, even though it does not specifically
17 state the name of the current licensee?

18 INVESTIGATOR MARTIN: Because this
19 was the document that spoke directly to the
20 outdoor seating approval. And there was
21 nothing else for me to rely on.

22 MR. ADAMS: Okay. And based upon

1 your knowledge, how would -- a change in
2 corporate status, how would that change
3 whether or not you could rely on this
4 document?

5 MR. KLINE: Objection. Relevance
6 in terms of a change of corporate status.
7 It's not before the Board. I don't even know
8 where we are going --

9 MR. ADAMS: No, absolutely --

10 MR. KLINE: -- at this point.

11 MR. ADAMS: -- it is before the
12 Board. It's relevant. We allowed testimony
13 about whether or not they are the same person,
14 the licensee's name is on the license, I think
15 is fair on redirect for us to understand the
16 reliance. I mean, it has already been --

17 CHAIRPERSON MILLER: I'm going to
18 overrule it.

19 MR. KLINE: But there is -- if I
20 may? There is no testimony concerning any
21 change in corporate organization. There is no
22 testimony about that at all.

1 MR. ADAMS: All right.

2 MR. KLINE: I mean, the only thing
3 we have --

4 CHAIRPERSON MILLER: The --

5 MR. KLINE: I'm sorry.

6 CHAIRPERSON MILLER: -- only
7 question is why she relied on that, even
8 though it differed from Rumors.

9 MR. KLINE: I thought the next
10 question was what's your understanding of
11 something related to a change of organization?
12 There is no evidence of record.

13 CHAIRPERSON MILLER: Okay.

14 MR. ADAMS: There was.

15 MR. KLINE: That's not in
16 evidence. There isn't anything that looks to
17 that in this case.

18 MR. ADAMS: Based upon the -- I'll
19 withdraw the question.

20 Based upon your investigation,
21 what were you able to determine about whether
22 there had been -- whether there are any

1 records regarding a change in the ownership or
2 change of who the -- yes, change of ownership
3 in terms of this location by this name at that
4 address.

5 MR. KLINE: Objection. Assumes
6 facts not in evidence.

7 MR. ADAMS: No. I asked her
8 questions like, you know, what information did
9 you -- what information was there?

10 MR. KLINE: Concerning a change of
11 ownership.

12 MR. ADAMS: Right.

13 MR. KLINE: There is no evidence
14 of that.

15 MR. ADAMS: She can answer that
16 question. That's not --

17 CHAIRPERSON MILLER: Okay. Unless
18 somebody wants to bring to my attention, I
19 agree there wasn't any testimony about a
20 change in ownership.

21 MR. ADAMS: Well --

22 CHAIRPERSON MILLER: Bring it to

1 my attention.

2 MR. ADAMS: Well --

3 MEMBER ALBERTI: Wait, wait just
4 one moment, Mr. Adams.

5 CHAIRPERSON MILLER: Was there?
6 Yes?

7 MEMBER ALBERTI: Mr. Kline asked
8 her --

9 CHAIRPERSON MILLER: Yes, go
10 ahead. Can you put that on the record,
11 because I don't remember it?

12 MEMBER ALBERTI: Mr. Kline, I
13 believe in your questioning to Ms. Martin, you
14 asked her if RHT, Incorporated was the name of
15 the current licensee. Did you not?

16 MR. KLINE: I did.

17 MEMBER ALBERTI: That's all I need
18 to know. Thank you.

19 MR. ADAMS: All right. And again,
20 the question is to your knowledge, Ms. Martin,
21 is there information in the ABRA file
22 regarding any change of the ownership of this

1 establishment?

2 INVESTIGATOR MARTIN: That I
3 cannot answer. I did no inquiry regarding
4 ownership.

5 MR. ADAMS: Okay.

6 CHAIRPERSON MILLER: Could you
7 speak louder?

8 INVESTIGATOR MARTIN: Yes. I
9 stated that question I cannot answer because
10 I did no inquiry --

11 CHAIRPERSON MILLER: Okay.

12 INVESTIGATOR MARTIN: -- on the
13 ownership.

14 CHAIRPERSON MILLER: Yes, okay.

15 MR. ADAMS: Now, based on your
16 knowledge, to what extent -- who does the
17 Certificate of Use apply to? Does it apply to
18 a particular person or do they apply to
19 whomever is at the address?

20 INVESTIGATOR MARTIN: The occupant
21 of the address.

22 MR. ADAMS: Now, earlier, very

1 early in your testimony, you were asked about
2 the fact that you filed three reports within
3 a -- for this investigation. You know, one,
4 obviously, was the initial report.

5 Now, why did you file the
6 supplemental reports in this case? Can you
7 address that?

8 INVESTIGATOR MARTIN: Yes. To my
9 understanding, our legal counsel wanted to
10 make a clear record of the finding of the
11 inside of the establishment versus the outside
12 of the establishment.

13 MR. ADAMS: Okay. So now, I
14 guess, this simply refers to Government's
15 Exhibit 2. Now, obviously, there is a
16 photograph that was a part of the exhibit.
17 What was your understanding was the purpose of
18 providing a photograph and supplementing the
19 record?

20 INVESTIGATOR MARTIN: To
21 accurately depict the outdoor seating.

22 MR. ADAMS: All right. And in

1 terms of accurately depicting in what way?
2 What was the purpose for -- what was the
3 purpose of depicting the seating?

4 INVESTIGATOR MARTIN: To clearly
5 define the outdoor seating versus the indoor
6 seating.

7 MR. ADAMS: All right. And was
8 there any reason why that had to be defined in
9 this case?

10 INVESTIGATOR MARTIN: I wasn't
11 privy to the intentions of legal.

12 MR. ADAMS: All right. And just
13 briefly, I just want to make sure. Now, there
14 was also the supplement for the -- the second
15 supplement. Now, actually, can you, please --
16 because I guess there was some discussion
17 earlier about this -- about your exhibits.

18 Can -- in your summary, can you
19 read what is stated here in this, as part of
20 155(b) here?

21 INVESTIGATOR MARTIN: Yes. "This
22 report is being generated to clarify the

1 exhibits attached to Report No. 12-CMP-
2 00155(a). Although the exhibit is labeled
3 Exhibit No. 3, it should have been labeled
4 Exhibit No. 1. No additional exhibits are
5 attached to Report No. 12-CMP-00155(a)."

6 MR. ADAMS: Okay. So what other
7 purpose did that supplement have? Can you
8 tell us whether there was any other purpose
9 for the second report?

10 INVESTIGATOR MARTIN: Yes. This
11 was after -- after the reports go through an
12 approval process, an error was captured in
13 Exhibit No. -- correction in Government's
14 Exhibit 1, where I had -- correction.

15 Government Exhibit No. 2 with
16 respect to the exhibits, I did some copying
17 and paste for shortcuts to complete my report
18 and failed to erase the exhibits that I had on
19 there.

20 MR. ADAMS: Now, I'll ask you
21 another question. Now, you are shown an
22 architectural plan and I think that was

1 Document No. 3. And actually, just for the
2 record, was that introduced into evidence,
3 Exhibit No. 3, by respondent?

4 CHAIRPERSON MILLER: Yes.

5 MR. ADAMS: Okay. To what -- can
6 you describe -- in terms of being an
7 investigator, to what extent is it typical to
8 examine architectural drawings as a part of
9 investigations for compliance with occupancy
10 or for any other purposes as far as your
11 normal investigative duties?

12 MR. KLINE: Objection as to
13 relevance.

14 CHAIRPERSON MILLER: Overruled.

15 MR. ADAMS: No, it's --

16 CHAIRPERSON MILLER: Go ahead.

17 INVESTIGATOR MARTIN: That's not
18 generally part of my investigation process.

19 MR. ADAMS: All right. Okay. And
20 why don't you look for architectural plans
21 when you look at -- when you try to determine
22 an establishment's occupancy?

1 INVESTIGATOR MARTIN: I'm not sure
2 what I'm looking at.

3 MR. ADAMS: All right. But I mean
4 -- okay. And in the past, have you ever had
5 to review an architectural plan to determine
6 current occupancy for an establishment?

7 INVESTIGATOR MARTIN: No, sir.

8 MR. ADAMS: All right. I have no
9 further questions.

10 CHAIRPERSON MILLER: Mr. Kline?

11 MR. KLINE: Yes.

12 RE-CROSS-EXAMINATION

13 MR. KLINE: Investigator, you
14 testified that C of Use apply to an occupant
15 at an address, correct?

16 INVESTIGATOR MARTIN: Yes, sir.

17 MR. KLINE: And that would be the
18 licensee, correct?

19 INVESTIGATOR MARTIN: Yes, sir.

20 MR. KLINE: So what would be the
21 entity that is licensed by ABRA, correct?

22 INVESTIGATOR MARTIN: The

1 hesitation is because the licensee and the
2 entity are words that are interchangeable.

3 MR. KLINE: Okay. So in your
4 experience, you said you have been an
5 investigator six years, correct?

6 INVESTIGATOR MARTIN: Yes, sir.

7 MR. KLINE: When you go in, you
8 know who the ABRA licensee is, because you
9 have access to ABRA records, right?

10 INVESTIGATOR MARTIN: Correct.

11 MR. KLINE: And then you expect a
12 Certificate of Occupancy to be in the name of
13 that individual or entity, correct?

14 INVESTIGATOR MARTIN: Correct.

15 MR. KLINE: You expect the
16 business license to be in the name of that
17 individual or entity, correct?

18 INVESTIGATOR MARTIN: Correct.

19 MR. KLINE: You expect the sales
20 tax certificate to be in the name of that
21 entity or individual?

22 INVESTIGATOR MARTIN: Correct.

1 MR. KLINE: Right?

2 INVESTIGATOR MARTIN: Right, yes.

3 MR. KLINE: And the same with
4 respect to the Certificate of Use, right?

5 INVESTIGATOR MARTIN: Correct.

6 MR. KLINE: All right. So if the
7 Certificate of Use doesn't relate to the
8 licensee, who you know is the licensee
9 according to ABRA's records, then that's not
10 the relevant Certificate of Use for that
11 business, is it?

12 INVESTIGATOR MARTIN: I would say
13 that's correct.

14 MR. KLINE: All right.

15 CHAIRPERSON MILLER: What did you
16 say? I'm sorry? Did you say correct?

17 INVESTIGATOR MARTIN: Yes.

18 CHAIRPERSON MILLER: Okay.

19 MR. KLINE: And if the -- and you
20 have had some training with respect to
21 organizations in your role as an investigator?

22 INVESTIGATOR MARTIN: Yes.

1 MR. KLINE: In terms of how they
2 are formed and how they are created and so on
3 and so forth, right?

4 INVESTIGATOR MARTIN: Yes.

5 MR. KLINE: And you know that in
6 order to form one, you have to file some
7 papers with DCRA, right?

8 INVESTIGATOR MARTIN: Yes.

9 MR. KLINE: And you have to get
10 something called a Certificate of Organization
11 or Certificate of Incorporation?

12 INVESTIGATOR MARTIN: Correct.

13 MR. KLINE: That creates the
14 entity, right?

15 INVESTIGATOR MARTIN: Correct.

16 MR. KLINE: So if the Certificate
17 of Use that we have is dated before the
18 creation of your licensed entity, then it
19 couldn't possibly relate to that business,
20 could it?

21 INVESTIGATOR MARTIN: (No audible
22 answer.)

1 MR. KLINE: In other words, if
2 1900 M -- I keep getting it wrong. 1900 M
3 Street Restaurant Associates, Inc. wasn't
4 created until some time after 1994, which is
5 the date of the Certificate of Use, then that
6 Certificate of Use couldn't relate to that
7 entity, could it? Because that entity didn't
8 exist yet, right?

9 INVESTIGATOR MARTIN: Well, I
10 can't actually answer that one right now,
11 because I don't know when 1900 M Street
12 Restaurant Associates were incorporated.

13 MR. KLINE: Right. I understand.

14 INVESTIGATOR MARTIN: Yes.

15 MR. KLINE: It was a hypothetical.
16 It was if it was formed after that date, then
17 it couldn't travel back in time and be the
18 permittee under that particular permission,
19 right?

20 INVESTIGATOR MARTIN: Mr. Kline, I
21 have to say yes or no to that one.

22 MR. KLINE: You don't know?

1 INVESTIGATOR MARTIN: No, I'm not
2 saying that. I'm saying that had I been
3 investigating the entity, then I definitely
4 would have found that out a lot quicker.

5 MR. KLINE: All right.

6 INVESTIGATOR MARTIN: However --

7 MR. KLINE: I'm going to show
8 you ---=

9 INVESTIGATOR MARTIN: Okay.

10 MR. ADAMS: I apologize. I'm not
11 sure if Mr. Martin had a full chance to answer
12 that question. You said yes or no? I
13 apologize. I think she was still in the
14 process of answering that question.

15 MR. KLINE: Madam Chairman, with
16 all due respect, the fact that the Government
17 doesn't like her answer doesn't mean --

18 CHAIRPERSON MILLER: He is not
19 going there.

20 MR. ADAMS: No, that's not it.

21 CHAIRPERSON MILLER: Let's not go
22 there.

1 MR. ADAMS: I think she was still
2 actually answering the question.

3 CHAIRPERSON MILLER: Right.

4 MR. KLINE: Oh, I apologize. I'm
5 sorry.

6 CHAIRPERSON MILLER: He just
7 didn't think she finished the answer, but --

8 MR. KLINE: Were you done with
9 your answer?

10 INVESTIGATOR MARTIN: No, sir.

11 MR. KLINE: Oh, I'm sorry. Go
12 ahead. I apologize. My fault. I'm sorry.

13 CHAIRPERSON MILLER: Go ahead.

14 INVESTIGATOR MARTIN: Yes. Had I
15 gone on that road to inquire of the ownership,
16 then that would have been clear to me the
17 entity, who that entity was and that would
18 have provided a red flag to me and I would
19 have, you know, did a case on that as well.

20 But being that I was just focused
21 on the actual sidewalk occupancy and I saw the
22 correlation of -- correction, the same name as

1 Rumors that is on our records versus Rumors on
2 the '94 document, that's what I went with.

3 MR. KLINE: Okay. So you did
4 review the application you said. You reviewed
5 the application records with respect to this
6 licensee, right?

7 INVESTIGATOR MARTIN: Yes, sir.

8 MR. KLINE: All right. So if the
9 records of the Department of Consumer and
10 Regulatory Affairs reflect that 1900 M Street
11 Restaurant Associates, Inc. was not formed
12 until March 11, 1997, would that affect your
13 opinion as to the relevancy of the Certificate
14 of Use that seems to be the main exhibit in
15 this case?

16 INVESTIGATOR MARTIN: It would
17 have affected whether or not if I would move
18 forward on a case for the entity change
19 without notice, but not to the effect of the
20 seating for the outdoor cafe.

21 MR. KLINE: No further questions.

22 CHAIRPERSON MILLER: Okay. Okay.

1 Are there any other Board questions?

2 MEMBER ALBERTI: No, I don't have
3 any Board questions.

4 CHAIRPERSON MILLER: Good. Are
5 there any other questions?

6 MEMBER ALBERTI: I don't want to
7 be here all night. No. Mr. Adams?

8 MR. ADAMS: I have no further
9 questions.

10 CHAIRPERSON MILLER: Mr. Kline?
11 What?

12 MR. ADAMS: I have no further
13 questions, Madam Chair.

14 CHAIRPERSON MILLER: Good. Okay.
15 Thank you very much.

16 INVESTIGATOR MARTIN: Thank you.
17 (Whereupon, witness was excused.)

18 CHAIRPERSON MILLER: And do you
19 rest your case, at this point?

20 MR. ADAMS: The District does rest
21 its -- I apologize. The District does rest
22 its case. We have no further witnesses who

1 will be sneaking through the door any time.

2 CHAIRPERSON MILLER: Can I see
3 what he is going to do first?

4 MEMBER ALBERTI: Okay. Let's see
5 what he does first.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Kline, what --

8 MR. KLINE: I'm going to move to
9 dismiss the Government's case. If I may be
10 heard on that?

11 CHAIRPERSON MILLER: Okay.

12 MR. KLINE: The charge here is --
13 there is one charge here. This case is very
14 complicated, but it's only by -- this is under
15 25-762. We have heard discussion of it with
16 the witness.

17 In our opinion, what must be
18 proven is the following: First, what was set
19 forth on the original application for the
20 licensee. 762 says "Before a licensee may
21 make a change in the interior or exterior,
22 which would substantially change the nature of

1 the operation of the licensed establishment,
2 as set forth in the initial application."

3 So in other words, there has to be
4 a benchmark. It is not oh, gee, they made a
5 change. Changes are made all the time. Menus
6 are changed, decor changes, there are all
7 sorts of changes that take place.

8 The benchmark, according to the
9 statute and the Board may disagree and maybe
10 this is something down the road we need to
11 look at, maybe it needs to be more precise,
12 but what it says in the statute as we sit here
13 today is "as set forth in the initial
14 application."

15 So a crucial element of the
16 Government's case is what was set forth in the
17 initial application. We have not had a shred
18 of testimony concerning this issue. All we
19 have had is a copy of a Certificate of Use
20 that happens to be in the file from 1994 in
21 the name of another entity, in the name of
22 RHT, Inc.

1 There isn't any evidence that ties
2 that Certificate of Use to this operator and
3 there isn't any -- no one has produced an
4 application. The investigator said that she
5 reviewed the application. It didn't shed any
6 light on this case. That there wasn't
7 anything in that application which -- I think
8 the Board even questioned her on well, where
9 else might seats be shown? So that's number
10 one.

11 Number two, was there a change?
12 That's an issue. The only evidence we have of
13 a change is this C of U from 1994 issued to
14 this other entity. There is no testimony that
15 it is now different than what existed then.
16 It's only in terms of what was on that C of U.

17 And in terms of whether this
18 applicant has made any change, again, without
19 a benchmark it's a little hard to make that
20 determination anyway, because in order to make
21 the change, as some of our statisticians and
22 engineers know, you've got to have a

1 benchmark. You just can't say there has been
2 a change.

3 You have to know where you
4 started. And our only starting point here is
5 the C of U that is not even, at this point,
6 tied to the named licensee.

7 Now, the third issue, which Mr.
8 Adams seemed to disagree with me about as we
9 were going through the case, is is this change
10 substantial?

11 Well, the Board deals with
12 substantial changes all the time. The Board
13 exercises its discretion in terms of -- and
14 the magic language is in the statute. It is
15 of concern, potentially of concern to the
16 residents of the area surrounding the
17 establishment?

18 Now, the Board gets to make that
19 call. The Board makes it all the time. The
20 Board has been flexible in terms of what
21 neighborhood, who might be concerned. We
22 don't have much evidence in this case, but we

1 have a little bit of evidence and it came in
2 over objection, which is there has been no
3 complaint in however many years that this
4 licensee has been licensed.

5 ABRA's records do not reflect one
6 person from Dupont Circle, which is a very
7 engaged neighborhood in terms of licensing
8 issues, not from the Dupont Circle, not from
9 ANC-2B, not from the Dupont Circle Citizens
10 Association, not from some of the usual people
11 that you might see down here. You haven't
12 received one complaint.

13 So for the Board to say well, gee,
14 this must be of concern, that's -- I'm going
15 to leave that to you, because, as I said, you
16 get to make that decision. That's within the
17 Board's discretion.

18 But I would offer to you that if
19 this were an issue that was of concern, I
20 think you would have heard about it long
21 before now. Long before 2012 from whenever
22 this change was supposedly made, even though

1 there is no evidence of it.

2 So based on all of that, we do not
3 believe that the Government has sustained its
4 burden of putting before you evidence from
5 which you could find that this licensee is in
6 violation.

7 And it fails on the first point,
8 principally, which is without what was set
9 forth in the original application, the initial
10 application, and a variance from that, there
11 is simply no showing of a violation.

12 So based on all of that, we would
13 request that the Show Cause be dismissed.
14 Thank you.

15 CHAIRPERSON MILLER: Mr. Adams?

16 MR. ADAMS: Madam Chair, the
17 District's response is that the District has
18 provided a prima facie case by which the Board
19 can make the determination that substantial
20 change did occur.

21 I would like to say -- state from
22 the beginning is that I think that the

1 respondent's counsel is correct. This is a
2 very simple case that has been made into
3 something that -- other than something that is
4 very simple.

5 And bluntly, well, whatever. I
6 think this is, frankly, this type of matter
7 that could have easily be discussed or
8 evolved, but, you know, respondents have their
9 rights and so we are here to get it resolved
10 in front of the Board.

11 But obviously, that is within
12 their discretion. But the bottom line is
13 this. This respondent has known that the only
14 thing that they have regarding their occupancy
15 for their unenclosed sidewalk cafe is this
16 1994 document.

17 They -- it has already been stated
18 -- today he stated before that in terms of
19 whether or not Investigator Martin could
20 determine whether or not there is
21 noncompliance, there is nothing in the initial
22 application that would change her

1 determination about what we have here.

2 Now, they have had years, the
3 establishment has had years to state a
4 Certificate of Use. They have had years to
5 state what the number should be, but this is
6 the only thing that is important here, Board.

7 What has the licensee established
8 or what has the Board approved in terms of
9 what is the capacity for the unenclosed
10 sidewalk cafe?

11 Based upon what we have seen here,
12 it hasn't changed to 24. Now, whether they
13 have done some changes or used the State of
14 Maryland, Federal Government, Congress, it
15 really doesn't matter, because not -- I mean,
16 it hasn't been provided to this Board for even
17 perfunctory approval, but so this is the world
18 that we live in right here is 24 seats is
19 capacity for the out -- for the unenclosed
20 cafe.

21 Ms. Martin counted 14 more seats
22 than what was supposed to be there. So, yes,

1 we have met that benchmark, that's not a
2 problem. So we know where to start.

3 In terms of whether or not it's
4 the same entity, the -- again, the
5 establishment has to provide -- the
6 establishment never met its own duty to
7 provide a change of -- in terms of number, but
8 also in terms of saying okay, well, this is
9 who the person is.

10 And it is our understanding that
11 the Certificate of Use says run by the
12 occupant. So I'm sure that DDOT doesn't go
13 around saying oh, well, there is someone else
14 here, that Certificate of Use doesn't apply
15 any more.

16 I mean, if that were the case, I'm
17 quite sure that there would be much problems
18 from the counsel if every time that there was
19 such a change that someone would say oh, well,
20 you know, it doesn't apply any more because
21 you have now done a change within your own
22 corporate board.

1 So but this -- the Certificate of
2 Use runs with the property. And they have --
3 and it certainly hasn't changed since 1997.
4 And this establishment has had a problem with
5 it, at that point.

6 The third point. Substantial
7 change. Now, it's pretty much admitted that
8 it's within the Board's discretion to make
9 that determination. But obviously, the -- it
10 is within the statute that an increase and the
11 occupancy can be determined to be a
12 substantial change.

13 And, yes, so it is within the
14 Board's discretion. But part of the
15 discretion has already been defined. Now,
16 certainly we wouldn't have to -- would the
17 investigators have to go back to the community
18 to decide whether or not there is new
19 performances with -- at the establishment?

20 Does -- do investigators have to
21 go back to see whether or not -- well, if they
22 had a dance floor, there is a dance floor

1 there within the establishment, the -- they
2 can do that without there being a complaint.

3 Now, whether someone complained or
4 not has no bearing for the Board. The only
5 thing is whether or not action took place, was
6 it above what was authorized and -- was it
7 above what was authorized and was it in --
8 while the establishment was operating?

9 In this case, all those questions
10 can be answered in the affirmative. So the
11 District has made a prima facie case. And if
12 -- and so we should proceed forward.

13 MR. KLINE: I would like two
14 minutes on rebuttal --

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: -- on two points. One
17 is Mr. Adams reads out of the statute then
18 ignores it entirely the language "as set forth
19 in the initial application." That's what the
20 statute says. We can't look at other records.
21 That's what the statute says.

22 Secondly, I have to take issue

1 with the implication that somehow because this
2 licensee has taken issue with this Show Cause,
3 that the licensee is a troublemaker in some
4 way in terms of gee, this could have all been
5 avoided. This isn't a big deal.

6 We would submit that if there is a
7 discrepancy concerning records and there is a
8 1994 C of U, ABRA has got a much simpler way
9 of dealing with this, which is to write the
10 licensee a letter and say hey, you know what,
11 this is what we found. This is what our
12 records show. Can you help us? You know, can
13 we fix this? Why is there this discrepancy?

14 Instead, we are here on a Show
15 Cause. So that part of it, I have to address.
16 It really is not relevant to the arguments in
17 terms of the underlying issues, the legal
18 issues in terms of whether the Government has
19 made its case.

20 But I felt compelled to respond
21 that somehow the licensee in terms of fighting
22 an accusation has somehow made a bigger deal

1 out of this than it should be. We would
2 submit that perhaps the fall with that might
3 lay elsewhere. And I'll leave that there.
4 Thank you.

5 MR. ADAMS: I agree.

6 CHAIRPERSON MILLER: All right.

7 MR. ADAMS: That's the case. No
8 letter was submitted to the District. Hey, I
9 mean, I think when we communicate, things do
10 go well, but there is no communication.

11 CHAIRPERSON MILLER: Okay.

12 MR. ADAMS: I'll leave it at that.

13 CHAIRPERSON MILLER: Okay. I just
14 want to ask just a couple of questions and if
15 Board Members have any.

16 But to each of you, if you know
17 the answer. Does DDOT enforce for violations
18 of Certificates of Use for public space?

19 MR. KLINE: You're asking me, so
20 I'm going to tell you. I have 30 plus years
21 experience with the Public Space Regulations
22 and DDOT. For many years, C of Use, although

1 religiously paid for, were not issued. There
2 was a period of seven, eight, nine years where
3 my office, who had in excess of 20 of them,
4 would contact and say well, where are they?
5 Where are they? We would go to Council
6 Members. We would go to the Mayor's office.
7 We never saw them.

8 They have in recent years, yes,
9 been inspecting with respect to C of Use.
10 They finally have started issuing them maybe
11 three, four or five years ago. And we started
12 seeing them again.

13 CHAIRPERSON MILLER: My question
14 is in this case, if it was violated, if there
15 were 38 seats instead of 24, do they, as a
16 regulatory body, issue citations for that?
17 Okay.

18 MR. KLINE: Actually, I think a
19 DCRA investigator.

20 CHAIRPERSON MILLER: DCRA. Okay.

21 MR. KLINE: That's on that, but,
22 yes, there is someone who does inspect with

1 respect to occupancy of sidewalk cafes.

2 CHAIRPERSON MILLER: And who is
3 ultimately responsible? Who is the citation
4 issued to, an occupant or an owner?

5 MR. KLINE: The business owner.

6 CHAIRPERSON MILLER: The business
7 owner?

8 MR. KLINE: Yes. Which is a
9 little confusing because the Public Space
10 permit is issued to the property owner. And
11 the Certificate of Use is usually issued to
12 the business owner.

13 CHAIRPERSON MILLER: So that's --

14 MR. KLINE: But we have seen a
15 lack of --

16 CHAIRPERSON MILLER: That would be
17 the --

18 MR. KLINE: -- consistency.

19 CHAIRPERSON MILLER: -- licensee
20 in this case.

21 MR. KLINE: Correct.

22 CHAIRPERSON MILLER: Is that what

1 you mean?

2 MR. KLINE: Absolutely.

3 CHAIRPERSON MILLER: Okay. All
4 right. So my understanding is you have made
5 a motion. Oh, does anybody else have any
6 other questions?

7 MEMBER ALBERTI: Yes.

8 CHAIRPERSON MILLER: Yes, Mr.
9 Alberti?

10 MEMBER ALBERTI: So, Mr. Kline, do
11 you know, in fact, do you know for certain
12 whether or not faced with this C of O and
13 having discovered 38 seats out on the patio,
14 whether or not DCRA would have issued a
15 citation?

16 MR. KLINE: Assuming that that
17 were the -- if that Certificate of Use were
18 accurate and current, then, yes --

19 MEMBER ALBERTI: Faced with --

20 MR. KLINE: -- that's a
21 possibility.

22 MEMBER ALBERTI: -- this C of O

1 that we have before us. Faced with this C of
2 O and the assumption that there were 38 seats
3 out there, do you know, in fact, certainly --
4 can you state unequivocally whether or not
5 DCRA would have issued a citation?

6 MR. KLINE: I don't know how to
7 not be flippant. You are asking me to know
8 with any certainty as to whether DCRA would do
9 anything?

10 MEMBER ALBERTI: Yes.

11 MR. KLINE: I'm not going to sit
12 here and tell you what I know is --

13 MEMBER ALBERTI: But you offered
14 statements as to certainty about the
15 procedures as of late.

16 MR. KLINE: No, I was talking
17 about -- yes. They have issued C of Use, not
18 C of Os, C of Use.

19 MEMBER ALBERTI: Okay.

20 MR. KLINE: So I don't know. I
21 don't know with certainty. I know -- I don't
22 even know with certainty that we will get

1 Certificates of Use this year.

2 MEMBER ALBERTI: Okay. Thank you.

3 MR. KLINE: I don't know anything
4 with certainty with respect to DCRA.

5 MEMBER ALBERTI: All right. My
6 next question is --

7 MR. KLINE: I'll say that
8 publicly.

9 CHAIRPERSON MILLER: All right.

10 MEMBER ALBERTI: Now, my next
11 question for you is this is an administrative
12 body. If we were to take administrative
13 notice of our records, we could review the
14 original application and all the documents
15 that go along with it. Is that your correct--
16 is that your understanding of what our role
17 is?

18 MR. KLINE: You could do that.

19 MEMBER ALBERTI: Possibly?

20 MR. KLINE: You could do that.
21 The difficulty is that your benchmark is
22 incomplete. And with -- and other than with

1 respect, in my memory, to restaurants, CR
2 licensees who are required to provide seating
3 information in connection with a food forum
4 that you had at one time, I'm not even sure
5 whether you still have it, I don't think that
6 your records request or have that information
7 on an initial application.

8 And maybe that's a hole in the
9 process that we have discovered. But you can
10 look at your records, but I'm 95 percent
11 certain -- and the investigator has already
12 testified that she looked at the application
13 and she didn't find anything.

14 MEMBER ALBERTI: That's -- I will
15 take that.

16 CHAIRPERSON MILLER: Yes.

17 MEMBER ALBERTI: I'll just say
18 that in your manner of defining an
19 application, it may not be how I define an
20 application. I define an application as all
21 the relevant documents that go with, that are
22 submitted with the -- not the blanks that are

1 written on the application, but all the
2 relevant documents that are required.

3 So if an applicant is required to
4 submit Clean Hands, then I see that as part of
5 the initial application.

6 MR. KLINE: If it's filed
7 initially, I agree with you. I think we agree
8 on this.

9 MEMBER ALBERTI: Right, right.
10 Thank you.

11 MR. KLINE: If it's filed with the
12 initial application, then I would agree,
13 because I was going to pull out the reg, but
14 now I realize we are in the same place.

15 MEMBER ALBERTI: Right.

16 MR. KLINE: If it's part of the
17 initial application, then, yes. But I would
18 proffer to you, and your records will grow
19 this out, that RHT, Inc. was first licensed in
20 1977, not in 1994.

21 And if you can even find the 1977
22 application, which you probably can, because

1 your Agency is much better than most, you
2 won't find a 1994 Certificate of Use nor will
3 you find any Certificates of Use because the
4 law creating Certificates of Use did not come
5 around until 1984 when the regulations under
6 the Sidewalk Cafe Act of 1982 were promulgated
7 and took effect.

8 So I think that that would be a
9 futile exercise, but I invite the Board to do
10 it, because I know the history and I know you
11 are not going to find anything there.

12 MR. ADAMS: And briefly, I mean,
13 that's part of our point. I mean, while the
14 Certificate of Use was from 1994 -- from 1997,
15 so, I mean, again, that's -- that kind of goes
16 to the point that we are saying. You know,
17 you don't have to go to 1977, but, I mean, at
18 some point the certificate was used to define
19 capacity and it has run with this
20 establishment since then, since 2004.

21 MEMBER ALBERTI: Let me ask both
22 parties. I mean, so we have a transfer here

1 that happened at some point.

2 MR. ADAMS: Yes.

3 MR. KLINE: Um-hum.

4 MEMBER ALBERTI: And there is this
5 question of how does the Certificate of
6 Occupancy apply to the licensee? So there is
7 this question of what did the licensee, when
8 he did the transfer, because that's the -- the
9 transfer is really what I would see as the
10 initial application. What did they assume?
11 Did they assume responsibility for the
12 Certificate of Occupancy?

13 MR. KLINE: Mr. Alberti?

14 MEMBER ALBERTI: And that's the
15 question in my mind.

16 MR. ADAMS: That --

17 MEMBER ALBERTI: I'll let both of
18 you speak to that.

19 MR. KLINE: I will.

20 MR. ADAMS: I think that's the
21 District's point is that, you know, you do
22 assume responsibility for things such as

1 Certificate of Occupancy or any conditions
2 that run along the license.

3 I mean, obviously, it's hard for
4 us to deal with voluntary agreements that were
5 made in '95 and an establishment had a license
6 change in 2006. There are things that were
7 not initially negotiated that apply to such
8 establishment.

9 But even by the counsel's own
10 admission, I mean, we have a situation that
11 hey, maybe the D.C. Government didn't issue
12 Certificates of Use for a certain period. So
13 do -- I mean, in order to have enforcement, is
14 it a constant thing of trying to go through
15 well, this transfer happened to this.

16 It's really a situation that goes
17 to the, again, transfer and what's assumed
18 during the transfer. And unless it's amended
19 in the, I guess, 15 years that the
20 establishment is in business, then they buy
21 it.

22 MR. KLINE: Unless what was

1 amended? I mean, the issue --

2 MR. ADAMS: Unless a Certificate
3 of Use --

4 MEMBER ALBERTI: Wait, wait, wait.
5 No, no, no. I don't want be between the two
6 of you. Mr. Kline?

7 MR. KLINE: Unless what was
8 amended? I mean, the statute is clear. I
9 mean, the law is not what we would like it to
10 be or what would be convenient for it to be or
11 what would be nice if it was. The law is the
12 law. It's written here.

13 And it says "what is in the
14 initial application." Now, I agree with you,
15 Mr. Alberti. If the initial application,
16 which includes not only the forms that you
17 fill out, but your Certificate of Occupancy is
18 one that is filed, if it's under 25.1, your
19 Certificate of Formation for your entity, your
20 Certificate of Use, if one is filed at that
21 time, all those make up the application.

22 But I can tell you that that

1 wasn't here. We didn't have that here. That
2 wasn't in the initial application. You have
3 no benchmark. Just to say well, gee, there
4 might have been a change, well, from what?
5 The question is what's the benchmarking? You
6 have to have a benchmark. That's number one.

7 Number two, all of a sudden we are
8 now talking about transfers. We are talking
9 about there must have been a transfer. None
10 of this was introduced during the course of
11 this case. I mean, the Board just can't -- I
12 mean, I know the Board can look at its
13 records, but the Government can't rely on the
14 Board to make its case after the fact. He has
15 rested. We are done.

16 For the Board to now say well,
17 gee, we might have had a transfer. Let's look
18 at this. We might have this. Let's look at
19 this issue. We are here today. The only
20 evidence of a change is this 1994 Certificate
21 of Use issued to another entity. And there is
22 no testimony concerning a transfer. There is

1 nothing concerning a transfer.

2 The only thing we know is that a C
3 of Use from 1994 seems to be the Government's
4 main piece of evidence and our licensee is a
5 different entity. Those are the facts of
6 record, at this point.

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: And --

9 MEMBER ALBERTI: Mr. Kline, I have
10 one last statement and you can respond to it.
11 But, you know, one interpretation is if there
12 is no, as you said, current and applicable C
13 of O, then the count is zero, because the
14 licensee hasn't told us what it is and hasn't
15 said that he has any seats.

16 MR. KLINE: So show --

17 MEMBER ALBERTI: And that's one
18 interpretation. So there are a myriad of
19 interpretations here that can be had if we buy
20 into your -- the -- your assumption that this
21 C of O is not applicable to this licensee.

22 MR. KLINE: No, sir.

1 MR. ADAMS: And --

2 MR. KLINE: Excuse me, Mr. Adams.

3 MEMBER ALBERTI: I'll let you
4 respond then. Mr. Adams, you can respond.

5 CHAIRPERSON MILLER: Okay.

6 MR. ADAMS: I apologize for
7 impeding on your time, Mr. Kline.

8 MR. KLINE: The book that I'm
9 holding for the record --

10 MEMBER ALBERTI: Um-hum.

11 MR. KLINE: -- is 25 -- DC Code
12 Title 25 and DCMR 23. This is what we go by.
13 This is what we rely on. Unless it says in
14 here that one is required to run in here with
15 a C of Use every time there is one at issue,
16 we are not required to do that.

17 I mean, it's sort of after the
18 fact when we don't like the way it looks and,
19 therefore, you know, we should figure out a
20 way to punish people. The regulation -- we
21 rely on the regulations, Mr. Alberti. We rely
22 on what is required.

1 And our applicants and the members
2 of the Restaurant Association, which I happen
3 to also work for, try hard to comply. But to
4 say after the fact, well, maybe you should
5 have done this, no. We go by this book.
6 Unless you can show me in this book where
7 something wasn't done, then I'm going to take
8 issue with it.

9 MEMBER ALBERTI: Okay. Fine. Mr.
10 Adams?

11 MR. ADAMS: Obviously, counsel has
12 the right to take issue on this, but it really
13 goes to a very fundamental point. I mean, the
14 inclusion of seats/capacity are a very basic
15 portion of what this Board looks at, I mean,
16 all throughout. Whether it be within the
17 application itself, I mean, it actually states
18 that it must be under 402(a)(6) it says "it
19 must be defined."

20 Now, if the application -- the
21 initial application doesn't define it, then --
22 and there is a transfer that took place, then

1 they assume what these capacities are. You go
2 throughout those regulations, 23 DCMR 1005, it
3 states that if you are going to have
4 application for a sidewalk cafe or garden,
5 then it has to include a Certificate of Use or
6 a Public Space permit.

7 So if the '94 doesn't exist, then
8 -- and nothing else is missing to the Board,
9 then nothing exists. So the only thing the
10 Board has is the 1994 Certificate of Use. And
11 if they don't have it, then maybe it's
12 improper for there to be a cafe at all.

13 So it's their choice.

14 CHAIRPERSON MILLER: Yes. Mr.
15 Kline, just to be clear, are you saying that
16 this Certificate of Use in 1994 is not
17 applicable to -- or was not applicable on
18 April 10, 2012 to Rumors?

19 MR. KLINE: No, it expired. They
20 are issued for a year. It expired a long time
21 ago.

22 CHAIRPERSON MILLER: Okay. And

1 that they didn't have to have a Certificate of
2 Use?

3 MR. KLINE: I haven't said that.

4 CHAIRPERSON MILLER: Oh, okay.
5 It's just this was not applicable. This one.

6 MR. KLINE: I mean, there are two
7 points.

8 CHAIRPERSON MILLER: Okay.

9 MR. KLINE: I mean, one.

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: It's the Government's
12 burden. I mean, it's not my job to make their
13 case. It's the Government's burden.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: The only document the
16 Government has produced to sustain its burden
17 that this licensee is in violation because it
18 made a change without Board permission, a
19 change from its initial application, which is
20 what the statute says, its initial
21 application, not a change by something that
22 was filed 15 years after they were licensed,

1 unless that change -- unless what was filed
2 represented an approved change, that's the
3 only thing they have produced.

4 And it so happens that that
5 certificate is not even for this licensee. So
6 for the Board to make the leap that oh, well,
7 this almost 20 year-old document must be what
8 is relevant, I mean, that's more than a leap.

9 CHAIRPERSON MILLER: Okay. You
10 answered my question. You really did. Thank
11 you.

12 So at this point, it's almost
13 1:00. So you have a Motion to Dismiss. And
14 what I understand is, fortunately, we don't
15 have another hearing, I don't think after this
16 one, but we will need to decide that in order
17 to determine whether you are going to put on
18 evidence, correct?

19 MR. KLINE: Correct.

20 CHAIRPERSON MILLER: All right.
21 So I think we will take a break, at this
22 point, and then the question is how long a

1 break.

2 MEMBER ALBERTI: I think we should
3 go back and get legal advice. Consult with
4 our legal representatives on this case and
5 then come back and make our decision.

6 CHAIRPERSON MILLER: Right. But I
7 think we -- I am suggesting --

8 MEMBER ALBERTI: How long?
9 Because I can't --

10 CHAIRPERSON MILLER: -- a break.

11 MEMBER ALBERTI: If you are asking
12 me, I don't know how long it is going to take.

13 CHAIRPERSON MILLER: Okay. Well--

14 MEMBER SILVERSTEIN: Is the Chair
15 asking should we break for lunch or is the
16 Chair -- when you say a break --

17 CHAIRPERSON MILLER: Right.

18 MEMBER SILVERSTEIN: -- are we
19 talking about a break to go back and get legal
20 advice and make a decision, then return, then
21 give our decision, have lunch and if necessary
22 come back? Is that --

1 CHAIRPERSON MILLER: Whatever you
2 all --

3 MEMBER SILVERSTEIN: I would
4 suggest we do that.

5 CHAIRPERSON MILLER: I don't --

6 MEMBER JONES: You don't have a
7 suggestion?

8 CHAIRPERSON MILLER: I was going
9 to say 20 minutes, but I don't know. We are
10 open I believe. If you want longer for lunch,
11 I don't know about --

12 MEMBER ALBERTI: My problem is I
13 don't know how long it is going to take for us
14 to discuss this with our general counsel.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER ALBERTI: That's my point.

17 MEMBER SILVERSTEIN: May I
18 suggest --

19 CHAIRPERSON MILLER: Why don't
20 we --

21 MEMBER SILVERSTEIN: -- that we go
22 back and discuss this now, however long it

1 takes, and return with a decision and then
2 break for lunch?

3 MEMBER JONES: Yes, I agree.

4 CHAIRPERSON MILLER: Okay. I just
5 want to let the parties take a little break,
6 too, so just it will probably be at least 15
7 minutes anyway. If you all want to take a
8 little break. Okay.

9 MR. KLINE: Thank you.

10 CHAIRPERSON MILLER: Yes, okay.

11 MEMBER ALBERTI: Are we off the
12 record?

13 CHAIRPERSON MILLER: We are
14 recessing now.

15 MEMBER ALBERTI: I think that we
16 need to close this and go into a closed
17 hearing to get legal advice.

18 (Whereupon, at 12:58 p.m. a recess
19 until 12:59 p.m.)

20 CHAIRPERSON MILLER: Okay. As
21 Chairperson of the Alcoholic Beverage Control
22 Board for the District of Columbia and in

1 accordance with Section 405 of the Open
2 Meetings Amendment Act of 2010, I move that
3 the ABC Board hold a closed meeting for the
4 purpose of seeking legal advice from our
5 counsel on Case No. 12-CMP-00155, No. 12-CMP-
6 00155(a) and No. 12-CMP-00155(b), Rumors
7 Restaurant, per Section 405(b)(4) of the Open
8 Meetings Amendment Act of 2010, and
9 deliberating upon this case for the reasons
10 cited in Section 405(b)(13) of the Open
11 Meetings Amendment Act of 2010.

12 Is there a second?

13 MEMBER BROOKS: Second.

14 CHAIRPERSON MILLER: Mr. Brooks
15 has seconded the motion. I'll now take a roll
16 call vote.

17 Mr. Brooks?

18 MEMBER BROOKS: I agree.

19 CHAIRPERSON MILLER: Mr. Alberti?

20 MEMBER ALBERTI: I agree.

21 CHAIRPERSON MILLER: Ms. Miller
22 agrees.

1 Mr. Jones?

2 MEMBER JONES: I agree.

3 CHAIRPERSON MILLER: Okay. There
4 has been a roll call vote on the motion that
5 has passed by a vote of 4-0-0.

6 I hereby give notice that the ABC
7 Board will recess this proceeding at this time
8 to hold a closed meeting in the ABC Board
9 conference room pursuant to the Open Meetings
10 Amendment Act of 2010.

11 Thank you.

12 (Whereupon, at 1:00 p.m. a recess
13 until 1:34 p.m.)

14 CHAIRPERSON MILLER: Okay. We are
15 back on the record. And I forgot we did have
16 another hearing scheduled after this, so we
17 are going to be brief and to the point.

18 We are going to rule on the Motion
19 to Dismiss and then take a 40 minute lunch
20 break and I'll just ask you afterwards, you
21 can think about this, how much time we are
22 going to need you think for the rest of the

1 case, if we go forward with the rest of the
2 case, which actually looks like that's what we
3 are going to do.

4 Okay. I am going to move to deny
5 the Motion to Dismiss on the grounds that
6 there was a sufficient case made, prima facie
7 case, with respect to going forward, based on
8 the Certificate of Use in the record and the
9 evidence that there was a change or deviation
10 from that use regarding the number of seats in
11 use in this public space.

12 So that's my motion. Do I have a
13 second?

14 MEMBER BROOKS: Second.

15 CHAIRPERSON MILLER: Okay. There
16 is a motion then to deny the Motion to Dismiss
17 that has been seconded by Mr. Brooks. Are
18 there any comments before we vote?

19 Not hearing any, all those in
20 favor say aye.

21 ALL: Aye.

22 CHAIRPERSON MILLER: All those

1 opposed? All those abstaining? The vote is
2 5-0-0 to deny the Motion to Dismiss.

3 So we will entertain licensee's
4 case after a brief lunch break. So we had in
5 mind 40 minutes, so that would be 2:15 to
6 reconvene. Can you give us an idea whether we
7 might go more quickly in this second half of
8 this?

9 MR. KLINE: I hope so.

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: I have two witnesses.

12 CHAIRPERSON MILLER: Okay.

13 MR. KLINE: One of the witnesses I
14 don't plan to ask more than four or five
15 questions of.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: But I leave the rest
18 to your and Mr. Adams.

19 CHAIRPERSON MILLER: Okay. Good.
20 All right. So everybody okay with that
21 schedule? Then --

22 MEMBER ALBERTI: And, Mr. Adams, I

1 hope you didn't want to call Rule on
2 Witnesses.

3 MR. ADAMS: Well, yes, way --

4 MEMBER ALBERTI: It's too late
5 now.

6 MR. ADAMS: -- too late. Way too
7 late now. So, no, the District doesn't want
8 to call Rule on Witnesses.

9 MEMBER ALBERTI: All right.

10 CHAIRPERSON MILLER: Okay.

11 MR. ADAMS: It's not that kind of
12 case.

13 MR. KLINE: You may want to keep
14 this open for the District to call the
15 outside--

16 MEMBER ALBERTI: Yes, thank you.

17 CHAIRPERSON MILLER: Let me just
18 go back on the record for one second, because
19 we have another case that is being rescheduled
20 around this case. So if we have to start at
21 2:15, is it safe to -- well, do you think we
22 would be done by 3:00 or 3:15? Just we want

1 to tell the next party, give them an idea, so
2 they don't wait too long. I don't want to
3 rush you.

4 MR. KLINE: I don't take long. I
5 mean, I never --

6 CHAIRPERSON MILLER: Okay.

7 MR. KLINE: -- bumped up against
8 the 90 minutes I get in a protest case, but--

9 CHAIRPERSON MILLER: Okay. Mr.
10 Adams?

11 MR. KLINE: -- oh, you get to ask
12 questions --

13 CHAIRPERSON MILLER: You can't
14 tell?

15 MR. KLINE: -- and Mr. Adams gets
16 to ask questions. So I don't have any control
17 over that part.

18 CHAIRPERSON MILLER: You can't
19 tell, right?

20 MR. ADAMS: I sent my evidence, so
21 I'm good.

22 CHAIRPERSON MILLER: Oh, all

1 right. Okay. So 3:15, do you think? An hour
2 for the rest of it?

3 MR. KLINE: Yes, yes.

4 CHAIRPERSON MILLER: Okay. So all
5 right. Let's go then. Thank you.

6 MR. KLINE: Are you moving Indulj?

7 CHAIRPERSON MILLER: Oh, is that
8 your case?

9 MR. KLINE: Yes.

10 CHAIRPERSON MILLER: Okay. That's
11 a pretty quick case actually.

12 MR. KLINE: I think so, yes.

13 CHAIRPERSON MILLER: Is that --
14 will that work?

15 MR. KLINE: That's fine.

16 CHAIRPERSON MILLER: Okay. Yes,
17 we will hear it after.

18 MR. KLINE: It's now set for 2:30,
19 right?

20 CHAIRPERSON MILLER: It's set for
21 2:30, so you can call your -- can you call
22 people? Let's see.

1 MR. KLINE: Does the Board have
2 any interest, if it's going to be a quick
3 case, I don't think there is much there, would
4 the Board have any interest in doing it and
5 getting them out of here before we resume this
6 case?

7 CHAIRPERSON MILLER: Would that
8 work for your clients that are here now?

9 MR. KLINE: I mean, I wasn't here
10 for the initial hearing, but in looking at the
11 record, I don't think we are going to be
12 spending much time on it.

13 CHAIRPERSON MILLER: No, that's
14 true. It's a quick follow-up. Maybe we
15 should consider that.

16 MR. ADAMS: I would prefer to get
17 this -- I actually would prefer just to get
18 this case over with.

19 MR. KLINE: Yes.

20 CHAIRPERSON MILLER: You get that
21 done.

22 MR. ADAMS: If possible.

1 MR. KLINE: I'll leave it to you.
2 I mean, I defer to your judgment on the
3 schedule.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER ALBERTI: Just give us one
6 moment.

7 MR. KLINE: Sure.

8 CHAIRPERSON MILLER: Let's see who
9 is coming. Mr. Kline?

10 MR. KLINE: Yes.

11 CHAIRPERSON MILLER: If you can
12 call your client at Indulj that we will take
13 them afterwards at 3:00. You are here?

14 MR. KLINE: Yes, that's fine.

15 CHAIRPERSON MILLER: Oh, just one
16 second. Okay. All right. Yes, there are a
17 lot of different people to juggle, so we are
18 going to have to do Indulj afterwards, if he
19 can stay until afterwards. Okay.

20 MR. KLINE: Can you stay?

21 CHAIRPERSON MILLER: Because our
22 investigator is not here yet.

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MR. KLINE: That's fine.

CHAIRPERSON MILLER: Okay. So let's all get our lunch in and get back here by 2:15.

MR. KLINE: So we are due back here at 2:15?

CHAIRPERSON MILLER: Yes.

MR. KLINE: Okay. Thank you.

CHAIRPERSON MILLER: Okay.

(Whereupon, Show Cause Hearing was recessed at 1:40 p.m. to reconvene at 2:21 p.m. this same day.)

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2:21 p.m.

CHAIRPERSON MILLER: Okay. We are back on the record. We have a quorum. The other two will be joining us any minute.

So, Mr. Kline, are you ready to proceed?

MR. KLINE: Yes.

CHAIRPERSON MILLER: Okay.

MR. KLINE: I'm calling to the stand Richard Tolbert.

Whereupon,

RICHARD TOLBERT

was called as a witness by Counsel for the licensee, and having been first duly sworn, assumed the witness stand and was examined and testified as follows:

CHAIRPERSON MILLER: Thank you.

Have a seat.

DIRECT EXAMINATION

MR. KLINE: Would you state your name and home address for the record, please?

1 MR. TOLBERT: Richard Tolbert,
2 4635 Massachusetts Avenue, Washington, D.C.

3 MR. KLINE: And are you connected
4 in some way with the business known as Rumors
5 Restaurant?

6 MR. TOLBERT: I am.

7 MR. KLINE: And what's your
8 connection to Rumors Restaurant?

9 MR. TOLBERT: Rumors is owned by a
10 trust and I'm the asset manager of the trust,
11 so I oversee the overall operations in that
12 capacity.

13 MR. KLINE: All right. Mr.
14 Tolbert, could you keep your voice up, so that
15 the court reporter --

16 MR. TOLBERT: Certainly.

17 MR. KLINE: -- can hear you and I
18 can hear you and the Board can hear you?

19 MEMBER SILVERSTEIN: His last name
20 is?

21 MR. KLINE: Tolbert.

22 MEMBER SILVERSTEIN: Tolbert.

1 MR. KLINE: T-O-L-B-E-R-T.

2 MEMBER SILVERSTEIN: Thank you.

3 Thank you.

4 MR. KLINE: So, Mr. Tolbert, you
5 are the asset manager for the current
6 licensee. Is that correct?

7 MR. TOLBERT: Correct.

8 MR. KLINE: And how long have you
9 been in that capacity?

10 MR. TOLBERT: Since 1998.

11 MR. KLINE: All right.

12 CHAIRPERSON MILLER: I'm sorry, it
13 dropped off at the end. 1990 what?

14 MR. TOLBERT: 1998.

15 CHAIRPERSON MILLER: 8, okay.

16 MR. KLINE: And were you involved
17 with the business prior to 1998?

18 MR. TOLBERT: I was.

19 MR. KLINE: And so how long in
20 total have you been involved with this
21 business?

22 MR. TOLBERT: Since it's

1 inception.

2 MR. KLINE: Which was when?

3 MR. TOLBERT: September 1977.

4 MR. KLINE: All right. And prior
5 to 1998, what was your involvement?

6 MR. TOLBERT: I was the president
7 and majority owner.

8 MR. KLINE: Okay. And then there
9 was a change in ownership in 1998?

10 MR. TOLBERT: There was.

11 MR. KLINE: In the inception of
12 the business in 1977, what -- it was known as
13 Rumors, at that time?

14 MR. TOLBERT: It was.

15 MR. KLINE: And what was the
16 business physically? What was it made up of?
17 Made up of at that time?

18 MR. TOLBERT: The configuration of
19 the business is -- it was then as it is now.
20 Exactly the same. The same square footage
21 inside and outside. It had a covered patio
22 and an outside patio and the interior.

1 MR. KLINE: Now, when you referred
2 to the covered patio and the outside patio, is
3 that on public space?

4 MR. TOLBERT: It's all public
5 space.

6 MR. KLINE: So that is known as a
7 sidewalk cafe?

8 MR. TOLBERT: Sidewalk cafe, one
9 public space.

10 MR. KLINE: All right. You need
11 to also let me finish my questions, because
12 otherwise everyone is going to have a hard
13 time.

14 And so it has existed as what is
15 known as an unenclosed sidewalk cafe and an
16 enclosed sidewalk cafe?

17 MR. TOLBERT: Correct.

18 MR. KLINE: Now, did the business
19 exist there prior to 1977?

20 MR. TOLBERT: It did. I think
21 there was a prior restaurant there called
22 Paradise Cafe. It was built in '75.

1 MR. KLINE: In 1975?

2 MR. TOLBERT: Yes.

3 MR. KLINE: And was there always
4 an enclosed and unenclosed portion of the
5 cafe?

6 MR. TOLBERT: The former owners,
7 the Paradise Cafe owners constructed the cafe
8 as is now configured, yes.

9 MR. KLINE: Okay. But at one
10 point, wasn't it all open air, at one point,
11 if you know?

12 MR. TOLBERT: I don't know,
13 because I wasn't involved with it until '77.

14 MR. KLINE: Okay. All right. So
15 you took it over in 1977. At that point,
16 there was an enclosed sidewalk cafe area and
17 an unenclosed area, correct?

18 MR. TOLBERT: Correct.

19 MR. KLINE: All right. Now, in
20 terms of number of seats, which we spent a lot
21 of time talking about today, what was the
22 seating configuration in these areas?

1 MR. TOLBERT: Going back that far,
2 there really -- they didn't have seating
3 configurations. There were total number of
4 seats allowed on the sidewalk cafe, of the
5 enclosed and unenclosed. And it was, as I
6 recall, 100 seats.

7 MR. KLINE: Okay. So that was for
8 both areas?

9 MR. TOLBERT: Correct.

10 MR. KLINE: All right. And are
11 you saying there was no differentiation in
12 terms of whether the 100 were in the
13 unenclosed portion or the enclosed portion?

14 MR. TOLBERT: There was no
15 differentiation.

16 MR. KLINE: Now, do you know, if
17 you know, did there come a time that there was
18 a law changed that did something with respect
19 to enclosed sidewalk cafes?

20 MR. TOLBERT: Yes. In 1982, the
21 Sidewalk Cafe Law passed that clarified many,
22 many of these issues about seating and what

1 was allowed and not allowed to be built,
2 approvals by the whole city, I think,
3 including ABRA or ABRA's predecessor, it
4 hasn't always been ABRA, which defined today's
5 outside cafes.

6 MR. KLINE: All right. And that
7 was in 1982?

8 MR. TOLBERT: '82.

9 MR. KLINE: And was that
10 specifically with respect to enclosed sidewalk
11 cafes?

12 MR. TOLBERT: It was both, as I
13 recall.

14 MR. KLINE: Okay. But your
15 sidewalk cafe already existed, at that point,
16 as an enclosed and unenclosed cafe?

17 MR. TOLBERT: It did.

18 MR. KLINE: Now, in 1998, that's
19 when you have testified that, at that point,
20 you became affiliated with the family, the
21 manager of the family trust or whatever it is?

22 MR. TOLBERT: Right.

1 MR. KLINE: Is that right?

2 MR. TOLBERT: Correct.

3 MR. KLINE: Were there other
4 changes at that point in terms of the
5 business?

6 MR. TOLBERT: Right. We have been
7 -- you know, the first company had been there
8 20 years. It was pretty run down.

9 MR. KLINE: What was the name of
10 the first company, just for the record?

11 MR. TOLBERT: The official name?

12 MR. KLINE: Yes, the --

13 MR. TOLBERT: That would be RHT,
14 Inc.

15 MR. KLINE: Okay. All right. So
16 go ahead.

17 MR. TOLBERT: And it was in need
18 of renovation. We needed a new lease. The
19 landlord wanted a renovation of the existing
20 space, which we agreed. Say the new company
21 agreed to go ahead and do. We renovated in
22 1998.

1 MR. KLINE: All right. And what
2 did that renovation consist of?

3 MR. TOLBERT: It consisted of
4 rebuilding everything that was kind of
5 dilapidated, like the canopy. We needed a new
6 canopy, because it was leaking like crazy. We
7 built -- new windows were put in, all of which
8 went to, you know, all the building
9 inspectors, all the Public Space Committee and
10 I'm sure ABRA for approval.

11 MR. KLINE: All right. And then
12 was there any change in the configuration of
13 the public space at that time?

14 MR. TOLBERT: Not at all. It's
15 the same configuration that had been there
16 since 1977.

17 MR. KLINE: All right. Now, how
18 do you know? How are you so sure? When you
19 say same configuration, we are talking about
20 what? We're talking about seating? We're
21 talking about square footage? What are we
22 talking about?

1 MR. TOLBERT: We're talking about
2 square footage of the enclosed sidewalk cafe
3 and the unenclosed sidewalk cafe remained
4 exactly the same.

5 MR. KLINE: And how are you so
6 sure of that?

7 MR. TOLBERT: Because I was there
8 the whole time.

9 MR. KLINE: Okay. Are you also --
10 do you also pay differently with respect to
11 the --

12 MR. TOLBERT: We do.

13 MR. KLINE: -- wait. Let me
14 finish. With respect to the unenclosed
15 portion and the enclosed portion?

16 MR. TOLBERT: We pay more for the
17 enclosed portion of the sidewalk cafe and less
18 for the unenclosed. That's citywide.

19 MR. KLINE: And as part of your
20 responsibilities as manager, do you see that
21 those payments are made? Do you write those
22 checks?

1 MR. TOLBERT: I don't. They are
2 written by the landlord and I pay the landlord
3 through the lease.

4 MR. KLINE: Okay.

5 MR. TOLBERT: All -- as far as I
6 know, all sidewalk cafes go to the landlord,
7 that's because restaurants come and go and
8 landlords are pretty consistent.

9 MR. KLINE: This place has been
10 there for 30 some years, correct?

11 MR. TOLBERT: 36 years. You
12 combine the two companies.

13 MR. KLINE: Okay. But you are the
14 one that sees that the payments are made to
15 reimburse the landlord --

16 MR. TOLBERT: Correct.

17 MR. KLINE: -- for the sidewalk
18 cafe rent, correct?

19 MR. TOLBERT: Correct.

20 MR. KLINE: And as a result of
21 that, you -- does that confirm for you that
22 there hasn't been any change in the square

1 footage of the two particular areas?

2 MR. TOLBERT: It's been the same
3 throughout.

4 MR. KLINE: Do you know offhand
5 how many square feet make up the unenclosed
6 portion of the cafe?

7 MR. TOLBERT: I think about 400.

8 MR. KLINE: Okay.

9 MR. TOLBERT: Roughly.

10 MR. KLINE: And what's -- how do
11 the rates differ from the enclosed and
12 unenclosed?

13 MR. TOLBERT: I think the rate for
14 the enclosed sidewalk cafe is double the
15 unenclosed.

16 MR. KLINE: Okay.

17 MR. TOLBERT: Is that correct?

18 MR. KLINE: You don't get to ask
19 me any questions. That's just the way it
20 works.

21 All right. So does that -- and
22 that confirms for you, but you have been

1 paying the same amount for a number of years.
2 That hasn't changed any way in terms of the
3 rent that you are paying?

4 MR. TOLBERT: Not one dollar.

5 MR. KLINE: All right. Now, with
6 respect to what was done in '98, it was a
7 renovation/remodeling basically?

8 MR. TOLBERT: Correct.

9 MR. KLINE: Of interior and the --
10 what you call the patio areas?

11 MR. TOLBERT: Yes.

12 MR. KLINE: Yes?

13 MR. TOLBERT: Yes.

14 MR. KLINE: Okay. Was there any
15 change with respect to seating in the two
16 areas in '98?

17 MR. TOLBERT: No.

18 MR. KLINE: Okay. There was no
19 change. And so what was the seating? In your
20 mind, what was the approved seating, at that
21 point?

22 MR. TOLBERT: Let's go back to the

1 beginning. It's like 100. It's around 100
2 seats for the combined areas.

3 MR. KLINE: Okay. Now, over the
4 years has your business either as RHT or as
5 the 1900 M Street Restaurant Associates, LLC,
6 I have trouble with this name, the current
7 licensee, have you applied for Certificates of
8 Use?

9 MR. TOLBERT: We have.

10 MR. KLINE: What has been your
11 experience in terms of the issuance of
12 Certificates of Use?

13 MR. TOLBERT: Our experience has
14 been it is periodic. What I mean by that is
15 it's an annual permit to be paid for every
16 year. I think it is close to \$300 now. It's
17 \$200 and some. In many years, they never even
18 issued it. We would just hang up the canceled
19 check to prove that we had paid for a
20 Certificate of Use.

21 Other years, all over the map from
22 the 100 seats I'm talking about to 24 that the

1 counselor is talking about to 56, I think, was
2 one year.

3 MR. KLINE: All right. I want to
4 show you -- I beg the Board's indulgence.

5 I'll show you what we previously
6 marked as Respondent's Exhibit 2.

7 MR. TOLBERT: Okay.

8 MR. KLINE: Can you identify that
9 document?

10 MR. TOLBERT: Let's see, it's a C
11 of Use for -- I'm looking for the date.

12 MR. KLINE: Is there a date in the
13 upper right hand corner of the box? Above the
14 box.

15 MR. TOLBERT: 5/2/2012.

16 MR. KLINE: Okay.

17 MR. TOLBERT: Slash 5/2/2013.

18 MR. KLINE: All right. So is
19 this --

20 MR. TOLBERT: This is the current
21 C of Use.

22 MR. KLINE: For?

1 MR. TOLBERT: For the unenclosed
2 and enclosed cafe.

3 MR. KLINE: For Rumors Restaurant?

4 MR. TOLBERT: Correct.

5 MR. KLINE: All right. I would
6 move respondent's Exhibit 2.

7 MR. ADAMS: And I'm going to
8 object. Again, this is a current one, but at
9 the time of the charge, this does not help the
10 Board determine whether -- on April 10th
11 whether a violation took place.

12 MR. KLINE: It absolutely does.
13 The witness has testified that there has been
14 inconsistency with respect to the issuance of
15 these permits. We have seen one dated 1994.
16 We are hopefully going to see another and we
17 may see a couple more.

18 CHAIRPERSON MILLER: Okay.

19 MR. KLINE: So it certainly
20 supports the witness' testimony that there is
21 -- that in terms of the numbers on the
22 permits, maybe things aren't always what they

1 seem.

2 CHAIRPERSON MILLER: So the
3 purpose is to see what is on this permit, even
4 though it's outside the time frame when the
5 violation occurred? As an example of what is
6 on the different Certificates of Use?

7 MR. KLINE: Yes. The Government's
8 entire case is predicated on one lone
9 Certificate of Use which the Government is
10 requesting that you take as gospel in terms of
11 what has been approved.

12 This exhibit and other exhibits
13 will demonstrate that these C of Use are all
14 over the map. There isn't any consistency in
15 terms of what they issue. So to take one as
16 gospel and so oh, this ended up in ABRA's
17 files, this must be the right one --

18 CHAIRPERSON MILLER: Okay.

19 MR. KLINE: -- we think that this
20 demonstrates this pretty aptly.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: Just for the record,

1 the evidence was just evidence. I wasn't
2 asking the Board to take something as gospel.
3 I object to that --

4 CHAIRPERSON MILLER: Okay.

5 MR. KLINE: -- going forward.

6 CHAIRPERSON MILLER: All right.

7 All right. I'm going to admit it. So Exhibit
8 No. 2 is admitted.

9 (Whereupon, the document marked as
10 Licensee Exhibit 2 was received in
11 evidence.)

12 MR. KLINE: Oh, and before we move
13 on from 2, is there a block for seating
14 capacity?

15 MR. TOLBERT: There is.

16 MR. KLINE: And what is in that
17 box?

18 MR. TOLBERT: It's blank.

19 MR. KLINE: And it was issued that
20 way, blank, correct?

21 MR. TOLBERT: Correct.

22 MR. KLINE: I'll show you what has

1 been marked as Licensee's Exhibit 4.

2 (Whereupon, the document was
3 marked as Licensee Exhibit 4 for
4 identification.)

5 MR. KLINE: I ask you if you can
6 identify that document?

7 MR. TOLBERT: It's a Certificate
8 of Use, May 6, 2001.

9 MR. KLINE: Issued to?

10 MR. TOLBERT: 1900 M Restaurant
11 Associates.

12 MR. KLINE: And does it identify
13 seating capacity?

14 MR. TOLBERT: It does.

15 MR. KLINE: And what is the number
16 or the numbers on that document?

17 MR. TOLBERT: 56 enclosed, 34
18 unenclosed.

19 MR. KLINE: And when does that
20 certificate expire?

21 MR. TOLBERT: April 2002.

22 MR. KLINE: I would move

1 Applicant's Exhibit 4.

2 MR. KLINE: No objection.

3 CHAIRPERSON MILLER: Okay. Okay.

4 There is no objection. Exhibit No. 4 from the
5 licensee is accepted into the record.

6 (Whereupon, the document marked as
7 Licensee Exhibit 4 was received in
8 evidence.)

9 MR. KLINE: I want to show you
10 what we have marked as Licensee's Exhibit 5.

11 (Whereupon, the document was
12 marked as Licensee Exhibit 5 for
13 identification.)

14 MR. KLINE: And ask if you can
15 identify that document?

16 MR. TOLBERT: August 19, 1996 a
17 Certificate of Use for RHT, Inc.

18 MR. KLINE: All right. So this is
19 the old entity, the one to which the '94 C of
20 Use that is in evidence was issued, for RHT,
21 Inc.?

22 MR. TOLBERT: Correct.

1 MR. KLINE: All right. Now, does
2 this license have seating capacity on it with
3 respect to enclosed and unenclosed?

4 MR. TOLBERT: It does. It's 114.

5 MR. KLINE: 114 in --

6 MR. TOLBERT: Combined.

7 MR. KLINE: Combined.

8 MR. TOLBERT: Combined.

9 MR. KLINE: So there is no
10 differentiation?

11 MR. TOLBERT: None.

12 MR. KLINE: Now, you testified
13 earlier, I believe, that in your experience
14 the Government or the licensing agency treated
15 the two areas together. Is that what you
16 said?

17 MR. TOLBERT: Correct.

18 MR. KLINE: In terms of seating?

19 MR. TOLBERT: Correct.

20 MR. KLINE: All right. So does
21 that mean so there was an overall number like
22 on this C of Use?

1 MR. TOLBERT: Correct.

2 MR. KLINE: Okay. I would move
3 Licensee's 5.

4 MR. KLINE: No objection.

5 CHAIRPERSON MILLER: Okay. Okay.
6 Licensee's Exhibit No. 5 is admitted into
7 evidence. Oh, yes, okay.

8 (Whereupon, the document marked as
9 Licensee Exhibit 5 was received in
10 evidence.)

11 MR. KLINE: Now, you said that in
12 and around '98 you renovated or remodeled or
13 what have you and you sought permission from
14 various Government agencies, at that time?

15 MR. TOLBERT: We did.

16 MR. KLINE: All right. And one of
17 those included the Public Space Committee?

18 MR. TOLBERT: Absolutely.

19 MR. KLINE: All right. I want to
20 show you Licensee's Exhibit 6.

21 (Whereupon, the document was
22 marked as Licensee Exhibit 6 for

1 identification.)

2 MR. KLINE: And I ask you if you
3 recall seeing that document?

4 MR. TOLBERT: I do.

5 MR. KLINE: And what is that
6 document?

7 MR. TOLBERT: It's approval of the
8 permit for March 4, 1998.

9 MR. KLINE: All right. And that
10 is directed to who? Who is it addressed to?

11 MR. TOLBERT: Aqua Port Floor
12 Corporation who was the landlord at that time.

13 MR. KLINE: Okay. So they were
14 the -- your landlord of the building, at that
15 time?

16 MR. TOLBERT: Correct.

17 MR. KLINE: And this was the
18 approval, at that time?

19 MR. TOLBERT: Correct.

20 MR. KLINE: Now, so you went
21 through an approval process, at that time,
22 correct?

1 MR. TOLBERT: Correct.

2 MR. KLINE: With the Public Space
3 Committee?

4 MR. TOLBERT: Correct.

5 MR. KLINE: I would move
6 Licensee's Exhibit 6.

7 MR. ADAMS: I apologize. I don't
8 have an objection. No objection.

9 MR. KLINE: Oh, I'm sorry. Here
10 take that one.

11 Now, you are aware --

12 CHAIRPERSON MILLER: Mr. Kline?
13 Do you want to wait and I'll --

14 MR. KLINE: Oh, I'm sorry. Sure.

15 CHAIRPERSON MILLER: -- enter into
16 evidence. Okay. Licensee's Exhibit No. 6 is
17 entered into evidence.

18 (Whereupon, the document marked as
19 Licensee Exhibit 6 was received in
20 evidence.)

21 MR. KLINE: Now, you are aware
22 that in connection with the approval, there

1 was a process before the Public Space
2 Committee?

3 MR. TOLBERT: Correct.

4 MR. KLINE: And that the
5 directorate or secretary of the Public Space
6 Committee made a recommendation to the Public
7 Space Committee?

8 MR. ADAMS: Objection. Leading.
9 It's leading.

10 CHAIRPERSON MILLER: Overruled.
11 Go ahead. Sorry.

12 MR. KLINE: I want to show you
13 what has been marked as Licensee's 7.

14 (Whereupon, the document was
15 marked as Licensee Exhibit 7 for
16 identification.)

17 MR. KLINE: And ask if you can
18 identify that?

19 MR. TOLBERT: I don't have a copy
20 of that document.

21 MR. KLINE: You don't?

22 MR. TOLBERT: I do not. I have

1 six.

2 MR. KLINE: No, that's fine.

3 CHAIRPERSON MILLER: This is 7.

4 MR. KLINE: Have you seen that
5 document before?

6 MR. TOLBERT: I have.

7 MR. KLINE: And what is that?

8 MR. TOLBERT: It was a request. I
9 don't know who TC Bernard is, but asking --
10 Public Works contacted all the agencies in the
11 District and the neighborhood about approval
12 of the sidewalk cafe.

13 MR. KLINE: Okay. Is that the
14 recommendation that you were talking about,
15 what we talked about earlier?

16 MR. TOLBERT: It is.

17 MR. KLINE: Okay. I would move
18 Licensee's Exhibit 7.

19 MR. ADAMS: No objection.

20 CHAIRPERSON MILLER: Okay. Then I
21 have this in front of me and I'll enter
22 Licensee's Exhibit 7 into evidence.

1 (Whereupon, the document marked as
2 Licensee Exhibit 7 was received in
3 evidence.)

4 MR. KLINE: And just so we are
5 clear, 1900 M Street Restaurant Associates, do
6 you know when it was formed, approximately?

7 MR. TOLBERT: Formed at the end of
8 '97 and the beginning of '98.

9 MR. KLINE: So is it fair to say
10 it was not in existence when the 1994
11 Certificate of Use was issued?

12 MR. TOLBERT: It did not exist.

13 MR. KLINE: Now, you were aware in
14 or about 1998 that there was a transfer
15 application filed with the Board?

16 MR. TOLBERT: There was.

17 MR. KLINE: And do you know if a
18 copy of the lease was filed with the Board?

19 MR. TOLBERT: I don't recall, but
20 I would imagine it would be, because that
21 would be part of the process, I would think.

22 MR. KLINE: All right. I would

1 ask the Board to take administrative notice of
2 the fact that a copy of the lease was filed
3 with the application in the Board's files.

4 MR. KLINE: Well, I'll just say
5 that it's appropriate for the Board to take
6 administrative notice of the application for
7 whatever is in the application. I'm not sure
8 if there is a lease or not in there, so
9 unfortunately the witness didn't recall.

10 CHAIRPERSON MILLER: Okay. So the
11 Board can take administrative notice of the
12 application and whatever is attached to it.

13 MR. KLINE: I'll show you what has
14 been marked as Licensee's Exhibit 8.

15 (Whereupon, the document was
16 marked as Licensee Exhibit 8 for
17 identification.)

18 MR. KLINE: And ask if you can
19 identify that document?

20 MR. TOLBERT: It's the lease with
21 Aqua Port Floor Corporation and 1900 M Street
22 Restaurant Associates.

1 MR. KLINE: So this almost half
2 inch document or a quarter to a half inch
3 document is the lease?

4 MR. TOLBERT: It is.

5 MR. KLINE: And does the lease
6 contain descriptions of the physical layout of
7 the premises?

8 MR. TOLBERT: It does.

9 MR. KLINE: All right. Where
10 might those be found?

11 MR. TOLBERT: There is a copy of
12 the renovation plans in the back laying out
13 the whole restaurant.

14 MR. KLINE: All right. Well, let
15 me get that. The big drawing was previously
16 labeled as Licensee's 3. I'm going to hold it
17 up or walk it over there. Licensee's 3. Do
18 you know this document?

19 MR. TOLBERT: I do.

20 MR. KLINE: What is this document,
21 Licensee's 3?

22 MR. TOLBERT: That was part of the

1 submission to -- for approval of all this in
2 1998.

3 MR. KLINE: Okay. So -- and does
4 this depict the outdoor seating area?

5 MR. TOLBERT: It does.

6 MR. KLINE: I'll walk over to the
7 witness, if I may?

8 MR. TOLBERT: It does.

9 MR. KLINE: And does this depict
10 the outdoor seating area as it has existed
11 since 1998?

12 MR. TOLBERT: It does.

13 MR. KLINE: All right. Now, you
14 referenced in the lease that there are
15 drawings or diagrams attached to the lease?

16 MR. TOLBERT: Correct.

17 MR. KLINE: And is there a drawing
18 that in any way resembles -- well, let me
19 strike that.

20 In the lower right hand corner of
21 this drawing, is there a number which depicts
22 what drawing it is?

1 MR. TOLBERT: 01-A8.

2 MR. KLINE: 01-A8?

3 MR. TOLBERT: Yes.

4 MR. KLINE: All right. Opening
5 the lease, is that document in some form, is
6 this drawing defendant's or Respondent's
7 Exhibit 3 reflected in the lease? Is it
8 contained in the lease somewhere?

9 MR. TOLBERT: It is contained in
10 the lease, 01-A8.

11 MR. KLINE: And where is that
12 found?

13 MR. TOLBERT: In the document
14 showing the layout of the restaurant.

15 MR. KLINE: All right. Now, I
16 don't remember if we did it before and I don't
17 remember if it came in, because there was a
18 lot of discussion about it, I would move --

19 CHAIRPERSON MILLER: It's in.

20 MR. KLINE: -- Respondent's 3.

21 CHAIRPERSON MILLER: It's in.

22 MR. KLINE: It's in. Okay. Now,

1 do you have in front of you the drawing that
2 is labeled 01-A8, as attached to the lease?

3 MR. TOLBERT: I do.

4 MR. KLINE: And is there a legend
5 in the upper right hand corner that says page
6 of 10?

7 MR. TOLBERT: This is reduced way
8 down. I really can't read it.

9 MR. KLINE: May I approach the
10 witness?

11 CHAIRPERSON MILLER: Okay.

12 MR. TOLBERT: That right hand
13 corner? Yes. Page 6 of 10.

14 MR. KLINE: All right. Now, the
15 drawing that I showed you earlier as
16 Licensee's No. 3 differs a little bit from
17 this drawing, does it not?

18 MR. TOLBERT: It does.

19 MR. KLINE: Okay. This plan 01-
20 A8, did it have a couple of different uses
21 with respect to approvals of the renovation of
22 the restaurant?

1 MR. TOLBERT: I think it served as
2 both building permits and submission to the
3 agencies.

4 MR. KLINE: Okay. And so how is
5 this drawing, the one that is attached to the
6 lease, different from the one that I showed
7 you earlier that has been entered into
8 evidence as Licensee's Exhibit No. 3?

9 MR. TOLBERT: It's got an X
10 through the sidewalk cafe.

11 MR. KLINE: All right. Does it
12 have an X anywhere else?

13 MR. TOLBERT: It does not.

14 MR. KLINE: What about in the
15 kitchen area?

16 MR. TOLBERT: It does.

17 MR. KLINE: Okay. And what, to
18 your recollection, do those Xs mean?

19 MR. TOLBERT: Those areas were not
20 renovated, at that time.

21 MR. KLINE: Okay. All right. So
22 they were not part of the --

1 MR. TOLBERT: Approval process.

2 MR. KLINE: -- approval process in
3 terms of the renovation. I would move
4 Licensee's Exhibit 8.

5 MR. ADAMS: I apologize, Madam
6 Chair, just one question I had. Is there
7 record that this lease was submitted to the
8 Board at some point, along with the initial
9 application? I just want to make sure of
10 that.

11 MR. KLINE: I would proffer that
12 it was, but I'm not going to stand and
13 testify. The Board's records will certainly
14 reflect that it is there.

15 MR. ADAMS: No, it was just a
16 simple question. For purposes of this
17 hearing, I will not object.

18 CHAIRPERSON MILLER: Oh, just to
19 clarify, I was going to say this when the
20 Board had questions, but I'm not sure now
21 about this lease to whom it was submitted.
22 Did you say -- you didn't say it was submitted

1 to ABRA? It was submitted to an agency?

2 MR. KLINE: No. He said he didn't
3 know. And I asked that the Board take
4 administrative notice that it was submitted in
5 connection with the transfer application.

6 CHAIRPERSON MILLER: Okay.

7 MR. KLINE: You know, I don't want
8 to take the stand, but I can proffer that it
9 was submitted in connection with the transfer
10 application.

11 CHAIRPERSON MILLER: Okay. Did
12 you pass it up to anybody?

13 MR. KLINE: Did I?

14 CHAIRPERSON MILLER: So there is
15 no objection, correct, Mr. Adams?

16 MR. ADAMS: That's right.

17 CHAIRPERSON MILLER: Okay. Okay.
18 Licensee's Exhibit No. 8 is entered into
19 evidence.

20 (Whereupon, the document marked as
21 Licensee Exhibit 8 was received in
22 evidence.)

1 MR. KLINE: And those are all the
2 questions I have of this witness, at this
3 time. Thank you.

4 CHAIRPERSON MILLER: Okay. Cross?

5 CROSS-EXAMINATION

6 MR. ADAMS: How are you doing, Mr.
7 Tolbert?

8 MR. TOLBERT: I'm good. How are
9 you?

10 MR. ADAMS: Good.

11 MR. TOLBERT: Good.

12 MR. ADAMS: All right. So you
13 have been with Rumors for -- since '77, which
14 is quite a long period. Is that correct?

15 MR. TOLBERT: That's correct.

16 MR. ADAMS: All right. And I
17 guess prior to 1998, what was your role with
18 it?

19 MR. TOLBERT: Prior to '98, I was
20 president and majority owner.

21 MR. ADAMS: Majority owner. All
22 right. Okay. So, obviously, it takes a great

1 amount of pride in terms of how this licensee
2 has operated and with things it has done in
3 the past. Is that correct? Take a lot of
4 pride in the business?

5 MR. TOLBERT: Absolutely.

6 MR. ADAMS: Okay. Great. Great.
7 All right. So very well. Now, because you
8 provided a lot of history, a lot of documents
9 regarding your establishment, so I just want
10 to kind of go through a couple of things to
11 make sure that it's clear for the Board.

12 Just now, we were talking about a
13 lease that was a lease and they had -- that
14 renovations -- that there was a drawing that
15 were attached where the sidewalk cafe was
16 reflected. Is that correct?

17 MR. TOLBERT: Correct.

18 MR. ADAMS: And you stated that
19 it's consistent with what has already been
20 entered into evidence as Exhibit 3, which is
21 a large drawing. Is that correct?

22 MR. TOLBERT: Correct.

1 MR. ADAMS: Now, I just want to
2 clarify a couple of points.

3 Now, you stated that the drawing
4 was different two material days and that was
5 that there is an X in the outdoor seating
6 area. Is that correct?

7 MR. TOLBERT: Correct.

8 MR. ADAMS: And that there is an X
9 in the kitchen area. Is that correct?

10 MR. TOLBERT: Correct.

11 MR. ADAMS: Now, in looking at the
12 drawing that you have in the lease, there
13 wasn't anything with regards to seating
14 capacity in that drawing. Is that correct?
15 In other words, look at Exhibit A at 01-A8.
16 There -- you know, I'll allow you a chance to
17 take a look.

18 And I guess next to -- well, of
19 course, there are measurements as well, but --
20 so in the area next to the sidewalk cafe is
21 completely blank in the lease. Is that
22 correct?

1 MR. TOLBERT: In the sidewalk area
2 over here?

3 MR. ADAMS: In this area right --
4 sorry. I apologize. The area that is next to
5 the sidewalk cafe area, there is an area that
6 states seating capacity.

7 MR. TOLBERT: Oh, on that one.
8 Not on this one.

9 MR. ADAMS: Right. Okay. So that
10 was not part of the lease that may have been
11 submitted to the Board. Is that correct?

12 MR. TOLBERT: What was that
13 question?

14 MR. ADAMS: This area that's
15 seating.

16 MR. TOLBERT: That legend there?

17 MR. ADAMS: Yes.

18 MR. TOLBERT: Apparently not.

19 MR. ADAMS: Right. And even --
20 and in the quarterly legends, there is --
21 there are about three lines that talk about
22 permits, that's not part of this. Is that

1 correct? I know it's very small.

2 MR. TOLBERT: It doesn't seem to
3 be, no.

4 MR. ADAMS: Okay. All right. And
5 so at the time that was submitted, the
6 establishment was going through renovations to
7 -- obviously, as part of the change over with
8 the ownership. Is that correct?

9 MR. TOLBERT: That's correct.

10 MR. ADAMS: All right. And so the
11 least was supplied -- may have been supplied
12 to the Board to, you know -- or actually, I'm
13 going to withdraw that question.

14 Now, you have had over the years,
15 over, obviously, the 30 year period,
16 investigators who represent the Alcoholic
17 Board. They have visited your establishment
18 before, right?

19 MR. TOLBERT: Many times.

20 MR. ADAMS: And they have
21 inspected issues, such as capacity of the
22 sidewalk cafe area at that time as well. Is

1 that correct?

2 MR. TOLBERT: I would assume so.

3 MR. ADAMS: Okay. But prior to
4 that, they never found any problems in terms
5 of the numbers or anything or they never cited
6 you for the number of seats in the sidewalk
7 area?

8 MR. TOLBERT: I don't think so.

9 MR. ADAMS: All right. So let me
10 see here. And when they have done that, you
11 have been present when they have had
12 regulatory inspections of your establishment?

13 MR. TOLBERT: Actually, most of
14 the time, I'm not present.

15 MR. ADAMS: Okay. Oh, I
16 apologize.

17 MR. TOLBERT: You know, we have
18 the licensed managers that run the place.

19 MR. ADAMS: Okay.

20 MR. TOLBERT: And I'm not present.
21 I have very little interaction with your
22 investigators.

1 MR. ADAMS: Okay. Very well. I
2 want to clarify -- so let me clarify one issue
3 here. Now, your counsel presented Exhibits 4,
4 5. I'm going to say 4, 5 and 6 and 7 and that
5 was presented by your counsel as evidence.
6 And, of course, it states different
7 capacities.

8 And those capacities are -- were
9 issued by the DDOT or by, you know, DCRA at
10 different occasions. Is that correct?

11 MR. TOLBERT: That's correct.

12 MR. ADAMS: All right. But at no
13 time were the subsequent documents submitted
14 to ABRA. Isn't that correct, Mr. Tolbert?

15 MR. TOLBERT: The Certificate of
16 Uses?

17 MR. ADAMS: Yes, the specific ones
18 that were referenced within your direct
19 testimony. At no time where they submitted
20 to --

21 MR. TOLBERT: I can't say that.

22 MR. ADAMS: -- ABRA.

1 MR. TOLBERT: If there was a
2 requirement of ABRA, I'm sure you got them.
3 If it's not, you didn't.

4 MR. ADAMS: Well, I mean, I
5 actually don't know. I mean, you have to tell
6 me what you --

7 MR. TOLBERT: And nor do I.

8 MR. ADAMS: -- submitted.

9 MR. TOLBERT: Nor do I. I don't
10 know all the laws in the District of Columbia.

11 MR. ADAMS: Well, the specific
12 question is what was submitted? Did you --

13 MR. TOLBERT: Submitted when?

14 MR. ADAMS: -- submit these
15 permits to the Board?

16 MR. KLINE: Objection. The
17 question has been asked and answered. He said
18 he didn't know. He said if it needed to be
19 submitted, it was and if it wasn't -- if it
20 didn't need to be, it wasn't. Mr. Adams
21 doesn't like the answer, so he is going to ask
22 him again.

1 MR. ADAMS: Well, the question
2 was --

3 CHAIRPERSON MILLER: No, I --

4 MR. ADAMS: -- not answered.

5 CHAIRPERSON MILLER: I didn't hear
6 him.

7 MR. ADAMS: The question wasn't
8 answered.

9 CHAIRPERSON MILLER: Specifically,
10 I heard him say he doesn't know all the laws.
11 But did you answer the question whether you
12 specifically submitted those Certificates of
13 Use to the Board, to the Agency, ABRA?

14 MR. TOLBERT: What I answered is I
15 don't know.

16 CHAIRPERSON MILLER: You don't
17 know.

18 MR. TOLBERT: I would assume that
19 if they were required, we submitted them. I
20 mean, you are talking a long, long time here.
21 I mean, it's a 36 year span for me. I have
22 trouble with last week.

1 MR. ADAMS: Understood. But, I
2 mean, still, I mean, but you do understand
3 that your restaurant itself does have a set
4 capacity. You do understand that?

5 MR. TOLBERT: I would like to
6 correct you on one thing. It's not my
7 restaurant.

8 MR. ADAMS: Okay. Do you
9 understand that the establishment by which you
10 have responsibility for has a set capacity?

11 MR. TOLBERT: I oversee it. I
12 don't -- others have responsibility. They are
13 in this room.

14 MR. ADAMS: The matter that we are
15 here for, do you understand that that place
16 has a set capacity in terms of seating? Is
17 that correct?

18 MR. TOLBERT: It does.

19 MR. ADAMS: Okay. Now, in your
20 direct testimony, you state that capacity was
21 100 seats regardless of whether it is an
22 enclosed area or the unenclosed area. Is that

1 correct?

2 MR. TOLBERT: I think I testified
3 that that -- yes.

4 MR. ADAMS: Okay.

5 MR. TOLBERT: It's been the
6 history of it since day one.

7 MR. ADAMS: All right. From --
8 the history of it from day one. However, now,
9 I know that in portion there has been some
10 issues that talk about consistency, but,
11 obviously, like even in Exhibit 5 or, sorry,
12 Exhibit 4, which is before you, there is a
13 differentiation between enclosed and
14 unenclosed space. Is that correct, sir?

15 MR. TOLBERT: Mine aren't
16 numbered.

17 MR. ADAMS: Okay. I'll provide it
18 to you. This is --

19 MR. TOLBERT: Is that the one May
20 6, 2001?

21 MR. ADAMS: That is correct, sir.

22 MR. TOLBERT: 56 enclosed, 34

1 unenclosed.

2 MR. ADAMS: Okay. So then --
3 okay. So then there -- it hasn't always been
4 a case that has 100 regardless of what area
5 it's in. That's not proper. The all time
6 that it has been 100 regardless of where it
7 has been.

8 MR. KLINE: Objection. What has
9 not been? I don't understand the question.

10 MR. ADAMS: Okay. That's fine.
11 The answer that you gave is not true. Your
12 answer that you gave previously that, in your
13 experience, it has always been 100 seats
14 capacity regardless of whether it is in the
15 enclosed sidewalk cafe or outside.

16 MR. TOLBERT: Based on the square
17 footage of the space, I think that is correct,
18 yes.

19 MR. ADAMS: Okay. However, but
20 that has -- that is not consistent with the
21 permits that were issued, correct?

22 MR. TOLBERT: This one is what 96?

1 That's damn close to 100.

2 MR. ADAMS: But there is a
3 differentiation between unenclosed and
4 enclosed?

5 MR. TOLBERT: On this particular
6 one. On the other one, it's 117.

7 MR. ADAMS: Okay.

8 MR. TOLBERT: On this one it's
9 like 34. And on your's it's 24. I mean, come
10 on.

11 MR. ADAMS: I understand.
12 Understood. Well, I mean, I apologize.

13 MR. TOLBERT: I mean, what are you
14 getting at? Your own investigator said 32
15 seats and 38 seats. It's the same thing.

16 MR. ADAMS: I -- no, it's not the
17 same thing.

18 MR. TOLBERT: Nobody knows.

19 MR. ADAMS: And I apologize. I'm
20 asking the questions, so if you --

21 CHAIRPERSON MILLER: Go ahead.
22 They say you are arguing too much.

1 MR. TOLBERT: Excuse me?

2 CHAIRPERSON MILLER: Just try to
3 answer the question and not argue.

4 MR. TOLBERT: Can you repeat which
5 question we are on?

6 MR. ADAMS: Now, I'm getting ready
7 to ask you a question, so I apologize, Mr.
8 Tolbert, if you feel inconvenienced, but,
9 obviously, we are here for a license.

10 But -- all right. So here is my
11 question. Now, you state that you pay
12 differently because you have an unenclosed and
13 an enclosed space. Is that correct?

14 MR. TOLBERT: That's correct.

15 MR. ADAMS: To whom do you pay
16 that to?

17 MR. TOLBERT: I pay it to the
18 landlord.

19 MR. ADAMS: Okay. You pay it to
20 the landlord. So the space that is paid
21 differently, that's not paid to D.C.
22 Government?

1 MR. TOLBERT: The landlord pays
2 D.C. Government.

3 MR. ADAMS: Okay. And what is the
4 structure that the D.C. Government has in
5 terms of charging for that space?

6 MR. TOLBERT: Rent is \$1,155 a
7 month.

8 MR. ADAMS: Okay. So more or less
9 the rate you are citing is just from landlord.
10 It has nothing to do necessarily with D.C.
11 Government?

12 MR. TOLBERT: It's a straight pass
13 through from the landlord and the D.C.
14 Government.

15 MR. ADAMS: Okay. So it is a pass
16 through? So what is the fee that you are
17 referring to? Is it from the Public Space
18 Commission?

19 MR. TOLBERT: It's the combined
20 for the Public Space Committee.

21 MR. ADAMS: Okay. But you state
22 that the fee is different. Different from

1 what?

2 MR. TOLBERT: There is two rates.

3 MR. ADAMS: Oh, two rates, okay.

4 MR. TOLBERT: There is two rates.

5 I think there is a rate for unenclosed and a
6 rate for enclosed.

7 MR. ADAMS: Okay. So --

8 MR. TOLBERT: Sidewalk cafes.

9 MR. ADAMS: -- you are paying a
10 fee. Your fee as far as rent has
11 differentiation. Is that correct?

12 MR. TOLBERT: Closed and
13 unenclosed.

14 MR. ADAMS: Okay. I have no
15 further questions for Mr. Tolbert.

16 CHAIRPERSON MILLER: Okay. Board
17 questions? Board questions? Mr. Silverstein?

18 MEMBER SILVERSTEIN: Mr. Tolbert,
19 help me out with the 1998 lease. Do you have
20 a copy of it there, because we don't?

21 MR. TOLBERT: I do.

22 MEMBER SILVERSTEIN: What does it

1 say specifically about the number of seats
2 enclosed, unenclosed or what have you?

3 MR. TOLBERT: You know, the
4 diagram shows 34 seats on the unenclosed
5 portion.

6 MEMBER SILVERSTEIN: The diagram
7 for the 1998 lease has 34 seats?

8 MR. TOLBERT: That's correct.
9 It's the 01-A8 Exhibit.

10 MR. ADAMS: Okay.

11 MR. TOLBERT: Which corresponds to
12 the bigger drawing that has seating capacities
13 on it that I think are the same, are they not?
14 56 and 34?

15 MR. ADAMS: I apologize. I have
16 to object to that answer, because we already
17 established that that number was not on -- is
18 not in the lease.

19 MR. TOLBERT: Well, it's not
20 printed on there, but there is 34 seats
21 depicted on there.

22 MEMBER SILVERSTEIN: Is the

1 diagram part of the lease?

2 MR. TOLBERT: Absolutely.

3 CHAIRPERSON MILLER: Yes.

4 MR. TOLBERT: Absolutely.

5 MR. ADAMS: But I guess there is
6 two things. The diagram -- is there a diagram
7 that is part of the lease? Absolutely. The
8 District doesn't object to that, but there was
9 an answer that states in terms of what was the
10 seating capacity. And that is inconsistent
11 with the fact that in front of you that there
12 was any number regarding the past date and the
13 lease.

14 MR. KLINE: Madam Chairperson?

15 CHAIRPERSON MILLER: I understand
16 that.

17 MR. KLINE: With all due respect,
18 counsel for the Government can't argue with
19 the witness' answers. He can certainly argue
20 it on closing, but for him to correct his
21 testimony while he is testifying is most
22 unusual. And I strenuously object to it.

1 MR. ADAMS: It's not unusual.

2 CHAIRPERSON MILLER: I don't want
3 this to go on, ad infinitum, like this
4 morning.

5 MR. TOLBERT: Objection.

6 CHAIRPERSON MILLER: But the point
7 I understand that was made earlier was that
8 the big sheet has words on it that says seat
9 capacity and numbers next to them. The lease,
10 which is in evidence now, is blank in that
11 area. However, there are seats drawn or
12 depicted on here and that's what the witness
13 is referring to, as I understand it. And I
14 don't see that that's -- there should be an
15 objection to that.

16 MEMBER SILVERSTEIN: That was what
17 I was trying to figure out the difference, the
18 discrepancy, what have you. I have no further
19 questions.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Other questions?

22 MEMBER JONES: Just a quick

1 follow-up --

2 CHAIRPERSON MILLER: Yes, Mr.
3 Jones?

4 MEMBER JONES: -- based on all my
5 questions, but just a quick follow-up based on
6 that.

7 The lease diagram just to be
8 clear, you are counting the pictorial
9 representation of seats on that diagram. You
10 are not referring to a number that is written?

11 MR. TOLBERT: That's correct.

12 MEMBER JONES: Okay.

13 MR. TOLBERT: In this particular.

14 MEMBER JONES: In the particular
15 diagram that's in the lease.

16 MR. TOLBERT: As I understand it,
17 the document --

18 MEMBER JONES: I don't have the
19 lease in front of me, so I'm just trying to--

20 MR. TOLBERT: Yes, that's fair.
21 But as I understand it, the diagram that is on
22 the lease served multiple purposes for

1 building permits, for ABC, etcetera. And why
2 it wasn't exactly copied, I have no idea. But
3 it certainly could have been and probably
4 should have been.

5 But the number of seats at issue
6 here, which is the outside cafe, is clearly
7 34. And it's clearly 34 on the Certificate of
8 Use where he wanted me to differentiate
9 between the two inside and outside. If that's
10 -- you know, you can just as easily go with
11 117. You can just as easily go with 24. I
12 don't know what the hell is going on at DCRA,
13 but clearly they are not precise. They are
14 not precise.

15 MEMBER JONES: I'm not trying to--
16 I'm just trying to get clarification on how
17 you are making a determination that you got to
18 34.

19 MR. TOLBERT: Off that diagram.

20 MEMBER JONES: Off the diagram.
21 You counted the number of seats?

22 MR. TOLBERT: Yes, sir.

1 MEMBER JONES: Okay. What is the
2 purpose of that diagram? As you understand
3 it, what was the purpose of that diagram?

4 MR. TOLBERT: This lease was
5 submitted to ABRA. It was submitted to
6 whoever required --

7 MEMBER JONES: The inclusion of
8 that diagram in the lease serves what purpose?

9 MR. TOLBERT: It's a requirement
10 of the lease.

11 MEMBER JONES: It's a requirement
12 of the lease?

13 MR. TOLBERT: Yes.

14 MEMBER JONES: Okay. Does that
15 diagram also specifically dictate where you
16 can put tables in that outdoor space?

17 MR. TOLBERT: It does.

18 MEMBER JONES: If you had to --

19 MR. TOLBERT: Let me rephrase
20 that.

21 MEMBER JONES: -- tables that are
22 not in that location as specified by that

1 diagram, are you in violation of the lease?

2 MR. TOLBERT: I doubt it.

3 MEMBER JONES: You doubt it?

4 MR. TOLBERT: I doubt it.

5 MEMBER JONES: Can you have

6 fewer --

7 MR. TOLBERT: You know, I mean,

8 the landlords are more --

9 MEMBER JONES: Can you have

10 fewer --

11 MR. TOLBERT: -- pickier than you

12 are. I mean --

13 MEMBER JONES: Can you have

14 fewer --

15 MR. TOLBERT: And these guys want

16 it like they sign it. Excuse me. Go ahead.

17 MEMBER JONES: Go ahead, Madam

18 Chair. I'm not really getting much

19 cooperation.

20 CHAIRPERSON MILLER: Did you need

21 to finish your answer?

22 MR. TOLBERT: Excuse me?

1 CHAIRPERSON MILLER: Did you need
2 to finish your answer or have you finished
3 your answer to Mr. Jones?

4 MR. TOLBERT: I'm sorry, I can't
5 hear you.

6 CHAIRPERSON MILLER: I'm just
7 asking if you finished your answer? I guess
8 you did.

9 MR. TOLBERT: I can't hear you.

10 CHAIRPERSON MILLER: I'm asking
11 you if you finished your answer, your
12 response?

13 MR. TOLBERT: Yes.

14 CHAIRPERSON MILLER: Okay. Are
15 there other Board questions?

16 MEMBER ALBERTI: Yes.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MEMBER ALBERTI: I know you have
19 gone over this before, but please bear with
20 me. You were a member of RHT Incorporated?

21 MR. TOLBERT: I was.

22 MEMBER ALBERTI: And your position

1 with them was? Okay. So would you have been
2 very involved with the submission of the
3 application, the transfer application?

4 MR. TOLBERT: For this? For the
5 new license?

6 MEMBER ALBERTI: In 1998, I guess
7 the transfer was made, right?

8 MR. TOLBERT: Well, I wasn't very
9 involved, because I was being left behind.
10 This was new ownership, new officers.

11 MEMBER ALBERTI: Okay. Let's say
12 when -- when did RHT Incorporated become
13 Rumors?

14 MR. KLINE: Objection. It assumes
15 facts in evidence. It did not become rumors.
16 And I want to make that very clear for the
17 record.

18 MEMBER ALBERTI: Okay.

19 MR. KLINE: There was a -- if I
20 may? There was a transfer application filed
21 from RHT, Inc. to 1900 Restaurant Associates,
22 LLC.

1 MEMBER ALBERTI: Okay. Back in
2 1994, this establishment was -- the name of
3 this establishment was what?

4 MR. TOLBERT: RHT, Inc. t/a
5 Rumors.

6 MEMBER ALBERTI: Trading as
7 Rumors. Thank you. All right. When did RHT
8 Incorporated establish Rumors?

9 MR. TOLBERT: 1977.

10 MEMBER ALBERTI: 1977. And you
11 were president then?

12 MR. TOLBERT: Correct.

13 MEMBER ALBERTI: Okay. Were you
14 involved with all of the submissions to -- for
15 licenses until 1998?

16 MR. TOLBERT: Yes.

17 MEMBER ALBERTI: As president?

18 MR. TOLBERT: Yes.

19 MEMBER ALBERTI: Okay.

20 MR. TOLBERT: Of course.

21 MEMBER ALBERTI: So you would have
22 been responsible for the submission of this

1 1994 Certificate of Occupancy, right?

2 MR. KLINE: Objection.

3 Certificate of Use, just so we are --

4 MEMBER ALBERTI: Certificate of
5 Use, excuse me.

6 MR. TOLBERT: Also --

7 MEMBER ALBERTI: The Certificate
8 of Use that was attached to the investigator's
9 report.

10 MR. TOLBERT: You don't make
11 application. They send you a bill and you pay
12 it. And they send you the Certificate of Use.
13 There is no application for a Certificate of
14 Use on an annual basis.

15 MEMBER ALBERTI: But the
16 Certificate of Use that was submitted to ABRA
17 in 19 -- the 1994 Certificate of Use that was
18 submitted to ABRA, you would have been
19 responsible for submitting that to ABRA. Is
20 that correct? Or to the agency that was in
21 charge at that time.

22 MR. TOLBERT: As far as I know,

1 there was no reason to submit C of Use to
2 ABRA. I'm sure there might have been when you
3 -- you know in '77.

4 MEMBER ALBERTI: All right. All
5 right. That's fine. That's fine.

6 MR. TOLBERT: In '98.

7 MEMBER ALBERTI: That's fine.

8 MR. TOLBERT: But '94 neither of
9 those --

10 MEMBER ALBERTI: Okay. All right.
11 That's fine. The Exhibit No. 2, do you have
12 the exhibits there in front of you?

13 MR. TOLBERT: Yes.

14 MEMBER ALBERTI: The licensee's
15 exhibits? Well, let me ask you.

16 MR. TOLBERT: What exhibit number?

17 MEMBER ALBERTI: What's your
18 position now with this establishment?

19 MR. TOLBERT: I have no position
20 with this establishment.

21 MEMBER ALBERTI: You have no
22 position?

1 MR. TOLBERT: Correct.

2 MEMBER ALBERTI: All right. So
3 you -- do you work -- you don't work for them
4 at all? You don't have any -- do you have any
5 role in this business at all in any capacity?

6 MR. TOLBERT: As I said when we
7 started, as our asset manager for the trust,
8 I oversee the business, if you will, for the
9 trust. I have no --

10 MEMBER ALBERTI: You oversee the
11 business for the trust and the trust owns the
12 business. Is that correct?

13 MR. TOLBERT: That's correct.

14 MEMBER ALBERTI: Okay. Thank you.
15 And the business being? What is the business,
16 just so I'm clear?

17 MR. TOLBERT: What business?

18 MEMBER ALBERTI: The business that
19 you oversee for the trust?

20 MR. TOLBERT: For the trust? It's
21 a restaurant, 1900 M.

22 MEMBER ALBERTI: 1900 M. Thank

1 you. All right. We have a Certificate of Use
2 for sidewalk cafe in public space that -- do
3 you have Exhibit 2, Licensee's Exhibit 2?

4 MR. TOLBERT: I do.

5 MEMBER ALBERTI: Okay. This is
6 the Certificate of Use for sidewalk cafe dated
7 May 2, 2012. Do you see the box that says
8 seating capacity?

9 MR. TOLBERT: I do.

10 MEMBER ALBERTI: Can you tell me
11 what is there?

12 MR. TOLBERT: Nothing. It's
13 blank.

14 MEMBER ALBERTI: Thank you. I
15 have 1990 -- Exhibit No. 5. Well, let's go in
16 order. I have Exhibit No. 4, which is a
17 Certificate of Use for sidewalk cafe May 6,
18 2001. Do you see that?

19 MR. TOLBERT: 56/54, yes, sir.

20 MEMBER ALBERTI: Okay. So seating
21 capacity says 56/54. Is that what you were
22 referring to in that last comment?

1 MR. TOLBERT: Yes.

2 MEMBER ALBERTI: Okay. Thank you.
3 I'm going to come back to that one, so hang on
4 to that one. And Exhibit No. 5, that
5 Certificate of Use was dated August 19, 1996.

6 MR. TOLBERT: Correct.

7 MEMBER ALBERTI: And the seating
8 capacity there says what?

9 MR. TOLBERT: 114.

10 MEMBER ALBERTI: 114. Does it
11 give a breakdown?

12 MR. TOLBERT: It does not.

13 MEMBER ALBERTI: So am I correct
14 that the only -- we only have before us two
15 Certificates of Use that have a breakdown
16 between the enclosed and unenclosed? Is that
17 correct?

18 MR. TOLBERT: Correct.

19 MEMBER ALBERTI: And did you
20 submit, since there is a change between the
21 one from 1994 and the one from 2001, did you
22 submit the 2001 to ABRA and request a change

1 in your license?

2 MR. KLINE: Objection. It assumes
3 facts that are not in evidence. There is no
4 requirement that he do that.

5 MEMBER ALBERTI: I didn't say
6 there was a requirement, Mr. Kline. I asked
7 him a question. I said did he.

8 CHAIRPERSON MILLER: Okay.

9 MR. KLINE: It certainly implies
10 that there is a requirement, Mr. Alberti.

11 MEMBER ALBERTI: Am I mumbling,
12 Mr. Kline?

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: Do you understand
15 English?

16 CHAIRPERSON MILLER: Okay. All
17 right.

18 MEMBER ALBERTI: I said did he.

19 MR. KLINE: Yes, I do, Mr.
20 Alberti.

21 MEMBER ALBERTI: Mr. Tolbert?

22 MR. KLINE: It certainly implies a

1 requirement that that be done. And that's not
2 what we are here to talk about.

3 MEMBER ALBERTI: I'm not implying
4 anything. Do not put words in my mouth, Mr.
5 Kline.

6 CHAIRPERSON MILLER: Okay. Let's
7 move on. I think --

8 MEMBER ALBERTI: Mr. Kline,
9 please, do not put words in my mouth. I asked
10 a very simple question.

11 Mr. Tolbert, did you submit this C
12 of O to ABRA?

13 MR. TOLBERT: I don't recall and I
14 probably did not.

15 MEMBER ALBERTI: Okay. Thank you.
16 Now, let's go to this Exhibit No. 4. Are you
17 familiar with this exhibit at all?

18 MR. TOLBERT: Well --

19 MEMBER ALBERTI: Other than today?

20 MR. TOLBERT: -- I'm sure I was
21 familiar with it in 2001. Yes, sir, it hangs
22 on our wall for a year.

1 MEMBER ALBERTI: Okay. Do you --
2 it's just a little odd and I'm just wondering
3 if you know how this came about, but the word
4 enclosed, the two words enclosed and the one
5 word -- the word enclosed after unenclosed and
6 then the word enclosed after 56 and then the
7 word enclosed with the number 34 are -- all
8 appear to be entered after the fact.

9 Do you have any idea how that --
10 or at some point different than the other
11 information. I mean, it's a much darker type
12 and it's actually -- well, it's a much darker
13 type. And so I'm wondering if you know at all
14 how that came to be?

15 MR. TOLBERT: I do not.

16 MEMBER ALBERTI: Okay. I have no
17 further questions.

18 CHAIRPERSON MILLER: Others?
19 Okay. I just have a few questions.

20 So if I understand your testimony,
21 you said that you don't apply every year for
22 a Certificate of Use, that you just send a

1 check in and then you expect to get back a new
2 Certificate of Use.

3 MR. TOLBERT: They send us a bill
4 and there is usually an inspector that comes
5 out and looks at it, yes.

6 CHAIRPERSON MILLER: So you just
7 automatically pay though before that?

8 MR. TOLBERT: Correct.

9 CHAIRPERSON MILLER: And some
10 years you don't get it and some years you do,
11 right?

12 MR. TOLBERT: Recently, we have
13 been getting Certificates of Use. There have
14 been periods where we literally posted the
15 canceled check. So if an inspector came in
16 and said where is your Certificate of Use? We
17 would say we don't have one, but here we paid
18 for it.

19 CHAIRPERSON MILLER: And do you
20 know how it happens that you get different
21 numbers for seating capacity on different
22 Certificates of Occupancy?

1 MR. TOLBERT: I do not know. I
2 suspect it has something to do with the
3 inspector that comes out and their records.
4 We have nothing to do with those numbers.

5 CHAIRPERSON MILLER: So when the
6 inspectors do come out, do they come out to
7 look at the area and see how many seats there
8 should be and/or do they come out for any
9 other reason? Why do they come out?

10 MR. TOLBERT: I think it's just a
11 general --

12 CHAIRPERSON MILLER: When you said
13 they come out --

14 MR. TOLBERT: -- inspection. I
15 mean, we get inspected by the world, not just
16 ABRA. Health, fire, police on and on.

17 CHAIRPERSON MILLER: When Public
18 Space comes out --

19 MR. TOLBERT: I mean we are
20 constantly being monitored. Yes, that's just
21 part of their process, as far as I know.

22 CHAIRPERSON MILLER: Okay. So but

1 is it your understanding that they make an
2 assessment each year what your seating
3 capacity should be? You don't ask? They just
4 make that assessment and then send you a new
5 Certificate of Use?

6 MR. TOLBERT: It has never been an
7 issue before, so, yes. I don't know what
8 their methodology is, but it appears that it's
9 got to be random.

10 CHAIRPERSON MILLER: Okay.

11 MR. TOLBERT: Actually.

12 CHAIRPERSON MILLER: Okay. Okay.
13 And what's your most recent Certificate of
14 Use?

15 MR. TOLBERT: The one that was --

16 MR. KLINE: Exhibit 2.

17 CHAIRPERSON MILLER: Exhibit 2.

18 So you have -- okay. And that's dated when?
19 I don't have that in front of me. 1990
20 something?

21 MR. TOLBERT: That's the 5/2/2012.

22 CHAIRPERSON MILLER: 2012. Okay.

1 MR. TOLBERT: That's the one that
2 is in effect now to 5/2/2013. And it is
3 blank.

4 CHAIRPERSON MILLER: It's blank.
5 Okay. Exhibit 5, I don't know if you have
6 that in front of you.

7 MR. TOLBERT: I do.

8 CHAIRPERSON MILLER: Okay. It has
9 a notation on it including in paren (To: ABC
10 Board).

11 MR. TOLBERT: I see that. That's
12 not my handwriting. I don't know who sent it
13 or what.

14 CHAIRPERSON MILLER: Okay. So you
15 are not --

16 MR. TOLBERT: Probably somebody in
17 Andrew's office. I have no idea.

18 CHAIRPERSON MILLER: You have no
19 idea what that referred to or whether somebody
20 sent it to the ABC Board or not?

21 MR. TOLBERT: I don't.

22 CHAIRPERSON MILLER: Okay. Did

1 anyone from ABRA ever tell you to -- that you
2 were required to submit updated Certificates
3 of Use?

4 MR. TOLBERT: No. But in
5 fairness, I'm not on the site interacting with
6 an inspector. And as far as I know, no one
7 from ABRA asked for a Certificate of Use.

8 CHAIRPERSON MILLER: Okay. And my
9 last --

10 MR. TOLBERT: In other words, it
11 could have been asked for and I wouldn't have
12 known.

13 CHAIRPERSON MILLER: Okay. You
14 don't have any personal knowledge?

15 MR. TOLBERT: That's correct.

16 CHAIRPERSON MILLER: I think you
17 said, in general, you were allowed to have 100
18 for the whole history.

19 MR. TOLBERT: I'm going way back
20 now. They really didn't get specific until
21 the '82 law passed about what patios could and
22 couldn't do. It was like the Wild West. It

1 really was.

2 CHAIRPERSON MILLER: So that's
3 based on your square footage that you were
4 told you --

5 MR. TOLBERT: Yes, the area, the
6 outlined area of the sidewalk cafe.

7 CHAIRPERSON MILLER: Okay.

8 MR. TOLBERT: And it's been the
9 same for 36 years.

10 CHAIRPERSON MILLER: Is that
11 reflected anywhere other than the Certificates
12 of Use that we have in our record?

13 MR. TOLBERT: You mean the
14 outline?

15 CHAIRPERSON MILLER: The 100 that
16 you could have 100 seating total.

17 MR. TOLBERT: Well, it is -- they
18 have got it up to 117 at one point here.

19 CHAIRPERSON MILLER: Okay. But
20 the numbers that you are relying on are what
21 is in the record?

22 MR. TOLBERT: Right.

1 CHAIRPERSON MILLER: Okay. All
2 right. I don't have any other questions. Any
3 other Board questions?

4 Let's see is there any redirect on
5 this?

6 REDIRECT EXAMINATION

7 MR. KLINE: Mr. Tolbert, you were
8 before the Board previously in another case
9 against Rumors, correct?

10 MR. TOLBERT: Correct.

11 MR. KLINE: All right. You
12 testified previously that you were working--

13 MR. ADAMS: Objection. He is --
14 based upon -- I apologize. I'll let him
15 finish the question.

16 MR. KLINE: Please.

17 MR. ADAMS: I'll withdraw.

18 MR. KLINE: You testified earlier
19 that you weren't aware that Rumors had ever
20 been cited for any seating violation related
21 to the sidewalk cafe. Do you remember your
22 testimony with respect to that?

1 MR. TOLBERT: Right. As far as I
2 know, yes.

3 MR. KLINE: All right. Do you
4 recall the previous case and where there being
5 an issue concerning seating in the enclosed
6 cafe area? Do you remember that?

7 MR. TOLBERT: I do.

8 MR. KLINE: Okay.

9 MR. TOLBERT: Now that you have
10 said it, yes.

11 MR. KLINE: All right. So does
12 that refresh your recollection in terms of
13 your answer to that question?

14 MR. TOLBERT: It does.

15 MR. KLINE: And what was that
16 issue all about?

17 MR. TOLBERT: I think the
18 inspector, in that particular case, thought
19 the enclosed sidewalk cafe was part of the
20 main building.

21 MR. KLINE: So there has been some
22 confusion concerning your sidewalk cafe area,

1 hasn't there?

2 MR. ADAMS: Objection. Leading
3 question.

4 MR. TOLBERT: In that case,
5 definitely.

6 MR. KLINE: I'll withdraw.

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: No further questions.

9 CHAIRPERSON MILLER: Okay.

10 Anything else, Mr. Adams?

11 MR. ADAMS: No further questions.

12 CHAIRPERSON MILLER: Okay. Thank
13 you very much.

14 MR. TOLBERT: Thank you.

15 CHAIRPERSON MILLER: You can be
16 excused.

17 (Whereupon, witness was excused.)

18 CHAIRPERSON MILLER: Do you have
19 another witness?

20 MR. KLINE: Yes, two questions.

21 Let me have the exhibit. I call to the stand
22 Wilfredo Paz.

1 CHAIRPERSON MILLER: Good
2 afternoon.

3 Whereupon,

4 WILFREDO PAZ

5 was called as a witness by Counsel for the
6 licensee, and having been first duly sworn,
7 assumed the witness stand and was examined and
8 testified as follows:

9 CHAIRPERSON MILLER: Okay. Thank
10 you.

11 DIRECT EXAMINATION

12 MR. KLINE: Good afternoon, Mr.
13 Paz.

14 MR. PAZ: Good afternoon.

15 MR. KLINE: Where do you work?

16 MR. PAZ: Rumors.

17 MR. KLINE: How long have you
18 worked there?

19 MR. PAZ: For 31 years.

20 MR. KLINE: Okay. When did you
21 start?

22 MR. PAZ: 1982.

1 MR. KLINE: 1992?

2 MR. PAZ: '82.

3 MR. KLINE: 1982?

4 MR. PAZ: Yes.

5 MR. KLINE: All right. What's
6 your job there?

7 MR. PAZ: I get started as a
8 busboy and then waiter, bartender, cleaning,
9 anything we have to do right there.

10 MR. KLINE: All right.

11 MR. PAZ: For the last 20 years I
12 been in charge for all the busboys.

13 MR. KLINE: Okay. You've been in
14 charge of the busboys for the last 20 years?

15 MR. PAZ: Busboys and I do like --
16 I'm a manager right now.

17 MR. KLINE: Okay.

18 MR. PAZ: So --

19 MR. KLINE: Do your
20 responsibilities include setting up the
21 sidewalk cafe area?

22 MR. PAZ: Yes.

1 MR. KLINE: And how long have your
2 responsibilities included that?

3 MR. PAZ: The last 20 years.

4 MR. KLINE: And that specifically
5 is the unenclosed cafe area?

6 MR. PAZ: Inside and outside, yes,
7 we set up every morning.

8 MR. KLINE: Has there been any
9 change in how you set up the outside cafe area
10 in the last 20 years?

11 MR. PAZ: No. No, the same way.

12 MR. KLINE: Same number?

13 MR. PAZ: Same way every day. We
14 set tables.

15 MR. KLINE: Okay. Same number of
16 seats for the unenclosed cafe area?

17 MR. PAZ: Yes.

18 MR. KLINE: All right. Thank you.
19 I have no further questions.

20 CHAIRPERSON MILLER: Mr. Adams?

21 CROSS-EXAMINATION

22 MR. ADAMS: Mr. Paz, you don't

1 have responsibility for filing documents with
2 D.C. Government or with the ABC Board, do you?

3 MR. KLINE: Objection. Beyond the
4 scope of direct.

5 MR. ADAMS: I think it is
6 relevant. I just wanted to understand the
7 role here and see why it's not relevant.

8 CHAIRPERSON MILLER: Okay. I'll
9 allow that one. Just watch it.

10 MR. ADAMS: Is it -- you don't
11 have responsibilities for filing --

12 MR. PAZ: No.

13 MR. ADAMS: -- documents or --

14 MR. PAZ: No.

15 MR. ADAMS: Okay. I have no
16 further questions.

17 CHAIRPERSON MILLER: Thank you.
18 Board questions? Mr. Jones?

19 MEMBER JONES: Thank you, Madam
20 Chair. You said you are responsible for
21 setting up the unenclosed eating area or
22 seating area for Rumors?

1 MR. PAZ: Yes.

2 MEMBER JONES: It's one of your
3 duties?

4 MR. PAZ: Yes.

5 MEMBER JONES: How do you know how
6 to set that up? What guidance was given to
7 you and by whom to set that up in the way that
8 you have been setting it up for X number of
9 years?

10 MR. PAZ: Well, we know how much
11 space, use every table, so we can let the
12 people get through between one table and
13 another.

14 MEMBER JONES: So are you saying
15 that you make the determination on your own,
16 based on your own ability to calculate what
17 makes sense or has someone dictated and
18 mandated to you that you will use this many
19 tables and this many chairs for this area?

20 MR. PAZ: No, it's not a
21 determination. When I came to do it, it was
22 already same, the same set up every morning.

1 And we keep doing it every morning, every
2 morning the same thing.

3 MEMBER JONES: Who told you to do
4 it that way?

5 MR. PAZ: Like the guy who was
6 before me. Like the busboys, you know. We
7 are in all the restaurants the busboy is the
8 one who fix tables.

9 MEMBER JONES: Okay. So you don't
10 get direct guidance? Currently, you don't get
11 direct guidance from a manager, an owner or
12 anyone other than yourself as to how to
13 configure the outdoor space?

14 MR. PAZ: Well, we were told
15 before how to set it up.

16 MEMBER JONES: Okay. Who told
17 you?

18 MR. PAZ: My manager. Like that's
19 like 20 years ago.

20 MEMBER JONES: 20 years. So you
21 are operating off of guidance that you
22 received, essentially, 20 years ago --

1 MR. PAZ: Yes.

2 MEMBER JONES: -- how to -- as to
3 how to set up the outdoor space?

4 MR. PAZ: Yes.

5 MEMBER JONES: Okay.

6 MR. PAZ: And I saw --

7 MEMBER JONES: Thank you.

8 MR. PAZ: -- that's the same way
9 we have been doing it.

10 MEMBER JONES: Thank you, Madam
11 Chair.

12 CHAIRPERSON MILLER: Okay. Yes,
13 okay. Mr. Alberti?

14 MEMBER ALBERTI: Mr. Paz, you have
15 been at this 20 years?

16 MR. PAZ: Yes.

17 MEMBER ALBERTI: In that time,
18 have they ever gotten new tables, new chairs?

19 MR. PAZ: Yes.

20 MEMBER ALBERTI: Do they always
21 look like they do today or were they sometimes
22 different design?

1 MR. PAZ: We get the same kind
2 every year. One broke, we buy new ones.

3 MEMBER ALBERTI: So for 20 years,
4 you have had identical design?

5 MR. PAZ: Almost, yes.

6 MEMBER ALBERTI: Almost?

7 MR. PAZ: Almost.

8 MEMBER ALBERTI: But it has --

9 MR. PAZ: The color change, but
10 same quality, the same --

11 MR. ADAMS: The same --

12 MR. PAZ: -- size.

13 MEMBER ALBERTI: Okay.

14 MR. PAZ: The same everything,
15 yes.

16 MEMBER ALBERTI: Okay. All right.
17 Thank you.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER JONES: Madam Chair?

20 CHAIRPERSON MILLER: Okay. Mr.
21 Jones.

22 MEMBER JONES: A question I

1 forgot. How many chairs were set up? Well,
2 were you responsible for setting up the chairs
3 on April 10, 2012?

4 MR. PAZ: Yes.

5 MEMBER JONES: You were? How many
6 chairs were set up out there on that date?

7 MR. PAZ: 34.

8 MEMBER JONES: 34?

9 MR. PAZ: Yes.

10 MEMBER JONES: All right. And you
11 know that how?

12 MR. PAZ: How?

13 MEMBER JONES: Yes.

14 MR. PAZ: It depended. I mean,
15 the tables -- every table have two chairs.

16 MEMBER JONES: Every table has two
17 chairs?

18 MR. PAZ: Two chairs. And we have
19 four tops also, four top, table for four
20 people.

21 MEMBER JONES: You have one four
22 top?

1 MR. PAZ: One, two.

2 MEMBER JONES: Two?

3 MR. PAZ: Two four top.

4 MEMBER JONES: Two four top and
5 the remainder are two?

6 MR. PAZ: Yeah, and then you --
7 four people come in, we put two tables
8 together and then, you know, make it work.

9 MEMBER JONES: Okay. So you do
10 have the ability to rearrange the
11 configuration based on customer demand? Based
12 on what you just indicated?

13 MR. PAZ: We can move tables.

14 MEMBER JONES: So you can move
15 tables. Can you also move chairs?

16 MR. PAZ: Yes.

17 MEMBER JONES: Do you have more
18 than 34 chairs of this type at that
19 establishment?

20 MR. PAZ: No.

21 MEMBER JONES: No? So the maximum
22 number of chairs that you have in existence at

1 that location that you could possibly use is
2 34?

3 MR. PAZ: 34 all the time.

4 MEMBER JONES: Okay. And what
5 happens in the event that a chair gets
6 damaged, stolen, warped, spilled on, whatever
7 the case may be? What happens in that
8 instance?

9 MR. PAZ: We throw it away.

10 MEMBER JONES: You throw it away.
11 So in that instance, the next night, if you
12 throw a chair away, you only have 33 chairs
13 available to you?

14 MR. PAZ: One is missing.

15 MEMBER JONES: One is missing.

16 MR. PAZ: Yes, we buy new one.

17 MEMBER JONES: You buy a new one?

18 MR. PAZ: Yes.

19 MEMBER JONES: Okay. Thank you.

20 Thank you, Madam Chair.

21 CHAIRPERSON MILLER: Okay.

22 Anything else? Okay. Thank you very much.

1 MR. KLINE: Thank you.

2 MR. PAZ: You're welcome.

3 (Whereupon, witness was excused.)

4 MR. KLINE: We rest.

5 CHAIRPERSON MILLER: Okay. All
6 right. Any closing arguments?

7 MR. ADAMS: Yes, Madam Chairman.
8 The Board's indulgence for a second.

9 Believe it or not, actually, I
10 would like to reserve -- how many minutes do
11 I have for closing?

12 CHAIRPERSON MILLER: How many
13 minutes?

14 MR. ADAMS: Five minutes?

15 CHAIRPERSON MILLER: Yes.

16 MR. ADAMS: Okay. I would like to
17 reserve two for rebuttal.

18 CHAIRPERSON MILLER: Okay.

19 MR. ADAMS: So I'll just cover
20 very quickly.

21 CHAIRPERSON MILLER: Okay.

22 MR. ADAMS: The bottom line,

1 believe it or not, Members of the Board, this
2 really is a very simple matter. It is that
3 the investigator went to the establishment,
4 counted the amount of chairs, 38 chairs, that
5 exceeded the capacity in terms of what was
6 supposed to be for the outdoor unenclosed
7 area, in this area.

8 Now, that Certificate of Use that
9 you go by, that would exceed that amount. But
10 even if we were to assume that it was 34
11 chairs that were actually in the area, the
12 bottom line is it's not what -- this is --
13 this case is not about what DCRA does or what
14 DDOT does or any other agency does.

15 What this case is, essentially,
16 about is what was submitted to the Board and
17 what did the Board authorize. And based upon
18 the testimony, it's clear that the only thing
19 that has been submitted officially to the
20 Board in terms of what would -- if that could
21 be used as guidance for seating capacity is
22 what was in the Board's records, they state

1 that only 24 seats could be within the
2 unenclosed area.

3 So as a result, really the bottom
4 line is a substantial change is sustained in
5 this case, because that capacity was far
6 exceeded.

7 So we have proven that there has
8 been a different capacity that is there in
9 terms of what the Board has in place. And
10 that's really the only thing that you have.
11 I mean, there is no indication that anything
12 else has been submitted to the Board.

13 So as a result, with all of the
14 evidence and documents that have been provided
15 to you, it's a really very simple issue.
16 Records state 24, count was 38, that exceeds--
17 and if the count is above 38, no matter what
18 Certificate of Use that you are using, the
19 establishment exceeds.

20 So the District's case is proven.

21 MR. KLINE: Madam Chair, Members
22 of the Board. First, I want to apologize to

1 the Board to the extent that I was
2 cantankerous or argumentative today.

3 What we have is a situation that
4 is very frustrating to licensees in the
5 industry. And that seems to be an effort to
6 impose precision, which is certainly
7 appreciated and respected, but unfortunately
8 it's precision over another agency, which is
9 not necessarily so precise.

10 The evidence before you is that
11 there are four different Certificate of Uses.
12 They have different numbers on them. They are
13 inconsistent. Sometimes they have a gross
14 number, sometimes they separate, the numbers
15 are different and the Government seizes on one
16 of those without any explanation as to how or
17 why it's in the Board's files, we have no
18 idea. There is no testimony as to it.

19 It doesn't coincide with the date
20 of a transfer application. It doesn't
21 coincide with the date of an initial
22 application. They seize on that one document

1 and they say ah-ha, we got you, because you
2 have more seats that are on this document,
3 which for whatever reason ended up in our
4 files. It has been repeatedly argued and
5 stated that it was submitted.

6 There is no testimony that it was
7 submitted. We don't know where it came from.
8 It could have fallen on somebody's desk. We
9 have no idea where that document came from.

10 We have all these other documents.
11 Mr. Adams wants to say we don't care about
12 those. We only care about the one that came
13 out of our files, even though there is no
14 explanation that has been proffered today as
15 to how it ended up in your files. We don't
16 know.

17 And the Government hasn't offered
18 any explanation, but that's not really the
19 point. The Government's entire closing
20 argument omits an important part of the
21 statute and it's a part of the statute that is
22 clear as day.

1 It says "As set forth in the
2 initial application." So this 1994
3 Certificate of Use, it doesn't coincide with
4 any initial application. We don't know what
5 it coincides with, because we don't even know
6 how it ended up there.

7 Now, in terms of further evidence
8 of DCRA's and DDOT's inconsistency in terms of
9 administering sidewalk cafes, I direct your
10 attention to Exhibit 7. It's a memorandum
11 from the Executive Secretary of the Public
12 Space Committee dated February 23, 1998.

13 It says "The proposed sidewalk
14 cafe will consist of 32 tables, which will
15 accommodate seating for 101 people." Now,
16 there is that about 100 figure that Mr.
17 Tolbert testified to.

18 And what else is in here is that
19 notices were forwarded to the various District
20 agencies, the ANC. There was no objection to
21 the granting of this request.

22 So I come back to what I argued in

1 the Motion to Dismiss earlier. A change isn't
2 -- even if there was a change -- and we argue
3 there was no change. We argue there was no --
4 there is no evidence of a change. The only
5 thing there is is evidence that the seating
6 conflicts with the 1994 C of Use.

7 Mr. Paz testified it has been the
8 same way for 20 years. And there isn't anyone
9 else that has testified any differently than
10 that, that someone saw it different and now
11 there are more seats.

12 The Government's entire case is
13 premised on this one C of Use. We don't know
14 where it came from.

15 But the point is even if there was
16 a change, let's assume for purposes of
17 discussion that the Government is correct and
18 that there are 12 more seats on the outside
19 cafe than somehow were approved by ABRA. We
20 don't have any evidence that there is any
21 approval of that. It's not in the
22 application.

1 Let's just assume that for
2 purposes of discussion. There is still the
3 requirement that you make a determination that
4 this is a substantial change. It's not
5 automatically a substantial change. And we
6 submit that there is only two pieces of
7 evidence as to -- well, the Board has the
8 benefit of two pieces of evidence.

9 Normally, when a substantial
10 change request is submitted to you, you get to
11 think and analyze well, what neighborhood is
12 it in? What's the ANC like? Who might
13 complain about this?

14 On this case, we have actual
15 evidence, because it has been there since
16 1998. At least all of the counts are and the
17 investigator testified you haven't had a
18 single complaint, at least not that she has
19 found in your records.

20 In 1998, when it came before the
21 Public Space Committee and it was a referral
22 to the ANC, there was no objection to the plan

1 that would have been distributed to the ANC,
2 at that point.

3 So to make the leap that there is
4 a change and it is also a substantial change
5 because it would have been of concern, there
6 is two pieces of evidence that nobody cares
7 about this. I mean, the only people that
8 apparently care about this are an investigator
9 who, you know, the second shot on this
10 establishment, let's catch them with something
11 with their cafe.

12 Because we were before you, we had
13 a long hearing where the investigator thought
14 the enclosed cafe was part of the interior and
15 cited them for having too many people in the
16 interior of the restaurant.

17 Now, all anybody had to do was
18 call up and ask or make an inquiry, that would
19 have been resolved. Instead, it became part
20 of a case.

21 Just in this case, all anybody had
22 to do, all the Agency had to do is say look,

1 we have a discrepancy. What is this all
2 about? Let's find out what it's all about.
3 Instead, we have a licensee facing a Show
4 Cause.

5 Now, I submit to you that is not
6 the current policy of the District of Columbia
7 in terms of dealing with instances. We need
8 to find a better way. We need to find a
9 friendlier way. This licensee wants to be in
10 compliance. We submit to you this licensee is
11 in compliance. Thank you.

12 CHAIRPERSON MILLER: Thank you.

13 MR. ADAMS: All right. Very
14 quickly on rebuttal. Again, the District --
15 what it really comes down to is, again, what
16 is the question of what was approved by the
17 Board in terms of what is capacity.

18 Now, what has been brought up is
19 another case. Now, which frankly used the
20 very same document that is in use today regard
21 to -- regarding what is their Certificate of
22 use. What is the capacity for this

1 establishment, which seems to be, for lack of
2 a better term, the interpretation of which
3 would be a moving target.

4 It now has to be stated that --
5 the investigators here, they do their jobs.
6 No one has an axe to grind. They went to
7 several -- the evidence shows that they went
8 to several establishments that day just to
9 make sure that there was compliance with an
10 issue.

11 Now, in this case, you know, the
12 establishment didn't provide the information
13 that was there. They didn't have on site
14 maybe because -- I mean, for various reasons.
15 But I'm not going into -- that's not really in
16 evidence. But they didn't provide it.

17 So they went to -- back to what
18 they had, which is the Certificate of Use that
19 is within the files.

20 The bottom line is that if there
21 is an issue, especially one that is of note --
22 that is acknowledged by this establishment,

1 based upon the prior case. Now, they want to
2 speak about a prior case, then it could have
3 been resolved, but it wasn't. It wasn't
4 resolved.

5 So this -- the numbers that you
6 have is the number 24. Even if it's the
7 number 34, we are still talking about 38.
8 Now, and nothing has been called to question
9 regarding any counting.

10 And again, Board, you are not here
11 to decide for what other agencies do. You are
12 not here to look at different permits that are
13 requested for different purposes. You are
14 just -- you are here to say well, based upon
15 what we see here, you have capacity that is
16 above what has been approved and based upon
17 what has been done in the past, that it is
18 consistent to something that is a substantial
19 change.

20 Now, I most certainly agree that
21 all parties can work together on this.
22 Certainly, it could have been done in this

1 case, because bluntly in many ways this may in
2 part by unnecessary. But you know, it really
3 takes a dialogue from both sides.

4 But when there is not a dialogue
5 from both sides, you just have evidence or you
6 have what's in the files.

7 So based upon what is in front of
8 you, you have sufficient evidence that there
9 is a substantial change took place, that they
10 violated what had been approved by the Board
11 and so, therefore, you can rule against them.

12 So believe it or not, this is only
13 -- they had no -- this is my recommendation
14 for you, Board. In finding that their
15 violation has taken place, there has been no
16 further prior violations for this
17 establishment that are currently in place.

18 This would be a first secondary
19 tier violation and so as a result, the
20 District would recommend a \$500 fine.

21 CHAIRPERSON MILLER: Thank you.

22 MR. ADAMS: Appreciate your time.

1 CHAIRPERSON MILLER: Thank you
2 very much. All right. I'm going to close the
3 record, at this time. I think the evidence
4 you all wanted to move in has been moved in.

5 Do the parties want to file
6 proposed findings of fact and conclusions of
7 law or waive your right to do so?

8 MR. KLINE: We'll waive.

9 MR. ADAMS: The District waives as
10 well.

11 CHAIRPERSON MILLER: Okay. Then
12 that completes this hearing. Thank you very
13 much. I'll read the closed meeting
14 instructions and we'll take our vote.

15 I know you are here for the next
16 case, Mr. Kline. Mr. Adams, don't feel
17 compelled to hang around.

18 MR. ADAMS: If I could be excused,
19 Madam Chair?

20 CHAIRPERSON MILLER: You can be
21 excused. You can expect an order within 90
22 days.

1 MR. KLINE: Thank you.

2 CHAIRPERSON MILLER: Thank you
3 very much.

4 MR. ADAMS: Thank you.

5 CHAIRPERSON MILLER: As
6 Chairperson of the Alcoholic Beverage Control
7 Board for the District of Columbia and in
8 accordance with Section 405 of the Open
9 Meetings Amendment Act of 2010, I move that
10 the ABC Board hold a closed meeting for the
11 purpose of seeking legal advice from our
12 counsel on Case No. 12-CMP-00155, No. 12-CMP-
13 00155(a) and No. 12-CMP-00155(b), Rumors
14 Restaurant, per Section 405(b)(4) of the Open
15 Meetings Amendment Act of 2010, and
16 deliberating upon this case for the reasons
17 cited in Section 405(b)(13) of the Open
18 Meetings Amendment Act of 2010.

19 Is there a second?

20 MEMBER BROOKS: Second.

21 CHAIRPERSON MILLER: Mr. Brooks
22 has seconded the motion. I'll now take a roll

1 call vote on the motion before us now that it
2 has been seconded.

3 Mr. Brooks?

4 MEMBER BROOKS: I agree.

5 CHAIRPERSON MILLER: Mr. Alberti?

6 MEMBER ALBERTI: I agree.

7 CHAIRPERSON MILLER: Ms. Miller
8 agrees.

9 Mr. Silverstein?

10 MEMBER SILVERSTEIN: I agree.

11 CHAIRPERSON MILLER: Mr. Jones?

12 MEMBER JONES: I agree.

13 CHAIRPERSON MILLER: It appears
14 the motion has passed by a vote of 5-0-0.

15 I hereby give notice that the ABC
16 Board will hold a closed meeting in the ABC
17 Board conference room later today or possibly
18 continue to March 27th pursuant to the Open
19 Meetings Amendment Act of 2010.

20 Thank you.

21 (Whereupon, the Show Cause Hearing
22 was concluded at 3:48 p.m.)

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