

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Langston Bar & Grille, LLC
t/a Langston Bar & Grille Show Cause
1831 Benning Road, NE Hearing
Retailer CR - ANC-6A
License No. 76260
Case #13-AUD-00049 and
(Failed to Maintain Books
and Records)
Case #13-CMP-00215
(Substantial Change in
Operation-No Summer Garden
Endorsement)

April 23, 2014

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

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

FERNANDO RIVERO, OAG
JASON PERU, ABRA Investigator

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

(1:31 p.m.)

CHAIRPERSON MILLER: Okay.

MEMBER ALBERTI: Madam Chair?

CHAIRPERSON MILLER: Okay. Good afternoon. We are back on the record and I'm calling Case No. 13-AUD-00049, Langston Bar & Grille located at 1831 Benning Road, N.E., License No. 76260, in ANC-6A. Good afternoon.

MR. ROBERSON: Good afternoon.

CHAIRPERSON MILLER: So why don't we start with introductions, starting with the applicant or the licensee?

MR. ROBERSON: Antonio Roberson, owner of Langston Bar & Grille.

MR. RIVERO: Good afternoon, Board Members, Fernando Rivero for the District of Columbia.

CHAIRPERSON MILLER: Okay. This is a Show Cause case. Are there any preliminary issues?

MR. RIVERO: Yes. Board Members,

1 the Government will now move to dismiss this
2 case for evidentiary reasons.

3 CHAIRPERSON MILLER: Okay. All
4 right. Then at the request of the Assistant
5 Attorney General, I will move to dismiss this
6 case. Do I have a second?

7 MEMBER ALBERTI: Second.

8 CHAIRPERSON MILLER: Mr. Alberti
9 seconded the motion. Any comments or
10 questions?

11 All those in favor then of
12 dismissing say aye.

13 ALL: Aye.

14 CHAIRPERSON MILLER: All those
15 opposed? All those abstaining? The motion
16 passes 5-0-0.

17 Then this case is dismissed.

18 We have a second case dealing with
19 Langston Bar and Grille.

20 MR. RIVERO: Right. The
21 Government will be back at 2:00.

22 CHAIRPERSON MILLER: Okay. All

1 right. Then the Board will recess and we will
2 see you all at 2:00

3 MR. RIVERO: Thank you.

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 (Whereupon, at 1:32 p.m. a recess
7 until 2:14 p.m.)

8 CHAIRPERSON MILLER: Okay. The
9 Board is back on the record and we are going
10 to hear now the second Langston Bar & Grille
11 case, Case No. 13-CMP-00215. Langston Bar &
12 Grille is located at 1831 Benning Road, N.E.,
13 License No. 76260, in ANC-6A.

14 And if you would introduce
15 yourselves for the record?

16 MR. RIVERO: Good afternoon, Board
17 Members. Fernando Rivero for the District of
18 Columbia.

19 MR. ROBERSON: Good afternoon.
20 Antonio Roberson, owner of the Langston Bar &
21 Grille.

22 CHAIRPERSON MILLER: Okay. So

1 this is a Show Cause. Are there any
2 preliminary matters?

3 MR. RIVERO: There are no
4 preliminary matters, Madam Chairperson, and
5 the Government is ready to proceed.

6 CHAIRPERSON MILLER: The
7 Government is ready to proceed?

8 MR. RIVERO: No, we are ready to
9 proceed.

10 CHAIRPERSON MILLER: Yes. Okay.
11 And let me just ask Mr. Roberson, are you
12 familiar with these proceedings at all?

13 MR. ROBERSON: A little, yes.

14 CHAIRPERSON MILLER: Okay. So
15 I'll just be very quick then and if you have
16 any questions later, you can ask as we go.
17 But basically, the Government has the burden
18 of proof, so the Government goes first with
19 making its case. And you have an opportunity
20 to cross-examine his witnesses, as will the
21 Board.

22 Also, so when he rests his case,

1 he may put in documents as well. Then you can
2 present your case and if you are the only
3 witness or whatever, I will swear you in and
4 you can give both evidence and argument.

5 Okay?

6 And then at the end, at the very
7 beginning, I will give you the change for
8 opening arguments -- opening statements,
9 that's optional, and it means that you can see
10 if Mr. Rivero does it, it just kind of sets
11 what he is going to prove. And then at the
12 end of the case, closing arguments and that
13 sums up what the evidence has shown.

14 Okay. And so those are optional.

15 Okay. All right. Mr. Rivero?

16 MR. RIVERO: Thank you.

17 CHAIRPERSON MILLER: Um-hum.

18 MR. RIVERO: Good afternoon, Board
19 Members. We are here today in the Show Cause
20 matter of Langston Bar & Grille, LLC t/a
21 Langston Bar & Grille located at 1831 Benning
22 Road, N.E.

1 The Show Cause Notice issued in
2 this matter concerns a charge that the
3 licensee permitted the operation of a summer
4 garden without the required license
5 endorsement in violation of DC Official Code
6 25-113a(c).

7 So I believe that by a
8 preponderance of the evidence today, based on
9 our witness, ABRA Investigator Peru, that we
10 will show the establishment didn't have the
11 proper endorsement to operate a summer garden
12 on that part of the premises, based on a visit
13 that took place on April 18, 2013. Thank you.

14 CHAIRPERSON MILLER: Okay. So you
15 can either make an opening statement if you
16 want now or you can make it at the beginning
17 of your case or not at all.

18 MR. ROBERSON: I'll wait until the
19 beginning of my case.

20 CHAIRPERSON MILLER: Okay.

21 MR. ROBERSON: Thank you.

22 CHAIRPERSON MILLER: Okay. Do you

1 want to call your first witness?

2 MR. RIVERO: Thank you. The
3 Government will call Investigator Peru to the
4 stand.

5 CHAIRPERSON MILLER: Good
6 afternoon.

7 INVESTIGATOR PERU: Good
8 afternoon.

9 Whereupon,

10 INVESTIGATOR JASON PERU
11 was called as a witness by Counsel for the
12 Government, and having been first duly sworn,
13 assumed the witness stand and was examined and
14 testified as follows:

15 INVESTIGATOR PERU: I do.

16 CHAIRPERSON MILLER: Okay. Thank
17 you.

18 DIRECT EXAMINATION

19 MR. RIVERO: Good afternoon.

20 Could you, please, state your full name for
21 the record?

22 INVESTIGATOR PERU: Investigator

1 Jason Peru.

2 MR. RIVERO: And spell your last
3 name, please.

4 INVESTIGATOR PERU: P-E-R-U.

5 MR. RIVERO: Thank you.
6 Investigator, what is your occupation?

7 INVESTIGATOR PERU: I'm an
8 Investigator with the Alcoholic Beverage
9 Regulation Administration.

10 MR. RIVERO: Okay. And you have
11 been an Investigator for how long?

12 INVESTIGATOR PERU: One year now.

13 MR. RIVERO: Okay. Thank you.
14 And what are your duties as an Investigator
15 for ABRA?

16 INVESTIGATOR PERU: To investigate
17 and inspect all licensed ABC establishments.

18 MR. RIVERO: Okay. Are you
19 familiar with Langston Bar & Grille?

20 INVESTIGATOR PERU: Yes, sir.

21 MR. RIVERO: And how are you
22 familiar with this establishment?

1 INVESTIGATOR PERU: I conducted a
2 regulatory inspection along with Investigator
3 Lawson last year.

4 MR. RIVERO: Okay. And do you
5 recall more or less the date?

6 INVESTIGATOR PERU: I believe
7 April 18th.

8 MR. RIVERO: Okay. And around
9 what time was it when you got there?

10 INVESTIGATOR PERU: It was in the
11 evening.

12 MR. RIVERO: All right. And what
13 did you do when you got to the establishment?

14 INVESTIGATOR PERU: We entered the
15 establishment, asked to speak to an ABC
16 manager or owner.

17 MR. RIVERO: And with whom did you
18 speak?

19 INVESTIGATOR PERU: I believe the
20 manager, Ms. Brenda Marshall.

21 MR. RIVERO: Okay. And what did
22 you discuss with Ms. Brenda Marshall?

1 INVESTIGATOR PERU: We let her
2 know that we were there to conduct an
3 inspection.

4 MEMBER RODRIGUEZ: And what
5 happened after that?

6 INVESTIGATOR PERU: She helped us
7 with the inspection. We checked the licenses.
8 We checked the signs posted. We checked the
9 C of O.

10 MR. RIVERO: And what is C of O?

11 INVESTIGATOR PERU: Certificate of
12 Occupancy.

13 MR. RIVERO: Okay. Go on.

14 INVESTIGATOR PERU: And we asked
15 to see the alcohol invoices, but they were
16 locked up and she did not have access to them
17 at the time.

18 MR. RIVERO: And so then what
19 happened?

20 INVESTIGATOR PERU: The liquor
21 invoices were locked up, so we asked her to
22 contact the owner and notify her that we would

1 come back at a later date to reinspect the
2 books and records.

3 MR. RIVERO: And what happened
4 after that?

5 INVESTIGATOR PERU: Once the
6 inspection was completed, we exited the
7 establishment through the rear.

8 MR. RIVERO: All right. And what
9 happened when you exited the establishment
10 through the rear?

11 INVESTIGATOR PERU: We entered
12 into what appeared to be a summer garden.

13 MR. RIVERO: Okay. And what did
14 you see?

15 INVESTIGATOR PERU: There was
16 table, chairs, two individuals, one was
17 standing up smoking and one was sitting in the
18 chair.

19 MR. RIVERO: And what did you --
20 was there anything on the table that you saw?

21 INVESTIGATOR PERU: There were
22 several glasses.

1 MR. RIVERO: Okay. And then what
2 happened?

3 INVESTIGATOR PERU: We then
4 proceeded to take photos. Actually, I believe
5 we exited the back door, took photos of the
6 outside and worked our way back in, took
7 photos of the inside of the establishment, of
8 the summer garden.

9 MR. RIVERO: Okay. I'm going to
10 go ahead and show you a couple of photographs.

11 INVESTIGATOR PERU: Sure.

12 MR. RIVERO: I'm going to mark as
13 Government's Exhibit 1 and 2 for
14 identification, copies of which the licensee
15 has and I believe that the Board is in
16 possession of them in their report.

17 (Whereupon, the document was
18 marked as Government Exhibit 1 and
19 2 for identification.)

20 CHAIRPERSON MILLER: Okay.
21 Martha, do we have Government's Exhibit 1 and
22 2?

1 MR. RIVERO: I would like to --

2 MEMBER ALBERTI: They are part of
3 your investigative report.

4 CHAIRPERSON MILLER: Oh. Mr.
5 Rivero?

6 MR. RIVERO: Yes?

7 CHAIRPERSON MILLER: Are the
8 exhibits you are referring to part of the
9 Investigator's report?

10 MR. RIVERO: They are.

11 CHAIRPERSON MILLER: Oh, same
12 numbers, 1 and 2?

13 MR. RIVERO: No.

14 CHAIRPERSON MILLER: No.

15 MR. RIVERO: They are numbered
16 differently. I've got some extra copies of
17 both.

18 CHAIRPERSON MILLER: Okay. Just
19 so we can follow the right --

20 MR. RIVERO: Sure. So this is the
21 first photograph that I'm going to show you.

22 CHAIRPERSON MILLER: Okay.

1 MR. RIVERO: The photo you all
2 took?

3 INVESTIGATOR PERU: Yes.

4 MR. RIVERO: Okay. Does that
5 photograph accurately represent what you
6 witnessed in this photo?

7 INVESTIGATOR PERU: Yes, it does.

8 MR. RIVERO: Okay. I would like
9 to -- and what is this a photo of?

10 INVESTIGATOR PERU: That is the
11 summer garden bottom level and top level.

12 MR. RIVERO: I would like to go
13 ahead and move Government Exhibit 1 into
14 evidence at this time, a photograph of the
15 establishment taken from outside of the
16 establishment showing the summer garden.

17 CHAIRPERSON MILLER: Okay. Any
18 objection?

19 MR. ROBERSON: No.

20 CHAIRPERSON MILLER: No. Okay.
21 So Government's Exhibit 1 is the same as
22 Exhibit 2, I believe, to the investigation

1 report. And that is admitted. Okay.

2 (Whereupon, the document marked as
3 Government Exhibit 1 was received
4 in evidence.)

5 MR. RIVERO: Okay. All right.

6 And if you can point exactly in this
7 photograph the area where you were, that you
8 said you witnessed -- that you saw a couple of
9 people at a table with drinks.

10 INVESTIGATOR PERU: This lower
11 level behind this wooden fence.

12 MR. RIVERO: Okay. All right.
13 And where is it that you exited when you were
14 in that area?

15 INVESTIGATOR PERU: You can see
16 there is a door coming out of the back of the
17 establishment. We came out through that door
18 and entered that area.

19 MR. RIVERO: Okay. Thank you.
20 I'm going to show you another photograph that,
21 as I indicated, is marked Government 2 for
22 identification. Okay. You all took this

1 photo, correct?

2 INVESTIGATOR PERU: Yes, we did.

3 MR. RIVERO: And does this photo
4 accurately reflect what you saw --

5 INVESTIGATOR PERU: Yes, it does.

6 MR. RIVERO: -- in that area?

7 Okay. What is this a photo of?

8 INVESTIGATOR PERU: When we exited
9 from the back door, there is a table and
10 chairs with two individuals. One was sitting
11 down in this bottom corner chair.

12 MR. RIVERO: So it's the back
13 area, the summer garden?

14 INVESTIGATOR PERU: Correct.

15 MR. RIVERO: That we see.

16 INVESTIGATOR PERU: Yes.

17 MR. RIVERO: All right. The
18 Government will now move into evidence
19 Government's 2. It's a photograph of the
20 interior of the summer garden on the first
21 floor.

22 CHAIRPERSON MILLER: Okay. Any

1 objection?

2 MR. ROBERSON: No.

3 CHAIRPERSON MILLER: All right.

4 This is also the Exhibit 3 to the
5 investigation, to the Investigator's report.

6 And it is admitted.

7 (Whereupon, the document marked as
8 Government Exhibit 2 was received
9 in evidence.)

10 MR. RIVERO: Thank you.

11 CHAIRPERSON MILLER: It is already
12 part of the record in the Investigator's
13 report, but it will be admitted also as
14 Government's Exhibit 2. Okay.

15 MR. RIVERO: Thank you. Now, you
16 indicated that there was -- you testified that
17 there was a person sitting down. Can you tell
18 me which of these?

19 INVESTIGATOR PERU: Yes, there wa
20 a person sitting on this left corner chair
21 when we first exited.

22 MR. RIVERO: Okay. But they are

1 not in the picture, are they?

2 INVESTIGATOR PERU: No. The
3 minute we pulled the camera out, they both got
4 off the chair and didn't want to be in the
5 photos.

6 MR. RIVERO: Okay. All right.

7 CHAIRPERSON MILLER: Okay.

8 MR. RIVERO: So what is on the
9 table?

10 INVESTIGATOR PERU: It looks like
11 three glasses.

12 MR. RIVERO: And did they have
13 liquid in them?

14 INVESTIGATOR PERU: Yes, they all
15 had beverages in them, two straws, two of them
16 have straws in them.

17 MR. RIVERO: Okay. All right.
18 Did you have any communication with the people
19 who moved out of the picture, you say?

20 INVESTIGATOR PERU: Briefly. They
21 asked us who we were and why we were there.
22 And we explained to them we were ABRA

1 Investigators and taking -- doing an
2 investigation and taking photos.

3 MR. RIVERO: Okay. Thank you. So
4 then after you took your photographs and you
5 concluded your inspection, what did you do?

6 INVESTIGATOR PERU: We left the
7 establishment.

8 MR. RIVERO: Okay. And then what
9 happened?

10 INVESTIGATOR PERU: The following
11 evening when I came back to work --

12 MR. RIVERO: Um-hum.

13 INVESTIGATOR PERU: -- I pulled
14 the ABRA records on Langston Bar & Grille.

15 MR. RIVERO: And what did you do
16 with them?

17 INVESTIGATOR PERU: I went through
18 it to determine if they had an endorsement for
19 a summer garden.

20 MR. RIVERO: And what did you
21 find?

22 INVESTIGATOR PERU: I find that --

1 I found a letter that stated that it was
2 approved with a contingency.

3 MR. RIVERO: Okay. I'm going to
4 go ahead and show you a letter that is marked
5 Government 3 for identification, a copy of
6 which the licensee has and it is in the
7 Board's possession as well in the report. And
8 it is actually Exhibit 7 of the report in the
9 top right as such.

10 CHAIRPERSON MILLER: Okay.
11 (Whereupon, the document was
12 marked as Government Exhibit 3 for
13 identification.)

14 MR. RIVERO: I want to go ahead
15 and ask you whether this is an accurate copy
16 of the letter that you saw in the record, so
17 you say you indicated you inspected?

18 INVESTIGATOR PERU: It is.

19 MR. RIVERO: Okay. Thank you.

20 This is a letter, what date?

21 INVESTIGATOR PERU: July 1, 2010.

22 MR. RIVERO: And who is the

1 recipient?

2 INVESTIGATOR PERU: Antonio
3 Roberson.

4 MR. RIVERO: And it's from who?

5 INVESTIGATOR PERU: It is from the
6 ABRA.

7 MR. RIVERO: Okay. Thank you. I
8 would like to move into evidence, at this
9 time, Government's Exhibit 3, a letter from
10 ABRA to Antonio Roberson dated July 1, 2010.

11 CHAIRPERSON MILLER: Okay. It's
12 admitted. I don't hear an objection and it's
13 part of the investigation, Investigator's
14 report anyway. So admitted Government's
15 Exhibit 3.

16 (Whereupon, the document marked as
17 Government Exhibit 3 was received
18 in evidence.)

19 MR. RIVERO: Thank you.

20 CHAIRPERSON MILLER: Okay.

21 MR. RIVERO: Okay. So can you
22 tell us what this letter says to Mr. Roberson?

1 INVESTIGATOR PERU: Yes. It says
2 "Dear Mr. Roberson, the Alcoholic Beverage
3 Regulation Administration" --

4 MR. RIVERO: Oh, you don't have to
5 read it.

6 INVESTIGATOR PERU: I'm sorry.

7 MR. RIVERO: It's an approval,
8 right?

9 INVESTIGATOR PERU: Yes, it's an
10 approval for your request of a summer garden
11 with 18 seats.

12 MR. RIVERO: Okay. And is this an
13 actual approval or what?

14 INVESTIGATOR PERU: It says
15 approval is contingent on submission of the
16 following documents.

17 MR. RIVERO: And what documents
18 are you talking about?

19 INVESTIGATOR PERU: Certificate of
20 Occupancy, including number of seats for
21 summer garden; a diagram or photos of premises
22 showing area for summer garden; fee of \$125,

1 \$75 for summer garden fee plus \$50 for
2 inspection.

3 MR. RIVERO: Okay. Did you find
4 any of this information in the file? Any of
5 this information you just described? A
6 certificate?

7 INVESTIGATOR PERU: No.

8 MR. RIVERO: The photos? Anything
9 like that?

10 INVESTIGATOR PERU: No.

11 MR. RIVERO: No.

12 INVESTIGATOR PERU: No, they are
13 not.

14 MR. RIVERO: All right. Did you
15 have any opportunity or what, if any,
16 opportunity did you have to speak to the
17 licensee because you -- did you speak to Mr.
18 Roberson on the day of your visit on April
19 18th?

20 INVESTIGATOR PERU: No, I did not.

21 MR. RIVERO: Did you speak to him
22 thereafter?

1 INVESTIGATOR PERU: Yes, I did.

2 MR. RIVERO: Okay. And what was
3 your full conversation?

4 INVESTIGATOR PERU: Telephonically
5 I spoke with him and I advised him of the
6 violations that was observed on that date and
7 time. He stated to me that he did, in fact,
8 submit an application for a summer garden
9 endorsement.

10 MR. RIVERO: Um-hum.

11 INVESTIGATOR PERU: He also
12 informed me that he was waiting for an
13 inspection from the Department of Consumer and
14 Regulatory Affairs, DCRA, and the issuance of
15 an updated Certificate of Occupancy.

16 MR. RIVERO: Okay. Thank you. No
17 further questions of the witness, at this
18 time.

19 CHAIRPERSON MILLER: Okay. Mr.
20 Roberson, do you have cross-exam? Do you have
21 questions for him, based on his testimony?

22 MR. ROBERSON: Yeah, I'll do the

1 best I can.

2 CHAIRPERSON MILLER: What?

3 MR. ROBERSON: Yes.

4 CHAIRPERSON MILLER: You can stay
5 in your seat.

6 MR. ROBERSON: Oh.

7 CHAIRPERSON MILLER: The
8 microphone is on the table.

9 MR. ROBERSON: Right.

10 CROSS-EXAMINATION

11 MR. ROBERSON: You had testified
12 that there were two people on the lower level
13 in the summer garden?

14 INVESTIGATOR PERU: Yes, sir.

15 MR. ROBERSON: And one was
16 standing and the other one was seated?

17 INVESTIGATOR PERU: Yes, sir.

18 MR. ROBERSON: So the person that
19 was seated had three drinks? And what were
20 they doing?

21 INVESTIGATOR PERU: I'm not sure
22 who the drinks belonged to, sir.

1 MR. ROBERSON: Were they
2 consuming?

3 INVESTIGATOR PERU: I did not see
4 anybody actually drinking out of one of those
5 glasses.

6 MR. ROBERSON: Okay. Were they
7 smoking? The person that was sitting there?

8 INVESTIGATOR PERU: The person who
9 was standing was smoking.

10 MR. ROBERSON: The person seated
11 was not smoking?

12 INVESTIGATOR PERU: Correct.

13 MR. ROBERSON: Okay. On the top
14 level where you have a photograph at Exhibit
15 4, I guess this photograph right here.

16 INVESTIGATOR PERU: Yes, sir.

17 MR. ROBERSON: I'm assuming -- I
18 wasn't there.

19 CHAIRPERSON MILLER: Wait that's--
20 we need to identify that for the record. What
21 photograph is that? Is there --

22 MR. ROBERSON: Exhibit 4.

1 CHAIRPERSON MILLER: Exhibit 4 to
2 -- the Government's Exhibit 4 or --

3 MR. ROBERSON: Government's --

4 CHAIRPERSON MILLER: No. Exhibit
5 4 to the investigation report.

6 MR. ROBERSON: Right.

7 CHAIRPERSON MILLER: Right. Okay.

8 (Whereupon, the document was
9 marked as Government Exhibit 4 for
10 identification.)

11 MR. ROBERSON: I'm assuming that
12 when you went upstairs to the second level,
13 that the door was shut, the lights were off
14 and there was no human activity on the second
15 floor?

16 INVESTIGATOR PERU: Correct. At
17 the time of our visit, yes.

18 MR. ROBERSON: Okay. But you had
19 to physically open the door and turn on the
20 lights in order to take photographs?

21 INVESTIGATOR PERU: I don't
22 remember turning on lights.

1 MR. ROBERSON: Okay. As for
2 Exhibit 7, the letter that you read earlier,
3 was there any time limit for me, the owner, to
4 process and obtain or pay the fees that were
5 listed in the contingency? Was there any time
6 limit on that?

7 INVESTIGATOR PERU: I did not see
8 one in the letter, no.

9 MR. ROBERSON: Okay. Thank you.

10 CHAIRPERSON MILLER: Any Board
11 questions? Mr. Alberti?

12 MEMBER ALBERTI: Just one moment,
13 please. Okay. Okay. Going back to which
14 would be, I guess, Government's Exhibit 2 and
15 Exhibit 3 in your report, there is a disk on
16 that table it looks like. Can you tell me
17 what that is with the drinks? I'm going back
18 to Exhibit 3 in your report.

19 INVESTIGATOR PERU: Yes.

20 MEMBER ALBERTI: Government's
21 Exhibit 2, that photo there. What's in the
22 middle of that table? The dish-shaped thing.

1 INVESTIGATOR PERU: This here,
2 sir?

3 MEMBER ALBERTI: Yes.

4 INVESTIGATOR PERU: This round
5 thing here?

6 MEMBER ALBERTI: Yeah, yeah, with
7 the glasses.

8 INVESTIGATOR PERU: Yes, food.

9 MEMBER ALBERTI: Food?

10 INVESTIGATOR PERU: Yes.

11 MEMBER ALBERTI: Okay. So it's a
12 dish containing food?

13 INVESTIGATOR PERU: Yes.

14 MEMBER ALBERTI: Okay. Very good.
15 Thank you. Do you remember what the food was?

16 INVESTIGATOR PERU: Sir, I do not.
17 To my recollection --

18 MEMBER ALBERTI: Okay.

19 INVESTIGATOR PERU: -- it was
20 food.

21 MEMBER ALBERTI: So I'm also
22 curious, there are some other exhibits in your

1 investigative report, Investigator Peru.

2 First of all, I want to thank you for your
3 report. But exhibit -- do you have your
4 report with you there?

5 INVESTIGATOR PERU: Yes, I have
6 the report. I don't have the exhibits.

7 MEMBER ALBERTI: Would we have
8 copies of those exhibits? I have -- you know,
9 we -- I don't have good copies, so that's why
10 I'm asking.

11 INVESTIGATOR PERU: Right.

12 MR. RIVERO: I might be able to
13 produce my particular copy, if I knew which
14 one was in front of you.

15 MEMBER ALBERTI: Okay. So I'm
16 looking at Exhibit 5 from the report, Exhibit
17 6 from -- and Exhibit 6 from the report. They
18 both look like pictures of -- I see tables and
19 chairs. I don't know which room they are in.

20 MR. RIVERO: Okay. This is
21 Exhibit 6.

22 MEMBER ALBERTI: Can you tell me--

1 MR. RIVERO: On the top left?

2 MEMBER ALBERTI: Yes. It looks
3 like about what I see here.

4 INVESTIGATOR PERU: Yes, sir,
5 that's the --

6 MEMBER ALBERTI: What is that?

7 INVESTIGATOR PERU: Well, this is
8 the upstairs.

9 MEMBER ALBERTI: Okay. That's the
10 upstairs.

11 INVESTIGATOR PERU: Yes, sir.

12 MEMBER ALBERTI: Okay. So the
13 only exhibit -- hold on. So is the only
14 exhibit we have -- the only picture we have of
15 the summer garden is the one -- is Exhibit 3
16 to your report?

17 INVESTIGATOR PERU: Of the
18 downstairs area summer garden, sir? Yes, sir.

19 MEMBER ALBERTI: Okay. Very good.
20 Okay. I'll ask this question, although I
21 suspect you may not know it. Do you know if
22 since this date, the licensee has submitted

1 the documents necessary to get a summer garden
2 endorsement?

3 INVESTIGATOR PERU: I'm not aware,
4 sir, no.

5 MEMBER ALBERTI: You are not --
6 you don't know or you are not aware of them
7 having been submitted?

8 INVESTIGATOR PERU: No, I'm not
9 aware of anything being submitted. I did
10 check ABRA records before today's hearing.

11 MEMBER ALBERTI: And did you find
12 that they had or did not have --

13 INVESTIGATOR PERU: I did not see
14 any documents, sir.

15 MEMBER ALBERTI: Okay. So to the
16 best of your knowledge, they currently do not
17 have a summer garden endorsement. Is that
18 correct?

19 INVESTIGATOR PERU: To the best of
20 my knowledge, yes.

21 MEMBER ALBERTI: Okay. Thank you
22 very much. I have no further questions.

1 CHAIRPERSON MILLER: Okay. Thank
2 you. Others? I just have a couple. So it
3 looks -- if I look at Exhibit 2 to the
4 investigator's report and exhibit -- I guess
5 Government's Exhibit 3, but there is outdoor
6 seating for two stories, correct? Upstairs
7 and downstairs?

8 INVESTIGATOR PERU: Yes, yes,
9 ma'am.

10 CHAIRPERSON MILLER: And so does
11 the letter that talks about, that is Exhibit
12 7 to your report, --

13 INVESTIGATOR PERU: Yes.

14 CHAIRPERSON MILLER: -- refers to
15 a summer garden. Is it referring to both
16 stories or one of the stories?

17 INVESTIGATOR PERU: The letter is
18 not clear. It refers to seats.

19 CHAIRPERSON MILLER: Okay.

20 INVESTIGATOR PERU: It says 18
21 seats. It does not refer to which story.

22 CHAIRPERSON MILLER: So if we look

1 at your other photos then, well, the upstairs,
2 Exhibit 5 and Exhibit 6, did you count seats
3 at all?

4 INVESTIGATOR PERU: We did not
5 count seats upstairs, no.

6 CHAIRPERSON MILLER: Okay. So
7 upstairs there was no activity though. Is
8 that correct?

9 INVESTIGATOR PERU: Correct. No
10 activity, yes.

11 CHAIRPERSON MILLER: Okay. And
12 were you able to form an opinion as to whether
13 the drinks on the table were alcoholic or non-
14 alcoholic?

15 INVESTIGATOR PERU: Two of them
16 appeared to be alcohol, but --

17 CHAIRPERSON MILLER: Okay. Let me
18 look. So we are looking at Exhibit 3 to your
19 report. I don't know if you have it in front
20 of you.

21 MR. RIVERO: Exhibit 3 to the
22 report?

1 CHAIRPERSON MILLER: Yeah. That's
2 what it says. It's the one that has the food
3 on the table.

4 MR. RIVERO: It has the what?

5 CHAIRPERSON MILLER: It has the
6 food on the table.

7 MR. RIVERO: Oh, that was
8 Government's Exhibit 2.

9 MEMBER ALBERTI: Government's
10 Exhibit 2.

11 MR. RIVERO: Yeah.

12 CHAIRPERSON MILLER: Okay. It's
13 Government's Exhibit 2, I guess. And Exhibit
14 3 to the Investigator's report. Yes, that's
15 the -- yeah, okay. So there are three glasses
16 on the table. And you said you thought two
17 were with alcohol.

18 INVESTIGATOR PERU: Yes.

19 CHAIRPERSON MILLER: And could you
20 tell us why you drew that conclusion?

21 INVESTIGATOR PERU: Based on my
22 experience, seeing the way mixed drinks are

1 served, having a straw in them, the color of
2 the beverage, it would prove to be a mixed
3 drink.

4 CHAIRPERSON MILLER: Okay. Is
5 that the only table on the first floor?

6 INVESTIGATOR PERU: I believe so,
7 yes.

8 CHAIRPERSON MILLER: Okay.

9 INVESTIGATOR PERU: Yes.

10 CHAIRPERSON MILLER: That's the
11 only table at least where you saw drinks and
12 food?

13 INVESTIGATOR PERU: Yes.

14 CHAIRPERSON MILLER: And people
15 around or whatever.

16 INVESTIGATOR PERU: Yes.

17 CHAIRPERSON MILLER: Okay. All
18 right. That's all my questions. Is there any
19 cross-examination based on Board questions?

20 MR. RIVERO: Yes.

21 CHAIRPERSON MILLER: Okay.

22 REDIRECT EXAMINATION

1 MR. RIVERO: Investigator Peru,
2 I'm going to turn your attention to
3 Government's Exhibit 2, which is the summer
4 garden space on the first floor.

5 INVESTIGATOR PERU: Yes.

6 MR. RIVERO: You testified you
7 exited into that space?

8 INVESTIGATOR PERU: Yes.

9 MR. RIVERO: From when inside the
10 establishment. You used a door to go into
11 that space?

12 INVESTIGATOR PERU: Yes.

13 MR. RIVERO: Did you see any signs
14 on that door prohibiting entry into the space
15 where you saw those two people?

16 INVESTIGATOR PERU: I did not.

17 MR. RIVERO: Okay. Did you see
18 any signs inside that first -- when you were
19 there actually in the space, indicating that
20 people couldn't be there?

21 INVESTIGATOR PERU: I did not.

22 MR. RIVERO: Okay. At this point,

1 I would hope to make the suggestion that the
2 Board is perfectly welcome, if there is no
3 objection, to enter the report into evidence,
4 since there was a lot of discussion about
5 photographs that are not being used in the
6 Government's case, but which the Board is
7 using to ask various questions.

8 And it's because of those
9 questions that were asked, Investigator Peru,
10 I turn your attention to your visit to the
11 first floor where you testified in response to
12 answers to questions from the Board that there
13 was a space up above that was also a summer
14 garden?

15 INVESTIGATOR PERU: Yes.

16 MR. RIVERO: You testified?

17 INVESTIGATOR PERU: Correct.

18 MR. RIVERO: Let me go ahead and
19 just draw your attention to Government Exhibit
20 1, the actual photo that is in evidence. Can
21 you identify that space on the second floor by
22 looking at this photo?

1 INVESTIGATOR PERU: Yes. It's the
2 upper, it looked like a, deck or balcony.

3 MR. RIVERO: Okay. So I want to
4 ask you, in order to access the space from the
5 inside, do you have to go through a door as
6 well, just like the first door?

7 INVESTIGATOR PERU: I'm sorry?

8 MR. RIVERO: To go into this space
9 on the second floor --

10 INVESTIGATOR PERU: Yes.

11 MR. RIVERO: -- from the interior
12 of the building, do you use a door?

13 INVESTIGATOR PERU: Yes, yes.

14 MR. RIVERO: Just like on the
15 first floor?

16 INVESTIGATOR PERU: Yes.

17 MR. RIVERO: You testified there
18 was no sign on the door on the first floor
19 telling people they can't be in there.

20 INVESTIGATOR PERU: Yes.

21 MR. RIVERO: Was there a sign on
22 the door on the second floor saying that

1 people can go in there?

2 INVESTIGATOR PERU: No.

3 MR. RIVERO: What did you see on
4 that door?

5 INVESTIGATOR PERU: I believe it
6 was the number of seats.

7 MR. RIVERO: Do you recall?

8 INVESTIGATOR PERU: I do not
9 recall, no.

10 MR. RIVERO: But you don't recall
11 a sign saying do not go in?

12 INVESTIGATOR PERU: Correct.

13 MR. RIVERO: Okay. But you say
14 you also -- according to responses from
15 questions from the licensee, that you opened
16 the door, but you don't recall turning on the
17 lights?

18 INVESTIGATOR PERU: Correct.

19 MR. RIVERO: So you were inside
20 that space on the second floor?

21 INVESTIGATOR PERU: Yes.

22 MR. RIVERO: Okay. Did you see

1 any signs in that second floor space to
2 indicate that people should not be there?

3 INVESTIGATOR PERU: No, I did not.

4 MR. RIVERO: Okay. And what did
5 you see?

6 INVESTIGATOR PERU: Bar --

7 MR. RIVERO: Furniture?

8 INVESTIGATOR PERU: Correct. High
9 top tables and chairs.

10 MR. RIVERO: Okay. Those are all
11 the questions for the Government. Thank you.

12 CHAIRPERSON MILLER: Okay. Do you
13 have any other questions based on the Board's
14 questions?

15 MR. ROBERSON: I do.

16 RE-CROSS-EXAMINATION

17 MR. ROBERSON: I don't even know
18 how to ask the question, but Exhibit 3 --

19 INVESTIGATOR PERU: This one?

20 MR. ROBERSON: Yes, Exhibit 3.

21 CHAIRPERSON MILLER: We just have
22 to be --

1 MR. ROBERSON: Government's 2.

2 INVESTIGATOR PERU: Yep.

3 CHAIRPERSON MILLER: Okay. For
4 the record, okay. Government's Exhibit 2?

5 MR. ROBERSON: That like circular
6 object that you see on the table?

7 INVESTIGATOR PERU: Yes, sir.

8 MR. ROBERSON: Is that more
9 consistent with an ashtray or with a plate?

10 INVESTIGATOR PERU: I'm not sure.
11 I'm not sure.

12 MR. ROBERSON: Can you see slits
13 at the to of it where cigarettes may be able
14 to --

15 INVESTIGATOR PERU: I do see that,
16 yes.

17 MR. ROBERSON: All right. So it's
18 more consistent with an ashtray rather than a
19 plate of food?

20 INVESTIGATOR PERU: Possibly, yes.

21 MR. ROBERSON: Okay. As far as
22 the drinks are concerned, are you familiar

1 with the drink called a Shirley Temple?

2 INVESTIGATOR PERU: Yes, I am.

3 MR. ROBERSON: What's the color of
4 that drink?

5 INVESTIGATOR PERU: Made with 7-Up
6 or Coke?

7 MR. ROBERSON: Both.

8 INVESTIGATOR PERU: With the 7-Up
9 it would be a reddish color.

10 MR. ROBERSON: Consistent with the
11 color of the drink in the exhibit?

12 INVESTIGATOR PERU: Possibly. I'm
13 not a bartender, so --

14 MR. ROBERSON: But you assume it
15 was alcohol in the drink?

16 INVESTIGATOR PERU: Yes.

17 MR. ROBERSON: And the other
18 drink, the darker colored drink, is that
19 consistent with the color of Coca-Cola?

20 INVESTIGATOR PERU: I would say
21 it's lighter than Coca-Cola.

22 MR. ROBERSON: Maybe a watered

1 down Coke?

2 INVESTIGATOR PERU: With the
3 photo, it's hard to tell.

4 MR. ROBERSON: Yes. Did you
5 notice in this back area when you came out
6 from inside the building, there was an exit
7 sign at that door, that metal door?

8 INVESTIGATOR PERU: I do not
9 recall.

10 MR. ROBERSON: Well, there was one
11 way to enter the building and then there was
12 an egress out the back of the building,
13 correct?

14 INVESTIGATOR PERU: Yes. To enter
15 -- to exit the summer garden from the rear.

16 MR. ROBERSON: Right.

17 INVESTIGATOR PERU: Yes.

18 MR. ROBERSON: In most facilities
19 it's mandatory to have an entrance way and an
20 egress?

21 MR. RIVERO: Okay. I'm going to
22 object to the part of the question that is not

1 a question. This should be just a question.

2 CHAIRPERSON MILLER: Yes, this is
3 the time for questions. Sometimes you set the
4 stage with a statement that comes before, but
5 for the most part, this is the time to ask him
6 questions.

7 MR. ROBERSON: When you exited the
8 bottom level of the building, did you notice
9 that there was a door with any kind of exit
10 sign at that door?

11 INVESTIGATOR PERU: I don't recall
12 an exit sign.

13 MR. ROBERSON: But so when you
14 were able to go through that door, you were
15 able to exit or egress the building from that
16 door?

17 INVESTIGATOR PERU: I exited the
18 building and went through the summer garden,
19 yes.

20 MR. ROBERSON: All right. Into
21 the area?

22 INVESTIGATOR PERU: Yes.

1 MR. ROBERSON: The outdoor area?

2 INVESTIGATOR PERU: Yes.

3 MR. ROBERSON: Right. That also
4 led to -- from there, you would -- where else
5 could you go once you went through that door?

6 INVESTIGATOR PERU: You could exit
7 the back of the summer garden to the parking
8 lot.

9 MR. ROBERSON: All right. Did you
10 notice that door on the lower level? Was
11 there any other door on that -- at the back of
12 the facility?

13 INVESTIGATOR PERU: When you refer
14 to the back of the facility here, I'm not sure
15 if we are talking about the inside or the
16 outside of the establishment. I'm kind of
17 confused about your questioning.

18 MR. ROBERSON: Outside of the
19 establishment.

20 INVESTIGATOR PERU: So I'm sitting
21 in that outdoor space you are saying?

22 MR. ROBERSON: Sitting or standing

1 in the outdoor space.

2 INVESTIGATOR PERU: In the outdoor
3 space. The door that I exited, if you look at
4 the photo that you guys put into, I believe
5 into evidence --

6 MR. ROBERSON: This one?

7 INVESTIGATOR PERU: Yes. The door
8 that I exited was on the -- is in that photo.

9 CHAIRPERSON MILLER: Which photo
10 for the record?

11 MR. ROBERSON: The gate.

12 INVESTIGATOR PERU: The gate,
13 correct.

14 MR. RIVERO: The witness is
15 referring to Government's Exhibit 1 entered
16 into evidence today. There is a --

17 INVESTIGATOR PERU: Yes, the gate
18 is the one I exited to get into the parking
19 lot.

20 MR. ROBERSON: Is now an
21 appropriate time for me to move an exhibit?

22 CHAIRPERSON MILLER: Do what,

1 enter an exhibit? No, when you do your case.

2 MR. ROBERSON: Okay, okay, okay.

3 Thank you.

4 CHAIRPERSON MILLER: Okay. Okay.

5 Thank you very much.

6 MR. RIVERO: Thank you.

7 CHAIRPERSON MILLER: Mr. Rivero,
8 do you have anything else for us right now?

9 MR. RIVERO: No further witnesses
10 for the Government.

11 CHAIRPERSON MILLER: Okay. Mr.
12 Roberson, I'm going to swear you in. Okay?

13 MR. ROBERSON: Okay.

14 Whereupon,

15 ANTONIO ROBERSON
16 was called as a witness by Counsel for the
17 Licensee, and having been first duly sworn,
18 assumed the witness stand and was examined and
19 testified as follows:

20 MR. ROBERSON: Yes.

21 CHAIRPERSON MILLER: Okay. So you
22 know, you're in a position where you are both

1 the advocate and the party and the witness it
2 seems. So you can either go over there to
3 testify or you can stay where you are if you
4 are comfortable. Okay.

5 MR. ROBERSON: Right here is good.

6 CHAIRPERSON MILLER: All right.
7 So it's your turn to make your case then.

8 MR. ROBERSON: So in order to
9 present the exhibit, do I need to call Mr.
10 Peru back?

11 CHAIRPERSON MILLER: What are
12 they?

13 MR. ROBERSON: Do I need him to
14 take a look at this exhibit?

15 CHAIRPERSON MILLER: Is he still
16 here? Oh, he's still here. Okay. What is
17 it? I'll tell you whether you do or not. Is
18 this a part of his report?

19 MR. ROBERSON: No, these are
20 exhibits that I have.

21 CHAIRPERSON MILLER: They are
22 exhibits that you have?

1 MR. ROBERSON: Photographs that I
2 have.

3 CHAIRPERSON MILLER: Okay. And
4 you want him to identify them?

5 MR. ROBERSON: See if he can
6 identify and recall what's in the photograph.

7 CHAIRPERSON MILLER: Do you have
8 any objection?

9 MR. RIVERO: No, because this is
10 the licensee's case. The licensee is entitled
11 to call the Investigator as his witness.

12 CHAIRPERSON MILLER: Okay.

13 MR. RIVERO: Now, of course,
14 advance notice probably would have been
15 helpful, but it doesn't matter. The
16 Government doesn't object to the --

17 CHAIRPERSON MILLER: Okay.

18 MR. RIVERO: -- licensee
19 exercising his rights, at this time.

20 CHAIRPERSON MILLER: Okay. He
21 probably didn't know to do that. So, Mr.
22 Peru, would you come back up?

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DIRECT EXAMINATION

MR. ROBERSON: I just want to see if this depicts as relates to the outdoor summer garden on the first floor?

CHAIRPERSON MILLER: Let me ask you this, have you shown a copy of that photo to Mr. Rivero?

MR. ROBERSON: Yes.

CHAIRPERSON MILLER: You only have one? Okay.

MR. ROBERSON: Yes.

MR. RIVERO: Okay.

CHAIRPERSON MILLER: And you will need to speak up when you are over there, because the mike is way over there.

MR. ROBERSON: All right.

CHAIRPERSON MILLER: Okay.

MR. ROBERSON: Can you describe what you see as relates to the patio area that your exhibit is all about?

INVESTIGATOR PERU: It looks like the back of the establishment. This door here

1 could be -- I can't tell from that angle. I
2 can't make a determination. I don't see the
3 whole wide shot. I can't tell if that is the
4 door exiting outside or if that's a separate
5 or different door.

6 MR. ROBERSON: Do you see two
7 doors?

8 INVESTIGATOR PERU: The door --
9 the lower door you are referring to?

10 MR. ROBERSON: Um-hum.

11 INVESTIGATOR PERU: Like a
12 basement level?

13 MR. ROBERSON: Um-hum.

14 INVESTIGATOR PERU: Yes, I do see
15 that in the picture.

16 MR. ROBERSON: All right. And did
17 you take -- by chance when you were there, did
18 you notice a second level, a lower level or
19 basement door when you were at the
20 establishment?

21 INVESTIGATOR PERU: I didn't. To
22 this door? No, I don't recall that door.

1 MR. ROBERSON: All right. Does
2 this look familiar to you, this door?

3 CHAIRPERSON MILLER: Mr. --

4 INVESTIGATOR PERU: No.

5 MR. ROBERSON: This is this
6 photograph.

7 MR. RIVERO: I don't have that.

8 MR. ROBERSON: You don't have
9 that?

10 MR. RIVERO: No, I do not. I need
11 to see that. Okay.

12 MR. ROBERSON: Does that look
13 familiar?

14 INVESTIGATOR PERU: I am not sure
15 what door that is.

16 MR. ROBERSON: All right. Thank
17 you. Do I need to enter these into --

18 CHAIRPERSON MILLER: If you want
19 to enter them, you can ask that they be
20 admitted. Do you have a copy for me to look
21 at to see what they are?

22 MR. ROBERSON: I did ask for --

1 MR. RIVERO: I actually made that
2 request of Ms. Walker.

3 CHAIRPERSON MILLER: Oh, is she
4 making a copy?

5 MR. RIVERO: Yeah, I think.

6 CHAIRPERSON MILLER: Well, you can
7 wait then on that. We can get back to that.

8 MR. RIVERO: I think she was
9 supposed to make copies.

10 MEMBER ALBERTI: Ms. Miller?

11 CHAIRPERSON MILLER: Yes?

12 MEMBER ALBERTI: Would it be
13 appropriate for Mr. Roberson to identify those
14 pictures for the record for us?

15 MR. RIVERO: Correct.

16 MEMBER ALBERTI: I think that that
17 would be helpful for the record and for the
18 Board to --

19 CHAIRPERSON MILLER: It would be.

20 MEMBER ALBERTI: -- testify to --
21 under oath what those pictures are that you
22 are presenting to us.

1 CHAIRPERSON MILLER: Except I
2 would just say -- you can, I was just -- if we
3 had the pictures in front of us, it would be
4 easier, then I could see what it was that he
5 was identifying.

6 MEMBER ALBERTI: Well, at least we
7 will have it in the record.

8 CHAIRPERSON MILLER: Of course we
9 will have it in the record. What?

10 MEMBER RODRIGUEZ: They are right
11 there on the edge of the table.

12 CHAIRPERSON MILLER: They are
13 here?

14 MEMBER RODRIGUEZ: Yes.

15 CHAIRPERSON MILLER: Sheesh.

16 MEMBER ALBERTI: On the edge of
17 their table? No, I don't think so.

18 CHAIRPERSON MILLER: Yes.

19 MEMBER ALBERTI: Okay.

20 CHAIRPERSON MILLER: Okay. So
21 everyone has a copy now.

22 MR. ROBERSON: Well, there still

1 may be a little bit of a discrepancy. I think
2 one of the photographs was not photocopied, so
3 I can either refer to it or not. It's up to
4 you.

5 CHAIRPERSON MILLER: It seems to
6 me that you asked Mr. Peru to address two
7 photos.

8 MR. ROBERSON: Um-hum.

9 CHAIRPERSON MILLER: Okay. And we
10 have those photos, as far as I can tell.

11 MR. ROBERSON: Well, I think we're
12 missing this one though, because --

13 CHAIRPERSON MILLER: Oh.

14 MR. ROBERSON: -- yeah.

15 CHAIRPERSON MILLER: Did you ask
16 him about that one as well?

17 MR. ROBERSON: Yes.

18 CHAIRPERSON MILLER: Okay. Okay.

19 MR. RIVERO: The witness is
20 holding up a document of a door with a sign on
21 it. And there is writing on top. It's dated
22 April 21st at 1:41 p.m., ADT, ABRA-3 is the

1 title of it. You don't have it, right?

2 CHAIRPERSON MILLER: No.

3 MR. RIVERO: That's the one.

4 CHAIRPERSON MILLER: Do you?

5 MR. RIVERO: It's called ABRA-3.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER ALBERTI: Can we at least
8 get it into the record and --

9 MR. RIVERO: Yes.

10 MEMBER ALBERTI: -- then while --

11 CHAIRPERSON MILLER: Well, yes.

12 MEMBER ALBERTI: -- we are waiting
13 for a photocopy, we can continue to proceed
14 rather than --

15 MR. RIVERO: No objection.

16 MEMBER ALBERTI: -- stopping here.

17 MR. RIVERO: No objection.

18 MEMBER ALBERTI: So just describe
19 the photographs.

20 CHAIRPERSON MILLER: Well, that's
21 exactly what we are doing. Go ahead. So
22 let's start with the ones that you showed to

1 Mr. Peru.

2 MR. ROBERSON: Okay. The one that
3 is No. ABRA-2 is a photograph of the rear of
4 the building. It shows the egress from the
5 bar level of the restaurant. It also shows
6 the entrance way to the kitchen. The kitchen
7 is situated in the basement of the facility.
8 So it's the rear of the building.

9 CHAIRPERSON MILLER: Okay. So
10 let's just look at this one first. Did you
11 take this photo?

12 MR. ROBERSON: I did.

13 CHAIRPERSON MILLER: Okay.

14 MR. ROBERSON: Yes.

15 CHAIRPERSON MILLER: And when did
16 you take it?

17 MR. ROBERSON: I took it on the
18 same day, April 21st.

19 CHAIRPERSON MILLER: Okay. And
20 you want to submit it into evidence for what
21 reason? What's the relevance?

22 MR. ROBERSON: To show that that's

1 a physical egress out the back of the
2 building. I mean, it's a lawful egress out
3 the back of the building, one. And two, to
4 illustrate that that's, you know, the kitchen,
5 where the kitchen is situated.

6 CHAIRPERSON MILLER: Okay.

7 MR. ROBERSON: So there is no
8 internal access to the kitchen from inside the
9 building. There is only access to the kitchen
10 from outside.

11 CHAIRPERSON MILLER: And how is
12 that connected to the summer garden then? The
13 summer garden is what is at issue, right?

14 MR. ROBERSON: Well, I'm not
15 calling it a summer garden.

16 MEMBER ALBERTI: Are we doing
17 cross-examination of the licensee now or
18 shouldn't we go to the Government for cross-
19 examination first?

20 CHAIRPERSON MILLER: They are not
21 cross-examination. I have a job to decide
22 whether to admit it or not and relevance is

1 the main --

2 MEMBER ALBERTI: I haven't heard
3 any objections to relevance.

4 CHAIRPERSON MILLER: So I'm asking
5 how it is relevant. I don't need an objection
6 to ask how it is relevant. If you want to
7 object to it, is that an objection?

8 MR. ROBERSON: Well, it's a part
9 of my physical property. You know, that space
10 is a part of the lot, square. You know, it's
11 a physical part of the property. And that's
12 the way that you egress out of the property
13 and that's the way that you enter into the
14 kitchen. It's not optional. Those are the
15 only ways that you can egress the property or
16 enter into the kitchen.

17 CHAIRPERSON MILLER: Okay. Do you
18 have any objection? Any questions about this?

19 MR. RIVERO: Well, I wouldn't
20 object if we understood the relationship of
21 this door to the space where the witness
22 testified people were sitting, smoking.

1 That's what I --

2 MR. ROBERSON: So in exhibit --

3 MR. RIVERO: -- if I understood,
4 that would be great.

5 CHAIRPERSON MILLER: All right.

6 MR. RIVERO: If I don't understand
7 that, then I don't see a reason to keep this
8 photo in the record.

9 CHAIRPERSON MILLER: Okay. So Mr.
10 Roberson is not an attorney and so, you know,
11 that's why we are trying to give you a little
12 more guidance as to --

13 MR. ROBERSON: Thank you.

14 CHAIRPERSON MILLER: -- what you
15 need to say in order for us to determine its
16 relevance.

17 MR. ROBERSON: And I'll try to
18 explain that.

19 CHAIRPERSON MILLER: Okay.

20 MR. ROBERSON: In exhibit -- I
21 guess this is Exhibit 3.

22 MR. RIVERO: The licensee is

1 referring to Government's Exhibit 2.

2 MR. ROBERSON: The steps that you
3 see in exhibit -- Government Exhibit 2 are the
4 same steps that you see in my Exhibit ABRA-2.
5 Those steps are in common.

6 MR. RIVERO: Now, the Government
7 does not object to inclusion of this photo.

8 CHAIRPERSON MILLER: Which exhibit
9 were you referring to? Just the same steps is
10 in that --

11 MR. ROBERSON: The steps that were
12 photographed.

13 CHAIRPERSON MILLER: Oh, okay.
14 Okay, okay. All right. There not being any
15 objection, then this will be admitted as
16 Licensee's Exhibit No. 1.

17 (Whereupon, the document was
18 marked for identification as
19 Licensee Exhibit 1 and was
20 received in evidence.)

21 CHAIRPERSON MILLER: Okay.

22 MR. RIVERO: If I may pause for a

1 moment, the licensee has called as his witness
2 the Investigator, who is on the stand, and
3 perhaps we could complete anything having to
4 do with that witness before moving forward?

5 MR. ROBERSON: You know, if I can
6 submit the photographs, then I don't have any
7 further questions of him.

8 CHAIRPERSON MILLER: So do you
9 need Mr. Peru here before you finish with the
10 photographs?

11 MR. ROBERSON: No.

12 CHAIRPERSON MILLER: You're
13 finished with Mr. Peru then?

14 MR. ROBERSON: I believe so.

15 CHAIRPERSON MILLER: Okay. Then
16 we will wait on the photographs, at this
17 point.

18 MR. RIVERO: I do have cross-
19 examination.

20 CHAIRPERSON MILLER: You have
21 cross-examination. Okay. So we will come
22 back to your photographs. Hopefully we will

1 have the other exhibits.

2 MR. ROBERSON: Thank you.

3 CHAIRPERSON MILLER: All right.

4 Go ahead.

5 MR. RIVERO: Thank you.

6 CROSS-EXAMINATION

7 MR. RIVERO: Investigator Peru,
8 you testified to some -- you answered some
9 questions from the licensee about his photos
10 and what they show. Okay? And he showed you
11 this photograph here.

12 INVESTIGATOR PERU: Yes, sir.

13 MR. RIVERO: Which I guess we are
14 marking --

15 CHAIRPERSON MILLER: Licensee's
16 Exhibit No. 1.

17 MR. RIVERO: Licensee's Exhibit
18 No. 1 and it's in the record now. Do you have
19 to walk through a kitchen to get to the back?

20 INVESTIGATOR PERU: No.

21 MR. RIVERO: You testified that
22 you were inside the establishment and you

1 exited out the rear and you saw this space
2 with two people there?

3 INVESTIGATOR PERU: Correct.

4 MR. RIVERO: Okay. Did you have
5 to walk through a kitchen to get there?

6 INVESTIGATOR PERU: No.

7 MR. RIVERO: Thank you. No
8 further questions.

9 CHAIRPERSON MILLER: Okay. Any
10 Board questions? Mr. Short?

11 MEMBER SHORT: Yes. I would like
12 to ask just -- are we asking the witness now
13 or just --

14 CHAIRPERSON MILLER: The witness.

15 MEMBER SHORT: Okay. I have
16 nothing.

17 CHAIRPERSON MILLER: No? Okay.
18 Just this witness, Mr. Peru. Okay. All
19 right.

20 MR. RIVERO: No further questions.

21 CHAIRPERSON MILLER: Okay. Did
22 you have any other questions based on --

1 MEMBER ALBERTI: Well, I can ask
2 the witness, Mr. Peru, a question. I'm sorry.
3 Real quick. So do you remember where the exit
4 to the -- from the summer garden was?

5 INVESTIGATOR PERU: The exit?

6 MEMBER ALBERTI: From -- you
7 entered through the stairway, was there
8 another exit?

9 INVESTIGATOR PERU: Yes, straight
10 -- yes, in the back. It's in one of the
11 photos that have been submitted as an exhibit.
12 There is a gate at the rear of the summer
13 garden.

14 MEMBER ALBERTI: Okay. Very good.
15 Great. Thank you very much. We don't have
16 very good photos, that's why it's hard for me.
17 Thank you.

18 CHAIRPERSON MILLER: All right. I
19 have a follow-up question then. Not that I
20 get the whole connection, you know, between
21 these exits and the summer garden, but the
22 summer garden stairs -- and you said, I think,

1 in your Exhibit No. 3 attached to your report
2 with the table and the food showed the stairs.

3 And then we had Licensee's Exhibit
4 No. 1 showing apparently the same stairs and
5 it leads to a kitchen. Is that right? That
6 door there?

7 INVESTIGATOR PERU: I -- the door
8 that -- the door where the stairs are located
9 goes back into the establishment.

10 CHAIRPERSON MILLER: Into the
11 establishment?

12 INVESTIGATOR PERU: Yes.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Is there another way to leave that summer
15 garden?

16 INVESTIGATOR PERU: Yes, through
17 the -- if you continue through the summer
18 garden --

19 CHAIRPERSON MILLER: Yes.

20 INVESTIGATOR PERU: -- there is a
21 gate that exits into the parking lot.

22 CHAIRPERSON MILLER: Okay. All

1 right. Thank you.

2 INVESTIGATOR PERU: Yes.

3 CHAIRPERSON MILLER: Okay.

4 Anything else? All right. Thank you very
5 much.

6 INVESTIGATOR PERU: Thank you.

7 CHAIRPERSON MILLER: Okay.

8 (Whereupon, witness was excused.)

9 CHAIRPERSON MILLER: All right.

10 So we are back to you, Mr. Roberson, whether
11 you want to continue with your photographs, is
12 that what you would like to do, or you don't--

13 MR. ROBERSON: Well, I have one
14 more photograph.

15 CHAIRPERSON MILLER: We have only
16 admitted one photograph and that's this one,
17 Exhibit No. 1.

18 MR. ROBERSON: Yeah, but evidently
19 the photograph that I want to discuss has not
20 been photocopied.

21 CHAIRPERSON MILLER: Do you know
22 about that? Could you -- okay. So do you

1 want to wait for that photo or is there other
2 testimony you want to give?

3 MR. ROBERSON: I don't have to
4 wait for the photograph. No.

5 CHAIRPERSON MILLER: Okay.

6 MR. ROBERSON: So am I testifying
7 at this point?

8 CHAIRPERSON MILLER: Yes.

9 MR. ROBERSON: Okay. So I just --
10 so I don't have to ask myself questions?

11 CHAIRPERSON MILLER: No.

12 MR. ROBERSON: Okay.

13 CHAIRPERSON MILLER: Just in your
14 head maybe.

15 MR. ROBERSON: Okay. So my
16 testimony is that on the street level there is
17 an entrance way from Benning Road, then there
18 is an exit towards the alley. The door in
19 question on the opposite side of the door for
20 the exhibit that has been submitted into
21 evidence, there is an exit sign above that
22 door and there is a sign on that door that

1 says no food or drink allowed beyond this
2 point.

3 So when that photograph is entered
4 into evidence, I just want to be clear.

5 CHAIRPERSON MILLER: Okay.

6 MR. ROBERSON: I actually took one
7 of the signs and actually brought it in, so I
8 don't know -- I have a photocopy of it just to
9 illustrate what the photograph -- what the
10 language is on the opposite side of the door.

11 The door at the lower -- the door
12 -- the two doors in the photograph in the
13 exhibit that was submitted, one door is -- the
14 lower door leads to the basement where the
15 kitchen is situated. And why that is relevant
16 is because often times -- I wasn't there that
17 night, but often times my staff will use the
18 tables in the back area as a staging area for
19 taking stuff up or down from the kitchen.

20 I have a hard and fast rule there
21 should be no glassware in the kitchen for the
22 obvious reason that glassware is more fragile

1 than plates and pots and they just get broken
2 in the kitchen. And, you know, if you do see
3 glassware in the bus pan, return it to the
4 bar.

5 So, you know, that's my testimony.
6 You know, it's pretty clear that, you know,
7 patrons have to leave -- they don't have to.
8 They have a choice of egress out the back of
9 the building. And the only way for my staff
10 to get down to the kitchen area is to go
11 through the rear of the building. There is no
12 access to the kitchen from inside the
13 building. So often times my staff will use
14 that outside area as a staging area.

15 In addition, I think it's pretty
16 clear, I don't know if you guys have color
17 photographs, but Mr. Peru was mistaken in
18 referring to that black disk as food. You
19 know, it's pretty clear to me that it's an
20 ashtray.

21 CHAIRPERSON MILLER: Okay. So we
22 now have that photograph, picture. That

1 photograph, do you have it? No, not that one.
2 The one that we have been waiting for. Yes,
3 okay.

4 MR. RIVERO: The Government does
5 not have any objection to entering it as
6 Licensee's No. 2.

7 CHAIRPERSON MILLER: Okay. So
8 Licensee's No. 2. Mr. Roberson, will you just
9 describe what it is, please?

10 MR. ROBERSON: This is the rear
11 egress or exit from the street level of 1831
12 Benning Road. And as you can see, there is a
13 -- you can't see the word exit, but it's
14 pretty obvious what that apparatus is, the
15 white apparatus is above the door. It's an
16 exit sign.

17 And then for clarity reasons, you
18 know, it wasn't the best photograph, so that's
19 why I brought in another exhibit. I think you
20 guys have a copy of this one that shows
21 exactly what that sign is on the back of the
22 door that says no food or beverages allowed

1 beyond this point.

2 CHAIRPERSON MILLER: Okay. Do you
3 want to move that one into evidence as well?

4 MR. ROBERSON: Yes.

5 CHAIRPERSON MILLER: Okay. Do you
6 have an objection?

7 MR. RIVERO: Which one?

8 CHAIRPERSON MILLER: This is the
9 one that says no food or beverages allowed
10 beyond this point.

11 MR. RIVERO: Oh, yes, no
12 objection.

13 CHAIRPERSON MILLER: Is that a
14 picture of this sign or what is that exactly?

15 MR. ROBERSON: Yes, if you look at
16 it hard enough, you can probably see the big
17 word no and you can see a little bit of the
18 illustration to the left, but since it wasn't
19 clear, I actually just make a photograph of
20 the actual sign.

21 CHAIRPERSON MILLER: Okay. And
22 what you just held up is the actual sign that

1 was on the door?

2 MR. ROBERSON: Yes.

3 CHAIRPERSON MILLER: Or just the
4 same?

5 MR. ROBERSON: The same sign.

6 CHAIRPERSON MILLER: A duplicate
7 of what was on the door?

8 MR. ROBERSON: It's a duplicate of
9 what --

10 CHAIRPERSON MILLER: Yes.

11 MR. ROBERSON: -- was on the door.

12 CHAIRPERSON MILLER: Okay. All
13 right.

14 MR. ROBERSON: The actual sign is
15 still there.

16 CHAIRPERSON MILLER: It's still on
17 the door. Okay. Thank you. All right.
18 Okay. You didn't object to either one. Is
19 that correct?

20 MR. RIVERO: Correct.

21 CHAIRPERSON MILLER: All right.
22 Then I'm going to admit these two photos as

1 Licensee's Exhibit No. 2 and 3, and No. 3 is
2 the one with the lettering that says no food
3 or beverages allowed beyond this point. Okay.

4 (Whereupon, the documents were
5 marked for identification as
6 Licensee Exhibit 2 and 3 and were
7 received in evidence.)

8 CHAIRPERSON MILLER: Okay.

9 MR. ROBERSON: Can I --

10 CHAIRPERSON MILLER: Yeah, go
11 ahead. Do you have any other?

12 MR. ROBERSON: Yes, I have one
13 more.

14 CHAIRPERSON MILLER: Okay.

15 MR. ROBERSON: If you don't mind.

16 CHAIRPERSON MILLER: All right.

17 No.

18 MR. ROBERSON: The one that is
19 stated ABRA.

20 CHAIRPERSON MILLER: Um-hum.

21 MR. ROBERSON: And I don't know if
22 you can see it or not, but in Government

1 Exhibit --

2 MR. RIVERO: The licensee is
3 pointing out Exhibit 4 in the report.

4 MR. ROBERSON: It's this right
5 here.

6 CHAIRPERSON MILLER: Okay. The
7 whole report is actually going to be in the
8 record. The Board takes judicial notice of
9 this whole report.

10 MR. ROBERSON: Okay. Then I just
11 want to testify as to what is in the
12 photograph. Is that possible?

13 CHAIRPERSON MILLER: Yes. Sure it
14 is. All right. But we can be redundant. We
15 were a little redundant -- do you want this to
16 be Licensee's Exhibit No. 4 as well?

17 MR. ROBERSON: Yes, I want it --
18 actually, I want to discuss both of these.

19 CHAIRPERSON MILLER: Both of
20 those, okay.

21 MEMBER ALBERTI: I think it is
22 Exhibit No. -- Licensee's Exhibit No. --

1 CHAIRPERSON MILLER: It is --

2 MEMBER ALBERTI: -- 5, what he
3 wants to do. All right.

4 CHAIRPERSON MILLER: Okay. So
5 Exhibit No. 4 in the Investigator's report is
6 also Licensee's Exhibit No. 4. And Licensee's
7 Exhibit No. 5 would be that last photo of
8 tables and chairs.

9 MEMBER ALBERTI: Oh, okay. I'm
10 sorry.

11 CHAIRPERSON MILLER: And where are
12 the -- they are tables and chairs of what?
13 Could you identify it for us, Mr. Roberson?

14 MR. ROBERSON: Yes, this is -- the
15 Government -- well, the -- I guess Exhibit No.
16 4 --

17 CHAIRPERSON MILLER: Um-hum.

18 MR. ROBERSON: -- is the
19 photograph that the Investigator took on the
20 night in question. Which before the open
21 door, I think it's somewhat obvious that that
22 area is not illuminated.

1 CHAIRPERSON MILLER: Okay. Before
2 you testify to that, I just want to get
3 exhibits right.

4 MR. ROBERSON: Okay.

5 CHAIRPERSON MILLER: Your last one
6 is No. 5, right?

7 MR. ROBERSON: Yes. This is my
8 number -- this is what I'm considering my No.
9 5.

10 CHAIRPERSON MILLER: Okay. What
11 is that? What is it?

12 MR. ROBERSON: The same door.

13 CHAIRPERSON MILLER: It's a door?

14 MR. ROBERSON: Yes.

15 MEMBER ALBERTI: What area is
16 that, Mr. Roberson?

17 MR. ROBERSON: Second floor.

18 CHAIRPERSON MILLER: Second floor.
19 Okay. And there are no objections. So those
20 two photos will be admitted in the record as
21 Licensee's Exhibits No. 4 and 5.

22 (Whereupon, the documents were

1 marked for identification as
2 Licensee Exhibit 4 and 5 and were
3 received in evidence.)

4 CHAIRPERSON MILLER: So now, you
5 can testify to them further if you like, Mr.
6 Roberson.

7 MR. ROBERSON: So from my
8 perspective, it's pretty obvious that this is
9 on the inside of the building that would lead
10 out to the -- what's in question right now as
11 being the summer garden. There is no lock on
12 the door, because I lost the key and so I had
13 to break the handle off in order to install a
14 new lock, otherwise, there would have been
15 probably even no reasonable way for even the
16 Inspector to get out to that space.

17 So the space was not illuminated.
18 It was not lit. The door was closed. And the
19 only reason he was able to get into that
20 space, access to that space is because the
21 door was not functional.

22 So the Exhibit 5 shows where I

1 have installed a new lock or handle on the
2 door. And I also added the sign, the no food,
3 no beverages beyond this point recently.

4 CHAIRPERSON MILLER: Okay.

5 MR. ROBERSON: So my position is
6 that the spaces do exist. They are not in
7 use. Have not been in use. And until we
8 decide to obtain -- we have not even decided.
9 Until we are in a position where we do obtain
10 the increase in load for capacity for a C of
11 O, we have no intention on utilizing it.

12 CHAIRPERSON MILLER: Okay. Does
13 that complete your testimony?

14 MR. ROBERSON: Yes.

15 CHAIRPERSON MILLER: Okay. So
16 now, Mr. Rivero may cross-examine you. I
17 think he will. Okay.

18 MR. RIVERO: I will.

19 CHAIRPERSON MILLER: All right.

20 CROSS-EXAMINATION

21 MR. RIVERO: Okay. You testified
22 you weren't actually present on the night of

1 the Investigator's visit, right?

2 MR. ROBERSON: Correct.

3 MR. RIVERO: Okay. Was that the
4 only time that you were out, because you are
5 there every single night that the
6 establishment is open?

7 MR. ROBERSON: I'm not there every
8 night, no.

9 MR. RIVERO: Okay. What are the
10 hours or the days that your establishment is
11 open?

12 MR. ROBERSON: Seven days a week.

13 MR. RIVERO: Seven days a week.
14 So you are not there seven days a week?

15 MR. ROBERSON: No.

16 MR. RIVERO: Okay. And you also
17 were not there this night in question.

18 MR. ROBERSON: No, I was not
19 there.

20 MR. RIVERO: Okay. So that you
21 wouldn't be there to prevent people to access
22 this second floor space, because you weren't

1 there?

2 MR. ROBERSON: No.

3 MR. RIVERO: Nor would you be
4 there to prevent access to the first floor,
5 the back door where there was -- where the
6 table was that the Investigator testified
7 about. You weren't there.

8 MR. ROBERSON: Well, I think it
9 would be unlawful for me to deny access to the
10 space.

11 MR. RIVERO: Okay. But you can't
12 -- if people wanted to exit and sit in that
13 space, you actually weren't there that night
14 to prevent them.

15 MR. ROBERSON: No.

16 MR. RIVERO: From leaving.

17 MR. ROBERSON: No.

18 MR. RIVERO: Okay. All right.
19 And you indicate that there is a sign in one
20 of your photos, which I believe if I'm not
21 mistaken was Licensee's Exhibit No. 2.

22 MR. ROBERSON: Uh-huh, yes.

1 MR. RIVERO: Okay. You indicate
2 that this is the door to go out into the first
3 floor summer garden area? Is that the door?

4 MR. ROBERSON: The first floor
5 outdoor area.

6 MR. RIVERO: That's the first
7 floor. Okay.

8 MR. ROBERSON: Yes.

9 MR. RIVERO: Now, you also
10 indicated in your Exhibit 1 that there is
11 another door that leads to the same area, a
12 lower door?

13 MR. ROBERSON: No. Well, you can
14 exit from the kitchen to that area, yes.

15 MR. RIVERO: In your Exhibit 1,
16 this is the kitchen door.

17 MR. ROBERSON: Yes.

18 MR. RIVERO: I'm pointing to the
19 lower door --

20 MR. ROBERSON: Um-hum.

21 MR. RIVERO: -- in this
22 photograph.

1 MR. ROBERSON: Yes.

2 MR. RIVERO: They both lead to the
3 same area?

4 MR. ROBERSON: Outdoors.

5 MR. RIVERO: Okay. Where there
6 was that table and chairs?

7 MR. ROBERSON: Correct.

8 MR. RIVERO: Okay. There isn't
9 really anything preventing your guests from
10 accessing the same door, this same area that
11 your employees access?

12 MR. ROBERSON: No.

13 MR. RIVERO: Okay. Your
14 photograph, which I believe is Licensee's
15 Exhibit 5, is the second floor door with a
16 sign posted saying no food and beverages
17 allowed?

18 MR. ROBERSON: Correct.

19 MR. RIVERO: Okay. But that sign
20 wasn't on the door the night of the
21 Investigator's visit, was it?

22 MR. ROBERSON: No, it was not.

1 MR. RIVERO: Okay. And can you
2 tell us whether -- when you took this
3 photograph of the second floor door with the
4 sign saying no food allowed?

5 MR. ROBERSON: April 21st.

6 MR. RIVERO: April 21st, which
7 would have been two days ago?

8 MR. ROBERSON: Yes.

9 MR. RIVERO: Okay. Now, it's your
10 testimony that on the date that you say you
11 took the photo, this door is capable of being
12 locked?

13 MR. ROBERSON: It was not.

14 MR. RIVERO: It was not capable of
15 being locked?

16 MR. ROBERSON: No.

17 MR. RIVERO: Okay. So on April
18 21, 2014, this door is not capable of being
19 locked and then on April 18, 2013, the same
20 door was also not capable of being locked?

21 MR. ROBERSON: No, it's not here.

22 MR. RIVERO: Okay.

1 MR. ROBERSON: The door is current
2 -- on the 21st, it was capable. It is and it
3 was capable of being locked on the 21st. It
4 was not capable of being locked on the day the
5 Investigator --

6 MR. RIVERO: Oh, okay.

7 MR. ROBERSON: -- took the
8 photograph.

9 MR. RIVERO: All right. So now,
10 you are changing your answer and then on the
11 21st of 2014 of April, you were able to lock
12 this same door, that you were not able to lock
13 on the date of the Investigator's visit? Is
14 that your answer?

15 MR. ROBERSON: Yes.

16 MR. RIVERO: Okay.

17 MR. ROBERSON: On the 21st it was
18 able to be locked. And on the day the
19 Investigator came out, it was not capable.

20 MR. RIVERO: Okay. All right.
21 And if you are not there and you said you are
22 not there, even though you are open seven days

1 a week, there isn't really anything to stop
2 guests from going into this space, is there?

3 MR. ROBERSON: Yes, the ABC
4 manager. My staff.

5 MR. RIVERO: The ABC manager?

6 MR. ROBERSON: And my staff, yes.

7 MR. RIVERO: Okay. Now, if your
8 ABC manager happened not to do that for
9 whatever reason, you wouldn't be there to know
10 that.

11 MR. ROBERSON: I would not.

12 MR. RIVERO: You would not. Okay.

13 MR. ROBERSON: Well, actually,
14 I'll take that back. If there was a question,
15 I do have video surveillance, so I probably
16 could investigate for a certain period of
17 time.

18 MR. RIVERO: Okay. You have video
19 cameras.

20 MR. ROBERSON: Yes.

21 MR. RIVERO: How many video
22 cameras do you have?

1 MR. ROBERSON: 16.

2 MR. RIVERO: 16 video cameras.

3 How many of those video cameras show the exit
4 door?

5 MR. ROBERSON: The exit door?

6 MR. RIVERO: Of the first floor to
7 go out to the first floor summer garden area?

8 MR. ROBERSON: Two.

9 MR. RIVERO: Two. How many of
10 those cameras show the door on the second
11 floor to gain entry to the second floor summer
12 garden?

13 MR. ROBERSON: One.

14 MR. RIVERO: One. Okay. So that's
15 a total of three cameras that would show those
16 two doors, right? Two on the first and one on
17 the --

18 MR. ROBERSON: Yes.

19 MR. RIVERO: Two on the first and
20 one on the second. Is that correct?

21 MR. ROBERSON: Yes.

22 MR. RIVERO: Okay. Now, you

1 indicate that if there -- there are people
2 that operate in that space that you would be
3 able to see that space on these cameras,
4 right? Irrespective of what your manager
5 would do, that's your testimony.

6 MR. ROBERSON: Well, irrespective
7 of what my manager would say, yes.

8 MR. RIVERO: Or do, because,
9 again, you have testified you are not there
10 seven days a week.

11 MR. ROBERSON: Right, right.

12 MR. RIVERO: Okay. Right. All
13 right. And have you, in fact, looked at the
14 video for each time that you are not there?

15 MR. ROBERSON: No, not at all.

16 MR. RIVERO: Okay. No further
17 questions, at this time.

18 CHAIRPERSON MILLER: Okay. Board
19 Members? Okay. Did you look at the video for
20 the day in question that the Investigator went
21 out and saw some individuals on the lower
22 summer deck?

1 MR. ROBERSON: No. I should have,
2 but, no, I didn't.

3 CHAIRPERSON MILLER: Okay. Did
4 you talk to your ABC manager as to --

5 MR. ROBERSON: I did.

6 CHAIRPERSON MILLER: You did. And
7 can you tell us who he or she said was out
8 there?

9 MR. ROBERSON: I didn't ask her
10 who was out there. My question to her was did
11 you allow anybody out there to consume and her
12 response was no.

13 CHAIRPERSON MILLER: Okay.

14 MR. ROBERSON: So what we are --
15 you know, and I will say -- and I don't know
16 what is legally, but customers will go out
17 there and they will smoke either in the front
18 of the building or the back of the building,
19 but we are very clear that there is no
20 consumption upstairs or downstairs on those
21 outdoor areas.

22 CHAIRPERSON MILLER: Okay. So it

1 could have been either patrons or employees,
2 but that they were only authorized to smoke
3 out there. Is that right?

4 MR. ROBERSON: Right. And --
5 yeah. You know, I don't even like my
6 employees to smoke, but I understand --

7 CHAIRPERSON MILLER: Okay.

8 MR. ROBERSON: -- on their break,
9 I have no control over it.

10 CHAIRPERSON MILLER: Right. Okay.
11 So can you explain the glasses on the table?

12 MR. ROBERSON: No, I can't other
13 than the assumption that it was a staging area
14 for my staff. Again you know, we have a three
15 compartment sink behind the bar and I have
16 very strict rules on -- you know, it goes as
17 far as, you know, when they wash fragile
18 glasses, they need to wash those and put them
19 away right away. No glassware in the kitchen.

20 If a buser was to grab the bus pan
21 and he didn't return the glassware right away,
22 he may have sat it on the table, I don't know.

1 But you know, I wasn't there. But when I
2 asked my ABC manager about it, she was clear
3 from her perspective there was no consumption
4 on the outside.

5 CHAIRPERSON MILLER: So let me ask
6 you about this plate/ashtray. I don't know if
7 you have a copy of the picture.

8 MR. ROBERSON: Hum?

9 CHAIRPERSON MILLER: A copy of the
10 picture in front of you, which was Exhibit 3
11 to the Investigator's report where you said
12 that the black circle is clearly an ashtray.

13 MR. ROBERSON: Um-hum.

14 CHAIRPERSON MILLER: Because it
15 has the slots in it and stuff.

16 MR. ROBERSON: Um-hum.

17 CHAIRPERSON MILLER: Can you
18 identify what is inside it?

19 MR. ROBERSON: Well, you know, I
20 guess the -- you know, to be a little cynical,
21 it's definitely not food, you know.

22 CHAIRPERSON MILLER: Not food?

1 MR. ROBERSON: That's not what we
2 do at Langston Bar & Grille, so it's not food.

3 CHAIRPERSON MILLER: What is it?

4 MR. ROBERSON: Trash.

5 CHAIRPERSON MILLER: What?

6 MR. ROBERSON: Trash.

7 CHAIRPERSON MILLER: What?

8 MR. ROBERSON: Trash.

9 CHAIRPERSON MILLER: Trash.

10 MR. ROBERSON: Cigarette butts and
11 probably some miscellaneous other paper
12 material.

13 CHAIRPERSON MILLER: Okay.

14 MR. ROBERSON: If I had to assume.

15 CHAIRPERSON MILLER: Okay. I
16 guess I was asked about the follow-up on the
17 staging area. How was it used? It's not
18 depicted in this photo that it is a staging
19 area.

20 MR. ROBERSON: No. And actually,
21 it's not, but, you know, what is clear with my
22 staff and I have been very clear on this is

1 there is no allowed consumption on the
2 outside.

3 CHAIRPERSON MILLER: Okay. So if
4 they go for a cigarette break, which you don't
5 necessarily condone, but if they do, they
6 can't bring their drinks with them?

7 MR. ROBERSON: They should not.

8 CHAIRPERSON MILLER: They should
9 not.

10 MR. ROBERSON: No.

11 CHAIRPERSON MILLER: Okay. And
12 one more question on egress. For someone to--
13 for patrons to leave the establishment, do
14 they have to go through the summer garden?

15 MR. ROBERSON: They can either
16 leave out the front or they can leave out --
17 they have option of leaving out the front of
18 the building or the rear of the building.

19 CHAIRPERSON MILLER: Okay. This
20 is the rear of the building where the summer
21 garden is?

22 MR. ROBERSON: Yeah. I mean, you

1 keep calling it a summer garden.

2 CHAIRPERSON MILLER: I'm sorry.

3 MR. ROBERSON: I don't want to
4 call it a summer garden.

5 CHAIRPERSON MILLER: Well, what do
6 you want to call it? Okay.

7 MR. ROBERSON: It's the outdoor
8 area.

9 CHAIRPERSON MILLER: Outdoor area.

10 MR. ROBERSON: It's not public
11 space. It's --

12 CHAIRPERSON MILLER: Well --

13 MR. ROBERSON: -- physically a
14 part of our footprint. It's a part of our
15 lot/square.

16 CHAIRPERSON MILLER: Okay.

17 MR. ROBERSON: You have to have an
18 egress out the back of the building. So once
19 you go down those steps, you've got another 10
20 feet and you hit a gate and you go into a
21 parking lot.

22 CHAIRPERSON MILLER: Okay. So let

1 me ask you this then, with respect to Exhibit
2 No. 7 to the Investigator's report, which is
3 the letter that says your request for summer
4 garden with 18 seats is approved contingent
5 upon your submission of a few documents.

6 Does that refer to the upstairs
7 and the downstairs or just the upstairs or
8 what does that refer to?

9 MR. ROBERSON: Up and down.

10 CHAIRPERSON MILLER: It goes to
11 the upstairs. Okay.

12 MR. ROBERSON: Up and down. It
13 refers to both.

14 CHAIRPERSON MILLER: Up and down.

15 MR. ROBERSON: Yes, ma'am.

16 CHAIRPERSON MILLER: So then that
17 is part of what is referred to as a summer
18 garden.

19 MR. ROBERSON: Once we get the
20 endorsement, it will be considered a summer
21 garden.

22 CHAIRPERSON MILLER: Okay. Okay.

1 Any other questions?

2 MEMBER ALBERTI: A real quick
3 question.

4 CHAIRPERSON MILLER: Yes, yes.

5 MEMBER ALBERTI: Mr. Roberson, an
6 obvious question, why the table and chairs --

7 MR. ROBERSON: Well, no, it's --

8 MEMBER ALBERTI: -- on the first
9 level?

10 MR. ROBERSON: On the first level?

11 MEMBER ALBERTI: Yeah.

12 MR. ROBERSON: You know, for
13 convenience, you know. Customers -- you know,
14 obviously nowadays unless you are a tobacco
15 shop, you can't smoke inside the facility.
16 You know, so there are people that want to
17 come outside and have a smoke or there are
18 people on my staff -- and actually, I think,
19 100 percent of my staff smoke, at this point,
20 you know.

21 MEMBER ALBERTI: So you condone
22 customer smoking out there?

1 MR. ROBERSON: I haven't
2 restricted it, no.

3 MEMBER ALBERTI: Thank you. No
4 further questions.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER RODRIGUEZ: Yes, I have.

7 CHAIRPERSON MILLER: Yes, Mr.
8 Rodriguez?

9 MEMBER RODRIGUEZ: Yes, sir, one
10 short question. On the table, that is exhibit
11 no. -- this is -- on the table.

12 CHAIRPERSON MILLER: The table
13 one. Well, it's Exhibit No. 3 to the
14 Investigator's report.

15 MEMBER RODRIGUEZ: Yes. Exhibit
16 No. 3, that bottle there?

17 MR. ROBERSON: Uh-huh.

18 MEMBER RODRIGUEZ: Is that -- what
19 is in that bottle, you know?

20 MR. ROBERSON: Hot sauce.

21 MEMBER RODRIGUEZ: What's in that
22 bottle that --

1 MR. ROBERSON: Hot sauce.

2 MEMBER RODRIGUEZ: -- what's that?

3 MR. ROBERSON: Hot sauce.

4 MEMBER RODRIGUEZ: Hot sauce.

5 MEMBER ALBERTI: For the
6 cigarettes.

7 MEMBER RODRIGUEZ: And then you
8 have an ashtray with cigarette butts.

9 MR. ROBERSON: Hot sauce.

10 MEMBER RODRIGUEZ: And then you
11 have a glass with what appears to be -- well,
12 let's say that it's a drink. So and you are
13 saying that staff inadvertently could leave
14 that there?

15 MR. ROBERSON: Yes, they could,
16 yes.

17 MEMBER RODRIGUEZ: I see.

18 MR. ROBERSON: Well, you know, the
19 tell tale sign for me again, I wasn't there,
20 so I, you know, can't say anything is, you
21 know, probably 100 percent.

22 MEMBER RODRIGUEZ: Yes.

1 MR. ROBERSON: But most cocktails,
2 we use cocktail straws. When people order
3 soft drinks, they get a beverage straw.

4 MEMBER RODRIGUEZ: Right.

5 MR. ROBERSON: And that's
6 obviously a beverage straw. And it would be
7 unusual for one of my staff to have given a
8 cocktail drinker a beverage straw.

9 MEMBER RODRIGUEZ: Okay. Thank
10 you, sir.

11 CHAIRPERSON MILLER: Okay. Any
12 other Board questions? Any questions, Mr.
13 Rivero, based on Board questions?

14 MR. RIVERO: No.

15 CHAIRPERSON MILLER: Okay. So you
16 have completed your testimony, put in your
17 exhibits, correct?

18 MR. ROBERSON: I believe so.

19 CHAIRPERSON MILLER: All right.
20 You will have a chance for closing.

21 MR. ROBERSON: Okay.

22 CHAIRPERSON MILLER: And then you

1 can make your arguments based on what we have
2 heard today. So if you don't have any other
3 evidence, okay, then we will go to closing and
4 the Government goes first.

5 MR. RIVERO: Thank you.

6 CHAIRPERSON MILLER: Okay.

7 MR. RIVERO: Board Members, if
8 nothing else, this is not necessarily a case
9 of a summer garden by design in use, but
10 perhaps a summer garden by neglect, but it's
11 a summer garden nonetheless.

12 What I have to do is draw your
13 attention to the law, because that's your job
14 is to look at the evidence and to fit it
15 within the law. Okay.

16 And the law in this particular
17 instance requires a particular special permit
18 in order to operate what is called a summer
19 garden and I would like to just draw your
20 attention to a very important word in the
21 statute, because to me it makes all the
22 difference.

1 And I'm reading from 25-113a(c).
2 "The licensee under an on-premises license
3 requires a summer garden endorsement to"
4 operate -- actually, the phrase is to "conduct
5 business operations on a summer garden, which
6 may include sales, service, consumption of
7 alcoholic beverages on outdoor or public
8 space."

9 And so that word "may" shouldn't
10 really be turned into the word must in the
11 law, because then we have a different statute.
12 So the law indicates that these are some of
13 the things that we call the conduct of
14 business operations, but as the evidence also
15 showed, nothing really stopped any of the
16 clients, not the employees, from going in the
17 back, notwithstanding the fact that the ABC
18 manager have prevented them, but she may have
19 not, because the licensee is not there seven
20 days a week.

21 And we don't have photographic
22 evidence from those cameras showing actions to

1 the contrary on this night in question,
2 because that's what we are talking about,
3 right? We're not talking about what may
4 happen hypothetically on any of the 364 days
5 of the year. We are talking about this
6 particular night.

7 And there may have been and, in
8 fact, those two individuals may have been
9 customers who were having a smoke or chatting
10 or what have you and drinking. Now, a lot was
11 made on whether there is a Shirley Temple on
12 the table or Vodka Cranberry or Rum and Coke
13 or anything else.

14 And a fixation on that kind of
15 evidence, in effect, turns the statute from
16 may to must have those alcoholic beverages.
17 Because otherwise, they can do whatever they
18 want.

19 Now, as I said, this is really, in
20 my view anyway, a story of a summer garden by
21 accident or neglect and not necessarily by
22 design. Why? Because after the visit, the

1 licensee understood that it was really
2 important not to keep people there.

3 We have a photograph of the door
4 on the second floor without a sign saying you
5 can't come in here and then we have a
6 photograph of the very same door with a sign
7 saying you can't come in here.

8 Now, with respect to the first
9 floor, the Investigator did testify he didn't
10 see a sign, so it could be that there was, in
11 fact, no sign on that night and it was later
12 affixed to that door in the same way that you
13 have evidence showing that the sign was
14 affixed later in time on the second floor
15 door.

16 So none of these things are
17 necessarily inconsistent here. So we don't
18 have a requirement that the licensee planned
19 to use this particular space in avoidance of
20 following the law. That's not what we are
21 actually alleging, an intent to flout the law,
22 because as the licensee also testified or

1 actually the witness, the Investigator also
2 testified in response to the licensee's
3 question, the licensee drew the Investigator's
4 attention to that letter that said you are
5 approved contingent on these three things.

6 And the licensee himself drew the
7 attention of the Investigator to that letter.
8 Is there a time limit for me to do these
9 things? And the answer interestingly was no,
10 there is no time limit. There is no -- if
11 there are deadlines, one would suggest that
12 maybe a fire would be lit under one's seat,
13 right?

14 In this case, perhaps, the fire --
15 it wasn't the deadline on the letter, because
16 it didn't exist, but perhaps it was the visit
17 of those Investigators that night on the 18th
18 and that made the licensee realize well, I
19 have got to change things around a little bit
20 and maybe get my act together and have an
21 actual summer garden endorsement.

22 Now, interestingly, we have a

1 letter that talks about 18 seats. And I
2 wouldn't want much to be made about that
3 number, but it is true that those 18 seats,
4 because there is no evidence to the contrary,
5 we have an admission by the licensee, referred
6 to both the first and second floor.

7 Now, you do have that photograph
8 of the door on the second floor that says
9 capacity 20, but I don't know that that
10 necessarily means that there are 20 seats. We
11 don't have that in evidence.

12 The only thing that is really
13 significant is that the 18 seats do relate to
14 the first and second floor and it is the
15 licensee's intention eventually to use that
16 first floor where those people were found as
17 part of the summer garden.

18 So it is not necessarily the case
19 that you must construe that space where the
20 Investigator found those two people as a
21 staging area. I don't know that I would
22 necessarily go out for a smoke break with a

1 tobacco -- with a Tabasco Sauce or a hot sauce
2 bottle. I don't know that I have -- I mean,
3 I don't smoke and I don't know of anybody who
4 has hot sauce with his or her cigarettes.

5 So again, whether that is a
6 skillet or a dark dish or an enormous ashtray,
7 it looks -- I mean, you know, I could say it
8 looks like an omelette in there. It doesn't
9 really matter, because you have a hot sauce
10 bottle, which probably was just brought back
11 there by customers who wanted to have a little
12 bit of hot sauce with whatever it is they
13 consumed that's no longer there, because they
14 probably ate it by the time the Investigator
15 showed up.

16 So the evidence is not necessarily
17 in equipoise and it is, indeed, more likely
18 than not that these spaces were just used, not
19 necessarily by design, but the law does not
20 require that mental intent, as a summer garden
21 endorsement.

22 And so we ask, therefore, Board

1 that you find in the Government's favor based
2 on the totality of the evidence presented
3 today that by a preponderance of the evidence,
4 that space is, in fact, used as a summer
5 garden endorsement and to date there is no
6 evidence that the actual endorsement is a part
7 of the licensee's file with ABRA.

8 Thank you very much.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Mr. Roberson?

11 MEMBER ALBERTI: Do you have a
12 recommendation or do you want to wait until
13 later?

14 MR. RIVERO: The Government's
15 recommendation is that if there is a penalty,
16 if the Government -- if the Board finds in the
17 Government's favor, that the Board issue a
18 penalty consistent with Title 25 of the DC
19 Code.

20 MEMBER ALBERTI: Okay. Thank you.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Roberson?

1 MR. ROBERSON: I just want to try
2 to respond to a few comments that the attorney
3 made. I think -- while I think I was clear on
4 the Investigator saying that he saw no
5 consumption on the area in question, he saw
6 one person seated, but he didn't make a
7 correlation between that person and what was
8 on the table.

9 He had no evidence that that
10 person had touched, handled or managed
11 anything that was on the table. The other
12 person he identified, as the person who was
13 standing up smoking. Again, he was there, so
14 he, you know, testified as to what he saw.

15 The reason why I haven't moved
16 forward to increase my C of O is for one
17 reason and that's because I have a neighbor
18 that constantly complains about Langston Bar
19 & Grille, whether it is trash or it is noise
20 or it's rodents.

21 Just recently, she sold her house
22 and I expect within a six month period or so,

1 that she will be gone and her house will be
2 razed and there is going to be a new facility
3 starting in that area. And at that point, I
4 have an interest in actually using the summer
5 garden, using the area as a summer garden.

6 You know, the staging area, you
7 know, whether or not it was a staging area,
8 this is what I call it, it's not uncommon for
9 my busboys or my wait staff to use that area
10 to transfer material. Again, if a busboy came
11 out from the bar area and he noticed that
12 there was glassware in the bus pan, either he
13 should have returned it immediately back to
14 the bar or he should sit it to the side, take
15 the dirty dishes downstairs, have them taken
16 care of and then at some point put the -- let
17 the bartenders wash and manage bar material.

18 And I would consider glassware bar
19 material and should not go into the kitchen
20 under no circumstances.

21 As it relates to -- he made a
22 comment about, I guess, doing business in that

1 outdoor area. You know, as far as I can tell
2 from the photographs and from the testimony of
3 the Investigator, there was no business being
4 conducted.

5 You know, the person may well have
6 paid their bill, been ready to leave, had a
7 short conversation, had a smoke. It could
8 have been a staff person. I don't know. I
9 don't know if he even identified the people as
10 males or females. I don't know who the people
11 were at that moment that were outside.

12 Whether they were staff or whether
13 or not they were -- you know, it could have
14 been a customer who was on his way exiting, I
15 don't know. I'm just not sure about that.
16 But what I am sure about is that my staff has
17 very clear instructions that there is no
18 consumption of alcoholic beverages or food
19 outside in that area.

20 Our plates -- our -- what we serve
21 at Langston Bar & Grille is comfort food and
22 all of it is plated. So you have -- yes, you

1 have a hot sauce container or bottle, but I
2 would think if it was being used by a
3 customer, you would at least see a knife or
4 fork or plate, something, that says somebody
5 was consuming food out there in that area.
6 And, you know, I just didn't, you know, I
7 don't see that.

8 Okay. That's my testimony or my
9 closing.

10 CHAIRPERSON MILLER: Okay. Good.
11 Thank you. Is there rebuttal?

12 MR. RIVERO: The Government does
13 not object to including the licensee's
14 statements and his legal argument that were,
15 in fact, testimony, because he included
16 testimonial statements about what takes place
17 in the establishment outside of his --

18 CHAIRPERSON MILLER: And you would
19 object? Is that what you --

20 MR. RIVERO: I do not.

21 CHAIRPERSON MILLER: -- said? Do
22 not. Okay.

1 MR. RIVERO: That concerns what
2 happens in his establishment, that he did not
3 say during the time that he was sworn in to
4 give testimony.

5 CHAIRPERSON MILLER: Right.

6 MR. RIVERO: We are not going to
7 object.

8 CHAIRPERSON MILLER: Okay. Thank
9 you. Okay. So you all have put in your
10 evidence, your documents. So I'm going to
11 close the record, at this point, and ask the
12 parties if they wish to file proposed findings
13 of facts and conclusions of law?

14 MR. RIVERO: The Government
15 waives.

16 CHAIRPERSON MILLER: Okay. Waives
17 the right to do it. Do you understand?

18 MR. ROBERSON: Yeah, that was
19 explained to me earlier.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 MR. ROBERSON: And I don't want to

1 waive that, because I do have a few questions
2 that I would want to get clear -- get clarity
3 on.

4 CHAIRPERSON MILLER: Okay. Now,
5 let me --

6 MR. ROBERSON: As in regards to
7 the law.

8 CHAIRPERSON MILLER: -- okay. Let
9 me explain to you. You cannot. I have closed
10 the record. You cannot add any new evidence,
11 so all that this filing is is taking from the
12 transcript and the documents that were
13 admitted into the record and setting forth
14 facts that you wish the Board to find based on
15 the evidence that is in the record now and
16 then legal argument.

17 So there is -- so we would not
18 entertain any new information. So do you
19 still want to file something like that?

20 MR. ROBERSON: Well, I don't want
21 to waive it, so I'm not saying I will file.

22 CHAIRPERSON MILLER: Okay. Okay.

1 So what that -- okay, that's your right. But
2 I just want to make sure. It is a right that
3 everybody has, but it's sometimes more
4 appropriate in some cases than other cases.

5 All I can say is in some cases
6 where the facts are more --

7 MR. ROBERSON: Well, if I can
8 speak openly, he read something out of, I
9 guess, what is that book considered?

10 MR. RIVERO: If the Board gives
11 the licensee a deadline by which to turn that
12 proposed document in, we don't --

13 CHAIRPERSON MILLER: Okay. Then--

14 MR. RIVERO: We just -- it would
15 be concerning if there was an open-ended
16 right.

17 CHAIRPERSON MILLER: Oh, it's
18 never open-ended.

19 MR. RIVERO: That is not
20 exercised.

21 CHAIRPERSON MILLER: Okay. No,
22 it's never open-ended. What would happen is

1 that when the transcript becomes available, it
2 would be mailed out to you. And that's about
3 two to three weeks and then you have 30 days
4 in which to file like a brief. So you know,
5 you have had time to review the transcript and
6 then put together the facts and the law.

7 And if so, that means that we will
8 wait to deliberate until we get that. And if
9 you decide at some point that you are really
10 not going to do that kind of filing, just let
11 the Board and Mr. Rivero know.

12 MR. ROBERSON: Okay.

13 CHAIRPERSON MILLER: Okay.

14 MR. ROBERSON: And I'll let you
15 know about what means?

16 CHAIRPERSON MILLER: What?

17 MR. ROBERSON: By what means would
18 I let you know?

19 CHAIRPERSON MILLER: Oh, okay.

20 Well, you can contact Ms. Jenkins, that would
21 be the best --

22 MR. ROBERSON: All right.

1 CHAIRPERSON MILLER: -- means to
2 let us know.

3 MR. ROBERSON: Okay.

4 CHAIRPERSON MILLER: And so then
5 we would go --

6 MR. ROBERSON: You know, if I have
7 an opportunity to have a conversation with her
8 after this, I can probably come to that
9 determination.

10 CHAIRPERSON MILLER: Right.
11 That's fine. That's what I thought. Yes,
12 take the time you need to understand what we
13 are talking about. I understand you want to
14 do that before you waive a right. Okay.
15 Okay.

16 MR. RIVERO: No objection to that
17 proposed communication.

18 CHAIRPERSON MILLER: Okay. All
19 right. Is everybody set on that then? Okay.
20 Okay. So then I'm going to read the
21 instructions and have us take a vote on the
22 Board deliberating on this case in closed

1 session.

2 As Chairperson of the Alcoholic
3 Beverage Control Board for the District of
4 Columbia and in accordance with Section 405 of
5 the Open Meetings Amendment Act of 2010, I
6 move that the ABC Board hold a closed meeting
7 for the purpose of seeking legal advice from
8 our counsel on Case No. 13-CMP-00215, Langston
9 Bar & Grille, per Section 405(b)(4) of the
10 Open Meetings Amendment Act of 2010, and
11 deliberating upon this case for the reasons
12 cited in Section 405(b)(13) of the Open
13 Meetings Amendment Act of 2010.

14 Is there a second?

15 MEMBER BROOKS: Second.

16 CHAIRPERSON MILLER: Mr. Brooks
17 has seconded the motion. I'll now take a roll
18 call vote on the motion now that it has been
19 seconded.

20 Mr. Brooks?

21 MEMBER BROOKS: I agree.

22 CHAIRPERSON MILLER: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON MILLER: Mr.

3 Rodriguez?

4 MEMBER RODRIGUEZ: I agree.

5 CHAIRPERSON MILLER: Ms. Miller

6 agrees.

7 Mr. Short?

8 MEMBER SHORT: I agree.

9 CHAIRPERSON MILLER: Okay. It
10 appears that the motion has passed by a vote
11 of 5-0-0, which means that I hereby give
12 notice that we will deliberate this in closed
13 session and we will issue a written order on
14 this. Normally, we do it within 90 days from
15 today, but we will do it within 90 days from
16 when we receive proposed findings of fact and
17 conclusions of law or you let us know if you
18 are not going to do it, that's when the clock
19 will start ticking on us.

20 And that concludes this case then.

21 MR. ROBERSON: Thank you.

22 MR. RIVERO: Thank you.

1 CHAIRPERSON MILLER: If you have
2 any other questions, feel free to call Ms.
3 Jenkins.

4 MEMBER ALBERTI: Thank you.

5 MR. ROBERSON: Okay. I will.

6 CHAIRPERSON MILLER: All right.
7 Thank you very much.

8 MR. ROBERSON: Thank you.

9 MR. RIVERO: Thank you.

10 (Whereupon, the Show Cause Hearing
11 in the above-entitled matter was concluded at
12 3:38 p.m.)

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