

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
BEG Investments, LLC :
t/a Twelve Restaurant & :
Lounge : Show
1123 H Street Northeast : Cause
Retailer CT : Hearing
License No. 76466 :
Case Nos: 11-251-00241 :
 11-CMP-00352 :
 11-CMP-00458 :
ANC 6A :
Failed to Comply with A Board:
Order :
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APRIL 25, 2012

The Alcoholic Beverage Control

Board met in the Reeves Building, 2000 14th
Street Northwest, Washington, D.C. 2009,
Chairperson Ruthanne Miller, presiding.

PRESENT
RUTHANNE MILLER, Chairperson
CALVIN NOPHLIN, Member

DONALD BROOKS, Member
NICK ALBERTI, Member
MIKE SILVERSTEIN, Member
JEANETTE MOBLEY, Member

ALSO PRESENT:
AMY SCHMIDT, OAG

INVESTIGATOR TYRONE LAWSON, ABRA
INVESTIGATOR JABRIEL SHAKOOR, ABRA
INVESTIGATOR CRAIG STEWART, ABRA

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

2 9:59 a.m.

3 CHAIRPERSON MILLER: Okay. The
4 next case on our calendar is the Case No. is
5 11-251-00241, 11-CMP-099352 and 11-CMP-00458
6 BEG Investments, LLC, trading as Twelve
7 Restaurant & Lounge at 1123 H Street
8 Northeast, License No. 76366, in ANC 6A.

9 Would the parties identify
10 themselves for the record, please?

11 MS. SCHMIDT: Good morning. Amy
12 Schmidt, Assistant Attorney General on behalf
13 of the District of Columbia.

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

16 CHAIRPERSON MILLER: Okay. Are
17 there any preliminary matters?

18 MS. SCHMIDT: None for the
19 Government.

20 CHAIRPERSON MILLER: Mr. Kline,
21 any preliminary matters?

22 MR. KLINE: No, we don't have any.

1 Thank you.

2 CHAIRPERSON MILLER: Okay. We're
3 here for a Show Cause Hearing. Can you
4 indicate to the Board the number of witnesses
5 you plan on presenting, if any?

6 MS. SCHMIDT: Three.

7 CHAIRPERSON MILLER: Three for the
8 Government? Okay.

9 MR. KLINE: At most, two.

10 CHAIRPERSON MILLER: Okay. And
11 either of you wish to invoke the rule of
12 witnesses?

13 MR. KLINE: No.

14 MS. SCHMIDT: No.

15 CHAIRPERSON MILLER: Okay. Good.
16 All right. Then we're ready for opening
17 statements.

18 Ms. Schmidt?

19 MS. SCHMIDT: Today the Government
20 will show that Twelve Restaurant & Lounge has
21 repeatedly contravened Board Order 2011-289 in
22 that first of all it used flyers to promote

1 events at the establishment and also that it
2 did not hire MPD reimbursable details whenever
3 entertainment was provided. And we have three
4 different Investigators to testify that on
5 three different occasions that this occurred.
6 And therefore, Twelve has flagrantly violated
7 the Board's Order.

8 CHAIRPERSON MILLER: Okay. Mr.
9 Kline?

10 MR. KLINE: We'll reserve opening
11 statement.

12 CHAIRPERSON MILLER: I'm sorry,
13 would you repeat?

14 MR. KLINE: We'll reserve opening
15 statement until the commencement of our case.

16 CHAIRPERSON MILLER: Okay. Fine.
17 All right.

18 MS. SCHMIDT: The Government calls
19 Investigator Tyrone Lawson.

20 And for the benefit of the Board,
21 we're going to be talking about Case No. 11-
22 251-00241.

1 CHAIRPERSON MILLER: Okay. Could
2 you just repeat that, please? You're going to
3 be talking about what?

4 MS. SCHMIDT: 11-251-00241. The
5 events here happened on July 13, 2011.

6 CHAIRPERSON MILLER: July 13th?
7 Okay.

8 MS. SCHMIDT: July 13th, 2011.

9 CHAIRPERSON MILLER: Okay.

10 (Witness sworn.)

11 DIRECT EXAMINATION

12 MS. SCHMIDT: Good morning,
13 Investigator Lawson. Would you state your
14 full name and your employment for the record?

15 INVESTIGATOR LAWSON: Tyrone
16 Lawson. I'm employed as an Investigator with
17 the Alcoholic Beverage Regulation
18 Administration.

19 MS. SCHMIDT: And on July 13th,
20 2011 were you called to the Twelve Lounge
21 located at 1123 to 1125 H Street Northeast in
22 the District of Columbia?

1 INVESTIGATOR LAWSON: Yes.

2 MS. SCHMIDT: And why were you
3 there that evening?

4 INVESTIGATOR LAWSON: I was there
5 to investigate an unrelated matter, a matter
6 unrelated to the violation of a Board Order.

7 MS. SCHMIDT: And at that time did
8 you see any flyers at the establishment?

9 INVESTIGATOR LAWSON: Yes.

10 MS. SCHMIDT: May I please
11 approach Investigator Lawson?

12 CHAIRPERSON MILLER: Yes.

13 MS. SCHMIDT: Investigator Lawson,
14 I now hand you what has been marked as Exhibit
15 3. Can you tell the Board what that is?

16 INVESTIGATOR LAWSON: Yes. This is
17 a host stand at the front entrance of Twelve
18 Restaurant & Lounge that had flyers -- flyers
19 were there.

20 CHAIRPERSON MILLER: Ms. Schmidt,
21 is the Exhibit that you're referring to
22 attached to the Investigative Report?

1 MS. SCHMIDT: Yes, it is.

2 CHAIRPERSON MILLER: Okay. What
3 Exhibit number is?

4 MS. SCHMIDT: Exhibit 3.

5 CHAIRPERSON MILLER: Thank you.

6 MS. SCHMIDT: And I gave you
7 Exhibit 4. What is that?

8 INVESTIGATOR LAWSON: This is a
9 photograph for a printout of one of the flyers
10 that was located at Twelve Restaurant & Lounge
11 on July 13, 2011.

12 CHAIRPERSON MILLER: I'm sorry.
13 Could you just speak up a little louder. We
14 have trouble hearing sometimes from that mic.

15 INVESTIGATOR LAWSON: Okay.

16 MS. SCHMIDT: And Exhibit No. 5,
17 what is that?

18 INVESTIGATOR LAWSON: That was
19 another flyer that was photographed from
20 Twelve Restaurant & Lounge.

21 MS. SCHMIDT: And what did that
22 flyer advertise?

1 INVESTIGATOR LAWSON: It
2 advertises happy hour specials, specials on
3 alcoholic beverage drinks, and that's it.

4 MS. SCHMIDT: And, Investigator,
5 sometime during the investigation did you
6 become aware of the Board Order in this
7 matter?

8 INVESTIGATOR LAWSON: Yes. I was
9 aware of the Board Order prior to visiting the
10 establishment.

11 MS. SCHMIDT: And what has been
12 marked in the exhibit package as Exhibit No.
13 8, could you please let the Board know what
14 that is?

15 INVESTIGATOR LAWSON: This is a
16 copy of the Board Order, Board Order No. 2011-
17 289.

18 MR. KLINE: I'm sorry. Is that
19 attached to the report?

20 MS. SCHMIDT: Yes. Yes, it is.
21 Exhibit No. 8.

22 MR. KLINE: Thank you.

1 MS. SCHMIDT: And could you please
2 go to the last page of that Order? The last
3 page. Is that signed? Who are those
4 signatures?

5 INVESTIGATOR LAWSON: Nick
6 Alberti, the Interim Chairperson, Donald
7 Brooks Member, Herman Jones Member, Calvin
8 Nophlin Member, Mike Silverstein Member.

9 MS. SCHMIDT: Okay. And so that
10 was the Board that constituted ABRA at the
11 time of the Order?

12 INVESTIGATOR LAWSON: Yes.

13 MS. SCHMIDT: And what is the date
14 of that Order? I think it's on the page
15 before.

16 INVESTIGATOR LAWSON: June 22,
17 2011.

18 MS. SCHMIDT: And what does
19 paragraph number one of that Order state?

20 INVESTIGATOR LAWSON: "The
21 Applicant and its third party promoters shall
22 not use flyers to promote events at the

1 establishment."

2 MS. SCHMIDT: No further questions
3 at this time.

4 CHAIRPERSON MILLER: Okay. Any
5 cross, Mr. Kline?

6 MR. KLINE: Yes.

7 CROSS-EXAMINATION

8 MR. KLINE: Investigator Lawson,
9 attached to the report these are photocopies.
10 correct? Photocopies of the cards?

11 INVESTIGATOR LAWSON: Yes.

12 MR. KLINE: So you don't have any
13 actual cards?

14 INVESTIGATOR LAWSON: They are --
15 they would be in the original case file. I
16 don't have the original case file.

17 MR. KLINE: Okay. So we don't have
18 those before the Board today?

19 INVESTIGATOR LAWSON: They're
20 available to the Board today.

21 MS. SCHMIDT: If I may?

22 MR. KLINE: Okay. Now starting

1 with Exhibit 4 to your report, do you have
2 that in front of you?

3 INVESTIGATOR LAWSON: No. I don't
4 have any exhibits. Okay. Exhibit 4.

5 MR. KLINE: Is that photocopy the
6 actual size?

7 INVESTIGATOR LAWSON: Yes.

8 MR. KLINE: It hasn't been
9 enlarged or decreased in size in anyway?

10 INVESTIGATOR LAWSON: No.

11 MR. KLINE: That was printed on
12 card stock, wasn't it?

13 INVESTIGATOR LAWSON: I don't
14 recall -- well, I -- I'm not familiar with
15 card stock. What do you mean "printed on card
16 stock"?

17 MR. KLINE: You're aware that when
18 you print something that it can be printed on
19 different weights of paper or cardboard,
20 correct?

21 INVESTIGATOR LAWSON: Yes. Yes.

22 MR. KLINE: All right. And

1 typically, holding up the sheet of photocopy
2 paper --

3 INVESTIGATOR LAWSON: Yes.

4 MR. KLINE: -- this is what you
5 would see in terms of thermal paper, correct?

6 INVESTIGATOR LAWSON: Yes.

7 MR. KLINE: This was heavier than
8 that, wasn't it?

9 INVESTIGATOR LAWSON: Yes, I would
10 say.

11 MR. KLINE: Okay. So do you now
12 understand what card stock is?

13 INVESTIGATOR LAWSON: I have an
14 idea of where you're going with the meaning of
15 card stock, yes.

16 MR. KLINE: Exhibit 5, is that
17 photocopied the actual size?

18 INVESTIGATOR LAWSON: Yes.

19 MR. KLINE: It hasn't been reduced
20 or enlarged in anyway?

21 INVESTIGATOR LAWSON: If it will
22 help, Mr. Kline, what I did was I had the

1 original flyers. I taped them to a blank piece
2 of white paper and then I photocopied them.

3 MR. KLINE: Okay. But my question
4 is in doing so you did not enlarge them or
5 diminish them in size, correct?

6 INVESTIGATOR LAWSON: No.

7 MR. KLINE: Is that right?

8 INVESTIGATOR LAWSON: Yes.

9 MR. KLINE: Okay.

10 INVESTIGATOR LAWSON: That's
11 correct.

12 MR. KLINE: And the same with
13 Exhibit 6?

14 INVESTIGATOR LAWSON: That's
15 correct.

16 MR. KLINE: And the same with
17 Exhibit 7?

18 INVESTIGATOR LAWSON: That's
19 correct.

20 MR. KLINE: Now all of these were
21 found in the premises, correct?

22 INVESTIGATOR LAWSON: Yes.

1 MR. KLINE: None of them were
2 found in the neighborhood or on corners, or
3 anyplace else, were they?

4 INVESTIGATOR LAWSON: No.

5 MR. KLINE: That's all I have.
6 Thank you.

7 CHAIRPERSON MILLER: Okay. Board
8 Members.

9 MS. SCHMIDT: Oh, may I?

10 CHAIRPERSON MILLER: Go ahead.

11 MS. SCHMIDT: Don't I get to ask
12 first?

13 CHAIRPERSON MILLER: Oh, I'm
14 sorry. No, I'll go back to you after our
15 Board questions and then you can have the
16 witness respond.

17 Yes, Mr. Alberti?

18 MEMBER ALBERTI: Investigator
19 Lawson, let's talk about the flyers. I want
20 to talk about how accessible the flyers were
21 to customers.

22 So, let's start. Where were these

1 flyers? And if they were in different places,
2 let me know, tell me that.

3 INVESTIGATOR LAWSON: Yes. As I
4 recall, Mr. Alberti, Exhibit 7 was on the host
5 stand.

6 MEMBER ALBERTI: Okay. I can see
7 that from Exhibit 3.

8 INVESTIGATOR LAWSON: I'm not sure
9 which -- if you notice on the host stand
10 there's one that's on the edge of the host
11 stand, a long one.

12 MEMBER ALBERTI: Yes.

13 INVESTIGATOR LAWSON: For some
14 reason I don't recall which flyer that was.

15 MEMBER ALBERTI: Okay.

16 INVESTIGATOR LAWSON: But I can
17 say that at least two of these flyers, I'm
18 thinking Exhibit 4 and 5, were actually in the
19 office, the management office.

20 MEMBER ALBERTI: Okay. So 4 and 5
21 were not out?

22 INVESTIGATOR LAWSON: No.

1 MEMBER ALBERTI: Okay.

2 INVESTIGATOR LAWSON: But I --
3 because of the date on the flyers, I used
4 those because it was sometime after the Board
5 Order.

6 MEMBER ALBERTI: Okay. Let's talk
7 about 4 and 5 then. So the date on the flyers
8 is Wednesday, July 3rd. So they were an event
9 for -- for 4 and 5 -- 4 was July 3rd and that
10 predates the Order?

11 INVESTIGATOR LAWSON: July 13th.

12 MEMBER ALBERTI: What?

13 INVESTIGATOR LAWSON: Four is July
14 13th.

15 MEMBER ALBERTI: Oh, which is the
16 date of your visit?

17 INVESTIGATOR LAWSON: Yes.

18 MEMBER ALBERTI: Okay. And that
19 was in the management office.

20 And what's the date on Exhibit 5?

21 INVESTIGATOR LAWSON: Exhibit 5
22 doesn't appear to have a date because it's

1 just a general --

2 MEMBER ALBERTI: Oh, just general
3 happy hour? And that was in the management
4 office also.

5 INVESTIGATOR LAWSON: Yes.

6 MEMBER ALBERTI: Okay. So on
7 Exhibit 3 I see that the flyers shown in
8 Exhibit 7 is on that host stand.

9 INVESTIGATOR LAWSON: Yes.

10 MEMBER ALBERTI: And it's your
11 recollection that the other stack of long
12 towards the back of this from the perspective
13 I'm looking at, towards the back of the
14 picture --

15 INVESTIGATOR LAWSON: Yes.

16 MEMBER ALBERTI: -- the host
17 stand, is that another flyer?

18 INVESTIGATOR LAWSON: Yes. Yes.

19 MEMBER ALBERTI: Okay. Okay.

20 INVESTIGATOR LAWSON: This is
21 another flyer. I just grabbed this particular
22 one.

1 MEMBER ALBERTI: Okay. So it was
2 another flyer advertising the Twelve Lounge?

3 INVESTIGATOR LAWSON: Yes.

4 MEMBER ALBERTI: Okay. Where is
5 the host stand located?

6 INVESTIGATOR LAWSON: It was right
7 at the front entrance, right -- that if you
8 walk in through the door --

9 MEMBER ALBERTI: Yes.

10 INVESTIGATOR LAWSON: -- just
11 immediately to the right of the front entrance
12 or that's usually where they post it.

13 MEMBER ALBERTI: All right. Did
14 you see anyone there at the host stand?

15 INVESTIGATOR LAWSON: No.

16 MEMBER ALBERTI: No? Okay.

17 INVESTIGATOR LAWSON: I did see a
18 security -- they did have a security member
19 that was immediately inside of the front
20 entrance. I wouldn't say he was behind the
21 host stand, but in the area right in front of
22 the host stand.

1 MEMBER ALBERTI: So would these
2 flyers be accessible to a patron as they were
3 coming in and leaving?

4 INVESTIGATOR LAWSON: Oh, yes.
5 There were some that had flyers when they were
6 leaving the establishment that night.

7 MEMBER ALBERTI: All right. So you
8 saw patrons with flyers?

9 INVESTIGATOR LAWSON: Oh, yes.
10 Yes. There was not that many people there
11 that night that I visited, but I did --

12 MEMBER ALBERTI: Okay. It doesn't
13 matter.

14 INVESTIGATOR LAWSON: -- I did
15 observe the --

16 MEMBER ALBERTI: Okay.

17 INVESTIGATOR LAWSON: -- people
18 with the flyers.

19 MEMBER ALBERTI: Okay. Thank you
20 for that.

21 Your report says that on July 13th
22 there was DJ?

1 INVESTIGATOR LAWSON: Yes.

2 MEMBER ALBERTI: Where was the DJ?
3 Downstairs? There's two levels to this
4 establishment, correct?

5 INVESTIGATOR LAWSON: Yes. Yes.

6 MEMBER ALBERTI: The DJ was
7 upstairs?

8 INVESTIGATOR LAWSON: Yes.

9 MEMBER ALBERTI: Okay. And
10 describe what that DJ was doing while you were
11 there?

12 INVESTIGATOR LAWSON: Give me one
13 second.

14 MEMBER ALBERTI: Okay.

15 INVESTIGATOR LAWSON: If you look
16 on Exhibit 2, there's a photograph of the DJ
17 standing behind the equipment.

18 MEMBER ALBERTI: I have to tell
19 you that my picture really is just mostly
20 black.

21 INVESTIGATOR LAWSON: Yes. But if
22 you see the figure of kind of a person, you

1 see a light --

2 MEMBER ALBERTI: Yes, I see him.

3 INVESTIGATOR LAWSON: And you see
4 that figure right there?

5 MEMBER ALBERTI: All right.

6 INVESTIGATOR LAWSON: The person's
7 behind. You see kind of two -- the middle of
8 the picture and the waist length of a person?

9 MEMBER ALBERTI: Yes.

10 INVESTIGATOR LAWSON: That's kind
11 of a laptop that's used for manipulating
12 music.

13 MEMBER ALBERTI: Okay.

14 INVESTIGATOR LAWSON: Or DJ
15 equipment.

16 MEMBER ALBERTI: Did he have a
17 microphone and was using it while you were
18 there?

19 INVESTIGATOR LAWSON: I don't
20 recall. I don't recall making that
21 observation if there was a microphone that he
22 was actually using.

1 MEMBER ALBERTI: Did you have a
2 discussion with Mr. Gibson about the --

3 INVESTIGATOR LAWSON: Yes.
4 Actually, I had a discussion with him about
5 the Board Order. I specifically asked him if
6 he had a copy of his Board Order, and he knew
7 what the Board Order said.

8 MEMBER ALBERTI: Okay. But I'm
9 interested in the DJ. Did he make any
10 comments about what you were referring to as
11 the DJ and what he was doing there, what his
12 function was, anything like that?

13 INVESTIGATOR LAWSON: No, don't
14 recall specifically having a conversation
15 about the DJ.

16 MEMBER ALBERTI: Okay. I have no
17 further questions.

18 Thank you, Mr. Lawson.

19 INVESTIGATOR LAWSON: Yes, sir.

20 CHAIRPERSON MILLER: Other Board
21 questions? I just have a couple.

22 Mr. Lawson, do you have a

1 definition of flyer?

2 INVESTIGATOR LAWSON: I'm sorry?

3 CHAIRPERSON MILLER: Do you have a
4 definition of flyer?

5 INVESTIGATOR LAWSON: A definition
6 of flyer?

7 CHAIRPERSON MILLER: A definition
8 of flyer?

9 INVESTIGATOR LAWSON: No, ma'am. I
10 don't.

11 CHAIRPERSON MILLER: Okay. Okay.
12 Did you see what you called the flyers
13 distributed?

14 INVESTIGATOR LAWSON: Personally
15 being distributed? No, I did not.

16 CHAIRPERSON MILLER: Okay. That's
17 all I have.

18 Ms. Schmidt?

19 MS. SCHMIDT: Yes.

20 REDIRECT EXAMINATION

21 MS. SCHMIDT: Were these flyers
22 meant to be taken off premises?

1 INVESTIGATOR LAWSON: From the
2 appearance?

3 MS. SCHMIDT: Yes.

4 INVESTIGATOR LAWSON: Yes. From
5 where they were located.

6 MS. SCHMIDT: And the contents of
7 these flyers, do they actually promote events?

8 INVESTIGATOR LAWSON: Yes.

9 MS. SCHMIDT: No further
10 questions.

11 CHAIRPERSON MILLER: Mr. Kline?

12 RE-CROSS-EXAMINATION

13 MR. KLINE: Investigator, you were
14 asked if you had a definition of flyer, and
15 your response was that you did not, correct?

16 INVESTIGATOR LAWSON: I don't have
17 a definition of the flyers.

18 MR. KLINE: Well, you've testified
19 repeatedly that these were flyers. So how was
20 it that you conclude that these were flyers if
21 you do not have a definition of a flyer?

22 INVESTIGATOR LAWSON: Well,

1 generally because of my experience of what
2 these particular items are called. And when
3 they are being distributed and when they're
4 being advertised at an establishment or at an
5 -- for an event, that there's no distinction
6 between the kind of paper that is used or the
7 size of paper that is used. It's just that the
8 flyers are available to patrons or potential
9 patrons.

10 MR. KLINE: So it's your position
11 that if it's material that advertises the
12 establishment in anyway, it's a flyer?

13 INVESTIGATOR LAWSON: And it can
14 be handed out and on whatever kind of paper.
15 Yes.

16 MR. KLINE: Okay. So it doesn't
17 matter what stock it's on, it doesn't matter
18 what media it's printed on; if I can be handed
19 out to customers, it's a flyer?

20 INVESTIGATOR LAWSON: Based on my
21 knowledge and experience, yes.

22 MR. KLINE: May I approach the

1 witness?

2 CHAIRPERSON MILLER: Yes.

3 MR. KLINE: Investigator, have you
4 ever seen one of these or anything like that?

5 INVESTIGATOR LAWSON: Yes, sure.

6 MR. KLINE: What is it?

7 INVESTIGATOR LAWSON: This is a
8 membership card kind of -- I guess for patrons
9 that visit the establishments so they can
10 benefit from making purchases there.

11 MR. KLINE: And that advertises
12 the establishment, doesn't it?

13 INVESTIGATOR LAWSON: Yes.

14 MR. KLINE: And that could be
15 handed out to patrons?

16 INVESTIGATOR LAWSON: Well, sure.

17 MR. KLINE: And it is handed out
18 to patrons, isn't it?

19 INVESTIGATOR LAWSON: I would say
20 yes.

21 MR. KLINE: So is that a flyer?

22 INVESTIGATOR LAWSON: No.

1 MR. KLINE: That's not a flyer?

2 INVESTIGATOR LAWSON: No.

3 MR. KLINE: All right.

4 INVESTIGATOR LAWSON: That's a
5 card.

6 MR. KLINE: That's a card?

7 INVESTIGATOR LAWSON: A membership
8 card.

9 MR. KLINE: All right.

10 INVESTIGATOR LAWSON: Because
11 it's-- anyway --

12 MR. KLINE: There's no question
13 pending? Wait, let me finish my question.

14 INVESTIGATOR LAWSON: All right.

15 MR. KLINE: Because it's produced
16 on plastic is that why you come to that
17 conclusion?

18 INVESTIGATOR LAWSON: Well, yes.
19 Well our discussion was about paper,
20 initially. And we were talking about cards
21 and you --

22 MR. KLINE: And I asked you --

1 INVESTIGATOR LAWSON: Yes.

2 MR. KLINE: And I asked you
3 whether it mattered what media it was printed
4 on, and you said it didn't, I believe.

5 INVESTIGATOR LAWSON: That I don't
6 recall. I do recall you asking me regarding
7 the paper or the kind of paper.

8 MR. KLINE: I showed you a BGR,
9 the Burger Joint VIP Card, correct?

10 INVESTIGATOR LAWSON: Yes.

11 MR. KLINE: And it's composed on
12 plastic, correct?

13 INVESTIGATOR LAWSON: Yes.

14 MR. KLINE: If it were on paper,
15 is it your position that this is a flyer?

16 INVESTIGATOR LAWSON: It could be.

17 MR. KLINE: It could be?

18 Now Exhibits 4 through 7; if
19 Exhibit 4 were posted on a wall, would it be
20 your position that it's a flyer?

21 INVESTIGATOR LAWSON: Sure, it's a
22 flyer posted on a wall.

1 MR. KLINE: It's a flyer posted on
2 a wall?

3 INVESTIGATOR LAWSON: Yes.

4 MR. KLINE: What if it were 2 by 3
5 feet in size --

6 INVESTIGATOR LAWSON: Okay.

7 MR. KLINE: -- and were posted on
8 the wall, would it be your position that it's
9 a flyer?

10 INVESTIGATOR LAWSON: No.

11 MR. KLINE: Why not?

12 INVESTIGATOR LAWSON: Because of
13 the size.

14 MR. KLINE: Because of the size?

15 INVESTIGATOR LAWSON: Yes.

16 MR. KLINE: So what size is a
17 flyer?

18 INVESTIGATOR LAWSON: I would say
19 a flyer is -- personally between 8« and 11
20 sheet of paper to maybe what, 3« by whatever
21 size piece of cardboard paper.

22 MR. KLINE: So if it's smaller

1 than that, it's not a flyer and if it's
2 between those two sizes, in your estimation
3 it's a flyer?

4 INVESTIGATOR LAWSON: I'm sorry.
5 Repeat the question.

6 MR. KLINE: If it's between those
7 two sizes that you specified, if it's either
8 of those two sizes or between those two sizes,
9 your position is it's a flyer?

10 INVESTIGATOR LAWSON: My position
11 is that it could be a flyer.

12 MR. KLINE: Could be?

13 INVESTIGATOR LAWSON: Yes.

14 MR. KLINE: And how do we
15 determine whether it is or it isn't?

16 INVESTIGATOR LAWSON: Well, are
17 you asking me to determine how it is or it
18 isn't?

19 MR. KLINE: Well, you've testified
20 repeatedly that these are flyers, so yes, I'm
21 asking.

22 INVESTIGATOR LAWSON: Okay. Well,

1 the portability of it if it's able to be
2 passed out, it was the abundance of them and
3 what they're advertising as far as an event or
4 as far as an establishment or what it's
5 offering to the establishment or what it's
6 offering to the patrons, they receive; yes, to
7 me is a flyer.

8 MR. KLINE: But it's posted on a
9 wall it's your position that it is still a
10 flyer if it's between those two sizes,
11 correct?

12 INVESTIGATOR LAWSON: Sure.

13 MR. KLINE: What if it's mailed to
14 patrons, is it a flyer?

15 INVESTIGATOR LAWSON: Yes.

16 MR. KLINE: And that would be in
17 violation of the Board's Order in your
18 estimation?

19 INVESTIGATOR LAWSON: Yes.

20 MR. KLINE: What if it is
21 published in a magazine, is that a flyer?

22 INVESTIGATOR LAWSON: I don't

1 understand what you say "published in a
2 magazine."

3 MR. KLINE: Well, in other words
4 the same content as an 8« by 11 size page ad
5 in a magazine, is that a flyer?

6 INVESTIGATOR LAWSON: Okay. No, I
7 would say it's an advertisement but it's not
8 a flyer.

9 MR. KLINE: All right. I don't
10 have any further questions of the witness.
11 Thank you.

12 CHAIRPERSON MILLER: Yes, Mr.
13 Silverstein?

14 MEMBER SILVERSTEIN: Thank you.

15 Mr. Lawson, I'm trying to
16 determine what a flyer is. I guess we'll go
17 back to Justice Stewart in Jacobellis that we
18 don't know what it is necessarily, but we know
19 what it is when we see it. We may not be able
20 to describe it exactly.

21 Board Member Mobley has suggested
22 we check the internet. The definition I see

1 here is that it's a circular handbill or a
2 leaflet in the form of a paper advertisement
3 intended for wide distribution. It says "To
4 promote a good or service such as a restaurant
5 or nightclub." Are you comfortable with that?

6 INVESTIGATOR LAWSON: Sure.

7 MEMBER SILVERSTEIN: It says that
8 there are many different flyer formats. Some
9 examples are letterhead size, half letterhead
10 size, comslip size and post card size. Are you
11 comfortable that they can come in different
12 sizes, that they can be anything from big to
13 something you can slip either into your pocket
14 or onto your windshield where it will stick in
15 the morning?

16 INVESTIGATOR LAWSON: Yes, sir.

17 MEMBER SILVERSTEIN: Were the
18 items that you saw here fit in those
19 definitions?

20 INVESTIGATOR LAWSON: Yes, sir.

21 MEMBER SILVERSTEIN: And according
22 to the Board Order, which I'm going to right

1 here, it says that they are not -- "Shall not
2 use flyers to promote events at this
3 establishment. That the Applicant and its
4 third party promoters shall not use flyers to
5 promote events at the establishment."

6 Did they use flyers by that
7 definition to promote events at the
8 establishment?

9 INVESTIGATOR LAWSON: Yes.

10 MEMBER SILVERSTEIN: Is there any
11 wiggle room in what you're saying? You're
12 definitely sure that your experience as an
13 ABRA Investigator, these were flyers?

14 INVESTIGATOR LAWSON: Yes.

15 MEMBER SILVERSTEIN: And these
16 were used to promote events at this
17 establishment?

18 INVESTIGATOR LAWSON: Yes.

19 MEMBER SILVERSTEIN: No further
20 questions. Thank you, Mr. Lawson.

21 CHAIRPERSON MILLER: Other Board
22 questions?

1 MR. KLINE: If I may --

2 CHAIRPERSON MILLER: I know --

3 MR. KLINE: Before we proceed, I
4 would ask that for the record Board Member
5 Silverstein put on the record the source of
6 his testimony concerning about the definition
7 of a flyer?

8 MEMBER SILVERSTEIN: I will do so.
9 It is the Wikipedia definition of flyer
10 (pamphlet).

11 MR. KLINE: It's the Wikipedia
12 definition?

13 MEMBER SILVERSTEIN: Yes. Just
14 the first one that popped up.

15 CHAIRPERSON MILLER: Mr. Lawson --

16 INVESTIGATOR LAWSON: Yes, ma'am.

17 CHAIRPERSON MILLER: Oh, are we
18 finished here?

19 I just want to clarify, though,
20 your testimony. I thought that you at one
21 point gave an answer to Mr. Kline where you
22 said that a flyer fell within two dimensions;

1 8« by 11 or something else. What did you say?

2 INVESTIGATOR LAWSON: I think we
3 were discussing the size of the flyer. And I
4 offered my opinion in my experience that 8« by
5 11 sheet of paper or a 3« by 3« is roughly a
6 size range that I've known flyers to be.

7 CHAIRPERSON MILLER: The 3« by
8 what?

9 INVESTIGATOR LAWSON: The 3« --

10 CHAIRPERSON MILLER: Well,
11 approximately, this is approximate.

12 INVESTIGATOR LAWSON: It could be
13 -- it could actually even be taped to a 3 by
14 3 sheet piece of paper or cardboard, or
15 something like that.

16 CHAIRPERSON MILLER: Okay. Okay.
17 So is there something, a business card size,
18 the traditional business card size?

19 INVESTIGATOR LAWSON: Yes. In my
20 opinion, it could be used as a flyer.

21 CHAIRPERSON MILLER: So if you saw
22 that, if you went into this establishment and

1 there was, you know, a bowl full of these
2 business cards promoting an event, business
3 card size is what they call them --

4 INVESTIGATOR LAWSON: Yes, ma'am.

5 CHAIRPERSON MILLER: -- you would
6 say that that's a flyer?

7 INVESTIGATOR LAWSON: Yes.

8 Depending on how the establishment was using
9 it and what it was used to advertise as far as
10 an event the establishment would be having.
11 And if it's meant -- intended for mass
12 distribution.

13 CHAIRPERSON MILLER: Okay. And
14 you drew upon your experience in assessing
15 what you thought what you would consider a
16 flyer, correct?

17 INVESTIGATOR LAWSON: Yes, ma'am.

18 CHAIRPERSON MILLER: Okay. That's
19 it. Okay.

20 Mr. Silverstein?

21 MEMBER SILVERSTEIN: Pertinent
22 question on that. Assume there's a business

1 card and there are two business cards.

2 INVESTIGATOR LAWSON: Yes.

3 MEMBER SILVERSTEIN: One says

4 "John Smith Productions can handle your

5 birthdays and weddings and everything like

6 that." And then next to it is a business card

7 that says "John Smith Productions presents ABC

8 at Club DEF April 21st."

9 INVESTIGATOR LAWSON: Yes.

10 MEMBER SILVERSTEIN: Is one of

11 those a flyer and is one of those a business

12 card or what's --

13 INVESTIGATOR LAWSON: Yes. I would

14 say that the John Smith Productions of

15 birthday party, balloons or whatever, would be

16 a business card. And the promoting of an

17 event at a certain date and time would be a

18 flyer.

19 MEMBER SILVERSTEIN: So then you

20 can do a business cards, but you can't do

21 flyers?

22 INVESTIGATOR LAWSON: Sure.

1 MEMBER SILVERSTEIN: Thank you.

2 CHAIRPERSON MILLER: Okay. Other
3 Board questions?

4 Mr. Kline, I think I'll go back to
5 you.

6 Ms. Schmidt, do you have any?

7 MS. SCHMIDT: No.

8 CHAIRPERSON MILLER: Okay.

9 RECROSS-EXAMINATION

10 MR. KLINE: So Investigator, if
11 the business card promotes an event, that's
12 considered a flyer, is that your testimony?

13 INVESTIGATOR LAWSON: No. My
14 testimony is -- would you like for me to
15 clarify?

16 MR. KLINE: Sure.

17 INVESTIGATOR LAWSON: Depending on
18 what the business card is used for, what is
19 advertised, what is the intent of the business
20 card it could be used as a flyer.

21 MR. KLINE: Okay. So if the
22 business card, for example, doesn't advertise

1 an event but it's stuck under every windshield
2 wiper in the neighborhood, it's a flyer, isn't
3 it?

4 INVESTIGATOR LAWSON: No, it's a
5 business card.

6 MR. KLINE: Oh, it's a business
7 card, and even though it's distributed on
8 windshield wipers in the neighborhood?

9 INVESTIGATOR LAWSON: Yes.

10 MR. KLINE: So under what
11 circumstances does it become a flyer?

12 INVESTIGATOR LAWSON: Well, you
13 just said: If it had an event, promoted an
14 event or specific date, time for a function
15 that was being had by an establishment, then
16 it would be in my opinion a flyer. If it
17 was--

18 MR. KLINE: Were you in the room
19 earlier when there was a hearing concerning a
20 relay race?

21 MS. SCHMIDT: Objection.
22 Objection. Relevance.

1 MR. KLINE: We'll get there

2 CHAIRPERSON MILLER: Well, since
3 there's been an objection, do you want to tell
4 us what the relevance is going to be so I can
5 rule on it?

6 MR. KLINE: May I have some
7 latitude, because I think we'll get there
8 pretty quickly?

9 CHAIRPERSON MILLER: All right.
10 We'll hear the question then. Oh, was that the
11 question then?

12 MR. KLINE: That's the question
13 and there are two follow-ups to that.

14 CHAIRPERSON MILLER: All right.

15 INVESTIGATOR LAWSON: No. No, sir.

16 MR. KLINE: You weren't in the
17 room

18 INVESTIGATOR LAWSON: No, sir.

19 MR. KLINE: All right. We'll
20 start it a different way.

21 Are you familiar here with the
22 Chili Cook Off that takes place every year in

1 town?

2 INVESTIGATOR LAWSON: I'm -- yes,
3 vaguely.

4 MR. KLINE: The Cherry Blossom
5 Festival, are you familiar with that?

6 INVESTIGATOR LAWSON: Yes. Yes.

7 MR. KLINE: All right. So if
8 there was a business card for the Director of
9 the Cherry Blossom Festival that had the dates
10 of the Cherry Blossom Festival on the back of
11 it, is it your position that that's a flyer
12 because it advertises a specific event?

13 INVESTIGATOR LAWSON: Yes.

14 MR. KLINE: I have no further
15 questions.

16 CHAIRPERSON MILLER: Yes, Ms.
17 Schmidt.

18 MS. SCHMIDT: One follow-up
19 question based on his questions.

20 CHAIRPERSON MILLER: Okay.

21 REDIRECT EXAMINATION

22 MS. SCHMIDT: Is there a Board

1 Order for the Cherry Blossom Festival about
2 promoting events as far as you know?

3 INVESTIGATOR LAWSON: To my
4 knowledge, no.

5 MS. SCHMIDT: No further
6 questions.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 (Whereupon, the witness was
10 excused.)

11 CHAIRPERSON MILLER: Next witness.

12 MS. SCHMIDT: Yes. The Government
13 calls Investigator Jabriel Shakoor. We'll be
14 discussing Report number 11-CMP-00352, the
15 date is August 30th, 2011.

16 (Witness sworn.)

17 DIRECT EXAMINATION

18 MS. SCHMIDT: Good morning,
19 Investigator Shakoor. Could you please state
20 your name for the record?

21 INVESTIGATOR SHAKOOR: Jabriel
22 Shakoor.

1 MS. SCHMIDT: And by whom are you
2 employed?

3 INVESTIGATOR SHAKOOR: The
4 Alcoholic Beverage Control Administration.

5 MS. SCHMIDT: And August 30th,
6 2011 did you happen to be at Twelve Lounge?

7 INVESTIGATOR SHAKOOR: I did.

8 MS. SCHMIDT: And what was going
9 on that evening?

10 INVESTIGATOR SHAKOOR: I was
11 assigned to stop by and monitor Twelve
12 Restaurant & Lounge after receiving numerous
13 complaints about the establishment providing
14 entertainment and not providing an MPD
15 reimbursement detail.

16 MS. SCHMIDT: And what did you see
17 that evening when you were there?

18 INVESTIGATOR SHAKOOR: On the
19 second floor of the establishment did have a
20 DJ in operations. There were approximately 20
21 patrons upstairs.

22 MS. SCHMIDT: And could you be

1 more specific about how the DJ was operating?

2 INVESTIGATOR SHAKOOR: He was at
3 the DJ booth operating the DJ and sound
4 equipment.

5 MS. SCHMIDT: Was he making
6 announcements as the music was playing?

7 INVESTIGATOR SHAKOOR: No.

8 MS. SCHMIDT: So how was he
9 operating the equipment basically?

10 INVESTIGATOR SHAKOOR: He was
11 physically manipulating the equipment that was
12 there with his hands.

13 MS. SCHMIDT: Okay. Was he
14 choosing the sounds?

15 INVESTIGATOR SHAKOOR: Yes, I
16 would say so.

17 MS. SCHMIDT: So it didn't look to
18 you like it was an automatic system where the
19 sounds randomly play?

20 INVESTIGATOR SHAKOOR: No.

21 MS. SCHMIDT: Okay. And are you
22 aware of Board Order 2011-368?

1 INVESTIGATOR SHAKOOR: Yes.

2 MS. SCHMIDT: And -- I'm sorry,
3 289. I got the wrong one. I'm sorry. Oh,
4 there's a modified Order, yes. Okay.

5 Let me show this to you. It's the
6 second Order, modified Order. And it is
7 Exhibit 1 in that file.

8 CHAIRPERSON MILLER: Exhibit 1 is
9 attached to this Investigative Report?

10 MS. SCHMIDT: Yes, it is.

11 CHAIRPERSON MILLER: Okay.

12 MS. SCHMIDT: And could you please
13 tell the Board what this is?

14 INVESTIGATOR SHAKOOR: It's a
15 Board Order, modified Board Order No. 2011-
16 289.

17 MS. SCHMIDT: And what's the date
18 of that Order?

19 INVESTIGATOR SHAKOOR: The -- of
20 August, 2011.

21 MS. SCHMIDT: And could you please
22 read paragraph two of the Order?

1 INVESTIGATOR SHAKOOR: "The
2 Applicant shall hire the MPD reimbursable
3 detail whenever the establishment provides any
4 DJs or live music as entertainment at the
5 establishment. The MPD reimbursable detail
6 shall be hired for a minimum of four hours and
7 shall end no sooner than one hour after
8 closing."

9 MS. SCHMIDT: And did you see an
10 MDP reimbursable detail when you were there
11 that evening?

12 INVESTIGATOR SHAKOOR: I did not.

13 MS. SCHMIDT: Board's indulgence.
14 Did you speak to the owner about
15 this?

16 INVESTIGATOR SHAKOOR: On that
17 night I did not. The following date, on
18 Friday, September 17th, 2011 I did.

19 MS. SCHMIDT: And what did he say
20 about that?

21 MR. KLINE: Mr. Gibson stated that
22 in the month of August the reimbursable detail

1 is not scheduled.

2 MS. SCHMIDT: No further questions
3 at this time.

4 CHAIRPERSON MILLER: Okay. Mr.
5 Kline?

6 CROSS-EXAMINATION

7 MR. KLINE: Good morning,
8 Investigator.

9 INVESTIGATOR SHAKOOR: Good
10 morning.

11 MR. KLINE: So when you say he was
12 "physically manipulating the equipment," you
13 mean he was selecting putting the music on?

14 INVESTIGATOR SHAKOOR: Correct.

15 MR. KLINE: Okay. Thank you. No
16 further questions.

17 CHAIRPERSON MILLER: Board
18 questions? Mr. Alberti?

19 MEMBER ALBERTI: Hi, Investigator
20 Shakoor.

21 INVESTIGATOR SHAKOOR: Yes.

22 MEMBER ALBERTI: Okay. So you've

1 testified that the DJ was selecting songs?

2 INVESTIGATOR SHAKOOR: Correct.

3 MEMBER ALBERTI: Was he
4 manipulating the music in any other way?

5 INVESTIGATOR SHAKOOR: Not that I
6 saw.

7 MEMBER ALBERTI: Okay. Did he
8 change the bass, the treble, the volume?

9 INVESTIGATOR SHAKOOR: I wasn't
10 standing over his shoulder, but it's obvious
11 that he was making movements and controlling
12 the equipment there.

13 MEMBER ALBERTI: Okay. During --
14 in the middle of the song while it was playing
15 or--

16 INVESTIGATOR SHAKOOR: While it
17 was playing, correct.

18 MEMBER ALBERTI: While it was
19 playing? Okay.

20 Did you have a discussion with Mr.
21 Gibson about the DJ?

22 INVESTIGATOR SHAKOOR: The

1 following time I returned I did, yes.

2 MEMBER ALBERTI: All right. Did
3 he characterize that person that you think
4 that you characterized as a DJ, did he
5 characterize him in anyway?

6 INVESTIGATOR SHAKOOR: Not
7 especially about the DJ. We spoke briefly
8 about the events and he said it was an
9 unscheduled event that happened as per the
10 moment.

11 MEMBER ALBERTI: Did you reference
12 that person who was manipulating the music as
13 a DJ to Mr. Gibson?

14 INVESTIGATOR SHAKOOR: I'm sure we
15 did, yes, that he provided entertainment and
16 DJ, yes.

17 MEMBER ALBERTI: Did he at any
18 point dispute the fact that this person was a
19 DJ?

20 INVESTIGATOR SHAKOOR: No.

21 MEMBER ALBERTI: Okay. Thank you.
22 Did you check the MPD records to

1 see if he had hired a reimbursable detail for
2 this date?

3 INVESTIGATOR SHAKOOR: On that
4 night I did, I believe. This has an Exhibit
5 2 --

6 MEMBER ALBERTI: Oh, okay. Okay.
7 Oh, I see. So -- give me one moment, please.
8 These are all for September.

9 INVESTIGATOR SHAKOOR: That's
10 correct.

11 MEMBER ALBERTI: Did you ask MPD
12 for records for August?

13 INVESTIGATOR SHAKOOR: There were
14 no records for August. And as Mr. Gibson
15 said, they had not scheduled anything for
16 August.

17 MEMBER ALBERTI: Okay. But MPD
18 could not provide you any records for August
19 also, correct?

20 INVESTIGATOR SHAKOOR: That's
21 correct.

22 MEMBER ALBERTI: Thank you very

1 much.

2 I have no further questions.

3 CHAIRPERSON MILLER: Ms. Mobley?

4 MEMBER MOBLEY: Yes.

5 Investigator, did Mr. Gibson state why he
6 didn't employ the police reimbursable detail
7 for August?

8 INVESTIGATOR SHAKOOR: In direct
9 conversation, I believe he stated that the
10 event was spur of the moment, it wasn't
11 scheduled in advance where they had enough
12 time to schedule the detail.

13 MEMBER MOBLEY: Okay. But the
14 report says he didn't schedule any for the
15 month of August, is that correct?

16 INVESTIGATOR SHAKOOR: That's
17 correct.

18 MEMBER MOBLEY: Okay. Thank you.

19 No further questions.

20 CHAIRPERSON MILLER: Other Board
21 Members?

22 Did he give you more information

1 about what he meant with respect to "spur of
2 the moment"?

3 INVESTIGATOR SHAKOOR: Not
4 necessarily. Just is, I think it popped up or
5 it may have come up, you know an event that is
6 very small.

7 CHAIRPERSON MILLER: It was a
8 small event?

9 INVESTIGATOR SHAKOOR: Yes. Only
10 20 people there, it was a Tuesday night.

11 CHAIRPERSON MILLER: Twenty
12 people? And how long did you observe it?

13 INVESTIGATOR SHAKOOR: About 15 or
14 20 minutes.

15 CHAIRPERSON MILLER: And what did
16 you exactly observe this DJ doing?

17 INVESTIGATOR SHAKOOR: Inside the
18 DJ booth controlling the equipment there.

19 CHAIRPERSON MILLER: So does that
20 mean, like making it louder, softer, more
21 bass, more something; that kind of control?

22 INVESTIGATOR SHAKOOR: I was aware

1 just selecting the songs.

2 CHAIRPERSON MILLER: He didn't
3 actually change something, or to make it
4 something --

5 INVESTIGATOR SHAKOOR: Right. I
6 wasn't looking over his shoulder, but it was
7 obvious that he was controlling the equipment
8 there.

9 CHAIRPERSON MILLER: Okay. I
10 don't have any other questions.

11 Any questions, Ms. Schmidt?

12 MS. SCHMIDT: No questions.

13 RECROSS-EXAMINATION

14 CHAIRPERSON MILLER: Mr. Kline?

15 MR. KLINE: So just to be clear
16 when you say "controlling the equipment," you
17 meant he was selecting and putting on the
18 songs, correct?

19 INVESTIGATOR SHAKOOR: Right.

20 CHAIRPERSON MILLER: Okay.

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

22 CHAIRPERSON MILLER: All right.

1 Any redirect?

2 MS. SCHMIDT: No.

3 CHAIRPERSON MILLER: Okay. Thank
4 you very much.

5 INVESTIGATOR SHAKOOR: You're
6 welcome.

7 (Whereupon, the witness was
8 excused.)

9 MS. SCHMIDT: The Government calls
10 Investigator Craig Stewart.

11 (Witness sworn.)

12 MS. SCHMIDT: And for guidance
13 again, we're now referring to Report 11-CMP-
14 00458, October 9, 2011.

15 CHAIRPERSON MILLER: Okay.

16 MS. SCHMIDT: Okay.

17 DIRECT EXAMINATION

18 MS. SCHMIDT: Good morning,
19 Investigator. Sir, if you could please state
20 your name and your employer?

21 INVESTIGATOR STEWART: I'm
22 Supervisory Investigator Craig Stewart

1 employed with the Alcoholic Beverage
2 Regulation Administration.

3 MS. SCHMIDT: And how long have
4 you been with ABRA?

5 INVESTIGATOR STEWART: Five years.

6 MS. SCHMIDT: All right. Drawing
7 your attention to October 9, 2011 did you go
8 to Twelve Restaurant & Lounge that night?

9 INVESTIGATOR STEWART: Yes, ma'am.

10 MS. SCHMIDT: And why were you
11 there?

12 INVESTIGATOR STEWART: I received a
13 call on the ABRA Hotline. Someone stated that
14 they were having entertainment without an MPD
15 reimbursable detail.

16 MS. SCHMIDT: And when you walked
17 in that evening what did you see?

18 INVESTIGATOR STEWART: When we
19 walked into the establishment, when we
20 arrived--

21 MS. SCHMIDT: Who is "we," by the
22 way?

1 INVESTIGATOR STEWART: I'm sorry.
2 Myself and Investigator Abyie Ghenene.

3 On arriving at the establishment
4 we walked around the outside of the
5 establishment and determined that there were
6 no MDP police presence.

7 We went into the establishment,
8 made contact with the owner, Mr. Gibson. Mr --
9 excuse, Investigator Ghenene, while he was
10 speaking with Mr. Gibson I went upstairs and
11 observed a DJ and patrons dancing.

12 MS. SCHMIDT: And what sort of
13 stuff did the DJ have?

14 INVESTIGATOR STEWART: I think he
15 had a laptop computer, sound board, speakers,
16 microphone, headphones.

17 MS. SCHMIDT: And was he
18 manipulating what selections came in?

19 INVESTIGATOR STEWART: Yes.

20 MS. SCHMIDT: And how do you know
21 that?

22 INVESTIGATOR STEWART: I walked up

1 to him, I observed him do it.

2 MS. SCHMIDT: And so this was not
3 like some prerecorded music he was just
4 playing?

5 INVESTIGATOR STEWART: No.

6 MS. SCHMIDT: And what did Mr.
7 Gibson say? Did you speak to Mr. Gibson about
8 the reimbursable detail?

9 INVESTIGATOR STEWART: Yes, I did.

10 MS. SCHMIDT: And what did he say
11 about it?

12 INVESTIGATOR STEWART: He said
13 that he had applied for their services, that
14 he was owed a credit for the previous month,
15 and that he expected them to be there. We
16 asked him to produce documents. He could not
17 produce any valid documents for that time. He
18 said that it was a private party upstairs at
19 that time.

20 MS. SCHMIDT: And, may I approach
21 the witness?

22 CHAIRPERSON MILLER: Yes.

1 MS. SCHMIDT: Did he eventually
2 produce those documents?

3 INVESTIGATOR STEWART: He produced
4 documents that did validate the sound.

5 MS. SCHMIDT: And I'm going to ask
6 you to look at Exhibit No. 2, what's that?

7 INVESTIGATOR STEWART: This is an
8 email.

9 MS. SCHMIDT: And who is that
10 email from?

11 INVESTIGATOR STEWART: It is from
12 I believe Mr. Gibson?

13 MS. SCHMIDT: And who is it to?

14 INVESTIGATOR STEWART: Mr. Herbert
15 Newman, D.C. Government.

16 MS. SCHMIDT: And what is the
17 content of that email?

18 INVESTIGATOR STEWART: It says "We
19 have not cancelled our detail. Just had a lot
20 of slow days for the month of October. We
21 need details." He references dates of
22 September, but not for October.

1 MS. SCHMIDT: Was one of those
2 days September 9th?

3 INVESTIGATOR STEWART: No. But I
4 believe we're talking about October.

5 MS. SCHMIDT: October.

6 INVESTIGATOR STEWART: Yes.

7 MS. SCHMIDT: On Exhibit 3 what is
8 that? Can you tell the Board what that is?

9 INVESTIGATOR STEWART: This is, I
10 believe, a request for services.

11 MS. SCHMIDT: And do you see a
12 date for Saturday, October 9th there?

13 INVESTIGATOR STEWART: No. And I
14 believe going to the question with this
15 document, was that October 9th was actually a
16 Saturday -- or actually a Sunday, if I
17 recollect. I would have to pull the calendar
18 out, but I believe if this is one of the
19 points of contention. If I can pull my
20 calendar? Excuse me.

21 Yes. So one of the points of
22 contention with this email that -- or not this

1 email, this document was that we were there on
2 Saturday, October 8th into Sunday, October
3 9th. The request for services said Friday,
4 October 8th, which is not the correct date. We
5 were actually there on Saturday. So we brought
6 this to Mr. Gibson's attention and he had no
7 answer for that.

8 MS. SCHMIDT: But when you were
9 there you did not see a detail?

10 INVESTIGATOR STEWART: That's
11 correct.

12 MS. SCHMIDT: No further questions
13 at this time.

14 CHAIRPERSON MILLER: Okay. Mr.
15 Kline?

16 CROSS-EXAMINATION

17 MR. KLINE: Good morning,
18 Investigator.

19 INVESTIGATOR STEWART: Good
20 morning.

21 MR. KLINE: Are you familiar with
22 this establishment?

1 INVESTIGATOR STEWART: Yes.

2 MR. KLINE: Been there a number of
3 times?

4 INVESTIGATOR STEWART: A few
5 times.

6 MR. KLINE: Do you know typically
7 when they offer entertainment?

8 INVESTIGATOR STEWART: Mostly
9 weekends.

10 MR. KLINE: Okay. Just the
11 weekends?

12 Do you have your calendar there in
13 front of you?

14 INVESTIGATOR STEWART: Yes.

15 MR. KLINE: And you also have
16 Exhibit 2?

17 INVESTIGATOR STEWART: I have
18 those exhibits.

19 MS. SCHMIDT: I'm sorry.

20 INVESTIGATOR STEWART: Exhibit 2.

21 MR. KLINE: All right. And what is
22 that document?

1 INVESTIGATOR STEWART: I believe
2 this is the email from Mr. Gibson to Mr.
3 Newman, D.C. Government.

4 MR. KLINE: What was the purpose
5 of the email?

6 INVESTIGATOR STEWART: Getting --
7 stating that he had not cancelled the details
8 for the month of October.

9 MR. KLINE: And also requesting
10 details, correct?

11 INVESTIGATOR STEWART: For
12 September dates, yes.

13 MR. KLINE: All right. For
14 September dates? But it says "For month O-C-T
15 period," meaning October, "we need a detail on
16 the following dates." Isn't that what it
17 says?

18 INVESTIGATOR STEWART: Yes, but he
19 lists the dates of September.

20 MR. KLINE: All right. Starting
21 with September 8th, what day of the week is
22 that?

1 INVESTIGATOR STEWART: September
2 8th?

3 MR. KLINE: You have your
4 calendar, correct?

5 INVESTIGATOR STEWART: Yes. It's a
6 Thursday.

7 MR. KLINE: How about September
8 13?

9 INVESTIGATOR STEWART: It's a
10 Tuesday.

11 MR. KLINE: September 14th?

12 INVESTIGATOR STEWART: Thursday.

13 MR. KLINE: September 20th?

14 INVESTIGATOR STEWART: It's a
15 Tuesday.

16 MR. KLINE: September 21st?

17 INVESTIGATOR STEWART: It's a
18 Wednesday.

19 MR. KLINE: September 22nd?

20 INVESTIGATOR STEWART: It's a
21 Thursday.

22 MR. KLINE: And then September

1 21st and 22nd are referenced twice, correct,
2 in the email?

3 INVESTIGATOR STEWART: Yes.

4 MR. KLINE: Now given what you
5 know about the operation, that they typically
6 offer entertainment on weekends and given that
7 the introduction says "For the month of
8 October," the use of nine to specify the dates
9 is clearly in error, isn't it?

10 INVESTIGATOR STEWART: I can't
11 speculate.

12 MR. KLINE: What's the date of the
13 email?

14 INVESTIGATOR STEWART: October
15 6th.

16 MR. KLINE: So is it your
17 contention that the licensee was requesting
18 reimbursable detail for the previous month?

19 INVESTIGATOR STEWART: Well, there
20 was a lot of confusion with Mr. Gibson. And
21 one of the things he was doing -- to get -- to
22 actually get to these emails took him about

1 35/40 minutes. We weren't actually privy to
2 him pulling the documents because kind of
3 stood at his doorway. And he came back with
4 these documents after he printed them.

5 So I don't -- I questioned him on
6 these dates. I said these dates actually say
7 September. And he was like, "Well, I meant
8 October."

9 And I said "Well, what do you have
10 to prove that you requested for October
11 dates?" I said "Because if you sent this
12 document to me requesting services from the
13 previous month, I would have questions." I
14 said "Where's the response from the Officer
15 that you requested it from," and he couldn't
16 provide that.

17 MR. KLINE: All right. But you
18 ultimately did obtain Exhibit 3, correct?

19 INVESTIGATOR STEWART: I did not
20 obtain this. Investigator Ghenene obtained
21 it. Yes, sir.

22 MR. KLINE: But it was obtained by

1 your office?

2 INVESTIGATOR STEWART: Yes.

3 MR. KLINE: And, in fact, those
4 dates match up with the dates that were
5 requested for reimbursable detail in Mr.
6 Gibson's email, don't they?

7 INVESTIGATOR STEWART: No.

8 MR. KLINE: They don't?

9 INVESTIGATOR STEWART: No.

10 MR. KLINE: How do they not?

11 INVESTIGATOR STEWART: You have
12 Thursday October 27th, Friday October 28th,
13 Saturday October 29th. And --

14 MR. KLINE: So if --

15 INVESTIGATOR STEWART: And she
16 mentioned that they say October, whereas his
17 says September.

18 MR. KLINE: Okay. But in terms of
19 the day of the month, they correspond with the
20 exception of the fact that there are three
21 additional dates, correct?

22 INVESTIGATOR STEWART: Well,

1 there's no Friday October 8th and I'll also
2 say in Mr. Gibson's email just has the month
3 and the day -- or the date, not the day of the
4 week. So I haven't took the time to look to
5 see if the calendar days actually match up
6 either.

7 MR. KLINE: All right. Well, let's
8 do it then. On Exhibit 2 he references 9/8, we
9 have October 8th on the invoice, don't we?

10 INVESTIGATOR STEWART: So yes, 8
11 and 9 match up.

12 MR. KLINE: We have 9/13 on the
13 email and we have October 13th on the invoice,
14 correct?

15 MR. KLINE: October 13th is a
16 Thursday?

17 MR. KLINE: Yes. Forget about the
18 day of the week. We're just looking at the
19 days of the month.

20 INVESTIGATOR STEWART: Okay.

21 MR. KLINE: Is that correct?

22 INVESTIGATOR STEWART: Sure.

1 MR. KLINE: We have the 14th and
2 the 14th, correct?

3 INVESTIGATOR STEWART: Yes.

4 MR. KLINE: The 15th and the 15th?

5 INVESTIGATOR STEWART: Yes.

6 MR. KLINE: The 20th and the 20th?

7 INVESTIGATOR STEWART: Yes.

8 MR. KLINE: The 21st and the 21st?

9 INVESTIGATOR STEWART: Yes.

10 MR. KLINE: The 22nd and the 22nd?

11 INVESTIGATOR STEWART: Yes.

12 MR. KLINE: And the 27th and the
13 27th?

14 INVESTIGATOR STEWART: Yes.

15 MR. KLINE: And then in addition
16 to that on the invoice we also have October --
17 the 28th and the 29th of October listed,
18 correct?

19 INVESTIGATOR STEWART: Yes.

20 MR. KLINE: Okay. Now in Mr.
21 Gibson's email, he didn't specify days of the
22 week, did he?

1 INVESTIGATOR STEWART: No.

2 MR. KLINE: But those are
3 specified by the invoice that was generated by
4 MPD, correct?

5 INVESTIGATOR STEWART: Yes.

6 MR. KLINE: So presumably that
7 information was added by MPD?

8 INVESTIGATOR STEWART: I'll let
9 you be the one --

10 MR. KLINE: Well, you got this
11 from MPD's files, didn't you?

12 INVESTIGATOR STEWART: No, I got
13 this from Mr. Gibson.

14 MR. KLINE: All right. But you've
15 seen these documents before, correct?

16 INVESTIGATOR STEWART: In Mr.
17 Gibson's office.

18 MR. KLINE: And you've seen them
19 in connection with other licensees as invoices
20 for reimbursable detail?

21 INVESTIGATOR STEWART: Not in
22 this format.

1 MR. KLINE: You have not?

2 INVESTIGATOR STEWART: No, sir.

3 MR. KLINE: So, do you dispute
4 that this is an invoice for reimbursable
5 detail?

6 INVESTIGATOR STEWART: No.

7 MR. KLINE: So you concede it's an
8 invoice for reimbursable detail?

9 INVESTIGATOR STEWART: I concede
10 it's a document that I received that had an
11 MPD header on it from Mr. Gibson.

12 MR. KLINE: Now October 8th is
13 actually a Saturday, correct?

14 INVESTIGATOR STEWART: Yes.

15 MR. KLINE: With the exception of
16 the first entry on Exhibit 3, all of the days
17 of the week correspond with the dates in
18 October, correct?

19 INVESTIGATOR STEWART: Yes.

20 MR. KLINE: Did you attempt to
21 confer with MPD whether Mr. Gibson has
22 requested reimbursable detail for October?

1 INVESTIGATOR STEWART: I'm not the
2 Investigator that's responsible for this case.
3 Investigator Ghenene is. He did the follow-up.

4 MR. KLINE: So do you know if he
5 did that?

6 INVESTIGATOR STEWART: I'm not
7 sure.

8 MR. KLINE: So we don't have any
9 reason to believe what Mr. Gibson provided in
10 terms of documents requesting reimbursable
11 detail if this isn't correct, do we?

12 INVESTIGATOR STEWART: Well, let
13 me further explain that the date requested was
14 Sunday October 9th and Saturday October 8th.
15 When we asked Mr. Gibson could you produce a
16 document and proof that you've paid for these
17 services on that day, and he could not.

18 MR. KLINE: But you didn't do any
19 follow-up with MPD?

20 INVESTIGATOR STEWART: No, sir.

21 MR. KLINE: He told you that he
22 was entitled to a credit for amounts he had

1 overpaid in previous months, correct?

2 INVESTIGATOR STEWART: That's what
3 he said.

4 MR. KLINE: And you don't have any
5 reason to believe that that's incorrect, do
6 you?

7 INVESTIGATOR STEWART: I reserve
8 comment.

9 MR. KLINE: Well, I'm asking you.
10 I mean, do you have any evidence --

11 INVESTIGATOR STEWART: Well,
12 again, because --

13 MR. KLINE: Let me finish my
14 question.

15 Do you have any evidence that what
16 he told you about being entitled to a credit
17 for the month of September was false?

18 INVESTIGATOR STEWART: Well, we
19 asked him "Could you show us where you were
20 supposed to get credit," and he could not show
21 us that.

22 MR. KLINE: Okay. Now you've been

1 an Investigator for five years, correct?

2 INVESTIGATOR STEWART: Yes, sir.

3 MR. KLINE: And you're a
4 Supervisory Investigator?

5 INVESTIGATOR STEWART: Yes, sir.

6 MR. KLINE: And you've had
7 dealings with the reimbursable detail program,
8 correct?

9 INVESTIGATOR STEWART: Yes.

10 MR. KLINE: And we know that their
11 record keeping isn't the best, don't we?

12 INVESTIGATOR STEWART: I'll let
13 you say that.

14 MR. KLINE: Well, what's your
15 opinion on that?

16 INVESTIGATOR STEWART: I don't
17 know how they keep records. That's not --
18 that's not part of my duties to determine how
19 they keep records at MPD.

20 MR. KLINE: Okay. So you didn't
21 think it was important to go back to MPD and
22 try to confirm whether what Mr. Gibson was

1 telling you about the credit was correct?

2 INVESTIGATOR STEWART: Again, this
3 is not my case.

4 MR. KLINE: Okay. Thank you.

5 I have no further questions.

6 CHAIRPERSON MILLER: Board Member
7 questions? Mr. Alberti?

8 MEMBER ALBERTI: Hi, Investigator
9 Stewart. I'm not sure where to begin.

10 But first of all, I'm going to
11 begin with something that I just can't --
12 forgot to get mentioned in all this
13 questioning about these dates and how Exhibit
14 2 corresponds to Exhibit 3, and all of that.
15 Now let's go back to Exhibit 2.

16 INVESTIGATOR STEWART: Yes, sir.

17 MEMBER ALBERTI: It says "We need
18 a detail on the following dates," and he lists
19 several dates. And then it says "For Fridays
20 and Saturdays."

21 INVESTIGATOR STEWART: Yes.

22 MEMBER ALBERTI: All right. And

1 as you pointed out, I'll just ask you, but as
2 you pointed out, is it correct that some of
3 the dates in Exhibit 3 mentioned Thursdays?
4 Reference a Thursday in Exhibit 3?

5 INVESTIGATOR STEWART: Yes.

6 MEMBER ALBERTI: Okay. Thank you.

7 So I'm very confused by this
8 document, but that's not your problem.

9 Okay. Let's talk about payment.
10 Because this report was prepared by
11 Investigator Ghenene, is that correct?

12 INVESTIGATOR STEWART: Yes, it
13 was.

14 MEMBER ALBERTI: All right. Are
15 you Mr. Ghenene's supervisor?

16 INVESTIGATOR STEWART: No, sir.

17 MEMBER ALBERTI: Okay. Did you
18 discuss this report with him at all?

19 INVESTIGATOR STEWART: In the
20 beginning, yes sir.

21 MEMBER ALBERTI: Okay. Did you
22 discuss -- do you have the report in front of

1 you?

2 INVESTIGATOR STEWART: No, sir.

3 MEMBER ALBERTI: Okay. Can we get
4 the Investigator a copy of Mr. Ghenene's
5 report?

6 I mean, this may go quickly
7 depending on what your answer is here.

8 Let's go to the second page. And
9 the two paragraphs above "Exhibits attached."

10 INVESTIGATOR STEWART: Yes, sir.

11 MEMBER ALBERTI: Do you have any
12 knowledge either in your discussions with
13 Investigator Ghenene or your discussions with
14 MPD about the information that's provided in
15 those two paragraphs?

16 INVESTIGATOR STEWART: Yes, sir. I
17 have to read those two paragraphs you
18 referenced. I remember speaking with
19 Investigator Ghenene.

20 MEMBER ALBERTI: Okay. And do
21 these two paragraphs correctly convey your
22 understanding of what -- do they coincide with

1 what Investigator Ghenene conveyed to you?

2 INVESTIGATOR STEWART: No, sir.

3 But then again, part of the follow-up was
4 because Mr. Gibson couldn't provide the
5 documents, Investigator Ghenene --

6 MEMBER ALBERTI: I understand
7 that. I just wanted to make sure that
8 Investigator Ghenene had spoken to you about
9 the information in these last two paragraphs
10 and what he told you was consistent with what
11 was written here, am I correct?

12 INVESTIGATOR STEWART: Yes, sir.

13 MEMBER ALBERTI: Okay. Thank you.

14 Do you know -- and we have this in
15 the record so I'm not going to read it, all
16 right. Do you know in your work how MPD --
17 the requirements that MPD has on when someone
18 must pay for reimbursable detail?

19 INVESTIGATOR STEWART: I thought
20 it was seven days prior, at least at the
21 latest.

22 MEMBER SILVERSTEIN: That's your

1 understanding?

2 INVESTIGATOR STEWART: Yes.

3 MEMBER ALBERTI: And you have that
4 understanding how?

5 INVESTIGATOR STEWART: Just
6 through my experience that they won't even
7 acknowledge anything if it's less than seven
8 days --

9 MEMBER ALBERTI: Does this come
10 from --

11 INVESTIGATOR STEWART: And this
12 come up almost at the last minute and they
13 said "We need at least seven days for that
14 payment to be paid and to be able to be able
15 to give officers."

16 MEMBER ALBERTI: Does this come
17 from communications they've held with you or
18 with other Investigators here?

19 INVESTIGATOR STEWART: Yes, sir.

20 MEMBER ALBERTI: Okay. Thank you.

21 I have no further questions. Thank
22 you, Mr. Investigator.

1 INVESTIGATOR STEWART: Yes, sir.

2 CHAIRPERSON MILLER: Other Board
3 Members?

4 I have one question. Exhibit No.
5 3, do you have that in front of you for the
6 Investigative Report? I believe it was -- I'm
7 not sure if this was an invoice.

8 INVESTIGATOR STEWART: Yes, ma'am.

9 CHAIRPERSON MILLER: Okay. If
10 this is an invoice -- what would you call this
11 document that lists the dates and times.

12 INVESTIGATOR STEWART: It could be
13 considered an invoice.

14 CHAIRPERSON MILLER: Statement.
15 Okay.

16 And what's the significance of --
17 my copy has no signatures on it. At the
18 bottom there are lines for approval by the
19 Commander and the Cluster Controller. I'm not
20 sure of this process. Like where would this
21 be in the process without any signature, or is
22 that --

1 INVESTIGATOR STEWART: To me some
2 as -- invoice, I think we could the title of
3 it and call it a quote because it's not
4 signed. It's not approved.

5 CHAIRPERSON MILLER: Okay. But
6 this is supposed to be something that would
7 come by email to Mr. Gibson or is it --

8 INVESTIGATOR STEWART: I don't
9 know how he receives this.

10 CHAIRPERSON MILLER: Okay. This
11 is just a document that he pulled and gave to
12 you?

13 INVESTIGATOR STEWART: Yes.

14 CHAIRPERSON MILLER: Okay. Any
15 other questions?

16 Any redirect?

17 MS. SCHMIDT: Yes, just briefly.

18 REDIRECT EXAMINATION

19 MS. SCHMIDT: Where is he supposed
20 to Investigator Ghenene today?

21 INVESTIGATOR STEWART: His wife
22 had a baby. He's on leave.

1 MEMBER SILVERSTEIN: Okay.

2 CHAIRPERSON MILLER: I'm sorry.

3 What?

4 MS. SCHMIDT: Where was

5 Investigator Ghenene?

6 INVESTIGATOR STEWART:

7 Investigator Ghenene is on maternity leave,

8 his wife had a baby.

9 CHAIRPERSON MILLER: Oh. That's
10 very nice. Okay.

11 MS. SCHMIDT: Where you were
12 there, going back to October 9th did you see
13 a DJ playing or a DJ manipulating music?

14 INVESTIGATOR STEWART: Yes.

15 MS. SCHMIDT: And was there a
16 reimbursable detail there?

17 INVESTIGATOR STEWART: No.

18 MS. SCHMIDT: No further
19 questions.

20 CHAIRPERSON MILLER: Okay. Mr.
21 Kline?

22 CROSS-EXAMINATION

1 MR. KLINE: Sir, when you say
2 "manipulating music," what you saw him doing
3 was selecting music and putting it on,
4 correct?

5 INVESTIGATOR STEWART: Selecting
6 music, speaking into a microphone, trying to
7 get the crowd excited about the songs.
8 Basically talking about the patrons' attire,
9 talking about how we were to, I guess , enjoy
10 the night.

11 MR. KLINE: All right. Now, you
12 testified previously that you received Exhibit
13 3 from Mr. Gibson. The fact of the matter is
14 you received it from MPD, correct?

15 INVESTIGATOR STEWART: No, sir.
16 By Mr. Gibson.

17 MR. KLINE: What about Exhibit 4?

18 INVESTIGATOR STEWART: Exhibit 4
19 looks like Exhibit 3, so I don't know where
20 that came from.

21 MR. KLINE: Well, they're
22 basically identical, aren't they?

1 INVESTIGATOR STEWART: At first
2 glance, yes sir.

3 MR. KLINE: Well, you were
4 directed to the last two paragraphs of the
5 report which says that Officer Newman provided
6 you the report, correct?

7 INVESTIGATOR STEWART: It's in his
8 report.

9 MR. KLINE: So does that refresh
10 your recollection as to where it came from?

11 INVESTIGATOR STEWART:
12 Investigator Ghenene says that his report came
13 from Officer Newman, then that's this report.

14 MR. KLINE: So this notion that
15 somehow these documents were created by Mr.
16 Gibson couldn't be true, could it?

17 INVESTIGATOR STEWART: I don't
18 know where that notion came from.

19 MR. KLINE: Well, I think you
20 suggested it during your previous testimony.
21 You had submissions about --

22 MS. SCHMIDT: Objection.

1 Objection. The testimony is in the record.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: I'll withdraw it.

4 CHAIRPERSON MILLER: Okay.

5 MR. KLINE: Now would Officer
6 Newman be the one that would be aware as to
7 whether a credit was due to the establishment?

8 INVESTIGATOR STEWART: I'm not
9 aware of that.

10 MR. KLINE: Okay. Thank you.

11 I don't have anything further.

12 CHAIRPERSON MILLER: Okay. Board
13 Member has another question and then I'll get
14 back to you, Ms. Schmidt.

15 MEMBER ALBERTI: Real quick, Ms.
16 Schmidt.

17 The first page of Exhibit 3, take
18 a look at it, please?

19 INVESTIGATOR STEWART: Exhibit 3,
20 sir?

21 MEMBER ALBERTI: Yes.

22 INVESTIGATOR STEWART: Okay.

1 MEMBER ALBERTI: There are two
2 places for signatures at the bottom; is it
3 signed?

4 INVESTIGATOR STEWART: No, sir.

5 MEMBER ALBERTI: Okay. Exhibit 4
6 has two pages. The first page, bottom of the
7 first page, is it signed?

8 INVESTIGATOR STEWART: No, sir.

9 MEMBER ALBERTI: The second page
10 is it signed?

11 INVESTIGATOR STEWART: No, sir.

12 MEMBER ALBERTI: Thank you.

13 That's all the questions I have.

14 CHAIRPERSON MILLER: Yes, ma'am.

15 Redirect.

16 MEMBER SILVERSTEIN: No further
17 questions.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 MR. KLINE: I have some follow-
21 up--

22 CHAIRPERSON MILLER: Do you have

1 another.

2 MR. KLINE: -- in light of --

3 CHAIRPERSON MILLER: In light of
4 Board questions?

5 MR. KLINE: -- further Board
6 questions.

7 CHAIRPERSON MILLER: Okay.

8 RE-CROSS-EXAMINATION

9 MR. KLINE: Did you or
10 Investigator Ghenene --

11 INVESTIGATOR STEWART: Ghenene.

12 MR. KLINE: --Ghenene, inquire of
13 Officer Newman what the significance of
14 signature was?

15 INVESTIGATOR STEWART: Again, I
16 did not speak -- no, sir, I did not. I don't
17 know what Investigator Ghenene did.

18 MR. KLINE: So we don't know as we
19 sit here today what it means that it was not
20 signed or if it was signed whether there was
21 any distinction between the two of them?

22 INVESTIGATOR STEWART: That's

1 correct.

2 MR. KLINE: Okay. Thank you.

3 CHAIRPERSON MILLER: Questions?

4 MS. SCHMIDT: No further
5 questions. The Government rests at this
6 point.

7 CHAIRPERSON MILLER: Okay. Thank
8 you very much.

9 (Whereupon, the witness was
10 excused.)

11 MR. KLINE: Can I have the Board's
12 indulgence?

13 CHAIRPERSON MILLER: Okay.

14 MR. KLINE: We rest as well.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Kline, do you want to introduce the person who
17 is sitting next to you?

18 INVESTIGATOR STEWART: Yes, for
19 the record, Bernard Gibson has joined me at
20 the table here.

21 CHAIRPERSON MILLER: Okay. You're
22 resting?

1 MR. KLINE: Correct.

2 CHAIRPERSON MILLER: No opening,
3 no closing?

4 MR. KLINE: We will make argument.

5 CHAIRPERSON MILLER: Or closing?

6 MR. KLINE: We will make opening
7 and closing argument at the same time, and a
8 motion to dismiss; all at the same time.

9 CHAIRPERSON MILLER: All at the
10 same time? Well --

11 MR. KLINE: Yes, we'll do it -- I
12 don't mean to repeat myself, so what I'll do
13 is file it as a motion to discuss. I will
14 argue that and then the Government can
15 certainly make their closing depending upon
16 what the Board does with the motion to
17 dismiss.

18 CHAIRPERSON MILLER: Okay. I
19 missed what you just said. You're going to do
20 a motion to dismiss?

21 MR. KLINE: Yes. We're going to
22 move to dismiss the charges based upon the

1 Government's case and I'm prepared to argue
2 that.

3 CHAIRPERSON MILLER: Okay. And
4 this would be the time.

5 MR. KLINE: Okay. Thank you.

6 With respect to Charge No. 1,
7 Charge No. 1 involved an allegation that the
8 licensee used flyers, and I used "flyers" in
9 air quotes like my kids used to do, in
10 violation of a Board order.

11 Board Member Silverstein says
12 flyers are somehow like pornography, "We know
13 it when we see it." I vehemently disagree.
14 Even the Investigator that testified was all
15 over the Board in terms of what a flyer was.

16 This licensee is charged with
17 violation of a Board Order. I personally
18 think that that's a pretty serious offense,
19 violation of a Board Order. You have ordered
20 the licensee to do something and the
21 allegation is licensee didn't do it.

22 In the first instance, however, I

1 think the Board bears responsibility for such
2 a violation because it's the Board's
3 responsibility in the first instance to write
4 a clear order where there is no ambiguity as
5 to what we're talking about. Now that's
6 particularly true when we're talking about
7 flyers. And the reason why it's so important
8 is that different from other instances that we
9 might encounter in Board Orders, we're talking
10 about First Amendment rights with respect to
11 speech.

12 Now, in looking at the Board Order
13 it's clear that what the Board was concerned
14 about was trashing the neighborhood with
15 flyers being distributed, handing out to
16 people, flyers being put on windshields, I
17 think this was referenced in the Board Order.
18 How is this licensee supposed to know from
19 that Board Order that a stack of cards in his
20 establishment was even, according to some
21 testimony, a stack of business cards if it
22 happens to have a date on it is in violation

1 of the Board Order?

2 I think that in the first
3 instance, the licensee should be on notice as
4 to what's prescribed, it should be very clear.
5 This is not clear at all.

6 In terms of what a flyer is, we're
7 going to rely on Wikipedia? I hope that we
8 have not fallen to the level where a
9 licensee's rights are going to be determined
10 what we read in Wikipedia. I would hope that
11 the Board in writing an order would clearly
12 set forth what's required and what is not
13 required so licensees are not left to guess.

14 In my own mind, for whatever it's
15 worth, I think the flyer is determined by how
16 its used. If one has an 8« by 11 piece of
17 paper that's posted somewhere, it's a poster.
18 That's not a flyer.

19 If an 8« by 11 piece of paper is
20 laying on a table, it's not a flyer. A flyer
21 is distributed. It's handed out. It's put on
22 people's windshields exactly the kind of

1 conduct that the Board was concerned about
2 when it wrote the order. So even if the Board
3 somehow finds that it's own Order is not
4 ambiguous, and I would insert that it is, I
5 would assert that there was no distribution of
6 flyers here. That the resting of papers or
7 advertising material on a counter is not the
8 distribution of flyers that was contemplated
9 by the Board Order.

10 Now let's turn to the second
11 charge. The second charge requires the Board,
12 finally, to make a decision that the industry
13 has been asking about for quite a long time,
14 has made inquiries of the Board's counsel, and
15 that is: What is live entertainment as
16 contemplated by an entertainment endorsement?

17 The testimony with respect to the
18 incident on August 30, 2011 is that we have
19 somebody selecting the music. Now, it doesn't
20 matter what the equipment is. It can be
21 turntables, it can be an iPod, it can be an XM
22 Sirius Radio; the music that was provided was

1 recorded music.

2 Now, I would submit to you, and
3 we've always argued to the Board and have
4 submitted to ABRA and we've discussed it with
5 Board's counsel, that there's a very fine
6 distinction between a DJ and what we call for
7 purposes of convenience "a music programmer."

8 The music programmer is anybody
9 that selects the music and puts it on. It can
10 be the bartender when a patron sitting at the
11 bar says "Hey, put on the other music
12 channel." And the bartender changes the
13 channel on the TV and you have a different
14 music channel and you have different music.

15 It can be an iPod where somebody
16 has an iPod and they select music, it changes
17 the music.

18 When the line is crossed and
19 you're using a DJ is when the music programmer
20 is in and of himself or herself live
21 entertainment. Handing out songs, they do
22 shoutouts, they do contests. They do any one

1 of a number of things that in and of
2 themselves are entertainment. Because
3 remember, what we're talking about under an
4 entertainment endorsement is live
5 entertainment. And somehow we have to parse
6 the difference between recorded music, which
7 is permitted in the establishment without an
8 entertainment endorsement and live
9 entertainment which is not permitted in an
10 establishment without an entertainment
11 endorsement. And your Order, the Board's
12 Order, certainly references that when there is
13 entertainment as under an entertainment
14 endorsement reimbursable detail is now
15 required. When, on the other hand, not
16 explicitly stated in the Board Order, there is
17 not such entertainment there is recorded music
18 then presumably reimbursable detail is not
19 required.

20 Now 20 people standing around on
21 the second floor listening to somebody play
22 music is not live entertainment. And if the

1 Board were to hold that such activity were
2 live entertainment, then we have a lot of
3 people in the industry who are in violation
4 because they have bartenders that put on
5 music, they have music programmers; they have
6 all sorts of functionaries who manipulate
7 music because they select music that's to be
8 played. When a customer says "I don't want to
9 hear classical, I want to hear rock and roll"
10 then someone's got to make that change.
11 Somebody has to manipulate the system, as was
12 testified by the Investigator, to put on
13 different music.

14 Now if the Board holds that that's
15 live music, then any person in any licensed
16 establishment that does not have an
17 entertainment endorsement is in violation when
18 they change the channel on a radio station.
19 And I don't have any other way to draw the
20 line. I've looked at this issue many different
21 ways. I've discussed it with Board's counsel.
22 Discussed it with the ABRA Director. And it

1 seems to me that the only way to draw the line
2 is to say that if you are a personality, then
3 you're providing live entertainment. If you
4 entertain the people other than by choosing
5 the music, then you're a DJ and that's live
6 entertainment. But just because we have DJ
7 equipment and we have somebody putting on the
8 music, that doesn't make him a DJ.

9 There's no evidence whatsoever
10 with respect to the events of August 30th when
11 there's 20 people standing around
12 spontaneously listening to music that there is
13 live entertainment being offered.

14 Now let's turn to October 9, 2011.
15 There seems to be a lot of confusion here, but
16 not as much as the Government would assert.
17 Even though the Investigator originally
18 testified that they had no evidence whatsoever
19 that Mr. Gibson had ordered reimbursable
20 detail on October 8th, it then becomes clear
21 that Exhibit 4, which is identical to Exhibit
22 3 in almost all respects, was obtained from

1 MPD. So that the reimbursable was indeed
2 ordered. Those dates with the exception of an
3 obvious error in referencing the month nine
4 instead of the month ten wind up with the
5 email that was requested. One of the dates
6 that was requested for was October 8th.

7 Now the other evidence that's
8 before you is that the licensee indicated that
9 he was entitled to a credit and, therefore
10 payment was not necessary. There isn't any
11 evidence that there's no such credit. The
12 Investigator couldn't even testify that
13 Officer Newman is the one who could provide
14 information as to whether there was a credit
15 due.

16 Now, you may look at us and say
17 "Well, gee, that's your responsibility." Well
18 no it's not. In a case such as this it's the
19 Government burden to prove their case in the
20 first instance, which is why we're making a
21 motion to dismiss. And the Government has not
22 rebutted the information in its own report

1 from Mr. Gibson that:

2 (1) He ordered reimbursable
3 detail for October 8th, and;

4 (2) He was entitled to a credit.

5 So, we would submit for all of
6 those reasons, all three charges should be
7 dismissed.

8 Thank you.

9 CHAIRPERSON MILLER: Whenever
10 you're ready, you're ready, right?

11 MS. SCHMIDT: Okay. First of all,
12 the issue of size. It's not the type of paper
13 that it's in question here. It doesn't matter
14 if it's printed on gold leaf. The Board Order
15 clearly specifies flyers promoting events.
16 It's the content of what's on the material.

17 In this case the evidence is quite
18 clear that these events were being promoted in
19 the future.

20 And also with respect to the
21 licensee's argument that the Board's order did
22 not contemplate flyers inside the

1 establishment, that is shown by the fact that
2 the Order was not actually applied to a
3 specific -- the first Order may have been
4 vague. But in order to clarify, the Board
5 issued a modified Order which specifically
6 stated that -- I'm sorry. I just want to show
7 you the modified Order.

8 Gave a definition of where the
9 flyers will be placed. And that Order states:
10 "Shall not distribute flyers that promote
11 events at the establishment inside the
12 establishment, or within a half a mile away
13 from the establishment"

14 So the argument that the Board
15 allowed, in fact the Board even clarified that
16 it didn't mean inside the establishment in the
17 second order from the first Order. So the
18 cards found inside the establishment on the
19 table, whether they're cards, whatever you
20 want to call them, flyers, paper; these were
21 documents that attempted to promote events,
22 and that was what the Board specifically said

1 not to do.

2 With respect to the disc jockey
3 argument, it should be noted that disc jockeys
4 are distinct in the Board's definitional
5 section of what constitutes entertainment.
6 That can be found in the regulation section
7 199.1. That section states "That entertainment
8 - live music or any other live performance
9 conducted by an actual person or persons,
10 including but not limited to: Live bands,
11 karaoke, comedy shows, poetry readings, and
12 disc jockeys. The operation of a jukebox, a
13 television, a radio, or other prerecorded
14 music shall not be considered entertainment."
15 However, they did make the distinction for
16 disk jockeys. And in this case it is not just
17 merely operating, turning on the jukebox --
18 turning on whatever they produced on a
19 soundboard, I don't know exactly what the
20 technology is. I'm saying records this
21 morning, but I know that there's not records
22 anymore, too.

1 But in this case the fact that the
2 disc jockey had control over the type of music
3 and whether or not people would -- and could
4 choose the genre it shows that there was
5 definitely -- that they violated the Board's
6 Order because the Board Order wanted to ensure
7 that whenever there's a disc jockey, which
8 means that it was more than just background
9 music but that there was a real person, that
10 based on the Board's experience and the
11 neighbor's experience with music in these
12 establishments, wants to make sure that
13 there's a reimbursable police detail outside
14 the establishment, but this was not done.

15 We have eyewitness testimony from
16 two different Investigators on two different
17 occasions: Yes, there was music, no
18 reimbursable detail.

19 And in the case of October 9th it
20 doesn't matter what -- once the establishment
21 realized there was no reimbursable detail,
22 they knew they should not be playing the

1 music. Whether or not they paid or not, that
2 is irrelevant. That's sending us down a wild
3 goose chase because all -- the Investigator
4 went in there, he saw the music, there was no
5 reimbursable detail. And we should not get
6 lost in the forest for the trees because
7 again, the Government only has the burden to
8 show that there was entertainment as required
9 by the entertainment endorsement and there was
10 no reimbursable detail.

11 MR. KLINE: Brief rebuttal.

12 CHAIRPERSON MILLER: Okay. Sure.

13 MR. KLINE: Just a couple of
14 points.

15 CHAIRPERSON MILLER: Yes.

16 MR. KLINE: The Government argues
17 that it's about the content of the flyers.
18 That is indeed troubling and that goes to the
19 very issue that we're talking about, and
20 that's why it implicates the First Amendment.

21 We would submit that it's not
22 about the content, it's about how they're

1 distributed because I know this Board knows
2 not to regulate the content. It's about what
3 is a flyer. And a flyer is not about what the
4 content is. A flyer is how its used: The
5 same piece of paper could be pasted on a wall,
6 that doesn't make it a flyer contrary to the
7 Investigator's testimony.

8 With respect to the Board's Order
9 not being clear and there's something to be
10 clarified, the Government seems to argue that
11 the fact that the Order was clarified
12 therefore makes the original Order clear. I
13 don't understand that argument.

14 It seems to me that the second
15 Order is certainly clearer than the first,
16 although even still would benefit from some
17 clarity in terms of what conduct is
18 prohibited. But to suggest that somehow the
19 fact that the Board clarified the Order then
20 means that the first Order was clear as to
21 what it was talking about is absurd. I mean,
22 that is not consistent at all.

1 The Order was clarified because it
2 was in need of clarification and perhaps is
3 still in need of clarification so that this
4 licensee will clearly be on notice as to what
5 conduct is prescribed and what isn't.

6 With respect to entertainment, the
7 key in the definition of entertainment is
8 "live music or any other live performance
9 conducted by an actual person or persons."

10 And then it goes on to say "concluding." So
11 how we look at a DJ and say that they're a
12 live performance? The only way to do that is
13 to have the DJ somehow participate in a way
14 that they are the entertainment rather than
15 the music. And the way that's done, and we've
16 all seen them, is the DJs at weddings and bar
17 mitzvahs and birthday parties and fund raisers
18 and other events who excite the crowd, they do
19 shoutouts, they do contests, they do all
20 manner of things themselves which are part of
21 the entertainment in addition to recorded
22 music. The recorded music, in and of itself

1 without anything more, is merely recorded
2 music and it doesn't matter whether that
3 person who is being called the DJ is playing
4 it on what we used to call transistor radio or
5 a full blown DJ apparatus with turntables and
6 everything else so long as they are not the
7 entertainer.

8 Thank you.

9 CHAIRPERSON MILLER: Okay. Board
10 questions on the motion? Mr. Alberti?

11 MEMBER ALBERTI: Real quick.

12 You said something that I want to
13 go back to about flyers. You made a
14 distinction about a flyer being -- that the
15 same piece of paper that if it's handed out to
16 somebody promoting an event is a flyer, is
17 that correct?

18 MR. KLINE: In my mind, I think
19 the distinction would be if they're handed
20 out, they're actively distributed in some way
21 rather than passively available.

22 MEMBER ALBERTI: Right. So if

1 they're sitting on a table assessable to the
2 customers as they leave or enter, that's not
3 a flyer, is that what you're saying?

4 MR. KLINE: That's passive.

5 MEMBER ALBERTI: That's passive?

6 So, let's go as an example just to
7 make sure I understand, Exhibit 7, this is an
8 exhibit as an example. I'm just using this as
9 an example.

10 MR. KLINE: I understand.

11 MEMBER ALBERTI: So, if that is
12 sitting on a table by the front door and
13 patrons are picking up with the knowledge of
14 establishment that's not a flyer?

15 MR. KLINE: Not in my mind, no.

16 MEMBER ALBERTI: Okay. Thank you.

17 Just wanted to understand his
18 thinking. Thank you.

19 MR. KLINE: And the only other
20 thing that I would add is that none of these
21 exhibits are of record at this point. They
22 haven't been admitted, and the Government's

1 rested its case. And we would object to their
2 introduction at this point because they've
3 never been admitted. And the originals aren't
4 here. And those are arguments which we would
5 have made had they been proffered. But they
6 have never been proffered and the Government's
7 rested.

8 MEMBER ALBERTI: Okay.

9 CHAIRPERSON MILLER: I have a
10 question for you, Mr. Kline. Do you think
11 that distribute and flyers need to go together
12 in order to be treated as flyers?

13 MR. KLINE: Yes. I think that --
14 and again, I would hope for a clearer order.
15 I mean, I would hope that when the Board
16 writes an order and tells the licensee to do
17 something or not do something, that there
18 would be clarity and we would not be having
19 this discussion in terms of what's related or
20 whatnot. But in the absence of that, we have
21 the Order that we have.

22 I believe that flyers are

1 described by how they are used and
2 distribution is exactly what one talks about
3 when one talks about flyers. We've all seen
4 them. "They're handing out flyers," I mean
5 that's the term we've all heard.

6 CHAIRPERSON MILLER: Okay. I was
7 not here when this Order was issued, but I'm
8 looking at the modified Order paragraph 1 says
9 "The Applicant and its third party promoters
10 shall not distribute flyers that promote
11 events at the establishment, inside the
12 establishment or within a half mile radius of
13 the establishment."

14 Now, another question for you: So
15 distributed flyers go together, they're
16 written together in this paragraph.

17 The second question goes to your
18 comments about being careful not to regulate
19 or violate First Amendment rights. So where
20 the paragraph says "that promote events," do
21 you see a difference between the purpose of a
22 flyer and the content of a flyer regulating

1 the purposes versus, you know the content?

2 MR. KLINE: Yes, because if you're
3 relating -- it seems to me that this Board
4 would not care whether the flyer said come to
5 our premises on Thursday night of September
6 29th for a dance party or if the flyers said
7 come to our premises; if they end up all over
8 the neighborhood and they end up on people's
9 windshields, the effect is the same. So it
10 seems to me that there's a mutual way to
11 regulate the activity without getting to the
12 content. And that would be to say that thou
13 shalt not distribute any advertising media be
14 it flyer, post card, business card, et cetera,
15 et cetera, et cetera. I mean the Board has
16 lawyers and they know how to make this stuff.
17 One way to write it would be in any manner
18 that its likely to end as debris or trashing
19 the neighborhood.

20 A fair way to write it might be
21 not to be placed on windshields, not to be
22 handed out to patrons, which would be handed

1 to patrons.

2 There's no clarity. And I would
3 be troubled by something that said in effect:
4 You can do all these things as long as you're
5 not promoting a specific event, as long as
6 you're advertising media does not have
7 specific content, which seems to be what we're
8 focusing on. Because that gets right to First
9 Amendment.

10 Okay. And I'm not saying the
11 Board can never regulate First Amendment. I'm
12 saying that if there's a choice between
13 governing an establishment and regulating it,
14 then the Board should choose the way that does
15 not regulate content and choose the way that
16 regulates conduct rather than content, because
17 that's the least offensive in terms of
18 restricting speech.

19 CHAIRPERSON MILLER: Okay.

20 MEMBER BROOKS: Question, Madam
21 Chair?

22 CHAIRPERSON MILLER: Yes. Yes, Mr.

1 Brooks.

2 MEMBER BROOKS: Thank you, Madam
3 Chair.

4 Mr. Kline, for my information and
5 edification concerning entertainment and what
6 you consider particularly manipulating, I
7 guess an instrument against it, what about TV,
8 a television? As you know, a number of
9 licensees have TVs and if someone asked the
10 bartender to change the channel, is that
11 entertainment?

12 MR. KLINE: It's not entertainment
13 in terms -- I would argue, I would think that
14 if the Board rules that the person on the
15 second floor or on the August date was
16 entertainment, live entertainment as that term
17 is used in the Regulation, then, yes, the
18 Board would have to then conclude that the
19 person changing the channel is live
20 entertainment also. I would -- my position
21 would be neither. That the live entertainment
22 requires that the person changing the channel

1 to sing along with the jingle or do something
2 him or herself to entertainment. And I think
3 that the analogy that you used, Board Member
4 Brooks, is right on point with what was
5 happening. We had somebody playing music and
6 the only evidence is that they were changing
7 the songs and selecting the songs. And I
8 don't think that's any different than the
9 bartender changing the channel. And I don't
10 think that either of that are entertainment or
11 live entertainment as the term is used in 199.

12 MEMBER BROOKS: Thank you.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Alberti?

15 MEMBER ALBERTI: Mr. Kline, it's
16 related to DJ's and live entertainment. What
17 makes something an instrument?

18 First of all, somebody's playing
19 an instrument, is that live entertainment?

20 MR. KLINE: If they're playing an
21 instrument?

22 MEMBER ALBERTI: Yes.

1 MR. KLINE: Yes.

2 MEMBER ALBERTI: Okay. A musical
3 instrument.

4 MR. KLINE: They're making music?

5 MEMBER ALBERTI: Yes, what makes
6 something an instrument, a musical instrument?

7 MR. KLINE: What makes it a --

8 MEMBER ALBERTI: In modern
9 context.

10 MR. KLINE: Okay. In the modern
11 context what makes something a musical
12 instrument is that the person that's utilizing
13 the device is in some way, other than by
14 selecting the material, modifying -- making
15 sounds or modifying the sounds to entertain.

16 So, for example --

17 MEMBER ALBERTI: So someone who is
18 sampling music to create a musical piece, that
19 is not -- they're not using the device -- the
20 device that they're using is not being used as
21 an instrument, is that your contention?

22 MR. KLINE: Oh, no, not at all.

1 MEMBER ALBERTI: Okay. Thank you.

2 MR. KLINE: Not at all --

3 MEMBER ALBERTI: No, no, you've
4 answered my question. Thank you.

5 CHAIRPERSON MILLER: Okay. Any
6 other questions? Okay.

7 What I would propose is that we
8 just hear the closing arguments and finish the
9 case, and then we will consider the motion to
10 dismiss. They are obviously within our
11 deliberations, but I don't think it would be
12 a good use of resources to go and deal with
13 the motion to dismiss now and then come back.
14 If that's all right with you? Okay.

15 So, I guess where we're at is,
16 you're not going to do another opening
17 statement at this point, right?

18 MR. KLINE: No.

19 CHAIRPERSON MILLER: Okay. So,
20 Ms. Schmidt did an opening and when you're
21 closing, you'll do your closing, Mr. Kline,
22 and that will be the case. Okay.

1 MS. SCHMIDT: The Government
2 clearly has proven its case. With respect to
3 the flyers, again, there's no -- the
4 Government is not asking that the Board
5 regulate the content of the flyers. The
6 flyers definitely exist and they do just
7 promote an event. They just promote an event.
8 The Government is not saying to the Board we
9 can only say come to this kind of event or
10 come to that kind of event; it's a very broad
11 mandate. There's a date, an event and it's in
12 the future and they're on some sort of
13 disposable form of paper.

14 And also, the distributing does
15 not have to be a physical distribution. The
16 Government will also argue that it does not
17 have to be a physical distribution, but just
18 that they're available for people to take. So
19 there's no difference in the net effect of
20 someone taking them themselves or actually
21 being handed a flyer. Because, obviously, a
22 stack of flyers are not there just for

1 decoration. They're meant to be reminders to
2 people of future events.

3 And in this case on July 13th
4 Investigator Lawson said he came in there, he
5 say a stack on a table next to the door, he
6 saw a stack of flyers and this was in
7 contraction of the Order which said that
8 flyers were not to be distributed.

9 With respect to the second charge
10 on August 30, 2011 Investigator Shakoor went
11 in there and saw a DJ playing music. Whether
12 or not the people were dancing is irrelevant
13 because the music was there and people could
14 dance, so the people could have reacted to
15 music. How they react to the music is not the
16 concern -- is not really at issue here. The
17 fact is there's an invitation there. Whether
18 or not people took invitation is irrelevant to
19 the charge. And the most informed fact is
20 there was no reimbursable detail out there.

21 And as far as Charge 3 on October
22 9th, Investigator Shakoor even went further

1 and said yes the DJ was there making shoutouts
2 to people. He was commenting on people's
3 clothing. And again, there was entertainment
4 there and whether or not -- and there was no
5 reimbursable detail there no matter what the
6 circumstances was.

7 Mr. Gibson had his opportunity
8 before the Board. The Board made an Order and
9 Mr. Gibson knew of the Board's Order, and at
10 that point he should not have violated no
11 matter whether or not there was an early
12 dispute or whatever. He should have at that
13 point said "Look, I can't do this now. Until
14 this is resolved, I can't play any music, I
15 can't have a DJ there." He did not do so.
16 Therefore, the Government asks that the Board
17 find the licensee violated all three charges,
18 and that he be fined accordingly.

19 CHAIRPERSON MILLER: Okay. Thank
20 you.

21 MR. KLINE: Ma'am Chairperson, I
22 will not repeat the previous arguments, but I

1 would like the opportunity to address some of
2 the new points that were raised. And we'll
3 just do that.

4 CHAIRPERSON MILLER: Okay. It's
5 your closing.

6 MR. KLINE: Thank you.

7 The Government tends to conclude
8 the issues in this case. The Investigator
9 walked in and he saw a DJ. The issue is with
10 the DJ. I mean, that's the issue that we're
11 grappling with in terms of what's a DJ, what's
12 recorded music, what's live entertainment.
13 That goes to the heart of this case. So to
14 walk in and to sum up and say the Investigator
15 walked in and saw a DJ, that begs the
16 question: Was it a DJ? And that's an
17 important issue that this Board has to decide.
18 I don't believe it's previously been ruled on,
19 but it has far reaching implications for the
20 industry in terms of what conduct is
21 permissible without an entertainment
22 endorsement and which conduct for which

1 entertainment endorsement is the flyer. So,
2 it's a very important issue.

3 The same thing with respect to the
4 flyers. The Government just concludes well
5 they're flyers because the Investigator said
6 that they were flyers. We believe that
7 important issues have been raised today in
8 terms of how does one define a flyer. And I
9 think that the cross-examination of the
10 Investigator was instructive: We're making it
11 up as we go along. We have sizes, one of the
12 sizes didn't even have the last parameter, it
13 was 3« by something and the blank was never
14 really filled in. It was clear, and I hope it
15 was clear to the Board, that we were making it
16 up as we go along.

17 It was, as Board Member
18 Silverstein said, well gee it ought to be we
19 know it when we see it. Well, that's not a way
20 to govern the licensee's conduct. The
21 licensee should know what it is that's
22 prescribed, particularly when we're talking

1 about the written word which is protected by
2 the First Amendment and in what ways it can be
3 displayed in the industry.

4 Thank you.

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 So at this point the record in the
8 case is closed. And do the parties want to
9 file Proposed Findings of Fact and Conclusions
10 of Law?

11 MS. SCHMIDT: Not for the
12 Government.

13 MR. KLINE: No, ma'am.

14 CHAIRPERSON MILLER: Okay. Okay.
15 Unless Board Members have any other questions
16 of the parties, I'm going to close the case
17 now.

18 As Chairperson of the Alcoholic
19 Beverage Control Board for the District of
20 Columbia and according to Section 405 of the
21 Open Meetings Amendment Act of 2010, the ABC
22 Board will hold a closed meeting for the

1 purpose of seeking legal advice from our
2 counsel and deliberating upon Cases No. 11-
3 251-00241, 11-CMP-00352 and 11-CMP-00458. Do
4 I hear a second?

5 MEMBER MOBLEY: Second.

6 CHAIRPERSON MILLER: And for the
7 reasons cited in Section 405(b)(4) and (b)(13)
8 of the Open Meetings Amendment Act of 2010.
9 Okay.

10 Now that the motion's been
11 seconded, I'll take a Roll Call vote.

12 Mr. Nophlin, do you agree?

13 MEMBER NOPHLIN: I agree.

14 CHAIRPERSON MILLER: Mr. Brooks?

15 MEMBER BROOKS: I agree.

16 CHAIRPERSON MILLER: Mr. Alberti?

17 MEMBER ALBERTI: I agree.

18 CHAIRPERSON MILLER: Ms. Miller
19 agrees.

20 Mr. Silverstein?

21 MEMBER SILVERSTEIN: I agree,

22 Ma'am Chairman.

1 CHAIRPERSON MILLER: Ms. Mobley?

2 MEMBER MOBLEY: I agree.

3 CHAIRPERSON MILLER: Okay. Then
4 the vote is six-zero-zero to close that
5 meeting.

6 Okay. Then that concludes this
7 case and the Board's going to adjourn for five
8 or ten minutes before we pick up the next
9 case.

10 Do you have a question?

11 MR. KLINE: Yes. We would request
12 the next case I also have. We would request
13 perhaps a little bit longer which we think
14 will ultimately save the Board a lot of time.

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: Because we have a set
17 of stipulated facts that we hope we can agreed
18 to.

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: And if we do that,
21 then I think we can save two or three hours.

22 CHAIRPERSON MILLER: Okay. You

1 know, I didn't say, you know that if we get an
2 Order in this case within 90 days; let me put
3 that on the record.

4 So, how much time would you like?

5 MR. KLINE: About half an hour.

6 CHAIRPERSON MILLER: Okay. We'll
7 have counsel check with you before we all come
8 out, how's that.

9 MR. KLINE: Yes. We don't want to
10 waste the Board's time.

11 CHAIRPERSON MILLER: Okay. Good.

12 MR. KLINE: Thank you.

13 CHAIRPERSON MILLER: Okay. We're
14 adjourned.

15 (Whereupon, at 11:44 a.m. the Show
16 Cause Hearing was adjourned.)

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