

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
2408 Wisconsin Avenue, LLC :
t/a Mason Inn :
2408 Wisconsin Avenue, N.W. : Show
Retailer CT : Cause
License No. 79644 : Hearing
ANC 3B :
Substantial Change in :
Operation (Increase in :
Occupancy) :
Case No. 12-251-00368 :
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September 18, 2013

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

DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member
ALSO PRESENT:

CHRISSEY GEPHARDT, OAG
FELICIA MARTIN, Investigator, ABRA

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

2:51 p.m.

CHAIRPERSON MILLER: Okay. Our next case on the afternoon calendar is Case Number 12-251-00368, Mason Inn located at 2408 Wisconsin Avenue, N.W., License Number 79644 in ANC 3B.

When you're ready if you could sign in and then introduce yourselves for the record.

MS. GEPHARDT: Chrissy Gephardt on behalf of the Office of the Attorney General.

MR. SUNG: Good afternoon. Ki Jun Sung for Mason Inn.

MR. BROGAN: Fritz Brogan for Mason Inn.

CHAIRPERSON MILLER: Okay. So, I have in my notes that you are managing members. Are you owners or --

MR. SUNG: Yes.

CHAIRPERSON MILLER: You're owners. Okay.

1 Okay. This is show cause hearing.
2 Are there any preliminary matters before we
3 start?

4 MS. GEPHARDT: No, there are no
5 preliminary matters in this case.

6 CHAIRPERSON MILLER: Okay. And I
7 just want to ask the Licensee if you're
8 familiar with the proceedings or do you need
9 me to tell you what the process is for the
10 show cause hearing?

11 MR. SUNG: We're familiar with the
12 process. Thank you.

13 CHAIRPERSON MILLER: Okay. Good.
14 All right. Then Ms. Gephardt.

15 MS. GEPHARDT: Yes. Board
16 Members, in this case, the Government is
17 charging making a substantial change to the
18 establishment by increasing the occupancy of
19 the interior of the establishment.

20 Specifically, on Thursday,
21 November 22nd, 2012, you will hear from
22 Investigator Felicia Martin that she was there

1 investigating an assault and while she was
2 there noticed that the establishment was quite
3 crowded. She spoke to the ABC manager about
4 the occupancy at the time and the ABC manager
5 referred her to the doorman and the doorman
6 specifically stated that there were 205 people
7 in the establishment and that the
8 establishment certificate of occupancy only
9 allowed 125 people.

10 So, you will hear her state that
11 she personally counted the number of people in
12 the establishment with a clicker and was able
13 to determine that there were 150 patrons which
14 is in excess or surplus of 25.

15 At the end of the argument and the
16 evidence, I will ask you to find that this
17 Licensee's in violation and that you penalize
18 by a fine.

19 Thank you.

20 CHAIRPERSON MILLER: Okay. Did we
21 have a change at the table or were you at the
22 table the whole time?

1 MR. BROGAN: Yes, I've been here.

2 Yes, ma'am.

3 CHAIRPERSON MILLER: What's your
4 name?

5 MR. BROGAN: Francis Brogan.

6 CHAIRPERSON MILLER: Okay.

7 Brogan. Okay. All right.

8 Mr. Sung, you are representing?

9 MR. SUNG: Yes.

10 CHAIRPERSON MILLER: So, do you
11 have an opening statement at this point or --

12 MR. SUNG: Yes.

13 CHAIRPERSON MILLER: Okay.

14 MR. SUNG: Very briefly.

15 CHAIRPERSON MILLER: All right.

16 MR. SUNG: The claim or the charge
17 is that we exceeded our legal capacity and by
18 doing so, we violated the substantial change
19 statute. However, I believe this is a
20 misapplication of the law.

21 The substantial change statute
22 says that the Licensee needs to get Board

1 approval if it makes a change to the exterior
2 or the interior or in its format that would
3 increase its capacity. You can't just have an
4 isolated incident of a licensee exceeding
5 capacity in order to violate the statute.

6 Moreover, we do dispute the fact
7 that Mason Inn exceeded its capacity that
8 night and I think the evidence will show that.

9 Thank you.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. Okay. Ms. Gephardt.

12 MS. GEPHARDT: All right. The
13 Government would like to call now Felicia
14 Martin to the stand.

15 CHAIRPERSON MILLER: Good
16 afternoon.

17 INVESTIGATOR MARTIN: Good
18 afternoon.

19 Whereupon,

20 FELICIA MARTIN
21 was called as a witness by the Government
22 after having been first duly sworn, assumed

1 the witness stand and was examined and
2 testified as follows.

3 DIRECT EXAMINATION

4 MS. GEPHARDT: Good afternoon, Ms.
5 Martin. Can you please state your name and
6 spell it for the record?

7 INVESTIGATOR MARTIN: Felicia
8 Martin. F like Frank E-L-I-C-I-A Martin M
9 like Mary A-R-T-I-N.

10 MS. GEPHARDT: All right. Thank
11 you.

12 Ms. Martin, where do you work?

13 INVESTIGATOR MARTIN: For the
14 Alcoholic Beverage Regulation Administration
15 also known as ABRA.

16 MS. GEPHARDT: And what is your
17 title?

18 INVESTIGATOR MARTIN:
19 Investigator.

20 MS. GEPHARDT: And what is an
21 investigator at the Alcoholic Beverage
22 Regulation Administration?

1 INVESTIGATOR MARTIN: My duties
2 are to enforce the alcohol regulations for the
3 Washington, D.C.

4 MS. GEPHARDT: Okay. And as part
5 of that responsibility, what exactly do you
6 do? Do you go out into the field at all?

7 INVESTIGATOR MARTIN: Yes.

8 MS. GEPHARDT: Can you briefly
9 explain what kinds of things you might do?

10 INVESTIGATOR MARTIN: Yes, I -- I
11 investigate complaints that come into our
12 office. I also investigate complaints that I
13 find myself. I reduce those complaints to a
14 written document and submit them for review as
15 well as we do sale to minor enforcement and
16 other matters.

17 MS. GEPHARDT: Okay. Are you
18 familiar with a licensee by the name of Mason
19 Inn?

20 INVESTIGATOR MARTIN: Yes.

21 MS. GEPHARDT: Okay. And did you
22 have occasion to visit Mason Inn on November

1 the 22nd, 2012?

2 INVESTIGATOR MARTIN: Yes.

3 MS. GEPHARDT: And can you tell
4 the Board what brought you there?

5 INVESTIGATOR MARTIN: Yes, my
6 supervisor, Keith Gethers, instructed an ABRA
7 Investigator Apraku -- Kofi Apraku and myself
8 to assist MPD Police, D.C. Police. They ask
9 our assistance because of an assault that had
10 occurred -- allegedly occurred at Mason Inn.

11 MS. GEPHARDT: And what was your
12 role once you were inside the establishment in
13 terms of investigation?

14 INVESTIGATOR MARTIN: Well, I went
15 for the primary function of investigating the
16 assault complaint.

17 MS. GEPHARDT: Okay. And when you
18 were in there, did you interview witnesses?

19 INVESTIGATOR MARTIN: I did not.
20 My initial arrival on the scene, I was met on
21 the sidewalk by MPD. Officer Timothy Carter
22 had advised me of an assault that may have --

1 that was alleged that may had involved the
2 bouncer, one of the bouncers at Mason Inn.

3 MS. GEPHARDT: Okay. And when you
4 were there, did you speak at all to the owner
5 of the establishment or the general manager?

6 INVESTIGATOR MARTIN: No.

7 MS. GEPHARDT: Okay. Who did you
8 speak to when you were there?

9 INVESTIGATOR MARTIN: Ryan Roller
10 who identified himself as the ABC manager.

11 MS. GEPHARDT: And what kind of
12 conversation did you have with Mr. Roller?

13 INVESTIGATOR MARTIN: After
14 speaking with MPD about the assault during my
15 conversation with MPD Officer Timothy Carter,
16 he advised me of the assault, the alleged
17 assault and also stated to me that he believed
18 the establishment was overcrowded.

19 MS. GEPHARDT: Okay. And you
20 mentioned you spoke with Mr. Roller. What did
21 you talk to him about specifically?

22 INVESTIGATOR MARTIN: I discussed

1 with him the assault allegation as well as the
2 overcrowding allegation.

3 MS. GEPHARDT: What specifically
4 did you ask him and what was his response?

5 INVESTIGATOR MARTIN: I asked Mr.
6 Roller did he know how many patrons were
7 inside the establishment and I also asked of
8 him to provide me with their certificate of
9 occupancy so that I can see the occupancy
10 approval for that location.

11 MS. GEPHARDT: And when you asked
12 him how many people were in the establishment,
13 what did he tell you?

14 INVESTIGATOR MARTIN: Mr. Roller
15 stated that he did not know and encouraged me
16 to speak with the doorman.

17 MS. GEPHARDT: And did you go
18 speak with the doorman?

19 INVESTIGATOR MARTIN: Yes.

20 MS. GEPHARDT: What kind of
21 information did you glean from the doorman
22 about the number of people within the

1 establishment?

2 INVESTIGATOR MARTIN: I identified
3 myself to the doorman and asked of him the
4 head count. At that time, he had a clicker in
5 his hand and looked down and showed me that
6 there were 205 patrons inside.

7 MS. GEPHARDT: Okay. Did you at
8 any time get the opportunity to review the
9 certificate of occupancy?

10 INVESTIGATOR MARTIN: I did. Once
11 Mr. Roller returned with the certificate of
12 occupancy, approximately ten minutes after
13 arriving on the scene, ABRA Investigator
14 Apraku and myself entered the establishment.
15 The moment I walked into the establishment,
16 there were people, patrons, standing right
17 just inches inside the doorway.

18 MS. GEPHARDT: Okay. So, but what
19 did the establishment's certificate of
20 occupancy say?

21 INVESTIGATOR MARTIN: It stated
22 that there was an approval of 125 patrons.

1 MS. GEPHARDT: Okay. And what did
2 you personally observe?

3 INVESTIGATOR MARTIN: Once inside,
4 I and Investigator Apraku made our way through
5 the crowd. I had to slide my body through
6 other -- you know, through the patrons to find
7 a location where I could best assess a count.

8 So, there was a -- some sort of
9 ledge that Investigator Apraku and myself
10 perched ourselves. I had a clicker in hand
11 and I began to do a count starting from the
12 left side of the room and spanned all the way
13 to the back.

14 MS. GEPHARDT: And how many people
15 did you count with your clicker?

16 INVESTIGATOR MARTIN:
17 Approximately 150.

18 MS. GEPHARDT: Okay. So, was it
19 your conclusion that the establishment at that
20 time was beyond it's -- had exceeded their
21 capacity?

22 INVESTIGATOR MARTIN: Yes.

1 MS. GEPHARDT: Okay. At that
2 time, did you -- once you observed that there
3 were -- that capacity had been exceeded, did
4 you notify anybody at the establishment of
5 this fact?

6 INVESTIGATOR MARTIN: I did.

7 MS. GEPHARDT: And who did you
8 notify?

9 INVESTIGATOR MARTIN: Mr. Roller.

10 MS. GEPHARDT: And did he have
11 anything to say in particular?

12 INVESTIGATOR MARTIN: No.

13 MS. GEPHARDT: Okay. All right.
14 That's all I have for this witness. Thank
15 you.

16 CHAIRPERSON MILLER: Okay. Is
17 there cross examination?

18 MR. SUNG: Yes.

19 CROSS EXAMINATION

20 MR. SUNG: Good afternoon, Ms.
21 Martin.

22 INVESTIGATOR MARTIN: Good

1 afternoon.

2 MR. SUNG: Prior to this date,
3 November 22nd, 2012, had you been to Mason Inn
4 before?

5 INVESTIGATOR MARTIN: Yes.

6 MR. SUNG: On how many occasions
7 approximately?

8 INVESTIGATOR MARTIN: I've been to
9 that location probably four to five times.
10 Before it was named Grog & Tanker. So, I was
11 there under that trade name probably three or
12 four of those times and then the other times
13 was as Mason Inn.

14 MR. SUNG: Thank you. Had you
15 ever noticed there being a capacity issue or
16 overcrowding issue at Mason Inn before?

17 INVESTIGATOR MARTIN: The delay in
18 response is I've seen large crowds gathered in
19 front of the establishment. I don't know if
20 that was an indication as to -- I don't know
21 why that was. So, I -- I can't say.

22 MR. SUNG: Did you ever charge

1 Mason Inn with being overcrowded in the past
2 prior to November 22nd, 2012?

3 INVESTIGATOR MARTIN: To my
4 knowledge, no.

5 MR. SUNG: So, having been there
6 several times before, you're familiar with the
7 interior layout of Mason Inn?

8 INVESTIGATOR MARTIN: Yes.

9 MR. SUNG: When you were there on
10 November 22nd, 2012, did you notice any change
11 in the interior layout that would increase the
12 occupancy of Mason Inn?

13 INVESTIGATOR MARTIN: Absent -- I
14 remember a couple of times I've seen tables
15 set up, but I didn't see any tables set up on
16 the 22nd.

17 MR. SUNG: Are you aware if
18 there's any exterior space for Mason Inn?

19 INVESTIGATOR MARTIN: No, I'm not
20 aware of any exterior space.

21 MR. SUNG: Now, when you conducted
22 your count as you testified, did you stop

1 people from coming in and leaving?

2 INVESTIGATOR MARTIN: No.

3 MR. SUNG: You said that you spoke
4 to an employee outside that told you the count
5 was 205. Do you remember who that was? Do
6 you have the gentleman's name?

7 INVESTIGATOR MARTIN: No, he was
8 just identified to me as the doorman.

9 MR. SUNG: Did you ask him how
10 many people are inside or did you ask him what
11 is the number on your clicker?

12 INVESTIGATOR MARTIN: How many
13 people were inside.

14 MR. SUNG: Okay. Are you aware
15 that there was another individual outside who
16 was holding another clicker that showed how
17 many people were leaving?

18 INVESTIGATOR MARTIN: No.

19 MR. SUNG: Now, you said you were
20 there initially to investigate an alleged
21 assault. Do you know where that assault
22 allegedly occurred? Inside Mason Inn or

1 outside Mason Inn?

2 INVESTIGATOR MARTIN: Outside.

3 MR. SUNG: Okay. And do you know
4 who called the police?

5 INVESTIGATOR MARTIN: No, I do
6 not.

7 MR. SUNG: Okay. Thank you.
8 That's all I have.

9 INVESTIGATOR MARTIN: Yes, sir.

10 CHAIRPERSON MILLER: Okay. Mr.
11 Silverstein.

12 MEMBER SILVERSTEIN: Thank you,
13 Ms. Martin. You mentioned that the -- it was
14 a doorman. Did he tell you that there were
15 205 people inside or that 205 people had
16 entered?

17 INVESTIGATOR MARTIN: Two hundred
18 and five people inside.

19 MEMBER SILVERSTEIN: Were inside
20 and you say you saw a certificate of occupancy
21 in the building.

22 INVESTIGATOR MARTIN: Yes.

1 MEMBER SILVERSTEIN: It was
2 approved for how many?

3 INVESTIGATOR MARTIN: One hundred
4 and twenty-five.

5 MEMBER SILVERSTEIN: One hundred
6 and twenty-five.

7 You say you walked inside and
8 things were quite crowded and how do you do a
9 clicker count in a situation where things are
10 that crowded?

11 INVESTIGATOR MARTIN: Okay. I
12 think I need to be a little more clear on the
13 time frame when I went inside.

14 When I asked the doorman for the
15 total number, he told me -- the total number
16 inside, he said it was 205. At that time, I
17 did not have in hand the certificate of
18 occupancy. Once Mr. Roller provided me with
19 the certificate of occupancy which is
20 approximately ten minutes later, I think went
21 inside the establishment to do the count.

22 To answer your question, I start

1 from -- I started from the left side of the
2 room and I count in pockets. So, I would do
3 like one pocket, two pocket and continue to
4 span the floor until I reached the end.

5 MEMBER SILVERSTEIN: Are you
6 likely in that case -- are you more likely to
7 miss people, to double count or how secure are
8 you in the number of people you would count?

9 INVESTIGATOR MARTIN: Yes, there
10 are times where I am missing individual
11 because some individuals are -- are moving,
12 but once I'm in that section, I count exactly
13 who's in that section and then I just continue
14 to span until I get to the end.

15 MEMBER SILVERSTEIN: And what did
16 your clicker count show?

17 INVESTIGATOR MARTIN: A hundred
18 and fifty.

19 MEMBER SILVERSTEIN: Your clicker
20 count showed 150?

21 INVESTIGATOR MARTIN: Yes.

22 MEMBER SILVERSTEIN: How confident

1 are you that the number of people in there was
2 beyond the certificate of occupancy by a
3 reasonable number meaning more than three or
4 four or five?

5 INVESTIGATOR MARTIN: Very
6 confident. The clicker that I use is a
7 standard clicker. It starts with zero. It's
8 manual. It's manual. So, I turn it exactly
9 to all four zeros and then I start to count
10 from there.

11 MEMBER SILVERSTEIN: Thank you.
12 No further questions.

13 CHAIRPERSON MILLER: Mr. Jones.

14 MEMBER JONES: Thank you, Madam
15 Chair.

16 Investigator Martin, I want to
17 make sure I'm clear. So, the number that you
18 counted when you did your count was exactly
19 150?

20 INVESTIGATOR MARTIN: Yes.

21 MEMBER JONES: Okay. Did you just
22 do one pass? So, you did the clicker count.

1 You set it to zero. You did one pass of the
2 establishment and it came to 150.

3 INVESTIGATOR MARTIN: Yes.

4 MEMBER JONES: Did you do another
5 pass just to --

6 INVESTIGATOR MARTIN: No.

7 MEMBER JONES: Okay. Just that
8 one. And did -- was it Apraku?

9 INVESTIGATOR MARTIN: Yes.

10 MEMBER JONES: Did he do a count
11 as well or what was he doing while you were
12 doing the count?

13 INVESTIGATOR MARTIN: Just
14 standing there with me to help me so I
15 wouldn't fall.

16 MEMBER JONES: Got you. Okay.
17 And did you have a camera with you on that
18 day?

19 INVESTIGATOR MARTIN: I did.

20 MEMBER JONES: Did you have an
21 opportunity to take pictures?

22 INVESTIGATOR MARTIN: No, I did

1 not.

2 MEMBER JONES: Okay. Thank you.

3 Thank you, Madam Chair.

4 CHAIRPERSON MILLER: Yes, Mr.

5 Alberti.

6 MEMBER ALBERTI: Okay. After you

7 came up with your count, did you speak to Mr.

8 Roller?

9 INVESTIGATOR MARTIN: Yes.

10 MEMBER ALBERTI: Okay. And what

11 did you advise him about the number of

12 patrons?

13 INVESTIGATOR MARTIN: That they

14 were over their approved capacity.

15 MEMBER ALBERTI: Did you tell him

16 how many you had counted?

17 INVESTIGATOR MARTIN: I did. I

18 showed him.

19 MEMBER ALBERTI: You showed him

20 your clicker?

21 INVESTIGATOR MARTIN: Yes.

22 MEMBER ALBERTI: What was his

1 response?

2 INVESTIGATOR MARTIN: He said
3 okay. I didn't take that okay as an
4 admission. He was just saying oh, okay,
5 that's what you -- that that was your count.

6 MEMBER ALBERTI: Did you tell him
7 that you spoke to the doorman?

8 INVESTIGATOR MARTIN: I don't
9 recall.

10 MEMBER ALBERTI: Okay. Did you
11 tell him how many -- this may be redundant.
12 Did you tell him how many patrons the doorman
13 reported?

14 INVESTIGATOR MARTIN: That I don't
15 recall. I remember the conversation he and I
16 had as it related to the occupancy telling him
17 that -- that they were, you know, grossly over
18 what was approved.

19 MEMBER ALBERTI: Now, you said you
20 created -- you defined pockets and then
21 counted the number of people in pockets. How
22 did you define a pocket?

1 INVESTIGATOR MARTIN: I usually
2 count ten to 15 a pocket and then I got to the
3 next. If it's above, then above. Then over.
4 Then down. Just taking in sections until I
5 reach the end.

6 MEMBER ALBERTI: So, I mean how do
7 you create a section? How do you identify a
8 section during the count?

9 INVESTIGATOR MARTIN: Generally,
10 for this particular establishment, many of the
11 patrons were just standing still just talking.
12 So, it wasn't too difficult to -- to track
13 their movement because they weren't --
14 everyone wasn't moving to and fro. So, many
15 of them were just standing in place.

16 MEMBER ALBERTI: So, you visually
17 said okay, that's a cluster there of people.
18 You counted that cluster and then moved to
19 what you thought was the adjacent cluster?

20 INVESTIGATOR MARTIN: Correct.
21 Um-hum. There's a -- there's a -- a cutoff
22 line. I -- I may use someone's clothing.

1 Like okay, I'm going to stop with the yellow.
2 That's one. One group. Then I go to the next
3 group and just continue like that.

4 MEMBER ALBERTI: You said that
5 there were -- what activities were going on in
6 the establishment during that time?

7 INVESTIGATOR MARTIN: Music was
8 playing and drinking.

9 MEMBER ALBERTI: Was there
10 dancing?

11 INVESTIGATOR MARTIN: There was
12 some dancing. Yes.

13 MEMBER ALBERTI: And was that in
14 one part of the establishment or in -- all
15 over the -- is there a defined dance floor?

16 INVESTIGATOR MARTIN: If there
17 was, I -- I didn't see it. There were patrons
18 just dancing in place. So, I couldn't
19 determine a defined dance floor.

20 MEMBER ALBERTI: So, I mean how
21 mobile -- when you say dancing, I think of
22 people maybe moving around a bit. Was that

1 happening or were they just moving in place?

2 INVESTIGATOR MARTIN: They're
3 moving in place. There's no break dancing or
4 line dancing or anything like that. What was
5 going on is pretty much dancing in place.

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

8 CHAIRPERSON MILLER: Mr. Jones.

9 MEMBER JONES: Thank you. Just a
10 quick follow up. I think I get it, but I just
11 want to make sure. So, a pocket. So,
12 sometimes you go to a club and people just
13 kind of click together. So, you have a group
14 of people that seem to be talking to each
15 other or socializing with each other and you
16 have another group of people that seem to be
17 talking and socializing with each other. They
18 could be right next to each other, but
19 naturally forming pockets of social
20 interaction.

21 Is that what you mean by a pocket
22 or are you just making up I'm going to draw a

1 line at the person with the red velvet coat
2 on? Right. And then, okay, starting from him
3 to the left and counting all these people and
4 then someone with a green starter jacket on.
5 I'm going to count everything from him to the
6 right or are you using the natural forming
7 clicks that kind of come up when you go to a
8 club?

9 INVESTIGATOR MARTIN: Well, that
10 particular night, I was -- I was going by
11 identification of -- of like a shirt. I -- I
12 see -- in that particular pocket, I see
13 someone with a red shirt or my next pocket is
14 a yellow shirt. I know I'm going to take it
15 up to that point.

16 MEMBER JONES: Okay.

17 INVESTIGATOR MARTIN: It was just
18 -- just pockets --

19 MEMBER JONES: Fair enough.

20 INVESTIGATOR MARTIN: -- of
21 people.

22 MEMBER JONES: Got it. Thank you.

1 Thank you, Madam Chair.

2 CHAIRPERSON MILLER: Okay.

3 Others?

4 MEMBER ALBERTI: No questions.

5 CHAIRPERSON MILLER: I have a
6 question. Okay. How long did it take for you
7 to do your count?

8 INVESTIGATOR MARTIN:
9 Approximately maybe two minutes or so.

10 CHAIRPERSON MILLER: Oh. Okay.
11 And do you know if any patrons were leaving
12 after you counted them?

13 INVESTIGATOR MARTIN: After I
14 counted, that I cannot say. Because the way
15 I came in the door, it's sitting to my left as
16 I'm perched on this ledge and so, once I --
17 once I passed the beginning point of where the
18 door was, I continued to move towards my
19 right. So, I -- I didn't pay attention to
20 anyone who was leaving at that point.

21 CHAIRPERSON MILLER: Okay. I
22 think that you said that you counted after --

1 ten minutes after the doorman gave you his
2 count?

3 INVESTIGATOR MARTIN: Correct.

4 CHAIRPERSON MILLER: So, the
5 doorman's count I believe that you testified
6 to was 205 and your count was 150.

7 INVESTIGATOR MARTIN: Correct.

8 CHAIRPERSON MILLER: Do you have
9 an opinion whether the difference in the
10 number of patrons is attributed to that number
11 leaving in ten minutes or to the un-
12 reliability of the 205 number?

13 INVESTIGATOR MARTIN: I took the
14 doorman for his word at -- at 205 and the --
15 the delayed response I think contributed to
16 the reduction of the numbers when I -- when I
17 completed my count.

18 CHAIRPERSON MILLER: Right. Okay.
19 I just thought you said that was ten though.
20 Ten minutes later.

21 INVESTIGATOR MARTIN: Yes.

22 CHAIRPERSON MILLER: Okay. Okay.

1 I don't have any other questions. Are there
2 questions based on the Board questions?

3 MS. GEPHARDT: I have questions.

4 CHAIRPERSON MILLER: You have
5 redirect?

6 MS. GEPHARDT: Yes.

7 CHAIRPERSON MILLER: Do you all
8 have any questions based on the Board's
9 questions?

10 MR. SUNG: A couple. Yes.

11 CHAIRPERSON MILLER: Okay. So,
12 why don't we hear from you and then we'll do
13 redirect.

14 MS. GEPHARDT: Okay. Who goes
15 first?

16 CHAIRPERSON MILLER: He can do.
17 Then you can do your redirect.

18 MS. GEPHARDT: Okay. Okay.

19 CHAIRPERSON MILLER: Okay.

20 RE CROSS EXAMINATION

21 MR. SUNG: Ms. Martin, is there an
22 approved methodology or standard practice

1 within ABRA that they train you on how to
2 count crowds?

3 INVESTIGATOR MARTIN: No, sir.

4 MR. SUNG: Just to confirm, you
5 said it took you two minutes to count the
6 crowd?

7 INVESTIGATOR MARTIN: Yes.

8 MR. SUNG: That's it. That's all
9 I have.

10 CHAIRPERSON MILLER: Okay.

11 MS. GEPHARDT: Oh. Okay.

12 REDIRECT EXAMINATION

13 MS. GEPHARDT: Ms. Martin,
14 opposing counsel mentioned something about
15 there being another individual out front who
16 is counting people who are leaving. Were you
17 aware of that person's presence or did you not
18 even see anybody?

19 INVESTIGATOR MARTIN: I -- I
20 wasn't aware of his presence. Because when I
21 was -- when I asked the question to Mr. Roller
22 how many people did he have inside and he said

1 he didn't know. he directed me to that -- this
2 particular doorman.

3 MS. GEPHARDT: So, when you looked
4 around, did you see any other person with a
5 clicker?

6 INVESTIGATOR MARTIN: No.

7 MS. GEPHARDT: Okay. What was the
8 lighting like inside that night?

9 INVESTIGATOR MARTIN: I call it
10 mood lighting. There was some pockets of
11 light that was, I remember, in the bar area or
12 somewhere towards the -- the back of the
13 establishment as well.

14 MS. GEPHARDT: Okay. Is the
15 lighting enough to be able to see people out
16 on the floor?

17 INVESTIGATOR MARTIN: Yes.

18 MS. GEPHARDT: Okay. And how
19 often -- with what frequency would you say
20 when you go to establishments you count
21 capacity?

22 INVESTIGATOR MARTIN: It's pretty

1 regular for me. I initiated a clicker on my
2 own for purchase. I purchased it with my own
3 money. Used to facilitate and aid me with the
4 -- with the counting.

5 MS. GEPHARDT: Are you saying that
6 -- do other ABRA investigators use these
7 clickers or are you the only one that uses
8 them?

9 INVESTIGATOR MARTIN: To my
10 knowledge, I'm the only one.

11 MS. GEPHARDT: Okay. Do you feel
12 like you had a good view of the entire floor
13 that night?

14 INVESTIGATOR MARTIN: Yes.

15 MS. GEPHARDT: Okay. All right.
16 Thank you. That's all I have.

17 CHAIRPERSON MILLER: Okay. Thank
18 you very much.

19 INVESTIGATOR MARTIN: Thank you.

20 (Whereupon, the witness was
21 excused.)

22 CHAIRPERSON MILLER: Do you have

1 any other witnesses?

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

3 CHAIRPERSON MILLER: Okay. All
4 right. Why don't we go to the Licensee then?

5 MR. SUNG: Yes. Thank you. We'd
6 like to call Ryan Roller to the stand.

7 CHAIRPERSON MILLER: Okay. Ryan.
8 What's his last name?

9 MR. SUNG: Roller R-O-L-L-E-R.

10 CHAIRPERSON MILLER: Roller.

11 Right. Okay. Would you raise your right
12 hand? I'll swear you in. Okay.

13 Whereupon,

14 RYAN ROLLER

15 was called as a witness by the Licensee after
16 having been first duly sworn, assumed the
17 witness stand and was examined and testified
18 as follows.

19 DIRECT EXAMINATION

20 MR. SUNG: Can you tell the Board
21 your full name?

22 MR. ROLLER: My name is Ryan R-Y-

1 A-N last name Roller R-O-L-L-E-R.

2 MR. SUNG: And how long have you
3 been a ABRA-licensed manager in D.C.?

4 MR. ROLLER: Since May of 2009 I
5 believe.

6 MR. SUNG: And how long have you
7 been with Mason Inn?

8 MR. ROLLER: Since June 1st of
9 2012.

10 CHAIRPERSON MILLER: I'm sorry.
11 June what?

12 MR. ROLLER: June 1st of 2012.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 MR. SUNG: Do you know what the
16 capacity at Mason Inn is?

17 MR. ROLLER: I do.

18 MR. SUNG: What is it?

19 MR. ROLLER: It is -- according to
20 our certificate of occupancy, it is 125.

21 MR. SUNG: And were you aware of
22 that on November 22nd, 2012?

1 MR. ROLLER: I was.

2 MR. SUNG: And on November 22nd,
3 did you have a procedure in place for
4 complying with the capacity?

5 MR. ROLLER: We do. Our security
6 staff is instructed. Outside the premises,
7 one doorman has an incoming clicker. He is
8 usually stationed just to the right of the
9 door. He is also responsible for checking all
10 identification coming into the establishment.

11 The second is to the left of the
12 door. He is responsible for people --
13 counting people leaving. He is also
14 responsible for people reentering the
15 establishment that have stepped outside for a
16 cigarette, to make a phone call, et cetera.

17 MR. SUNG: So, how do you
18 determine how many people -- how many
19 customers are inside?

20 MR. ROLLER: We take the clicker
21 on the right and subtract the amount of people
22 that have left on the clicker to the left at

1 the door. That gives us a net count of
2 patrons inside the establishment.

3 MR. SUNG: And are the doormen
4 instructed to notify you if the capacity
5 reaches a certain level?

6 MR. ROLLER: They are.

7 MR. SUNG: At what level?

8 MR. ROLLER: Typically when we get
9 to about 25 to 20 people of that level I'm
10 notified over the radio.

11 MR. SUNG: Twenty to 25 short of
12 that level or above that level?

13 MR. ROLLER: Short.

14 MR. SUNG: Okay. And what happens
15 when -- if the crowd -- if the number of
16 customers hits 125? What happens then?

17 MR. ROLLER: We hold -- we hold a
18 line outside. We hold the line outside.

19 MR. SUNG: How often does that
20 happen?

21 MR. ROLLER: Depending on the
22 season it can be rare. On that night, it

1 happened -- that week, I think that was the
2 only day of that week. I would say it
3 probably happens maybe two to three times a
4 month.

5 MR. SUNG: Okay. Do you remember
6 on November 22nd who was handling the clickers
7 outside?

8 MR. ROLLER: I do.

9 MR. SUNG: Who were they?

10 MR. ROLLER: The incoming clicker
11 was Igor Milosevic. He is also -- who is also
12 responsible for checking identification.

13 The out-coming clicker was Milan.
14 I believe his last name is Stankovich.

15 MR. SUNG: And do you remember an
16 assault occurring outside of Mason Inn that
17 day?

18 MR. ROLLER: An alleged assault.
19 Yes, I do.

20 MR. SUNG: And can you tell us
21 what happened after that when you learned of
22 it?

1 MR. ROLLER: Yes, I can. I was
2 outside when the alleged assault happened.
3 Unfortunately, we had a patron who -- who
4 proceeded to pull the weapon after he was
5 denied entry. He would not leave the door
6 area which is when he pulled the weapon and
7 tried to conceal it.

8 While we restrained him because he
9 had a weapon in hand, I dialed 911. As I
10 dialed 911, an on-duty 2nd District officer,
11 I believe it was Cuadra, happened to be
12 driving by. So, I actually flagged him down
13 and explained the situation to him.

14 MR. SUNG: What was the weapon?

15 MR. ROLLER: It was a knife, a
16 flip knife.

17 MR. SUNG: Now, when -- do you
18 remember when Investigator Martin came to
19 Mason Inn?

20 MR. ROLLER: I do.

21 MR. SUNG: Okay. Can you briefly
22 summarize what you and she discussed if

1 anything that night?

2 MR. ROLLER: We did. We -- we
3 discussed the alleged assault first. There
4 was some confusion as to what actually
5 happened based on what Officer Carter I
6 believe had told her who initially notified
7 ABRA based on what Officer Cuadra had been
8 told as he was the first on scene.

9 So, the original discussion we had
10 was, you know, who actually pulled the weapon
11 or not. Was it was one of our security staff
12 or was it a patron or, I'm sorry, a patron
13 denied -- who was denied entrance.

14 We established that afterwards the
15 investigators did enter the establishment and
16 proceeded to count patrons inside.

17 MR. SUNG: Did you watch as the
18 investigator counted the --

19 MR. ROLLER: I did.

20 MR. SUNG: -- folks who were left?
21 How long did it take?

22 MR. ROLLER: I -- I would say in

1 my estimation, it was between four to five
2 minutes of so.

3 MR. SUNG: And during that time,
4 did people leave Mason Inn?

5 MR. ROLLER: Yes. Yes.

6 MR. SUNG: Do you think it's
7 possible that 50 people left Mason Inn during
8 her count?

9 MR. ROLLER: I do. Especially
10 considering the count was from the left to the
11 right. The main -- the main and only entrance
12 actually of Mason Inn that is not an emergency
13 exit is to the left of where our vantage point
14 was.

15 MR. SUNG: Do you think it's also
16 possible that 50 people came in while she was
17 counting?

18 MR. ROLLER: No, I do not.

19 MR. SUNG: Now, did you ask Igor
20 and Milan what their counts were at that time?

21 MR. ROLLER: During which time?

22 MR. SUNG: When Investigator

1 Martin was there conducting a count or right
2 before she conducted her count?

3 MR. ROLLER: Not right before. I
4 was -- I -- I did instruct Investigator Martin
5 to speak with the doormen. She did only speak
6 with one. I was unfortunately providing my
7 identification and ABC manager's
8 identification to one of the officers who was
9 conducting his investigation on the alleged
10 assault.

11 MR. SUNG: Did you ever find out
12 what the net count, the difference between the
13 incoming clicker and the outgoing clicker was
14 when Investigator Martin first arrived?

15 MR. ROLLER: I did not. Not when
16 she first arrived. No.

17 MR. SUNG: Is it your
18 understanding that Mason Inn was over capacity
19 that evening at any time?

20 MR. ROLLER: I don't believe so.
21 No.

22 MEMBER SILVERSTEIN: What was that

1 you said?

2 MR. ROLLER: I said I don't
3 believe so. No.

4 MEMBER SILVERSTEIN: Thank you.

5 MR. SUNG: Since you've been
6 working there, have there been any changes to
7 the interior layout of Mason Inn so as to
8 increase occupancy?

9 MR. ROLLER: No, there have not.

10 MR. SUNG: Have there been any
11 changes to the exterior of Mason Inn to
12 increase capacity?

13 MR. ROLLER: No, there have not.

14 MR. SUNG: And since you've been
15 there, have there been any changes in format
16 at Mason Inn to increase the occupancy?

17 MR. ROLLER: No.

18 MR. SUNG: That's all the
19 questions I have.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Cross.

22 MS. GEPHARDT: Yes.

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CROSS EXAMINATION

MS. GEPHARDT: Your attorney or the attorney for the establishment mentioned that there was an assault that night and my question would be was it chaotic within the establishment and outside given that there was an assault?

MR. ROLLER: It -- it was not. There was -- first off, there was no assault actually committed. It was alleged assault because somebody had actually pulled a weapon.

Secondly, if you're familiar with the layout of the 2400 block of Wisconsin Avenue, there are three establishments within less than a tenth of a mile of each other. There's Town Hall down the street. Bourbon which is directly next door to it. Mason Inn where we are and there's actually Slate Wine Bar & Bistro which is directly next door to us that was closed at the time.

Because it was the night before Thanksgiving, there were many more people on

1 the block than on any normal given night.
2 There were some entering Mason. There were
3 some entering Bourbon and some entering Town
4 Hall.

5 If you're asking if Mason Inn was
6 chaotic outside, I would say yes, but only
7 because of how people were actually on the
8 street because of how many establishments are
9 there.

10 There's also Breadsoda down the
11 street which I know a number of people were
12 coming from at that time as well.

13 MS. GEPHARDT: What was the
14 environment like inside the establishment when
15 there was this incident or alleged incident
16 out front? What was the environment like
17 inside?

18 MR. ROLLER: It was honestly a
19 normal night at Mason Inn. There was a DJ
20 playing. People there to have fun, socialize,
21 dance. It was not chaotic inside though. No.

22 MS. GEPHARDT: Did people inside

1 become aware of what was going on outside?

2 MR. ROLLER: I'm not sure if they
3 became aware entirely of the situation, but
4 there were flashing lights outside. Yes. So,
5 they were aware there was a police presence
6 there.

7 MS. GEPHARDT: Would it be
8 possible that given the number of people
9 outside on the sidewalk and given the police
10 activity that the doormen could have lost
11 track that night of who was coming in and out?

12 MR. ROLLER: Yes, it's possible.

13 MS. GEPHARDT: And is it possible
14 that your attention was diverted since you
15 were dealing with lots of different things at
16 the time?

17 MR. ROLLER: At the time, yes, my
18 attention was diverted to preventing the
19 denied patron from entering -- from pulling
20 the knife. I was the first one to call out
21 that he had a weapon. I was also the first to
22 attempt to restrain him.

1 MS. GEPHARDT: Okay.

2 MR. ROLLER: I -- we did have --
3 while it occurred, one person did stay
4 stationed at the door to prevent people from
5 going in while myself, another person and I
6 believe Milan who was to the left who was
7 controlling the outside radioed for help and
8 we had a third person come out to assist us.

9 MS. GEPHARDT: Okay. So, would it
10 be fair to say that the capacity of your
11 establishment that night was unclear given the
12 chaos that was going on outside and the people
13 coming in and out?

14 MR. ROLLER: I would -- I would
15 not say it's unclear. No. When that incident
16 happened, we stopped letting people inside the
17 establishment so we could deal with what was
18 going on outside.

19 MS. GEPHARDT: Okay.

20 MR. ROLLER: If anything, people -
21 - the people coming out were not necessarily
22 clicked in or, I'm sorry, clicked out because

1 of Milan assisting me with the patron --

2 MS. GEPHARDT: Okay. And there
3 was one other question I had. Hold on one
4 second. Oh, is it customary for your
5 establishment to have two doormen, one
6 clicking in and one clicking out?

7 MR. ROLLER: Yes.

8 MS. GEPHARDT: All right. That's
9 all I have. Thank you.

10 CHAIRPERSON MILLER: Okay. Board
11 questions? Mr. Brooks.

12 MEMBER BROOKS: Yes. Thank you,
13 Madam Chair.

14 Mr. Roller, I just want to be sure
15 I understand all of your testimony. You
16 indicated that you thought it took Ms. Martin
17 four to five minutes --

18 MR. ROLLER: Yes, that -- yes.
19 That was my assumption. Yes.

20 MEMBER BROOKS: And within that
21 time, you said about 50 people left?

22 MR. ROLLER: I did not say that.

1 I said it was possible that 50 -- the question
2 was whether or not it was possible if 50
3 people could have left. I said it was. I
4 believe the follow-up question was could 50
5 people have come in and I had said no, because
6 we were at that point still holding the door.

7 MEMBER BROOKS: Okay. So, you
8 thought it was possible --

9 MR. ROLLER: It's possible that 50
10 people --

11 MEMBER BROOKS: -- that 50 people
12 left within four to five minutes?

13 MR. ROLLER: Yes, it could be.

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

16 CHAIRPERSON MILLER: Others? Mr.
17 Jones.

18 MEMBER JONES: Thank you, Madam
19 Chair. Mr. Roller, yes.

20 MR. ROLLER: Yes.

21 MEMBER JONES: All right. How
22 long have you been working at this

1 establishment in this capacity?

2 MR. ROLLER: Say that again.

3 MEMBER JONES: How long have you
4 been working at this establishment in your
5 current capacity?

6 MR. ROLLER: Since June 1st of
7 2012.

8 MEMBER JONES: June 1st, 2012.

9 MR. ROLLER: Yes.

10 MEMBER JONES: So, at the time of
11 the incident, it was roughly five months?

12 MR. ROLLER: Five and a half
13 months. Yes.

14 MEMBER JONES: Five and a half
15 months. Okay. Did you receive training
16 regarding the capacity?

17 MR. ROLLER: I did.

18 MEMBER JONES: You did. Okay.
19 What was that training? How did that -- how
20 did you receive that training?

21 MR. ROLLER: I received that
22 training through training with Mr. Brogan,

1 shadowing him as a manager. Having two
2 clickers outside with two people clicking it
3 out had been the policy prior to when I
4 arrived and it continues to be our policy.

5 MEMBER JONES: Okay. So, you
6 would say you are very comfortable and well-
7 versed in what the process was for maintaining
8 your capacity?

9 MR. ROLLER: Yes.

10 MEMBER JONES: All right. Okay.
11 So, you indicated that when you spoke with
12 Investigator Martin, you directed her to go
13 speak with the doormen?

14 MR. ROLLER: I did.

15 MEMBER JONES: Regarding capacity?

16 MR. ROLLER: Yes, I did.

17 MEMBER JONES: Okay. And why did
18 you do that again?

19 MR. ROLLER: Because I -- I was
20 dealing unfortunately with the MPD officers
21 that were there. I had just -- I had just
22 been asked for my identification and ABC

1 manager's license at the time. When she came
2 and asked capacity, I told her she -- she
3 needed to check with the doormen and I would
4 be over in just a minute or so.

5 MEMBER JONES: Okay. Did you
6 explain to her that she needed to speak with
7 both doormen or did you just say go talk to
8 the doorman?

9 MR. ROLLER: I -- I said doormen.
10 But, I -- I said -- I specified men not man.

11 MEMBER JONES: Okay. And you were
12 not in any position to explain to her enough
13 information regarding the process.

14 MR. ROLLER: Not at that -- not at
15 that moment. No.

16 MEMBER JONES: Okay. Igor was the
17 gentleman that was responsible for the
18 incoming clicker.

19 MR. ROLLER: Yes.

20 MEMBER JONES: And Milan?

21 MR. ROLLER: Milan was
22 responsible.

1 MEMBER JONES: For the outgoing
2 clicker?

3 MR. ROLLER: Yes.

4 MEMBER JONES: Can you help me
5 understand? Igor based on the testimony
6 provided by the investigator indicated that
7 the capacity at that current time was
8 approximately 205.

9 MR. ROLLER: No, that would be --
10 that was Milan --

11 MEMBER JONES: Milan.

12 MR. ROLLER: -- who she spoke
13 with. Yes.

14 MEMBER JONES: Okay.

15 MR. ROLLER: That had the outgoing
16 clicker.

17 MEMBER JONES: Milan indicated
18 that the count was 205?

19 MR. ROLLER: Yes.

20 MEMBER JONES: If he was
21 responsible for the outgoing clicker, why
22 would he -- how would he come to explain to

1 the investigator that the capacity was
2 currently at 205?

3 MR. ROLLER: I don't believe he
4 explained the capacity at 205. I believe he
5 showed the clicker to her.

6 MEMBER JONES: Okay. So, you
7 believe he did show the clicker to her?

8 MR. ROLLER: Yes.

9 MEMBER JONES: Okay. How do you
10 know what the count was that night?

11 MR. ROLLER: Based on the clickers
12 that we have outside.

13 MEMBER JONES: Okay. So, what
14 were the two clicker counts?

15 MR. ROLLER: At the time, I do not
16 recall.

17 MEMBER JONES: So, you had an
18 incoming clicker --

19 MR. ROLLER: Yes.

20 MEMBER JONES: -- and an outgoing
21 clicker?

22 MR. ROLLER: Yes.

1 MEMBER JONES: At what point do
2 you check capacity?

3 MR. ROLLER: I typically check
4 capacity every ten to 15 minutes throughout a
5 normal night.

6 MEMBER JONES: Okay. So, prior to
7 the assault --

8 MR. ROLLER: Yes.

9 MEMBER JONES: -- what was the
10 count the ten minutes prior to the time of the
11 assault?

12 MR. ROLLER: We were at -- we were
13 at 125 prior to that.

14 MEMBER JONES: You were exactly at
15 125?

16 MR. ROLLER: We were at 125
17 holding a line outside. Yes.

18 MEMBER JONES: And you knew that
19 based on what?

20 MR. ROLLER: Based on checking our
21 clickers outside.

22 MEMBER JONES: Okay. And you got

1 -- how does that process work? So, do you
2 call doorman one with the incoming clicker and
3 get a number from him?

4 MR. ROLLER: I -- I physically
5 walk outside and check both clickers.

6 MEMBER JONES: Okay. So, you walk
7 outside every ten to 15 minutes --

8 MR. ROLLER: I do.

9 MEMBER JONES: -- to verify --

10 MR. ROLLER: I do.

11 MEMBER JONES: Okay. So, when the
12 assault occurred, you were just holding the
13 door?

14 MR. ROLLER: We were. Yes.

15 MEMBER JONES: All right. Who was
16 keeping track of who left?

17 MR. ROLLER: It was -- it was
18 suppose to have been Milan, but he was
19 assisting me with the patron who had the
20 weapon and --

21 MEMBER JONES: He was assisting
22 you with the patron who had the weapon?

1 MR. ROLLER: Yes.

2 MEMBER JONES: Okay.

3 MR. ROLLER: We called for a
4 third. We called assistance over the radio
5 for a third while Igor held the door.

6 MEMBER JONES: So, Igor held the
7 door closed?

8 MR. ROLLER: Yes.

9 MEMBER JONES: All right.

10 MR. ROLLER: Did not hold it
11 closed. He held -- he held patrons from
12 entering.

13 MEMBER JONES: I'm sorry. He kept
14 people from entering the establishment.

15 MR. ROLLER: Yes.

16 MEMBER JONES: All right. So,
17 Milan had a count of 205 at the time the
18 investigator checked it. So, when the
19 investigator approached -- did the
20 investigator approached you at any point in
21 time regarding her concerns related to the
22 capacity?

1 MR. ROLLER: She did.

2 MEMBER JONES: Okay.

3 MR. ROLLER: She did. After we
4 spoke -- after we spoke about the assault and
5 I explained it to her, she then spoke with
6 Officer Carter, I believe, who had originally
7 called ABRA about the capacity issue. She
8 came and spoke with me while I was still
9 speaking with Officer Cuadra about what
10 happened. There was a sergeant who had
11 appeared on the scene as well. I don't recall
12 who. We were also -- you know, I talked to
13 him about if -- you know, if charges were
14 going to be pressed against the patron,
15 whether or not, what charges would be. If
16 charges could be pressed I suppose is the
17 correct wording.

18 MEMBER JONES: So, when she
19 expressed to you her concerns regarding
20 capacity, i.e., specifically when she
21 expressed to you that she had concerns that
22 you were over capacity, what did you do?

1 MR. ROLLER: At that point, that
2 was when to the best of my recollection we
3 entered the establishment with her clicker in
4 hand and Investigator Kofi, I can't remember
5 his last name, I apologize, where we walked
6 through the establishment. We came to a
7 middle bench and that was when they elevated
8 themselves on the bench and counted patrons.

9 MEMBER JONES: Okay. Was there a
10 reason why you didn't check with Igor and
11 Milan at that moment when she indicated to you
12 that she had a concern regarding the capacity
13 to confirm what the count was in your
14 establishment since that's your benchmark?

15 MR. ROLLER: I don't recall why.
16 Honestly, I don't recall why. It was -- there
17 was a lot going on. It was a very quick --
18 very quick between the time we talked about
19 capacity with Officer Carter present and the
20 time that we entered the establishment.

21 MEMBER JONES: Okay. So, then you
22 entered the establishment. You get on this

1 ledge area --

2 MR. ROLLER: Yes.

3 MEMBER JONES: -- and Investigator
4 Martin conducts a count.

5 MR. ROLLER: Yes.

6 MEMBER JONES: And she counts 150.

7 MR. ROLLER: Yes.

8 MEMBER JONES: Did she communicate
9 that to you?

10 MR. ROLLER: Yes, she did.

11 MEMBER JONES: So, you were aware
12 of the count that she came up with?

13 MR. ROLLER: Yes.

14 MEMBER JONES: Okay. Is there a
15 reason why you didn't go to your doormen at
16 that point in time to confirm what they
17 indicated the count was or did you?

18 MR. ROLLER: We did.

19 MEMBER JONES: You did?

20 MR. ROLLER: When we left the --

21 MEMBER JONES: Confirm the count.

22 MR. ROLLER: -- when we left the

1 establishment, we did. Yes.

2 MEMBER JONES: And what was the
3 count at that time?

4 MR. ROLLER: It -- I don't recall
5 over the clicker. I went on --

6 MEMBER JONES: So, she indicated
7 to you she counted 150. You checked with the
8 doormen.

9 MR. ROLLER: I told --

10 MEMBER JONES: Do you know what
11 the -- do you know that the count was
12 different from her 150? You say you don't
13 know what the number is. You don't recall the
14 number.

15 MR. ROLLER: I don't recall the
16 actual number.

17 MEMBER JONES: But, you don't --
18 you have no recollection as to whether or not
19 it was over or below the 150 that she
20 challenged you with?

21 MR. ROLLER: I -- when we -- when
22 the count was established at 150, I walked

1 outside and told my doormen that we -- that
2 they had counted 150 people and that we were
3 over capacity and we were still holding the
4 door at that point. So.

5 MEMBER JONES: Okay. And what did
6 they respond?

7 MR. ROLLER: Their response was --
8 I -- I don't recall the exact response, but I
9 mean we -- we began clearing patrons as best
10 as we could.

11 At that point, it was very close
12 to last call as well. There was also some
13 confusion at that point about whether or not
14 we had extended hours or not, but just after
15 that conversation, I had walked in and
16 actually hit the lights for the -- the end of
17 the night.

18 MEMBER SILVERSTEIN: You actually
19 what?

20 MR. ROLLER: Turned the lights --

21 CHAIRPERSON MILLER: Hit the
22 lights.

1 MR. ROLLER: -- on for the end of
2 the night. Yes.

3 MEMBER SILVERSTEIN: Okay.

4 MEMBER JONES: Igor and Milan,
5 these were the two that were assigned that
6 night. Are they typically the designees?

7 MR. ROLLER: Igor -- Igor is
8 always assigned to the outside. Milan no
9 longer works for us. But, Igor is always
10 responsible every night. He is our head of
11 security. He has that job title. He's paid
12 more than our other doormen. He's responsible
13 for checking all IDs coming into the
14 establishment and for collecting -- clicking
15 in, I'm sorry, people coming in.

16 MEMBER JONES: Okay. So, he does
17 the count as well as ID verification?

18 MR. ROLLER: Yes.

19 MEMBER JONES: Okay. What happens
20 if Igor needs to have a bio-break?

21 MR. ROLLER: It's typically me
22 that handles it then.

1 MEMBER JONES: So, what's the
2 process?

3 MR. ROLLER: We switch the
4 clicker. We physically hand the clicker off
5 to somebody. Typically me.

6 MEMBER JONES: You physically hand
7 the clicker off to somebody. Is that
8 somebody --

9 MR. ROLLER: It's -- it's
10 typically me. It can -- there's only one
11 other person that typically currently checks
12 IDs within the -- coming into the
13 establishment.

14 MEMBER JONES: So, it could be a
15 total of two other individuals?

16 MR. ROLLER: Yes.

17 MEMBER JONES: Okay. Yourself,
18 Igor and one other person have been given the
19 authority to check IDs?

20 MR. ROLLER: Yes.

21 MEMBER JONES: Okay. And,
22 therefore, it is three possible people that

1 could be keeping hold or track of the clicker
2 count --

3 MR. ROLLER: Yes, the incoming.
4 Yes.

5 MEMBER JONES: Incoming clicker.
6 Okay. Yes, I think that's all the questions
7 I have. Thank you, Madam Chair.

8 CHAIRPERSON MILLER: Thank you.
9 Others. Mr. Alberti.

10 MEMBER ALBERTI: Hi, Mr. Roller.
11 I presume that you have a standard set of
12 procedures for the establishment. Is that
13 correct?

14 MR. ROLLER: Yes, we do.

15 MEMBER ALBERTI: Okay. So, you
16 have a standard operating format.

17 MR. ROLLER: Yes.

18 MEMBER ALBERTI: And who defines
19 that?

20 MR. ROLLER: Myself and the
21 ownership.

22 MEMBER ALBERTI: Yourself and the

1 ownership. Okay.

2 Would that include things like
3 number of security, where they're stationed,
4 how many people are stationed at the front
5 door?

6 MR. ROLLER: Yes.

7 MEMBER ALBERTI: How ID checks are
8 done, whether you have one or two clickers at
9 the front door, when last call is done? All
10 of those sorts of things?

11 MR. ROLLER: Yes.

12 MEMBER ALBERTI: Is part of that
13 standard operating format how many people
14 you'll allow to be in the establishment at one
15 time?

16 MR. ROLLER: Well, we are -- I
17 mean we're governed by 125 being in the
18 establishment. Yes.

19 MEMBER ALBERTI: Well, that's a
20 standard.

21 MR. ROLLER: Yes.

22 MEMBER ALBERTI: All right. So,

1 hypothetically, if the owner said to you we're
2 going to allow in 150 people tonight, just
3 hypothetically, would that be a change from
4 your standard operating format?

5 MR. ROLLER: Hypothetically
6 speaking, I would have to say if I was the
7 manager on duty that I wouldn't allow it, but
8 something like that has never come up. So, I
9 don't necessarily know if I have your answer.

10 MEMBER ALBERTI: I didn't say
11 whether you would allow it. I asked would it
12 be a change from your standard operating
13 format?

14 MR. ROLLER: If -- yes, it would
15 be change. If hypothetically I was told to
16 let more patrons in than we were allowed to
17 have, then yes, that would be a change.

18 MEMBER ALBERTI: Thank you. I
19 have no further questions.

20 Mr. Jones has I think --

21 CHAIRPERSON MILLER: Mr. Jones.

22 MEMBER JONES: Thank you, Member

1 Alberti.

2 So, given that scenario, you have
3 a standard operating procedure. You indicate
4 that you go out and you check the count every
5 -- at a minimum of every 15 minutes.

6 MR. ROLLER: Yes.

7 MEMBER JONES: You've indicated
8 you were holding the door because Igor was on
9 the door because of the assault.

10 MR. ROLLER: Yes.

11 MEMBER JONES: Not because of
12 capacity?

13 MR. ROLLER: We were holding the
14 door because of the assault that happened
15 outside and the amount of people that were on
16 the street for safety. I mean it was
17 essentially for the safety of other people on
18 the street with how many people were on
19 Wisconsin Avenue between our establishment and
20 the two others.

21 MEMBER JONES: Right. But, you
22 weren't holding the door because you had

1 reached your 125 capacity?

2 MR. ROLLER: Well, we had. We
3 had. Yes. I -- so, yes.

4 MEMBER JONES: So, you were --

5 MR. ROLLER: We were at -- we were
6 at capacity inside previously. We had had a
7 line. At that point after the assault,
8 patrons were entering, but we were not letting
9 other people in at that time, at that exact
10 time because of the assault that occurred.

11 MEMBER JONES: I'm totally
12 confused on what you just said. So, let me
13 back up and break it down so I can understand
14 it.

15 So, at what point did you hold the
16 door because of capacity? At what time of the
17 evening was this?

18 MR. ROLLER: It -- it had been
19 prior to the assault that occurred.

20 MEMBER JONES: What time was the
21 assault?

22 MR. ROLLER: I believe it was

1 around 12:30 or so.

2 MEMBER JONES: Twelve-thirty or
3 so?

4 MR. ROLLER: Yes.

5 MEMBER JONES: Okay. So, at what
6 point did you receive the call on your radio
7 that you were at capacity?

8 MR. ROLLER: It at been prior to
9 that. Probably around midnight or so.

10 MEMBER JONES: Around midnight or
11 so and at that point, what does the protocol
12 call for you to do? So, you get that call.
13 You're saying you're within 25 people of your
14 capacity. What are you suppose to do? What
15 does the manual say?

16 MR. ROLLER: I went outside. I
17 checked the -- I checked our clickers, our
18 incoming count, our out-coming count. We let
19 20 -- you know, we went through the motions of
20 letting more people in.

21 MEMBER JONES: So, what did the
22 count say?

1 MR. ROLLER: We were at -- we were
2 at 125.

3 MEMBER JONES: So, you had 125
4 when you responded to the call --

5 MR. ROLLER: No.

6 MEMBER JONES: -- that you --

7 MR. ROLLER: No. No. No. I'm
8 sorry. Okay. I'm sorry. I misunderstood
9 you.

10 MEMBER JONES: Yes.

11 MR. ROLLER: Prior to that, we
12 were probably around -- between 110 and 115.
13 I went outside. I checked the clickers. We
14 let a few more patrons in. That's when we
15 proceeded to hold the line for the night.

16 MEMBER JONES: So, you got the
17 call that you were at 100. You went and
18 checked your clickers. At that point, you
19 were at 115 give or take.

20 MR. ROLLER: Yes.

21 MEMBER JONES: You let ten more
22 people in.

1 MR. ROLLER: Yes.

2 MEMBER JONES: Because you said
3 you were at 125.

4 MR. ROLLER: Yes.

5 MEMBER JONES: And then you
6 stopped and you held the door.

7 MR. ROLLER: Yes.

8 MEMBER JONES: And this was
9 sometime before 12:30.

10 MR. ROLLER: Yes.

11 MEMBER JONES: Okay. Did anyone
12 leave?

13 MR. ROLLER: Yes, and as people
14 left the establishment, others were allowed to
15 enter --

16 MEMBER JONES: Okay.

17 MR. ROLLER: -- based on a one
18 in/one out --

19 MEMBER JONES: From there, you
20 were able to hold it at 125?

21 MR. ROLLER: Yes.

22 MEMBER JONES: Then the assault

1 occurred?

2 MR. ROLLER: Yes.

3 MEMBER JONES: And Igor --

4 MR. ROLLER: Yes.

5 MEMBER JONES: -- was responsible
6 for holding the door to keep people from
7 coming in?

8 MR. ROLLER: Yes.

9 MEMBER JONES: Right. At that
10 point, the only thing that was allowed to
11 happen was people were allowed to leave.

12 MR. ROLLER: Yes.

13 MEMBER JONES: Okay. So, you
14 mention that there was a crowd out on the
15 street and that you held the door from the
16 standpoint of patron safety?

17 MR. ROLLER: Yes.

18 MEMBER JONES: Right. So, holding
19 the door from the standpoint of patron safety,
20 how does that help when there's an assault
21 going on --

22 MR. ROLLER: We were -- we were to

1 the -- if you're looking at Mason Inn from the
2 outside, we were to the right. The line to
3 enter Mason Inn was to the left.

4 At the time, the establishment
5 that was next door to us is closed. Had not
6 opened yet. So, there was nobody on that side
7 and obviously, we're -- we were the north --
8 the north-most bar at that point.

9 So, we were basically the last on
10 that street which is why it was easier to hold
11 the door out there. We didn't have people on
12 that side to the door where we had a line to
13 the left.

14 MEMBER JONES: Okay. So, you said
15 you were holding people against that side or
16 to that side --

17 MR. ROLLER: Yes.

18 MEMBER JONES: -- for safety
19 reasons due to the assault.

20 MR. ROLLER: Yes.

21 MEMBER JONES: And how did you
22 implement that? Did you have two of your

1 security people come from outside to tell
2 people --

3 MR. ROLLER: I had one person
4 arrive outside to assist us in restraining the
5 patron, but I physically instructed Igor to
6 hold people away from the door at that moment.

7 MEMBER JONES: Okay. And this was
8 roughly around 12:30? Between 12:30 and 1:00?

9 MR. ROLLER: Yes.

10 MEMBER JONES: Okay. So, you have
11 people standing outside.

12 MR. ROLLER: Yes.

13 MEMBER JONES: You're holding them
14 outside. The assault occurred. You're busy.
15 You're running around. This whole time Igor's
16 still holding the door. Correct?

17 MR. ROLLER: Yes.

18 MEMBER JONES: You haven't let
19 anybody else in?

20 MR. ROLLER: We have not. We did
21 not let anybody in until MPD showed up. Which
22 was -- I had called 911 and was able to flag

1 down an officer a few minutes later. So.

2 MEMBER JONES: So, you did leave
3 -- you let people in sometime after 1:00?

4 MR. ROLLER: Once -- yes, once MPD
5 was on scene and Milan was able to take his
6 spot back outside the door, then yes, we did
7 resume letting people in.

8 MEMBER JONES: Okay. And so, was
9 Investigator Martin still at the facility?

10 MR. ROLLER: She had not arrived
11 at the facility.

12 MEMBER JONES: She hadn't arrived
13 at the facility yet?

14 MR. ROLLER: Yes.

15 MEMBER JONES: Okay. So, now,
16 we've gotten through all of this and your
17 individual that keeps tracks of the outgoing
18 count wasn't counting.

19 MR. ROLLER: Yes.

20 MEMBER JONES: At this point. You
21 only know that you have the incoming count.

22 MR. ROLLER: We knew that we had

1 the incoming count and we attempt -- Igor
2 attempted to have a count of people that left
3 while all this was going on.

4 MEMBER JONES: Ah. That's the
5 missing piece. Now, I'm following. So, Igor
6 was now responsible for both ingress and
7 egress --

8 MR. ROLLER: Yes.

9 MEMBER JONES: -- of patrons at
10 the -- okay. So, did he have two counters?

11 MR. ROLLER: He did not.

12 MEMBER JONES: Okay. So, how was
13 he doing that? You sound like your process is
14 broken at this point because if you're relying
15 on the counters and Igor is now the guy that's
16 responsible for both incoming and out-coming
17 and he only has one counter, then how did you
18 reconcile?

19 MR. ROLLER: Well, he -- because
20 he was not letting people out or letting
21 people in I should say until people came out.

22 Fortunately, I've worked with Igor

1 for a very long time. Enough to know that
2 he's been doing it for, you know, ten to 15
3 years and can keep track of people that are
4 leaving the establishment.

5 He did it in his head, but I
6 trusted his -- his count.

7 MEMBER JONES: Got it. So, you
8 had no way of verifying it outside of trusting
9 Igor?

10 MR. ROLLER: Yes.

11 MEMBER JONES: Okay. Thank you.
12 Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Okay.
14 Others? I just have very few questions.

15 MR. ROLLER: Okay.

16 CHAIRPERSON MILLER: These
17 doormen, are they security or how would you
18 characterize them?

19 MR. ROLLER: I -- I refer to them
20 as security. I refer to all my -- all my
21 bouncers as you would put it as security. I
22 don't like the term doorman and I don't like

1 the term bouncer. Implies a negative
2 connotation. So.

3 CHAIRPERSON MILLER: Does Mason
4 Inn have a security plan?

5 MR. ROLLER: We do.

6 CHAIRPERSON MILLER: On file with
7 ABRA?

8 MR. ROLLER: Yes.

9 CHAIRPERSON MILLER: Okay. And
10 are the use of clickers in the security plan?

11 MR. ROLLER: To the best of my
12 knowledge, yes, they are.

13 CHAIRPERSON MILLER: Okay. And I
14 just want to confirm. It sounds to me that
15 since the assault or before the assault when
16 you -- when the establishment came to close to
17 capacity, that your doormen were paying
18 careful attention to --

19 MR. ROLLER: Yes.

20 CHAIRPERSON MILLER: -- the
21 capacity and how many people --

22 MR. ROLLER: Yes.

1 CHAIRPERSON MILLER: -- were
2 coming in and out.

3 MR. ROLLER: Yes.

4 CHAIRPERSON MILLER: Okay. Okay.
5 I don't have any other questions. Are there
6 questions based on the Board questions?

7 MR. SUNG: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: Well, doesn't Ms.
10 Gephardt get to go first.

11 CHAIRPERSON MILLER: No, she does
12 the redirect and wraps it all up.

13 MEMBER ALBERTI: Well, that's the
14 opposite of direct.

15 CHAIRPERSON MILLER: I'm sorry.

16 It's your witness. I'm sorry. Yes, Mr.
17 Alberti is correct. Ms. Gephardt can go first
18 and then you get the redirect.

19 MS. GEPHARDT: Hi.

20 CHAIRPERSON MILLER: Thank you,
21 Mr. Alberti.

22 RE CROSS EXAMINATION

1 MS. GEPHARDT: I just had a quick
2 question. When you were telling Board Member
3 Jones that Igor at one point was trying to do
4 both the in and the out, when was that again?

5 MR. ROLLER: It was --

6 MS. GEPHARDT: At what point
7 during the night?

8 MR. ROLLER: -- it was just after
9 the alleged assault had occurred to a point
10 prior to when the first MPD officer was on
11 scene.

12 MS. GEPHARDT: And at what point
13 did Ms. Martin and Mr. Apraku arrive?

14 MR. ROLLER: It was between 30 to
15 45 minutes after that.

16 MS. GEPHARDT: Okay. And at some
17 point did Igor get assistance again or --

18 MR. ROLLER: Yes.

19 MS. GEPHARDT: So, how long was
20 Igor doing this counting in and out?

21 MR. ROLLER: I would say probably
22 anywhere between five to ten minutes.

1 MS. GEPHARDT: Okay. All right.
2 That's all I have.

3 CHAIRPERSON MILLER: Okay.

4 REDIRECT EXAMINATION

5 MR. SUNG: Did any security staff
6 tell you that evening that Mason Inn was over
7 capacity?

8 MR. ROLLER: Over capacity, no.

9 MR. SUNG: Are you aware if anyone
10 entered who was not clicked?

11 MR. ROLLER: To the best of my
12 knowledge no.

13 MR. SUNG: Did any of the security
14 -- I already asked you that question. Sorry.

15 Now, you mentioned that after this
16 incident with someone pulling a knife people
17 were let in again.

18 MR. ROLLER: Yes.

19 MR. SUNG: When they were let in
20 was capacity exceeded at that time?

21 MR. ROLLER: I don't believe so.
22 No.

1 MR. SUNG: Okay. What makes you
2 say that?

3 MR. ROLLER: Because people had
4 left while no one was being allowed to enter
5 the establishment.

6 MR. SUNG: The person who's
7 clicking in and the person who's clicking out,
8 two separate security, do they communicate
9 with each other?

10 MR. ROLLER: Yes.

11 MR. SUNG: So, they don't
12 necessarily need you to tell them hey, we're
13 at capacity. Let's hold the line until
14 someone comes out.

15 MR. ROLLER: Yes.

16 MR. SUNG: And do you have any
17 reason to believe that Igor and Milan that
18 evening were not communicating with each other
19 what their counts where?

20 MR. ROLLER: I have -- nothing
21 leads me there. No.

22 MR. SUNG: Are you aware whether

1 prior to November 22nd security at Mason Inn
2 outside ever exceeded capacity of 125?

3 MR. ROLLER: No.

4 MR. SUNG: That's all the
5 questions I have.

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

8 MR. ROLLER: Thank you.

9 (Whereupon, the witness was
10 excused.)

11 CHAIRPERSON MILLER: Do you have
12 any other witnesses?

13 MR. SUNG: No.

14 CHAIRPERSON MILLER: Okay. Then
15 we're ready for closing I believe, Ms.
16 Gephardt, unless you have any other redirect
17 witnesses?

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

19 CHAIRPERSON MILLER: No. Okay.
20 So, we're ready for closing.

21 MS. GEPHARDT: Okay. Ladies and
22 gentlemen, you heard here today testimony from

1 several witnesses.

2 You heard through Ms. Martin that
3 on November the 22nd, 2012, ABRA investigators
4 arrived at the Mason Inn to investigate on an
5 assault or an alleged assault that had
6 occurred. While Ms. Martin was there in her
7 conversation with the doorman as well as
8 through her own clicker count, she came to the
9 conclusion that Mason Inn had exceeded its
10 capacity. Specifically, the doorman notified
11 her that he counted 205 persons in the
12 establishment and then in her count, she
13 proceeded to discover that there were 150
14 patrons which was in excess of, I guess, 25
15 patrons over the limit of 125 per the
16 certificate of occupancy which she viewed --
17 which Mr. Roller gave her a copy to view.

18 There are several reasons to
19 believe the credibility of Ms. Martin and that
20 is Ms. Martin has been an investigator for
21 some years. She uses her clicker to count the
22 capacity at various establishments in the

1 area. So, it's not like this was the first
2 time she had done it. She's familiar with it.
3 You heard that she could the floor. She had
4 a method that she had establishment of
5 counting pockets within the bar. She had
6 assistance from her co-investigator. She went
7 outside to talk to the doorman who gave her
8 information and let her know that the capacity
9 was at 205.

10 It's also important to note that
11 on this particular evening because of the
12 incident outside the bar, that things were
13 chaotic. Things were crazy. I mean there was
14 police. There were patrons on the sidewalk.

15 It's fair to say that -- while Ms.
16 Martin didn't see another person there with a
17 clicker, it's fair to say that the fact that
18 there were, according to the defendant, two
19 people out there with clickers, but it's fair
20 to say that they -- there was so much going on
21 they probably weren't coordinated. You know,
22 how many people are coming in? How many

1 people are coming out? It's easy to see why
2 they would get mixed up.

3 And even Mr. Roller testified that
4 he was distracted and that his attention was
5 diverted that night. So, it would be easy to
6 see why he would be not keeping track of the
7 people coming in and coming out of his
8 establishment because, of course, the police
9 and the assault and all that is taking
10 precedence on that evening.

11 Mr. Roller said that when he was
12 talking to Ms. Martin inside the establishment
13 she said to him I just counted 150 people and
14 he said that they went outside to notified the
15 doorman, but the doorman didn't say anything.
16 Neither did Mr. Roller. So, it seems that
17 there was confusion over how many people
18 really were in the establishment that evening.

19 Let's see. Furthermore, you heard
20 that at one point during the evening's events
21 that Igor was left alone and so, he was trying
22 to count people coming in and count people

1 going out and with all the people and the
2 chaos, it would be easy to understand how he
3 would lose track and how more people would be
4 let in and let out and why this establishment
5 would be over capacity at that time.

6 Furthermore, the Government argues
7 that for the violation here the charge is
8 actually you made the substantial change in
9 the operation of the establishment by
10 increasing the capacity of the establishment
11 in violation of D.C. Code 25-762(b)(1).

12 Counsel argues that this implies
13 that the establishment actually proactively
14 made a change to the establishment whether
15 they added on space, they added on a roof
16 deck, they did other types of things to
17 actually increase the size of the physical
18 properties of the establishment to allow for
19 more people.

20 However, that's not what the
21 statute targets. The statute targets any time
22 an establishment is allowing more people in to

1 their establishment than it is allowed per
2 their certificate of occupancy.

3 If we were to read it the way
4 counsel wants us to read it, it would never be
5 a violation to have your establishment
6 overcrowded.

7 So, therefore, the Government
8 argues based on the evidence that you have
9 heard that they be held liable for this
10 violation and that they be fined \$3,000.

11 CHAIRPERSON MILLER: Okay.

12 MR. SUNG: Thank you. This
13 statute is 25-762 and the Government's
14 attorney is correct. It does not -- actually,
15 I apologize. The statute doesn't imply that
16 there needs to be some sort of physical
17 change. It's in the plain language of the
18 statute.

19 As I'm sure the Board is aware,
20 the first principle of statutory construction
21 is you look at the plain meaning of the words
22 of statute and you look at the natural meaning

1 of the words. If there's an ambiguity, then
2 you start talking about what does this mean,
3 but the statute is very clear.

4 It states that before a licensee
5 may make a change in the interior or exterior
6 or a change in a format, it must get approval
7 of the Board and in determining whether the
8 changes are substantial, the Board shall
9 consider whether the changes would increase
10 the occupancy of the licensed establishment.

11 That's Subsection 1 and it lists
12 18 other factors that may be considered by the
13 Board. But, the one that we're concerned with
14 today is Subsection 1 which is increasing the
15 capacity.

16 So, you need two components to
17 find a violation of the statute, an increase
18 in the occupancy accompanied by either a
19 change in the interior, the exterior or a
20 change in format and I submit to that the
21 evidence does not satisfy the first component.

22 The investigator testified that

1 she had been to Mason Inn before on several
2 occasions and that upon visiting Mason Inn on
3 November 22nd, she did not notice an interior
4 change that would increase the occupancy of
5 the venue.

6 She also testified that there was
7 no exterior space. So, that doesn't apply.

8 And Mr. Roller testified that in
9 the time that he's been there, there's been no
10 change in format of Mason Inn. It's been the
11 same business and he also confirmed that there
12 was no change in the interior layout.

13 So, I submit to you, the Board,
14 that there is no violation of 25-762.

15 And to counter the Government's
16 counsel that well, that means any venue can
17 always exceed capacity and not be in
18 violation. Well, that's true for this
19 statute, but there are other statutes that
20 address being over capacity. So, we're here
21 for the violation of this section and I submit
22 that there is no violation that's been

1 established.

2 I believe what needs to be shown
3 is some sort of permanent change or some sort
4 of pattern of conduct, prior instances where
5 Mason Inn was found to be in excess of its
6 capacity, but there's been no such testimony
7 here today.

8 Now, if we're actually going to go
9 to the facts of the case, I would simply say
10 that I think the Board can exercise common
11 sense and realize what a difficult challenge
12 it is to be trying to conduct a count of a
13 moving mass of people exceeding 100 people.
14 I think the only way to accurately count is at
15 the entry point. Count the people coming in
16 and count the people going out and you take
17 the difference.

18 And that's the testimony of Mr.
19 Roller today. That's been the protocol ever
20 since he's worked there. That was the
21 protocol there tonight. He checked and when
22 he checked, the club was -- the bar was never

1 over capacity and the protocol was followed.

2 And finally, there was an instance
3 where Igor was doing it in his head and
4 counsel tried to characterize that as being a
5 very difficult task. It's not very difficult.
6 You let one person out. You let one person in
7 and that count stays the same.

8 So, for all these reasons, I ask
9 the Board to find that there was no violation
10 of the statute.

11 Thank you.

12 CHAIRPERSON MILLER: Okay. Thank
13 you very much.

14 At this point, then I'm going to
15 close the record in this case and ask parties
16 if they want to file proposed findings of
17 facts and conclusions of law.

18 MS. GEPHARDT: No, we'll waive.

19 MR. SUNG: Are you asking if want
20 findings of fact and --

21 CHAIRPERSON MILLER: If you would
22 like to file them for the Board's

1 consideration.

2 MR. SUNG: Well, I would like to
3 brief the matter -- brief the law if the Board
4 wants further assistance in interpreting the
5 law.

6 CHAIRPERSON MILLER: Okay. The
7 Board's not seeking further assistance. The
8 law provides the parties with a right to file
9 proposed findings of fact and conclusions of
10 law.

11 Most parties in these show cause
12 cases don't do that. But, you do have that
13 right and that's why I am just offering that
14 to you if you would like to do the --

15 MR. SUNG: Yes, I would like to
16 brief the court -- brief the Board with
17 findings of fact and conclusions of law.

18 CHAIRPERSON MILLER: Okay. So,
19 then what's going to happen -- you still --
20 Ms. Gephardt, now that the other side wants
21 to, do you want to leave that open for
22 yourself as well or no?

1 MS. GEPHARDT: Yes, I'll leave it
2 open.

3 CHAIRPERSON MILLER: Okay. So,
4 what happens is this hearing has been
5 transcribed by a court reporter and the
6 transcript is usually available within a
7 couple of weeks and I understand that our
8 legal staff will probably email it to you and
9 then you will have 30 days from that point to
10 file proposed findings of fact and conclusions
11 of law and you will need to serve them on the
12 Board and opposing counsel. Okay.

13 MR. SUNG: Thank you.

14 CHAIRPERSON MILLER: All right.
15 So, and then after the Board gets those
16 findings of facts and conclusions of law,
17 we'll then deliberate and issue an order
18 within 90 days of that point. Okay.

19 So, that concludes this case. I'm
20 only going to now read the instructions and
21 have the Board vote on deliberation of this
22 case in closed session as provided under the

1 Open Meetings Act for adjudication cases.

2 As Chairperson of the Alcoholic
3 Beverage Control Board for the District of
4 Columbia and in accordance with Section 405 of
5 the Open Meetings Amendment Act of 2010, I
6 move that the ABC Board hold a closed meeting
7 for the purpose of seeking legal advice from
8 our counsel on Case Number 12-251-00368, Mason
9 Inn per Section 405(b)(4) of the Open Meetings
10 Amendment Act of 2010 and deliberating upon
11 this case for the reasons cited in Section
12 405(b)(13) of the Open Meetings Amendment Act
13 of 2010.

14 Is there a second?

15 MEMBER SILVERSTEIN: Second.

16 CHAIRPERSON MILLER: Mr.

17 Silverstein has seconded the motion. I'll now
18 take a roll call vote on the motion now that
19 it's been seconded. Mr. Brooks?

20 MEMBER BROOKS: I agree.

21 CHAIRPERSON MILLER: Mr. Alberti?

22 MEMBER ALBERTI: I agree.

1 CHAIRPERSON MILLER: Ms. Miller
2 agrees. Mr. Silverstein?

3 MEMBER SILVERSTEIN: I agree.

4 CHAIRPERSON MILLER: Mr. Jones?

5 MEMBER JONES: I agree.

6 CHAIRPERSON MILLER: It appears
7 that the motion has passed by a 5-0-0 vote.

8 I hereby give notice that the ABC
9 Board will hold a closed meeting in the ABC
10 Board conference room upon receipt of the
11 proposed findings of facts and conclusions of
12 law from the parties pursuant to the Open
13 Meetings Amendment Act of 2010 and issue an
14 order within 90 days of such receipt.

15 Okay. So, that does conclude the
16 case at this point.

17 Thank you very much.

18 MS. GEPHARDT: Thank you.

19 MR. SUNG: Thank you.

20 (Whereupon, at 4:09 p.m., the
21 hearing was adjourned.)

22

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