

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Inner Circle 1223, LLC
t/a Dirty Martini Bar/Dirty Bar Protest
1223 Connecticut Avenue, NW Hearing
License No. 83919 ANC 2B (Status)
Retailer CN
Case #13-PRO-00172
License Renewal

April 10, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairman Ruthanne Miller, presiding.

PRESENT

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

Martha Jenkins, ABRA
Jason Peru, Investigator, ABRA
Emanuel Mpras, ESQ
Michael Romeo Rehman, Licensee Owner
Sarah Peck, Protestant
Abigail Nichols, Commissioner ANC2B05

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

(4:59 p.m.)

CHAIRPERSON MILLER: Okay, I'm calling Case Number 13-PRO-00172, Dirty Martini Bar/Dirty Bar. Located at 1223 Connecticut Avenue, NW. License Number 83919 and ANC 2B.

And this is a protest hearing regarding a renewal application. When you're ready if you could start by introducing yourselves for the record.

MR. MPRAS: Emanuel Mpras, representing the licensee, Dirty Martini.

MR. REHMAN: Michael Romeo Rehman, owner of Dirty Martini.

MS. PECK: Sarah Peck, resident and one of the party of, is it 19 or 20 protesters for this case.

CHAIRPERSON MILLER: Okay.

MS. NICHOLS: Abigail Nichols, Commissioner for Single Member District 2B05.

CHAIRPERSON MILLER: Okay. And my

1 understanding is you all have done protest
2 hearings before so you're familiar with the
3 procedure as well as the time limitations. Is
4 that correct?

5 MR. MPRAS: Yes, ma'am.

6 MS. PECK: I've done one.

7 CHAIRPERSON MILLER: Okay. Do you
8 need a, you need a refresher in any way, you
9 let me know.

10 MS. PECK: I think I remember it
11 from last time, a few weeks ago, so I think
12 it'll be okay.

13 CHAIRPERSON MILLER: Okay, all
14 right. Okay. So we can start with any
15 preliminary matter. So do I understand, do
16 the protestants have a motion that is a
17 preliminary matter?

18 MS. PECK: Okay, yes, so we have
19 submitted a motion to put into the record a
20 few tapes that we made of operations that took
21 place at the Dirty Martini establishment this
22 Sunday night.

1 And this took place after the PIF
2 was filed, and it was an unique situation
3 because normally when all the bars are
4 operating, you can't specify exactly which
5 club is contributing what level of sound.

6 But in this case, at 7 o'clock on
7 Sunday night, Dirty Martini was operating, is
8 hosting some sort of event. It was very loud,
9 I could hear it from my apartment. And I took
10 very short film clips with an iPhone.

11 So it gives you a idea of the
12 environment, the, what it sounds like from
13 various distances from the front and back of
14 the building. I did call at that time.

15 I called counsel to let him know
16 that this was an issue. And I also sent a
17 letter the next day letting him know that I
18 had this and I would be submitting a motion to
19 use this in this hearing. And I think it
20 would be useful and instructive to the Board
21 to see this footage.

22 MR. MPRAS: Well ma'am, obviously

1 --

2 CHAIRPERSON MILLER: Yes.

3 MR. MPRAS: -- we object. It's in
4 violation of the protest information phone
5 protocols, as required, to be given to us also
6 physically.

7 So we may have, so we may review
8 it and have whatever experts we need to exam
9 that material.

10 So we have fully complied. We've
11 filed all the documents on time. And you
12 know, we object as this would be prejudicial
13 in the presentation of our case, at this
14 extremely late date.

15 CHAIRPERSON MILLER: Okay, you
16 have a question, you're asking?

17 MEMBER SILVERSTEIN: I have a
18 question of Ms. Peck. This was at 7 o'clock
19 on a Sunday night?

20 MS. PECK: Yes, sir. I was
21 sitting down to watch to watch 60 Minutes and
22 I heard noise coming in my window. And I

1 said, what on earth is that? And I went out
2 to investigate. And I walked around the
3 neighborhood and found that it was Dirty
4 Martini hosting an event.

5 MEMBER SILVERSTEIN: But at that
6 hour would that be a violation of the city's
7 ordinance? Or are you asking us to take this
8 for illustrative purposes?

9 MS. PECK: I'm asking you to, this
10 is an example of a club that is operating in
11 excess of 60 decibels, which is what our main
12 contention is. Is that all of these clubs in
13 this area do this routinely.

14 But they normally do it all at the
15 same time. This is once when it's doing it
16 all by itself, so that you can tell.

17 MEMBER SILVERSTEIN: Were they in
18 violation of the city noise ordinance --

19 MS. PECK: Yes, sir.

20 MEMBER SILVERSTEIN: -- at that
21 hour?

22 MS. PECK: Yes, sir.

1 MR. MPRAS: Then Mr. Silverstein,
2 I also object pursuant to DC Noise Control Act
3 2700.20. If, they'll have to demonstrate that
4 the noise readings were taken in accordance
5 with that in order for them to be admissible.

6 (Off the record comments)

7 CHAIRPERSON MILLER: Right. Yes,
8 let me, Ms. Peck it's just that -- okay on the
9 one hand, you know, I read your motion. I
10 understood that it wasn't, it didn't happen
11 until after you filed the PIF.

12 MS. PECK: All right.

13 CHAIRPERSON MILLER: So I can
14 understand that you couldn't have filed it
15 with the PIF. And it's relevant, okay. So
16 those were, you know, standards that we employ
17 in deciding whether to accept something late.

18 However, number one, if you were
19 able to copy it onto the disc, I think today
20 is Thursday, that you should have provided it
21 to opposing counsel beforehand.

22 MS. PECK: It's been on our

1 website --

2 CHAIRPERSON MILLER: So he could
3 review --

4 MS. PECK: -- and available for
5 the entire world to view since Monday. As
6 I've already indicated --

7 MR. MPRAS: What website?

8 MS. PECK: -- in a previous
9 motion, I have a full time job. I have been
10 scrambling to try --

11 CHAIRPERSON MILLER: Okay, but
12 that --

13 MS. PECK: -- to get everything
14 together for this hearing. So I --

15 (Crosstalk)

16 CHAIRPERSON MILLER: Are you
17 telling me, did you tell Mr. Mpras where it
18 was, so he could look at it on your website?
19 Or are you just assuming he's just going to go
20 to your website all the time?

21 MS. PECK: I don't know that I
22 informed him that he can see it on the

1 website, although he knows about the website
2 and that we do post these.

3 CHAIRPERSON MILLER: Okay.

4 MR. MPRAS: Ma'am, I didn't know
5 of their website and I was not informed.

6 MS. PECK: May I just say one --

7 CHAIRPERSON MILLER: Okay.

8 MS. PECK: Ma'am, so may I just
9 add, respectfully one last thing, and that is
10 I would suggest because it is so difficult for
11 this Board to understand the nature of what
12 we're talking about. There is a series of
13 protests all through this concentrated area.

14 So even if you don't admit it as
15 evidence which is, you know, your prerogative,
16 I think it is a useful thing for you to
17 observe this, just to understand what, when we
18 talk about appropriateness, this is what we're
19 talking about.

20 So this does not establish that
21 they were officially in violation of the law.
22 I'm not submitting this to prove that they

1 were in excess of 65 or 60 decibels.

2 I'm saying that this goes to your
3 understanding of our claim that the operations
4 that we're experiencing are inappropriate.

5 And that's, it's really about
6 educating the Board and providing this kind of
7 information in a rare setting, that never
8 normally happens. That I'm not normally a
9 party to.

10 CHAIRPERSON MILLER: Okay, if we
11 listen to it in this case, it is evidence in
12 this case. But we listen to it outside of
13 this case at some point, I'd have an
14 understanding of what's going on in the
15 neighborhood, that's something else.

16 But how would, did you anticipate
17 that we would view this? Did you bring a
18 player?

19 MS. PECK: We just, this last time
20 I was here there was a --

21 CHAIRPERSON MILLER: In that form?

22 MS. PECK: Yes, in our last case,

1 in Ozio, we were permitted to do this. And
2 there was a, we were able to get a book here
3 and it was played on these monitors here.

4 CHAIRPERSON MILLER: Okay, and you
5 didn't --

6 MS. PECK: And the Board did find
7 that it would be useful to at least see the
8 nature of the music and get a sense of what
9 was happening.

10 CHAIRPERSON MILLER: Well, I
11 wasn't here then.

12 MS. PECK: I understand.

13 CHAIRPERSON MILLER: The Board
14 accepted it in the same similar situation?

15 MS. PECK: The problem, they
16 accepted a similar kind of evidence. What
17 they didn't have in front of them at that time
18 was a moment like this, where it had not been
19 presented at the time the PIF was filed.

20 MR. MPRAS: Ma'am, if I may, are
21 they, their PIF was filed with absolutely no
22 evidence listed on it. And now at the 11th

1 hour, they're coming with this which we
2 haven't even seen. It's like we have no idea
3 what it's about. And they're trying, I mean
4 this is trial by ambush. I mean you really
5 can't admit this.

6 (Off the record comments)

7 (Pause)

8 CHAIRPERSON MILLER: Okay. I
9 think the consensus is, and I'll make a
10 motion, but it's not that it wasn't on the
11 PIF. That part doesn't concern me. But what
12 concerns me is that, and I think the rest of
13 the Board, is that there was enough time to
14 actually share it with the other side.

15 And they may have then had an
16 expert or somebody else look at it, and be
17 able to testify to it. So I think it's highly
18 prejudicial if it's admitted into evidence at
19 this time.

20 And so therefore I'm going to move
21 that we deny the motion to it, that have
22 admitted. It's not exactly worded this way,

1 it's worded to amend the PIF, but to allow the
2 new evidence on the disc into the record.

3 MEMBER RODRIGUEZ: I second the
4 motion.

5 CHAIRPERSON MILLER: Okay, any
6 other comments?

7 MEMBER SHORT: Well I'd just like
8 to before we vote, before we vote. Would it
9 possible that this, could it be possible that
10 this is turned over to our staff? Allow us to
11 see it another time, which doesn't become a
12 part of this process. But that it is
13 something that we could look at, at a later
14 time?

15 CHAIRPERSON MILLER: Yes, the vote
16 is, the motion is that it not be considered in
17 the record of this case.

18 MEMBER SHORT: And I understand
19 that. I go along with that. But I'm just
20 with the stipulation that we have to give it
21 to staff.

22 CHAIRPERSON MILLER: Okay, I don't

1 want to mess up my motion here, but we can,
2 but I agree with you that there's no issue
3 about that.

4 MEMBER SHORT: Thank you.

5 CHAIRPERSON MILLER: I don't
6 think. Okay, so the motion is to deny the
7 admission of that evidence. All those in
8 favor say aye.

9 (Chorus of ayes)

10 CHAIRPERSON MILLER: All those
11 opposed?

12 (No response)

13 CHAIRPERSON MILLER: Okay the
14 motion passes 5-0-0.

15 And Ms. Peck you'll be able to
16 testify to whatever experiences you had with
17 the establishment. You identified that on
18 your PIF for sure. All right. Okay. As long
19 as you understand the basis of that is.

20 MS. PECK: Yes.

21 CHAIRPERSON MILLER: Okay. And I
22 do want to address Mr. Short's concern and

1 your suggestion, you know, that the Board be
2 able to view that outside of the context of
3 this case. And that's sure, you know.

4 MS. PECK: Okay.

5 CHAIRPERSON MILLER: I don't have
6 any issue with that. I don't think any Board
7 Members do. Okay.

8 MR. MPRAS: Madam, there is one
9 more preliminary motion before we get started.

10 CHAIRPERSON MILLER: Okay.

11 MR. MPRAS: And this was filed on
12 April 7th and properly served per DC code on
13 the protestants. To dismiss the protest at
14 ANC 2B, they did not file a PIF at all, as
15 required.

16 CHAIRPERSON MILLER: Okay.

17 MR. MPRAS: And I have a copy of
18 the motion which you do not have in front of
19 you.

20 CHAIRPERSON MILLER: All right, we
21 haven't, I haven't seen that motion. Have you
22 seen the motion?

1 MR. MPRAS: This is the, who wants
2 it?

3 (Off the record comments)

4 CHAIRPERSON MILLER: Okay, would
5 the ANC like to address a different copy of
6 this motion?

7 MS. NICHOLS: Yes, Ms. Anderson
8 alerted me that we had not submitted anything.
9 The, and at that point it was late. The ANC
10 does not have a separate case.

11 CHAIRPERSON MILLER: Okay.

12 MS. NICHOLS: And I know your
13 rules suggest that when there are more than
14 one protestants, you like them combined
15 anyway.

16 So, I didn't think much more about
17 it until just now when Mr. Mpras -- I'm not
18 sure what he's saying are the implications of
19 this. I'm not planning a separate ANC case.

20 CHAIRPERSON MILLER: Okay. What
21 we say I believe is that if you don't submit
22 a PIF -- it may be dismissed.

1 MR. MPRAS: How can one prepare,
2 how can one prepare a defense to a case if --

3 CHAIRPERSON MILLER: Okay, so all
4 right, we may dismiss you. We may dismiss
5 you, but we say, what I say I believe and
6 every time I go where there's a status
7 hearing.

8 We say you're required to submit a
9 PIF seven days ahead of time. If the Board
10 does not receive a PIF, you're application or
11 your protest may be dismissed. It's a maybe,
12 okay.

13 But in this, so in this case, if
14 you have not, the point of the PIF is just to
15 identify for the opposing party and the Board,
16 what your issues are, who your witnesses are
17 going to be, and your exhibits.

18 So if you don't have any, it
19 doesn't mean you're going to be dismissed.
20 But it means that the other protestant is
21 taking the lead on the case. And has
22 witnesses and exhibits and you don't.

1 MS. NICHOLS: Right.

2 CHAIRPERSON MILLER: Okay, so then
3 we see your only role, are you just going to
4 be support to -- you don't have to be
5 dismissed as a party, it just means that you
6 can't introduce your witnesses et cetera.

7 MS. NICHOLS: I was not intending
8 to.

9 CHAIRPERSON MILLER: Okay.

10 MS. NICHOLS: One PIF for the
11 protestants essentially, although it's not
12 presented that way.

13 CHAIRPERSON MILLER: Right. Okay.
14 So there's not going to be any surprises. Ms.
15 Peck is going to be doing the witnesses et
16 cetera. Correct? Okay.

17 MR. MPRAS: Is it, I mean, is it
18 my understanding then that the ANC itself will
19 not be allowed to present evidence or
20 witnesses?

21 CHAIRPERSON MILLER: Right. But
22 the ANC case, is not dismissed as a party, so

1 if you have a closing argument, or a opening
2 statement, things like that, you can do that.
3 But you can't, you have no witnesses or
4 exhibits that you're going to be putting in,
5 correct?

6 MS. NICHOLS: Correct.

7 CHAIRPERSON MILLER: Okay. If you
8 have a --

9 MS. NICHOLS: I am listed as a
10 witness for the protestant front.

11 CHAIRPERSON MILLER: Okay, then
12 you can testify. And if, I think if there is
13 some interest of the ANC that isn't
14 represented on cross. If you have a question,
15 you could do that.

16 But for the most part I assume Ms.
17 Peck is going to take the lead. Right? Okay.

18 MR. MPRAS: Ma'am, because of the
19 late date, per the rules, may I request that
20 one person be designated to handle the case
21 then?

22 CHAIRPERSON MILLER: Okay, it

1 looks like Ms. Peck, are you designated lead?

2 MS. PECK: Yes.

3 CHAIRPERSON MILLER: Okay.

4 MR. MPRAS: Thank you.

5 CHAIRPERSON MILLER: Okay, sure.

6 Okay, anything else? All right. Ready to
7 jump in? Okay. And the witnesses have all
8 been identified on your PIFs?

9 MR. MPRAS: Yes, ma'am.

10 CHAIRPERSON MILLER: Okay, all
11 right. So let's start then with the
12 applicant's opening statement.

13 MR. MPRAS: Members of the Board,
14 you're here today due to an abusive process by
15 a small group of chronic complainers. These
16 individuals who moved into a well known
17 entertainment district, and a commercial zone,
18 are now claiming ignorance regarding the level
19 of activity and the consequence noise in that
20 same area.

21 Dirty Martini is successor to the
22 1223 Nightclub, which has operated at 1223

1 Connecticut Avenue since 1998. Since its
2 inception, Dirty Martini has been a model
3 establishment with zero ABRA violations of any
4 type. And no noise violations from any
5 District Government agency.

6 Now the protestants will attempt
7 to enlist sympathy from the Board but will not
8 be able to present any credible evidence
9 whatsoever that Dirty Martini is operating
10 outside the limits set forth by the District
11 of Columbia Noise Control Act, because it is
12 not.

13 Approximately three weeks ago the
14 newly formed Noise Task Force took readings
15 pursuant to the DC Noise Act along the 1200
16 block of Connecticut Avenue where Dirty
17 Martini, Lucky Bar, Midtown and Rose Bar are
18 located on the eastern side.

19 The only violation issued was to
20 Rose Bar, which was also closed that evening
21 for the same violation. This is a model
22 licensee that should not be going through a

1 protest, but should have its license renewed
2 as is. Thank you.

3 CHAIRPERSON MILLER: Thank you.
4 Ms. Peck, ready?

5 MS. PECK: The DC Noise Control
6 Act limits the sound of amplified sound
7 emanating from a club to 60 decibels when
8 measured 3 feet away.

9 The facts will show that Dirty
10 Martini regularly emits noise many multiples
11 over that level. This noise not only violates
12 the law, it disturbs the lives of people
13 living in Dupont Circle.

14 Many of them moved there long
15 before any of the clubs, including Dirty
16 Martini arrived. Abigail Nichols will testify
17 about the history of the nightclubs and the
18 noise problems that result.

19 Also violations of Dirty Martini's
20 existing voluntary agreement, and the impact
21 of all of this noise from all of these clubs,
22 including Dirty Martini, on the community.

1 I will tell you about my own
2 experience with Dirty Martini's noise and if
3 you'd like to see credible evidence, some day,
4 you can look at it right here on this thing.
5 But I hope that you will find my testimony
6 credible as well.

7 That video footage and my own
8 testimony will establish that the club was
9 operating at roughly in the neighborhood of 84
10 decibels tallied behind it, last Saturday,
11 Sunday night.

12 Carl Nelson will tell you about
13 our groups efforts to map the sound levels in
14 our neighborhood, particularly the sound in
15 the alley behind Dirty Martini.

16 I don't know if the ABRA inspector
17 is here tonight now, but I did have a
18 conversation with him, and I understand that
19 he will tell you that the sound in the alley
20 is indeed very loud.

21 And Steve Coniglio could not be
22 here tonight because of the late hour, so I

1 can't tell you what he would have said. But
2 let me tell you that we are very concerned
3 about his ability to sell his properties that
4 are right across from the alley that opens
5 behind Dirty Martini.

6 Dirty Martini is violating the
7 peace, order, and quiet of our residential
8 neighborhood. And despite our best efforts,
9 it had been going on for months. We have been
10 unable to stop it.

11 Its operations are therefore
12 inappropriate for our neighborhood. We ask
13 that you deny Dirty Martini's request to renew
14 its license until it can verify that it is
15 compliant with the DC Noise Control Act.

16 CHAIRPERSON MILLER: Okay, thank
17 you. And I think we're now ready for our
18 investigator. I don't know if it's afternoon
19 or evening at this point. Hello.

20 Do you swear to tell the truth,
21 the whole truth, and nothing but the truth?

22 MR. PERU: I do.

1 CHAIRPERSON MILLER: Okay.

2 Thanks.

3 MR. PERU: ABRA Investigator,
4 Jason Peru. So I received the protest
5 investigation report for Dirty Martini
6 referenced to a license renewal.

7 The application had been protested
8 by Advisory Neighborhood Commission ANC 2B,
9 represented by Abigail Nichols and a group of
10 19, represented by Sarah Peck.

11 The protestants have submitted
12 letters to ABRA opposing the renewal
13 application on the ground that the
14 establishment has an adverse impact on peace,
15 order, and quiet. And an adverse impact on
16 property values.

17 So the two, the two protest issues
18 adverse impact on peace, order, and quiet and
19 an adverse impact on property values, ABRA
20 Investigators are not qualified to determine
21 property values.

22 I did speak with, on Thursday,

1 March 27th, I telephonically spoke to Ms.
2 Sarah Peck. Ms. Peck stated that the group
3 19er, was concerned about the noise that comes
4 from the establishment. Ms Peck stated that
5 the sound levels from the roof deck are above
6 DC regulations.

7 Ms. Peck stated that the group was
8 currently in contact with the establishment's
9 owner, Michael Rehman. Ms. Peck stated that
10 Mr. Rehman was trying to cooperate with the
11 group. Ms. Peck stated that a proposed
12 settlement agreement was submitted to the
13 owner.

14 Ms. Peck also stated that the
15 group would like the establishment to have a
16 noise compliance plan, which would include
17 turning down the volume level of the roof
18 deck. And adjusting the decibel levels.

19 Ms. Peck stated that the group of
20 19 was meeting the establishment's
21 representative on Saturday, March 29th at 4:00
22 p.m.

1 I also, I was not able to speak to
2 Ms. Abigail Nichols. I attempted via email
3 and telephone calls. However, on Tuesday,
4 April 1st -- oh, just for the record. Ms.
5 Nichols contacted me once the report was
6 submitted, so I spoke with her after the
7 report was submitted.

8 CHAIRPERSON MILLER: Okay.

9 MR. PERU: So the issues were not
10 listed in the report.

11 On Tuesday April 1st I spoke with
12 Mr. Mpras. Mr. Mpras stated that he had a
13 meeting with the protestants and it went well.
14 And he was waiting for the owner, Mr. Rehman
15 to return from a trip to finalize a possible
16 settlement agreement.

17 Mr. Mpras stated that he would
18 contact me as soon as he knew the outcome. He
19 did contact me once the report was submitted.
20 I'm not sure if you want that information as
21 well, to let me know that they did not come to
22 an agreement. And they were coming to a

1 hearing.

2 CHAIRPERSON MILLER: Okay.

3 MR. PERU: The zoning of Dirty
4 Martini is located in the C-3, C zone. I did
5 look up the establishment's, I mean the
6 resident's, behind Dirty Martini, which are
7 located in a SP-1 zone.

8 Directly behind and next to, on N
9 Street. It's a different zoning area.
10 There's was an alley that separates those two
11 zones, behind the establishment.

12 According to our GIS information
13 system, there are approximately 37
14 establishments within 1200 feet. The purpose
15 of the report on the GIS map, I actually
16 listed everything that's on the GIS map that
17 was given to me because it involved noise,
18 instead of listing just the establishments
19 within the parameter of that map.

20 Dirty Martini is primarily in the
21 commercial district with residences directly
22 behind the establishment. Once again, it

1 includes 37 licensee establishments. One B
2 retail, two CX, four hotels, six taverns, one
3 D restaurant, three establishments are CNs,
4 and approximately nine establishments have
5 entertainment endorsements in that area.

6 I focused my investigation on that
7 block of Dirty Martini. Since that was where
8 the alleyway is running between the two
9 businesses.

10 Dirty Martini is a row style brick
11 structure located among other row style type
12 buildings. There were two entrances in Dirty
13 Martini. You can see them in the exhibits.
14 One I guess Dirty Bar, and one is Dirty
15 Martini itself. They're the same side-by-side
16 establishments.

17 The current hours of Dirty
18 Martini, their summer garden is from 11:30
19 a.m. to 2:00 a.m. Sunday through Thursday.
20 And Friday and Saturday from 11:30 to 3:00
21 a.m.

22 ABRA Investigators visited the

1 establishment, Dirty Martini, on approximately
2 11 separate occasions between February 20th
3 and March 22nd. During the hours ABRA
4 Investigators monitored the establishment, no
5 ABRA violations were observed.

6 Once again, I was unable to
7 receive the calls for service by MPD at the
8 time this report was written. I believe
9 that's all.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. All right, are there Board questions?
12 Yes.

13 MEMBER BROOKS: Yes, thank you,
14 Madam Chair. Investigator, the city has
15 created a Noise Task Force about three, four
16 weeks ago. Are you familiar with that?

17 MR. PERU: Yes, sir. I've worked
18 on the Noise Task Force.

19 MEMBER BROOKS: Okay, did they
20 have an occasion since the inception, to visit
21 the area where Dirty Martini is located?

22 MR. PERU: I believe, a night that

1 I was, I don't have that given information
2 about the Noise Task Force, that was
3 submitted. When I worked the Noise Task
4 Force, I never responded to any calls on the
5 task force.

6 My understanding is, and I can't
7 say that's factual, is that the Noise Task
8 Force did respond to, on one occasion and to
9 take a reading from the exterior.

10 MEMBER BROOKS: To the exterior of
11 Dirty Martini?

12 MR. PERU: Yes, I believe so.

13 MEMBER BROOKS: Okay, but you
14 don't know the reading?

15 MR. PERU: No, no, I do not.

16 MEMBER BROOKS: Thank you, Madam
17 Chair.

18 CHAIRPERSON MILLER: Okay, others?
19 (Off the record comments)

20 CHAIRPERSON MILLER: I wanted to
21 ask you if you have any more information
22 about, you talked about a, what's it called?

1 A noise compliance plan, something like that.
2 That, that's what the protestants were
3 interested in?

4 MR. PERU: No, there was no, I
5 guess at that time, there were still trying to
6 sort out details. But she was very specific
7 to decibel levels. And stated in reference to
8 possibly turning down the speaker and level
9 inside of the establishment.

10 So turning it down to a reasonable
11 level inside, that way it would not emanate to
12 the exteriors.

13 CHAIRPERSON MILLER: Okay. Do you
14 have any opinion about whether that would work
15 to control noise from the establishment?

16 MR. PERU: Well, based on, I mean
17 I work in that area a lot, when I'm on nights.
18 MPD detail's always out front. You know, I
19 speak with them and get their kind of feel for
20 things.

21 The noticeable noise of the air,
22 that comes from the area, it's going to be

1 from the alley. You know, the alley is, you
2 know, separating these peaceful buildings.
3 Sound is bouncing and but it's nearly
4 impossible, I say nearly, because to really
5 pinpoint a location where the noise is coming
6 from.

7 So you know, it's difficult to
8 say. I don't know if, you know, everyone on
9 that block turned their speaker levels maybe
10 you could see a significant improvement.

11 I'm not sure if Dirty Martini
12 alone would change the outcome along that
13 whole block.

14 CHAIRPERSON MILLER: Okay. And so
15 I was looking at your photographs. I think,
16 so I see, there's a lot of like the front,
17 like Exhibit 3, shows where Dirty Martini Bar
18 is. Is there a way to describe where the
19 residences are?

20 MR. PERU: Well residents are
21 actually directly --

22 CHAIRPERSON MILLER: Behind?

1 MR. PERU: -- behind the
2 establishment.

3 CHAIRPERSON MILLER: Okay.

4 MR. PERU: I do, there's, I have a
5 photo of an alleyway, but it's, it was even
6 the photos of the alleyway that I have, I have
7 them here. I mean, I don't know if you want
8 to see these?

9 CHAIRPERSON MILLER: Is that, is
10 that attached to the?

11 MR. PERU: No, no it is not.

12 CHAIRPERSON MILLER: Oh.

13 MR. PERU: It is not attached. It
14 is not attached.

15 CHAIRPERSON MILLER: Okay.

16 MR. PERU: But the alleyway behind
17 the establishment is where the dumpsters are
18 kept.

19 CHAIRPERSON MILLER: Okay.

20 MR. PERU: It doesn't really give
21 you a good reference point to where the
22 building is. But the building is directly

1 behind the, the residences are directly behind
2 Dirty Martini.

3 CHAIRPERSON MILLER: So, if
4 they're behind Dirty Martini, there's an
5 alley, and then the residences?

6 MR. PERU: Correct, right. If you
7 look at the GIS map.

8 CHAIRPERSON MILLER: Okay.

9 MR. PERU: I believe they kind of,
10 it's kind of depicted in that map. I believe
11 the, you can see a white portion between the
12 cross street and N Street if you're looking at
13 the map here. And Dirty Martini is located
14 here.

15 You see this alleyway runs
16 straight through between N and Rhode Island.
17 This is the area that separates the residents
18 from the Dirty Martini section.

19 CHAIRPERSON MILLER: Okay. I see
20 it. Thank you, that helps. One other
21 question. Have, are you aware of any
22 complaints with respect to Dirty Martini's

1 noise?

2 MR. PERU: As long as I've been on
3 nights, since this protest has taken place, I
4 have not personally responded, or have been
5 called to any noise complaints at Dirty
6 Martini's, me personally.

7 CHAIRPERSON MILLER: Okay. All
8 right. That's all my questions. Thank you.
9 Anybody else up here?

10 MEMBER SILVERSTEIN: Yes.

11 CHAIRPERSON MILLER: Okay, Mr.
12 Silverstein.

13 MEMBER SILVERSTEIN: Thank you for
14 your report, Investigator. My understanding
15 as a neighbor is that the residences are up
16 the street. Up 18th Street, is that not
17 correct, rather than directly behind?

18 Although there are some religious
19 who are living in the area behind the, in the
20 area of the church, which is somewhat behind
21 there.

22 MR. PERU: The row hold is on --

1 MEMBER SILVERSTEIN: N Street is
2 sort of a dead zone sadly, that no one is
3 currently living in the areas where Morton
4 Bender kicked everyone out, that, now known as
5 the N Street follies.

6 MR. PERU: Well, my understanding
7 was, after spending, maybe this was mis-
8 communication on my part. Ms. Peck stated
9 that the alleyway between the, separating the
10 buildings, and even with that there. That's
11 where the noise was emanating from.

12 I did not realize that Ms. Peck
13 was across the street, if that is the case.

14 MEMBER SILVERSTEIN: I think the
15 point that is often made is that, that alley
16 is almost an echo chamber. That things from
17 these areas are in the back. How high up is
18 the deck? It's not at roof level, it's not at
19 street level.

20 MR. PERU: It's not at street
21 level. I went I think approximately maybe
22 three levels, one, two, maybe three levels

1 from the street.

2 It's not a rooftop, you know, for
3 instance like it's set in the back of the
4 establishment. There's a, the building next
5 door has a, I guess, a childcare in the
6 building.

7 And there's like a playground that
8 you can see from that area when walking to the
9 roof deck. So the back of the roof deck is
10 not completely on a roof top.

11 MEMBER SILVERSTEIN: How do you
12 measure, this is one of the difficulties, how
13 does one measure the noise three stories up?
14 And where does it go? You know, if there's a
15 building in front of this, you stand on
16 Connecticut Avenue where you're not going to
17 hear it.

18 You go in the back of the alley,
19 you know, would you go a block up to somewhere
20 on the third floor at the same level? Because
21 noise doesn't, you know, doesn't go around
22 corners as well as air does.

1 MR. PERU: I think noise is one of
2 the, probably the most difficult things in
3 this city to measure.

4 MEMBER SILVERSTEIN: Yes, it sure
5 is.

6 MR. PERU: Especially when you
7 have these roof tops that are implemented,
8 it's the way the sound travels. You know,
9 I've had, I've personally had calls at office
10 buildings, office spaces, not from this
11 particular location.

12 But say now in your office
13 building that was located above the known
14 establishment. They could hear noise in the
15 office building.

16 So you know, it's one of those
17 difficult things to really determine. And for
18 me, I believe even to control in a city that's
19 saturated with the type of locations that are
20 around. Whether it's street noise, or patron
21 noise, or music which comes out. I thinks
22 it's very difficult.

1 I've never been in, you know,
2 according to ABRA, and we're aware of -- well
3 our direction is given is that we determine
4 noise by entering the establishment and
5 following those guidelines.

6 I've never entered in a residence
7 of any of the complainants or regarding the
8 Dirty Martini, personally. I've not done
9 that. So it would be, I'm not sure if that
10 would be a fair assessment if we had a chance
11 to do that, and in this particular situation.

12 MEMBER SILVERSTEIN: Have you had
13 any complaints regarding establishments on
14 this strip, regarding buildings above them,
15 businesses, things like that, not necessarily
16 residences?

17 But again, this difficulty, I
18 think this is the one thing we can all agree
19 on, is that it's very difficult to measure
20 noise when you're dealing with something
21 that's above ground level, if you're going to
22 be standing at ground level to do it.

1 And if not, where are you going to
2 stand? How do we know? Does this place have
3 a decent, describe for us how noise might be
4 trapped in there as opposed to being
5 broadcasted, emanated? Do they have any kind
6 of structures or anything that help capture
7 the noise?

8 MR. PERU: Well, it's pretty
9 common across the whole city what I've seen.
10 Places that have added in a roof deck. It
11 becomes an aluminum or possibly a steel
12 structure that uses a retractable type device.

13 Whether you know, the windows or
14 doors close? A plexiglass of some sort? So
15 it's, I mean it's obviously not well
16 insulated.

17 So I think that's, you know, so I
18 mean, but we're compared, in my opinion you're
19 seeing an enclosed structure with plexiglass,
20 with collapsible windows or doors. Or some
21 roof top decks that have no structure at all.
22 A complete open air.

1 You know, so I think so in this,
2 if you look at the photos for Dirty Martini,
3 you know, there is an aluminum and glass type
4 awning that's covering part of the location
5 that spans over.

6 So you know, and there's, they use
7 I guess some plastic for weather maybe
8 purposes or whatnot to keep the cool or hot
9 air in. If a place isn't fully enclosed and
10 insulated, to me it's, the noise is going to
11 escape. That's my opinion.

12 MEMBER SILVERSTEIN: Say that
13 again.

14 MR. PERU: If a place isn't fully
15 insulated and enclosed, the noise is going to
16 escape. And you use glass, noise travels
17 through glass and whatnot.

18 Of course unless we're talking
19 about sound proof glass. But I think any kind
20 of type of sound proofing would be the only
21 type, the only way to really prevent noise
22 from coming off of a roof top.

1 MEMBER SILVERSTEIN: And would it
2 be fair to say, and I'll just end with this,
3 that this seems to be the rub here. Not
4 what's going on necessarily inside the
5 building, but what is going on, on the roof
6 deck that is at times broadcast all over the
7 place?

8 MR. PERU: Yes, I believe that
9 primary concern is the noise that's emanating
10 from the roof deck itself. Not from actually
11 within the walls of the establishment.

12 MEMBER SILVERSTEIN: Thank you,
13 Investigator. We'll, I'll concentrate on that
14 certainly. Thank you, sir. No further
15 questions.

16 CHAIRPERSON MILLER: Other
17 questions? Mr. Peru, I actually have a couple
18 more now. Looking at your Exhibit 6
19 photograph.

20 MR. PERU: Yes.

21 CHAIRPERSON MILLER: That's the
22 outdoor deck?

1 MR. PERU: Yes.

2 CHAIRPERSON MILLER: Okay. Does
3 that abut another property, building deck?

4 MR. PERU: All the, they're all in
5 a row hold. They're all rows, so they're all
6 touching one another. You know, you have the,
7 establishments that are right next door.

8 CHAIRPERSON MILLER: Right, so
9 that roof connects to another building? Is
10 that right?

11 MR. PERU: Yes, it is. And on the
12 opposite side, I don't know if I have a photo
13 of the opposite side, but the office building
14 next door in one photo is where I said the
15 child --

16 CHAIRPERSON MILLER: Okay.

17 MR. PERU: -- day time area is as
18 well.

19 CHAIRPERSON MILLER: All right.

20 MR. PERU: It's an office building
21 that's next door.

22 CHAIRPERSON MILLER: Okay. It's

1 not residential over there. Can you just
2 clarify your role with the task, Noise Task
3 Force? Are you on it? Or have you gone on it
4 at some time?

5 MR. PERU: Yes, we, the Noise Task
6 Force has been out Thursday, Friday, Saturday
7 and Sundays for the last couple weeks. And
8 every time that I'm on night shift, I've been
9 assigned to go out. So I go out with the DCRA
10 Inspector, as well as with a MPD Sergeant.

11 And we go to locations on a list
12 that we have, and we also respond to calls
13 that come in for noise while we're on the task
14 force.

15 CHAIRPERSON MILLER: Okay, so the,
16 the night that they apparently went to Dirty
17 Martini, you weren't working that night?

18 MR. PERU: I was not working the
19 task force. Correct.

20 CHAIRPERSON MILLER: Okay. All
21 right. Thank you. Okay, any other Board
22 questions? Mr. Short.

1 MEMBER SHORT: Good evening, or
2 afternoon still.

3 MR. PERU: Thank you, sir.

4 MEMBER SHORT: Jason, I am, are
5 you aware of any noise violations that the new
6 task force has issued? Have they issued any
7 in the city at all?

8 MR. PERU: We issued, personally
9 we issued a warning citation to a New Town
10 Kitchen and Lounge, right here up the street
11 on 14th Street.

12 We entered a residence, we
13 listened from two different, actually several
14 residences on that street and determined that
15 the noise, the base and the music could be
16 heard.

17 And from there went to the
18 alleyway between the two buildings, similar to
19 the alleyway that we see in this situation.
20 And the DCRA Inspector took a noise reading.

21 According to him a warning was
22 issued, and I can't quote him, but he advised

1 us he issued a warning even though it read at
2 63 or 64 because they're given, they're
3 required to give a leeway of three to four
4 decibels.

5 So a warning was issued to New
6 Town as opposed to a --

7 MEMBER SHORT: This was above what
8 level?

9 MR. PERU: 60.

10 MEMBER SHORT: Okay.

11 MR. PERU: So above 60. So he
12 advised us that he had to in fact give a
13 warning for that situation, as opposed to a
14 violation.

15 MEMBER SHORT: Okay. Secondly,
16 are you aware, since, you testified you have
17 not yourself personally been to anything near
18 the Dirty Martini for these readings.

19 MR. PERU: Correct.

20 MEMBER SHORT: Are you aware that
21 any readings have been taken by the task force
22 in this area?

1 MR. PERU: I was told by, among
2 our investigators, that they did go to Dirty
3 Martini one evening, on one day of the task
4 force. I was trying to get that information
5 actually before I came here today. I was
6 unable to do that.

7 But I was told there was a
8 response at some point. And, or may not have
9 been a response, it was on the list. Because
10 we have a list for those evenings.

11 If it's on the list, we'll
12 literally drive by an establishment, get out
13 of our vehicles, and if the DCRA Inspector
14 believes that there is, the conditions are
15 right for a noise reading, he will then take
16 a noise reading.

17 So I understand there was a noise
18 reading done at some point. I don't know what
19 the outcome was.

20 MEMBER SHORT: Okay, is it
21 possible, I know this is not going to help us
22 tonight, but provide the Board with the

1 readings for the report that came from the
2 Dirty Martini?

3 MR. PERU: Correct. There's a,
4 every night the Noise Task Force goes out, we
5 do an after action report. And every place
6 visited is in that after action report, so
7 that's what I was trying to obtain this
8 evening, but I couldn't. I didn't know what
9 night it was on, because it's been going on
10 for quite some time.

11 So it could be possible yes, to
12 obtain those documents. Yes, sir.

13 MEMBER SHORT: Okay, I do thank
14 you very much. Thank you, Madam Chair.

15 CHAIRPERSON MILLER: It would be
16 even better if you had it, you know, while the
17 record is open here.

18 MR. PERU: Yes.

19 CHAIRPERSON MILLER: But that's
20 not likely today?

21 MR. PERU: Well they're being, the
22 records are being kept by a supervisor who is,

1 was not working today.

2 CHAIRPERSON MILLER: Oh, okay.

3 MR. PERU: And that's where the --
4 the reality --

5 CHAIRPERSON MILLER: Okay. All
6 right.

7 MEMBER BROOKS: Madam Chair, just
8 a follow up? Okay if a report was generated,
9 in front of Dirty Martini, would the owner of
10 the establishment be notified?

11 MR. PERU: Why absolutely, if we
12 find any violations that are found during the
13 Noise Task Force, we go into an establishment
14 and we conduct a full inspection. DCRA does
15 an inspection, and we do a regulatory
16 inspection as well. If a violation occurs.

17 But if you're just on the list,
18 and we're going out to do our random checks,
19 and the readings are below normal levels, or
20 allow levels, then we just move on to the next
21 location.

22 MEMBER SHORT: So the licensee may

1 not know you were even there?

2 MR. PERU: Correct, it's a
3 possibility, yes.

4 MEMBER SHORT: Okay, all right.
5 Thank you.

6 CHAIRPERSON MILLER: Any other
7 quick questions? All right. Applicant?

8 MR. MPRAS: Thank you, ma'am. Mr.
9 Peru, you said you conducted 11 visits to the
10 establishment as part of your investigative
11 reporting?

12 MR. PERU: As monitoring, correct,
13 yes. I did.

14 MR. MPRAS: And as part of these
15 visits, did you go inside or simply outside?

16 MR. PERU: I was focusing on the
17 protestants concerns, which was the noise from
18 the exterior. So I would walk down the dark
19 wonderful alley and walk back there and see
20 what I could hear. Yes.

21 MR. MPRAS: And it was your
22 determination that the, since you did not

1 write any violations, that no violation was
2 warranted?

3 MR. PERU: It was my, yes,
4 correct. Based on the, what I observed. Yes.

5 MR. MPRAS: Now if, had Dirty
6 Martini been issued a violation by the Noise
7 Task Force, would you know of it?

8 MR. PERU: I would not necessarily
9 know of it, unless I was working that evening.

10 MR. MPRAS: Would it have been
11 turned into some type of ABRA violation as
12 well?

13 MR. PERU: Correct, if the Noise
14 Task Force, DCRA has the noise meters. If
15 they conduct a reading and determine there is
16 a violation, DCRA will then move forward and
17 do an inspection inside. And then we follow
18 up with that as well, so.

19 MR. MPRAS: Now as part of your
20 Investigative Report, you do have copy of the
21 investigative history?

22 MR. PERU: Yes, sir. I do.

1 MR. MPRAS: Could you turn to
2 that?

3 MR. PERU: Excuse me.

4 MR. MPRAS: Would you please turn
5 to that?

6 MR. PERU: Yes, yes. Yes, sir.

7 MR. MPRAS: Do you see any noise
8 violations whatsoever, listed on that against
9 Dirty Martini?

10 MR. PERU: No, sir. I do not.

11 MR. MPRAS: Do you see any sustain
12 violations there against Dirty Martini?

13 MR. PERU: I see a warning being
14 sent. That's it.

15 MR. MPRAS: All right. Could you
16 please reread that, the last line underneath
17 it?

18 MR. PERU: Correct, it says,
19 decline to prosecute.

20 MR. MPRAS: Then there was no
21 warning, correct.

22 MR. PERU: Correct.

1 MR. MPRAS: Thank you. Now you
2 said you were behind the alley. You described
3 some buildings that you stated were residences
4 back there. Is that correct? On the opposite
5 side of the alley?

6 MR. PERU: Correct.

7 MR. MPRAS: Are you familiar with
8 the Saint Matthew's Rectory, by any chance?

9 MR. PERU: No, I'm not.

10 MR. MPRAS: Okay. Are you
11 familiar with Saint Matthew's Cathedral?

12 MR. PERU: No, I'm not. It's, I
13 believe it's on the corner. It's on N Street
14 I believe, at a corner.

15 MR. MPRAS: Are you aware that the
16 --

17 MR. PERU: I've never been inside,
18 so.

19 MR. MPRAS: Are you aware that the
20 properties directly behind, on the opposite
21 side of the alley are owned by Saint Matthew's
22 Church?

1 MR. PERU: No, I was not aware.

2 MR. MPRAS: Did you receive any
3 complaints from Saint Matthew's Church, noise
4 complaints regarding Dirty Martini?

5 MR. PERU: I have not personally,
6 no.

7 MR. MPRAS: To your knowledge, has
8 ABRA received any?

9 MR. PERU: Not to my knowledge,
10 no.

11 MR. MPRAS: Now you mentioned an
12 office building that was adjacent to Dirty
13 Martini, is that correct?

14 MR. PERU: Yes.

15 MR. MPRAS: Do you know who
16 occupies that building?

17 MR. PERU: No, I do not.

18 MR. MPRAS: Did you also state
19 that there was a playground connected to that
20 building?

21 MR. PERU: Yes.

22 MR. MPRAS: Did anyone from that

1 building contact you regarding any noise
2 complaints?

3 MR. PERU: No.

4 MR. MPRAS: To your knowledge did
5 anybody contact ABRA regarding any noise
6 complaints?

7 MR. PERU: To my knowledge, no.

8 MR. MPRAS: And that would be one
9 of the closest properties to Dirty Martini per
10 your investigation, is that correct?

11 MR. PERU: Yes, yes.

12 MR. MPRAS: Are you available, I'm
13 sorry. Are you aware of any noise violations
14 that were issued on the 1200 block of
15 Connecticut Avenue?

16 MR. PERU: No, I'm not aware of
17 any.

18 MR. MPRAS: Not aware of any. Now
19 have any complainant ever invited you into
20 their residence to gage the noise levels?

21 MR. PERU: No, and in regarding to
22 Dirty Martini, no.

1 MR. MPRAS: And sir, when you
2 describe the area, could you describe
3 Connecticut Avenue for us? First how many
4 lanes in total run past Dirty Martini?

5 MR. PERU: I'm going to have to
6 cheat and a little bit of math. But it's a
7 wide intersection, so it's pretty busy,
8 because it intersects with 18th Street. So
9 what do you have? Four, you have four lanes
10 going down Connecticut. Maybe even more than
11 that.

12 MR. MPRAS: Would you look at it
13 in some areas, could it be six lanes?

14 MR. PERU: It, Connecticut is wide
15 in certain areas, plus parking spaces as well.

16 MR. MPRAS: In your experience as
17 an investigator, would you consider that a
18 high traffic area?

19 MR. PERU: Definitely, definitely
20 a high traffic area.

21 MR. MPRAS: And just the ambient
22 noise there, from closeness to vehicles, the

1 pedestrians, the area in general, I mean, how
2 would you describe that?

3 MR. PERU: It's a very busy
4 intersection. And in the evenings, it's very
5 busy and noisy with patrons and whatnot. Yes.

6 MR. MPRAS: And then so does Metro
7 run underneath that area?

8 MR. PERU: I'm not sure about
9 that. I'm not aware.

10 MR. MPRAS: And did any other
11 investigators assist you with this
12 investigation, or?

13 MR. PERU: With the monitoring,
14 yes. Other investigators will go out and do
15 monitoring on the nights that they are on
16 night shift.

17 MR. MPRAS: Yes.

18 MR. PERU: Works, so some of the
19 dates and times are from other investigators.

20 MR. MPRAS: Okay, of the 11, were
21 there additional dates and times, that are not
22 listed in your report? Or could there have

1 been from other investigators?

2 MR. PERU: There could have been
3 as a normal part of a night shift work.

4 MR. MPRAS: And if they would have
5 found any violations they would have shown up
6 on the investigative history, correct?

7 MR. PERU: Yes, yes as the, at the
8 time the report was submitted. Correct,
9 everything is current.

10 MR. MPRAS: Thank you very much.

11 MS. PECK: Thank you for being
12 here tonight.

13 MR. PERU: No problem.

14 MS. PECK: I'd just like to
15 establish one point, an inspection report is
16 simply a gathering of facts --

17 MR. MPRAS: Objection. Objection.

18 MS. PECK: -- is that correct?

19 CHAIRPERSON MILLER: I think, is
20 this a question?

21 MR. MPRAS: This is the time for
22 questions only.

1 CHAIRPERSON MILLER: Wait. I
2 think she's kind of phrasing it as a question,
3 are you not?

4 MS. PECK: I just said it that
5 correct?

6 MR. PERU: I'm sorry can you
7 repeat the question?

8 MS. PECK: An inspection report is
9 a gathering of facts and information, is that
10 correct?

11 MR. MPRAS: Leading.

12 MR. PERU: You're referring to the
13 report --

14 CHAIRPERSON MILLER: It's not her
15 own witness, overruled. Go ahead.

16 MR. PERU: You're referring to the
17 protest report, correct?

18 MS. PECK: Yes.

19 MR. PERU: Yes, yes it is.

20 MS. PECK: Okay, so the report,
21 the purpose of the report is not to establish
22 whether or not there is a legal violation. Is

1 that correct?

2 MR. PERU: The purpose of the
3 report is to document observations made and
4 concerns of the protestants, and information
5 gathered. Correct. It's information
6 gathering.

7 MS. PECK: It does not reach a
8 legal conclusion. Correct?

9 MR. PERU: Correct.

10 MS. PECK: Okay. On Page 7 of
11 your report, you indicated that you or other
12 ABRA Investigators visited Dirty Martini at
13 least 11 times, right?

14 MR. PERU: Yes.

15 MS. PECK: When you personally
16 went into the alley behind Dirty Martini, did
17 you observe loud music back there?

18 MR. PERU: I heard, I could.
19 Music is very clear from the alley, from where
20 it's coming from, several establishments have
21 music and you know, so it's, there's
22 definitely music can be heard in the alley,

1 absolutely.

2 MS. PECK: Okay. So for those of
3 us who haven't been there are 12 o'clock or 1
4 o'clock in the morning, describe what it's
5 like to be back there and how loud the music
6 is.

7 MR. PERU: That's a hard, that's a
8 hard statement for me because for me, because
9 I just, it's, I don't want to yell at someone
10 to speak to them. So it's not like you're
11 inside of an establishment, but it's a
12 notable, I can probably tell the song what
13 song is playing. If maybe that's a helpful
14 determination.

15 Yes, it's not above speaking
16 level, but it's noticeable if you walking
17 through the alley, what the music is that's
18 coming out. I mean base emanates, obviously
19 bouncing off the buildings as well, so.

20 MS. PECK: And when you walk
21 closer to Rose Bar, do you, is the noise
22 louder in that direction, when you go closer

1 there, or is it equally distributed across the
2 alley?

3 MR. PERU: To be honest with you,
4 I walked on the alley a couple times, and I
5 mean, you know, there's, it's pretty
6 consistent I would say. I would say it's
7 pretty consistent.

8 MS. PECK: And when you were in
9 that alley did you notice that there was an
10 area underneath the Dirty Martini roof deck
11 where you could kind of go and it's sort of
12 like a little L area underneath the structure?

13 MR. PERU: Are you referring to
14 this?

15 MS. PECK: Yes.

16 MR. PERU: This, the structure
17 there?

18 MS. PECK: Yes.

19 MR. PERU: I did not go up --

20 CHAIRPERSON MILLER: Mr. Peru,
21 what is it that?

22 MR. PERU: I'm sorry, it's a photo

1 of the alleyway.

2 CHAIRPERSON MILLER: Oh, right.

3 MR. PERU: Yes, and the stairs. I
4 was --

5 CHAIRPERSON MILLER: We don't have
6 it. Is there some, what is the reason you
7 didn't put it in?

8 MR. PERU: What was it? I'm not
9 sure why it wasn't. But I was, I did not
10 physically go under the area where the
11 dumpster, or trash can is, no I did not.

12 MS. PECK: No, okay. Did you walk
13 out of the alley, you must have and out onto
14 N Street after you were finished being in the
15 alley?

16 MR. PERU: Yes, oh yes. I
17 actually parked on N Street, multiple
18 occasions.

19 MS. PECK: Were you able to hear
20 noise when you were at the opening of the
21 alley on N Street?

22 MR. PERU: You can hear noise

1 traveling down the alley, yes.

2 MS. PECK: Okay, would it be fair
3 to say that the reason why you were not able
4 to find a specific ABRA violation, is because
5 you couldn't tell which establishment of the
6 three back there was emanating sound?

7 MR. PERU: It would be safe to say
8 that in order to determine an ABRA violation,
9 I would have to enter a residence and make a
10 determination for sound based on that.

11 MS. PECK: So the reason why you
12 say there was no ABRA violation on sound is
13 because you didn't enter any residence?

14 MR. PERU: I was, I did not,
15 correct. Correct, I did not.

16 MS. PECK: Okay, so you're not
17 saying that you didn't encounter noise that
18 was necessarily legal or not, you're not
19 drawing any legal conclusion?

20 MR. PERU: I don't have a noise
21 meter. And I'm not a self made noise meter.
22 So I don't claim any levels are above

1 anything. I, to me, it would be, it's
2 difficult, they weren't blaring.

3 So I'm not sure if what kind of
4 meter reads would come out of that. Depending
5 on at the time of night, I'm sure as you know,
6 when you're there.

7 MS. PECK: If you were standing in
8 the back alley, near Dirty Martini and your
9 father was speaking, could you hear him
10 speaking there at the opening of the N Street
11 alley?

12 MR. MPRAS: Objection.

13 MS. PECK: Could you, I'm trying
14 to establish 60 decibels is about the sound of
15 a conversation.

16 MR. MPRAS: Objection, that hasn't
17 been determined. Facts not in evidence.

18 CHAIRPERSON MILLER: Okay,
19 assuming that fact --

20 MS. PECK: Assuming that fact --

21 CHAIRPERSON MILLER: What's the
22 question?

1 MS. PECK: The question is, if you
2 had somebody that you know, say your father,
3 any person, standing near the structure of
4 Dirty Martini, and they were talking, in a
5 normal conversational voice, and you were
6 standing at the opening at the N Street alley,
7 on N Street, do you think you could actually
8 hear that person speaking?

9 MR. PERU: Probably not.

10 MS. PECK: Thank you. There is no
11 reference in your report to the noise in the
12 alley. Is that correct?

13 MR. PERU: Correct.

14 MS. PECK: Why is that?

15 MR. PERU: It was, once again, I
16 couldn't, you can't, I couldn't determine it
17 was coming from Dirty Martini, the noise was
18 caused by Dirty Martini.

19 MS. PECK: So in other words, if I
20 could understand your answer, you're saying
21 you focus only on one structure, not on the
22 other structures in the area, or what the

1 collective noise levels might be?

2 MR. PERU: I was focusing on the
3 protestants concerns about the noise from
4 Dirty Martini's summer garden.

5 MS. PECK: So because of other
6 noise in the area, you couldn't tell whether
7 or not they were emanating high levels of
8 noise?

9 MR. PERU: Correct.

10 MS. PECK: I draw your attention
11 to the maps on your, in your report, Exhibits
12 1 and 2.

13 MR. PERU: Yes.

14 MS. PECK: You have circles drawn
15 there. The Exhibit 1, says that circle is a
16 1200 foot buffer. And it looks like the same
17 circle it says in the legend that, that's a
18 400 foot buffer.

19 MR. PERU: This is according to
20 District Columbia GIS systems. This is not a
21 self made map.

22 MS. PECK: Okay, well let the

1 record show that it looks like the exact same
2 circle on the exact same scale, has two
3 different measurements.

4 CHAIRPERSON MILLER: Do you
5 understand the question?

6 MR. PERU: Yes, I understand the
7 question, she's referring to the circle that's
8 around the radius. The maps are provided to
9 us by the GIS systems. With the radius
10 already drawn in. So yes, I understand you're
11 saying the size of the circle appears to be
12 the same. Is that what you're saying?

13 MS. PECK: Right.

14 MR. PERU: I'm not, I don't use
15 this system. We, I don't print these maps.
16 I don't have access to GIS system so I'm not
17 sure how the GIS system works and what it
18 bases the radius on.

19 MS. PECK: Well, looking at
20 Exhibit 2, that circle according to the legend
21 is 400 feet. Do you have any opinion or
22 experience to tell you whether that seems to

1 be an accurate characterization of the
2 distance on that map?

3 MR. PERU: I cannot determine
4 that. All I can determine that the second
5 legend is based on having schools in the area,
6 and it does not.

7 MS. PECK: No further questions.

8 CHAIRPERSON MILLER: I have a
9 clarifying question on her question to you
10 about when you're standing I guess at the
11 beginning of the alley on N Street, whether
12 you, you said something like you couldn't, if
13 you were talking to somebody you'd have
14 trouble hearing them?

15 MR. PERU: She asked me if I was
16 standing at the beginning of the alley
17 entrance, and if someone was standing all the
18 way by Dirty Martini, if I could hear them?
19 If I could talk to them clearly, during the
20 hours that it's noisy. And the answer was no
21 I could not.

22 CHAIRPERSON MILLER: Oh, well I

1 missed the time frame, it was during when?

2 MR. PERU: Well it's during the
3 hours in the evening when the club is open.

4 CHAIRPERSON MILLER: Okay, thank
5 you.

6 MS. PECK: If I could clarify that
7 wasn't exactly what I was trying to say, what
8 I was trying to say on a quiet day?

9 CHAIRPERSON MILLER: No.

10 MS. PECK: Today, like right now.
11 When it's not, when the music isn't out there.
12 Just trying to establish how loud 60 decibels
13 might be. You testified I believe that you
14 could hear the music at the opening of the N
15 Street alley during normal operations.

16 And what I was asking is, if it
17 were day time, and someone was standing back
18 there and just talking at a normal level,
19 would you be able to, all the way around over
20 onto the N Street opening, hear that person
21 talking?

22 MR. PERU: Okay, I misinterpreted

1 the question, because we were talking about it
2 being open, and hours of the garden, and the
3 music, so I apologize.

4 (Crosstalk)

5 MS. PECK: I apologize for not
6 clearly asking.

7 MR. PERU: I wouldn't be able to
8 answer that question. I'm not sure. On a
9 quiet day, I'm not sure.

10 MS. PECK: Okay, thank you.

11 CHAIRPERSON MILLER: Okay, any
12 other questions? Any Board questions?

13 MR. MPRAS: Yes, ma'am. The, what
14 would that distance be approximately? Do you
15 know? From that was just discussed, from
16 Dirty Martini to the end of the alley?

17 MR. PERU: I'm, I could gage maybe
18 --

19 MR. MPRAS: Your best guess.

20 MR. PERU: Maybe 35, 40 feet.
21 Maybe bigger, may be longer than that?

22 MR. MPRAS: Okay. Thank you.

1 CHAIRPERSON MILLER: Okay, good.

2 All right. Thank you very much, that's very
3 helpful.

4 CHAIRPERSON MILLER: Okay.

5 Applicant, you're up.

6 MR. MPRAS: We'd like to call our
7 first witness, Mr. John Fiorito.

8 MR. FIORITO: Good evening.

9 CHAIRPERSON MILLER: Good evening.

10 Do you swear to tell the truth, the whole
11 truth, nothing but the truth?

12 MR. FIORITO: I do.

13 CHAIRPERSON MILLER: Thank you.

14 MR. MPRAS: Please state your full
15 name for the record?

16 MR. FIORITO: John Fiorito.

17 MR. MPRAS: And please tell us
18 your occupation?

19 MR. FIORITO: I work for Ohm
20 Productions as a part time sound engineer,
21 designing audio systems for bars, nightclubs,
22 restaurants, and hospitality venues since

1 1998.

2 MR. MPRAS: And are you employed
3 in any other capacity right now?

4 MR. FIORITO: Yes, I am. I'm
5 employed full time as a Federal Law
6 Enforcement Officer.

7 MR. MPRAS: Can you tell us how
8 long you've been a sound engineer?

9 MR. FIORITO: Since 1998.

10 MR. MPRAS: And would you please
11 tell us your qualifications?

12 MR. FIORITO: My company had the
13 contract for Walt Disney World's Pleasure
14 Island for two years, which consists of eight
15 nightclubs, outdoor bars, restaurants, outdoor
16 stage, lighting and sound.

17 Where they provided accredited
18 training from Full Sail in Orlando, which is
19 a audio engineer school. And it was all
20 contracted through Walt Disney World.

21 I've also completed all the
22 training required to work on Disney parks

1 through the company in audio engineer and
2 digital signal processing training, and basic
3 concept design and safe operations of audio.

4 MR. MPRAS: And you're currently
5 employed now as an audio engineer?

6 MR. FIORITO: Yes.

7 MR. MPRAS: Part time, you said?

8 MR. FIORITO: Yes.

9 MR. MPRAS: Now are you employed
10 by Dirty Martini as an audio engineer?

11 MR. FIORITO: Yes, we have the
12 contract for all Mr. Rehman's establishments.

13 MR. MPRAS: Okay, and how long
14 have you been with Dirty Martini?

15 MR. FIORITO: Since
16 preconstruction. Since they started doing the
17 buildup.

18 MR. MPRAS: Can you describe your
19 duties there?

20 MR. FIORITO: My job was to design
21 the restaurant sound system, which consists of
22 ceiling speakers on the first floor. And it

1 also consists of a DJ system in case they were
2 to have receptions, weddings, parties, bar
3 mitzvahs or any other events that were occur
4 on the restaurant floors.

5 Then as you go up to the second
6 floor, my job was to design a ceiling speaker
7 system that's on a separate volume control for
8 the restaurant to have background music.

9 Then as you proceed up to the
10 third floor, there is a bar with a full DJ
11 sound system that's inside the establishment,
12 which I designed the audio system and
13 installed it there too.

14 And then outside there is an open
15 patio that has a DJ playback system. And my
16 duties are as the, after the place opened to
17 the public, that I maintain the audio system
18 through the company and provide any service or
19 any improvements needed in the system.

20 MR. MPRAS: Now Mr. Fiorito, is
21 this a typical system for a venue of this type
22 and size?

1 MR. FIORITO: It is except for the
2 patio.

3 MR. MPRAS: Please tell us why
4 it's not for the patio?

5 MR. FIORITO: During
6 preconstruction stage, the World Bank is
7 located directly adjoining to Mr. Rehman's
8 establishment. And Mr. Rehman was very
9 concerned, they had, with that particular
10 bank, they were concerned about the noise
11 levels at that time.

12 So we had several meetings with
13 them, with Mr. Rehman, to ensure that the
14 outdoor patio speakers would include no sub-
15 bass.

16 And that the system would be very
17 small, outdoor weather proof speakers to
18 ensure that the volume was controlled and
19 within the compliance of the DC regulations.

20 MR. MPRAS: And sir, since the
21 installation of that system, has the World
22 Bank ever come back and complained to your

1 knowledge?

2 MR. FIORITO: No.

3 MR. MPRAS: And would you know,
4 had they complained?

5 MR. FIORITO: Yes, because Mr.
6 Rehman reports everything to me right away.
7 If there is any concerns, he tells me to take
8 care of it right away or contacts my other
9 half in the company.

10 MR. MPRAS: Mr. Fiorito, do you
11 have any idea how many other nightclubs and
12 venues, bars, are in the general area of Dirty
13 Martini?

14 MR. FIORITO: Yes, I do. There's
15 at least a dozen. I could spell them out for
16 you because I'm a former Washingtonian and
17 I've been here since 1989. So I'm familiar
18 with all the establishments in the 1200 block
19 of Connecticut Avenue and M Street corridor,
20 if you'd like.

21 MR. MPRAS: And how many of these
22 to your knowledge, have outdoor patio areas?

1 MR. FIORITO: You have on Mr.
2 Rehman's side of the street you have his
3 establishment, you have the Midtown Complex,
4 and you have Rose Bar, which was formerly
5 known as Current.

6 Across the street you have Public,
7 there's a large sports bar that has a rooftop
8 over there. There's also another rooftop, I
9 don't know the name of the establishment
10 directly next to it.

11 There's also establishment's
12 directly down the street, it used to be called
13 the Acropolis, I do not know what the name of
14 the venue is now, as, and there is also a deli
15 that has an outdoor seating area with sound
16 that goes up 18th Street along the Connecticut
17 Avenue corridor.

18 MR. MPRAS: Mr. Fiorito, you just
19 mentioned the Connecticut Avenue corridor,
20 what type of area is that? Is it a busy area?

21 MR. FIORITO: That's an extremely
22 busy area. I can tell you as a former

1 policeman in this city, where I started my
2 career in 1989, that I've worked multiple hit
3 and run accidents in that area.

4 And in fact, recently because of
5 pedestrians being struck, they added an island
6 divider at the crosswalk there to ensure
7 pedestrians were not crossing. And then they
8 added a club zone at Metropolitan, police
9 officers to ensure the safety.

10 It's also heavily traveled, six
11 lanes of traffic with bus zones. Parking
12 meters during the day time that are restricted
13 for business type parking only. That has to
14 be gone by rush hour traffic.

15 You also have emergency vehicles
16 that are constantly traveling down M Street to
17 Georgetown Hospitals. You have the Metro rail
18 running directly underneath you, under the
19 sidewalk there. And Metro buses.

20 It's also a major intersection
21 where you have four intersections meeting one
22 another, where 18th Street merges directly

1 into Connecticut Avenue. So it is an
2 extremely busy intersection for pedestrians
3 and vehicles.

4 MR. MPRAS: And as a sound
5 engineer, Mr. Fiorito, how would you
6 characterize the noise levels, the ambient
7 noise levels?

8 MR. FIORITO: It's a very loud
9 area. I mean, even sometimes I've, the few
10 times that I've come up to DC, I've always
11 seen on the nice weather, there's hundreds and
12 hundreds of people on the sidewalks.

13 Going in and out of restaurants.
14 Going in and out of the establishments that
15 are all in that general area. There's a lot
16 of food and beverage service in that area.
17 There's also multiple hotels. It's a very big
18 area in hospitality.

19 I believe there's also two
20 gentlemen clubs around the corner. There's
21 also a new steak house that just went in from
22 a Miami group. It's a very, very populated

1 area.

2 MR. MPRAS: In that area, if
3 you're looking for a particular noise, is it
4 possible to distinguish where it's coming
5 from, with all that, that you just described?

6 MR. FIORITO: No, I think the
7 investigator couldn't have said it any
8 clearer. It's literally impossible unless
9 everything was dead silence and you had one
10 establishment open, and you could meter it,
11 and no other interference.

12 You have to take into
13 consideration everything the investigator
14 said, because it was completely accurate. You
15 have air conditioning units on roofs, you have
16 all kinds of noise. You have chillers on
17 roofs.

18 You have all types other
19 mechanical things happening there,
20 construction. There's a lot of noise in that
21 area so that to do an accurate sound reading,
22 I think would be literally impossible.

1 MR. MPRAS: Sir, have you ever had
2 any noise issues brought to your attention
3 from any other groups for Dirty Martini?

4 MR. FIORITO: No, I have not.

5 MR. MPRAS: And Mr. Fiorito, have
6 any sound prevention measures been taken by
7 you for Dirty Martini?

8 MR. FIORITO: Yes, we have, during
9 the preconstruction.

10 MR. MPRAS: Could you please
11 describe that?

12 MR. FIORITO: All the walls where
13 there's sheetrock, have Owens acoustical
14 fiberglass insulation to keep the sound inside
15 each floor.

16 But when you get to the rooftop
17 with an outdoor area, it's virtually
18 impossible when you have an open to keep the
19 sound in, because that's the purpose of a
20 rooftop. The rooftop is where people want to
21 be outside. They've become more and more
22 popular over the years.

1 But what has been done for
2 construction is there is framing as the
3 investigator said, aluminum walls and the
4 speakers are angled and deflected to
5 concentrate, to stay inside the area as much
6 as possible.

7 MR. MPRAS: Mr. Fiorito, as part
8 of your training, have you been trained to use
9 a sound or decibel meter?

10 MR. FIORITO: Yes, I have.

11 MR. MPRAS: Could you describe the
12 process for taking an accurate reading?

13 MR. FIORITO: To take an accurate
14 reading of a sound system, you need to have as
15 I prestated, dead silence other than what is
16 running, the sound system that you're trying
17 to meter.

18 So what will happen is you will
19 play the sound system, and you will use a
20 certified decibel meter, one that's been
21 checked. Not by an, not an iPod, or an app
22 that you could download.

1 Something that actually has a
2 quality microphone that's been purchased from
3 an audio store that is calibrated. The same
4 as law enforcement would calibrate their radar
5 systems, or breathalyzer tests that someone
6 would take. There's a scientific testing that
7 goes into ensure the accuracy of the meter.

8 So you would stand in the middle
9 of the floor and play the music, and measure
10 it on A-weight. A-weight is the most commonly
11 used decibels to measure sound. And you would
12 wait until the meter had a dead solid number,
13 of what the actual decibels were, not a
14 fluctuating.

15 If something is fluctuating when
16 you're taking a reading, it means it's picking
17 up other interference. And you have to
18 eliminate that interference to get an accurate
19 reading.

20 MR. MPRAS: Mr. Fiorito, have you
21 ever taken such readings at Dirty Martini?

22 MR. FIORITO: Yes, I have.

1 MR. MPRAS: Mr. Fiorito, have you
2 taken any measures to ensure that the volume
3 in the patio does not exceed a certain level?

4 MR. FIORITO: Yes I have.

5 MR. MPRAS: Could you please tell
6 us what you did?

7 MR. FIORITO: I cannot give you
8 the exact date, but a while ago I was
9 contacted by Mr. Rehman, and said that there
10 was some concerns about the noise, and he was
11 trying to be a good neighbor.

12 And he told me a lady named Sarah
13 Peck was going to be contacting me. And she
14 contacted me and discussed her concerns, and
15 I told her clearly that Mr. Rehman said to
16 make sure that she's happy. And the
17 neighborhood is happy, and that he's being a
18 good neighbor.

19 So I went back and told Ms. Peck
20 that I was going to go remeter, check it, and
21 mark the digital signal processors and the
22 volume control, which I did. And then I sent

1 her the pictures through email of where we
2 marked them. And what the settings were
3 supposed to be.

4 That way she knew that it was
5 accurately done. I also told her I would
6 leave a certified sound meter there with Joe,
7 which is Michael's house tech, Mr. Rehman's
8 house tech. So that she could access it any
9 time if she wanted to come by.

10 And I also put her in touch with
11 Joe, with his phone number and his email. And
12 I was copied on the emails when Joe sent the
13 pictures to her, so I knew she was able to
14 reach out to him at any time.

15 And I know that the meter is done
16 correctly because I also gave her the models
17 of the digital signal processors that Mr.
18 Rehman bought. That you can lock out, and the
19 only person that has the passcodes is me.

20 MR. MPRAS: And to your knowledge
21 are these levels, to this date, set as you
22 left them?

1 MR. FIORITO: Yes, nobody has
2 messed with the settings at all. I checked
3 them last night when I came to town, on this
4 subpoena.

5 MR. MPRAS: Now Mr. Fiorito, would
6 any sound professional use anything other than
7 a decibel meter to measure noise levels?

8 MR. FIORITO: Not to my knowledge.

9 MR. MPRAS: Have you ever seen
10 anyone, any sound professional use anything
11 other than a decibel meter when measuring
12 sound levels?

13 MR. FIORITO: No, I don't. All I
14 see is more sophisticated equipment that's
15 directly tied into the digital signal
16 processor, that's metering it as well. And
17 using it as a backup consistency with the
18 sound meter.

19 MR. MPRAS: Mr. Fiorito, could you
20 explain the term, production quality to us?

21 MR. FIORITO: Production quality
22 has to do with the speaker quality. If

1 anybody has purchased like say a less
2 expensive automobile, like a Hyundai. They
3 will come with a cheaper radio.

4 If you turn the car stereo up
5 really loud, you'll hear it distort. It won't
6 be able to handle the sound pressure that it's
7 trying to deliver. It'll become very crackly,
8 it won't have much bass, it'll be a very weak
9 sounding system.

10 Then if you get into a BMW, or a
11 Mercedes-Benz, where it has a Harman Kardon
12 sound system, you can turn it up and it feels
13 like you're sitting in a night club, the
14 quality of the sound system is so good.

15 So you, when you look at the
16 production quality also, it also refers to
17 CDs, I, downloads that DJs or musicians will
18 use.

19 If you've ever purchased a CD and
20 then purchased another CD, I don't know if you
21 noticed that one could be louder than another,
22 because of the production quality. It's all

1 in what the artist will spend on producing his
2 music.

3 So you could buy a new artist that
4 doesn't have a lot of money to spend on
5 production, and their CD will have poor
6 quality. Whereas you would go get a Madonna
7 or a Cher CD and it would be the finest
8 production quality in the world.

9 What happens is when the music is
10 played, that's why I believe the DC Noise Task
11 Force is allowing a few db leeway, either way,
12 because sometimes one CD is pressed louder
13 than the other because of the production
14 quality.

15 So you're going to have a slight
16 variance based on the production quality of
17 the music being played.

18 MR. MPRAS: Now Mr. Fiorito, in
19 your career, how many sound systems have you
20 designed and implemented?

21 MR. FIORITO: Hundreds, I've
22 probably done 90 percent in nightclubs in this

1 city through my company, Nation's, Platinum,
2 H2O. I did the original Z Club sound system,
3 it goes on, the bank.

4 I've done, it's countless, you can
5 easily search my name with Ohm Productions on
6 the internet. And you'll see all the press
7 and from credible magazines, of all the sound
8 systems that I've done with my company.

9 MR. MPRAS: Thank you, Mr.
10 Fiorito.

11 MS. PECK: Mr. Fiorito.

12 MR. FIORITO: Yes, ma'am.

13 MS. PECK: Nice to meet you in
14 person finally. And thank you for all the
15 conversations that we've had.

16 MR. FIORITO: You're very welcome.

17 MS. PECK: One of the
18 conversations that we had and that you
19 referenced in your testimony, was about
20 locking in the levels on the roof deck, at
21 Dirty Martini. What number did you have set
22 there?

1 MR. FIORITO: It's set for, two
2 settings, because we had two conversations.
3 The first one was 60db, and then the second
4 one was 80 because when you were doing a,
5 discussing your agreement, you said you wanted
6 to have a number locked in there.

7 So the second setting is marked in
8 red with a sharpie, that says 80. And then
9 the previous one was 60.

10 MS. PECK: Thank you.

11 FEMALE PARTICIPANT: Sir, could
12 you back off the microphone a little bit?

13 MR. FIORITO: Sure.

14 MS. PECK: Now behind the roof
15 deck area, there's the Dirty Bar, correct? Is
16 that what it's called?

17 MR. FIORITO: Yes.

18 MS. PECK: The dance floor area?
19 And that has a separate sound system in it,
20 right?

21 MR. FIORITO: It's separate, where
22 the volume control is separate, but it's

1 playing the same music that is being played
2 inside.

3 MS. PECK: Okay, so now, I'm going
4 to concentrate on the music that's played in
5 that inside space for a moment.

6 MR. FIORITO: Okay.

7 MS. PECK: That is a dance area,
8 correct?

9 MR. FIORITO: Yes.

10 MS. PECK: Where people dance, and
11 there's a DJ there typically on a weekend
12 night?

13 MR. FIORITO: Yes.

14 MS. PECK: And what sound level is
15 set for that area?

16 MR. FIORITO: That sound level for
17 the inside can probably reach 110 db, 105 to
18 110 db which is the typical for a dance floor.

19 MS. PECK: And is that, in your
20 experience the level that Dirty Martini plays
21 in that space?

22 MR. FIORITO: Yes, because when

1 you turn the mixer up to master volume, if
2 there within a certain range, where they're
3 directed and instructed to play it at, that's
4 where it's going to be.

5 MS. PECK: Now, on the roof deck
6 part, right now, what is the operating level?
7 We talked about 60, we talked about 80, well
8 where is it operating right now?

9 MR. FIORITO: They can either set
10 it at 80 or they can set it at 60. The
11 maximum level is set at 80 now.

12 MS. PECK: Okay.

13 MR. FIORITO: But there's going to
14 be a fluctuation, once again on production
15 quality if the DJ has a very high quality
16 burn, that he's downloaded to his laptop where
17 the music is coming from, it can slightly be
18 increased. It could get, it be as much as
19 five db.

20 MS. PECK: The next question is
21 about sound attenuation, and then how sound
22 travels. In between the Dirty Bar dance floor

1 and the roof deck, is a door. And that door
2 operates open.

3 So what happens when 105 to 110
4 decibel music leaves through that door and
5 goes into the sound level whether it's at 80
6 or 60, what happens to the sound there?

7 MR. FIORITO: Okay, can I back up
8 one question? You're saying it operates open.
9 I wasn't aware it operates open. I thought
10 was a VIP area, that they open and restrict
11 people going out.

12 I'm not here, and I, all the time
13 when the business is open, so I can't comment
14 first on whether the door is open or not.

15 MS. PECK: Let's talk about it
16 hypothetically then.

17 MR. FIORITO: Okay.

18 MS. PECK: Assuming that the door
19 was open and it was operating at 110? What
20 would the sound levels in your professional
21 experience be, 10, 15, feet into the center of
22 the bar operating at 80 decibels? What would

1 the sound level be, in your professional
2 evaluation?

3 MR. FIORITO: Okay, you're asking
4 me to draw a conclusion without going out
5 there and measuring it, and I do not want to
6 do that. Because if I'm drastically wrong,
7 then I would be perjuring myself here today,
8 which I'm not going to do.

9 So I cannot give you a
10 professional opinion because those are very
11 short throw speakers. You have different type
12 of speakers. Some are long throw, some are
13 throw, those are short throw because it's a
14 very small venue.

15 So I do not know the capability.
16 It's basically called back wash of how far
17 those speakers are going to dissipate out
18 there, and what the actual reading would be.
19 But I would be more than happy to take that
20 reading.

21 MS. PECK: If the door was open,
22 and the sound is operating at 110, all of that

1 professional experience that you just told us
2 about, and doing it for every club in the city
3 practically, and Disney World, you're not able
4 to tell me how loud 110 decibels --

5 MR. MPRAS: Objection. Asked and
6 answered.

7 MS. PECK: -- will be about 10
8 feet out of that door?

9 MR. MPRAS: Objection, asked and
10 answered.

11 MS. PECK: Not even an educated
12 guess?

13 MR. MPRAS: You asked the same
14 question, he gave an answer. She's looking
15 for another answer.

16 CHAIRPERSON MILLER: Is that the
17 exact same question?

18 MR. MPRAS: Yes.

19 CHAIRPERSON MILLER: Okay,
20 sustained then. Asked and answered. I mean,
21 as to, you know, asked and answered.

22 MR. FIORITO: You want me to

1 answer the question, Ms. Chairperson?

2 CHAIRPERSON MILLER: No.

3 MR. FIORITO: Okay, I didn't hear.

4 CHAIRPERSON MILLER: You did
5 answer it.

6 MS. PECK: No further questions.

7 CHAIRPERSON MILLER: Okay. Board
8 questions?

9 MEMBER RODRIGUEZ: I don't know
10 enough to ask him any questions. I'll think
11 about it.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Silverstein.

14 MEMBER SILVERSTEIN: Thank you
15 very much, Mr. Fiorito for coming. Let's talk
16 about the roof deck here. How loud is the
17 music played up there? Is there a governor?
18 Can you tell us what the max decibel level
19 would be, dB(A) and (b), for the roof deck?

20 MR. FIORITO: Yes. As I
21 previously testified, they are locked. It is
22 a locked digital signal processor. It has a

1 zone controlled volume, where it is marked.
2 Where 80 db and 60 db are, and the managers
3 are supposed to follow that protocol when
4 operating the system.

5 But those speakers are very
6 inexpensive weather proof speakers that are
7 out there. They are not capable of delivering
8 anything more than 90, 95 db full open.
9 Otherwise they'll just blow.

10 So I'm positive those particular
11 speakers, and I will be happy to print out the
12 specs or email them to the Board, or Ms. Peck,
13 those speakers are not capable of doing any
14 more than that.

15 They're a little tiny six inch
16 driver, they handle 100 watts of power. So
17 those particular speakers will not violate the
18 noise statute.

19 MEMBER SILVERSTEIN: What will
20 they do? What's the max they'll --

21 MR. FIORITO: 95 db.

22 MEMBER SILVERSTEIN: 95 db, but

1 that won't?

2 MR. FIORITO: Well the noise is 60
3 to 65 db during the day, 60 db, but it's one
4 meter from the property. So if we go
5 downstairs and measure it, those speakers are
6 not capable of violating the noise.

7 MEMBER SILVERSTEIN: What if, and
8 this is the difficult part of this. What if
9 you're on the adjacent roof top, not
10 downstairs? Certainly it's not going to go,
11 noise doesn't go around corners the way that
12 it goes straight.

13 MR. FIORITO: Correct.

14 MEMBER SILVERSTEIN: So how, what
15 would it be at a distance away? What would it
16 be for someone in their apartment, at that
17 level versus, down on the street?

18 MR. FIORITO: Okay, for where Ms.
19 Peck lives, at the Palladium? Is that what
20 you're --

21 MEMBER SILVERSTEIN: Sure. I mean
22 --

1 (Crosstalk)

2 MR. FIORITO: She would not be
3 able to hear, just the sound system on Mr.
4 Rehman's roof top. She would not be able to
5 hear the sound system I installed. You would
6 not be able to hear that sound system.

7 MEMBER SILVERSTEIN: Is, so you're
8 saying that even if the roof top is, even if
9 it's a gorgeous night like tonight, and people
10 really want to enjoy the sunshine and the
11 pollen. That, and you want to have the roof
12 top open, that no one would hear it?

13 MR. FIORITO: You'll hear the
14 people --

15 MEMBER SILVERSTEIN: At the
16 apartment house which is a half a block, or a
17 block away?

18 MR. FIORITO: You'll hear the
19 people, the people over power that sound
20 system. I can't attest to when I'm not here.
21 If something else is going on there. I can
22 only attest to the sound system that I

1 installed.

2 And that sound system is not
3 capable of doing any more than the decibels
4 I'm telling you. We can go there, we go at
5 the end of the alley. That sound system fully
6 cranked up will not violate the noise
7 ordinance. We measured it specifically for
8 the World Bank.

9 MEMBER SILVERSTEIN: You are in a
10 very difficult situation with them, because
11 they overlook you directly. Correct? And I
12 mean and then they go up ten stories, while
13 you're four.

14 MR. FIORITO: Yes, they're a glass
15 building. And they go up way higher than,
16 they're directly next to Dirty Martini.
17 What's next to us, is the, Dirty Martini, is
18 the Lucky Bar I believe.

19 MEMBER SILVERSTEIN: Someone
20 raised a particular ruckus at World Bank about
21 someone, a few years ago. Do you know
22 anything about it? Was that the predecessor

1 to, Dirty Martini?

2 MR. FIORITO: Well, I have done
3 the sound in that club since 1996.

4 MEMBER SILVERSTEIN: It was a day
5 time thing. Is was somebody in the daytime --

6 MR. FIORITO: Someone else then --

7 MEMBER SILVERSTEIN: -- was
8 supposedly --

9 MR. MPRAS: Mr. Silverstein, if
10 you'd like clarification, I was representing
11 the venue at the time. And I can clarify that
12 for you if you'd like.

13 MEMBER SILVERSTEIN: Yes, I would.
14 Because that might be helpful to me.

15 MR. MPRAS: Yes, sir. When the
16 deck was being built, the World Bank came with
17 concerns. So they protested and they wanted
18 their concerns addressed.

19 They had their sound engineer come
20 and do a sound test, checking Mr. Fiorito's
21 work. And they went through their protest,
22 and we've had no issue with them since.

1 MEMBER SILVERSTEIN: Thank you
2 very much. We're hearing two different things
3 though and I want to make sure that I'm able
4 to compartmentalize them correctly.

5 Mr. Peru said that there was so
6 much noise, it would be like if ten people
7 were shouting in a room, you couldn't tell
8 which one's voice from another because you had
9 this cacophony.

10 And you're saying if I get this
11 right, that there may be ten people shouting
12 in a room, but your establishment is not one
13 of the ten that's shouting?

14 MR. FIORITO: No. What I'm saying
15 is, if you were to have just the sound on in
16 that room, and we were to measure it, that
17 sound system would not disturb anybody in the
18 community. Just that one sound system. It's
19 set with the law compliant.

20 MEMBER SILVERSTEIN: So then, if
21 we accept Mr. Peru's argument that, or his
22 observation that there's a lot of noise in the

1 area, and he couldn't tell, and he could
2 specifically say which one is which.

3 You are telling me that Dirty
4 Martini is not one of the noise makers, that
5 other people may be making noise, but that
6 they are not creating, or truly adding to the
7 din.

8 MR. FIORITO: No, what
9 Investigator Peru stated was when you had all
10 the establishments open, with all the people
11 on the roof tops and all the businesses
12 running, you could not establish that.

13 I thought you were asking me, if
14 we just had that on, and it was dead silence,
15 there was no other businesses operating, and
16 we took a sound meter, I'm referring to that,
17 that sound system is in compliance.

18 MEMBER SILVERSTEIN: Okay.

19 MR. FIORITO: Mr. Peru, I already
20 testified is 100 percent correct and accurate.
21 You could not do any accurate sound testing
22 down there with all those nightclubs open,

1 all those bars, all those restaurants, and all
2 the pedestrian traffic.

3 And all the other noise from air
4 conditioners, air handlers, buses, everything
5 going on. Police cars, sirens, ambulance, you
6 could not do any type of accurate noise
7 testing to single out one establishment as the
8 culprit of the problem.

9 MEMBER SILVERSTEIN: Okay. I've
10 taken too much time. Thank you. No further
11 questions.

12 CHAIRPERSON MILLER: Yes, Mr.
13 Short.

14 MEMBER SHORT: I'd just like to
15 ask, I do, the limited information I have, or
16 knowledge I have of atmospheric pressures or
17 weather can do something about sound.

18 So on certain nights if the
19 humidity is very high, or very low, would that
20 have a difference on the sound traveling in
21 the community?

22 MR. FIORITO: Yes. And I can't

1 get into the scientific data why, but I have
2 been taught that. And I haven't just been
3 taught things sound differently at night, I
4 was actually taught that in the police
5 academy. Things sound and noises travel
6 differently at night.

7 MEMBER SHORT: So that means --

8 MR. FIORITO: And you're
9 absolutely correct on that, and you have to
10 take into fact all the buildings, the reverb
11 that the investigator stated bouncing off the
12 glass. So probably the alley is enhancing and
13 increasing the decibel level from all the
14 echoing and bouncing.

15 The same way as if you were to
16 take one speaker and put it together and then
17 add another speaker, you're adding decibel
18 level. So essentially when you have all those
19 venues together, coupled together, you could
20 have everyone of those venues set in
21 compliance individually.

22 If you said, we're going to shut

1 everybody down, and test your sound and we're
2 going to ensure that you're at 60 db outside
3 the establishment.

4 Now turn all three, four
5 establishments on, you've now coupled the db
6 probably by six to eight db, plus per
7 establishment, you'd probably have over a 100
8 db there with all those establishments going
9 and the noise.

10 So it's not an area that you're
11 ever going to be able to able narrow down when
12 you have more than one establishment. If you
13 had one establishment in a remote area in the
14 District, where there were no other bars or
15 nightclubs. You can then easily then isolate
16 the sound and cite someone and say you're in
17 noise violation.

18 MEMBER SHORT: Thank you.

19 CHAIRPERSON MILLER: Mr.
20 Rodriguez.

21 MEMBER RODRIGUEZ: Mr. Fiorito,
22 I'm not going to ask you a question that's

1 going to stump you, don't worry. But I do
2 have a serious question about sound mitigating
3 material.

4 And this is something that at our
5 hearings we have, you know, concern about and
6 with establishments that are wanting to deal
7 with sound complaints. What in your
8 professional opinion, is the best sound
9 mitigating material?

10 MR. FIORITO: Well, I can tell you
11 what the cheapest is because working for big
12 companies, they're always about the bottom
13 dollar. There's a product called vermiculite
14 and what it is, is glorified kitty litter.

15 And they pour it in between the
16 walls and when you pour that, it completely
17 deadens any sound and keeps the sound in the
18 restricted room.

19 The other cheap way to do it, is
20 sand. But sand gets moldy and is not as nice,
21 the vermiculite is a product that is very
22 inexpensive, and it can be poured anywhere.

1 It comes in bags, and they fill the walls with
2 it.

3 MEMBER RODRIGUEZ: Well thanks for
4 the freebie, I appreciate it.

5 CHAIRPERSON MILLER: Others?
6 Okay, I want to ask you about, somewhat about
7 your understanding of law. With all the
8 respect to sound, I think you said that it's
9 your understanding that the law requires the
10 sound limit to be 65 decibels, one meter from
11 the building? Is that your understanding?

12 MR. FIORITO: During the day time
13 hours I believe, then at night time it changes
14 to --

15 CHAIRPERSON MILLER: 60?

16 MR. FIORITO: Yes, 60 db, from 9
17 p.m. to 7 a.m.

18 CHAIRPERSON MILLER: Now is the,
19 in measuring that, so you say you have an
20 abutting building, do you measure, in your
21 opinion, do you measure one meter up?

22 MR. FIORITO: No. Because the

1 sound is traveling. It's the same as a set of
2 horns on a speaker. They come out like this,
3 and then they come out like that. It all
4 depends upon the quality of the sound system.

5 I don't know if you've ever gone
6 into like a Bose Home Theater System room,
7 where you hear, what a great sounding
8 acoustical system.

9 And then you take it home, and you
10 listen to it, and go wow. This didn't sound
11 as good as it did when the salesman showed it
12 to me in the acoustically perfect sound
13 engineered room.

14 So everything with sound takes
15 into play, as Mr. Short was bringing up,
16 atmosphere, the walls, there's so many
17 elements that go into this, that it is so hard
18 to determine where to measure.

19 But if you're looking for a
20 suggestion on how to measure that alley, the
21 best thing to do would be to either go to
22 people's homes and see if it's inside the home

1 bothering.

2 Because I stay at Topaz Hotel
3 which is walking distance from Mr. Rehman's
4 establishment, right down N Street. When I go
5 into the hotel room, it doesn't bother me. I
6 don't hear anything.

7 Now I don't know if their building
8 is built so well and it's such good
9 construction that I don't hear, I don't have
10 the backing to be able to testify to that.
11 But I can say I have not heard one complaint
12 on N Street from anybody about the noise.

13 But I would say the safest place
14 to measure that sound with a certified meter,
15 would be at the alley entrance at N Street.

16 Because all the reverb and
17 bouncing around should be done by the time you
18 hit the sidewalk, where the World Bank's
19 parking garage is. And if it's more than 60
20 db there, I would be very surprised.

21 CHAIRPERSON MILLER: Okay. And
22 similar to that question, you set players

1 whatever it is, not to exceed a certain db, so
2 that when it reaches one meter outside of the
3 building, it won't be higher than 60 or 65
4 right?

5 MR. FIORITO: Correct.

6 CHAIRPERSON MILLER: So, at any
7 point are other noises taken into effect, such
8 as the noise of a crowd inside? Is that
9 measured in conjunction with the music, or
10 not?

11 MR. FIORITO: When I install the
12 sound system, there's nobody in the club
13 before, once I tune the room and set
14 everything and lock everything out. So I'm
15 measuring an empty space.

16 Because it never says anywhere in
17 compliance that I need to fill the room with
18 bodies and take into consideration the voices
19 of people talking, dancing, yelling, and
20 having a good time. So I'm not factoring in
21 any of that.

22 But if you're factoring in the

1 amount of people, there's probably thousands
2 of people in those bars, nightclubs and
3 restaurants between inside, outside, and on
4 the street. That decibel level alone would be
5 over 100 db.

6 CHAIRPERSON MILLER: But when they
7 do the measuring, and we don't have Mr. Peru
8 here anymore, and I really haven't done one of
9 these noise cases before so, when that
10 machine, when the measurements come up on the
11 machine, does it reflect people's voices as
12 well? Or only music?

13 MR. FIORITO: Any sound.

14 CHAIRPERSON MILLER: Any sound.

15 MR. FIORITO: A-weight, and I can
16 leave you a piece of paper that explains A-
17 weight measuring, which is the commonly
18 measured. And then you can, and it's a simple
19 explanation. It's right off the internet.
20 It's nothing I created myself, you can find it
21 to.

22 But it gives you an idea of how

1 any voices, this microphone right here is
2 measuring my sound pressure. If his computer
3 laptop were to have an SPL meter, he would be
4 able to give you a decibel reading of what my
5 voice is projecting.

6 Because it's all taken in through
7 a microphone. And it also can depend on an
8 accurate reading, once again, can depend on
9 the quality of the microphone.

10 A perfect example, a microphone,
11 an old rock and roll band uses, like Brett
12 Michaels, who used to Poison and popular. Is
13 probably a few hundred dollar microphone.
14 It's not of such good quality.

15 But someone like Lady Gaga, or
16 Rihanna who's touring, is using a \$2,000
17 dollar ear mic that is of the finest quality
18 picking up every frequency. So it's the same
19 thing in audio.

20 You can buy cheap stuff and maybe
21 have a variance and not have accurate
22 readings. Or you can buy the most expensive

1 stuff and get a much more scientific accurate
2 reading.

3 CHAIRPERSON MILLER: Okay, so but
4 you know the equipment you're dealing with,
5 and you set it to go to 60 or 65. Then if
6 there's a crowd in there, are they likely to
7 go over then, the decibel limit?

8 MR. FIORITO: That's correct.
9 Yes.

10 CHAIRPERSON MILLER: Do you know
11 how much? Or not really, depending --

12 MR. FIORITO: Depending on the
13 amount of people, we'd have to go measure it
14 with, you know, with people. I would think
15 that the crowd, the noise alone, I do know
16 from a past experience with the Noise Task
17 Force, for another venue that I do on I
18 Street.

19 That they came there and tried to
20 measure the sound outside with all the buses
21 passing by at 1720 I Street. They were unable
22 to get an accurate reading.

1 And that's another area that I'm
2 focusing with that owner to ensure that he's
3 in compliance of the hotel. And he's making
4 drastic changes too, to his roof top to ensure
5 he's in compliance.

6 The equipment has been ordered, we
7 just haven't gotten there yet. But they were
8 not able to determine the accuracy of anything
9 due to the noise on the street.

10 CHAIRPERSON MILLER: Right, okay.
11 Thank you. Okay, other questions? Questions
12 on Board questions?

13 MR. MPRAS: No ma'am.

14 CHAIRPERSON MILLER: Okay, thank
15 you very much.

16 MS. PECK: I have, wait.

17 CHAIRPERSON MILLER: Oh, you have
18 a question?

19 MS. PECK: I still have a
20 question. I have just two quick questions.
21 If I may try again with the door, just to,
22 would it be your recommendation to your client

1 that in order to keep the noise levels on the
2 roof deck compliant with the law, the door
3 between the dance club when it's operating and
4 the roof deck should be kept shut?

5 MR. MPRAS: Objection. Mr.
6 Fiorito already stated it's compliant with the
7 law.

8 CHAIRPERSON MILLER: I'm going to
9 overrule it.

10 MR. FIORITO: I think that any
11 time you can close a door, it's a good idea.

12 MS. PECK: And my last question
13 is, you've been talking about even when all
14 the nightclubs are trying to comply, the noise
15 levels rise because the sound levels layer on
16 top of each other, and you estimated that it
17 could be, you know just, you threw out
18 hypothetically, could be even as high as 100
19 decibels, back there with all that noise back
20 there.

21 My question for you is, would it
22 make an impact in that area where there aren't

1 buses and subways and so on, this is an alley
2 enclosed by buildings, would it make a
3 difference if the operators in the area, which
4 include Rose Bar, Dirty Martini, and Midtown
5 stopped having amplified sound on their
6 outdoor spaces?

7 MR. FIORITO: I don't understand,
8 are you saying that they should --

9 MS. PECK: Would sound levels come
10 down noticeably?

11 MR. FIORITO: If they didn't have
12 a sound system?

13 MS. PECK: If they didn't play
14 amplified sound on their outdoor spaces?

15 MR. FIORITO: Well of course if
16 you didn't have any music playing on anybody's
17 deck, of course the noise would go down.

18 MS. PECK: Thank you.

19 CHAIRPERSON MILLER: Okay, thank
20 you very much.

21 MR. FIORITO: That's it?

22 CHAIRPERSON MILLER: Yes.

1 MR. FIORITO: Thank you, ma'am.

2 MR. MPRAS: Ma'am, we reserve to
3 call Mr. Fiorito later as a rebuttal witness
4 for Dirty Martini.

5 CHAIRPERSON MILLER: Okay.

6 MR. MPRAS: And no further
7 witnesses for us. We're good to go, thank
8 you.

9 CHAIRPERSON MILLER: Okay.

10 MS. PECK: I'd like to remind you
11 that I don't have experience doing this. What
12 we'd like to do is call myself as a witness.
13 So I'm not sure the best way to go about doing
14 this.

15 But I think what I'm should do is
16 go up there and just start speaking, after I
17 give my name and take my oath.

18 CHAIRPERSON MILLER: Give your
19 testimony. Yes, unless Ms. Nichols is
20 prepared to question you.

21 MS. PECK: But if it's okay, I can
22 just speak and then we can take the cross

1 examination.

2 CHAIRPERSON MILLER: Okay. We've
3 done that. We've done that many times.

4 MR. MPRAS: Since there is a co-
5 representative, it's appropriate for him to
6 question.

7 CHAIRPERSON MILLER: She's a co-
8 protestant, but --

9 MR. MPRAS: No, there's a co-
10 representative for the group of five.

11 CHAIRPERSON MILLER: Okay, I don't
12 think it's required and actually this might be
13 more efficient. Do you swear to tell the
14 truth, the whole truth, and nothing but the
15 truth?

16 MS. PECK: I do.

17 CHAIRPERSON MILLER: Okay, so if
18 you start with your name and address.

19 MS. PECK: My name is Sarah Peck
20 and I reside at 1325 18th Street in
21 Washington. And I have lived there for two
22 years. I live on the ninth floor.

1 My apartment looks out over that
2 World Bank building that we've been talking
3 about. And on the other side of that is this
4 alley and the clubs that are there.

5 In the two years that I've lived
6 there, I have not heard club noise, I actually
7 hear wind, and birds. It's, I don't hear
8 subways, I don't hear people on the street.
9 It's a very quiet apartment.

10 However, last November I was
11 asleep in bed, and I was wakened by bar noise.
12 Loud, loud enough to wake me, which startled
13 me, the first time I'd experienced that. And
14 so I threw on a pair of jeans and I went down
15 to see what the noise was.

16 And it was the front door of Dirty
17 Martini wide open, with noise blasting out.
18 And I confronted the gentleman standing there
19 and said, "turn down the noise, this is too
20 loud." May I speak to the manager?

21 And I was mocked. Go away. And I
22 said I'm going to go back and call the police.

1 And they said, fine. And that was my first
2 experience with bar noise and it just happened
3 coincidentally to be Dirty Martini.

4 That began my quest of trying to
5 get the noise turned down. I immediately
6 wrote to my ANC representative, who happens to
7 be my neighbor.

8 Who I knew had been negotiating
9 with other clubs to enter into a settlement
10 agreements, where they would have no outdoor
11 amplified sound. And I hoped that she could
12 help me.

13 And she said, yes, it's been a
14 long struggle. Together, we've been working
15 for the past five months to tackle this noise
16 problem that you've been hearing about
17 tonight.

18 The problem is it isn't just Dirty
19 Martini. It's gotten to the point where
20 there's so much noise that no one can fix it.
21 And everyone throws up their hands and says,
22 oh, dear. Too much noise, can't tell exactly

1 which piece of the noise is coming from which
2 thing.

3 It's like a hurricane, trying to
4 figure out which cloud the rain that just
5 drenched you, came from. You're drenched and
6 all the clouds are pumping out rain, and it's
7 a problem.

8 We have been working diligently to
9 try to resolve this issue. We've written a
10 White Paper summarizing the law. We've formed
11 an organization and launched a website. We've
12 had meetings with DCRA, ABRA and the police.

13 We've testified at an oversight
14 hearing. We've met with mayoral candidates.
15 We've filed protests in every single club in
16 the club central area, that was coming up for
17 renewal.

18 We went out in the middle of the
19 night, during the winter, all loaded down with
20 our down coats, to try to map out the sound,
21 and to keep a record of what was happening.
22 And to educate the media, and the Board and

1 the ANC.

2 We've gotten support from some
3 city officials. We have had, ABRA has now
4 sent out this letter announcing to clubs that
5 in fact there is a noise ordinance. And
6 you're expected to comply.

7 And our hope is actually as we
8 heard from Inspector Peru, if every club
9 brought down there noise to 60 decibels, it
10 would make a big difference.

11 We've gotten some support, we've
12 also been mocked, criticized, and even tonight
13 called chronic complainers. We're getting
14 used to it, we're developing thick skins.

15 On March 22nd at midnight, I took
16 council member, Vincent Orange, on a walk
17 through club central. We have had as we've
18 testified previously in another case, we have
19 a DCRA noise meter, which we have returned.
20 And using that noise meter, he witnessed 89
21 decibels in that alley behind Dirty Martini.

22 MR. MPRAS: Objection.

1 MS. PECK: As we --

2 MR. MPRAS: Objection, can't
3 testify as to what someone else witnessed.

4 MS. PECK: As we walked past the
5 homes --

6 CHAIRPERSON MILLER: Wait. Just a
7 second, stop.

8 MS. PECK: I'm sorry.

9 CHAIRPERSON MILLER: He has an
10 objection. Your objection?

11 MR. MPRAS: My objection was, you
12 cannot testify to what someone else witnessed.

13 CHAIRPERSON MILLER: Were you with
14 Mr., councilor Orange?

15 (Crosstalk)

16 MS. PECK: I was holding it, I saw
17 it. But I saw his eyes pointing in that
18 direction. He saw the noise meter that I was,
19 in fact, he asked me to measure at that point.
20 And I did. And he saw what it said. And I
21 saw what it said. And it said 89 decibels.

22 CHAIRPERSON MILLER: Okay, you saw

1 that it said 89 decibels?

2 MS. PECK: I saw myself because I
3 took the reading.

4 CHAIRPERSON MILLER: You saw him
5 look at it, is that it?

6 MS. PECK: And I saw him look at
7 it.

8 CHAIRPERSON MILLER: Okay.

9 MS. PECK: He walked with us out
10 of that same alley, past those folly buildings
11 we've mentioned which are actually
12 condominiums under construction on N Street,
13 right at the mouth of that alley.

14 And I will tell you what he said.
15 I'm sure I'll get an objection for this, it
16 isn't necessarily true, it's just what he told
17 me, and I heard this. That if he, he would be
18 concerned about the noise if he were
19 considering moving to the neighborhood.

20 All we residents are asking for,
21 and what so far has been illusive, is for
22 clubs to comply with the law, which requires

1 them to figure out how to keep their amplified
2 sound that they release low.

3 To about 60 decibels or not
4 audible at all, 60 decibels is low. And we
5 have not been able to get there.

6 The problem is that the District's
7 agencies are simply not setup to deal with
8 this kind of concentrated club noise. The
9 DCRA has two noise meters and they don't come
10 out during the day except now, they come out
11 on this task force.

12 ABRA works at night, but as you
13 heard, they don't use noise meters. And the
14 police want to focus on other things. This
15 isn't their priority.

16 All three of these agencies are
17 actually authorized by the law to issue
18 citations, and warnings, and act
19 independently. They don't need to do this in
20 a task force.

21 Since there has been ineffective
22 endorsement, I mean enforcement -- you heard

1 earlier that only one violation that this
2 gentleman was aware of, for one bar, the club
3 owners pretty much operate with impunity.

4 As so in the past five months of
5 concerted effort, here we are. We have had no
6 success getting the noise turned down. And
7 last Sunday is a perfect example. A bookend,
8 to my experience with Dirty Martini.

9 On Sunday night, I actually should
10 start with Saturday night. Because I was at
11 Dirty Martini, I just want say, I was
12 upstairs, I actually like Mr. Rehman very
13 much. He's a very nice guy and he has been
14 very kind to us.

15 But as I sat there, on the roof
16 deck, the door between the dance floor and the
17 roof deck was in fact wide open. And that's
18 how he told me, he operates it when the
19 weather is nice. And that's why it was so
20 loud on the roof deck that night. It was
21 loud, it was very loud.

22 Then on Sunday night as I sat down

1 to watch 60 Minutes, I heard noise coming in
2 my closed window. So I went down to figure
3 out where it was coming from. And followed
4 the source of the sound.

5 And there it was, Dirty Martini.
6 And that is the first experience I've had with
7 them operating on a Sunday night. I'm
8 assuming it's because now the weather is
9 nicer, and people are booking these clubs and
10 these outdoor spaces.

11 The noise coming out of the roof
12 deck was very, very loud. It had to be loud
13 because it made it all the way past that World
14 Bank building and into my ninth story window.

15 And it was especially noticeable
16 because there weren't other clubs operating.
17 So it wasn't that big cacophony of sound that
18 we've hearing about. It was that one.

19 And so I brought, I went home, got
20 my iPhone, and made a video and I took my iPad
21 and I have a downloadable sound meter on
22 there. And from that, for what it's worth --

1 MR. MPRAS: This is where I need
2 to object. There can't be testimony to sound
3 pursuant to 2700.20 unless the individual is
4 a person designated by the mayor, or a person
5 who's a qualified acoustical engineer. So if
6 Ms. Peck is not an engineer, she cannot
7 testify to decibel levels.

8 CHAIRPERSON MILLER: I don't
9 believe, I don't have it in front of me, Mr.
10 Mpras, but I know we had this in another case
11 and I don't believe the statute reads that she
12 can't testify.

13 MR. MPRAS: The case, you made an
14 evidentiary ruling on 3-28-14, 1624 U Street,
15 treating of Chi-Cha Lounge, were you did allow
16 testimony but you gave it no weight, based on
17 this statute.

18 CHAIRPERSON MILLER: Okay, but we
19 didn't say they couldn't testify. So for the
20 same reason, I think that, that statute reads
21 to, what is admissible, and that is when --

22 MR. MPRAS: And it designates who

1 is, that only such a person, that the evidence
2 shall be admissible in any civil, criminal, or
3 administrative proceeding, relative, relevant
4 to the enforcement of this act.

5 CHAIRPERSON MILLER: Right. Okay.
6 I think the rule, but didn't say that it
7 wasn't admissible. But it certainly does go
8 to the credibility of the reading. So you can
9 continue with your testimony.

10 MS. PECK: And I would admit that
11 a DCRA noise meter would be an even better one
12 to be using, but just from this one which we
13 have calibrated with the DCRA noise meter,
14 when we had it. It measured 83 decibels
15 standing down in the alley, beneath Dirty
16 Martini roof deck.

17 It measured about 79 decibels
18 standing at that wall where there's a crook in
19 the alley. And it measured 65 decibels at the
20 opening of the N Street alley.

21 CHAIRPERSON MILLER: Okay, Ms.
22 Jenkins, do you have an extra copy of that

1 statute? I don't have it with me. And she
2 wasn't at that hearing. I do want to say
3 that, that statute goes to the point that it's
4 not giving, we're not giving much credibility
5 to --

6 MS. PECK: That's fine.

7 CHAIRPERSON MILLER: -- the
8 measurements. Because you're not --

9 (Crosstalk)

10 MS. PECK: That's fine.

11 CHAIRPERSON MILLER: -- qualified
12 to take them --

13 MS. PECK: And I'm not putting it
14 in --

15 CHAIRPERSON MILLER: -- for that.

16 MS. PECK: -- to prove that, that
17 was what it is.

18 CHAIRPERSON MILLER: Okay.

19 MS. PECK: I'm not trying to do
20 that.

21 CHAIRPERSON MILLER: okay. Just
22 so you know.

1 MS. PECK: What I'm trying to tell
2 you is that at the same time, you can say I
3 believe you can draw from that, that it was
4 louder than a conversation. It was louder
5 than 60 decibels. Because you could hear it
6 for such distances. And that's all I'm
7 saying.

8 So for whatever it's worth, with
9 whatever weight you accord it. I notified
10 Dirty Martini through their counsel. I called
11 the ABRA hotline and also the office of Keith
12 Gethers. I called Commander Reese.

13 After dinner the noise could still
14 be heard in my apartment. And so when I got
15 ready to go to bed, I called 311 to notify the
16 administrative part of the police office, to
17 complain and they patched me over to 911.

18 And they said, which surprised me,
19 that they would dispatch a police unit. And
20 despite all of that, and the five months of
21 activity that came before, nothing happened.

22 Nothing happened. And that is why

1 we are pursuing these protest motions. This
2 Board needs to understand that this
3 neighborhood has a serious noise problem. And
4 the systems we have in place simply are not
5 prepared to adequately deal with them.

6 This is an important issue. It
7 affects the quality of life of people who live
8 in these areas. It affects my life. And
9 that's all I have to say.

10 CHAIRPERSON MILLER: Thank you.

11 MS. PECK: Comments from anyone?

12 MR. MPRAS: Madam Chair, did you
13 want that copy now?

14 CHAIRPERSON MILLER: If you have a
15 copy of it.

16 MR. MPRAS: I do have a copy.

17 CHAIRPERSON MILLER: If you're
18 going to be referring to it, it's nice to have
19 it here.

20 MR. MPRAS: Somebody want to take
21 it, or can I bring it up?

22 CHAIRPERSON MILLER: You can

1 approach. I'll see it if you put it here.

2 CHAIRPERSON MILLER: As long as
3 that, it's an extra copy?

4 MR. MPRAS: Here, here, I've
5 circled the section on the front.

6 CHAIRPERSON MILLER: All right,
7 thank you. Okay. Do you have cross exam?

8 MR. MPRAS: Sorry. Ms. Peck you
9 stated your address was 1325 18th Street, is
10 that correct?

11 MS. PECK: Yes.

12 MR. MPRAS: Approximately how far
13 away is that from Dirty Martini?

14 MS. PECK: Well we were trying to
15 establish that by looking at that circle. We
16 don't know.

17 MR. MPRAS: You said you disturbed
18 last November by bar noise, what night of the
19 week was that?

20 MS. PECK: That was a, either a
21 Friday or a Saturday night.

22 MR. MPRAS: Okay. And what area,

1 and you stated that you heard noise coming
2 from an area of Dirty Martini, what area was
3 that?

4 MS. PECK: That was the front door
5 area, not the area where, the door, well it
6 could have been both doors frankly.

7 It seemed to me that it was coming
8 from the open porch area, where you have the
9 front doors where you enter into the
10 restaurant area. That, those doors were open.
11 There were people sitting outside, it was a
12 warm night, and it was very loud.

13 MR. MPRAS: Are you aware that
14 those are a set of double doors? Doors inside
15 of doors, and that's not possible for --

16 (Crosstalk)

17 MS. PECK: They were quite open
18 and it was quite loud.

19 MR. MPRAS: Now being Friday,
20 Saturday night, I'm going to assume that every
21 other venue was open on the block?

22 MS. PECK: Yes, I'm sure they

1 were.

2 MR. MPRAS: And did you contact
3 the police or anything?

4 MS. PECK: I did.

5 MR. MPRAS: And what was there
6 response?

7 MS. PECK: Nothing.

8 MR. MPRAS: Why is that? Why do
9 you think, they didn't do anything?

10 MS. PECK: That is the mystery
11 that we are trying to solve.

12 MR. MPRAS: Could it be they
13 didn't feel they were in violation?

14 MS. PECK: I doubt that's the
15 reason.

16 MR. MPRAS: My question was, could
17 it be --

18 MS. PECK: I believe the police
19 does not regard this as a police matter.

20 MR. MPRAS: Have you contacted --

21 MS. PECK: In fact, I should add
22 that Commander Reese has so much as told us

1 those exact words.

2 MEMBER SILVERSTEIN: I'm sorry, I
3 didn't hear that.

4 MS. PECK: Commander Reese in a
5 meeting with us, told us afterwards, that he
6 did not feel this was a police matter.

7 MR. MPRAS: Have you contacted
8 DCRA?

9 MS. PECK: On that occasion?

10 MR. MPRAS: Yes.

11 MS. PECK: Actually, I probably
12 did. During that weekend, I called every
13 single number that a person could find and
14 spoke to them about it. So records of all of
15 this exist.

16 And in fact, I received many calls
17 from all of these people. The local police
18 commanders, I met with Lieutenant Now, so on
19 and on. I spoke to everyone, nothing's
20 happened.

21 MR. MPRAS: So the, no one took
22 any action then?

1 MS. PECK: Right.

2 MR. MPRAS: And then you stated
3 you were with Council Member Orange. Is that
4 correct?

5 MS. PECK: Yes, sir.

6 MR. MPRAS: What action is he
7 taking to alleviate this problem, if any?

8 MS. PECK: As far as I know,
9 nothing.

10 MR. MPRAS: Ms. Peck, are you a
11 designated official by the mayor, or any
12 person who is a qualified acoustical engineer,
13 who holds a certificate of registration as a
14 professional engineer issued by the District.

15 MR. MPRAS: As you well know, I'm
16 not. And this is one of the things that is a
17 problem, is that people --

18 MR. MPRAS: That's already --
19 (Crosstalk)

20 MS. PECK: -- can bring forward
21 information that --

22 MR. MPRAS: Please order her to

1 talk --

2 (Crosstalk)

3 CHAIRPERSON MILLER: Ms. Peck --

4 (Crosstalk)

5 MS. PECK: -- that is at least --

6 MR. MPRAS: -- as much as I have

7 questions.

8 (Crosstalk)

9 MS. PECK: -- that is at least

10 relevant to let people know volumes. It's

11 like saying --

12 (Crosstalk)

13 CHAIRPERSON MILLER: Ms. Peck, no.

14 Ms. Peck, you're, but Ms. Peck, you're out of

15 order.

16 MS. PECK: It's really, yes, the

17 answer is no. I am not.

18 CHAIRPERSON MILLER: Ms. Peck,

19 you're out of order.

20 MS. PECK: The answer is, I'm not.

21 CHAIRPERSON MILLER: You're out of

22 order, you have a chance to do closing later

1 on, or whatever. This is the time to answer
2 questions and --

3 MS. PECK: I apologize.

4 (Off the record comments)

5 CHAIRPERSON MILLER: Gee, he,
6 asked if she was qualified to measure that.

7 MALE PARTICIPANT: Oh.

8 (Off the record comments)

9 MR. MPRAS: Ms. Peck, you said you
10 were issued a, or loaned a sound meter by
11 DCRA?

12 MS. PECK: Yes, I was.

13 MR. MPRAS: Now, was this, do you
14 know if this sound meter was an instrument to
15 measure the sound pressure level, meeting
16 either a Type II requirements of the American
17 National Standard Institute.

18 MS. PECK: In fact that is exactly
19 what it is, and it being used by the task
20 force as we speak.

21 MR. MPRAS: Okay, now when you
22 took the measurements, did you follow the

1 measurement procedures with that machine, as
2 subscribed in Title 20-2905 Measurement
3 Procedures.

4 MS. PECK: I did not.

5 MR. MPRAS: And did you complete
6 the required data and reports in Title 20-2906
7 as required for taking sound meter levels.

8 MS. PECK: I did not.

9 MR. MPRAS: No further questions,
10 thank you.

11 CHAIRPERSON MILLER: Okay. Board
12 questions? Yes, Mr. Brooks.

13 MEMBER BROOKS: Yes, Ms. Peck just
14 one question. How long have you been hearing
15 these loud noises? I mean, you mentioned five
16 months that you've been going through these
17 different agencies and making complaint and
18 that sort of thing. But how long have you
19 been hearing these noises, in your home?

20 MS. PECK: Me personally, I heard
21 it that occasion. I have, and not before, I
22 often travel away on weekends and I travel

1 quite a lot for business, so I'm gone quite a
2 lot.

3 That could explain part of it, but
4 then winter happened, and then people weren't
5 out on roof decks. And so I think now that,
6 I've heard it for the past three weekends.
7 I've heard bar noise in my apartment. And
8 I've sat there and wondered should I call
9 ABRA, should, what should I do?

10 And knowing that ABRA officials
11 are going to come half an hour or so later,
12 and sit there in my house at 2 o'clock in the
13 morning, and then not do anything.

14 I just chose to continue this
15 process of raising awareness and pressing our
16 rights in this way. So I don't hear it all
17 the time. And I don't hear it everywhere.

18 But I have been hearing it
19 recently, and that's why Sunday night was so
20 startling. I've never heard it like that
21 before.

22 MEMBER RODRIGUEZ: Okay, because

1 Dirty Martini, I think someone testified has
2 been open since 1999, or?

3 MR. MPRAS: Mr. Brooks, it was
4 originally open since 1998, as 1223, the
5 successor to that previous venue is Dirty
6 Martini, so it's been in continuous operation
7 for about 14, 16 years.

8 MEMBER BROOKS: Yes, okay. So
9 quite a while. I'm just wondering, all of a
10 sudden you start hearing the noise from them,
11 you know, what has changed in their operation?
12 That's what I'm kind of curious about.

13 MS. PECK: Abigail Nichols who
14 will testify after me, has lived in this area
15 for a much longer period of time and has a
16 better time line of what has happened with the
17 noise as it has developed with bars in the
18 area.

19 MEMBER BROOKS: Okay, thank you,
20 Madam Chair.

21 CHAIRPERSON MILLER: All right.
22 Others? Mr. Short. Do you? Mr. Rodriguez.

1 MEMBER RODRIGUEZ: Yes, just a
2 short question, Ms. Peck. Now where you live,
3 do you have a landlord or is it a, what kind
4 of is it a house, or is it's an apartment.
5 Right?

6 MS. PECK: It's a condominium that
7 I own.

8 MEMBER RODRIGUEZ: It's a
9 condominium that you own. So did you complain
10 to the condominium association, is there an
11 association there?

12 MS. PECK: The president of the
13 association is in full support, and I
14 represent the condominium in this proceeding.

15 MEMBER RODRIGUEZ: Okay, and could
16 she get any response from the police?

17 MS. PECK: I'm representing the
18 condominium and, no. The answer is no.

19 MEMBER RODRIGUEZ: Okay. Thank
20 you.

21 CHAIRPERSON MILLER: Okay, I have
22 a few questions, and I appreciate your concern

1 about noise. It's very basic that people
2 should be able to sleep and et cetera.

3 I just, based on your testimony, I
4 just want to, number one, ask you are you here
5 on a protest because of your quest against all
6 the clubs in general, because of accumulated
7 noise? Or specifically about this club?

8 MS. PECK: Specifically about this
9 club. This club in particular is the one that
10 has most personally affected me. And I'd also
11 like to add that --

12 CHAIRPERSON MILLER: How do you
13 know that?

14 MS. PECK: Because in both of the
15 cases that I have told you about, I personally
16 went and verified that they were producing the
17 sound that I was hearing in my apartment. So
18 two --

19 CHAIRPERSON MILLER: So, in two
20 cases, they were specifically identified by
21 you as being responsible. Okay. And the
22 other clubs were less than that?

1 MS. PECK: Well on Sunday night,
2 the other weren't operating yet at that time.
3 And on the occasion that I mentioned, since it
4 happens to be the club closest to my
5 apartment.

6 And on that occasion, I think
7 afterwards, after the big ruckus that I made.
8 They started being ruthless about, or
9 religious about shutting, keeping their front
10 doors shut. So it really has changed the
11 street scape --

12 CHAIRPERSON MILLER: Now let's
13 talk about this club, okay. So I thought you
14 also said if every club were out there, dcbs
15 down to 60 or 65, it would help a lot.

16 MS. PECK: I believe that if every
17 club was properly complying with the law, it
18 would --

19 CHAIRPERSON MILLER: It would.

20 MS. PECK: -- lower the overall
21 ambient sound levels, yes.

22 CHAIRPERSON MILLER: Okay, so when

1 Mr. Fiorito, said that he set the equipment to
2 a maximum, I believe he said, they're still 60
3 or 65.

4 MR. MPRAS: Madam Chair, it was,
5 no, it was up to 80.

6 CHAIRPERSON MILLER: Oh, okay,
7 never mind, then that. So if they set it
8 there from 80, down to 60 or 65, that would
9 address your concern with this club?

10 MS. PECK: Yes, if they did that
11 and they kept that door shut between the dance
12 club and the deck, then yes, it would.

13 CHAIRPERSON MILLER: So when you
14 were testifying about the noise on the roof
15 top, was it from the dance music?

16 MS. PECK: I believe it was, yes.

17 CHAIRPERSON MILLER: When you
18 talked about calling Keith Gethers, at ABRA,
19 that was with respect to your most recent,
20 Sunday night?

21 MS. PECK: I did call him, I have
22 previously spoken to him, and I also have

1 permission from Director Moosally to reach out
2 to him to go on one of these task force
3 forays.

4 CHAIRPERSON MILLER: So, what
5 happened when you called Mr. Gethers?

6 MS. PECK: He did not return my
7 call, and also when I called the ABRA --

8 CHAIRPERSON MILLER: Did you call
9 the office?

10 MS. PECK: I called his office.

11 CHAIRPERSON MILLER: He was
12 probably out, do you know if he was there?

13 MS. PECK: I didn't know, I mean
14 it was, by that point it was 8:30 at night
15 maybe. And you know, I don't know what his,
16 whether he was working that night or whether
17 he'd be on at that time.

18 CHAIRPERSON MILLER: Okay.

19 MS. PECK: I just called and left
20 a message and I also called the regular ABRA
21 hot line number and left a message. And that
22 recording says that you will be called back

1 within 24 hours. I never received a call
2 back.

3 CHAIRPERSON MILLER: Oh, I'm sorry
4 to hear that. Okay. What time was it, Sunday
5 night?

6 MS. PECK: Like I said, 8:30, 9
7 o'clock time frame.

8 CHAIRPERSON MILLER: Okay, and I
9 thought you said, correct me if I'm wrong,
10 because I want to get this right. That you
11 contacted Dirty Martini to let them know by
12 calling counsel?

13 MS. PECK: If you look at their
14 voluntary settlement, their voluntary
15 agreement, that's one of the two people listed
16 there to contact.

17 CHAIRPERSON MILLER: So is that
18 Mr. Mpras?

19 MS. PECK: If there's a noise
20 issue. So that's who I called.

21 CHAIRPERSON MILLER: Did you call
22 him at the office? Or did you call his cell

1 phone or?

2 MS. PECK: I called the number
3 that's listed there?

4 CHAIRPERSON MILLER: But you
5 didn't know where it, do you know what that
6 number is?

7 MS. PECK: Well, I believe it's
8 his cell phone. But I'm not sure about that,
9 but anyway I left a message. And I said this
10 is, I called while I was standing in the alley
11 listening to the music. And I held the phone
12 up and I said, this is what I'm talking about.

13 CHAIRPERSON MILLER: Okay, but did
14 you call the restaurant, bar whatever, itself?
15 To talk to the manager to say it's noisy?

16 MS. PECK: I wanted, no. Having
17 contacted the one that is listed in the
18 voluntary agreement to contact, I felt that I
19 had done my job. And that he would contact
20 whoever was the right person to contact,
21 including the owner or whomever.

22 My main thing to be honest with

1 you, was I felt it was very important for the
2 authorities to be able to see this club in
3 operation when there weren't the other ones
4 operating around it.

5 So this was a good opportunity
6 also to let people attend, you know, document
7 the violation.

8 CHAIRPERSON MILLER: Okay. So --

9 MS. PECK: I wanted the violation
10 to be documented.

11 CHAIRPERSON MILLER: So you
12 weren't really looking for the music to stop
13 or whatever, at that point you were looking --

14 MS. PECK: I would have been just
15 as happy to have the music lowered as well.
16 Neither of these things ever happens, that's
17 the problem.

18 CHAIRPERSON MILLER: Okay.

19 MS. PECK: I'd go either way. But
20 I don't think it's -- well, I'll just stop
21 there.

22 CHAIRPERSON MILLER: So the noise

1 though, just to be clear, is the noise, what
2 is the noise that you're hearing? Is it
3 music, is it patrons? What it is?

4 MS. PECK: It is not patrons, it
5 is not subways, it is not street traffic or
6 ambulances, it is, I am focusing entirely on
7 amplified music. And that is all that I'm
8 talking about.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. All right. Mr. Silverstein.

11 MEMBER SILVERSTEIN: Very briefly,
12 first thank you for rearranging your schedule
13 to be able to make it this afternoon, Ms.
14 Peck. And thank Mr. Mpras and the other side
15 for also allowing us to have this hearing at
16 the rescheduling that we're doing to try
17 accommodate everyone.

18 When, it seems that you're saying
19 that the problem is not just the roof top,
20 that things coming out the front door at the
21 street level, is that what you're?

22 MS. PECK: My request to the clubs

1 is to keep their doors shut, front, back,
2 everywhere to keep the noise in, I don't care
3 how loud they play inside. And to keep the
4 sound levels on the exterior spaces very low.

5 MEMBER SILVERSTEIN: That wasn't
6 the question I asked?

7 MS. PECK: Oh, I'm sorry, I
8 apologize for that.

9 MEMBER SILVERSTEIN: The question
10 I asked, is where is the noise coming from?
11 Is noise coming from the front door when it's
12 kept open, is that? Are you talking about the
13 door at the street level?

14 MS. PECK: I believe that the
15 sound, and by the way I'm speaking for myself
16 now, I could be speaking for the entire
17 building and Abigail will be talking about
18 that.

19 But I think the sound, the problem
20 is the sound that emanates off the roof deck,
21 when it's in operation and when the sound is
22 high. Combined with all the rest of it. So

1 it's really those external spaces, that I
2 think generate the sound that goes up into the
3 air and spreads through the neighborhood.

4 MEMBER SILVERSTEIN: I know that,
5 but where is it coming from? Is it coming
6 from the roof, or is --

7 MS. PECK: I think it's coming
8 from all of those places.

9 MEMBER SILVERSTEIN: Is some of it
10 coming from inside the building?

11 MS. PECK: If you're asking is it
12 emanating through walls or that sort of thing?

13 MEMBER SILVERSTEIN: No, through
14 doors and windows, and anything like that?

15 MS. PECK: I think, my
16 observations having walked around in the
17 neighborhood, maybe ten times or so. Is that,
18 well of course during the winter, most clubs
19 are getting pretty good at keeping their front
20 doors closed. Some of them have open windows
21 in their exterior spaces for ventilation. And
22 so of course noise comes out of that.

1 In the case of Dirty Martini, I
2 would say that, they have, their roof deck
3 probably hasn't been very active over the cold
4 winter months. I think that's true for most
5 of the clubs that aren't covered.

6 And you know, so I think that the
7 noise levels are now starting to peak again,
8 now that the weather is getting nicer and
9 people are going out and the sound is being
10 turned up.

11 MEMBER SILVERSTEIN: Is the
12 problem that a door on, leading out to the
13 roof deck is kept open? Is that a major
14 problem?

15 MS. PECK: I believe, I personally
16 believe having witnessed it myself on Saturday
17 night. If it's true that the sound levels are
18 set at 80, and I have something about that,
19 but if it's true that, that's the case and
20 it's also true that the sound just on the, in
21 the room right next to it, is somewhere
22 between 105 and 110 decibels, which is 16, 32,

1 64 times the sound level.

2 It would raise the level to be a
3 very loud level which is what I experienced on
4 Saturday night on, inside the roof deck area.
5 So I believe that it probably, if they had
6 shut the door at that point, then the sound
7 levels probably would have come down
8 noticeably.

9 MEMBER SILVERSTEIN: So what
10 you're saying doesn't necessarily contradict
11 with what Mr. Fiorito, said. That it might
12 not be terribly loud on the roof deck with the
13 roof speakers themselves, but if you add
14 noise, bleeding from inside, out, that would
15 make it worse?

16 MS. PECK: That is exactly what
17 I'm saying.

18 MEMBER SILVERSTEIN: That's what
19 I'm trying to get at.

20 MS. PECK: Yes, exactly.

21 MEMBER SILVERSTEIN: No further
22 questions.

1 CHAIRPERSON MILLER: I'd like to
2 clarify, get clarified your position. Okay,
3 so we talked with Mr. Fiorito about that the
4 law talks about measuring one meter outside
5 the building.

6 And they, and he has testified
7 that while it's set at, the equipment is set
8 at 80, by the time the sound or whatever, how
9 the sound travels to outside the building,
10 that's, that's where the measurement is.

11 And that's where the measurement
12 is under law, 60 or 65 one meter outside the
13 building. Okay, so are you saying, that,
14 you're asking for something more than what the
15 law requires.

16 MS. PECK: Actually I don't think
17 I'm saying that at all. I'm saying exactly,
18 asking what the law requires.

19 I would like for Dirty Martini to
20 operate at a level that when you are holding
21 a meter by a registered licensed sound
22 engineer, a meter outside of the structure, it

1 won't be noticeably higher than the ambient
2 levels. Or above 60ish.

3 CHAIRPERSON MILLER: That's what
4 you're saying?

5 CHAIRPERSON MILLER: I know it's
6 difficult to measure, I can talk a blue steak
7 about this, but I won't. That is what I'm
8 asking is for the proper measurements to be
9 made, however you want to measure it.

10 I don't think today, that when the
11 doors are open, and that layers on top of the
12 sound that's being created by the speakers on
13 the deck, that it's 65 metered outside of the
14 roof deck. I'm quite sure that it is not.

15 CHAIRPERSON MILLER: Are you aware
16 of the task force, have they taken some
17 measurements?

18 MS. PECK: I found that out today.

19 CHAIRPERSON MILLER: Okay, you're
20 not aware of any specific measurement?

21 MS. PECK: I am not.

22 CHAIRPERSON MILLER: Okay.

1 (Off the record comments)

2 CHAIRPERSON MILLER: Yes, okay.

3 Mr. Rodriguez.

4 MEMBER RODRIGUEZ: Would you allow
5 an official to go into your abode and do the
6 measurements?

7 MS. PECK: I would permit it, but
8 I would have to say that it is my reading of
9 the law, that there is nothing in the law that
10 requires this method to be used.

11 I think it is a none productive
12 method that takes up city resources and puts
13 inspectors, male inspectors in the homes of
14 single women, very late at night.

15 I think it is a ridiculous thing.
16 And I don't want to do it that way. I want
17 instead for the sound measures to be taken at
18 the source of the sound as the law requires.

19 MEMBER RODRIGUEZ: Thank you.
20 There are females too, that do that. Right?

21 MS. PECK: Either way, I don't
22 want to wait up for half an hour to have

1 somebody come over there into my apartment.

2 MEMBER RODRIGUEZ: Okay.

3 CHAIRPERSON MILLER: Okay. But
4 that's different than the measurement we're
5 talking about, to meter outside the building.

6 MS. PECK: Right. I'm talking
7 about the measurement right outside, right.
8 That's where I believe, and what the law
9 states it should be done.

10 CHAIRPERSON MILLER: Right. Okay.
11 Any other questions? Questions on Board
12 questions?

13 MR. MPRAS: No, ma'am.

14 CHAIRPERSON MILLER: Okay, thank
15 you.

16 MS. PECK: Thank you. Could I ask
17 how we are doing on time?

18 MEMBER SILVERSTEIN: For both
19 sides, you're running neck and neck. You're
20 both 28 minutes.

21 MS. PECK: How many did you say,
22 we have 28 minutes left?

1 MEMBER SILVERSTEIN: No. You both
2 have 28 minutes, you've both used 28 minutes.

3 MS. PECK: Oh. Okay, so how much
4 time do we have, it's an hour?

5 MEMBER SILVERSTEIN: Ninety.

6 MS. PECK: Ninety minutes, okay.

7 MEMBER SILVERSTEIN: Most of the
8 time it's been used with either the
9 investigator, or questions from the Board.

10 MS. PECK: Okay, well then I would
11 like to call Abigail Nichols.

12 CHAIRPERSON MILLER: I'm sorry,
13 what did you just say?

14 (Off the record comments)

15 CHAIRPERSON MILLER: Okay, do you
16 swear to tell the truth, the whole truth, and
17 nothing but the truth?

18 MS. NICHOLS: I do.

19 CHAIRPERSON MILLER: All right.
20 Thank you.

21 MS. PECK: Abigail, could you
22 please give your name and address for the

1 record?

2 MS. NICHOLS: I'm Abigail Nichols.
3 I live at the Palladium Condominium at 1325
4 18th Street NW. I've lived there since 1987.

5 MS. PECK: And do you have any
6 other affiliations that you'd like to mention
7 tonight?

8 MS. NICHOLS: I am the ANC
9 Commissioner for the Single Member District in
10 which both the Palladium and the Dirty Martini
11 are located.

12 MS. PECK: Abigail, I'd like to
13 start by asking you to help clarify on the map
14 that was provided by the ABRA Inspector, where
15 on the map, the Palladium Building is located
16 for the benefit of the Board?

17 Could you please describe, perhaps
18 using the face of a clock, how they can find
19 the Palladium Building?

20 MS. NICHOLS: When you look at
21 that circle around, with the Dirty Martini at
22 the center, if you go to 12 o'clock. It looks

1 like the Palladium is right at the outer rim
2 of that. 12 o'clock would be where Ms. Peck
3 lives.

4 If you go around you see a little
5 white piece that is not actually on the
6 perimeter, but a little far north, I live, my
7 apartment faces 18th street. I face west, Ms.
8 Peck faces south.

9 So that distance would be about
10 400 feet, given his measurement. But I'm not,
11 I mean given that diameter as marked.

12 MS. PECK: Would you give us a
13 history of the nightclubs coming into the
14 area, from your recollection?

15 MS. NICHOLS: Well, I know there
16 weren't very many when I moved there in 1987.
17 I remember Cantina D'Italia was the fancy
18 restaurant on the block, and the Aster on M
19 Street was a fun place to go.

20 And because my job was in
21 Virginia, I probably didn't, I noticed things
22 in a vague way. I shopped at the fabric store

1 that previously inhabited the space at 1223,
2 that Mr., I guess Mr. Mpras bought when they
3 went out of business.

4 Over time, one by one, many
5 businesses had changed. So we were concerned
6 about, we kind of in a vague way, knew things
7 were happening and we were getting little bit
8 agitated.

9 But when vacancies showed up right
10 across from the Palladium in early 2008, we
11 thought uh-oh. Because we knew at that point
12 there was enough noise coming from south of
13 us, what if those empty buildings all became
14 the same thing, right across from us, which I
15 remember is 60 or 80 feet.

16 And so for the next six years,
17 we've been kept very busy because indeed, all
18 the, there was a sandwich shop, and there were
19 offices that became vacant and then became
20 alcohol licensees. And then there's another
21 one that's in the works.

22 And so from 2008 on, we were very

1 preoccupied with protecting the space closest
2 to us. We negotiated eight voluntary
3 agreements. And I must say that, that has
4 worked very well.

5 We get along very well with those
6 neighbors over there. We've gotten used to
7 their, there is more noise, but the patios
8 close at 10:30 and they do not use their back
9 doors. What you have is on Connecticut Avenue
10 --

11 MR. MPRAS: Madam Chair, I'd like
12 to object. This is question, answer, not
13 monologue, please.

14 CHAIRPERSON MILLER: Okay.

15 MS. NICHOLS: I'm sorry.

16 MS. PECK: Well, okay. I was
17 asking for a history --

18 CHAIRPERSON MILLER: I don't know
19 how long a history we need.

20 (Crosstalk)

21 MS. PECK: -- so, but one of the
22 things I'd like to comment on, is what are

1 those salient features of those voluntary
2 agreements with the buildings across the
3 street?

4 MS. NICHOLS: No amplified music
5 outside and early closing hours.

6 MS. PECK: So when, could you tell
7 us more about rather than the historical
8 picture, the sound and as it is being
9 presented today, in recent years?

10 MS. NICHOLS: Okay, the first time
11 we decided to try to figure out what was this
12 noise that was waking up, was in the fall of
13 2009. We did our first midnight walk. We go
14 to bed early. Nightlife really gets going
15 late.

16 So we started, we went out at
17 midnight with the police in September of 2009.
18 By 2011, things were bad enough that my family
19 was exploring sound proofing.

20 We found that to sound proof our
21 apartment, with a high tech sound proofing,
22 would be \$55,000 for the windows alone. Not

1 including, permits, protection of the street,
2 you know, people walking below us, scaffolding
3 to come down from the roof.

4 In May 2012, there was an incident
5 in which I temporarily moved a cot into the
6 closet. I did call ABRA that night and had no
7 results, as the result of ABRA Investigators
8 coming to my house.

9 MS. PECK: Could I just interrupt
10 you there for a moment, and say could you,
11 based on that experience, and working hard as
12 an ANC Commissioner, why is it that people
13 don't call ABRA when they have noise problems?

14 MS. NICHOLS: It feels very
15 hopeless. That night there was clear noise.
16 We thought, my husband and I talked to the
17 investigators together. I certainly thought
18 they were hearing what I was hearing.

19 We walked out together. Now if
20 the issue had been a difficulty of figuring
21 out exactly where the noise was coming from,
22 that was one thing.

1 But in the end, the report said
2 that because when we were talking, that you
3 didn't hear the noise, we weren't being
4 bothered. Well of course I was trying to go
5 to sleep. I wasn't trying to talk.

6 MS. PECK: Abigail, could I turn
7 your attention to the voluntary agreement that
8 is currently in effect for Dirty Martini?

9 MS. NICHOLS: Yes.

10 MS. PECK: Why don't you tell us
11 what the provisions are that you think are
12 relevant for this case today?

13 MS. NICHOLS: The one is that
14 lounge music, that the nature of the music on
15 the roof deck will be lounge music.

16 MS. PECK: Are any levels set in
17 that?

18 MS. NICHOLS: No. It's not
19 defined. Soft lounge music I think is the
20 wording. There's a discussion of --

21 CHAIRPERSON MILLER: Do you have a
22 copy of the agreement?

1 MS. PECK: I do have a copy of it.

2 CHAIRPERSON MILLER: Do you have
3 one copy?

4 MS. PECK: I have one copy.

5 MS. NICHOLS: I have a copy.

6 CHAIRPERSON MILLER: Do you have
7 an objection?

8 MR. MPRAS: Yes, ma'am. Well,
9 we'd also like a copy.

10 CHAIRPERSON MILLER: Yes, we
11 should look at the sound and agreement. I
12 don't think we have a staff meeting --

13 CHAIRPERSON MILLER: -- if you're
14 going to be referring to it.

15 MS. PECK: Okay, how should we
16 handle this? I've actually asked the question
17 I was going to ask, but I'm happy to turn this
18 over now as an exhibit.

19 CHAIRPERSON MILLER: Oh, that's
20 the only question you're going to ask on it?

21 MS. PECK: I would just like to
22 ask more questions about that particular

1 point, but I'm happy to hand this over.

2 CHAIRPERSON MILLER: Do you want
3 to read it into the record, what the provision
4 is?

5 MS. PECK: Okay, sure. That's a
6 good idea. Okay, so this is the --

7 MEMBER SILVERSTEIN: Please
8 describe exactly what it is you're reading.

9 MS. PECK: This is a provision
10 that is in an amendment to the voluntary
11 agreement, that was entered into by Dirty
12 Martini in an earlier iteration, the Asylum
13 Company I believe it is, and the ANC 2B.

14 CHAIRPERSON MILLER: Earlier
15 iteration, is it still in effect?

16 MS. PECK: My understanding is
17 that it is.

18 CHAIRPERSON MILLER: And you know
19 what the date is?

20 MS. PECK: Is it your
21 understanding that this is still in effect?

22 MR. MPRAS: I don't have it, so I

1 don't know.

2 MS. NICHOLS: I can describe the
3 history as I understand it.

4 CHAIRPERSON MILLER: No, I don't
5 think we want a whole history necessarily.
6 But is there a date?

7 MS. PECK: The date is June 2004,
8 and this is what is in the record, the public
9 record --

10 MEMBER SILVERSTEIN: Signed by?

11 MS. PECK: This was signed by
12 Diane Bowie, does that sound right?

13 MR. MPRAS: Darren Bowie.

14 MEMBER SILVERSTEIN: Darren Bowie

15 MS. PECK: And ANC 2B and Mr. --

16 MS. NICHOLS: And Monsignor
17 Jameson.

18 CHAIRPERSON MILLER: Okay, all
19 right. What does the provision say?

20 MS. PECK: Okay, the relevant
21 section says, "applicant agrees that the music
22 featured in the outdoor area will be (by

1 nature) soft, "lounge" music; should the music
2 level exceed that which is deemed acceptable
3 by the St. Matthew's Cathedral, the music will
4 be terminated. There will be no live
5 entertainment, DJ, karaoke, or other loud
6 performances in the outside area." That's the
7 provision that we're referring to.

8 CHAIRPERSON MILLER: Okay. Did
9 you have one, do you have many questions on
10 that?

11 MS. PECK: That is my only
12 question about other than to say, Abigail,
13 have you had an occasion to go inside of Dirty
14 Martini, upstairs in the roof deck area when
15 it was in operation?

16 MS. NICHOLS: Yes.

17 MS. PECK: Would you describe the
18 music that you heard as soft lounge music?

19 MS. NICHOLS: No. But in terms of
20 the way we've been, clarified this tonight.
21 The Dirty Bar portion, because I don't know
22 if, I guess it's clear to everybody that this

1 is all on one level.

2 That facing Connecticut Avenue is
3 a large room, which is a bar. Then there are
4 doors, and then at the back, I guess over an
5 extension of a lower floor. So it's not a
6 roof deck that's a pop up, above everything
7 else. So there is a continuous flow of people
8 from Dirty Bar up there.

9 CHAIRPERSON MILLER: Go ahead, I'm
10 sorry --

11 MS. NICHOLS: Now --

12 MS. PECK: Do you have anything
13 further to say about that?

14 MS. NICHOLS: One of the questions
15 has been, of course, we started this process
16 because we were inundated by noise. We
17 started going around and saying where is the
18 noise coming from?

19 And we had the experience with
20 Dirty Martini's front door being very clear
21 recently. It is harder in the alley, I mean
22 there's just no question. It's not the big

1 contributor to the alley noise, but doesn't
2 mean it's not contributing.

3 If I would walk, there's a north
4 wall, and there's, I guess it's, the space is
5 actually part of the World Bank's space but
6 you're going back along the wall, so you're
7 away from the noise source from Rose Bar and
8 Midtown.

9 And you can separately hear the
10 public bar, I mean not the public bar, the
11 Dirty Martini music under there. So that's my
12 only individual contribution. I was there for
13 various sound tests and in the alley a lot.
14 I've been out on lot of the measurement trips.

15 MS. PECK: I have one other
16 question to ask about the alley, and that is
17 being back there, have you ever had any other
18 experience with music that struck you as
19 similar in terms of loudness? Just to give an
20 idea of how loud this is.

21 MS. NICHOLS: No.

22 MS. PECK: In other words have you

1 ever heard music that loud before, what you
2 experienced in the alley when you're back
3 there?

4 MS. NICHOLS: Oh, in the alley in
5 general. Yes, over like by Rose Bar it's been
6 really loud. I did go one, silly as this is.
7 I once went to a Dixie Chicks concert. And I
8 had to leave.

9 CHAIRPERSON MILLER: And you what?

10 MS. NICHOLS: I paid a lot of
11 money, I just could not stay.

12 MS. PECK: Okay. I have no
13 further questions. Thank you.

14 CHAIRPERSON MILLER: Are you
15 finished?

16 MS. PECK: Yes.

17 CHAIRPERSON MILLER: Cross?

18 MR. MPRAS: Yes, Ms. Nichols, did
19 you just say you went to a Dixie Chicks
20 concert and it was too loud, and you couldn't
21 stay.

22 MS. NICHOLS: Yes.

1 MR. MPRAS: So I take it, you just
2 don't like loud noises, they bother you?

3 MS. NICHOLS: I would say that the
4 decibel level, because I've been doing these
5 measurements, the decibel level in there was
6 probably about 100, there were small children
7 --

8 MR. MPRAS: Objection, that's not
9 an answer my question, she's going off on a
10 tirade.

11 MS. NICHOLS: We have to define
12 loud music is all I'm trying to do.

13 MR. MPRAS: I didn't ask for that
14 information.

15 CHAIRPERSON MILLER: Okay, you
16 don't have to. Go ahead.

17 MS. NICHOLS: I think I do like
18 loud music.

19 CHAIRPERSON MILLER: I'm sorry,
20 what?

21 MR. MPRAS: You stated in 2008,
22 there were vacancies in apartments, and

1 buildings in the area?

2 MS. NICHOLS: Yes.

3 MR. MPRAS: Okay, you're aware
4 there was a recession at that time, and a lot
5 of people were being foreclosed upon, and
6 businesses were just going out of business due
7 to economy?

8 MS. NICHOLS: My understanding,
9 it's that the Hagner Reality Company had a
10 death and they decided to sell their space.
11 You may know more about that than I do.

12 MR. MPRAS: Okay. Now you said
13 you've had an ABRA Investigator come to your
14 home is that correct? And when he came to
15 your home --

16 MS. NICHOLS: There were two of
17 them.

18 MR. MPRAS: There were two of
19 them. Did they find that any establishment
20 was in violation from that visit?

21 MS. NICHOLS: No.

22 MR. MPRAS: And so recently you

1 taken activity, and you've been involved in
2 activities to, just because you're concerned
3 about your area and your neighborhood?

4 MS. NICHOLS: Yes.

5 MR. MPRAS: Was one of the
6 activities you were involved in, the Alcohol
7 Sanity Coalition DC?

8 MS. NICHOLS: Yes, yes.

9 MR. MPRAS: Okay. And did that
10 group oppose liquor licensing reforms that
11 were proposed?

12 MS. NICHOLS: This was the Omnibus
13 Alcohol Regulation Bill of 2012, which I was
14 part of a larger lobbying group. The Alcohol
15 Sanity Coalition really was a website to post
16 things. Wasn't very --

17 MR. MPRAS: Ma'am, my question to
18 you directly is, did your group oppose the
19 Alcohol Omnibus Act of 2012?

20 MS. NICHOLS: Specific provisions,
21 yes. I attended all the sessions of the task
22 force.

1 MR. MPRAS: And ma'am, as part of
2 that argument, did you publicly state that
3 establishments have a monetary incentive to
4 play music with a rhythmic beat at elevated
5 levels?

6 MS. NICHOLS: I might have,
7 because there is such research.

8 MR. MPRAS: And did you also claim
9 that alcohol tastes sweeter in the presence of
10 loud music?

11 MS. NICHOLS: That I don't, can't
12 connect with, but I might have.

13 MR. MPRAS: And did you also state
14 that young males consume beer 20 percent
15 faster when listening to loud music?

16 MS. NICHOLS: Yes, there is
17 research that shows that.

18 MR. MPRAS: Do you have this
19 research with you?

20 MS. NICHOLS: I do not, but I'll
21 be glad to furnish to the Board and to you.

22 MR. MPRAS: Now ma'am, the noise

1 that you said you heard in your apartment.

2 MS. NICHOLS: Yes.

3 MR. MPRAS: Were you able to
4 determine from exactly what source it came
5 from?

6 MS. NICHOLS: No.

7 MR. MPRAS: Thank you very much.
8 No further questions.

9 CHAIRPERSON MILLER: Board
10 questions? I just have a couple. One is
11 today ANC 2B passed a resolution against this
12 application?

13 MS. NICHOLS: Yes, they did.

14 CHAIRPERSON MILLER: They did?

15 MS. NICHOLS: Yes.

16 CHAIRPERSON MILLER: Okay. I'm
17 not sure that I've seen that. Is that in the
18 record?

19 MS. NICHOLS: It should be in the
20 record. I have a copy of the letter with me.

21 CHAIRPERSON MILLER: Okay, so you
22 are here in your official capacity

1 representing ANC 2B?

2 MS. NICHOLS: Yes.

3 CHAIRPERSON MILLER: Okay. And I
4 would like to, you have it with you?

5 MS. NICHOLS: Yes.

6 CHAIRPERSON MILLER: Okay, and my
7 other question is, well you're familiar with
8 the new task force with ABRA and DCRA? Right,
9 I know that, and MPD. And they go around
10 measuring the decibels, okay.

11 Did you ask ABRA if the task force
12 would measure the decibels for this club, this
13 establishment?

14 MS. NICHOLS: No, because during,
15 when we learned about it, there was a public
16 meeting. And I believe either there or in
17 other conversations, Mr. Moosally said that
18 the task force was aware of problem areas, and
19 so we didn't ask for anything special.

20 CHAIRPERSON MILLER: Okay. And I
21 think we just maybe, Mr. Mpras, it's been a
22 long night, but I think that we heard in this

1 proceeding that the task force may actually
2 have gone out and measured the decibels. Are
3 you aware that, that happened?

4 MS. NICHOLS: Not particularly. I
5 mean I heard some rumor that they've been out.
6 I mean that's what it was. I couldn't tell
7 you who told me. I heard like, in fact, Mr.
8 Peru said more definitively tonight than I'd
9 heard, that a citation had been made.

10 MR. MPRAS: Madam Chair, it was
11 your investigator that stated that. That they
12 went to that --

13 CHAIRPERSON MILLER: Oh, I'm
14 sorry. Thank you, it was our investigator,
15 it's occurred to me for the record that they
16 had actually gone out, but I don't know that
17 he said that there was a citation. I think he
18 didn't know.

19 MEMBER SHORT: He did not know
20 about it.

21 CHAIRPERSON MILLER: Yes, yes.
22 Okay. That's all my questions, but I actually

1 would like to see what the resolution says, if
2 you have it with you and it's not a problem.

3 MS. NICHOLS: Yes.

4 CHAIRPERSON MILLER: Have you, Mr.
5 Mpras have you seen that?

6 MR. MPRAS: I have a copy.

7 CHAIRPERSON MILLER: Of the
8 resolution?

9 MR. MPRAS: Right here. It was
10 with the protest.

11 CHAIRPERSON MILLER: Oh, it came
12 with the protest? Okay. I don't have the
13 protest in front of me.

14 MR. MPRAS: Anyone can see it, if
15 it's the one dated December 25th, 2013, then
16 yes.

17 MS. NICHOLS: Yes.

18 CHAIRPERSON MILLER: Okay, thank
19 you.

20 (Off the record comments)

21 CHAIRPERSON MILLER: Sure, go
22 ahead. I think, yes. I'll give it back to

1 you then, it's in our record.

2 MR. MPRAS: It was a standard,
3 peace, order, and quiet protest.

4 CHAIRPERSON MILLER: Oh, okay.
5 Thank you very much. Any other Board
6 questions?

7 (Pause)

8 CHAIRPERSON MILLER: Okay.

9 MS. NICHOLS: Thank you.

10 CHAIRPERSON MILLER: No, any
11 questions, Board questions? Thank you very
12 much.

13 MS. PECK: Okay, and now I would
14 like to call Carl Nelson.

15 CHAIRPERSON MILLER: Do you swear
16 to tell the truth, the whole truth, and
17 nothing but the truth?

18 MR. NELSON: I do.

19 CHAIRPERSON MILLER: Okay, thank
20 you.

21 MS. PECK: Mr. Nelson could you
22 give your name and address for the record?

1 MR. NELSON: My name is Carl
2 Nelson, I live at 1325 18th Street NW at the
3 Palladium Condominiums.

4 MS. PECK: And what is your
5 professional background?

6 MR. NELSON: I have two degrees in
7 Chemical Engineering and 25 years as a
8 physical scientist for the United States
9 Department of Defense.

10 MS. PECK: Have you had, ever
11 worked on any project that involved measuring
12 sound waves or pressure waves?

13 MR. NELSON: Yes. Well I spent my
14 first two years of adult life in the
15 artillery, I have plenty of sound there. And
16 one of my assignments at the Ballistics
17 Research Laboratory was to map sound pressure.
18 Make a mathematical model of sound pressure
19 coming from a large caliber gun.

20 MS. PECK: So have you been
21 working on trying to map the sound levels in
22 the neighborhood, in club central?

1 MR. NELSON: Yes. The problem was
2 getting so large, that we tried to get a map,
3 where was the noise coming from? And we went,
4 you and I, and she, went to DCRA who offered
5 to lend us one of their meters.

6 That turns out the meter was
7 purchased by them, in late 2013. And it was
8 still in its initial calibration which, re-
9 calibration was not due until this fall they
10 say.

11 MS. PECK: And what is the
12 accuracy level of those meters?

13 MR. NELSON: It's a Reed SD-4023,
14 the meter's manufactured published accuracy is
15 1.4 to 3.6 percent. Within the range, of the
16 expected frequencies for night clubs.

17 MS. PECK: So tell us generally
18 first, about how this mapping process worked
19 and where you went, and how you did it?

20 MR. NELSON: Are you going to
21 accept the numbers? I'm not an acoustical
22 engineer.

1 CHAIRPERSON MILLER: Well we said,
2 we're not going to give much weight to the
3 numbers if they haven't been done in
4 accordance with the statute. Though we've
5 said you can testify to --

6 MS. PECK: Go ahead and testify.

7 MR. NELSON: Over the months of
8 late November when we got the meter until the
9 end of March. We measured sound levels all
10 over the area. We made about nine or ten
11 complete round trips and mapped everything and
12 we did occasional visits to spots.

13 In particular, the trouble spots
14 were, I mean the loud spots were, which would
15 be a loud source was the alley you've all been
16 discussing here on the east side of Rose Bar,
17 Midtown and Dirty Martini.

18 And the alley on the west of the
19 1200 block of 18th Street which covers Ozio,
20 18th Street Lounge, Public Bar. Now there's
21 another one being built there --

22 CHAIRPERSON MILLER: Okay, let me

1 just interrupt here, okay. Because you know,
2 one of our Board Members is asking me a good
3 question and I don't want to mislead you.

4 I don't know the purpose of your
5 testimony, but I just want to be clear that
6 what we're saying is, if you haven't tested in
7 accordance with these regulations, they're not
8 going to be given much weight.

9 MR. NELSON: I'm sorry, I can't
10 hear your question.

11 CHAIRPERSON MILLER: Okay, I want
12 to be clear. Because we don't want to waste
13 time and a Board Member was asking me. If you
14 are not, if you did not take the measurements
15 in accordance with the regulations that Mr.
16 Mpras has brought to our attention for the
17 second time.

18 I had said that, you know, doesn't
19 mean that we can't hear your testimony,
20 because I don't know the purpose of your
21 testimony. But if the purpose of your
22 testimony is for us to accept the

1 measurements, I would say that we're not going
2 to give the measurements much weight.

3 We're not going to really accept
4 them for the figures you give us, because they
5 haven't been given to us, you haven't taken
6 the measurements in accordance with the
7 statute.

8 If there's some other purpose
9 where you just want to say well we just found
10 that it was loud or something based on your
11 interpretation of your measurements, that's
12 something else. Okay.

13 MR. NELSON: Specific to --

14 CHAIRPERSON MILLER: I don't want
15 you to spend a lot of time if it's about our
16 accepting the measurements.

17 MS. PECK: If I could just let you
18 understand the purpose of this line of
19 questioning.

20 CHAIRPERSON MILLER: Yes, what's
21 the purpose?

22 MS. PECK: In this DC Noise

1 Control Act there are provisions for measuring
2 sound by meter, and of course we're here to
3 talk about appropriateness anyway, we're not
4 here to prove beyond a reasonable doubt, or
5 beyond you know, the correct legal standard
6 exactly how loud something was.

7 But there's also something there
8 called a noise disturbance which is defined,
9 it's in the code, it's in the DCRA handbook
10 and it expressly states that does not require
11 a noise meter to determine whether a noise
12 disturbance has been created.

13 And I will provide information
14 about the legal standard when I make my
15 closing arguments.

16 CHAIRPERSON MILLER: No, wait a
17 minute though. I think no, since Mr. Mpras
18 has provided the statute that he's relying on,
19 or regulations. In order for me to even
20 evaluate the appropriateness of questions and
21 answers and for Mr. Mpras to evaluate it, we
22 need to know the law.

1 MS. PECK: I have the statute
2 where it cites and I can get you the, my
3 complete, it probably is here is on file
4 somewhere, I gave it to the, it's here in the
5 building. So I can get it for you, or we can
6 pull it off line and provide it for you --

7 CHAIRPERSON MILLER: Okay, do you
8 have provisions right there we can copy and?

9 MS. PECK: I have the statutory
10 cites.

11 CHAIRPERSON MILLER: That's all,
12 you don't have the provisions?

13 MS. PECK: I'm sorry, I'm not used
14 to knowing that I'm going to have to bring the
15 statute and I apologize for that.

16 CHAIRPERSON MILLER: Okay.
17 Where's the cite?

18 MS. PECK: Okay, so.

19 CHAIRPERSON MILLER: Oh. Your,
20 her White Paper? Do we have it? Are these
21 all in your White Paper?

22 MS. PECK: Yes.

1 CHAIRPERSON MILLER: Do you have
2 your White Paper?

3 MR. MPRAS: It never crossed my
4 mind.

5 CHAIRPERSON MILLER: Okay, our
6 counsel is going to get that.

7 MEMBER SILVERSTEIN: Did you say
8 you're going to introduce this in your closing
9 argument?

10 MS. PECK: Yes.

11 MR. MPRAS: Madam Chair.

12 MS. PECK: All I'm trying to do is
13 establish facts that prove, that establish the
14 factual basis for arguing that there is a
15 noise disturbance. And I'll tell you what a
16 noise disturbance is, and I will try to link
17 the facts to that law. And then it, we'll
18 have the statutory cites in front of you, plus
19 the --

20 MEMBER SILVERSTEIN: You can't
21 introduce new evidence in closing argument.

22 CHAIRPERSON MILLER: No, it's not

1 evidence.

2 MEMBER SILVERSTEIN: I would urge
3 you to do so prior to that.

4 MR. MPRAS: And the White Paper
5 cannot be introduced at all.

6 CHAIRPERSON MILLER: What?

7 MR. MPRAS: The White Paper cannot
8 be introduced because it wasn't on the PIF.

9 CHAIRPERSON MILLER: No.

10 MEMBER SILVERSTEIN: Yes, she
11 looking for a cite and she can find the cite
12 in her White Paper.

13 MS. PECK: Then she can print out
14 the law.

15 MEMBER SILVERSTEIN: Only the cite
16 and quote. It's, you know, certainly
17 counting.

18 CHAIRPERSON MILLER: So --

19 MR. MPRAS: I'm sorry, I
20 misunderstood.

21 CHAIRPERSON MILLER: Okay --

22 MEMBER SHORT: I just have one

1 thing I'd like to add if I could. In this,
2 basically I understand what you're really
3 attempting to do, and I think we've heard him
4 testify here before.

5 MS. PECK: Right, but it's not on
6 this record --

7 MEMBER SHORT: And he's testified
8 before he's not an expert. We had an expert
9 to testify today. So if you want us to give
10 him the same weight as an expert --

11 MS. PECK: No.

12 MEMBER SHORT: -- I don't think
13 this, I don't think we can do that. And I
14 really think basically that we understand that
15 you're hearing noises in your apartment. Both
16 of you and that basically there's a real
17 problem.

18 And I don't think we can solve the
19 problem by you sitting here tonight telling us
20 that you had a meter from DCRA, because that's
21 not like an expert using it.

22 And I really think that basically

1 it can't be solved tonight. It won't be
2 solved tonight, but I can tell you this, I
3 personally as a Board Member am hearing you.
4 And it is something that the city should be
5 able to do about this.

6 But us sitting here now for
7 another hour going over somebody, hearing
8 somebody say that, that they're not an expert
9 and they had a meter in their hand. It's not
10 going to help, I don't think your cause as
11 much as you would like for it to.

12 CHAIRPERSON MILLER: Let me --

13 MS. PECK: I believe that we've
14 actually. I take your advice to heart. I
15 believe that we have testimony tonight that
16 establishes the very high levels of sound in
17 this particular alley, not in the other one,
18 but this is the one that's relevant for this
19 case.

20 And so if you don't mind, just let
21 me just make sure I don't have any other
22 further questions I want to have, and then we

1 can wrap up this witness, is that --

2 MEMBER SHORT: We respect that.

3 CHAIRPERSON MILLER: I just want
4 to ask you one question. The noise, the
5 disturbance that you're talking about, so
6 forget the whatever that statute is that, are
7 you tying that to the appropriateness
8 standard?

9 MS. PECK: Absolutely.

10 CHAIRPERSON MILLER: Okay, so
11 you're going to argue disturbance based on
12 appropriateness.

13 MS. PECK: Absolutely.

14 CHAIRPERSON MILLER: All right.
15 So then, why don't you continue on that basis
16 then?

17 MS. PECK: Well, okay as I said --

18 CHAIRPERSON MILLER: Done?

19 MS. PECK: -- let me just check --

20 CHAIRPERSON MILLER: Okay.

21 MS. PECK: -- and I'm a little,
22 and make sure I don't miss anything I wanted

1 to put into the record.

2 CHAIRPERSON MILLER: Okay.

3 MR. MPRAS: Now could you tell me
4 what we're looking at, or what the reference
5 is for this?

6 CHAIRPERSON MILLER: What's the
7 question?

8 MR. MPRAS: What standard are you
9 referring to?

10 CHAIRPERSON MILLER: Oh, me?

11 CHAIRPERSON MILLER: Oh,
12 appropriateness, under protest.

13 MR. MPRAS: Okay, thank you.

14 CHAIRPERSON MILLER: That's all.

15 MR. MPRAS: I thought it was
16 something in the DCRA code you were talking,
17 referring to, sorry.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER SHORT: And while she's
20 doing that, one last, last thing I'd like to
21 add, we thank you for your service to this
22 country. We thank you for your service to the

1 U.S. military. And thank you for your service
2 to this community going out with it, trying to
3 help out the situation. We do thank you.

4 MR. NELSON: Okay.

5 MEMBER SHORT: Appreciate you.

6 MS. PECK: I don't believe I have
7 anything else that I need to establish. Do
8 you feel there's something else that I
9 overlooked? I think, no further questions.

10 CHAIRPERSON MILLER: Mr. Mpras, do
11 you have any cross?

12 MR. MPRAS: No I do not.

13 CHAIRPERSON MILLER: Okay. Board
14 any questions?

15 MALE PARTICIPANT: I don't.

16 CHAIRPERSON MILLER: Okay, thank
17 you.

18 MEMBER RODRIGUEZ: Thank you, sir.

19 CHAIRPERSON MILLER: Do you have
20 any other witnesses, Ms. Peck?

21 MS. PECK: I do not.

22 CHAIRPERSON MILLER: And do you

1 have any other --

2 (Off the record comments)

3 CHAIRPERSON MILLER: Okay, are
4 there any other documents that you want to put
5 into the record? Okay, do you rest your case?

6 MS. PECK: I rest my case.

7 CHAIRPERSON MILLER: This isn't
8 really an evidence question, but with respect
9 to the disturbance question that we were
10 talking about, that legal question, is that
11 something you're going to be arguing in
12 closing, or?

13 I know that my, okay, so in which
14 case our general counsel is looking for cites
15 for that.

16 MS. PECK: I can tell you the
17 citation right now.

18 CHAIRPERSON MILLER: You have it
19 right there? Okay.

20 MS. PECK: But I'd actually, do
21 you want to take a break, and take a look at
22 the, I'd be happy to, you know, pull it up on

1 an iPad, or something and --

2 CHAIRPERSON MILLER: Is it one law
3 you're talking about.

4 MS. PECK: I'm talking, it's part
5 of Title 20, Chapter 28. Chapter, it's 2800.2
6 which references that the noise disturbance is
7 something that can be used to measure a loud
8 sound emanating from clubs, and it is defined
9 further in the definition section of the
10 statute.

11 I unfortunately didn't bring my
12 handy, dandy White Paper with me. I can't
13 believe it. I left the house without it. But
14 it's back there and I'm using this, this whole
15 definitions are quoted in the White Paper and
16 so for --

17 CHAIRPERSON MILLER: Okay, so we,
18 is this 2800.2 of Chapter 28, it's Chapter 20
19 you said?

20 MS. PECK: It's Title 20, Chapter
21 28. I believe that's how you say it.

22 CHAIRPERSON MILLER: This might be

1 it, okay. You have, that's the Noise Act?

2 MS. PECK: Yes, yes. Part of the,
3 the Noise Act is Title 20, Chapter 27 to 28.

4 CHAIRPERSON MILLER: Okay, so.
5 All right, "It shall be unlawful for any
6 person to make, continue, or cause to be
7 continued any noise disturbance by the
8 operation, use, or playing of any musical
9 instrument or device, loud speaker, sound
10 amplifier, or other similar device, or
11 unamplified voice, for the production or
12 reproduction of sound on private property or
13 public space." That's it?

14 Okay, Ms. Jenkins, you're familiar
15 with that?

16 (Off the record comments)

17 CHAIRPERSON MILLER: Okay. So we
18 don't have a problem. Okay. All right, we
19 didn't know you were referring to this. Okay,
20 so you rest your case. Do you have any
21 rebuttal at this point?

22 MR. MPRAS: No.

1 CHAIRPERSON MILLER: Okay. Then
2 it's time for closing.

3 CHAIRPERSON MILLER: Applicant.
4 (Off the record comments)

5 MR. MPRAS: Members of the Board,
6 we spent the last few hours listening to the
7 protestants describe various sources of noise
8 emanating from the 1200 block of Connecticut
9 Avenue.

10 Now, nowhere in this testimony has
11 there been any credible evidence that Dirty
12 Martini has exceeded the legally prescribed
13 decibel levels pursuant to the District of
14 Columbia Noise Act. Also pursuant to that
15 Act, 2701.1, the Dirty Martini is only
16 responsible for noise source under its own
17 control.

18 Now through testimony of our
19 expert. And through the testimony of the
20 protestants, there are a multitude of noise
21 sources in that area, which my client has
22 absolutely no control over. That are

1 contributing to the problem, the noise problem
2 the protestants are having.

3 My client operates his business in
4 accordance with the laws of the District of
5 Columbia. Has never received any violations
6 from ABRA or any other agency regarding noise,
7 or from ABRA at all. And is worthy of having
8 his license renewed as is.

9 Nor has it, this once again is a
10 model licensee who should not have to go
11 through proceedings such as this for something
12 he is not responsible for. Thank you for your
13 time, and thank you for hearing this evening.

14 (Off the record comments)

15 CHAIRPERSON MILLER: I'm sorry.
16 Thank you. Okay.

17 MS. PECK: I think what we've
18 established here tonight is that frankly it is
19 impossible to enforce this Noise Control Act.

20 DCRA isn't there, they can't take
21 measurements because it's too loud to take
22 measurements. ABRA can't find violations

1 because it's too loud to figure out who's
2 violating.

3 You know, citizens can't do
4 anything about it. Officials, it just, this
5 is where we are. That is where we are.

6 There are two parts of the noise
7 control act that we can take a look at.
8 There's actually three, one is the one that
9 gets cited a lot, that's your regulations for
10 ABRA, which is 25-725, which has five
11 paragraphs in it.

12 And the first is the one that says
13 you cannot be able to hear the sound coming
14 from a club, inside of a residents home. And
15 that's what you were referring to, and that's
16 what ABRA does when it sends out its
17 inspectors.

18 The problem there is of course as
19 we've just talked about, when you go into
20 someone's home and you're talking about a
21 concentrated number of clubs, of course you
22 can't tell whether you're hearing Dirty

1 Martini, or Midtown, or Rose Bar. You're
2 probably hearing all of them.

3 That's the problem, that system
4 doesn't work, that's broken. But also 25-725
5 at paragraph, used to be (d), now I believe
6 it's (c), says, and the licensee must comply
7 with the Noise Control Act.

8 And what does that require? That
9 requires that the licensee not emanate any
10 sound in excess of 60 decibels. That's a hard
11 thing to do.

12 It means you're not going to be
13 able to have sound on your roof deck. It
14 means you're going to have to keep the door to
15 your dance club, shut, even if your customers
16 want to move in and out, and it's a nice
17 night.

18 This is the problem that we're
19 having, is that fortunately you could say, we
20 have an express law. But unfortunately, it
21 seems in practice to be unenforceable.

22 But there is another provision --

1 and I don't concede by the way that it's
2 unenforceable. And that's why we're here
3 today. I could have been somewhere else as
4 you all know. Something that meant very
5 dearly.

6 Why would I be here? This is not
7 fun, all right. I've taken days off, I've
8 spent nights in the middle of alleys. All
9 right, this is not what I do for fun. I have
10 a much more fun life believe me, okay.

11 I'm here because I'm trying to
12 serve my community and I'm trying to bring
13 down the sound levels to reasonable levels so
14 that those people who move into those new
15 condos are going to be able to enjoy their new
16 homes.

17 And I will be able to enjoy my
18 home, and Abigail, and Carl can enjoy theirs.
19 That's all we're asking for. So we have that
20 almost impossible to enforce 60 decibel limit.
21 It really can be done by this operator by
22 keeping those doors shut.

1 Frankly, if a sound engineer is,
2 who is surprised to hear that the door was
3 opened, said that if the noise was kept at the
4 low levels that he had set, it shouldn't be a
5 problem. It shouldn't be heard.

6 And that's right. I agree with
7 that. That's what we'd like him to do. That
8 is what our ask is. Unfortunately we haven't
9 gotten our ask.

10 But there is also another
11 provision of the law that is not been
12 explored, has not been used, but it's sitting
13 there. It's low hanging fruit.

14 It might be just the provision of
15 the law that could be useful in a case like
16 this where it's really difficult to bring out
17 squads of noise meters especially when there's
18 only two, and they only come out during the
19 day.

20 It is the noise disturbance
21 provision of 2800.2 that was just read into
22 the record. And it expressly states in the

1 definition of the law, of the definition which
2 is in the law, that a noise meter is not
3 required.

4 The mayor shall not need to use a
5 noise meter if there is a noise disturbance.
6 And a noise disturbance is defined as, any
7 sound that is loud and raucous, and
8 unreasonably disturbs the peace and quiet of
9 a reasonable person of ordinary sensibilities
10 in the vicinity thereof.

11 And it doesn't say it's only
12 limited to one person. I would submit that
13 the writers of a provision like that, imagine
14 it might several people together could be
15 capable of doing such a thing. And that is
16 exactly what has happened in the alley as
17 you've heard.

18 Decibel levels that the sound
19 engineer estimated, even if everyone was
20 trying to be good, might be as high as 100
21 decibels. It's loud, and it comes out of that
22 alley like a tidal wave. And it floods into

1 the neighbor. And it is not acceptable.

2 It does unreasonably disturb the
3 peace and quiet of reasonable people, which I
4 believe I am, of ordinary sensibilities. And
5 that includes the families, the children, the
6 retired people, the working people who live in
7 the Palladium.

8 That's a very nice building of
9 professional people and retired people. They
10 own those properties and they live there. And
11 they want quiet.

12 So this law says that it's not
13 acceptable. It can be stopped. And that is
14 what I'm asking you to determine. Is that a
15 noise disturbance is existing here. I also
16 believe we've submitted evidence that suggests
17 that the noise operating is also in violation
18 of the statutory limit of 60.

19 In conclusion, Dirty Martini is
20 violating both provisions of the Noise Control
21 Act, and also its existing voluntary agreement
22 which limits it to soft lounge music on its

1 roof deck.

2 We've been unable to bring the
3 noise down. We've tried, therefore we ask
4 this Board to determine that Dirty Martini's
5 operations as they currently are, are
6 inappropriate.

7 And deny the reissuance of Dirty
8 Martini's license until you can confirm that
9 it is fully complying with the DC Noise
10 Control Act, which means that Dirty Martini
11 needs to cease and desist using amplified
12 sound on its exterior space.

13 And it needs to put into place
14 procedures and protocols that keep those
15 exterior doors and that door between the dance
16 floor and the sound, the roof deck closed.

17 And finally we'd like them to
18 submit a settlement agreement that documents
19 the steps they will take to continuously
20 operate that way. So that it isn't relying on
21 citizens to complain, to know that there's a
22 problem.

1 They need to be in charge of this,
2 and own this, and make this happen. And that
3 is what we're asking. That is why I'm here
4 tonight. That is why we are all here tonight.

5 CHAIRPERSON MILLER: Thank you.
6 Is there a little rebuttal?

7 MR. MPRAS: Yes, ma'am.

8 CHAIRPERSON MILLER: Okay.

9 MR. MPRAS: Members, as I stated
10 in my opening remarks, they have provided
11 absolutely no factual or substantive evidence
12 of any credibilities that Dirty Martini's in
13 violation of any District of Columbia law.

14 The entire closing argument was
15 nothing more than an emotional plea for the
16 Board to take action in an area where it
17 should not intervene. Excuse me.

18 The District of Columbia Noise Act
19 is specifically under the purview of the
20 Department of Consumer and Regulatory Affairs
21 per Section A. And is to be administered by
22 DCRA only, which includes the enforcement of

1 it.

2 Now the Noise Control Act is, if
3 the protestants feel the Noise Control Act is
4 impossible to enforce, or not enforced to
5 their satisfaction, this is not an ABRA issue.
6 This is something that must be taken up before
7 the city council.

8 There has been no proof of any
9 noise emanation from Dirty Martini that
10 violates the law. And we once again request
11 that the Board renew this license as is for
12 this model operator, who has maintained his
13 business without any violations and in full
14 compliance with the law. Thank you.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. Okay the record is now --

17 MS. PECK: Can I just make one
18 comment about, one, do I, am I entitled to one
19 --

20 CHAIRPERSON MILLER: No.

21 MS. PECK: -- legal clarification
22 to something else, okay, very good. I'll put

1 it in --

2 CHAIRPERSON MILLER: All right,
3 but, the applicant gets the last word, and
4 that's rebuttal. So I'm going to close the
5 record. And ask if the parties wish to file
6 for closed findings of facts and conclusions
7 of law?

8 MR. MPRAS: We do.

9 CHAIRPERSON MILLER: You do.
10 Okay, so and I guess you understand you'll get
11 the transcript and then you'll have 30 days?

12 MS. PECK: Okay.

13 CHAIRPERSON MILLER: So, just
14 going to read the instructions and have, and
15 the Board will take a vote on deliberating
16 this case in closed session.

17 (Off the record comments)

18 CHAIRPERSON MILLER: As
19 Chairperson of the Alcohol and Beverage
20 Control Board for the District of Columbia and
21 according to Section 405 of the Open Meetings
22 Amendment Act of 2010, I move that the ABC

1 Board hold a closed meeting for the purpose of
2 seeking legal advice from our counsel on Case
3 Number 13-PRO-00172, Dirty Martini Bar/Dirty
4 Bar, per Section 405(b)(4) of the Open
5 Meetings Amendment Act of 2010, and
6 deliberating upon this case for the reasons
7 cited in Section 405 (b)(13) of the Open
8 Meetings Act of 2010. Is there a second?

9 MEMBER SHORT: Second. All of us.

10 CHAIRPERSON MILLER: Mr. Short has
11 seconded the motion. I'll now take a roll
12 call vote on the motion now that it's been
13 seconded. Mr. Brooks?

14 MEMBER BROOKS: I agree.

15 CHAIRPERSON MILLER: Mr.
16 Rodriguez?

17 MEMBER RODRIGUEZ: I agree.

18 CHAIRPERSON MILLER: Mr.
19 Silverstein?

20 MEMBER SILVERSTEIN: I agree.

21 CHAIRPERSON MILLER: Mr. Short?

22 MEMBER SHORT: I agree.

1 CHAIRPERSON MILLER: Okay, it
2 appears the motion has passed by 5-0-0 vote.
3 And I hereby give notice that the ABC Board
4 will deliberate on this case in closed session
5 pursuant to the Open Meetings Amendment Act of
6 2010.

7 And we will issue a written order
8 within 90 days from the date that you all
9 filed your proposed findings of facts and the
10 conclusions of law. Of the last one of you
11 two, you'll have 30 days from when you get the
12 transcript.

13 If you decide not to, please let
14 the office know, and the other side. So we
15 would get your order going sooner. Okay?
16 Thank you. Have a good night.

17 MALE PARTICIPANT: Thank you.

18 MALE PARTICIPANT: We're off the
19 record.

20 (Whereupon, the hearing in the
21 above-entitled matter was concluded at 8:00
22 p.m.)

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