

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

1720 I, LLC, t/a Café Asia
1720 I Street NW
License #86035
Retailer CN ANC 2B
Case #14-251-00217
Chief of Police Closure
August 4, 2014

Summary
Suspension
Hearing

August 15, 2014

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

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member
MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

CHRISTINE GEPHARDT, OAG
BRIAN AMY, OAG
ANDREW KLINE, Veritas Law Firm
SCOTT ROME, Veritas Law Firm
CHARLES ZHOU, Café Asia

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

(10:49 a.m.)

CHAIR MILLER: Good morning. I would like to welcome you to the District of Columbia Alcoholic Beverage Control Board. Today is August 15, 2014. My name is Ruthanne Miller. I'm the Chairperson.

To my far right is Mr. Nick Alberti. To my immediate right is Mr. Hector Rodriguez. To my immediate left is Mr. Mike Silverstein. And next to Mike Silverstein is Mr. James Short. We have five members in attendance for the conduct of business today and three constitutes a quorum.

Copies of today's hearing calendar and agenda which just has one item on the hearing calendar is available at the receptionist desk. Please be aware that these proceedings are being recorded by a court reporter.

Accordingly we must ask you to refrain from any disruptive noises or actions

1 in the hearing room. If you have any
2 electronic devices, pagers, cell phones or
3 such please make certain they are turned off
4 to avoid any interruption of the proceedings.

5 The Open Meetings Act requires a
6 public hearing on each case be open to the
7 public. The Board may, consistent with
8 Section 405(b) of the Open Meetings Act, enter
9 a closed meeting during or after the public
10 hearing to consult with an attorney, to obtain
11 legal advice, discuss settlement agreements or
12 let the Board deliberate upon a decision and
13 in an adjudication proceeding.

14 So we are here for one case which
15 is the Summary Suspension hearing involving
16 Café Asia at Retailer's Class CN located at
17 1720 I Street NW. It's Case #14-251-00217.
18 As the result of an incident on August 3,
19 2014, the Chief of Police, Cathy Lanier closed
20 the establishment pursuant to her authority
21 under DC Official Code Section 25-827.

22 Chief Lanier submitted a letter to

1 ABRA dated August 4, 2014, seeking revocation
2 of the establishment's ABC license. The Board
3 voted 6-0 on August 6, 2014, to continue the
4 suspension of the establishment's license.

5 The Respondent requested a hearing
6 on August 11, 2014, under DC Official Code 25-
7 826 . Today the Board will be hearing
8 testimony from the Office of the Attorney
9 General, the Respondent and their respective
10 witnesses.

11 The purpose of the hearing is so
12 that the Board can determine under DC Official
13 Code 25-826 whether the operations of the
14 Respondent present an imminent danger to the
15 health and safety of the public. The Board
16 will be announcing its decision at the
17 conclusion of today's hearing.

18 The Board asks that the parties
19 stick to the facts and issues related to the
20 incident, excuse me. The facts and issues are
21 those contained in the Summary Suspension
22 Notice dated August 8, 2014, and the

1 Investigative Report Case Number 14-251-00217.

2 The Board is only interested in
3 hearing about those matters that can be used
4 to establish whether the establishment is an
5 imminent danger to the health and safety of
6 the public. Before we begin the case by
7 hearing an opening statement from the
8 Government represented by the Assistant
9 Attorney General, Christine Gephardt followed
10 by the opening statement of Andrew Klein,
11 counsel for the Respondent.

12 Before we begin, however, with
13 opening statements, are there procedural
14 matters the parties would like to bring the
15 Board's attention? Okay.

16 MR. KLINE: Yes. At the outset I
17 would like to identify ourselves for the
18 record. Andrew Kline on behalf of the
19 licensee. To my left is Scott Rome, also with
20 the Veritas Law Firm. And on my far left is
21 Charles Chou who is the principal of the
22 licensed establishment.

1 MS. GEPHARDT: Chrissy Gephardt
2 here on behalf of the Office of the Attorney
3 General for the District of Columbia. To my
4 right is Brian Amy who is a, one of our pro
5 bono attorneys in the office and he is here to
6 assist with the case.

7 CHAIR MILLER: Okay, great. So do
8 you have any preliminary matters?

9 MS. GEPHARDT: Yes, we do have a
10 preliminary matter. We have come to an offer
11 in compromise that we would like to present to
12 the Board this morning. I believe the Board
13 Members have received a copy of the offer in
14 compromise. I don't know if, would you like
15 for me to read each of the --

16 CHAIR MILLER: The Board had
17 received copies of it. We obviously haven't
18 had much time to digest it. And I would like
19 you to go through it. And I can tell you, I'm
20 going to give you a choice. You know, we have
21 questions basically with respect to, you know,
22 how does the provision relate to alleviating

1 imminent danger at this establishment.

2 And so as you go through it if you
3 want to make any comments with respect to that
4 you are free to do that on both sides. And
5 then if there are remaining questions we would
6 like to ask you questions.

7 MS. GEPHARDT: Okay. All right.
8 So the offer in compromise that we are
9 proposing today is being presented to the ABC
10 Board by the Assistant Attorney General at the
11 summary suspension hearing. Please be advised
12 that this is a proposed compromise,
13 accordingly it is at the discretion of the
14 Board to accept or reject this offer.

15 So the offer in compromise of the
16 licensee agreeing to the following terms.
17 Number one, a submission of a revised security
18 plan which is in full compliance with all
19 applicable laws including all requirements for
20 a security plan under Title 25 of the DC
21 Official Code and which incorporates all the
22 below matters.

1 The revised security plan is
2 attached as Exhibit Number 1. And what I will
3 now be speaking to you about is the revised
4 parts of the security plan.

5 Number two, is that there is
6 confirmation that all cameras in the
7 establishment, including a new camera on the
8 exterior front of the premises and all digital
9 video recorders attached to such cameras are
10 in proper and working condition and reveal no
11 substantial blind spots.

12 Also confirmation that any camera
13 that was not night vision enabled will be
14 updated to include this feature. ABRA
15 Investigator, Abyie Ghenene has actually
16 already provided confirmation that these
17 cameras are up and in working order and have
18 the night vision capability established.

19 This provision was implemented as
20 part of the incident where when the
21 investigator went into the establishment there
22 was only one camera on the mezzanine level

1 which is where the incident took place. And
2 there were supposed to be six, there was only
3 one and it was not functional.

4 So this was an attempt to, you
5 know, rectify the situation and the cameras on
6 the lower level did not have the infrared
7 feature so it was difficult to tell at night
8 what was going on. So this is intended to
9 remedy that.

10 So number three is the execution
11 of a continuing service contract with PRISM
12 Security Group to perform regular and repeated
13 service and maintenance on all cameras on the
14 premises to ensure that such cameras will
15 remain in proper working order beyond the date
16 of the hearing. And the attached is the
17 contract with PRISM Security attached as
18 Exhibit Number 2.

19 Again, related to Provision Number
20 2, obviously the cameras are only so good as
21 if they are working. Having them in the
22 ceiling doesn't necessarily mean that they are

1 adequate. So obviously this is an attempt to
2 have a licensee have regular maintenance on
3 their cameras to make sure that they are up
4 and working.

5 Provision Number 4 is confirmation
6 that all future video recordings shall be
7 available for review immediately upon the
8 request by MPD or ABRA investigators and
9 copies will be given to ABRA investigators or
10 MPD within 48 hours of the request. All such
11 videos shall be maintained for at least 30
12 days.

13 This was to address a situation
14 where the ABRA investigator requested footage
15 from the, from that evening and was told that,
16 you know, you'll get it, you'll get it. And
17 the footage was received eventually but much
18 later, much past the time that would have been
19 useful to address this incident and to do
20 something about the imminent harm.

21 So this was, you know, obviously a
22 very serious situation that needed to be

1 addressed and this is an attempt to address
2 that within this OIC. Number five is
3 submission of a full diagram of the premises
4 including the location of all existing and
5 newly installed cameras and viewing angles of
6 vision for all such cameras.

7 One of the issues that came up
8 with the, with this incident was that some of
9 the cameras were, the view was obstructed so
10 you could not see, you know, the floor, you
11 could not see what was going on. In addition,
12 as I was mentioning, the infrared capability
13 was not there so it was difficult to see at
14 night, you know, what was going on.

15 So the diagram is intended to
16 show, okay here's where the cameras are.
17 They're not obstructed. This is their
18 location and here's their viewing angles
19 because obviously this was an issue in this
20 incident.

21 The sixth one is completion of a
22 further training session within 30 days. This

1 course shall include a training of all
2 security for the establishment. This is in
3 addition to the security training session that
4 all security staff has already undergone with
5 Tindley Protective Services.

6 This provision is, encompasses the
7 various violations that occurred that night,
8 violations of the security plan. Number one
9 being communication with MPD. Number two
10 being assisting MPD in their efforts to
11 control the crowd and to assist the victims.

12 The, also training regarding crime
13 scene preservation. That you will hear, if
14 you were to hear testimony you would hear
15 testimony that the crime scene was cleaned up
16 by staff using a bucket and a mop. And
17 essentially you just, other training which
18 will include how to, entry procedures into the
19 club, wandng, pat downs, things like that.

20 And all of this is to address the
21 things that actually happened during this
22 incident and that would be included in the

1 training. Number seven is a submission of a
2 full list of employees who witnessed any
3 incidents on the date at issue including the
4 name of the employee, the role of an employee
5 and the events witnessed. See the document
6 attached as Exhibit 4.

7 Such document shall be provided
8 upon request that the ABRA investigator at any
9 future incident being investigated by ABRA
10 investigators or MPD. This of course is
11 intended to know who was there, what's going
12 on, who to contact.

13 When you have a serious incident
14 like we had in this case, you know, we don't
15 know who was at the door, who was at the, you
16 know, who was on the mezzanine level, who was
17 near the victim, who was near the assailant.
18 And this is to be able to identify and, you
19 know, to be able to investigate and determine
20 what happened and to be able to relay that
21 information to MPD in their attempt to
22 investigate.

1 Number eight is agreement to
2 provide a minimum of four reimbursable detail
3 officers from 12:00 a.m. to 30 minutes after
4 closing during any and all dates in which any
5 live music is offered at the establishment.
6 The establishment on the evening of these
7 incidents had two reimbursable detail out
8 front.

9 Obviously once this incident
10 happened it became clear that two was not
11 enough to handle the crowd. They had people
12 spilling out of the club and to help, you
13 know, not only with crowd control but with
14 assisting victims and trying to locate
15 potential suspects.

16 So this is addressed to have more
17 security, beefed up security to assist with
18 that kind of thing. And the provision stating
19 that on any and all dates in which any live
20 music is offered, I believe that the
21 establishment offers live music frequently on
22 the weekends, and so this is to address those

1 events where there is live music because they
2 tend to draw, obviously a larger crowd and so
3 therefore you have more people to deal with
4 that are coming in and out of the
5 establishment.

6 Number nine as a submission of a
7 list of all security personnel employed by the
8 establishment which will be kept on the
9 premises with the job title or the role of
10 each employee listed. Such lists shall be
11 updated upon the hiring or termination of each
12 security employee and shall be available at
13 the establishment upon the request of MPD or
14 ABRA.

15 See a list of all security
16 personnel attached as Exhibit 5. Again, this
17 is so those, the ability to figure out what's
18 going on quickly, to investigate, to know who
19 is working where so that there is some order
20 after there's been an incident as to, you
21 know, who is where? Who observed what? Who
22 is handling it?

1 And to able to not only help with
2 crowd control and victim assistance but also
3 just to make things more orderly. So number
4 ten is an agreement to stop admitting patrons
5 at least 30 minutes prior to the end of the
6 permitted hours of service of alcoholic
7 beverages on any night of operation.

8 This is intended to mitigate some
9 of the chaos that ensues after the club has
10 closed. If alcoholic beverage service stops
11 30 minutes prior to closing the intention is
12 that, you know, things start winding down and
13 there's less chance for things to become
14 volatile.

15 Number ten, excuse me, number 11
16 is providing training to all employees within
17 30 days regarding the establishment's
18 procedures for preserving a crime scene.
19 Again, as I mentioned earlier, there was a
20 situation where a member of MPD went in and
21 witnessed a employee of Café Asia cleaning the
22 crime scene with a mop. And obviously this

1 was happening before MPD was able to get there
2 to preserve the crime scene.

3 And number 12 the matter should be
4 referred to the Office of the Attorney General
5 for a show-cause hearing. And this is pretty
6 standard that the Office of the Attorney
7 General have the opportunity to bring a show-
8 cause proceeding against the licensee for this
9 incident.

10 CHAIR MILLER: Okay. Do you have
11 anything else to add otherwise I'm going to
12 ask Mr. Kline if he wants to comment?

13 MS. GEPHARDT: Do I have any other
14 further comments?

15 CHAIR MILLER: Right, otherwise --

16 MS. GEPHARDT: No, no, no, I'm --

17 CHAIR MILLER: Okay. I'm sure
18 we'll have questions for you. But I'm going
19 to ask Mr. Kline to comment if you have
20 anything offhand.

21 MR. KLINE: Yes, thank you, Madam
22 Chair. Madam Chair, the offer in compromise

1 as presented is acceptable to the licensee.

2 And I want to thank Ms. Gephardt and her
3 office for working with us and fashioning what
4 we think are reasonable and prudent measures
5 to ensure the safety of the public.

6 I would remind the Board this is
7 an offer in compromise. So as to the
8 discussion about violations we don't concede
9 that were violations. That will be for
10 another day. What we're here to deal with is
11 imminent danger to the public.

12 We think that the offer in
13 compromise represents a reasonable set of
14 commandments, restrictions and guidelines that
15 will restore the safety of the public.

16 Certainly would welcome the opportunity to
17 address any concerns that the Board might have
18 in the event what we have worked out with the
19 Office of the Attorney General does not
20 address all of those issues.

21 That's been done in other cases
22 and I think it's useful and helpful. But we

1 think that this certainly represents a
2 document that contains the matters that are
3 necessary to assure that this establishment
4 operates in a way that it is not an imminent
5 danger to the public.

6 CHAIR MILLER: Okay. So now I'm
7 going to open it up to Board questions. And
8 I just have one burning question at least I
9 want to start with. And that is that this
10 case involved a knifing inside this
11 establishment.

12 And so to me the main question is
13 what is being put in place that would prevent
14 that from happening again because to me that
15 was, that's the imminent danger that somebody
16 else might get knifed inside the
17 establishment. And I can't see on the face of
18 these, this offer in compromise where that is.

19 I see a lot of things like, you
20 know, after the fact it's great to have great
21 cameras so you can see what happened
22 afterwards or, you know, training is going to

1 be within 30 days. So, you know, what's going
2 to be different tomorrow night if we were to
3 lift the suspension that we could feel that
4 okay well this is in place so a knife isn't
5 going to get through again or something to
6 that effect?

7 MR. KLINE: Madam Chair, we don't
8 concede that this incident involves a knifing.
9 There's very little evidence of it if you read
10 the reports and we've read them obviously very
11 carefully and very thoroughly. It's that
12 there's one person who says he's got a knife
13 and there's an injury.

14 We don't know any more than that
15 at this point. We have several witnesses who
16 are prepared to testify that they were there,
17 they saw what went on. They never saw a
18 knife. They never heard anyone say there was
19 a knife.

20 So from that standpoint we're sort
21 of at a loss. The security plan deals with
22 entry to the establishment and the

1 establishment will take precautions to make
2 sure that weapons are not brought into the
3 establishment. That is addressed by the
4 security plan.

5 But starting with the presumption
6 that this involves a knifing in the
7 establishment, we would take issue with. We
8 certainly, as I said, we're here to cooperate
9 and we will do the things that are appropriate
10 to prevent the establishment from presenting
11 an imminent danger to the public.

12 And if the Board has suggestions
13 on that issue we're happy to hear them. But
14 starting with the assumption that there was a
15 knifing in this establishment is a little
16 difficult for us.

17 CHAIR MILLER: Okay. Well I
18 understand that you're not conceding
19 violations at this point. But we're looking
20 at the facts and even without that then you
21 should have a security plan in place that
22 would prevent a knife from getting through in

1 any event.

2 So I guess one of my questions is
3 also if this is a revised security plan when
4 was it, was it revised after the incident?

5 MR. KLINE: Yes.

6 CHAIR MILLER: Okay. So is there
7 something in the security plan that you want
8 to bring our attention to that addresses that
9 issue so that a knife could not get through?

10 MR. KLINE: There is sufficient
11 security at the front of the establishment.
12 And hosts are to conduct appropriate searches
13 to make sure that weapons do not get in and
14 that's in the entering procedures.

15 I'll remind the Board that this
16 establishment is, although it operates as a
17 night club in the evenings, it's also a
18 restaurant. In fact it's been open for lunch
19 this week without alcohol service. So that's
20 another part of the way this establishment
21 operates.

22 So the security hosts will conduct

1 searches at the front of the establishment as
2 they've done. And that will continue.

3 CHAIR MILLER: So is there any
4 change then in the practice other than they're
5 going to get training in 30 days?

6 MR. KLINE: Is there any --

7 CHAIR MILLER: Change in the
8 security plan reflecting a change in screening
9 or --

10 MR. KLINE: The only change is to
11 clarify, and we think this was the case
12 before, to clarify that everyone is patted
13 down that comes in when entertainment is being
14 offered in the establishment. And that will
15 be reinforced in the training.

16 CHAIR MILLER: So the security, my
17 question is the security plan isn't changing
18 in that respect, it's just they're going to
19 get better training?

20 MR. KLINE: The security plan, the
21 practice has been to pat everyone down, is to
22 pat everyone down that came in. I know there

1 was a suggestion that everyone was not patted
2 down. That during the hearing will be
3 disputed.

4 But we require that everyone that
5 comes in the establishment when entertainment
6 is being offered will be patted down.

7 CHAIR MILLER: Is that in the
8 security plan?

9 MR. KLINE: That a proper search
10 will be done. We've left it flexible because
11 they may use wands or do pat-downs as
12 appropriate depending upon the nature of the
13 entertainment.

14 MEMBER ALBERTI: Can I ask
15 something?

16 CHAIR MILLER: Yes.

17 MEMBER ALBERTI: Where is this in
18 there?

19 MR. KLINE: In entering procedures
20 on --

21 MEMBER ALBERTI: Conduct a proper
22 search.

1 MR. KLINE: Correct.

2 MEMBER ALBERTI: I'm sorry to
3 interrupt. I just wanted to make sure I knew
4 where it is.

5 CHAIR MILLER: No, I think we're
6 all trying to look at the security plan.

7 MR. ROME: It's the fourth line
8 down under entering procedures that said the
9 hosts conduct a proper search and requests to
10 see identification.

11 MEMBER ALBERTI: I'm trying to see
12 what page?

13 MR. KLINE: It's on the first page
14 of the text, entering procedures.

15 MEMBER ALBERTI: Fourth line down,
16 okay.

17 CHAIR MILLER: Is the proper
18 search then, explain what that is? Is that
19 the --

20 MR. KLINE: That will be the, the
21 intention is that everyone will be patted down
22 which will be reinforced in the security

1 training or there will be wandering depending
2 upon what is deemed appropriate for the
3 particular night and what the entertainment
4 might be.

5 MEMBER SHORT: Madam Chair?

6 CHAIR MILLER: Yes.

7 MEMBER SHORT: Are you saying that
8 didn't take place the night that this
9 happened? They weren't doing it properly?

10 MR. KLINE: I'm not saying that at
11 all.

12 MEMBER SHORT: Okay. I just
13 wanted clarification on that.

14 CHAIR MILLER: Because this isn't
15 the show-cause hearing they haven't admitted
16 necessarily. But they were saying that they
17 need something in place so that we feel
18 comfortable in lifting the, yes.

19 MEMBER SHORT: That's where my
20 question was trying to get the bottom of.

21 CHAIR MILLER: I know. Okay. So
22 you don't really delineate, right, what a

1 proper search is in the security plan?

2 MR. KLINE: That would be
3 reinforced in the training.

4 CHAIR MILLER: It's only
5 reinforced in the training?

6 MR. KLINE: If the Board would be
7 more comfortable with explicitly spelling it
8 out in the security plan we will do that.

9 CHAIR MILLER: It may be. And I'm
10 wondering why, I know it's not done all the
11 time but certainly at the Verizon Center and
12 such pocketbooks are checked or opened or
13 things like that. I mean --

14 MR. CHOU: I think we do that.

15 CHAIR MILLER: You do that, okay.

16 MR. CHOU: And then on the, we
17 don't let the cigarettes and the lighters go
18 in either.

19 CHAIR MILLER: Okay. I think just
20 for me I would be more comfortable seeing what
21 it is exactly you've done as opposed to a
22 proper. Okay. I'm going to let others raise

1 questions if you have them. Do you have
2 questions? Mr. Alberti.

3 MEMBER ALBERTI: At the risk of
4 beating a dead horse here, I will point out
5 that the report indicates that the
6 complainant, the victim I'll call him, there
7 was at least one person who has observed that
8 to be with a laceration to their torso and
9 bleeding from that area from their torso
10 raises huge red flags for me.

11 And so my position is that I have
12 to err on the side of caution to protect
13 public safety. We have an establishment with,
14 where or nearby there have been multiple
15 simple assaults. So we know and we know from
16 this night that there was some sort of
17 confrontation in the club.

18 Again, I have to err on the side
19 of caution to protect public safety. I have
20 to know that I can be confident leaving this
21 hearing that there will, that the club is
22 doing everything in its power to prevent

1 weapons from entering that establishment.

2 And I do not see that as a
3 guarantee. I see that only as promises, not
4 made under oath, but only as promises from
5 this establishment that we do pat-downs and we
6 do a proper search. I do not see anything in
7 the security plan that commits them to doing
8 a search that would make me comfortable.

9 All right. So just letting you
10 know where I'm at. I want to talk about
11 cameras for a second.

12 MR. KLINE: Before you move on to
13 that may I address that?

14 MEMBER ALBERTI: Sure.

15 MR. KLINE: What I would suggest
16 is that we will put in the offer in
17 compromise, assuming that the Government is
18 agreeable and they probably will be, that pat-
19 down searches or wandering will be done of every
20 patron when live entertainment is being
21 offered. And rather than even putting --

22 MEMBER ALBERTI: It's still not

1 sufficient. I know that I have in other
2 instances only felt comfortable when I know
3 that wanding is being done --

4 CHAIR MILLER: He said wanding.

5 MEMBER ALBERTI: -- as well as
6 pat-downs. That's just, that's my comfort
7 level. I'm sorry. I'm not telling you what
8 to do. But I'm telling you what my comfort
9 level is.

10 MR. KLINE: You're saying wanding
11 and pat-downs is your comfort level? Just so
12 I'm clear.

13 MEMBER ALBERTI: The use of a
14 wand. I have seen in other instances the
15 commitments to use a wand and to search purses
16 and bags and backpacks and the like. That's
17 what I've seen in other instances.

18 MEMBER SHORT: Madam Chair?

19 CHAIR MILLER: Yes, Mr. Short.

20 MEMBER SHORT: Finishing that, I'm
21 going to move on to cameras but go ahead. Mr.
22 Kline, if I could ask it's important that

1 someone was cleaning up blood from the floor
2 of the establishment which meant when the
3 police department did come they couldn't do a
4 thorough investigation and find out if it was
5 a stabbing or if it wasn't.

6 If evidence was being cleaned up
7 that means that people coming into this club
8 aren't really safe because you can't be sure
9 that a person is going to be assured. And I
10 wonder if the Board can be assured if the
11 crime scenes are at the club they will leave
12 it in place until the police department does
13 a thorough investigation of it.

14 MR. KLINE: Yes, sir. Perhaps
15 you've seen evidence that I haven't seen. But
16 I haven't seen a single statement in any
17 document, in any report that indicates anyone
18 was cleaning up blood. There was a suggestion
19 that there was a crime scene cleaned up.

20 What that crime scene was I don't
21 know. But I haven't seen anything that says
22 that blood was cleaned up nor any evidence

1 that there was any blood in the establishment,
2 in any of the reports that I've read. Now
3 maybe you've read something that I haven't.

4 MEMBER SHORT: Can I, to follow up
5 on that, there is evidence that somebody was
6 leaving with blood coming from their side. Is
7 that correct?

8 MR. KLINE: That was correct.

9 MEMBER SHORT: Okay. So where did
10 that blood go?

11 MR. KLINE: There is evidence that
12 there was a person who had a, what's been
13 called a laceration.

14 MEMBER SHORT: Yes, sir.

15 MR. KLINE: There is not evidence
16 that there was active blood when he left the
17 establishment nor is there any evidence that
18 I've seen again, there were things in the
19 Board's notice which indicate, which go beyond
20 any of the documents that I've seen.

21 So if there are other documents
22 that have been reviewed we haven't seen them.

1 But based on the evidence that we have
2 reviewed, I haven't seen a single statement
3 that indicates that there was active bleeding
4 when this person --

5 MEMBER SHORT: A laceration to a
6 person's torso means what? The skin is
7 bleeding. That's a concern correct. Isn't
8 that a laceration?

9 MR. KLINE: Yes, sir.

10 MEMBER SHORT: Can we agree that
11 someone did say that in the reports you've
12 seen?

13 MR. KLINE: Yes, sir.

14 CHAIR MILLER: Mr. Short.

15 MEMBER SHORT: Yes.

16 CHAIR MILLER: We can't really go
17 into evidence too much because it's not an
18 evidentiary hearing. So we have to look at
19 the report to a certain extent because it was
20 closed, you know, Cathy Lanier's notice and in
21 our investigative reports.

22 So we have to, we know that's not

1 necessarily, we're not having an evidentiary
2 hearing. There's no chance to cross examine
3 or anything. But we have to look at some of
4 the facts to make our decision or some of the
5 allegations. Were they able to address what
6 was a danger?

7 MR. KLINE: Madam Chairperson, for
8 the purpose of this discussion the facts that
9 we have are the investigator's report and the
10 police report. That's the facts that we've
11 seen and we believe that's, we hope that's
12 what the Board based their notice on.

13 CHAIR MILLER: That is. And I can
14 look at the notice and it says, you know,
15 employee was observed cleaning the area. So,
16 you know, that's what they saw. I understand
17 that.

18 MR. KLINE: A far cry from a
19 statement that someone was cleaning blood from
20 the area. And I just want to make sure --

21 CHAIR MILLER: Exactly.

22 MR. KLINE: -- that as we move

1 forward we're dealing with the actual
2 statements that have been made rather than
3 conjecture in terms of what may or may not
4 have gone on.

5 CHAIR MILLER: Right.

6 MR. KLINE: We have 13 witnesses
7 here who will tell a very different story from
8 what you've seen. But we need not get into
9 that. We're trying to get this resolved.

10 CHAIR MILLER: Exactly, exactly.

11 Did you want to say something?

12 MEMBER SILVERSTEIN: I just wanted
13 to say we certainly can't prove what was there
14 because it was cleaned up.

15 MR. KLINE: Well, Mr. Silverstein,
16 we don't dispute that. But there isn't any
17 suggestion that anyone saw blood before
18 anything was cleaned up.

19 So a statement that blood was
20 being cleaned up or there's evidence that
21 blood was cleaned up, I haven't seen any such
22 evidence in any of the materials that I have

1 reviewed.

2 MEMBER SILVERSTEIN: Which I
3 understand which is why that area is not to be
4 cleaned.

5 MR. KLINE: We understand that.

6 CHAIR MILLER: Okay. But anyway,
7 what we want to do is have our procedures in
8 place to make sure that nothing happens anyway
9 and you do have that. You do have as far as
10 I see training for employees so that they know
11 the correct procedures for preserving a crime
12 scene.

13 MR. KLINE: Yes, we do.

14 CHAIR MILLER: So unless somebody
15 thinks that there's something more that needs
16 to be done on that we're not going to be
17 getting into the facts of the case that deep
18 at this hearing. So --

19 MR. KLINE: Unless, if I may
20 return to the previous concern. The licensee
21 is agreeable to putting in the offer in
22 compromise that when entertainment is offered

1 purses, backpacks and bags will be searched
2 and individuals entering the establishment
3 will be wanded and pat-searched as appropriate
4 they will all be wanded and pat-searched.

5 CHAIR MILLER: And that is,
6 everybody including VIP, correct?

7 MR. KLINE: Yes, everyone.

8 CHAIR MILLER: Everybody, okay.

9 MR. KLINE: And that would be for
10 when live music is being offered.

11 CHAIR MILLER: Correct, okay.

12 MEMBER ALBERTI: Entertainment.

13 MR. KLINE: When the live music
14 because the if there's a DJ there's a
15 different type of crowd. It's a different --

16 MEMBER ALBERTI: That's
17 entertainment. That's live entertainment to
18 me.

19 MR. KLINE: That's fine. The
20 licensee says it's fine. If the licensee
21 thinks it's acceptable, it's acceptable to me.

22 MEMBER ALBERTI: Thank you.

1 CHAIR MILLER: Okay. Mr.
2 Rodriguez.

3 MR. RODRIGUEZ: Yes, sir. When
4 you say everybody I always, you know, I'm
5 thinking about also staff. But I don't know
6 where we go with that. I'm a new Board
7 Member. So I'm curious when you say everybody
8 because I believe that staff is entitled to
9 protection too.

10 And when we talk about protection
11 of the public what I consider the public
12 inside and outside the establishment as the
13 public. And so it's a question that I pose.
14 Do you, when you say everybody, what about
15 staff?

16 MR. KLINE: In terms of searching
17 staff? That's not what we anticipated. I'm
18 not sure that if all staff were searched who
19 exactly would be doing the searching. But,
20 Mr. Rodriguez, if I may address that.

21 Employers obviously have to put a
22 certain amount of trust in their employees.

1 And if an employer has to search his
2 employees, particularly his security employees
3 before they start their shift then he's not
4 doing a very good job, he or she is not doing
5 a very good job of staffing and hiring because
6 those are the people that have to implement
7 those procedures.

8 Those are the people that need to
9 be trusted. So we would, unless the Board has
10 a strong preference otherwise, suggest that it
11 would not be appropriate to search the staff.

12 MR. RODRIGUEZ: Well, counsel, you
13 know, one of the first hearings I heard in
14 this Board was that a staff person had a
15 knife. You might recall that. I don't know
16 if you were the counsel on that one. I'm not
17 sure.

18 CHAIR MILLER: No.

19 MR. RODRIGUEZ: But a staff person
20 had a knife and he wielded the knife.

21 CHAIR MILLER: Right, exactly.

22 MR. RODRIGUEZ: So my question is,

1 you know, who ensures that staff is also not
2 wielding any weapons? And maybe this person
3 was so scared of his job, you know, of the
4 situation.

5 But the fact is, well that's a
6 question that I would pose, you know.

7 CHAIR MILLER: And maybe I can
8 interpose because I think that we draw from
9 other experiences, but still we have to look
10 at the facts of the specific case. And I
11 think in that case there was a situation with
12 staff being a problem with weapons.

13 And I think, but I don't think
14 that means that we then should extrapolate and
15 require, you know, other night clubs
16 necessarily to have to do the, you know, make
17 requirements on their staff that way.

18 MR. RODRIGUEZ: Right, Madam
19 Chair. And I appreciate that. It's just made
20 me curious about how do we deal with ensuring
21 that staff is also not bearing weapons, that's
22 all. Just a question.

1 MR. KLINE: I think the way that
2 you assure it is that you are careful in terms
3 of who you hire. Many of the members of the
4 security team work together quite a bit and
5 have been together for some time.

6 Board Member Rodriguez, if you
7 strongly about it we'll do it. My concern is
8 from a morale and employee atmosphere
9 standpoint if you subject the people that
10 you're supposed to be trusting with the
11 running of your establishment to search every
12 time they come in I don't think sends the best
13 message in terms of running an operation. But
14 I do hear your concern.

15 MR. RODRIGUEZ: Yes, Counsel, I
16 understand what morale is all about. But my
17 priority is the security of the patrons.
18 That's my priority. Morale comes second. I'm
19 interested in ensuring the safety of the
20 public inside the establishment. And that's,
21 those are my marching orders here.

22 MR. KLINE: I under --

1 MR. RODRIGUEZ: So morale is
2 secondary to that.

3 MR. KLINE: I only mention morale
4 in the context of assuring the safety of the
5 public because to get people who you want to
6 rely on and trust then you get people that are
7 comfortable working at a particular
8 establishment. Those that would work at an
9 establishment where they're subject to search
10 before they begin their shift might be a
11 different caliber than other individuals who
12 would be employed.

13 But again, if the Board feels
14 strongly about it the licensee has indicated
15 that he would have the head of security search
16 the employees before the shift. Personally
17 I'm not sure that's the best approach. But
18 the Board is, I'm looking at the Board's
19 judgment.

20 MR. RODRIGUEZ: Thanks, Madam
21 Chair.

22 MEMBER SILVERSTEIN: Mr. Kline, I

1 would like to associate myself with the
2 remarks of my colleague Mr. Rodriguez on this
3 matter.

4 CHAIR MILLER: I just want to say
5 something and the Board can talk about it, you
6 know, when we look at this finally again. But
7 also we've sometimes said, which would
8 probably be less offensive to employees if you
9 put something in the security plan that said
10 that employees were not allowed to bring to
11 the establishment any knives or whatever so
12 that they're on notice that and if they do
13 they will be fired or, you know, as opposed to
14 maybe the more drastic pat-down.

15 MR. RODRIGUEZ: Thanks, Madam
16 Chair. I appreciate that.

17 MEMBER SILVERSTEIN: I think both
18 would be a very good idea.

19 CHAIR MILLER: Mr. Short?

20 MEMBER SHORT: Yes. I guess the
21 real reason why we're here today is to make
22 sure that this establishment is a little less

1 dangerous than it was that particular night.
2 And we're looking for some changes, at least
3 this Board Member is looking to see because I
4 can't see anything in your security plan that
5 you didn't have already.

6 And apparently it wasn't enough.
7 I would like to know what you're going to do
8 differently if you're allowed to open back up
9 anytime soon what you're going to do
10 differently than you did that night because
11 apparently you were patting down. Apparently
12 you had security.

13 Apparently you had cameras
14 although some weren't working. What are you
15 going to do different that we can be assured
16 that the public will be safe in this
17 establishment?

18 MR. KLINE: Board Member Short,
19 I'm glad that you mentioned the cameras
20 because we think that was a very important
21 lapse in the case that the camera system was
22 not what it should have been and it's not what

1 the licensee had promised that it would be.

2 That situation has already been
3 corrected. It has been inspected by your
4 investigator and it now complies with what's
5 in the new plan and you have a camera diagram.
6 Had this been in place I think the Board would
7 have a very different picture of what went on
8 that evening.

9 The issue that I've heard voiced
10 by you and other Board Members is concern
11 about weapons entering the establishment and,
12 as we've said, we're prepared to put in the
13 offer in compromise that it's part of a Board
14 order that the searches will be done before
15 patrons enter the establishment whenever live
16 entertainment is being offered.

17 With respect to some of the other
18 issues, there's video and there's evidence,
19 the security staff, contrary to what's in the
20 reports actually did a pretty good job that
21 night.

22 MEMBER SHORT: They did?

1 MR. KLINE: Yes, they did in terms
2 of making sure that there was not and remember
3 what we have is an individual who had a
4 laceration. I mean there was not extreme
5 violence. There was not, I mean this is not
6 like many of the cases that we've seen where
7 people were seriously injured.

8 So I mean I think that in terms of
9 perspective there is some, from our standpoint
10 in terms of what went on. And we have some
11 adjectives in the report about where there was
12 chaos and this and that. The low level of
13 injury would seem to suggest otherwise in
14 terms of whether things were --

15 MEMBER SHORT: And just a
16 correction. You said live entertainment
17 again. I thought Mr. Alberti had talked to
18 you about entertainment period.

19 MR. KLINE: The distinction is
20 your statute refers to live entertainment
21 which includes live music, DJs, comedians,
22 poetry readers, that runs the gamut. So the

1 term in the statute is live entertainment.

2 That's what we're talking about.

3 I think that's what we --

4 MEMBER ALBERTI: Which includes a
5 DJ.

6 MR. KLINE: Which includes a DJ,
7 which we agreed with Mr. Alberti to be
8 included.

9 MEMBER SHORT: Thank you.

10 CHAIR MILLER: Mr. Alberti.

11 MEMBER ALBERTI: I want to go back
12 to the conduct of the staff and the security
13 staff. I agree with Ms. Miller's, I think Ms.
14 Miller offers a very good suggestion of what
15 could be in the security plan to deal with the
16 concerns expressed by Mr. Rodriguez about the
17 conduct of the security staff.

18 I expect that's already what you
19 expect of your employees that they not bring
20 in any weapons in. So simply having something
21 like that in the security plan is, and the
22 other reason is that it really, I mean, this

1 case is about the possibility of there being
2 a knife.

3 There's no allegation that, to
4 misconduct of the weapons possession by staff.
5 So I can't really address that at this
6 hearing. So that's why I sort of think that
7 would be, now to switch gears here, cameras.

8 I'm going to be a stickler here.
9 I think it's great that you have this
10 maintenance contract. But I guess, and this
11 is just what I've seen too often and it's not,
12 I wonder when a camera breaks down how long it
13 should take for it to be repaired or replaced.

14 And we always hear excuses no, it
15 broke down and we're waiting for it to get
16 replaced. And I know when you have a tech
17 coming there, a commitment for a tech to come
18 in within 24 hours that doesn't say to me
19 that, you know, that camera is going to be
20 repaired, it's going to be up and running in
21 some way within a reasonable time frame.

22 Can you commit to some time frame

1 in which, you know, camera is inoperable and,
2 you know, you're going to turn around and get
3 it operable because it doesn't seem
4 unreasonable given you can go to Best Buy.
5 And I'm being facetious there. But, you know,
6 we live in a big city. It's not hard to
7 replace and get equipment repaired.

8 MR. KLINE: Mr. Alberti, I think
9 you make a good point and at some point, and
10 what I would suggest is that the licensee
11 agree that the camera system will be tested on
12 a weekly basis with a written report, in other
13 words a checklist in terms of what cameras are
14 working because that's the biggest issue is
15 someone actually looking at it to make sure
16 that they're working.

17 MEMBER ALBERTI: Absolutely, you
18 make a very good point.

19 MR. KLINE: So I think the first
20 point would be that there be a mechanism for
21 monitoring that with a, well we can create a
22 report with a checklist that says okay, you

1 know, on Friday morning or whatever it is
2 before the weekend we've checked the camera
3 system. We've ascertained that all the
4 cameras that are installed are working and
5 recording the way they're supposed to record.

6 And if they are not working they
7 will be repaired within --

8 MR. CHOU: What we have in the
9 proposal from the Prism for the ongoing so any
10 service call will be within 24 hours.

11 MEMBER ALBERTI: Yes. But I get a
12 washing machine repairman out in 24 hours and
13 he may have to order a part. I mean this
14 isn't a washing machine. You know, you can
15 buy a camera probably cheaper than you can
16 replace the part.

17 MR. CHOU: I mean, something
18 probably that said they would be repaired
19 within 24 hours. I mean, trust me, I learn
20 daily with this case. I mean if I'd had a
21 camera --

22 MEMBER ALBERTI: I would be

1 satisfied within 48 hours or it happening.

2 MR. KLINE: Within 48 hours?

3 MEMBER ALBERTI: That's my, that
4 would be a comfort level for me to have a
5 camera.

6 MR. KLINE: So we'll do two
7 things. One is we'll agree to the checklist
8 because I think that's, I mean thinking about
9 it that's important.

10 MR. CHOU: And we added a lot of
11 cameras. So even though it's in one -- a far
12 distance like the blind spots.

13 MEMBER ALBERTI: Right. I
14 understand, but, I see your points where that
15 happened right in the blind spot. And I don't
16 want you to get caught up again.

17 CHAIR MILLER: So what is it, Mr.
18 Kline, that you just said you would add?

19 MR. KLINE: What we are suggesting
20 is commitment to two things. One is that the
21 camera system will be checked out by security
22 staff at least once per week and that there

1 will be a simple, and we won't do anything
2 complicated because then it won't get done.

3 But a simple checklist that will
4 have the numbers of the cameras. They work,
5 this one works, they all work and then a
6 signature from whoever did the checkout. We
7 will maintain that as part of the security log
8 that will be available for review. And if a
9 camera is discovered either then or just in
10 the normal course, then it will be repaired
11 within 48 hours.

12 CHAIR MILLER: Okay, good. Okay,
13 Mr. Rodriguez.

14 MR. RODRIGUEZ: Yes, Counsel, I
15 refer you to Item 8 of the OIC. The 30
16 minutes after closing. Why do you think 30
17 minutes after closing is adequate since a lot
18 of activity occurs outside after the club is
19 closed?

20 MR. KLINE: It was thought that 30
21 minutes, particularly with officers in uniform
22 there, would be sufficient time to clear the

1 area and have everyone move on.

2 MR. RODRIGUEZ: So you presume
3 then that the uniformed officers, the MPD
4 people would be there after the club closes?

5 MR. KLINE: Correct. That's what
6 the RDO commitment is to is that we would
7 provide four reimbursable detail officers from
8 midnight until 30 minutes after closing.

9 MR. RODRIGUEZ: Right. So my
10 question is why not a little more time?
11 That's just a question.

12 MR. KLINE: Do you want to address
13 that, Charles?

14 MR. CHOU: I think the 30 minutes
15 --

16 MR. RODRIGUEZ: I'm sorry, sir, if
17 you could speak in the microphone.

18 MR. CHOU: I'm sorry. The last 30
19 minutes is, we don't take any more patrons is
20 because we're starting to deal with a lot of
21 other people.

22 MR. ROME: He's asking about the

1 reimbursable detail being there a half an hour
2 after closing. Why cut it off that early
3 instead of more than a half hour after
4 closing?

5 MR. CHOU: We scheduled it to
6 4:00. It's 12:00 to 4:00. So we scheduled it
7 like an hour after the --

8 MR. KLINE: So we'll amend it to
9 an hour.

10 MEMBER ALBERTI: So I hear an
11 hour.

12 MR. KLINE: We'll amend it to an
13 hour.

14 MR. CHOU: We always go minimal
15 four hours. So we have them coming in at
16 midnight and sign off at 4:00. And the
17 establishment closes at 3:00. So I mean we
18 actually shut it down 2:45 lights out and then
19 they have about an hour to --

20 CHAIR MILLER: Okay.

21 MEMBER SILVERSTEIN: Follow up on
22 that. Do you have holiday hours as well on --

1 MR. CHOU: On holiday hours we let
2 the, we schedule for five hour sets.

3 MEMBER SILVERSTEIN: So again, it
4 is the 60 minutes post closing time?

5 MR. CHOU: The total is four hour
6 shifts for every detail.

7 MEMBER SILVERSTEIN: Thank you.

8 CHAIR MILLER: Mr. Alberti.

9 MEMBER ALBERTI: I think this will
10 be short. So just so I understand number one
11 says a revised security plan. The security
12 plan we submitted has a date of August 2013.

13 So I just wanted to, should I be
14 looking for something new or is this, this is
15 just for my information or is this the one
16 that we've had on file because if it isn't
17 then I've got to ask staff to do something
18 different with it then, our legal staff to do
19 something different, you know, look at it
20 differently then if it's the one that we've
21 had already.

22 MR. KLINE: No, this is the new

1 one that was filed.

2 MEMBER ALBERTI: Okay. So what's
3 changed in it? Can you go over that real
4 quick?

5 MR. ROME: Yes, I believe it's the
6 items that are on the offer in compromise have
7 been incorporated into this. But give me a
8 second so that I can see. There's another
9 attorney in our office --

10 MEMBER ALBERTI: See, Mr. Rome,
11 quite honestly unless I'm missing something I
12 don't see those things on the offer in
13 compromise having been reflected by things in
14 the security, for instance that video cameras
15 will be available immediately upon request.

16 I don't see that in the security
17 plan. And I'm not asking that it be there.
18 But, I'm not suggesting that it need to be
19 there. I'm just saying you represented this
20 as a change. I would like to know so, it
21 makes it easier for me to review if I know
22 what those changes are.

1 Are we sure we have the right
2 document submitted? That's what someone said.
3 The obvious question I should have asked.

4 MS. GEPHARDT: There's several
5 that I've taken note in the new security plan.
6 For example under Metropolitan Police
7 Department reimbursable detail protocol we've
8 added the four reimbursable detail officers.
9 Obviously it says 30 minutes but --

10 MEMBER ALBERTI: Wait, wait, you
11 added the four reimbursable.

12 MS. GEPHARDT: It used to be two
13 and now they're adding four.

14 MEMBER ALBERTI: Okay, so that's
15 one change.

16 MS. GEPHARDT: So that's one and
17 then obviously between midnight and 30 minutes
18 we'll change that. And then on the page
19 regarding the cameras it does say that all
20 camera recordings should be available for
21 review immediately upon request by MPD or ABRA
22 investigators.

1 MEMBER ALBERTI: Okay. I
2 apologize. I missed that.

3 MS. GEPHARDT: No, that's okay. I
4 mean it's hard to see them when you've got,
5 going through with a fine toothed comb.

6 MR. ROME: And the new camera
7 security layout is attached to the back of it.

8 MEMBER ALBERTI: Okay, very good.
9 That's helpful. Thank you.

10 MR. ROME: Sure.

11 CHAIR MILLER: But you may be
12 doing one more version, correct, with the new
13 --

14 MR. ROME: We're going to have to
15 now because of what we're discussing today.

16 CHAIR MILLER: Right.

17 MR. ROME: So if we do that we can
18 also take it back, re-check and make sure that
19 everything that's in this OIC is
20 reincorporated in the security plan, that a
21 new date is put on the front and we'll have
22 page numbers put on it because I know that was

1 a concern last time.

2 MEMBER ALBERTI: I wasn't saying
3 that it didn't reflect the OIC. I was just
4 saying, I was trying to match it up and I
5 wasn't able to.

6 CHAIR MILLER: I have a couple
7 more questions. One with respect to the
8 camera. Is there something with respect to
9 one of the cameras inside that would have
10 captured the incident and somehow prevented
11 injury?

12 MR. KLINE: I don't know, from
13 where I sit that cameras ever prevent injury
14 except they chill anti-social behavior or
15 criminal behavior as the case may be. So I
16 don't know that we can say if there were
17 cameras that anything would have been
18 prevented.

19 If there are cameras people,
20 sometimes, tend to act a little differently
21 than they would if there would not cameras.
22 Certainly cameras would have facilitated the

1 investigation of this issue. From our
2 standpoint and interviewing our, all the
3 witnesses that we have and we have lots, I
4 really wish we had video of what went on. You
5 know, from what we hear it's quite different
6 from what's in the reports.

7 CHAIR MILLER: Okay. And because
8 in addition to just improving things we've
9 stated that our job here is to see what we can
10 do to prevent any injuries from occurring. So
11 that's why I asked the question that way.

12 My other question goes to, I know
13 we don't have any evidence, you know, in the
14 record but there are allegations in the notice
15 about interactions between security and MPD.
16 And so I'm wondering if there are any, also I
17 don't think I saw anything that addressed
18 improving the protocol.

19 There was a protocol section I
20 guess in the security plan. Is there anything
21 that, I didn't study it carefully enough to
22 see if it addressed those things that happened

1 where there wasn't good cooperation as far as
2 I could tell from the notice.

3 I mean it's a good thing to have
4 good protocols. And in the event when to
5 contact MPD or, you know, and so I just
6 wondered if we could take a look at that
7 before we wrap this up if there's any
8 improvement.

9 MR. KLINE: One is certainly as
10 part of the training that will be reemphasized
11 and that's one of the reasons they did the
12 training to make sure everyone knows what
13 their responsibilities are. Second, is we
14 will look at the section in the security plan
15 concerning hand-off to MPD and make sure that
16 it's clear.

17 Security staff, having interviewed
18 many of them, seemed pretty clear as to what
19 their responsibilities are. And from, why
20 there's a report that says they didn't do it,
21 it's from our standpoint kind of baffling.
22 But we understand the Board's concern.

1 CHAIR MILLER: So I think I
2 understand your answer to be you're going to
3 take another look at this and if you could
4 improve it.

5 MR. KLINE: Two things. One is
6 we'll emphasize it in training.

7 CHAIR MILLER: Training, right.

8 MR. KLINE: Two is we will make
9 sure that our plan, to the extent that it
10 isn't, is clear in terms of what the
11 responsibilities are in terms of interacting
12 with the RDO officers. I think it's in the
13 plan already but we'll look at it again since
14 that is a concern of the Board.

15 CHAIR MILLER: Okay. Mr. Short.

16 MEMBER SHORT: Again, I just have
17 to reemphasize I would just like to know
18 exactly, if you could just tell me we've got
19 this correctly in dialog, what can make me as
20 a Board Member feel there are enough
21 substantial changes with the way you operate
22 that will help the situation, i.e. starting

1 with the reimbursable detail outside and the
2 current employees? If there is an incident
3 where someone is fighting, what happens?

4 MR. KLINE: What happens is if
5 there's an incident when someone's fighting
6 there's sufficient security staff and I think
7 you have a list of the current staff and their
8 positions where there are plenty of people
9 stationed within the establishment to separate
10 the individuals. They are then let out of the
11 establishment separately and the first people
12 that are to be contacted are the RDO officers.

13 At this point, from this point
14 forward instead of two officers there will be
15 four. That may have been one of the issues
16 that night is perhaps it would have been
17 helpful to have more than two. But from here
18 on out there will be more than two, there will
19 be four.

20 So among those four officers it
21 should be pretty easy for security to make
22 sure that they locate one and turn over,

1 escort the individuals involved in any
2 altercation to those reimbursable detail
3 officers for appropriate action by them.

4 MEMBER SHORT: Okay and not being
5 redundant, what happened on the night of the
6 incident then? Didn't you have the same thing
7 in place?

8 MR. KLINE: Mr. Short, if we're
9 going to get into the facts we had the same
10 thing in place and our witnesses will testify
11 that's exactly what they did. And we've got
12 13 of them that we can call in here, including
13 a Fairfax County police officer.

14 So we have a really different
15 version of what went on that night.

16 MEMBER SHORT: Thank you.

17 CHAIR MILLER: Okay, are there any
18 other questions? Anything anyone else wants
19 to add?

20 MS. GEPHARDT: Just one thing that
21 I thought may be, which might address the
22 Board's concern regarding the staff and

1 whether they should be patted down or wanded
2 is to on their etiquette, host attire and
3 etiquette put in a statement that just says
4 that we have all employees are required to
5 wear black.

6 All hosts are required to be properly
7 groomed put in there that no host or security
8 will carry weapons of any kind. Just, I mean
9 obviously, it seems obvious but to have it
10 actually written out in the security plan.

11 MR. KLINE: We'll go further than
12 that. We'll put it in bold and we'll put in
13 parentheses that it's grounds for immediate
14 termination.

15 CHAIR MILLER: Right, okay.

16 MEMBER ALBERTI: I mean I will say
17 that you already have in here that they must
18 not use undue force. And I noticed that was
19 in bold, if you could that would be --

20 MR. KLINE: Yes, and I don't want
21 to get into the facts but there is a short
22 video clip and it shows --

1 MEMBER ALBERTI: You don't need
2 to, you don't need to. I'll give you credit
3 for that.

4 MR. KLINE: Thank you.

5 CHAIR MILLER: I have a question.
6 Who is doing the training for the security
7 people?

8 MR. CHOU: We are signed up with
9 Penny Helos Protective Service.

10 CHAIR MILLER: Okay. I just want
11 to review, before we go out, before the Board
12 recesses just to take a look at the proposals
13 that we've been discussing to strengthen the
14 OIC, so one goes to when there's live
15 entertainment there will be pat-downs,
16 wanding, searching of all purses and
17 backpacks.

18 Okay. Also there will be in the
19 etiquette section, I guess, a provision
20 regarding no employees carrying, wearing
21 weapons. I don't know how you want to phrase
22 it, but you know, I mean at the establishment.

1 There's a provision we talked
2 about cameras being inspected on a weekly
3 basis with a checklist and repaired within 48
4 hours. Was there anything else we talked
5 about?

6 MEMBER SHORT: I think one more
7 caveat. I think Mr. Kline mentioned
8 termination of the employee --

9 CHAIR MILLER: Right, right. That
10 if they're found to violate that they will be
11 terminated immediately.

12 MR. ROME: I took pretty good
13 notes. I can read you the --

14 CHAIR MILLER: Good. It should be
15 similar I hope.

16 MR. ROME: The first one was that
17 it's going to be spelled out that pat-down
18 searches and wandling will be done of every
19 patron when live entertainment is provided as
20 well as all purses, backpacks, bags searched.
21 That's the first one.

22 Second is all security personnel

1 shall be searched by the management or
2 management of the security staff prior to each
3 night.

4 CHAIR MILLER: That's it?

5 MR. ROME: And that the security
6 plan will reflect this as well.

7 CHAIR MILLER: No.

8 MR. ROME: The third is that --

9 MR. KLINE: They weren't requiring
10 that. I think where we were on that was the
11 provision concerning weapons in the
12 establishment instead of that.

13 MR. ROME: Okay. So that one will
14 come out. The next one is commitment to have
15 the camera checked out by security staff at
16 least once per week with a checklist of all
17 camera numbers that are working or not working
18 and then anyone found not to be working will
19 be replaced within 48 hours of the discovery
20 of that camera being inoperable.

21 The next change we're going to
22 make is that number eight on the OIC is going

1 to be amended so it will clarify what's
2 already being done as a reimbursable detail
3 will be present until one hour after closing
4 as opposed to 30 minutes.

5 CHAIR MILLER: Yes, that's it.

6 MR. ROME: The next is that we'll
7 do a review of the security plan to see that
8 it incorporates everything in the OIC. I
9 believe that it does but we'll make sure
10 that's the case.

11 The next will be the training will
12 emphasize the hand off procedures to MPD and
13 we'll just state in there that will be done as
14 part of the training.

15 CHAIR MILLER: I think we also,
16 take a look and see whether the security plan
17 itself needs to be amended in any way to
18 reflect those procedures or better procedures.

19 MR. ROME: And that will be
20 incorporated into the security plan. And then
21 the last one is what you just mentioned, which
22 is the same as the other one. The etiquette

1 section will be amended to stress that no host
2 will carry weapons and if they do that will be
3 grounds for immediate termination and that
4 will be bolded.

5 CHAIR MILLER: Okay. Anything
6 else? Okay. Then we're going to adjourn to
7 discuss this. As Chairperson of the Alcoholic
8 Beverage Control Board for the District of
9 Columbia and in accordance with Section 405 of
10 the Open Meetings Amendment Act of 2010, I
11 move that the ABC Board hold a closed meeting
12 for the purpose of seeking legal advice from
13 our counsel on Case Number 14-251-00217, Café
14 Asia for Section 405(b) for the Open Meetings
15 Amendment Act of 2010 and deliberating upon
16 the issues in this case for the reasons cited
17 in Section 405(b)13 of the Open Meetings
18 Amendment Act of 2010. Is there a second?

19 MEMBER SILVERSTEIN: Second.

20 CHAIR MILLER: Mr. Silverstein
21 seconded the motion. I'll take a roll call
22 vote on the motion. Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIR MILLER: Mr. Rodriguez?

3 MR. RODRIGUEZ: I agree.

4 CHAIR MILLER: Mr. Silverstein?

5 MEMBER SILVERSTEIN: I agree.

6 CHAIR MILLER: Mr. Short?

7 MEMBER SHORT: I agree.

8 CHAIR MILLER: Okay. It appears
9 that the vote has passed, that motion has
10 passed by a vote of 5-0-0 so we will recess
11 now and return shortly to state our decision.
12 Okay.

13 (Whereupon, the above-entitled
14 matter went off the record at 11:59 a.m. and
15 resumed at 1:29 p.m.)

16 CHAIR MILLER: Okay, we're back on
17 the record. During the time in which the
18 Board recessed the licensee typed up the
19 conditions that we discussed that the Board
20 wanted to consider that would make the place
21 less dangerous based on our reading of the
22 Summary Notice, et cetera.

1 And I think we had a lot of
2 dialogue about those conditions. And so, in
3 fact, upon our review the licensee did make
4 changes to their security plan that reflected
5 all the changes that we talked about and they
6 made changes as well to the proposed OIC.

7 And I understand that they, and
8 they also made changes to a provision that the
9 Board noticed with respect to events for
10 individuals under 21 to take that out of the
11 security plan because at our last fact finding
12 hearing it was represented to us that there
13 would not be any more events for individuals
14 under 21 years old.

15 So that being said, the other
16 thing is the training even though the offer in
17 compromise says 30 days we understand the
18 training is going to be sooner than that and
19 that we'll be seeing the licensee for a check
20 in I think on September 17th so that all
21 training will have been completed before then.

22 Okay. So they, based on that then

1 I would move that we lift the suspension
2 that's been in place. Do I have a second?

3 MEMBER ALBERTI: Second.

4 CHAIR MILLER: Mr. Alberti has
5 seconded the motion. Are there any other
6 comments? Not hearing --

7 MEMBER SILVERSTEIN: Is anyone
8 else, I have a comment afterwards?

9 CHAIR MILLER: Any comments? Do
10 you want to make a comment, Mr. Silverstein?

11 MEMBER SILVERSTEIN: Yes, Madam
12 Chair, the threshold here is imminent danger
13 and whether this licensed establishment poses
14 an imminent danger by reopening to public
15 health and safety and whether the steps taken
16 in this offer in compromise alleviate our
17 concerns that the continued sales of alcohol
18 at the currently approved hours pose an
19 imminent danger to the public.

20 Certainly the chief of police in
21 her closure order presented a compelling case
22 that it would. Steps taken in the OIC are our

1 best efforts and do alleviate some of the
2 concerns but not all of them.

3 Mr. Chou, there is a pattern of
4 disorder and violence inside and outside the
5 establishment, inside the establishment and
6 outside at closing time. This case is being
7 referred to the Office of Attorney General for
8 a show-cause hearing so our work here is not
9 finished.

10 I've seen this movie before and
11 I'm afraid I know how it ends. Mr. Chou, you
12 came before us on the 29th of January after
13 disorder inside your establishment was
14 followed by a running gun battle in the
15 neighborhood outside your establishment. No
16 clear nexus was legally established.

17 But that gun battle resulted in
18 bullet holes being found in nearby buildings,
19 in parked cars and shell casings on the street
20 according to the police testimony at that
21 hearing. I'm voting against this offer in
22 compromise, Mr. Chou, to express my grave

1 concern that the continuing disorder and
2 violence in that neighborhood inside and
3 outside your establishment continues to pose
4 an imminent danger to the public.

5 We're not done with this case.
6 But you can reopen if the Board votes that way
7 and I sincerely hope and pray that I'm wrong
8 and I urge you to prove me wrong.

9 CHAIR MILLER: Okay.

10 MEMBER SHORT: Madam Chair?

11 CHAIR MILLER: Yes, Mr. Short.

12 MEMBER SHORT: I totally concur
13 with my colleague's statement. And we are
14 really interested in making sure that our
15 downtown Washington DC stays a viable and safe
16 place for the public in our community. Thank
17 you. That's all I have.

18 CHAIR MILLER: Any others?
19 Actually I want to modify this to approve the
20 offer in compromise and lift the suspension.
21 Do I have a second? I just had moved to lift
22 the suspension.

1 MEMBER ALBERTI: Can I make a
2 friendly, offer a friendly amendment to that?

3 CHAIR MILLER: Okay.

4 MEMBER ALBERTI: As part of that
5 we include sending this to the Office of the
6 Attorney General.

7 CHAIR MILLER: Okay. That is in
8 the offer in compromise.

9 MEMBER ALBERTI: Is that in the
10 offer and compromise? That's specifically
11 stated?

12 CHAIR MILLER: Yes.

13 MEMBER ALBERTI: Let me make sure
14 that's on the record, excuse me. I'm sorry
15 for that.

16 CHAIR MILLER: Okay. Anything
17 else? So we're all concerned about the
18 safety. And I move this motion and I'll be
19 voting for it. But I am, hope that this will
20 solve the problem here.

21 Okay. All those in favor of the
22 motion to approve the offer in compromise and

1 lift the suspension say aye.

2 (Chorus of ayes)

3 CHAIR MILLER: All those opposed.

4 MEMBER SILVERSTEIN: I oppose.

5 CHAIR MILLER: All those
6 abstaining?

7 MEMBER SHORT: I oppose.

8 CHAIR MILLER: Okay. Then the
9 motion passes 3-2-0. Okay. And that
10 concludes this case. Thank you very much.

11 MR. KLINE: Thank you.

12 CHAIR MILLER: I need to, I'm
13 sorry, informally I mentioned that we'd be
14 seeing you on the 17th. I just want to put
15 that officially on the record that we'll see
16 you on the 17th.

17 MR. KLINE: September 17th, right?

18 CHAIR MILLER: September 17, 2014,
19 9:30 a.m.

20 (Off the record comments)

21 MR. KLINE: Does the Board require
22 an OAG at that check-in?

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CHAIR MILLER: Yes.

MR. RODRIGUEZ: Yes, as always.

CHAIR MILLER: Any other
questions? Thank you.

(Whereupon, the above-entitled
matter went off the record at 1:36 p.m.)

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