

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
Case #11-251-00388 :
DC Irish, LLC :Fact
t/a Sign of the Whale :Finding
1825 M Street, N.W. :Hearing
License #85120 :
Retailer CT :
ANC 2B :
Assault Outside of the :
Establishment :
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APRIL 18, 2012

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009, Chairperson Miller, presiding.

PRESENT

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
CALVIN NOPHLIN, Member

JEANNETTE MOBLEY, Member

ALSO PRESENT

FELICIA MARTIN, Investigator

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

10:39 a.m.

CHAIRPERSON MILLER: The next case on our calendar is a fact finding hearing. Case Number 11-251-00388, Sign of the Whale located at 1825 M Street, N.W., License Number 85120 in ANC 2B.

Good morning.

INVESTIGATOR MARTIN: Good morning.

CHAIRPERSON MILLER: And would you please sign in on that piece of paper on the table and then identify yourselves for the record when you're ready.

INVESTIGATOR MARTIN: Good morning. Investigator Felicia Martin, Investigator with the Alcoholic Beverage Regulation Administration.

CHAIRPERSON MILLER: Thank you.

MR. O'BRIEN: Stephen O'Brien for the Licensee. To my immediate left is John Sullivan the managing member of the Limited

1 Liability Company Licensee and to my far left
2 is Fred Leiby L-I-B-E -- L-E-I- B-E-Y -- L-E-
3 I-B-Y. Fred Leiby.

4 CHAIRPERSON MILLER: Okay.

5 MR. O'BRIEN: And I'm spelling
6 that in particular L-E-I-B-Y because the name
7 is misspelled in the investigative report.

8 CHAIRPERSON MILLER: Okay. Let's
9 get it right the record then. Did you say L-
10 E-I-B-Y?

11 MR. O'BRIEN: Yes, I did.

12 CHAIRPERSON MILLER: Okay. Good.
13 All right.

14 So, this also is a fact finding
15 hearing. There's not going to be any
16 testimony under oath. Just we want to gather
17 a little bit more information about this case
18 which involves an assault as I understand it
19 outside the establishment.

20 It's possible that information
21 that comes out in this hearing could be
22 referred to OAG for a show cause, but that's

1 not the purpose. Just wanted to let you know
2 the purpose is really to get this information
3 and then assess it and to see, you know,
4 whether we should make a referral or take no
5 action or do something else. Okay.

6 So, do you have any questions
7 before we start?

8 Okay. So, we're going to start
9 with our investigator's report.

10 INVESTIGATOR MARTIN: Okay. On
11 Wednesday, December 12th of 2011, Robert Uline
12 -- correction, Matthew Uline, the Complainant,
13 reported to the Metropolitan Police that he
14 was a patron inside of Sign of the Whale
15 located at 1825 M Street, N.W. and was there
16 approximately one hour and during his one-hour
17 stay, he left the establishment on three
18 different occasions to smoke a cigarette.

19 On his third return -- on his
20 third attempt into the establishment, he was
21 confronted by who he said was an employee of
22 Sign of the Whale who advised him that he was

1 not able to reenter and he stated that the
2 employee grabbed him, sign an explicit word to
3 him and pushed him down a flight -- the stairs
4 in front of the establishment.

5 Mr. Uline stated that he suffered
6 a bump over his right eye, some swelling and
7 a scrape to his forearm and he also mentioned
8 to me that had -- he was acquainted with the
9 suspect because the suspect also worked at
10 another -- the suspect also was at another
11 establishment just below Georgetown.

12 On December the 20th, I visited
13 Sign of the Whale and met with Trey Huston who
14 identified himself as the ABC Manager. Mr.
15 Huston advised that he was working that night
16 and suggested that I speak with Mr. Fred Leiby
17 or Mr. Matt Angel because they were the
18 employees who were working on the night of the
19 incident.

20 Mr. Huston did not know how to
21 operate the cameras and told me that Mr. Leiby
22 should be able to assist me -- correction, Joe

1 Martin who's the General Manager should be
2 able to assist with the cameras.

3 On Wednesday, December the 21st, I
4 interviewed the reporting officer on the 251
5 William McGovern and he stated besides his
6 official police report, he did conduct a show
7 up, which is a type of lineup, of the
8 employees who were inside the establishment on
9 the night of the incident and unfortunately,
10 there was negative results as it relates to
11 any of the individuals who were presented to
12 the Complainant as the perpetrator who
13 assaulted him.

14 And I learned through another ABRA
15 Investigator Donnell Butler pertaining to the
16 video footage that the establishment only kept
17 video footage for two days and so, my
18 investigation was beyond the two-day wait
19 period.

20 And that's the conclusion of my
21 testimony.

22 CHAIRPERSON MILLER: Thank you.

1 Is the Complainant here by any chance or
2 anybody else here on this case? Okay.

3 Do Board Members have questions of
4 the investigator?

5 Let me ask you this. If I
6 understand you correctly, there was like a
7 lineup and he couldn't identify the person in
8 the lineup?

9 INVESTIGATOR MARTIN: Yes, the
10 Complainant Mr. Uline advised that once he was
11 pushed down the steps, the suspect ran into
12 the establishment.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Yes, Mr. Brooks.

15 MEMBER BROOKS: Yes. Ms. Martin,
16 I want to be clear. You said that you were
17 told that the video footage was only kept for
18 two days.

19 INVESTIGATOR MARTIN: Yes, sir.

20 MEMBER BROOKS: And that's their
21 system. It does not keep it for any longer
22 period of time.

1 INVESTIGATOR MARTIN: Yes, sir.

2 MEMBER BROOKS: Okay. Thank you,
3 Madam Chair.

4 CHAIRPERSON MILLER: Okay. I
5 think we might as well turn to you all. If
6 you have any questions for the investigator.
7 If you want to address your version of what
8 happened. Whatever you --

9 MR. O'BRIEN: Just two questions
10 before I go.

11 CHAIRPERSON MILLER: Okay. Um-
12 hum.

13 MR. O'BRIEN: Number one, I don't
14 see it in the report. What time of day was
15 this?

16 INVESTIGATOR MARTIN: For the show
17 up, it was --

18 MR. O'BRIEN: Not the show up.
19 For the incident.

20 INVESTIGATOR MARTIN: The incident
21 occurred around 1:40 a.m.

22 MR. O'BRIEN: Okay. I must have

1 missed that in the report.

2 INVESTIGATOR MARTIN: Yes, sir, it
3 is. On the -- not the report. That actual
4 251 police report.

5 MR. O'BRIEN: Oh, the 251. Okay.

6 INVESTIGATOR MARTIN: Yes, sir.

7 MR. O'BRIEN: All right. Other
8 than what the Complainant Mr. Uline said,
9 Investigator Martin, were you able to
10 determine whether the assailant was, in fact,
11 an employee?

12 INVESTIGATOR MARTIN: No.

13 MR. O'BRIEN: Those are my only
14 questions of the investigator.

15 CHAIRPERSON MILLER: Okay.

16 MR. O'BRIEN: Mr. Leiby who was
17 present is here to answer questions.

18 CHAIRPERSON MILLER: Okay.

19 MR. O'BRIEN: But, it's my
20 understanding that this person that apparently
21 is known to staff who the assailant was is not
22 an employee, never has been an employ and this

1 appears to be an altercation between two
2 patrons out on the sidewalk.

3 CHAIRPERSON MILLER: Now, who
4 knows that person? Mr. Leiby?

5 MR. LEIBY: He frequents the
6 establishment not regularly, but I know his
7 name is Tim. I don't know him personally.

8 CHAIRPERSON MILLER: Okay. Did
9 you tell the investigator that information?

10 MR. LEIBY: I didn't really know
11 him. That was the first time saw Mr. Uline
12 and Tim. That night was the first time I've
13 ever met them.

14 CHAIRPERSON MILLER: Oh. Oh, you
15 didn't know it that night, but you know it
16 now?

17 MR. LEIBY: Yes.

18 CHAIRPERSON MILLER: Okay.

19 MR. LEIBY: After.

20 CHAIRPERSON MILLER: Okay. Is
21 there anything else you want to say before we
22 ask any other questions?

1 MR. O'BRIEN: Not really.

2 CHAIRPERSON MILLER: What about
3 video only being kept two days?

4 MR. O'BRIEN: At the time, it was
5 four days. Since it has been upgraded. It's
6 now ten days.

7 CHAIRPERSON MILLER: Oh, great.
8 Okay. I guess I'll ask the investigator.

9 Did you find that the
10 establishment did anything wrong that night?

11 INVESTIGATOR MARTIN: Well, I
12 would have to say I really wasn't able to get
13 more information. I would have liked to have
14 gotten more information from the officer as
15 far as the lineup went and whether or not --
16 if there was an rear exit? Did everyone in
17 the lineup match the description given by the
18 Complainant. But, just based off of what was
19 advised to me, I would say no. I didn't have
20 enough information.

21 CHAIRPERSON MILLER: Okay. And
22 then I would ask you, so, you know who the

1 assailant was. Is there anything you do now
2 with respect to letting him come again to your
3 establishment or is there any policy with
4 respect to, you know, how you treat people who
5 have, you know, taken actions like this on
6 your property, outside your property?

7 MR. LEIBY: He has not been on --
8 been in since on a night that I have worked
9 since --

10 CHAIRPERSON MILLER: Um-hum.

11 MR. LEIBY: -- the altercation. I
12 don't -- we don't have a formal policy.

13 CHAIRPERSON MILLER: Okay. So, it
14 hasn't been a problem again basically. Okay.

15 Any other questions? Yes, Mr.
16 Nophlin.

17 MEMBER NOPHLIN: Piggyback on the
18 Chair question. Did you do anything to
19 improve this situation since it's happened?

20 MR. LEIBY: We monitor as best we
21 can the interaction between patrons and
22 generally, on busier nights, we do have

1 ministers of hospitality. People to make a
2 safe, calm atmosphere.

3 And on nights like this, you know,
4 when it's just a small staff on a slower
5 night, then we do the best we can to have a
6 positive atmosphere.

7 MR. SULLIVAN: And one thing we
8 did was upgrade the camera system so that we
9 would be able to record if there was an
10 incident.

11 MEMBER NOPHLIN: You did correct
12 it?

13 MR. SULLIVAN: Yes.

14 MEMBER NOPHLIN: To what extent?
15 How did you correct it?

16 MR. SULLIVAN: We added like the
17 memory to it. So, it records for ten days.
18 So, if there was an incident of any kind, we
19 can save it and burn it to a disk and have
20 that information to view at any time.

21 MEMBER NOPHLIN: Thank you, Madam
22 Chair.

1 CHAIRPERSON MILLER: Yes. Mr.

2 Alberti. Yes.

3 MEMBER ALBERTI: Mr. Leiby, just
4 look here since you brought it up, how did you
5 find out -- identify the suspect?

6 MR. LEIBY: Just word of mouth
7 from the neighborhood.

8 MEMBER ALBERTI: From the
9 neighborhood? How would they know who
10 assaulted this patron? How would they -- I
11 mean I'm a little curious how you identify who
12 it was that Mr. -- how you identified who
13 assaulted Mr. Uline. Because you seem pretty
14 definite.

15 MR. LEIBY: I mean like -- like I
16 said it's the neighborhood. There's several
17 other establishments and I had heard. You
18 know, word gets out.

19 MEMBER ALBERTI: Well, how did
20 they know who -- how would they even know he
21 was at your place that night?

22 MR. LEIBY: Word of mouth.

1 MEMBER ALBERTI: So, you're
2 assuming that this person who has some
3 reputation at other establishments was the
4 suspect that night?

5 MR. LEIBY: Yes, I can't be for
6 sure. I -- I -- knowing that both --

7 MEMBER ALBERTI: Okay. I'm a
8 little disappointed. Here's my
9 disappointment. You come in with surety that
10 you know who it is. If you don't know who it
11 is, that's fine, but, you know, we're trying
12 -- what this Board expects if you're going to
13 be before this Board is honesty. So, anything
14 that's going to help you. Trying to blow
15 smoke --

16 MR. LEIBY: I'm sorry.

17 MEMBER ALBERTI: -- in our face is
18 not going to help you. So, just a warning for
19 the future. Okay.

20 Mr. Sullivan.

21 MR. SULLIVAN: If I could go --
22 the comments that -- it happened like 1:30 on

1 a Sunday night. I wasn't there at the time.

2 MEMBER ALBERTI: Sure.

3 MR. SULLIVAN: But, there was
4 probably eight patrons in the place. So, he
5 would have known visually all of them and then
6 two minutes later, somebody said somebody
7 pushed somebody on the sidewalk. He went out
8 and there was two people that were missing of
9 the eight. So, we kind of -- we're drawing
10 some assumptions. You're right. It may be
11 wrong. But, that's --

12 MEMBER ALBERTI: Okay. Okay.
13 But, that's all -- that's all I was expecting
14 from you is -- yes. All right.

15 MR. SULLIVAN: And I understand.
16 Unless we knew 100 percent, you're right. We
17 shouldn't even --

18 MEMBER ALBERTI: And I'm hearing
19 facts and then I'm hearing different things.

20 MR. SULLIVAN: Understand.

21 MEMBER ALBERTI: Doubts. So --

22 MR. SULLIVAN: I'm sorry.

1 MEMBER ALBERTI: -- that's what's
2 triggering my concern here and I appreciate.

3 MR. SULLIVAN: Yes, sir.

4 MEMBER ALBERTI: Thank you.

5 CHAIRPERSON MILLER: I just wanted
6 to -- do you employ security or do you just
7 have your regular employees watching out or --

8 MR. LEIBY: On that night, we did
9 not have security.

10 MR. SULLIVAN: This was a Sunday
11 evening.

12 MR. LEIBY: Yes.

13 CHAIRPERSON MILLER: So, you have
14 security on the weekends or what?

15 MR. SULLIVAN: Yes, Thursday,
16 Friday and Saturday.

17 MR. LEIBY: Friday --

18 CHAIRPERSON MILLER: Okay.

19 MR. SULLIVAN: Yes.

20 CHAIRPERSON MILLER: Do you think
21 you need to have security on other nights
22 because of something like this or how do you

1 see it?

2 MR. SULLIVAN: I mean I think -- I
3 think there was three -- like three male
4 employees that were working including Fred,
5 the bartender and the bar manager and probably
6 eight employees -- I mean eight patrons. So,
7 I mean I don't think we needed extra security
8 for that night and, you know, again, I don't
9 know what we would have done unless we
10 followed them out onto the sidewalk where they
11 had their altercation anyway and if -- and
12 from what I understand and frankly to shed
13 more light to it, it really wasn't an -- it
14 was a -- physically somebody pushed somebody,
15 but by the time they walked outside, it was
16 over.

17 CHAIRPERSON MILLER: Um-hum.

18 MR. SULLIVAN: And then the one
19 assailant had ran and then the police came and
20 they did do the lineup and they came and they
21 saw our three employees, brought the gentleman
22 in, said is it any of these three, no and they

1 said okay. You know, so, that's all we -- so,
2 I don't know what we could have done different
3 in this circumstance anyway.

4 CHAIRPERSON MILLER: Okay. And no
5 one asked you for help. Is that correct?

6 MR. SULLIVAN: No, by the time we
7 went outside, the guy -- he said he was on the
8 phone calling the police and we said great.
9 Come and sit down. Do you want any ice or
10 whatever and he was fine and the police came
11 and that's when they did the little lineup
12 thing.

13 CHAIRPERSON MILLER: Okay. Ms.
14 Mobley.

15 MEMBER MOBLEY: Right. Thank you,
16 Madam Chair.

17 Just a couple of questions just to
18 help my understanding. First of all,
19 Investigator Martin, Exhibit 4, would you look
20 at Exhibit 4, the incident report?

21 INVESTIGATOR MARTIN: The 251? I
22 don't --

1 MEMBER MOBLEY: Exhibit 4.

2 INVESTIGATOR MARTIN: I don't have
3 the entire package with me, Ms. Mobley.

4 MEMBER MOBLEY: Okay. There was
5 an incident report. Do you recall getting an
6 incident report that night?

7 MR. O'BRIEN: I can loan my copy
8 to the investigator.

9 MEMBER MOBLEY: Thank you. Thank
10 you.

11 INVESTIGATOR MARTIN: Yes. Yes,
12 ma'am.

13 MEMBER MOBLEY: It said Mr. Huston
14 provided the incident report.

15 INVESTIGATOR MARTIN: Yes, ma'am.

16 MEMBER MOBLEY: Okay. And to your
17 knowledge, who completed this incident report?

18 INVESTIGATOR MARTIN: Mr. Huston.

19 MEMBER MOBLEY: Mr. Huston
20 completed it?

21 INVESTIGATOR MARTIN: Yes.

22 MEMBER MOBLEY: Okay. Mr. Leiby

1 -- Leiby.

2 MR. LEIBY: Leiby.

3 MEMBER MOBLEY: Leiby. Excuse me.

4 I'm looking at the incident report. Mr.

5 Huston completed it. Is that correct?

6 Because they're showing that you were the

7 manager -- ABC Manager on duty that night.

8 Can you --

9 MR. LEIBY: I -- the incident
10 report was done by me.

11 MEMBER MOBLEY: It was done by
12 you.

13 MR. SULLIVAN: Yes, the procedure
14 is the manager on duty if there was any
15 incident would fill it out that night and then
16 it would have been on file. So, when the
17 investigator came a couple of days later,
18 another manager might have handed it to her.

19 MEMBER MOBLEY: Okay.

20 MR. SULLIVAN: But, this was
21 done --

22 MEMBER MOBLEY: But, the incident

1 report was completed by you?

2 MR. LEIBY: Yes.

3 MEMBER MOBLEY: And I'm hearing it
4 said that there were only like eight or nine
5 patrons in the bar that night.

6 MR. LEIBY: Correct.

7 MEMBER MOBLEY: Okay. And so,
8 this incident report is saying that the
9 customer was Matt Uline. So, you knew him by
10 name according to --

11 MR. LEIBY: After the incident,
12 yes, I was told his name.

13 MEMBER MOBLEY: Okay. Because I'm
14 just trying to figure this out. Because if
15 there were just a few people in the bar and
16 you said that this gentleman, the customer,
17 was very intoxicated and he wasn't going to be
18 served any more liquor and that was a few
19 patrons, I'm trying to figure what was your
20 role that night as the ABC Manager.

21 You have a few patrons. You have
22 someone who's overly intoxicated. So, what

1 did you observe in terms of this customer?

2 MR. LEIBY: He was -- it looked
3 like he was visibly fine, but he was -- looked
4 like he had been, so, I refused him the right
5 to drink.

6 MEMBER MOBLEY: Okay.

7 MR. LEIBY: And let him stay while
8 his friends completed their drinks.

9 MEMBER MOBLEY: Okay. And then
10 what happened?

11 MR. LEIBY: That's when he
12 proceeded to smoke.

13 MEMBER MOBLEY: So, you saw him go
14 outside?

15 MR. LEIBY: He asked me for a
16 cigarette. I didn't see him go outside.

17 MEMBER MOBLEY: Okay. And then he
18 made an attempt to get back inside. Were you
19 aware of that?

20 MR. LEIBY: No.

21 MEMBER MOBLEY: You weren't aware
22 that he -- okay. You were not aware?

1 MR. LEIBY: I -- I was not near
2 the front door at all.

3 MEMBER MOBLEY: Okay. And you
4 didn't have -- did you -- I'm sorry. I know
5 you talked about security before. Was there
6 security at the door? No security because
7 you had a small group that night. Okay.

8 All right. No further questions,
9 Madam Chair.

10 CHAIRPERSON MILLER: Okay.
11 Anybody else?

12 MEMBER BROOKS: I have a question.

13 CHAIRPERSON MILLER: Yes, Mr.
14 Brooks.

15 MEMBER BROOKS: Now, you say he
16 asked for a cigarette. Did you give him one?

17 MR. LEIBY: No.

18 MEMBER BROOKS: You did not.

19 Okay. Mr. Sullivan, how many cameras do you
20 have?

21 MR. SULLIVAN: Six or eight
22 cameras. Eight I believe, sir.

1 MEMBER BROOKS: Eight cameras?

2 MR. SULLIVAN: Yes.

3 MEMBER BROOKS: And you had eight
4 cameras that night?

5 MR. SULLIVAN: Yes.

6 MEMBER BROOKS: And do you have
7 any cameras on the outside?

8 MR. SULLIVAN: It covers the front
9 door area.

10 PARTICIPANT: We don't have
11 anything outside. It just covers the main
12 vestibule and wall inside.

13 MR. SULLIVAN: Like the vestibule.
14 Then there's like three steps down which is
15 where this incident happened. That's kind of
16 covered and then it kind of ends right there.

17 MEMBER BROOKS: Okay. So, I saw a
18 picture of steps leading outside.

19 MR. SULLIVAN: Yes.

20 MEMBER BROOKS: Are those the
21 steps you're talking about?

22 MR. SULLIVAN: Yes, sir.

1 MEMBER BROOKS: So, do you have
2 cameras that would cover that?

3 MR. SULLIVAN: Like at the top of
4 those three steps is a vestibule. So, you'd
5 be queuing the vestibule and then kind of out
6 towards the sidewalks and you would see that
7 stair area. Yes.

8 MEMBER BROOKS: Okay. So, and you
9 say that you did not make a copy of that
10 incident.

11 MR. SULLIVAN: No.

12 MEMBER BROOKS: Or the camera did
13 not show that incident.

14 MR. SULLIVAN: No, I -- what I
15 said was after -- when the investigator came
16 like a couple of days or whatever later and it
17 was no longer -- it was already taped over.

18 The way the DVR works is it tapes
19 for a certain amount of days and then it re-
20 tapes over if you haven't burned it to a disk
21 and by the time we would have gone back to
22 look at the incident when the ABRA

1 Investigators came, it already taped over it
2 and then since then, we're upgraded the amount
3 of memory so it can have a ten-day period so
4 we'd have a longer period to do that before it
5 would tape --

6 MEMBER BROOKS: No, I was just
7 kind of curious. Knowing that you had an
8 incident because you had to give an incident
9 report, that you did not burn a copy of that
10 incident for that night.

11 MR. SULLIVAN: No, there was none.
12 There was one. It was not burned. No.

13 MEMBER BROOKS: Okay. Thank you,
14 Madam Chair.

15 CHAIRPERSON MILLER: Thank you.
16 Yes, Mr. Jones.

17 MEMBER JONES: Thank you. Do you
18 have the ability to burn CDs, DVDs?

19 MR. SULLIVAN: Yes, sir. Yes.

20 MEMBER JONES: At what point do
21 you do that? Under what circumstances would
22 be the trigger to say oh, let's burn off our

1 DVD just in case?

2 MR. SULLIVAN: I mean if we
3 thought there was an incident that we would
4 want to keep it to be able to show the video
5 to somebody.

6 MEMBER JONES: But, he saw --
7 there was an incident. So, did you look at
8 the camera footage on that night?

9 MR. SULLIVAN: No.

10 MEMBER JONES: But, you did do an
11 incident report.

12 MR. SULLIVAN: No, I didn't do an
13 incident report.

14 MEMBER JONES: Your -- some --

15 MR. SULLIVAN: Yes. I'm sorry.
16 Yes, sir.

17 MEMBER JONES: Your establishment
18 prepared an incident report.

19 MR. SULLIVAN: Yes.

20 MR. LEIBY: I was not trained to
21 use the DVR at that point.

22 MEMBER JONES: So, you don't know

1 how to use it?

2 MR. LEIBY: I do now.

3 MEMBER JONES: You do now.

4 MR. LEIBY: I assist and train,
5 but --

6 MEMBER JONES: Okay.

7 MR. LEIBY: -- at that point --

8 MR. SULLIVAN: Since then, that's
9 one of the things we did say. If we have any
10 incident report, we're going to burn the night
11 of and also extended the period of time that
12 it records.

13 MEMBER JONES: Okay. So, it's
14 very curious to me, but so, police were
15 actually called. Police came. So, you
16 drafted an incident report and you -- I
17 forgot. What's your name again?

18 MR. LEIBY: Fred Leiby.

19 MEMBER JONES: Leiby. You don't
20 have the ability -- at the time, you didn't
21 have the ability to review the camera footage.

22 MR. LEIBY: Yes, I wasn't trained.

1 MEMBER JONES: Did you call
2 anyone? Did you --

3 MR. LEIBY: I emailed the incident
4 report to -- I emailed the incident report to
5 all of my other managers.

6 MEMBER JONES: To your other
7 managers?

8 MR. LEIBY: Yes.

9 MEMBER JONES: Okay. Would that
10 include the owner as well? To whom do you
11 report?

12 MR. LEIBY: My General Manager Joe
13 Martin.

14 MEMBER JONES: You pointed back.
15 Got it. So, you reported this incident to
16 him?

17 MR. LEIBY: Yes.

18 MEMBER JONES: When did you report
19 that incident?

20 MR. LEIBY: That -- the night.
21 That very morning I guess. The a.m. of the
22 incident.

1 MEMBER JONES: So, within how many
2 hours of you drafting this incident report did
3 you contact him? Before or after you drafted
4 the incident report?

5 MR. LEIBY: It was after.

6 MEMBER JONES: After. How many
7 hours? Within how many hours?

8 MR. LEIBY: Within -- within the
9 hour.

10 MEMBER JONES: Within the hour?

11 MR. LEIBY: Yes.

12 MEMBER JONES: What did you
13 communicate to him?

14 MR. LEIBY: I -- in my close-out
15 report, you know, I -- I mentioned the
16 incident report as well as, you know --
17 pointed out and that was at, you know,
18 3:00/4:00 in the morning after the police had
19 left.

20 MEMBER JONES: Okay. So, at that
21 point, the video was still there.

22 MR. LEIBY: I guess.

1 MEMBER JONES: Correct? Based on
2 how the system was configured at that time.

3 Did you mention to your general
4 manager I guess the individual to whom you
5 report that you tried to look at the video and
6 couldn't or it didn't even cross your mind to
7 look at the video?

8 MR. LEIBY: It didn't even cross
9 my mind.

10 MEMBER JONES: And he didn't make
11 mention of it to you either?

12 MR. LEIBY: No.

13 MEMBER JONES: No.

14 MR. LEIBY: I'm sure he wasn't
15 even awake at that hour.

16 MEMBER JONES: So, what is the
17 primary purpose of your video system?

18 MR. O'BRIEN: Are you asking Mr.
19 Leiby or are you --

20 MEMBER JONES: No. I'm sorry.
21 It's open to --

22 MR. O'BRIEN: Okay. Thank you.

1 MEMBER JONES: -- the three or
2 four or five. Whoever may want to answer
3 that.

4 MR. SULLIVAN: I'm mean I'm sorry.
5 The primary purpose of the video is if there's
6 an incident that is going to be recording
7 something that we want to be able to show in
8 the future. To record it. I guess in this --

9 MEMBER JONES: So, why didn't it
10 apply in this instance? That's what I'm
11 trying to figure out.

12 MR. SULLIVAN: Because I mean -- I
13 don't even know when I first became of it. It
14 probably was a couple of days late.
15 Certainly, by the time, the -- an ABRA person
16 showed up and had some questions, we wanted to
17 burn it at that point, but it was already
18 gone.

19 MR. O'BRIEN: Mr. Jones, we'll
20 concede that there was enough there from the
21 incident report and from the police being
22 called that it should have been.

1 MEMBER JONES: It should have
2 been.

3 MR. O'BRIEN: It should have been.
4 We'll concede that. Yes.

5 MEMBER JONES: Okay. Thank you.
6 Thank you, Madam Chair.

7 MEMBER MOBLEY: Investigator
8 Martin.

9 INVESTIGATOR MARTIN: May I add
10 something?

11 MEMBER MOBLEY: Yes.

12 INVESTIGATOR MARTIN:
13 Unfortunately, for Sign of the Whale, they had
14 another incident, a simple assault, that I
15 happen to be the investigator on that report
16 after this incident in January. Either -- I
17 want to January it was. January or February
18 and I can say that I met with one of the ABC
19 Managers approximately four days after that
20 incident and he did -- they did have video
21 footage of that particular incident that I was
22 able to review that they did save.

1 So, just to help, you know, to let
2 you know that the additional footage -- the
3 additional time was captured even beyond the
4 two days from this report. If that helps at
5 all.

6 MR. O'BRIEN: Thank you. That's
7 very fair.

8 INVESTIGATOR MARTIN: Um-hum.

9 CHAIRPERSON MILLER: That's good.
10 That's great. Okay.

11 Do you have like procedures in
12 place? You know, like what should be done if
13 there's an incident? You know, the manager
14 writes an incident report. The -- whatever?
15 Do you have some --

16 MR. SULLIVAN: Yes.

17 CHAIRPERSON MILLER: Anything
18 change with that? With your procedures that
19 way?

20 MR. SULLIVAN: The only thing that
21 changed is this is -- if there is anything
22 that arises to the concern of an incident

1 report, that we'll burn a disk and keep it
2 with it.

3 CHAIRPERSON MILLER: You'd burn
4 the disk. Okay.

5 MR. SULLIVAN: So, that -- and so,
6 if we have -- you know, over a year period you
7 have five incident reports, we'll have five
8 videos to be kept with that.

9 CHAIRPERSON MILLER: Okay. I just
10 thought I heard you say like you didn't find
11 out about this until two days later or
12 something. That seems a little bit late.

13 MR. O'BRIEN: Mr. Sullivan
14 personally.

15 CHAIRPERSON MILLER: Yes.

16 MR. O'BRIEN: Mr. Sullivan lives
17 and works in New York.

18 CHAIRPERSON MILLER: Oh, I see.
19 Okay.

20 MR. O'BRIEN: And he has
21 businesses in multiple jurisdictions.

22 CHAIRPERSON MILLER: Okay.

1 MR. O'BRIEN: By the time it
2 filtered its way up to Mr. Sullivan --

3 CHAIRPERSON MILLER: Okay.

4 MR. O'BRIEN: -- a couple of days
5 -- at least a couple of days had passed.

6 CHAIRPERSON MILLER: Okay. All
7 right. I didn't realize you weren't down
8 here.

9 MR. SULLIVAN: No.

10 CHAIRPERSON MILLER: So, you don't
11 have a need to know immediately.

12 MR. SULLIVAN: No. Shortly.

13 CHAIRPERSON MILLER: Okay. Ms.
14 Mobley.

15 MEMBER MOBLEY: Just to get it on
16 the record, can we get the names of everyone
17 -- of all the employees who were on duty that
18 evening?

19 MR. LEIBY: It's Fred Leiby.

20 MEMBER MOBLEY: Fred, yourself,
21 Leiby.

22 MR. LEIBY: Leiby. The bar

1 manager was Matthew Angel.

2 MEMBER MOBLEY: Right.

3 MR. LEIBY: And another gentleman
4 Matt Aubrey who's our Director of
5 Entertainment for --

6 MEMBER MOBLEY: Matthew Aubrey.

7 MR. LEIBY: A-U-B-R-E-Y.

8 MEMBER MOBLEY: Right and what is
9 his position?

10 MR. LEIBY: He's a
11 bartender/Director of Entertainment. He's a
12 bartender.

13 MEMBER MOBLEY: Okay. And so, you
14 have no idea who this alleged employee is who
15 supposedly pushed this person to the ground?

16 MR. LEIBY: No.

17 MEMBER MOBLEY: Okay. Where were
18 -- you said that you were in the back. Where
19 was Matt Angel and Mr. Aubrey?

20 MR. LEIBY: They were at the -- at
21 the bar.

22 MEMBER MOBLEY: Okay. Just wanted

1 to get it on the record, Madam Chair.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. Anything else? Okay.

4 I think we heard a lot of
5 information, good information today about what
6 happened and some positive steps that you've
7 taken since then and that the investigator
8 confirmed has been helpful. Such as, you
9 know, the video being kept for a longer period
10 of time and the DVD.

11 So, at this point, I would
12 recommend that there be no further action on
13 this case.

14 Is that the consensus of the Board
15 that we take no further action?

16 I guess I can make a motion.

17 MEMBER NOPHLIN: Take a vote.

18 CHAIRPERSON MILLER: All those in
19 favor of no further action say aye.

20 (Ayes.)

21 CHAIRPERSON MILLER: Well, I'm
22 just saying why don't --

1 MEMBER JONES: You made a motion.

2 CHAIRPERSON MILLER: Well, we
3 don't really need a motion, but I just want to
4 make sure that I have the consensus of the
5 Board which I think is ideal, but no further
6 action to be taken. I can take a motion or we
7 can just -- you can give me the consensus.

8 MEMBER JONES: I'm sorry. I was a
9 little confused as to where we were. So,
10 you're recommending no further action.

11 CHAIRPERSON MILLER: I'm
12 recommended no further action.

13 MEMBER JONES: And you're calling
14 for a vote or just a general --

15 CHAIRPERSON MILLER: Well, let's
16 just get the general consensus. Because for
17 no further action, I don't think we really
18 need to vote.

19 MEMBER JONES: Okay.

20 CHAIRPERSON MILLER: Is that the
21 consensus? Okay.

22 MEMBER MOBLEY: I'm abstaining,

1 Madam Chair.

2 CHAIRPERSON MILLER: Okay. All
3 right. So, okay. I think that is the
4 consensus.

5 Thank you very much for coming
6 down and explaining everything and best of
7 luck.

8 MR. O'BRIEN: Thank you.

9 MR. LEIBY: Thank you very much.

10 (Whereupon, at 11:07 a.m., the
11 hearing was adjourned.)

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