

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

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IN THE MATTER OF: :
 :
Lusk's Corporation, :
t/a Eddie's Carryout :
1251 Bladensburg Road, NE :
Retailer B :
License No. 75795 : Show Cause
Case No. 12-CMP-00579 : Hearing
ANC 5D :
Failed to Post ABC Window :
Lettering in a Conspicuous :
Place; Failed to Post :
Pregnancy sign; Failed to Post :
Current Legal Drinking Age :
Notice :
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APRIL 17, 2013

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

PRESENT

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- MIKE SILVERSTEIN, Member
- ALSO PRESENT
- CHRISTINE GEPHARDT, OAG

EARL JONES, ABRA

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement for the Government.7
Opening Statement for the Licensee. 10
Closing Statement for the Government. 41

Closing Statement for the Licensee. 42

WITNESSES

Earl Jones. 11
Yiu Yong Lan. 23

EXHIBITS

Licensee's

1 Photo of licenses 24
2 Photo of area where licenses are posted . . 24

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

2:46 a.m.

CHAIRPERSON MILLER: All right.

Good afternoon. I'm calling Case No. 12-CMP-00579, Eddie's Carryout, located at 1251 Bladensburg Road, N.E., License No. 75795 in ANC 5D.

And do we have an interpreter here in this case?

INTERPRETER: Yes, I --

CHAIRPERSON MILLER: That's you? Okay. What's your name, sir?

INTERPRETER: My name is Gary Cheng.

CHAIRPERSON MILLER: Cheng? Okay. I'm going to swear you in. Do you solemnly affirm that you will faithfully and accurately interpret the proceedings in this matter -- is from Mandarin or Chinese --

INTERPRETER: Mandarin.

CHAIRPERSON MILLER: -- Mandarin Chinese into English and from English into

1 Mandarin Chinese to the best of your ability?

2 INTERPRETER: I do.

3 WHEREUPON,

4 YIU YONG LAN

5 was called for examination by Counsel for the

6 Government and, having first been duly sworn,

7 assumed the witness stand, was examined and

8 testified as follows. NOTE: UNLESS OTHERWISE

9 NOTED, ALL ANSWERS ARE GIVEN THROUGH THE

10 TRANSLATOR, GARY CHENG, WAS ALSO FIRST DULY

11 SWORN.

12 CHAIRPERSON MILLER: Okay. Thank

13 you. And with you at the table is? Who's

14 with you at the table?

15 INTERPRETER: On the document it

16 is Mr. Lan Yiu Yong.

17 CHAIRPERSON MILLER: Mr. Lan?

18 MR. LAN: Yes.

19 CHAIRPERSON MILLER: Okay. And

20 he's the owner, correct?

21 MR. LAN: Yes.

22 CHAIRPERSON MILLER: Okay. Ms.

1 Gephardt?

2 MS. GEPHARDT: My name is Ms.
3 Christine Gephardt. I am with the District
4 Government.

5 CHAIRPERSON MILLER: Okay. So
6 this is a show cause hearing. Are there any
7 preliminary matters?

8 MS. GEPHARDT: No, there are not.
9 The parties will proceed to a hearing.

10 CHAIRPERSON MILLER: Okay. Let me
11 just ask how many witnesses each of you have.
12 How many witnesses do you have? Do you have
13 any other than Mr. Yong?

14 MEMBER ALBERTI: Mr. Lan.

15 CHAIRPERSON MILLER: Lan.

16 INTERPRETER: Mr. Lan?

17 CHAIRPERSON MILLER: Mr. Lan.

18 He'll be testifying.

19 MR. LAN: What kind of a
20 witness --

21 CHAIRPERSON MILLER: No, it's his
22 case. I just want to know who's going to

1 testify. Is it just Mr. Lan?

2 MS. GEPHARDT: Yes, that's it.

3 CHAIRPERSON MILLER: Okay. That's
4 fine. Ms. Gephardt, how many witnesses do you
5 have?

6 MS. GEPHARDT: We have one
7 witness.

8 CHAIRPERSON MILLER: Okay. All
9 right. You can proceed then.

10 MS. GEPHARDT: Okay.

11 CHAIRPERSON MILLER: Oh, wait.
12 No. Sorry. I want to make sure that you
13 understand how this proceeding works. Okay?
14 So Government has the burden of proof.
15 Government goes first in presenting the
16 Government's case. Ms. Gephardt will call a
17 witness and ask questions of that witness, and
18 you will have an opportunity to ask questions
19 as well based on the testimony. And the Board
20 will ask questions also.

21 When Ms. Gephardt finishes her
22 case, we'll turn to you to present your case.

1 And at that point he can testify and he will
2 then be subject to questions by the Government
3 and the Board. And then you both will have
4 chances to do a closing argument summing up if
5 you want your argument in the case.

6 Okay. I'm not sure if I said this
7 before, but when you start your case if you
8 want you can do an opening argument about what
9 you will show in your case, if you want. It's
10 optional.

11 Okay. If you have any questions
12 along the way, feel free to ask me.

13 Okay. Any questions now?

14 MR. LAN: No questions.

15 CHAIRPERSON MILLER: Okay. Ms.
16 Gephardt, then you can proceed.

17 MS. GEPHARDT: Yes, all right.
18 Board Members, today you will through the
19 testimony of an investigator from ABRA that
20 the Licensee in this case failed to post three
21 different things regarding their license. No.
22 1, they failed to have their lettering on the

1 front door or an exterior window. Second,
2 they failed to post in a conspicuous place
3 warning signs regarding the dangers of alcohol
4 consumption during pregnancy.

5 CHAIRPERSON MILLER: Okay. Wait a
6 second.

7 MS. GEPHARDT: Excuse me.

8 CHAIRPERSON MILLER: I want to
9 give him time to translate.

10 MS. GEPHARDT: Oh, oh.

11 CHAIRPERSON MILLER: That's all.

12 MS. GEPHARDT: Okay. Just slow
13 down?

14 CHAIRPERSON MILLER: Yes, I think
15 so.

16 INTERPRETER: Yes. That would be
17 great, yes.

18 MS. GEPHARDT: I'm sorry. I'm
19 sorry.

20 INTERPRETER: No problem.

21 CHAIRPERSON MILLER: Okay.

22 MS. GEPHARDT: And the third

1 charge being that you failed to post a notice
2 in a place that's clearly visible from the
3 point of entry to the establishment stating
4 the current legal drinking age.

5 The Government will show that all
6 three of these charges -- that the Licensee is
7 guilty of all three of these charges through
8 the testimony of an investigator. Thank you.

9 CHAIRPERSON MILLER: Thank you.
10 So whenever you're ready to call your first
11 witness.

12 MS. GEPHARDT: Oh, okay.

13 CHAIRPERSON MILLER: Oh, I don't
14 think --

15 MS. GEPHARDT: Does he -- yes.

16 CHAIRPERSON MILLER: I think he's
17 going to do -- if he does an opening
18 statement, most likely he will do it when he
19 opens his case.

20 He can do an opening statement
21 now, but you can do it later when you open
22 your own case. Now? Okay.

1 MR. LAN: First, he said that his
2 sign is clearly displayed in office everyday,
3 so --

4 CHAIRPERSON MILLER: Okay. All
5 right.

6 INTERPRETER: This is on the
7 opening.

8 CHAIRPERSON MILLER: Right.
9 Exactly. That's testimony. That's evidence
10 he'll want us to hear.

11 MR. LAN: His general remark is
12 that he doesn't believe that he violated any
13 laws, regulations because they have do
14 everything they can to make sure the sign's
15 visible.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. And he'll have an opportunity to
18 elaborate on that when it's his turn to
19 present his case. Okay.

20 MS. GEPHARDT: Okay. The
21 Government will call Investigator Jones to the
22 witness stand.

1 CHAIRPERSON MILLER: Good

2 afternoon.

3 INVESTIGATOR JONES: Good

4 afternoon.

5 CHAIRPERSON MILLER: Do you swear

6 to tell the truth, the whole truth, nothing

7 but the truth?

8 INVESTIGATOR JONES: I do.

9 CHAIRPERSON MILLER: All right.

10 Thank you.

11 MS. GEPHARDT: Good afternoon,

12 investigator. Can you state your name and

13 spell it for the record?

14 INVESTIGATOR JONES: Earl Jones,

15 E-A-R-L. Last name Jones, J-O-N-E-S.

16 MS. GEPHARDT: And what is your

17 position?

18 INVESTIGATOR JONES: My position

19 is an ABRA investigator.

20 MS. GEPHARDT: And how long have

21 you worked as an investigator?

22 INVESTIGATOR JONES: I've been

1 with ABRA since September of 2009.

2 MS. GEPHARDT: And what are your
3 job duties when it comes to visiting
4 establishments?

5 INVESTIGATOR JONES: With
6 reference to my job duties as an investigator
7 I conduct inspections and investigations of
8 licensed ABC establishments within the
9 District of Columbia.

10 MS. GEPHARDT: Okay. Thank you.
11 Are you familiar with a Licensee by the name
12 of Eddie's Carryout?

13 INVESTIGATOR JONES: Yes, ma'am.

14 MS. GEPHARDT: And do you recall
15 going to Eddie's Carryout on Wednesday,
16 September 26th, 2012?

17 INVESTIGATOR JONES: Yes, ma'am.

18 MS. GEPHARDT: And what brought
19 you to that location on that date?

20 INVESTIGATOR JONES: I visited the
21 location because I was conducted a regulatory
22 inspection.

1 MS. GEPHARDT: Okay. And when you
2 were there what did you notice when you
3 entered the establishment?

4 INVESTIGATOR JONES: Well, even
5 before I entered the establishment, walking up
6 to their front entranceway one of the common
7 practices that we have is we always check to
8 see if the establishment has the ABRA-approved
9 window letters. I looked at every glass
10 window, every glass door, didn't see any
11 window lettering posted on any of the exterior
12 windows or doors prior to entering.

13 MS. GEPHARDT: Okay. And what did
14 you do after you observed that?

15 INVESTIGATOR JONES: I took note
16 on my regulatory inspection that it wasn't
17 present. I entered the establishment and I
18 requested to speak with an ABC manager or
19 owner.

20 MS. GEPHARDT: And who did you
21 meet with?

22 INVESTIGATOR JONES: At that point

1 in time I was introduced to Mr. Lan.

2 MS. GEPHARDT: Okay.

3 INVESTIGATOR JONES: Who's the
4 owner. Who indicated he was the owner.

5 MS. GEPHARDT: Is Mr. Lan here
6 today?

7 INVESTIGATOR JONES: Yes, ma'am.

8 MS. GEPHARDT: Okay. When you
9 spoke to Mr. Lan, what did you advise him?

10 INVESTIGATOR JONES: Well, when I
11 initially spoke to him I introduced myself and
12 identified myself as an ABRA investigator and
13 I gave him -- or I advised him as to the
14 reason for my visit. At that point in time I
15 told him prior to even starting the regulatory
16 inspection that I did not observe any window
17 lettering on any of the front windows or
18 doors.

19 MS. GEPHARDT: Did he have a
20 response to that?

21 INVESTIGATOR JONES: At that time
22 he stated that he had just replaced some of

1 the windows up front. And so that's why he
2 didn't have the window lettering on them.

3 MS. GEPHARDT: Okay. After you
4 talked to him about the window lettering, did
5 you have a conversation or did you observe
6 anything else after that?

7 INVESTIGATOR JONES: After that I
8 told him that I was going to conduct a
9 regulatory inspection, which I started. And
10 also during the regulatory inspection I
11 noticed or observed that Eddie's Carryout did
12 not have either warning or the legal notice
13 signs posted.

14 MS. GEPHARDT: And when you say
15 "warning or legal notice signs," can you
16 elaborate? What are those?

17 INVESTIGATOR JONES: The warning
18 signs are -- it's dealing with pregnancy and
19 not drinking while being pregnant. Legal
20 notice is the under 21 legal notice.

21 MS. GEPHARDT: Okay. And your
22 testimony is that you did not see those in the

1 establishment?

2 INVESTIGATOR JONES: Correct.

3 MS. GEPHARDT: Did you go
4 throughout the entire establishment to make
5 sure that you didn't see them?

6 INVESTIGATOR JONES: Yes.

7 MS. GEPHARDT: Did you notice if
8 they were posted in a back office or anything?

9 INVESTIGATOR JONES: Actually Mr.
10 Lan brought me to a back area where a kitchen
11 is and that's where I again looked around and
12 I didn't see any. And I advised him at that
13 point that he didn't have them up again, and
14 he just basically apologized for that. And I
15 asked him if he had any of the signs and he
16 said that he did. And that was pretty much
17 the end of -- as far as violations that I
18 found that day.

19 MS. GEPHARDT: You said that he
20 apologized and then indicated that he had
21 them?

22 INVESTIGATOR JONES: He said that

1 he had them somewhere. He just couldn't
2 locate them at that time.

3 MS. GEPHARDT: He couldn't locate
4 them?

5 INVESTIGATOR JONES: Yes.

6 MS. GEPHARDT: Okay.

7 CHAIRPERSON MILLER: I'm sorry,
8 could you repeat that? He had them somewhere
9 but --

10 INVESTIGATOR JONES: He stated
11 that he had signs.

12 CHAIRPERSON MILLER: Okay.

13 INVESTIGATOR JONES: At that point
14 in time he just couldn't locate them.

15 CHAIRPERSON MILLER: Couldn't
16 locate them? Okay. Thank you.

17 MS. GEPHARDT: What did you do
18 before you left? Did you issue a citation or
19 something?

20 INVESTIGATOR JONES: I did issue a
21 citation. I issued citation 6991 for \$600 due
22 to the legal notice sign being a \$250 fine,

1 the pregnancy sign, which is a warning sign,
2 being \$100 fine, and also a \$250 fine for the
3 missing window lettering.

4 MS. GEPHARDT: Okay.

5 INVESTIGATOR JONES: And at that
6 point I provided him with temporary window
7 lettering.

8 MS. GEPHARDT: You provided him
9 with what?

10 INVESTIGATOR JONES: With
11 temporary window lettering.

12 MS. GEPHARDT: Okay.

13 CHAIRPERSON MILLER: Did you get
14 that, Mr. Cheng?

15 INTERPRETER: Not the last.

16 INVESTIGATOR JONES: I provided
17 him with temporary window lettering.

18 INTERPRETER: Thank you.

19 MS. GEPHARDT: Okay. All right.
20 Well, thank you for your testimony.

21 INVESTIGATOR JONES: Yes, ma'am.

22 CHAIRPERSON MILLER: If you have

1 any questions related to the investigator's
2 testimony, you can ask him now.

3 MR. LAN: Mr. Lan says that he
4 did --

5 CHAIRPERSON MILLER: Wait a
6 second. Wait, wait. It's question time.
7 Okay?

8 INTERPRETER: Okay.

9 CHAIRPERSON MILLER: Because he's
10 going to have a chance to fully testify to his
11 side.

12 INTERPRETER: I don't think he has
13 any question. He just want to --

14 CHAIRPERSON MILLER: Make a
15 statement?

16 INTERPRETER: -- make a statement
17 that said --

18 CHAIRPERSON MILLER: No. Okay.
19 So hold your statement. Just remember that,
20 okay, and then it'll be your case and he can
21 testify all he wants to a statement.

22 Okay. Mr. Brooks?

1 MEMBER BROOKS: Yes, thank you,
2 Madam Chair.

3 Mr. Jones?

4 INVESTIGATOR JONES: Yes, sir?

5 MEMBER BROOKS: Were there any
6 other employees present when you were talking
7 to Mr. Lan?

8 INVESTIGATOR JONES: They had two
9 female employees who were taking orders at the
10 front counter, but I don't recall any of the
11 employees. There may have been employees that
12 may have walked by to pick up food orders or
13 what not, but there weren't any in the
14 vicinity where we were talking.

15 MEMBER BROOKS: Okay. And when
16 you were speaking to him did you feel that he
17 understood everything that you said to him?

18 INVESTIGATOR JONES: I fully felt
19 that he understood what I was saying to him.

20 MEMBER BROOKS: Okay. And did he
21 respond back to you in English?

22 INVESTIGATOR JONES: In English.

1 MEMBER BROOKS: Okay. And was
2 there any doubt in your mind that he was clear
3 on what you were telling him?

4 INVESTIGATOR JONES: There was no
5 doubt, sir.

6 MEMBER BROOKS: Okay. Thank you,
7 Madam Chair.

8 CHAIRPERSON MILLER: Okay.
9 Others?

10 (No audible response.)

11 CHAIRPERSON MILLER: Mr. Jones,
12 did you do a reinspection to see if the signs
13 were put up at a later time?

14 INVESTIGATOR JONES: No, ma'am.

15 CHAIRPERSON MILLER: Okay. And
16 you asked him why the signs weren't up?

17 INVESTIGATOR JONES: As far as all
18 three or as --

19 CHAIRPERSON MILLER: Any of the
20 three.

21 INVESTIGATOR JONES: Oh, well, as
22 I mentioned before, he indicated that there

1 was something that happened to the front
2 window, which was why he did not have the
3 window lettering up. As far as the legal
4 notice and the warning signs, he just
5 basically said that he apologized.

6 CHAIRPERSON MILLER: He just
7 apologized?

8 INVESTIGATOR JONES: Right.

9 CHAIRPERSON MILLER: He didn't
10 explain?

11 INVESTIGATOR JONES: No, ma'am.

12 CHAIRPERSON MILLER: Okay. Ms.
13 Gephardt, do you have any redirect?

14 MS. GEPHARDT: No, I don't.

15 CHAIRPERSON MILLER: Any questions
16 before I excuse this witness?

17 MR. LAN: No.

18 CHAIRPERSON MILLER: Okay. There
19 are no more Board questions?

20 (No audible response.)

21 CHAIRPERSON MILLER: All right.

22 Thank you very much.

1 INVESTIGATOR JONES: Thank you.

2 CHAIRPERSON MILLER: Okay. Ms.
3 Gephardt, does that conclude your case?

4 MS. GEPHARDT: That concludes my
5 case. Thank you.

6 CHAIRPERSON MILLER: Okay. All
7 right. Mr. Cheng, I'm going to swear in Mr.
8 Lan.

9 Could you raise your right hand?
10 Do swear to tell the truth, the whole truth,
11 nothing but the truth?

12 MR. LAN: Yes.

13 CHAIRPERSON MILLER: Okay. You
14 can have a seat. You can stay there.

15 So now it's your turn. So if you
16 would like to testify to your side of the
17 story?

18 MEMBER SILVERSTEIN: Slow down and
19 let him translate.

20 MR. LAN: (In English) Okay.
21 (Through interpreter) He said that he has the
22 paper-based sign on the window, on the door

1 for seven years and but due to the nature of
2 the sign and it's often get wiped out when
3 people try to clean the windows. And
4 particularly this time the window was smashed
5 and it was broken and he had to replace the
6 window at that time. And that he said he's
7 sorry that he didn't pay attention to that
8 after the window being replaced.

9 He said there's an area in the
10 kitchen and it has all the legal document
11 hanging against a wall. And he brought this
12 picture showing that he kept all those license
13 in the area. Oh, all the license. It's not
14 the warning sign, but basically he said in the
15 area that he kept all the legal document in
16 there.

17 When the investigator left the
18 restaurant, he put all the required -- the
19 warning sign back to the place.

20 CHAIRPERSON MILLER: Back to the
21 what?

22 MR. LAN: Back to the place. Back

1 to the windows.

2 CHAIRPERSON MILLER: Oh. When did
3 he do that?

4 MR. LAN: Once he left. Once the
5 investigator left. He was try to find it, but
6 he couldn't find it when he entered. But
7 after he left he was able to locate those
8 signs and put them right back on. That's all.

9 CHAIRPERSON MILLER: Okay. Ms.
10 Gephardt, do you have questions?

11 MS. GEPHARDT: I'd like to see the
12 exhibits real quick.

13 INTERPRETER: Sure.
14 one last thing. May I translate
15 his statement?

16 MEMBER SILVERSTEIN: Yes.

17 CHAIRPERSON MILLER: Yes.

18 MR. LAN: He said that he saw this
19 as a warning that he's going to receive, but
20 instead he received the penalty. And that's
21 something he said is not -- he think it's not
22 the way it's supposed to be. He thought it's

1 supposed to be a warning first. He said that
2 he worked in this restaurant for 20 years and
3 17 years as manager. They have a very clean
4 record of never sell any alcoholic beverage to
5 underage consumer and no bad record.
6 Basically that's what he said.

7 MS. GEPHARDT: May I?

8 CHAIRPERSON MILLER: Yes?

9 MS. GEPHARDT: Oh, okay. So this
10 picture of these, as you said, legal
11 documents, when was this picture taken?

12 MR. LAN: Days after the
13 investigator left.

14 MS. GEPHARDT: Okay.

15 CHAIRPERSON MILLER: What? Could
16 you repeat that, please?

17 MR. LAN: Days after the
18 investigator left. He thought that he might
19 be allowed to present some evidence.

20 CHAIRPERSON MILLER: Okay.

21 MR. LAN: And he said the
22 investigator also said there's no license

1 displayed, so that's why he took this picture.

2 MS. GEPHARDT: Just to go back for
3 a second, I guess you'd want to admit these
4 into evidence.

5 CHAIRPERSON MILLER: Well, Mr.
6 Cheng, I was going to ask you, but if you want
7 the Board to consider those documents as
8 evidence in your favor, in your client's
9 favor, you can ask us if we will admit it into
10 evidence. Would you like us to admit those
11 documents into evidence in your case?

12 INTERPRETER: I guess that's
13 question for Mr. Lan, right?

14 CHAIRPERSON MILLER: Yes.

15 MR. LAN: Yes.

16 CHAIRPERSON MILLER: Okay. Ms.
17 Gephardt, do you have an objection?

18 MS. GEPHARDT: No objection.

19 CHAIRPERSON MILLER: Okay. So can
20 you identify what they are? Is that the only
21 copy you have?

22 MR. LAN: That's the only copy he

1 has.

2 CHAIRPERSON MILLER: Okay. So for
3 now at least, for the record what we're
4 talking about -- Licensee's Exhibit No. 1 is
5 what? The pictures of --

6 MS. GEPHARDT: Pictures of
7 licenses on the wall.

8 CHAIRPERSON MILLER: Are they all
9 licenses? Are they warnings, or are they just
10 licenses?

11 MS. GEPHARDT: Certificate of
12 Occupancy. Certificate of Registration. Just
13 that.

14 CHAIRPERSON MILLER: Okay. All
15 right. So the Board will admit that as
16 Licensee's Exhibit No. 1, the pictures of the
17 licenses and Certificate of Occupancy,
18 etcetera.

19 What is the second document?

20 MS. GEPHARDT: It's the same one,
21 just of a larger panned out --

22 CHAIRPERSON MILLER: Zoomed out?

1 MS. GEPHARDT: -- picture to show
2 where it is.

3 CHAIRPERSON MILLER: Okay. That
4 will be Exhibit No. 2. Okay. That's accepted
5 as well into evidence, admitted into evidence.

6 MS. GEPHARDT: So picture No. 1
7 was taken after the investigator was there,
8 correct?

9 MR. LAN: Yes.

10 MS. GEPHARDT: In this photograph
11 is there anywhere that shows a pregnancy sign
12 or a no drinking under 21 sign?

13 MR. LAN: That picture doesn't
14 have that.

15 MS. GEPHARDT: Okay.

16 MR. LAN: He said at that time the
17 sign is on the window. On the door.

18 MS. GEPHARDT: Okay. And when the
19 investigator showed up there was no lettering
20 on the outside window, is that correct?

21 MR. LAN: Yes, that's correct.

22 MS. GEPHARDT: All right. That's

1 all I have.

2 CHAIRPERSON MILLER: Okay. Board
3 questions? Mr. Alberti?

4 MEMBER ALBERTI: Good afternoon,
5 Mr. Lan. Mr. Lan, is it your testimony that
6 the licenses that you are showing in those
7 pictures were posted in the kitchen area?

8 MR. LAN: Yes. Yes, is hang in
9 the eye catching in the kitchen.

10 MEMBER ALBERTI: What was that
11 last part?

12 MEMBER BROOKS: Eye catching.

13 MR. LAN: Yes, he --

14 MEMBER ALBERTI: An eye
15 catching --

16 MR. LAN: That's his word, eye
17 catching position of kitchen area.

18 MEMBER ALBERTI: Okay. Got you.
19 All right. Do you allow customers into your
20 kitchen?

21 MR. LAN: No.

22 MEMBER ALBERTI: How is your

1 kitchen visible to customers?

2 MR. LAN: Yes, they can see
3 through. They can see the kitchen area.

4 MEMBER ALBERTI: Okay. Is there a
5 big window into the kitchen?

6 MR. LAN: He says pretty open
7 area, just like he sees the background of your
8 area.

9 MEMBER ALBERTI: Okay. Describe
10 your -- you're a carryout?

11 MR. LAN: Yes, carryout.

12 MEMBER ALBERTI: Okay. So when
13 you first come into your establishment there
14 is a customer area, is that correct?

15 MR. LAN: Yes, correct.

16 MEMBER ALBERTI: Okay. So when
17 you first come into your establishment there's
18 a customer area, is that correct?

19 MR. LAN: Yes.

20 MEMBER ALBERTI: And then there's
21 a customer counter, is that correct?

22 MR. LAN: Yes.

1 MEMBER ALBERTI: What's behind the
2 counter?

3 MR. LAN: There's nothing behind
4 the counter. No object.

5 MEMBER ALBERTI: So there's no
6 wall between the kitchen and where you would
7 stand to wait on customers?

8 MR. LAN: No, there's no wall.

9 MEMBER ALBERTI: Okay. Where are
10 these mounted? On which wall are they
11 mounted?

12 MR. LAN: There's a column.
13 Actually there's a column in the kitchen.

14 MEMBER ALBERTI: They're mounted
15 on the column?

16 MR. LAN: Yes.

17 MEMBER ALBERTI: Okay. And which
18 way does that face?

19 MR. LAN: Faced to the customer
20 where they place order.

21 MEMBER ALBERTI: Okay. How far
22 away from it?

1 MR. LAN: It's about the same
2 distance between him and you.

3 MEMBER ALBERTI: Okay. Can the
4 customers walk up to it to see it?

5 MR. LAN: No.

6 MEMBER ALBERTI: Okay. I have no
7 further questions. Thank you.

8 CHAIRPERSON MILLER: Others?

9 (No audible response.)

10 CHAIRPERSON MILLER: Mr. Lan, did
11 you say that you've been working at this
12 restaurant for 17 years?

13 MR. LAN: More than 17 years.

14 CHAIRPERSON MILLER: More than 17
15 years?

16 MR. LAN: Twenty-some years. But
17 as a manager, yes, 17 years.

18 CHAIRPERSON MILLER: And the
19 establishment has a clean record for all those
20 years?

21 MR. LAN: He said that it is a
22 good -- I mean, yes, very good record.

1 There's no offenses.

2 CHAIRPERSON MILLER: So was he
3 aware of the requirement to hang the signs and
4 the lettering? Was he aware of the legal
5 requirement to post the signs and the
6 lettering?

7 MR. LAN: Yes, he said that he is
8 aware of the legal requirement for this, but
9 it's because the window was replaced.

10 CHAIRPERSON MILLER: So the window
11 was replaced and so he had to take the
12 lettering off the window, is that correct?

13 MR. LAN: He said, yes, the
14 contractor took them out.

15 CHAIRPERSON MILLER: Okay. But so
16 what about the other signs though? Where were
17 they? Well, there's the lettering and then I
18 believe there's the pregnancy sign and a
19 warning sign for not to serve under 21.

20 MR. LAN: He said that he didn't
21 know where those signs left at.

22 CHAIRPERSON MILLER: I mean had

1 they been on that window that was replaced, or
2 just the lettering was on the window?

3 MR. LAN: It has been on windows
4 before the window being replaced.

5 CHAIRPERSON MILLER: So all the
6 signs were on this window?

7 MR. LAN: All the sign was placed
8 on the same window which was replaced.

9 CHAIRPERSON MILLER: Okay. And
10 when was that window replaced?

11 MR. LAN: Two, three months.

12 CHAIRPERSON MILLER: Two to three
13 months what?

14 MR. LAN: Last April.

15 CHAIRPERSON MILLER: Last April?
16 Okay. So before that the signs were not hung
17 in the kitchen? The signs were not hung in
18 the kitchen back then?

19 MR. LAN: It was on a window which
20 being replaced.

21 CHAIRPERSON MILLER: Okay. All
22 right. I don't have any other questions.

1 MEMBER ALBERTI: May I ask just a
2 real quick question?

3 CHAIRPERSON MILLER: Yes.

4 MEMBER ALBERTI: Your Exhibit No.
5 2, can you tell me where you were standing
6 when you took that picture?

7 INTERPRETER: This one, right?

8 MEMBER ALBERTI: Yes.

9 MR. LAN: Right in front of it.

10 MEMBER ALBERTI: In the kitchen
11 area?

12 MR. LAN: Yes.

13 MEMBER ALBERTI: All right. Thank
14 you.

15 MEMBER ALBERTI: I have one more
16 question. Why did he hang the signs in the
17 kitchen instead of back on the window?

18 INTERPRETER: I think he said that
19 he didn't place the sign in the kitchen, but
20 only the license.

21 CHAIRPERSON MILLER: Oh, only the
22 license?

1 INTERPRETER: Yes, he didn't --

2 MR. LAN: No, he didn't put any
3 signs, any warning signs in the kitchen.

4 CHAIRPERSON MILLER: So the other
5 signs are back on that window?

6 MR. LAN: (In English) Yes.

7 CHAIRPERSON MILLER: Any questions
8 on redirect? Or, not redirect.

9 MS. GEPHARDT: Based on the
10 information that I've received, I had not seen
11 -- there are some other questions I'd like to
12 ask the investigator. Is it possible to call
13 him back for a very specific question?

14 CHAIRPERSON MILLER: Okay.

15 MS. GEPHARDT: Hi, Investigator
16 Jones.

17 INVESTIGATOR JONES: Yes, ma'am?

18 MS. GEPHARDT: Just briefly, on
19 the exhibits for the Respondent here, which is
20 the legal notices posted in the kitchen --

21 INVESTIGATOR JONES: Yes, ma'am.

22 MS. GEPHARDT: -- did you see

1 these notices?

2 INVESTIGATOR JONES: Well, what
3 you're mentioning there are the certificates.
4 That looks like the BBL, which is a basic
5 business license. You have the alcohol
6 license, which was posted. And they were in
7 the kitchen area.

8 MS. GEPHARDT: And can you
9 describe where the kitchen area is in the
10 establishment?

11 INVESTIGATOR JONES: When you
12 first enter the establishment there is like a
13 glass lobby area and then you step down. You
14 go through another door and then you step down
15 into where you place your orders. To the left
16 there is a seating area. And again, directly
17 in front of you is a long counter that has
18 glass all the way across the counter, and they
19 have individuals or workers who are taking the
20 orders on the other side of the glass.

21 Behind that counter is racks,
22 metal racks where food is dispensed and the

1 workers get the food and they give it to the
2 patrons, and that clearly blocks anything that
3 you see in the back. When Mr. Lan took me to
4 the back, there was -- I would say from where
5 I'm sitting to where that back door is is
6 where the licenses was posted, and it wasn't
7 in clear sight of the public.

8 And I would also like to mention
9 that I did not do a reinspection of the
10 establishment, but I did go by a few weeks ago
11 and the signs aren't posted on the front
12 window. They're posted inside the
13 establishment.

14 MS. GEPHARDT: Investigator, are
15 they posted on that column?

16 INVESTIGATOR JONES: No, they're
17 posted on the front glass, not where the
18 window letters should go on the outside, but
19 they're posted where the orders are taken,
20 where that glass is.

21 MS. GEPHARDT: Are they clearly
22 visible?

1 INVESTIGATOR JONES: Yes.

2 MS. GEPHARDT: All right. Thank
3 you.

4 INVESTIGATOR JONES: Thank you.

5 CHAIRPERSON MILLER: Do you have a
6 question based on his testimony?

7 MR. LAN: There's no question.
8 Just a statement.

9 CHAIRPERSON MILLER: Yes, okay.
10 Any Board questions?

11 (No audible response.)

12 CHAIRPERSON MILLER: Mr. Jones,
13 did you explain to Mr. Lan how and where the
14 lettering and signs should be posted?

15 INVESTIGATOR JONES: Yes, ma'am,
16 and he seemed to understand.

17 CHAIRPERSON MILLER: Okay. Thank
18 you.

19 INVESTIGATOR JONES: Thank you.

20 MS. GEPHARDT: Thank you.

21 CHAIRPERSON MILLER: We'll need
22 that. So we will need that in the record.

1 Thank you.

2 Okay. So I don't believe there
3 are any other witnesses. So now we'll go to
4 closing. The Government will go first and
5 then you'll have a final opportunity to argue
6 what your case showed. Okay.

7 MS. GEPHARDT: All right. Thank
8 you. In this case you've heard through the
9 testimony of Investigator Jones, as well as
10 the testimony from Mr. Lan that he indeed
11 failed to post his ABRA license on the front
12 door of the window of his establishment. He
13 also failed to post in a conspicuous place a
14 warning sign regarding the dangers of alcohol
15 consumption during pregnancy. And finally, he
16 failed to post the notice in a place clearly
17 visible at the point entry to the
18 establishment stating that the current legal
19 drinking age of 21.

20 You heard not only did
21 Investigator Jones not observe these notices
22 up, he did not see the window lettering on the

1 outside of the establishment, but you also
2 heard from Mr. Lan who admitted that he did
3 not have the notices up and that he did not
4 have the window lettering up because the
5 window had been replaced.

6 You also heard that the window was
7 replaced in April of 2012. This incident
8 happened in September of 2012, September 26th,
9 so we're talking five months in which Mr. Lan
10 did not post his licenses as he was supposed
11 to.

12 So the Government would urge that
13 the Board find that Mr. Lan is liable for all
14 three charges and we would ask for a fine of
15 \$800, which would be a \$350 fine for charge 1
16 and charge 3, and a \$100 for charge 2, which
17 is the pregnancy sign.

18 CHAIRPERSON MILLER: Okay. Thank
19 you. Now, Mr. Lan?

20 MR. LAN: He said that he is sorry
21 for fail to put those sign in those proper
22 places and -- but in the daily practice they

1 are all law-abiding citizens. They check IDs
2 each every time they think is underage
3 consumer. Basically based upon he believe
4 that he maintain a good record of the business
5 and he thought that there is a warning rather
6 than a fine, a penalty.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 Okay. I'm going to close the
10 record in this case and we have admitted the
11 two exhibits from the Licensee. Do you need
12 copies back of that?

13 MR. LAN: No, he doesn't need it.

14 CHAIRPERSON MILLER: Okay. This
15 may take a little explanation, but do the
16 parties want to file proposed findings of fact
17 and conclusions of law, or waive your right to
18 do so?

19 MS. GEPHARDT: No, thank you. The
20 Government will not be doing that.

21 CHAIRPERSON MILLER: Okay.
22 Government is not going to. The question is

1 you have a right if you so choose to file a
2 legal document after the transcript comes out
3 in which you identify what you would like to
4 argue to the Board to be proposed findings of
5 fact that go in his favor and argue legal
6 conclusions. Most parties don't do that, but
7 you are entitled if you want to.

8 INTERPRETER: You said receive the
9 transcript?

10 CHAIRPERSON MILLER: A transcript
11 would come out in about two weeks and they you
12 would --

13 INTERPRETER: On this --

14 CHAIRPERSON MILLER: On this
15 hearing.

16 INTERPRETER: On this hearing?

17 CHAIRPERSON MILLER: Just this
18 hearing, yes. And you would have 30 days to
19 write a legal argument in which you identify
20 findings of fact in the transcript that are
21 favorable to Mr. Lan and then also argue legal
22 conclusions from those facts in Mr. Lan's

1 favor.

2 INTERPRETER: So he's not going to
3 know the result of his hearing now until the
4 time he receive the transcript?

5 CHAIRPERSON MILLER: Right, after
6 you receive the transcript you would do that.
7 Otherwise, the Board would rule on the
8 transcript itself. You know, we would review
9 the hearing or based on this -- the Board
10 would just decide otherwise based on its own
11 review of the facts in the case.

12 So Ms. Gephardt has declined that
13 opportunity. The Government is not going to
14 do that. Most parties don't do that, but you
15 are entitled to do that if you want.

16 INTERPRETER: Entitled to do
17 the --

18 CHAIRPERSON MILLER: Submit a
19 written legal document afterwards.

20 INTERPRETER: To this --

21 CHAIRPERSON MILLER: To the Board.

22 INTERPRETER: To the Board?

1 MEMBER SILVERSTEIN: Mr.

2 Silverstein?

3 MEMBER SILVERSTEIN: Let me help
4 you. At the end of each hearing each party
5 can submit what is a legal brief which states
6 what happened in the case as you see it and
7 relevant law. It is a legal brief normally
8 done by an attorney, but it can be done by
9 anyone. It is not required, but it can be
10 done. Most people do not do it, but we offer
11 you this opportunity.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER SILVERSTEIN: Do you
14 decline the opportunity as the State has done?

15 MR. LAN: He want to have that.

16 CHAIRPERSON MILLER: He wants --

17 INTERPRETER: He wants it.

18 CHAIRPERSON MILLER: He wants to
19 do it?

20 INTERPRETER: He wants to do it.

21 CHAIRPERSON MILLER: Okay. So
22 does that affect your decision?

1 (No audible response.)

2 CHAIRPERSON MILLER: Okay. All
3 right. Okay. So I'm going to repeat what's
4 going to happen then. We have a court
5 reporter here, right?

6 INTERPRETER: He doesn't have an
7 email address. Just mailing address.

8 CHAIRPERSON MILLER: So the
9 transcript will be ready in about two weeks
10 and I believe it will be sent to you or
11 emailed to you, but --

12 MS. GEPHARDT: He doesn't have an
13 email address?

14 CHAIRPERSON MILLER: How does it
15 go?

16 MS. GEPHARDT: He doesn't have an
17 email address.

18 CHAIRPERSON MILLER: Oh, he
19 doesn't have email? Okay. So then you will
20 coordinate with Ms. Jenkins, our attorney.
21 Okay. We'll notify you then in two weeks when
22 the transcript is ready and you can get a copy

1 of the transcript. And then he'll have 30
2 days from then to submit his document.

3 INTERPRETER: Just for my own
4 information. I try to explain that.

5 CHAIRPERSON MILLER: Okay. Yes.

6 INTERPRETER: Transcript also has
7 the -- like the final decision of this matter,
8 right? Is that --

9 CHAIRPERSON MILLER: No, no, no.

10 INTERPRETER: No? Okay.

11 CHAIRPERSON MILLER: The
12 transcript has this hearing.

13 MEMBER SILVERSTEIN: Everything
14 that was said.

15 INTERPRETER: Right, right, right.
16 Okay. And he has rights to come to write back
17 to the Commission about that he was agree with
18 this transcript or not?

19 MEMBER SILVERSTEIN: No.

20 CHAIRPERSON MILLER: No, this
21 transcript won't be a decision.

22 INTERPRETER: Okay.

1 CHAIRPERSON MILLER: This is not
2 the decision. The Board will make a decision
3 afterwards.

4 INTERPRETER: Okay.

5 CHAIRPERSON MILLER: But this is
6 to argue further if you want based on the
7 facts presented at this hearing, your position
8 to the Board.

9 INTERPRETER: Got it.

10 CHAIRPERSON MILLER: And then the
11 Board will make a decision. Okay?

12 And if you have questions, you
13 can, you know, contact Ms. Jenkins, or if you
14 need a sample document, you know?

15 MR. LAN: He want to have Ms.
16 Jenkins contact information.

17 CHAIRPERSON MILLER: Yes. Yes,
18 she'll provide that. And if you change your
19 mind, this seems, you know, difficult, you
20 don't have to do it, but let us know because
21 we're going to wait for that before we issue
22 a decision. Okay?

1 MR. LAN: Okay. He want to do
2 that route, too, yes.

3 CHAIRPERSON MILLER: Okay? Is
4 that understood?

5 MR. LAN: Yes, he does.

6 CHAIRPERSON MILLER: Okay. All
7 right. So, yes, he can be in touch with Ms.
8 Jenkins afterwards.

9 Okay. All right. Then that
10 completes this hearing. Thank you very much.

11 You would expect an order within
12 90 days after you submit the proposed findings
13 of facts and conclusions of law. You can
14 expect an order, a written order within 90
15 days after we get the proposed findings of
16 fact from you all.

17 INTERPRETER: Proposal?

18 CHAIRPERSON MILLER: From your
19 written document. We're going to wait until
20 we receive your written document to decide.
21 If you decide not to submit the written
22 document, let us know and we'll decide

1 earlier.

2 MR. LAN: Okay.

3 CHAIRPERSON MILLER: Okay. All
4 right. Thank you very much. And I'm just
5 going to read the instructions for our
6 consideration of that document and
7 deliberation on this case in executive
8 session.

9 As Chairperson of the Alcoholic
10 Beverage Control Board for the District of
11 Columbia and in accordance with Section 405 of
12 the Open Meetings Amendment Act of 2010, I
13 move that the ABC Board hold a closed meeting
14 for the purpose of seeking legal advice from
15 our counsel on Case No. 12-CMP-00579, Eddie's
16 Carryout, per Section 405(b)(4) of the Open
17 Meetings Amendment Act of 2010 and
18 deliberating upon this case for the reasons
19 cited in Section 405(b)(13) of the Open
20 Meetings Amendment Act of 2010.

21 Is there a second?

22 MEMBER SILVERSTEIN: Second.

1 CHAIRPERSON MILLER: Mr.

2 Silverstein seconded the motion. I'll now
3 take a roll call vote. Mr. Brooks?

4 MEMBER BROOKS: I agree.

5 CHAIRPERSON MILLER: Mr. Alberti?

6 MEMBER ALBERTI: I agree.

7 CHAIRPERSON MILLER: Ms. Miller
8 agrees. Mr. Silverstein?

9 MEMBER SILVERSTEIN: I agree.

10 CHAIRPERSON MILLER: As it appears
11 that the motion has passed by a vote of 4-0-0,
12 I hereby give notice that the ABC Board will
13 hold a closed meeting in the ABC Board
14 conference room after receipt of the proposed
15 findings of fact and conclusions of law
16 pursuant to the Open Meetings Amendment Act of
17 2010 and issue an order within 90 days.

18 (Whereupon, the hearing was
19 concluded at 3:38 p.m.)

20
21
22

A	<p>Amendment 51:12 51:17,20 52:16</p> <p>ANC 1:10 3:7</p> <p>ANSWERS 4:9</p> <p>apologized 16:14 16:20 22:5,7</p> <p>appears 52:10</p> <p>April 1:15 35:14,15 42:7</p> <p>area 2:22 16:10 24:9,13,15 30:7 30:17 31:3,7,8,14 31:18 36:11 38:7 38:9,13,16</p> <p>argue 41:5 44:4,5 44:21 49:6</p> <p>argument 7:4,5,8 44:19</p> <p>asked 16:15 21:16</p> <p>assumed 4:7</p> <p>attention 24:7</p> <p>attorney 46:8 47:20</p> <p>audible 21:10 22:20 33:9 40:11 47:1</p> <p>aware 34:3,4,8</p> <p>a.m 3:2</p>	<p>believe 10:12 34:18 41:2 43:3 47:10</p> <p>best 4:1</p> <p>beverage 1:2,16,17 26:4 51:10</p> <p>big 31:5</p> <p>Bladensburg 1:8 3:6</p> <p>blocks 39:2</p> <p>Board 1:2,17 6:19 7:3,18 22:19 27:7 28:15 30:2 40:10 42:13 44:4 45:7,9 45:21,22 49:2,8 49:11 51:10,13 52:12,13</p> <p>brief 46:5,7</p> <p>briefly 37:18</p> <p>broken 24:5</p> <p>Brooks 1:21 19:22 20:1,5,15,20 21:1 21:6 30:12 52:3,4</p> <p>brought 12:18 16:10 24:11</p> <p>Building 1:17</p> <p>burden 6:14</p> <p>business 38:5 43:4</p>	<p>28:12,17</p> <p>certificates 38:3</p> <p>Chair 20:2 21:7</p> <p>Chairperson 1:18 1:20 3:3,11,15,21 4:12,17,19,22 5:5 5:10,15,17,21 6:3 6:8,11 7:15 8:5,8 8:11,14,21 9:9,13 9:16 10:4,8,16 11:1,5,9 17:7,12 17:15 18:13,22 19:5,9,14,18 21:8 21:11,15,19 22:6 22:9,12,15,18,21 23:2,6,13 24:20 25:2,9,17 26:8,15 26:20 27:5,14,16 27:19 28:2,8,14 28:22 29:3 30:2 33:8,10,14,18 34:2,10,15,22 35:5,9,12,15,21 36:3,21 37:4,7,14 40:5,9,12,17,21 42:18 43:7,14,21 44:10,14,17 45:5 45:18,21 46:12,16 46:18,21 47:2,8 47:14,18 48:5,9 48:11,20 49:1,5 49:10,17 50:3,6 50:18 51:3,9 52:1 52:5,7,10</p> <p>chance 19:10</p> <p>chances 7:4</p> <p>change 49:18</p> <p>charge 9:1 42:15 42:16,16</p> <p>charges 9:6,7 42:14</p> <p>check 13:7 43:1</p> <p>Cheng 3:14,15 4:10 18:14 23:7 27:6</p> <p>Chinese 3:19,22 4:1</p> <p>choose 44:1</p> <p>Christine 1:23 5:3</p>	<p>citation 17:18,21 17:21</p> <p>cited 51:19</p> <p>citizens 43:1</p> <p>clean 24:3 26:3 33:19</p> <p>clear 21:2 39:7</p> <p>clearly 9:2 10:2 39:2,21 41:16</p> <p>client's 27:8</p> <p>close 43:9</p> <p>closed 51:13 52:13</p> <p>closing 2:9,11 7:4 41:4</p> <p>Columbia 1:1 12:9 51:11</p> <p>column 32:12,13 32:15 39:15</p> <p>come 31:13,17 44:11 48:16</p> <p>comes 12:3 44:2</p> <p>Commission 48:17</p> <p>common 13:6</p> <p>completes 50:10</p> <p>conclude 23:3</p> <p>concluded 52:19</p> <p>concludes 23:4</p> <p>conclusions 43:17 44:6,22 50:13 52:15</p> <p>conduct 12:7 15:8</p> <p>conducted 12:21</p> <p>conference 52:14</p> <p>consider 27:7</p> <p>consideration 51:6</p> <p>conspicuous 1:11 8:2 41:13</p> <p>consumer 26:5 43:3</p> <p>consumption 8:4 41:15</p> <p>contact 49:13,16</p> <p>contractor 34:14</p> <p>Control 1:2,16,17 51:10</p> <p>conversation 15:5</p> <p>coordinate 47:20</p>
B	<p>B 1:8</p> <p>back 16:8,10 20:21 24:19,20,22,22 25:8 27:2 35:18 36:17 37:5,13 39:3,4,5 43:12 48:16</p> <p>background 31:7</p> <p>bad 26:5</p> <p>based 6:19 37:9 40:6 43:3 45:9,10 49:6</p> <p>basic 38:4</p> <p>basically 16:14 22:5 24:14 26:6 43:3</p> <p>BBL 38:4</p>	<p>call 6:16 9:10 10:21 37:12 52:3</p> <p>called 4:5</p> <p>calling 3:4</p> <p>carryout 1:7 3:5 12:12,15 15:11 31:10,11 51:16</p> <p>case 1:9 3:4,9 5:22 6:16,22,22 7:5,7,9 7:20 9:19,22 10:19 19:20 23:3 23:5 27:11 41:6,8 43:10 45:11 46:6 51:7,15,18</p> <p>catching 30:9,12,15 30:17</p> <p>cause 1:9 5:6</p> <p>Certificate 28:11</p>	<p style="text-align: center;">C</p>	

copies 43:12
copy 27:21,22
 47:22
Corporation 1:6
correct 4:20 16:2
 29:8,20,21 31:14
 31:15,18,21 34:12
counsel 4:5 51:15
counter 20:10
 31:21 32:2,4
 38:17,18,21
court 47:4
current 1:13 9:4
 41:18
customer 31:14,18
 31:21 32:19
customers 30:19
 31:1 32:7 33:4
C-O-N-T-E-N-T-S
 2:5

D

daily 42:22
dangers 8:3 41:14
date 12:19
day 16:18
days 26:12,17
 44:18 48:2 50:12
 50:15 52:17
dealing 15:18
decide 45:10 50:20
 50:21,22
decision 46:22 48:7
 48:21 49:2,2,11
 49:22
decline 46:14
declined 45:12
deliberating 51:18
deliberation 51:7
describe 31:9 38:9
different 7:21
difficult 49:19
directly 38:16
dispensed 38:22
displayed 10:2 27:1
distance 33:2
District 1:1 5:3

12:9 51:10
document 4:15
 24:10,15 28:19
 44:2 45:19 48:2
 49:14 50:19,20,22
 51:6
documents 26:11
 27:7,11
doing 43:20
DONALD 1:21
door 8:1 13:10
 23:22 29:17 38:14
 39:5 41:12
doors 13:12 14:18
doubt 21:2,5
drinking 1:13 9:4
 15:19 29:12 41:19
due 17:21 24:1
duly 4:6,10
duties 12:3,6
D.C 1:18

E

Earl 1:24 2:14
 11:14
earlier 51:1
Eddie's 1:7 3:5
 12:12,15 15:11
 51:15
either 15:12
elaborate 10:18
 15:16
email 47:7,13,17,19
emailed 47:11
employees 20:6,9
 20:11,11
English 3:22,22
 20:21,22 23:20
 37:6
enter 38:12
entered 13:3,5,17
 25:6
entering 13:12
entire 16:4
entitled 44:7 45:15
 45:16
entranceway 13:6

entry 9:3 41:17
establishment 9:3
 13:3,5,8,17 16:1,4
 31:13,17 33:19
 38:10,12 39:10,13
 41:12,18 42:1
establishments
 12:4,8
etcetera 28:18
everyday 10:2
evidence 10:9
 26:19 27:4,8,10
 27:11 29:5,5
Exactly 10:9
examination 4:5
examined 4:7
excuse 8:7 22:16
executive 51:7
Exhibit 28:4,16
 29:4 36:4
exhibits 2:17 25:12
 37:19 43:11
expect 50:11,14
explain 22:10
 40:13 48:4
explanation 43:15
exterior 8:1 13:11
eye 30:9,12,14,16
E-A-R-L 11:15

F

face 32:18
Faced 32:19
fact 43:16 44:5,20
 50:16 52:15
facts 44:22 45:11
 49:7 50:13
fail 42:21
failed 1:10,12,12
 7:20,22 8:2 9:1
 41:11,13,16
faithfully 3:17
familiar 12:11
far 16:17 21:17
 22:3 32:21
favor 27:8,9 44:5
 45:1

favorable 44:21
feel 7:12 20:16
felt 20:18
female 20:9
file 43:16 44:1
final 41:5 48:7
finally 41:15
find 25:5,6 42:13
findings 43:16 44:4
 44:20 50:12,15
 52:15
fine 6:4 17:22 18:2
 18:2 42:14,15
 43:6
finishes 6:21
first 4:6,10 6:15
 9:10 10:1 26:1
 31:13,17 38:12
 41:4
five 42:9
follows 4:8
food 20:12 38:22
 39:1
found 16:18
free 7:12
front 8:1 13:6
 14:17 15:1 20:10
 22:1 36:9 38:17
 39:11,17 41:11
fully 19:10 20:18
further 33:7 49:6

G

Gary 3:13 4:10
general 10:11
Gephardt 1:23 5:1
 5:2,3,8 6:2,4,6,10
 6:16,21 7:16,17
 8:7,10,12,18,22
 9:12,15 10:20
 11:11,16,20 12:2
 12:10,14,18 13:1
 13:13,20 14:2,5,8
 14:19 15:3,14,21
 16:3,7,19 17:3,6
 17:17 18:4,8,12
 18:19 22:13,14

23:3,4 25:10,11
 26:7,9,14 27:2,17
 27:18 28:6,11,20
 29:1,6,10,15,18
 29:22 37:9,15,18
 37:22 38:8 39:14
 39:21 40:2,20
 41:7 43:19 45:12
 47:12,16
give 8:9 39:1 52:12
GIVEN 4:9
glass 13:9,10 38:13
 38:18,20 39:17,20
go 16:3 27:2 38:14
 39:10,18 41:3,4
 44:5 47:15
goes 6:15
going 3:16 5:22
 9:17 12:15 15:8
 19:10 23:7 25:19
 27:6 43:9,22 45:2
 45:13 47:3,4
 49:21 50:19 51:5
good 3:4 11:1,3,11
 30:4 33:22,22
 43:4
Government 2:7,9
 4:6 5:4 6:14,15
 7:2 9:5 10:21
 41:4 42:12 43:20
 43:22 45:13
Government's 6:16
great 8:17
guess 27:3,12
guilty 9:7

H

hand 23:9
hang 30:8 34:3
 36:16
hanging 24:11
happen 47:4
happened 22:1
 42:8 46:6
hear 10:10
heard 41:8,20 42:2
 42:6

44:10,14,17 45:5 45:18,21 46:12,16 46:18,21 47:2,8 47:14,18 48:5,9 48:11,20 49:1,5 49:10,17 50:3,6 50:18 51:3 52:1,5 52:7,7,10 mind 21:2 49:19 missing 18:3 months 35:11,13 42:9 motion 52:2,11 mounted 32:10,11 32:14 move 51:13	Occupancy 28:12 28:17 offenses 34:1 offer 46:10 office 10:2 16:8 oh 6:11 8:10,10 9:12,13 21:21 24:13 25:2 26:9 36:21 47:18 okay 3:12,15 4:12 4:19,22 5:5,10 6:3 6:8,10,13 7:6,11 7:13,15 8:5,12,21 9:12,22 10:4,16 10:19,20 12:10 13:1,13 14:2,8 15:3,21 17:6,12 17:16 18:4,12,19 19:7,8,18,20,22 20:15,20 21:1,6,8 21:15 22:12,18 23:2,6,13,20 25:9 26:9,14,20 27:16 27:19 28:2,14 29:3,4,15,18 30:2 30:18 31:4,9,12 31:16 32:9,17,21 33:3,6 34:15 35:9 35:16,21 37:14 40:9,17 41:2,6 42:18 43:7,9,14 43:21 46:12,21 47:2,3,19,21 48:5 48:10,16,22 49:4 49:11,22 50:1,3,6 50:9 51:2,3 Once 25:4,4 open 9:21 31:6 51:12,16,19 52:16 opening 2:7,8 7:8 9:17,20 10:7 opens 9:19 opportunity 6:18 10:17 41:5 45:13 46:11,14 optional 7:10 order 32:20 50:11	50:14,14 52:17 orders 20:9,12 38:15,20 39:19 outside 29:20 39:18 42:1 owner 4:20 13:19 14:4,4 O-F 2:5	15:13 16:8 30:7 37:20 38:6 39:6 39:11,12,15,17,19 40:14 practice 42:22 practices 13:7 pregnancy 1:12 8:4 15:18 18:1 29:11 34:18 41:15 42:17 pregnant 15:19 preliminary 5:7 present 1:19,23 6:22 10:19 13:17 20:6 26:19 presented 49:7 presenting 6:15 presiding 1:18 pretty 16:16 31:6 prior 13:12 14:15 problem 8:20 proceed 5:9 6:9 7:16 proceeding 6:13 proceedings 3:18 proof 6:14 proper 42:21 Proposal 50:17 proposed 43:16 44:4 50:12,15 52:14 provide 49:18 provided 18:6,8,16 public 39:7 purpose 51:14 pursuant 52:16 put 21:13 24:18 25:8 37:2 42:21 P-R-O-C-E-E-D-... 3:1 p.m 52:19	6:20 7:2,11,13,14 19:1 22:15,19 25:10 30:3 33:7 35:22 37:7,11 40:10 49:12 quick 25:12 36:2
<hr/> N <hr/> name 3:12,13 5:2 11:12,15 12:11 nature 24:1 NE 1:8 need 40:21,22 43:11,13 49:14 never 26:4 NICK 1:21 normally 46:7 note 4:8 13:15 NOTED 4:9 notice 1:13 9:1 13:2 15:12,15,20,20 16:7 17:22 22:4 41:16 52:12 noticed 15:11 notices 37:20 38:1 41:21 42:3 notify 47:21 N.E 3:6 N.W 1:18				<hr/> R <hr/> racks 38:21,22 raise 23:9 read 51:5 ready 9:10 47:9,22 real 25:12 36:2 reason 14:14 reasons 51:18 recall 12:14 20:10 receipt 52:14 receive 25:19 44:8 45:4,6 50:20 received 25:20 37:10 record 11:13 26:4,5 28:3 33:19,22 40:22 43:4,10 redirect 22:13 37:8 37:8 Reeves 1:17 reference 12:6 regarding 7:21 8:3 41:14 Registration 28:12 regulations 10:13 regulatory 12:21 13:16 14:15 15:9 15:10 reinspection 21:12 39:9 related 19:1 relevant 46:7 remark 10:11 remember 19:19 repeat 17:8 26:16 47:3 replace 24:5 replaced 14:22 24:8 34:9,11 35:1 35:4,8,10,20 42:5
<hr/> O <hr/> OAG 1:23 object 32:4 objection 27:17,18 observe 14:16 15:5 41:21 observed 13:14 15:11		<hr/> P <hr/> panned 28:21 paper-based 23:22 part 30:11 particularly 24:4 parties 5:9 43:16 44:6 45:14 party 46:4 passed 52:11 patrons 39:2 pay 24:7 penalty 25:20 43:6 people 24:3 46:10 Photo 2:21,22 photograph 29:10 pick 20:12 picture 24:12 26:10 26:11 27:1 29:1,6 29:13 36:6 pictures 28:5,6,16 30:7 place 1:12 8:2 9:2 24:19,22 32:20 36:19 38:15 41:13 41:16 placed 35:7 places 42:22 please 26:16 point 7:1 9:3 13:22 14:14 16:13 17:13 18:6 41:17 position 11:17,18 30:17 49:7 possible 37:12 post 1:10,12,12 7:20 8:2 9:1 34:5 41:11,13,16 42:10 posted 2:22 13:11	<hr/> Q <hr/> question 19:6,13 27:13 36:2,16 37:13 40:6,7 43:22 questions 6:17,18	

42:7	see 13:8,10 15:22	solemnly 3:16	tell 11:6 23:10 36:5	23:10,10,11
reporter 47:5	16:5,12 21:12	sorry 6:12 8:18,19	telling 21:3	try 24:3 25:5 48:4
requested 13:18	25:11 31:2,3 33:4	17:7 24:7 42:20	temporary 18:6,11	turn 6:22 10:18
required 24:18	37:22 39:3 41:22	speak 13:18	18:17	23:15
46:9	46:6	speaking 20:16	testified 4:8	Twenty-some
requirement 34:3,5	seeking 51:14	specific 37:13	testify 6:1 7:1	33:16
34:8	seen 37:10	spell 11:13	19:10,21 23:16	two 20:8 35:11,12
respond 20:21	sees 31:7	spoke 14:9,11	testifying 5:18	43:11 44:11 47:9
Respondent 37:19	sell 26:4	stand 4:7 10:22	testimony 6:19	47:21
response 14:20	sent 47:10	32:7	7:19 9:8 10:9	T-A-B-L-E 2:5
21:10 22:20 33:9	September 12:1,16	standing 36:5	15:22 18:20 19:2	t/a 1:7
40:11 47:1	42:8,8	start 7:7	30:5 40:6 41:9,10	
restaurant 24:18	serve 34:19	started 15:9	thank 4:12 9:8,9	<hr/> U <hr/>
26:2 33:12	session 51:8	starting 14:15	10:16 11:10 12:10	underage 26:5 43:2
result 45:3	seven 24:1	state 11:12 46:14	17:16 18:18,20	understand 6:13
Retailer 1:8	she'll 49:18	stated 14:22 17:10	20:1 21:6 22:22	40:16
review 45:8,11	show 1:9 5:6 7:9	statement 2:7,8,9	23:1,5 33:7 36:13	understood 20:17
right 3:3 6:9 7:17	9:5 29:1	2:11 9:18,20	40:2,4,17,19,20	20:19 50:4
10:5,8 11:9 18:19	showed 29:19 41:6	19:15,16,19,21	41:1,7 42:18 43:7	urge 42:12
22:8,21 23:7,9	showing 24:12 30:6	25:15 40:8	43:19 50:10 51:4	
25:8 27:13 28:15	shows 29:11	states 46:5	thing 25:14	<hr/> V <hr/>
29:22 30:19 35:22	side 19:11 23:16	stating 9:3 41:18	things 7:21	vicinity 20:14
36:7,9,13 40:2	38:20	stay 23:14	think 8:14 9:14,16	violated 10:12
41:7 43:17 44:1	sight 39:7	step 38:13,14	19:12 25:21 36:18	violations 16:17
45:5 47:3,5 48:8	sign 1:12 10:2	story 23:17	43:2	visible 9:2 10:15
48:15,15,15 50:7	17:22 18:1,1	Street 1:18	third 8:22	31:1 39:22 41:17
50:9 51:4	23:22 24:2,14,19	subject 7:2	thought 25:22	visit 14:14
rights 48:16	29:11,12,17 34:18	submit 45:18 46:5	26:18 43:5	visited 12:20
Road 1:8 3:6	34:19 35:7 36:19	48:2 50:12,21	three 7:20 9:6,7	visiting 12:3
roll 52:3	41:14 42:17,21	summing 7:4	21:18,20 35:11,12	vote 52:3,11
room 1:17 52:14	signs 8:3 15:13,15	supposed 25:22	42:14	
route 50:2	15:18 16:15 17:11	26:1 42:10	time 8:9 14:1,14,21	<hr/> W <hr/>
rule 45:7	21:12,16 22:4	sure 6:12 7:6 10:14	17:2,14 19:6	wait 6:11 8:5 19:5
Ruthanne 1:18,20	25:8 34:3,5,16,21	16:5 25:13	21:13 24:4,6	19:6,6 32:7 49:21
	35:6,16,17 36:16	swear 3:16 11:5	29:16 43:2 45:4	50:19
<hr/> S <hr/>	37:3,3,5 39:11	23:7,10	today 7:18 14:6	waive 43:17
sample 49:14	40:14	sworn 4:6,11	told 14:15 15:8	walk 33:4
saw 25:18	sign's 10:14		touch 50:7	walked 20:12
saying 20:19	Silverstein 1:22	<hr/> T <hr/>	transcript 44:2,9	walking 13:5
says 19:3 31:6	23:18 25:16 46:1	table 4:13,14	44:10,20 45:4,6,8	wall 24:11 28:7
seat 23:14	46:2,3,13 48:13	take 34:11 43:15	47:9,22 48:1,6,12	32:6,8,10
seating 38:16	48:19 51:22 52:2	52:3	48:18,21	want 5:22 6:12 7:5
second 8:1,6 19:6	52:8,9	taken 26:11 29:7	translate 8:9 23:19	7:8,9 8:8 10:10
27:3 28:19 51:21	sir 3:12 20:4 21:5	39:19	25:14	19:13 27:3,6
51:22	sitting 39:5	talked 15:4	TRANSLATOR	43:16 44:7 45:15
seconded 52:2	slow 8:12 23:18	talking 20:6,14	4:10	46:15 49:6,15
Section 51:11,16,19	smashed 24:4	28:4 42:9	truth 11:6,6,7	50:1
				wants 19:21 46:16

46:17,18,20 warning 8:3 15:12 15:15,17 18:1 22:4 24:14,19 25:19 26:1 34:19 37:3 41:14 43:5 warnings 28:9 Washington 1:18 wasn't 13:16 39:6 way 7:12 25:22 32:18 38:18 Wednesday 12:15 weeks 39:10 44:11 47:9,21 weren't 20:13 21:16 we'll 6:22 40:21 41:3 47:21 50:22 we're 28:3 42:9 49:21 50:19 window 1:10 8:1 13:9,10,11 14:16 15:2,4 18:3,6,11 18:17 22:2,3 23:22 24:4,6,8 29:17,20 31:5 34:9,10,12 35:1,2 35:4,6,8,10,19 36:17 37:5 39:12 39:18 41:12,22 42:4,5,6 windows 13:12 14:17 15:1 24:3 25:1 35:3 wiped 24:2 witness 4:7 5:20 6:7,17,17 9:11 10:22 22:16 witnesses 2:13 5:11 5:12 6:4 41:3 word 30:16 worked 11:21 26:2 workers 38:19 39:1 working 33:11 works 6:13 write 44:19 48:16 written 45:19	50:14,19,20,21 <hr/> Y <hr/> years 24:1 26:2,3 33:12,13,15,16,17 33:20 Yiu 2:15 4:4,16 Yong 2:15 4:4,16 5:13 <hr/> Z <hr/> Zoomed 28:22 <hr/> P <hr/> p 1:5,14 <hr/> \$ <hr/> \$100 18:2 42:16 \$250 17:22 18:2 \$350 42:15 \$600 17:21 \$800 42:15 <hr/> 0 <hr/> 00579 3:5 <hr/> 1 <hr/> 1 2:21 7:22 28:4,16 29:6 42:15 10 2:8 11 2:14 12-CMP 3:4 12-CMP-00579 1:9 51:15 1251 1:8 3:5 14th 1:17 17 1:15 26:3 33:12 33:13,14,17 <hr/> 2 <hr/> 2 2:22 29:4 36:5 42:16 2:46 3:2 20 26:2 2000 1:17 2009 12:1 2010 51:12,17,20 52:17	2012 12:16 42:7,8 2013 1:15 21 15:20 29:12 34:19 41:19 23 2:15 24 2:21,22 26th 12:16 42:8 <hr/> 3 <hr/> 3 42:16 3:38 52:19 30 44:18 48:1 <hr/> 4 <hr/> 4-0-0 52:11 405 51:11 405(b)(13) 51:19 405(b)(4) 51:16 41 2:9 42 2:11 <hr/> 5 <hr/> 5D 1:10 3:7 <hr/> 6 <hr/> 6991 17:21 <hr/> 7 <hr/> 7 2:7 75795 1:9 3:6 <hr/> 9 <hr/> 90 50:12,14 52:17		
---	---	---	--	--