

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD

4 - - - - - X
5 IN THE MATTER OF: :
6 Daci Enterprises, LLC t/a :
7 Dacha Beer Garden : Case #
8 1600 7th Street, NW : 15-CMP-00223
9 License #92773 : Hearing
10 Retailer DT : (Status)
11 ANC 6E :
12 Substantial change in operation :
13 without board's approval, :
14 violation of settlement agreement, :
15 substantial change in operation :
16 (no summer garden endorsement) :
17 - - - - - X

18 Wednesday, October 28, 2015

19 Whereupon, the above-referenced matter
20 came on for hearing at the Alcoholic Beverage
21 Control Board, Reeves Center, 2000 14th Street,
22 N.W., Suite 400S, Washington, D.C. 20009.

1 CHAIRPERSON:

2 RUTHANNE MILLER, Presiding

3

4 BOARD MEMBERS:

5 MICHAEL SILVERSTEIN

6 JAMES SHORT

7 HERMAN JONES

8 HECTOR RODRIGUEZ

9 NICK ALBERTI

10

11 ALSO PRESENT:

12 AMY SCHMIDT, ESQ.,

13 on behalf of District of Columbia

14 ANDREW KLINE, ESQ.

15 ILYA ALTER

16 on behalf of the Licensee

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

2 CHAIRPERSON MILLER: Are you all ready to
3 go forward on the second one?

4 MS. SCHMIDT: Yes.

5 MR. KLINE: We are, yes.

6 CHAIRPERSON MILLER: Okay. All right.
7 Then I'm calling Case Number 15-CMP-00223, Dacha
8 Beer Garden, located at 1600 7th Street,
9 Northwest, License Number 92773 in ANC 6E.

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

13 MR. KLINE: Good afternoon. Andrew Kline
14 on behalf of the Licensee.

15 MR. ALTER: Ilya Alter, for the Licensee.

16 CHAIRPERSON MILLER: Okay. Good
17 afternoon. Are there any preliminary matters on
18 this case?

19 MS. SCHMIDT: Yes. The Government is
20 amending the charge -- is amending the notice to
21 dismiss -- to delete charge number 3.

22 CHAIRPERSON MILLER: Okay.

1 MR. KLINE: And we have no objection.

2 CHAIRPERSON MILLER: Okay. All right.
3 Then, are you ready to proceed with an opening
4 statement, Ms. Schmidt?

5 MS. SCHMIDT: Yes.

6 OPENING STATEMENT

7 MS. SCHMIDT: In this case, the
8 Government -- the evidence will show that on
9 April 18th, 2015, on Saturday night, based on a
10 complaint of overcrowding, Investigator John
11 Sureo and then Supervising Investigator Craig
12 Stewart went over to the Dacha Beer Garden,
13 located at 1600 7th Street, Northwest, in the
14 District of Columbia.

15 When they got there, they saw -- again,
16 they went in and they did a head count. And they
17 saw clickers, and the clickers showed over 400
18 patrons. And they met the owner, Ilya Alter.
19 And again, they spoke to the owner, and he showed
20 them his license. And the license and the fact
21 that it only allowed 126 people in the
22 establishment and that --

1 And they also went over the settlement
2 agreement with them, which said that they could
3 only be 100 people -- that only 100 people in the
4 establishment at any time.

5 And yet, there were more -- yet, as the
6 evidence will show through the pictures and
7 through the testimony, there were more than 126
8 people at the establishment at that time.

9 CHAIRPERSON MILLER: Okay. Mr. Kline, do
10 you wish to make an opening statement?

11 MR. KLINE: We'll reserve.

12 CHAIRPERSON MILLER: Okay. All right,
13 Ms. Schmidt. Your first Witness.

14 MS. SCHMIDT: The Government calls John
15 Suero.

16 CHAIRPERSON MILLER: Good afternoon.

17 MR. SUERO: Good afternoon.

18 CHAIRPERSON MILLER: Do you swear to tell
19 the truth, the whole truth, and nothing but the
20 truth?

21 MR. SUERO: I do.

22 CHAIRPERSON MILLER: Thank you.

1 Whereupon,

2 JOHN SUERO

3 was called as a witness and, having been first
4 duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. SCHMIDT:

8 Q Investigator Suero, would you please
9 state your name for the record?

10 A Investigator John Suero.

11 Q And by whom are you employed?

12 A The Alcoholic Beverage Regulation
13 Administration.

14 Q And in what capacity are you employed?

15 A I'm an investigator.

16 Q And how long have you been an
17 investigator?

18 A Since June the 3rd of 2013.

19 Q And drawing your attention to April 18th,
20 2015, at approximately 8:18 p.m., were you at the
21 Dacha Beer Garden?

22 A At 7:17 p.m., I was.

1 Q At 7:17. And why were you there?

2 A I, along with Supervisory Investigator
3 Craig Stewart, were there in response to citizens
4 complaining of overcrowding at Dacha Beer Garden.

5 Q And what did you see when you were there?

6 A Extremely large number of people within
7 the confines of Dacha Beer Garden.

8 Q And how did you know -- how many people
9 were there? How were you able to determine how
10 many people there were there?

11 A I actually walked through and did a head
12 count. And I counted over 400 persons there.
13 Also, we found a -- two metal clickers that were
14 hanging on the fence of the Beer Garden, one
15 indicating 400 persons, one indicating 17.

16 CHAIRPERSON MILLER: I'm sorry.

17 MR. SILVERSTEIN: What was the second?

18 CHAIRPERSON MILLER: Yeah. We didn't
19 hear the second one.

20 [Cross-talk.]

21 THE WITNESS: One said 400, and one said
22 17.

1 CHAIRPERSON MILLER: Seventeen?

2 THE WITNESS: Yes, ma'am.

3 MS. SCHMIDT: And for the purposes of
4 this hearing, the Government will be using
5 exhibit numbers which have been attached to the
6 case report in this case, Number 15-CMP-223, as
7 prepared by ABRA.

8 CHAIRPERSON MILLER: Thank you.

9 BY MS. SCHMIDT:

10 Q And drawing your attention to Exhibit
11 Number 8, what is that?

12 [Pause.]

13 THE WITNESS: Exhibit Number 8 is a
14 photograph I took of the clickers that were
15 hanging on the -- by the fence there at the
16 entrance of Dacha Beer Garden on that date and
17 time.

18 MS. SCHMIDT: And just housekeeping for a
19 second. And Exhibit Number --

20 BY MS. SCHMIDT:

21 Q Drawing your attention to Exhibit Number
22 5, can you tell the board what that is?

1 A Exhibit Number 5 is a photocopy of Dacha
2 Beer Garden's ABC License.

3 Q And what is the capacity listed on that?

4 A The capacity listed on the license is
5 126.

6 Q And then, Exhibit Number 9.

7 [Pause.]

8 THE WITNESS: Exhibit Number 9 is a copy
9 of their settlement agreement.

10 BY MS. SCHMIDT:

11 Q And how many patrons does the settlement
12 agreement say that Dacha Beer Garden may have?

13 A Settlement agreement indicates that they
14 can have no more than 100 persons seated at the
15 Beer Garden at any given time.

16 Q And on the last page of that settlement
17 agreement, who signed on behalf of Dacha? So
18 it's amended agreement.

19 A Looking for the page.

20 Q It's after the page of the board's
21 signatures.

22 A Ilya Alter.

1 Q And do you know who Mr. Alter is?

2 A He's the gentleman we spoke to and
3 identified himself as the owner when we were at
4 Dacha Beer Garden. He's seated to the left of
5 Mr. Kline.

6 Q Okay. Okay. So going back to that
7 night, to the night of April 18th, did you speak
8 -- so you spoke to Mr. Alter that night?

9 A We did. He was by the entrance when we
10 got there.

11 Q And what was the nature of the
12 conversation?

13 A We advised Mr. Alter why we were there,
14 again, since we had previously seen him regarding
15 the same issues. We indicated that --

16 Q When you said -- okay, back. So, had you
17 been there -- so you've been there -- were you
18 there before?

19 A I was.

20 Q And when was the last time you were there
21 before?

22 A I'm trying to recall the date. It was

1 also in April. It would have been a Thursday.
2 Our first time myself and Supervisor Investigator
3 Stewart were there, again for a complaint of
4 overcrowding by citizens who called us.

5 Q And were you aware if ABRA had been there
6 since you've been there?

7 A Since the time that myself and Supervisor
8 Stewart were there, investigators Brashears and
9 Peru had been there as well.

10 Q Okay. So what was the nature of the
11 conversation? Going back to that conversation
12 with Mr. Alter.

13 A We again advised Mr. Alter that he was
14 clearly over capacity, that his license clearly
15 stated the capacity was 126, that if he wanted to
16 make a change to that, he would have to approach
17 ABRA and through the proper channels and formally
18 make that request.

19 Q And what did he say when you said he was
20 over that capacity?

21 A Well, we walked with him, again, to the
22 area of the bar, where he maintains his licenses.

1 And as he showed us the license and brought down
2 a certificate of occupancy, he showed us that the
3 certificate of occupancy indicated 461 and
4 advised us that his attorney had advised him that
5 he could use that number on that certificate of
6 occupancy as the amount of people that he is
7 allowed to have within the confines of the Dacha
8 Beer Garden.

9 Q And what -- did you respond to that?

10 A We did. The response was that his
11 alcohol license clearly stated 126 and that he
12 must abide by that until that change is made by
13 ABRA.

14 I also indicated in the certificate of
15 occupancy that he showed us, which is my Exhibit
16 Number 7, under the addresses that it has on the
17 certificate of occupancy, it says, "tavern with
18 accessory food service, summer garden, with 126
19 seats."

20 It indicates 461 total occupant load.
21 Beneath that, it says, "will also utilize 1602
22 7th Street, Northwest, for kitchen and restaurant

1 purposes." We indicated to him that this
2 certificate of occupancy has added a building.

3 Therefore, the number that he is using at
4 461 included that other building; however, the
5 license that ABRA has provided him says 126. The
6 certificate of occupancy clearly states that the
7 summer garden is still 126.

8 Q And what did he do as a result of your
9 speaking to him?

10 A He indicated that he was advised that the
11 occupancy load he needed to go by was the number
12 on the certificate of occupancy.

13 Q And so, what did he do that night,
14 though?

15 A Well, after we spoke at length about the
16 safety issues with those many people within a
17 confined space, he had his door person, security
18 person not allow anymore persons to enter. And
19 after some time, we stayed there, myself and
20 Supervisor Stewart, and the number of persons
21 that were at the establishment were reduced.

22 Q When you went there that evening, was

1 there a line to get in?

2 A There was.

3 Q How long of a line was that?

4 A It wasn't all the way around the block.
5 But you could go from the entrance of the
6 establishment back toward Q Street, 7th and Q,
7 and a little bit past that.

8 MS. SCHMIDT: No further questions at
9 this time.

10 CHAIRPERSON MILLER: Okay. Others?
11 Sorry, Mr. Kline?

12 MR. KLINE: I don't have any questions
13 for the Witness.

14 CHAIRPERSON MILLER: Okay. Board
15 members?

16 [No audible response.]

17 CHAIRPERSON MILLER: I just have a
18 question about Exhibit 7, which is this
19 certificate of occupancy.

20 THE WITNESS: Let me get back to that.
21 Yes, Madam Chair.

22 CHAIRPERSON MILLER: So, it says,

1 "description of occupancy" -- anyway, in relevant
2 part, after summer garden, and it says "with 126
3 seats." And then it says, comma -- is that "461
4 total occupant load"?

5 THE WITNESS: Yes, ma'am.

6 CHAIRPERSON MILLER: "Restaurant and
7 public space purposes." Does that 126 only refer
8 to seats as opposed to standing room? Or how do
9 you explain? Can you elaborate on your
10 interpretation of that phrase, 126 seats?

11 THE WITNESS: My understanding from DCRA
12 is that that number, 128 [sic], although it says
13 "seats," it actually means people. They're
14 counting the amount of people that can be in that
15 space.

16 And so, what they've essentially done
17 here, from what I can determine, is they've
18 assigned the summer garden as 126 persons.
19 Because they've added a building which they're
20 calling a restaurant in this, they're adding a
21 total of 461 that includes the other building,
22 which is 1602 7th Street, which has a kitchen and

1 restroom facilities.

2 CHAIRPERSON MILLER: So, do you interpret
3 that 461 as allowing more than 126, but only in
4 that other building?

5 THE WITNESS: That would be my
6 interpretation. They specifically, very clearly
7 state the summer garden with 126; 461 total, and
8 then added the word "restaurant" for -- the Dacha
9 Beer Garden is not a restaurant, it's a tavern,
10 which it clearly states in this document as well.

11 So it would seem to me, in effect,
12 identifying two different spaces, a tavern and a
13 restaurant, the restaurant being the building
14 next door.

15 CHAIRPERSON MILLER: Is there another
16 restaurant in the building? I mean, is there a
17 restaurant in the building?

18 THE WITNESS: Frankly, I've never been in
19 the other building.

20 CHAIRPERSON MILLER: Oh.

21 THE WITNESS: I'm presuming they have a
22 kitchen that they use and, apparently, restrooms.

1 And it would seem that these, DCRA classified
2 that building as a restaurant. I can't advise
3 why.

4 CHAIRPERSON MILLER: Okay. It's probably
5 here, but can you identify for me when this
6 certificate of occupancy was issued?

7 THE WITNESS: The certificate of
8 occupancy, according to what's on the form, says
9 it was issued April the 13th of 2015.

10 CHAIRPERSON MILLER: Okay. Thank you.

11 MR. SILVERSTEIN: Of?

12 THE WITNESS: 2015, this year.

13 MR. SILVERSTEIN: Thank you.

14 CHAIRPERSON MILLER: Okay. Other board
15 members? Mr. Alberti.

16 MR. ALBERTI: Mr. Short, go ahead.

17 MR. SHORT: No, go ahead, Alberti.

18 MR. ALBERTI: That's all right. I'll
19 wait.

20 CHAIRPERSON MILLER: Mr. Short.

21 MR. SHORT: Yeah. Again, in our ABRA and
22 ABC Code 25761, substantial changes in operation

1 must be approved. So if they got a certificate
2 in 2015 from the Department of Consumer and
3 Regulatory Affairs, they would still have to go
4 before ABRA to have it approved for a -- do our
5 part there, even with the C of O. Is that
6 correct?

7 THE WITNESS: That's my understanding,
8 sir, yes.

9 MR. SHORT: Is that the law?

10 THE WITNESS: I believe it is.

11 MR. SHORT: Thank you. That's all I had,
12 Madam Chair.

13 CHAIRPERSON MILLER: Mr. Alberti?

14 MR. ALBERTI: Okay. So, I want to make
15 sure I'm clear here. So I'm looking at the C of
16 O, Exhibit 7. And I think as you read earlier,
17 it says, the description of occupancy says --
18 would you read what it says? Just very slowly
19 read out what it says under "description of
20 occupancy," for me, please.

21 THE WITNESS: Of course. "Tavern" -- I
22 believe it says, "bar tavern" --

1 MR. ALBERTI: Bar-slash-tavern?

2 THE WITNESS: "With accessory food
3 service," in parentheses, "summer garden, with
4 126 seats, 461 total occupant load restaurant for
5 public space purposes." Underneath, "This will
6 also utilize 1602 7th Street, Northwest, for
7 kitchen and restroom purposes."

8 MR. ALBERTI: Okay. What is 1602?

9 THE WITNESS: It's the building that's
10 adjacent to that open area Dacha is using.

11 MR. ALBERTI: Right. What's your
12 interpretation when it says -- it says, in
13 parentheses, "summer garden with" -- and then it
14 says "with 226 seats."

15 MR. KLINE: Object.

16 MR. ALBERTI: Pardon?

17 MR. KLINE: Sorry. I thought you were
18 finished; I'm sorry.

19 MR. ALBERTI: Would your interpretation
20 be -- what's your interpretation of the area that
21 they were describing at -- what's your
22 interpretation of the area to which they're

1 referring, they're referencing the 126 seats?

2 MR. KLINE: Objection as to what his
3 interpretation is. He's not an expert. And I
4 don't know from what he would make such an
5 interpretation.

6 MR. ALBERTI: Well --

7 CHAIRPERSON MILLER: I'm going to
8 overrule that, because I think we did --

9 MR. ALBERTI: Can I speak to that?

10 CHAIRPERSON MILLER: All right. I was
11 overruling it.

12 MR. ALBERTI: He deals with -- this
13 investigator deals with C of O's all the time in
14 his job. So I think he probably has some
15 understanding of what DCRA is describing.

16 CHAIRPERSON MILLER: Were you asking him
17 how he interprets it? Because I think he does
18 have to look at documents like this and interpret
19 them.

20 MR. ALBERTI: Yeah.

21 CHAIRPERSON MILLER: So if you're asking
22 him, I don't see any problem with that.

1 THE WITNESS: My interpretation is that
2 it specifically is speaking of 126 as the
3 capacity for the summer garden, which is the area
4 inside the fence that Dacha Beer Garden is using
5 for their business.

6 MR. ALBERTI: The area inside the fence?

7 THE WITNESS: Yes.

8 MR. ALBERTI: Would that be indoor or
9 outdoor area?

10 THE WITNESS: It's outdoor.

11 MR. ALBERTI: Okay. Do you know what the
12 -- well, all right. Okay. Okay. I'll leave
13 that at that.

14 [Pause.]

15 MR. ALBERTI: And you're not aware that
16 there had been any approval to change the license
17 total occupancy of 126 persons?

18 THE WITNESS: I did not find any such
19 approval in any of the records for Dacha Beer
20 Garden.

21 MR. ALBERTI: Okay. So your
22 understanding as an investigator, because you

1 have -- I mean, you have to go out there and do
2 enforcement, all right?

3 THE WITNESS: Yes, sir.

4 MR. ALBERTI: So, when a license says 126
5 people, does it make it -- does it make a
6 distinction between seated and standing? It just
7 said --

8 THE WITNESS: It says 126 as their total
9 capacity. That's what we view that ABC License
10 as actually telling us.

11 MR. ALBERTI: All right.

12 THE WITNESS: The ABRA, the board has
13 decided that 126 people is the most you can have
14 at that location, period.

15 MR. ALBERTI: Okay. Thank you.

16 And you did a count, 400 people?

17 THE WITNESS: Over 400, certainly did.

18 MR. ALBERTI: Over 400 people.

19 THE WITNESS: And might I say, that was
20 just the standing. There were over 100 sitting.

21 MR. ALBERTI: Well, I was going to ask
22 you that. Did you count the number of seated

1 people?

2 THE WITNESS: I did.

3 MR. ALBERTI: And what was that?

4 THE WITNESS: It was over 140, and then I
5 stopped counting.

6 MR. ALBERTI: Over 140. All right. Do
7 you remember how many -- we see benches in your
8 exhibits here. Well, benches -- we see picnic-
9 table-style pages in your exhibits. Do you have
10 any ideas, any recollection of how many there
11 were in the establishment?

12 THE WITNESS: I can only tell you that it
13 was extremely crowded. I couldn't give you an
14 exact number per table. But there was a lot of
15 people sitting that day in that location.

16 MR. ALBERTI: Okay. I mean, these pages
17 -- you know, the exhibits look like it was pretty
18 dense concentration of people. Was there any
19 area which had a much lesser density of people in
20 it?

21 THE WITNESS: It was dense throughout.
22 It was difficult to walk from the entrance just

1 to the bar area was just central to the space.
2 It's not a great, large space. So it took some
3 time just to get through the people to get to
4 that bar.

5 MR. ALBERTI: Okay. So there wasn't --

6 THE WITNESS: And back again.

7 MR. ALBERTI: So is it fair to say that
8 what you're telling me is that there wasn't any
9 area of that -- any portion of that outdoor area
10 that had, was vacant of people or had very few
11 people in it?

12 THE WITNESS: No, sir, there was not.

13 MR. ALBERTI: All right. Thank you.

14 I'll pause right now. Thank you.

15 THE WITNESS: Yes, sir.

16 CHAIRPERSON MILLER: Mr. Jones.

17 MR. JONES: Thank you, Madam Chair.

18 Investigator, in Exhibit 3, can you take
19 a look at that for me?

20 THE WITNESS: Yes, sir.

21 MR. JONES: Can you describe the vantage
22 point, once you get to that Exhibit 3 -- excuse

1 me. First of all, did you take this picture?

2 THE WITNESS: I did.

3 MR. JONES: What vantage point is it
4 taken from?

5 THE WITNESS: This is taken from, I'm now
6 on Q Street.

7 MR. JONES: You're on the street?

8 THE WITNESS: On 7th and Q and I'm taking
9 a picture from there.

10 MR. JONES: Okay. So I see a fence. Is
11 that bordering the summer garden area?

12 THE WITNESS: Yes, sir, it is.

13 MR. JONES: Okay. So that's the
14 boundary. So you're on the outside of the
15 boundary, and you're taking a picture looking
16 into the summer garden?

17 THE WITNESS: Yes, sir.

18 MR. JONES: Okay. At the far -- excuse
19 me. Scratch that.

20 If I looked straight ahead --

21 THE WITNESS: Yes.

22 MR. JONES: If I could see clearly in

1 this picture, would I see the bar?

2 THE WITNESS: Well, if there were less
3 people, you might be able to. But I don't think
4 it's clear --

5 MR. JONES: So there is a bar back there
6 somewhere?

7 THE WITNESS: There is.

8 MR. JONES: But there are so many people
9 there that I can't even see the bar from your
10 vantage point?

11 THE WITNESS: Yes, sir, that's correct.

12 MR. JONES: Okay. If there were no
13 people there at all, would I be able to clearly
14 see the bar?

15 THE WITNESS: Absolutely.

16 MR. JONES: Okay. In looking at Exhibit
17 4, is there any bar depicted in this photograph?

18 THE WITNESS: The bar would be to the
19 right of the photograph, but it's not showing in
20 this picture.

21 MR. JONES: Exhibit 4?

22 THE WITNESS: Yes.

1 MR. JONES: Okay. So, I'm looking at
2 Exhibit 4, and there appears to be in the
3 foreground, right on the other side of the fence,
4 there appears to be a young lady with the palm
5 side of her hand up. Do you see that young lady?

6 THE WITNESS: Yes, I do.

7 MR. JONES: Okay. If you drew a straight
8 line from her thumb --

9 THE WITNESS: Yes.

10 MR. JONES: -- directly as far back as
11 you could go, would that line touch or intersect
12 anywhere where bottles of beverages were stored
13 in the bar area?

14 THE WITNESS: The bar would be almost
15 directly by her index finger, straight across.

16 MR. JONES: Straight across?

17 THE WITNESS: Yes.

18 MR. JONES: Okay. So, what is this
19 structure that I am looking at? So, do you see
20 the young lady with her palm hand up?

21 THE WITNESS: I do.

22 MR. JONES: There is a gentleman with his

1 back turned towards us. I can't tell what color
2 his shirt is. But he's a gentleman with his back
3 towards us, and he appears to be a Caucasian
4 male.

5 THE WITNESS: Right.

6 MR. JONES: And he's facing some
7 structure.

8 THE WITNESS: Right.

9 MR. JONES: What is that structure?

10 THE WITNESS: That's toward the back of
11 the -- toward the back of the summer garden,
12 nearing where the other building is, which is on
13 that side. So part of that. You might be seeing
14 part of the wall from the other building on that
15 side.

16 MR. JONES: Part of the wall from the
17 other building?

18 THE WITNESS: Yeah.

19 MR. JONES: Okay. Do you have Exhibit 2?
20 In Exhibit 2, can you see the bar from your
21 vantage point?

22 THE WITNESS: It should be directly to

1 your right, but it can't be seen because of the
2 amount of people.

3 MR. JONES: Okay. So, if there were no
4 people there, would the bar be in the field of
5 view of this photograph?

6 THE WITNESS: It would be, sir.

7 MR. JONES: Okay. In your walkthrough,
8 you indicated that you counted approximately 150
9 patrons that were seated.

10 THE WITNESS: A hundred-and-forty, yes.

11 MR. JONES: Sorry, 140 patrons seated in
12 the summer garden area?

13 THE WITNESS: Right.

14 MR. JONES: Okay. You were -- were you
15 accompanied by anyone when you performed this?
16 Well, what was this? Was it an investigation?
17 Was it a service call? How would you categorize
18 this?

19 THE WITNESS: We had responded as a
20 result of several citizens calling the hotline
21 advising of the number of people at Dacha Beer
22 Garden and their concerns of the amount of people

1 at Dacha Beer Garden.

2 MR. JONES: Got it. Okay. On the date
3 that you went out on the 18th, were you aware of
4 any of the findings or any of the activities that
5 took place the night before?

6 THE WITNESS: I was aware that
7 Investigators Barshears and Peru had been there
8 the previous night.

9 MR. JONES: Okay.

10 THE WITNESS: Myself and Investigator --
11 Supervising Investigator Stewart had been there
12 before that.

13 MR. JONES: Okay. And prior to going,
14 did you have an opportunity to confer with either
15 Brashears or Peru regarding what was communicated
16 to the owner or the Licensee?

17 THE WITNESS: Absolutely.

18 MR. JONES: Okay. So you were cognizant
19 of what information the Licensee was made aware
20 of on the previous, the immediate previous night?

21 THE WITNESS: Yes, sir.

22 MR. JONES: Okay. When you approached

1 the owner, Licensee regarding the concern that
2 you had identified and had confirmed, based on
3 your observation and your head count that they
4 were in excess of what the approved capacity was
5 based on the ABRA License, what was --

6 I know you briefly mentioned this before,
7 but I'm just trying to get a -- what was the
8 nature of the reaction of the owner or Licensee?
9 Did he appear as if he was surprised by that
10 information? Did he come off defensive? What
11 was the nature of how he responded to you?

12 THE WITNESS: His response was that he
13 had a recently obtained certificate of occupancy
14 which allowed him to have a large number of
15 persons at the establishment. He showed us this
16 certificate of occupancy, which indicated 461,
17 the number that he used or he said he could go by
18 for to determine the amount of folks that could
19 be in his establishment.

20 MR. JONES: Okay. And based on your
21 understanding of what was communicated to him,
22 based on your discussions with Brashears and

1 Peru, was that in contradiction to what they had
2 communicated to him as to what was approved?

3 THE WITNESS: What they had communicated?
4 It was in contradiction to what they had
5 communicated to him and what myself and
6 Supervisor Stewart had communicated to him, as
7 well, prior to that date.

8 MR. JONES: Okay. And what was the next
9 step in that process as far as your interactions
10 with the owner or the Licensee? Specifically,
11 did he pick up the phone and call someone? How
12 did he react?

13 THE WITNESS: He did ask his door person,
14 I will call him, to not allow any more persons to
15 enter. And then we all remained in that
16 location, actually right out front, waiting for
17 the number of persons inside to be reduced.

18 MR. JONES: Okay. So at no point did the
19 owner or Licensee challenge your findings? At no
20 point did he say, "No, there are not 400 people
21 here"?

22 THE WITNESS: Oh, no, he did not.

1 MR. JONES: Okay. At any point, did he
2 challenge -- oh, well, excuse me. Did you
3 communicate to the owner that you counted 140
4 people seated?

5 THE WITNESS: My conversation with him
6 was that he had more people in total than was
7 allowed for him to have at that location. Now,
8 he agreed the number was higher than that 126.

9 MR. JONES: He agreed that the number --
10 he agreed the number was higher than 126?

11 THE WITNESS: Oh, absolutely.

12 MR. JONES: Am I to infer from that that
13 he did not necessarily agree that there were more
14 than 126 people seated?

15 THE WITNESS: I can't say for certain
16 that he had a difference of opinion in the amount
17 of people that were seated. But it was clear
18 from his own information that there were clearly
19 more than 400 people at the location.

20 MR. JONES: Okay. And just to reiterate
21 and reconfirm one more time, you not only took
22 pictures of the clickers; is it your

1 understanding that those clickers were used by
2 the establishment?

3 THE WITNESS: Absolutely.

4 MR. JONES: Did you at any point see them
5 being used by anyone associated with the
6 operations of the establishment?

7 THE WITNESS: Not on that day.

8 MR. JONES: Not on that day?

9 THE WITNESS: Right.

10 MR. JONES: Okay. Is that -- did you see
11 them being -- those particular clickers being
12 used by people associated with the operation of
13 the establishment on another day?

14 THE WITNESS: Yes. I had returned
15 several times, and yeah, the clickers were being
16 used.

17 MR. JONES: Okay. So you have no doubt
18 that those clickers were intended to be
19 associated with the operations of this
20 establishment?

21 THE WITNESS: No doubt whatsoever.

22 MR. JONES: Okay. Did you bring it to

1 the attention of the owner that you saw these
2 clickers and they had a count of 417?

3 THE WITNESS: They were pointed out to
4 him.

5 MR. JONES: They were pointed out to him?

6 THE WITNESS: They were.

7 MR. JONES: Okay. Thank you. That's all
8 I have. Thank you, Madam Chair.

9 CHAIRPERSON MILLER: Okay. Others? Mr.
10 Alberti?

11 MR. ALBERTI: I have just a quick
12 question.

13 THE WITNESS: Okay.

14 MR. ALBERTI: Investigator, one of your
15 exhibits, I believe, is an exhibit of the ABRA
16 License. I'm sorry I've lost my organization
17 here. And I believe that's -- I'm not sure what
18 exhibit that is.

19 THE WITNESS: Exhibit Number 5, sir.

20 MR. ALBERTI: Let's see. Exhibit Number
21 5 is -- is that a copy of the license?

22 THE WITNESS: It is.

1 MR. ALBERTI: And what's the date of
2 issuance?

3 THE WITNESS: The ABRA License?

4 MR. ALBERTI: Yeah.

5 THE WITNESS: I don't have it. Issue?
6 Let's see.

7 MR. ALBERTI: I think the issuance date
8 is at the top.

9 THE WITNESS: Yeah. It's May the 22nd of
10 2014.

11 MR. ALBERTI: And the expiration date?

12 THE WITNESS: Is September the 30th of
13 2016.

14 MR. ALBERTI: Okay. Would you read the
15 address for the establishment?

16 THE WITNESS: The address is 1600 7th
17 Street, Northwest.

18 MR. ALBERTI: Okay. Would you turn to
19 the C of O, please?

20 [Pause.]

21 MR. ALBERTI: I believe it's --

22 THE WITNESS: Exhibit Number 7?

1 MR. ALBERTI: Seven?

2 THE WITNESS: Yes.

3 MR. ALBERTI: Would you read the address
4 of the -- to which the C of O refers?

5 THE WITNESS: 1600-1602 7th Street,
6 Northwest.

7 MR. ALBERTI: Okay. So it's 1600-dash-
8 1602?

9 THE WITNESS: Yes, sir.

10 MR. ALBERTI: Okay. So do you -- would
11 it be your assumption that the C of O applies to
12 not only the licensed address, but to the
13 adjacent address?

14 THE WITNESS: Yes, sir. I would --

15 MR. KLINE: Objection. The document
16 speaks for itself.

17 MR. ALBERTI: I'll withdraw my question.
18 Thank you.

19 CHAIRPERSON MILLER: Okay. All right.

20 Other questions? Mr. Rodriguez. Do you
21 have a question?

22 MR. RODRIGUEZ: Yes.

1 CHAIRPERSON MILLER: Yes. All right.

2 MR. RODRIGUEZ: Inspector Suero, turning
3 to one of the exhibits here, where people are
4 making comments about the establishment -- where
5 is that? I'm sorry. It's toward the end of the
6 report. There are individuals that are making
7 comments about the establishment. I just saw it
8 here; I'm sorry.

9 CHAIRPERSON MILLER: There it is.

10 THE WITNESS: You mean the last two
11 pages?

12 MR. RODRIGUEZ: Yeah, the last two pages.

13 THE WITNESS: Last two pages --

14 MR. RODRIGUEZ: Last two pages.

15 THE WITNESS: Is this what you're
16 referring to?

17 MR. RODRIGUEZ: Yes. There are some
18 individuals here that indicate that the place is
19 crowded.

20 THE WITNESS: Yes.

21 MR. RODRIGUEZ: That even the customers
22 here on the statements, some of whom have

1 indicated that the place is crowded. While you
2 were there, were there any complaints about the
3 crowding, from the customers?

4 THE WITNESS: No one addressed us
5 reference to that issue while we were there.

6 MR. RODRIGUEZ: Okay. Thank you.

7 THE WITNESS: Yes, sir.

8 CHAIRPERSON MILLER: Okay. Others?
9 Questions from board questions, Mr.
10 Kline?

11 CROSS EXAMINATION

12 BY MR. KLINE:

13 Q Yes. Good afternoon, Investigator.

14 A Good afternoon.

15 Q Investigator, on April 18th of 2015, you
16 didn't have any way of knowing whether the
17 clickers were in use that day, did you?

18 A I noted that someone had obviously used
19 them. There were numbers on it.

20 Q There were numbers on them.

21 A Right.

22 Q But you don't know whether those numbers

1 were clicked the day before, the week before, or
2 the month before, do you?

3 A I do not.

4 Q Okay. Now, turning to the certificate of
5 occupancy, Exhibit 7.

6 A Yes, sir.

7 Q Right. Now, how long have you been an
8 investigator?

9 A I've been with ABRA since 2013.

10 Q All right. You're aware, are you not,
11 that most establishments have two numbers related
12 to their occupancy, one a seating number, and one
13 an occupancy number?

14 A Depends on the establishment, that's
15 true.

16 Q Okay.

17 CHAIRPERSON MILLER: Sorry. What was the
18 response?

19 THE WITNESS: Depending on the type of
20 establishment, that is true.

21 CHAIRPERSON MILLER: Depending -- could
22 you say that again? I'm sorry, Mr. Suero. Mr.

1 Suero, we're having trouble hearing you because
2 there's a fan here.

3 THE WITNESS: Oh. I'm sorry.

4 CHAIRPERSON MILLER: So what was your
5 answer to Mr. Kline's question?

6 THE WITNESS: I answered him by saying
7 that depending on the type of establishment,
8 that's true.

9 CHAIRPERSON MILLER: Okay. Thank you.

10 BY MR. KLINE:

11 Q All right. And when you say "depending
12 upon the type of establishment," what
13 establishments wouldn't have two numbers?

14 [Pause.]

15 BY MR. KLINE:

16 Q In your experience?

17 A A bar, a B store had one.

18 Q A B store?

19 A Yeah.

20 Q So that's an off-premise store?

21 [Cross-talk.]

22 CHAIRPERSON MILLER: Wait. We're going

1 to turn this fan off because we're having a
2 little trouble.

3 MR. KLINE: Fair enough.

4 [Pause, the fan was turned off.]

5 MR. KLINE: And I'll withdraw that and go
6 with a different one.

7 BY MR. KLINE:

8 Q So, in your experience, on-premise
9 establishments almost always have two numbers,
10 don't they, an occupancy number and a seated
11 number?

12 [Pause.]

13 THE WITNESS: I'm not sure that "almost
14 always" is the term that I would use. Those
15 numbers that we find.

16 BY MR. KLINE:

17 Q Okay. Now, the certificate of occupancy,
18 which is Exhibit 7, it reflects 1600-1602 7th
19 Street, which you've already testified to. In
20 1602 7th Street, there wasn't any seating, was
21 there?

22 A I have not been inside that business. I

1 can't tell you what's inside there.

2 Q How many visits have you made to the
3 establishment?

4 A To 1600 7th Street? Several.

5 Q Well, to the location, to where Dacha
6 Beer Garden is located.

7 A At least four or five.

8 Q At least four or five.

9 A Yep.

10 Q Have you ever seen any patron activity
11 inside of 1602 7th Street?

12 A I just stated I've never been inside 1602
13 7th Street.

14 Q Well, I asked a different question. I
15 asked you if you had -- you ever seen any patrons
16 coming and going from 1602?

17 A Not that I noticed.

18 Q Do you have any reason at all to believe
19 that a seated restaurant area is being operated
20 at 1602?

21 A I have no personal knowledge of anything
22 occurring at that location.

1 Q All right. Now, directing your attention
2 back to the certificate of occupancy, it says,
3 "bar tavern with accessory food service,"
4 parentheses, "summer garden with 126 seats, 461
5 total occupant load," period. Isn't that what it
6 says?

7 A Yes.

8 Q All right. Now, looking at that again,
9 is there anything on this certificate of
10 occupancy that leads you to believe that this
11 relates to any area other than the outdoor summer
12 garden area with respect to seats and occupant
13 load?

14 A Yes. The word "restaurant" is right next
15 to it.

16 Q All right. And the word "restaurant" has
17 a quote before it, doesn't it?

18 A It has quotation marks, yes.

19 Q All right. And what's the rest of the
20 clause with "restaurant"? What does it say?

21 A "For public space purposes."

22 Q "Restaurant for public space purposes."

1 A Right.

2 Q And do you know what that means?

3 A I do not.

4 Q Okay. You don't know that that means
5 that the establishment is eligible for a sidewalk
6 cafe permit?

7 A No.

8 Q Okay. But it doesn't say just the word
9 "restaurant," does it? It's qualified. It says
10 "for public space purposes," correct?

11 A That's what it says.

12 Q All right. Is there anything about that
13 clause that leads you to believe that the total
14 number relates to anything other than the outdoor
15 summer garden area?

16 A Yes.

17 Q And that would be that single word
18 "restaurant" in the quotes without the rest of
19 the clause?

20 A Not just that, but the actual -- the
21 description of occupancy says "bar tavern with
22 accessory food service that is," in parentheses,

1 "summer garden with 128 [sic] seats." It says
2 "461 total occupant load."

3 Q Right.

4 A It adds "restaurant for public space
5 purposes" and continues underneath.

6 Q And it says, actually underneath -- what
7 does it say underneath?

8 A "It will also utilize 1602 7th Street,
9 Northwest, for kitchen and restaurant purposes."

10 Q All right. So where on here do you
11 believe, since you've been asked to interpret the
12 C of O, that it says that there's any seating on
13 1602 or any occupancy that's attributable to
14 1602?

15 A The address of the certificate of
16 occupancy itself says, "1600-1602," indicating
17 that it's talking about both those locations.

18 Q And how many occupants do you suppose are
19 allocable to the 1602 part of the premises?

20 A I would presume the difference between
21 461 and 126.

22 Q Okay. And you would presume that number

1 would be located on how many floors of the
2 restaurant building?

3 A That I don't know. I've never been
4 inside of that building.

5 Q All right. Well, look at the rest of the
6 certificate of occupancy. Doesn't it say,
7 "floors occupied lot-slash-first"?

8 A Right.

9 Q All right. So based on your -- if we can
10 do some quick math here, it's your position that
11 255 [sic] occupants are attributable to the first
12 floor of 1602 7th Street? Is that what you would
13 submit?

14 A That I'd submit? That's what it seems to
15 indicate on the form.

16 Q Actually, I did my math wrong. It's 355
17 -- 355.

18 A If that's what DCRA determined, that's
19 what DCRA determined.

20 Q So you're not in a position to interpret
21 the certificate of occupancy; is that what I'm
22 hearing?

1 A What you're hearing is an answer to your
2 question about the floors occupied. It says
3 "lot," indicating the summer garden, and "first
4 floor." The first floor is not obviously also
5 the lot.

6 Q Okay. But it doesn't say second floor or
7 third floor or fourth floor or any other floor?

8 A It does not.

9 Q It doesn't say basement.

10 A It does not.

11 Q So if we just use our deductive
12 reasoning, then if we take your interpretation of
13 the C of O, there would have to be 355 people
14 attributable to the first floor at 1602 7th
15 Street. Is that a fair deduction?

16 A It may be that that's what DCRA decided,
17 that they could hold that amount of people in
18 that space.

19 Q All right. But you don't really know, do
20 you?

21 A I don't know the size of the space.

22 Q All right. So it's an equally fair

1 reading, based on everything we've reviewed here
2 now, that the 461 total occupant load really
3 relates just to the summer garden; isn't it?

4 A No, it is not.

5 MR. KLINE: Okay. That's all I have of
6 the Witness. Thank you.

7 CHAIRPERSON MILLER: Ms. Schmidt,
8 anything?

9 MS. SCHMIDT: Just very briefly.

10 REDIRECT EXAMINATION

11 BY MS. SCHMIDT:

12 Q But is there any dispute -- is there any
13 doubt in your mind that the Licensee violated the
14 ABRA capacity listed on the certificate?

15 MR. KLINE: Objection. That's for the
16 board to determine, not the investigator to
17 determine.

18 MS. SCHMIDT: The number. Is the number
19 on the ABRA --

20 CHAIRPERSON MILLER: Do you mean --

21 MS. SCHMIDT: It's a mathematical number.
22 Did they go above 126 or not?

1 MR. KLINE: Madam Chair, I would
2 respectfully request that that question be asked,
3 not whether they are in violation.

4 CHAIRPERSON MILLER: Yeah. You should
5 rephrase the question.

6 MS. SCHMIDT: I will rephrase the
7 question.

8 CHAIRPERSON MILLER: Okay.

9 BY MS. SCHMIDT:

10 Q So, is it your testimony that more than
11 126 people were located at Dacha Beer Garden that
12 night?

13 A Absolutely.

14 MS. SCHMIDT: No further questions.

15 CHAIRPERSON MILLER: Okay. Do you rest
16 your case?

17 MS. SCHMIDT: No, I'm going to --

18 CHAIRPERSON MILLER: You have another
19 witness?

20 MS. SCHMIDT: Yes. Investigator Craig
21 Stewart.

22 CHAIRPERSON MILLER: Okay. All right.

1 Good. Thank you.

2 MS. SCHMIDT: Supervisory Investigator
3 Craig Stewart, excuse me.

4 [Pause.]

5 CHAIRPERSON MILLER: Good afternoon.

6 SUPERVISORY INVESTIGATOR STEWART: Good
7 afternoon.

8 CHAIRPERSON MILLER: Do you swear to
9 tell the truth, the whole truth, and nothing but
10 the truth?

11 SUPERVISORY INVESTIGATOR STEWART: Yes,
12 ma'am.

13 CHAIRPERSON MILLER: Thank you. Okay.
14 Whereupon,

15 CRAIG STEWART
16 was called as a witness and, having been first
17 duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MS. SCHMIDT:

21 Q Supervisory Investigator Stewart, please
22 state your name for the record.

1 A I'm Supervisory Investigator Craig
2 Stewart.

3 Q And by whom are you employed?

4 A The Alcoholic Beverage Regulation
5 Administration.

6 Q And how long have you been employed by
7 ABRA?

8 A Approximately nine years.

9 Q And drawing your attention to April 18th,
10 2015, were you at 1600 7th Street, Northwest?

11 A Yes, ma'am.

12 Q And without reiterating all the testimony
13 you've heard, I just want to ask you one or two
14 questions. You said you -- you spoke to Mr.
15 Alter; is that correct?

16 A Yes, ma'am.

17 Q And what did he say to you?

18 A Well, a few things. We received the
19 complaint on the ABRA hotline. I actually took
20 the call. Upon responding, myself and
21 Investigator Suero, once we arrived, we saw a
22 large crowd congregating in a line around the

1 establishment.

2 Once we approached the front door, there
3 was a doorman seated -- excuse me, standing at
4 the entranceway -- not the door, I'm sorry. He
5 was holding two clickers in his hand, at which
6 point I asked him, I said, "Could you tell me
7 what are you using the clickers for?"

8 Because previously, they were not using
9 any clickers. So he said, "This is for the
10 occupancy." I said, "Can I take a look at
11 those?" And he showed them to me, and they
12 displayed 400, and one displayed 17.

13 I asked for the ABC manager or owner. He
14 hung the clickers on the fence, and then he
15 walked inside to get the owner, at which time Mr.
16 Alter came back. So I just wanted to clarify
17 first that the clickers weren't just sitting on
18 the fence unattended. They were actually in an
19 employee's hand.

20 Again, so Mr. Alter came out. Again, I
21 introduced myself. Again, he's familiar with me
22 because I was there when we did his final

1 inspection. Also, he's familiar with me from the
2 previous week's complaints and our investigators
3 arriving.

4 I again explained to Mr. Alter why we
5 were there. I explained to him that until the
6 certificate of occupancy -- excuse me, the ABRA
7 License was changed to more than 126, he could
8 not have any more patrons more than that.

9 I further explained that -- he provided
10 us again with the C of O. And I told him that is
11 a DCRA document. That is not what we're here to
12 enforce. I told him that your settlement
13 agreement specifically says 126.

14 We were prepared -- we'd have to do us
15 some homework. We showed him -- we reviewed his
16 application for the alcohol license, in which
17 they signed, which also says 126. We also talked
18 about the settlement agreement again, and he did
19 not dispute anything we were saying.

20 He asked what we should do, what he
21 should do to correct the problem. Told him we
22 weren't there for -- we were there, again, just

1 to notify him of the violation -- excuse me, of
2 the violation.

3 Mr. Alter was very indifferent, almost
4 nonchalant to say that, "My lawyer said this is
5 what I could do. This is what we're going to do.
6 I have a C of O, and it says 461." He kept
7 referring to the C of O. We kept referring to
8 the ABRA License and the settlement agreement.

9 I also described to him that he had one
10 entrance to his establishment. There was
11 approximately over 500 people there. There was
12 one entrance. If you look in the exhibits, you
13 can see a photograph of the fence. That fence
14 has spikes on it.

15 If anyone would try to jump that fence if
16 there was some type of emergency situation, a
17 large fight, fire --

18 MR. KLINE: Madam, I'm going to object to
19 this testimony. It's way beyond responsive to
20 the question, and it's irrelevant to the charges
21 that are pending before the board. And that's
22 just the first two objections that I can think

1 of.

2 CHAIRPERSON MILLER: Ms. Schmidt.

3 MS. SCHMIDT: It is relevant because it
4 shows why -- it shows the enforcement that was
5 done that evening and the relevance why he was
6 even there that evening.

7 MR. KLINE: I think he's testified they
8 were there because of the complaints. But in
9 terms of --

10 MS. SCHMIDT: Of crowding.

11 MR. KLINE: I mean, do I really have to
12 examine him on his expertise on public safety?
13 We can spend a lot of time on that, but it's
14 really not relevant to the charges that are
15 pending before the board.

16 CHAIRPERSON MILLER: Well, I don't think
17 it's irrelevant, because we're talking about the
18 numbers. And I don't think he's going to go on
19 and on about it, but the important -- he's
20 talking about the importance of the numbers, as I
21 see it. So --

22 MR. KLINE: But that's not for this

1 board. We have a law. We have a regulation.
2 The board is to determine whether there's been a
3 violation of the regulation. In terms of the
4 policy underlying the regulation, I could spend
5 hours on that. But it's not particularly
6 relevant to what's before you today.

7 CHAIRPERSON MILLER: Okay. I'm not under
8 the impression that Mr. Stewart has that much
9 more on this subject.

10 MR. KLINE: Well, why don't we have
11 questions from the attorney and he can answer
12 those? I think that's the way we usually do it.

13 CHAIRPERSON MILLER: Okay. Okay.

14 MR. KLINE: Instead of just a narrative
15 statement.

16 CHAIRPERSON MILLER: I thought that it
17 was -- he was responding to a question that you
18 had asked.

19 MS. SCHMIDT: I can ask a question.

20 CHAIRPERSON MILLER: Go ahead.

21 BY MS. SCHMIDT:

22 Q Now, you've been to this establishment

1 before, correct?

2 A Prior to this date?

3 Q Yes.

4 A Prior to April 18th?

5 Q Yes.

6 A Yes, ma'am.

7 Q And do any of the -- were any of the
8 reasons that you went to that establishment
9 dealing with overcrowding dealing with public
10 safety also?

11 A Yes, ma'am.

12 MR. KLINE: Objection. There is no
13 evidence that this relates to public safety. The
14 evidence -- there's a certificate of occupancy
15 that's in the record that reflects 461. We have
16 an alleged regulatory violation of ABRA
17 regulations. That's what we're here to talk
18 about.

19 I do not want this record inflamed with
20 references to -- we're not going to -- we can try
21 a DCRA case if that's what the board wants to do.
22 But I don't think that's what we're here to do.

1 As has correctly been stated, I think even by the
2 Witness, what's relevant is ABC records. That's
3 what we're here to talk about. That's what we're
4 here to address.

5 Our position is we have a C of O. It's
6 prima facie evidence of legality. And it's legal
7 on its face from a prima facie standpoint. From
8 a public safety standpoint, it's sufficient.

9 CHAIRPERSON MILLER: Ms. Schmidt, are you
10 going into public safety questions, or are you
11 just going to prior incidents?

12 MS. SCHMIDT: I was going to reasons why
13 they were called there. But however, I can
14 withdraw that question.

15 CHAIRPERSON MILLER: All right. All
16 right.

17 MS. SCHMIDT: Okay.

18 CHAIRPERSON MILLER: Go ahead.

19 BY MS. SCHMIDT:

20 Q And what did Mr. Alter do as a result of,
21 after you spoke to him?

22 A He advised the door person to not let

1 anyone else in the establishment. And we sat
2 approximately, I guess, over an hour outside the
3 establishment waiting for the occupancy to
4 diminish.

5 Q And did it finally diminish to 126?

6 A Yes, ma'am.

7 MS. SCHMIDT: No further questions at
8 this point.

9 CHAIRPERSON MILLER: Okay. Mr. Kline.

10 MR. KLINE: Yes.

11 CROSS EXAMINATION

12 BY MR. KLINE:

13 Q Good afternoon, Investigator. You're a
14 supervisory investigator, correct?

15 A Yes, sir.

16 Q All right. And you were the supervisor
17 on this investigation?

18 A Yes, sir.

19 Q And you reviewed and approved the report?

20 A I reviewed the report.

21 Q All right. And you approved the report?

22 A I'm not the signing approval on that.

1 Q You're not what?

2 A My name is not on the report, sir. I
3 reviewed the report.

4 Q Okay. So do you think the report's not
5 correct?

6 A That's not what I said.

7 Q Well, I'm asking you that. Do you think
8 the report is not correct?

9 A I think the report is accurate.

10 Q I beg your pardon?

11 A I said I believe the report to be
12 accurate.

13 Q You believe the report to be accurate.
14 All right. So you testified earlier that when
15 you arrived there, the clickers were in use; is
16 that right?

17 A Yes, sir.

18 Q And then the manager -- and that's
19 significant because that shows that that number
20 reflects how many patrons were in the
21 establishment that night, correct?

22 A It reflects what he clicked.

1 Q Right. So it reflects that he was using
2 the clickers that night, correct?

3 A Yes. I saw him, yes.

4 Q That would be normally -- and then you
5 put that in the report because that, of course,
6 shows that the number is probably accurate,
7 right?

8 A I'm sorry. I don't understand your
9 question.

10 Q That's something that you would put in a
11 report because it tends to prove the Government's
12 position that there was a violation because there
13 were more patrons than allowed in the
14 establishment as evidenced by clickers that were
15 in use that evening, correct?

16 A I think the report just documents what we
17 found when we saw the clickers.

18 Q Okay. And what you found, according to
19 the report, is, "While at Dacha Beer Garden" --
20 and I quote, "While at Dacha Beer Garden,
21 Supervisory Investigator Craig Stewart observed
22 two metal clickers located on the fence near the

1 entrance to Dacha Beer Garden. At the time of
2 the investigators' visit to Dacha Beer Garden,
3 the metal counters were not being utilized by the
4 staff." Is that what the report says?

5 A That's what it says.

6 MR. KLINE: I have no further questions.

7 CHAIRPERSON MILLER: Board members? Mr.
8 Short.

9 MR. SHORT: Yes. Good afternoon,
10 Inspector, Supervisor.

11 THE WITNESS: Yes, sir.

12 MR. SHORT: What is the classification
13 for Dacha Garden?

14 THE WITNESS: It's a tavern, sir.

15 MR. SHORT: A tavern?

16 THE WITNESS: Yes, sir.

17 MR. SHORT: So when you see "restaurant"
18 on a C of O for a business that's a tavern, is
19 that conflicting?

20 THE WITNESS: So, there's a lot of
21 conflicting things we see from several agencies.
22 So, I try to just focus on the ABRA documents.

1 So I've seen occupancy that was different. I've
2 seen addresses that were different, as it relates
3 to alcohol establishments. So we try to focus
4 merely on the alcohol, such as the settlement
5 agreement and the ABC License.

6 MR. SHORT: Okay.

7 THE WITNESS: So I --

8 MR. SHORT: And with the ABC License,
9 even if there's a change of occupancy, a request,
10 it still has to be approved by this Agency or
11 this board; is that correct?

12 THE WITNESS: Yes, sir. And this was,
13 again, what we talked about with the owner on
14 numerous occasions.

15 MR. SHORT: Okay. Can someone else,
16 i.e., a vice president or a mayor or an attorney
17 or anybody, just say to a business owner, "Don't
18 worry about that. I'm telling you that you can
19 do that"? Is that legal?

20 THE WITNESS: It's not legal; no, sir.

21 MR. SHORT: Okay. Thank you. That's all
22 I have, Madam.

1 CHAIRPERSON MILLER: Okay. Others?

2 [No audible response.]

3 CHAIRPERSON MILLER: I just have a few.

4 Oh, Mr. Jones. Go ahead.

5 MR. JONES: Thank you, Madam Chair.

6 CHAIRPERSON MILLER: Um-hm.

7 MR. JONES: Just to reiterate and make
8 sure I'm clear on the nature of what took place
9 on that evening, the evening of the 18th, were
10 you, Supervisory Investigator Stewart, did you
11 accompany Investigator Suero?

12 THE WITNESS: Yes, sir.

13 MR. JONES: So you were hand-in-hand with
14 him as he walked up to the establishment? Or did
15 you separate at some point in time?

16 THE WITNESS: We separated. I believe he
17 was taking photographs.

18 MR. JONES: At what point in the process
19 did you, roughly, separate from each other?

20 THE WITNESS: Almost immediately. I
21 think we wanted to capture the -- photograph and
22 capture the scene as I approached the front

1 entrance.

2 MR. JONES: Okay. So is it possible that
3 you saw with your own eyes some things that
4 Investigator Suero didn't see with his, and vice
5 versa?

6 THE WITNESS: Yes, sir.

7 MR. JONES: Okay. So is it conceivable
8 or possible that you -- you personally witnessed
9 and saw the clickers being used and that
10 Investigator Suero did not?

11 THE WITNESS: Yes, sir.

12 MR. JONES: Okay. And if Investigator
13 Suero did not actually physically see the
14 clickers being used, would it be accurate for him
15 to reflect that in the report?

16 THE WITNESS: Sure. Yes, sir.

17 MR. JONES: Okay. So, from your
18 observations, you're sitting before us today
19 under oath indicating to us that you witnessed
20 the clickers being used by an individual
21 associated with the operations of this
22 establishment?

1 THE WITNESS: Yes, sir. And if I could
2 go further, he had them in his hands. And I
3 asked him, because I had previously been to the
4 location and hadn't seen one, anyone, using any
5 clickers. So that's what caught my attention,
6 that he had them in his hands.

7 I said, "Are those the clickers you're
8 using to count the people?" And he said, "Yes."
9 And I said, "Can I see them?" And he held them
10 up. And then I said, "Can you get me the ABC
11 manager, owner?" And he turned around and put
12 them on the fence. And then he walked inside.

13 MR. JONES: Okay. Fair enough.

14 And just to -- let's turn away from the
15 clickers momentarily, for now. Did you do a
16 headcount?

17 THE WITNESS: Yes, sir. We did a
18 headcount.

19 MR. JONES: Okay. And in the headcount
20 that you did, approximately what number did you
21 arrive at?

22 THE WITNESS: We were almost over 500,

1 sir.

2 MR. JONES: Almost over 500?

3 THE WITNESS: That's with seated and
4 standing.

5 MR. JONES: Seated and standing, okay.
6 So is it safe to say that you were at least at
7 475?

8 THE WITNESS: Yes, sir.

9 MR. JONES: Okay. So you were at
10 approximately 475 patrons?

11 THE WITNESS: Yes, sir.

12 MR. JONES: Would you -- when you were
13 questioning or speaking to the owner and you
14 brought it to his attention that the count was
15 over, in excess of what we -- what ABRA had
16 determined to be allowed, as I understand your
17 testimony, the feedback you got from the owner
18 was that his attorney told him that he could
19 abide by what was in the recently received
20 certificate of occupancy noting 461?

21 THE WITNESS: Yes, sir. He was adamant.
22 And again, my advice to him, where I reflected

1 back when we did the final inspection, and I
2 reflected to the previous visits that, until it's
3 changed, until your alcohol license says
4 otherwise, until your settlement agreement says
5 otherwise, in no uncertain terms it's 126.

6 And that we will continue to come by when
7 we receive complaints, and we're going to only go
8 by the settlement agreement and the ABRA alcohol
9 license. That's it. And he wanted to continue
10 to tell me what the certificate of occupancy
11 stated and seated and standing.

12 And I just told him, I said, "We're not
13 here -- we really in essence, whatever the
14 alcohol license and settlement agreement says,
15 that's what we're going to enforce. So if you
16 were to get it changed to 461, that's what we
17 would enforce. But until such time, it had to be
18 126."

19 I mean we -- again, this conversation
20 happened three times prior to this date with the
21 ownership.

22 MR. JONES: So, just -- I'm not sure how

1 to -- how long have you been a supervisor? How
2 long have you been an investigator in any
3 capacity with ABRA?

4 THE WITNESS: Oh, with ABRA?

5 MR. JONES: With ABRA.

6 THE WITNESS: I've been a supervisor for
7 five-and-a-half years.

8 MR. JONES: Okay. Would you -- the
9 nature of the -- would you consider the owner to
10 have been receptive to your feedback guidance?
11 Would you consider him to have been aggressive?
12 How would you characterize the nature of his
13 response to you as an authority with the alcohol
14 -- with this agency? How would you consider his
15 response to your feedback to him?

16 THE WITNESS: Indifferent.

17 MR. JONES: Indifferent?

18 THE WITNESS: Yes, sir.

19 MR. JONES: Okay. Thank you. Thank you,
20 Madam Chair.

21 CHAIRPERSON MILLER: Okay. Others?

22 [No audible response.]

1 CHAIRPERSON MILLER: I just have a couple
2 of questions.

3 THE WITNESS: Yes, ma'am.

4 CHAIRPERSON MILLER: I think I heard you
5 say that when you brought it to the attention of
6 the owner that there were 500 people there, to
7 that effect, he said he wouldn't let any other
8 people in; is that correct?

9 THE WITNESS: Yes, ma'am. This is after
10 some, a lengthy conversation.

11 CHAIRPERSON MILLER: Okay. And I think
12 you also said that you waited until the number
13 diminished to 126?

14 THE WITNESS: Yes, ma'am.

15 CHAIRPERSON MILLER: So, how were you
16 counting?

17 THE WITNESS: We --

18 CHAIRPERSON MILLER: Was it like, one
19 exit and you were doing a hand count?

20 THE WITNESS: No, ma'am. We waited a
21 significant amount of time. And then we went
22 back into the establishment and counted again.

1 CHAIRPERSON MILLER: Oh, okay. You
2 didn't count people as they went out?

3 THE WITNESS: No, ma'am.

4 CHAIRPERSON MILLER: Okay. How long did
5 it take, about?

6 THE WITNESS: Over an hour.

7 CHAIRPERSON MILLER: Okay. And were you
8 there that night in response to a noise complaint
9 or a different kind of complaint?

10 THE WITNESS: It was a complaint of noise
11 and overcrowding. I guess the person that
12 contacted us was familiar with the settlement
13 agreement.

14 CHAIRPERSON MILLER: Okay. I have no
15 other questions. Anyone else?

16 MR. ALBERTI: I have a question.

17 CHAIRPERSON MILLER: Mr. Alberti.

18 MR. ALBERTI: Investigator Stewart,
19 you've worked for ABRA for how long?

20 THE WITNESS: Approximately nine years.

21 MR. ALBERTI: Have you had any
22 interaction with DCRA?

1 THE WITNESS: Yes, sir.

2 MR. ALBERTI: Have you had any experience
3 with C of O's?

4 THE WITNESS: Yes, sir.

5 MR. ALBERTI: Okay. And would you take a
6 look at Exhibit 5, I guess -- no, Exhibit 7?

7 [Pause.]

8 MR. ALBERTI: The square footage that is
9 said -- it says "occupied square footage" down
10 there on the right-hand side. Would you read the
11 occupied square footage?

12 THE WITNESS: Three-thousand nine-
13 hundred.

14 MR. ALBERTI: Okay. If this certificate
15 of occupancy applied to 1601 [sic], 1602, that
16 combined lot, and that combined lot had
17 approximately 3,900 square feet of lot area on
18 one level, would you interpret that as meaning
19 that the entire area of both of those -- of the
20 combined lots, 1600-1602, is what's covered by
21 the C of O?

22 THE WITNESS: Yes, sir.

1 MR. ALBERTI: Thank you. No further
2 questions.

3 CHAIRPERSON MILLER: Okay. Anyone else?
4 Okay. Mr. Silverstein.

5 MR. SILVERSTEIN: Thank you, Mr. Stewart.
6 The settlement agreement calls for how many
7 people, maximum?

8 THE WITNESS: One-hundred and twenty-six.

9 MR. SILVERSTEIN: And in signing a
10 settlement agreement, the people who had been
11 protestants gave up their rights to protest in
12 signing that agreement?

13 THE WITNESS: Yes, sir.

14 MR. SILVERSTEIN: And then the agreement
15 becomes part of the license, the ABRA License?

16 THE WITNESS: Yes. It's binding --

17 MR. SILVERSTEIN: Correct?

18 THE WITNESS: -- with the ABRA License.
19 Yes, sir.

20 MR. SILVERSTEIN: In the case where there
21 are two, not conflicting, but different capacity
22 numbers or restriction numbers such as dates,

1 times, whatever, which one trumps the other? The
2 more restrictive, the least restrictive? What
3 are you to enforce?

4 MR. KLINE: Objection. Calls for a legal
5 conclusion.

6 MR. SILVERSTEIN: No. I'm asking him
7 which he is to enforce.

8 THE WITNESS: I'm only going to enforce
9 the ABRA documents, the settlement agreement and
10 the alcohol license.

11 MR. SILVERSTEIN: Very well. No further
12 questions.

13 CHAIRPERSON MILLER: Okay. Any other
14 board questions?

15 [No audible response.]

16 CHAIRPERSON MILLER: Any questions on
17 board questions? Wait a second. I'm sorry. Mr.
18 Rodriguez.

19 MR. RODRIGUEZ: Madam Chair, yes.

20 I'm going back to Mr. Suero's report to
21 you.

22 THE WITNESS: Yes, sir.

1 MR. RODRIGUEZ: The last two pages,
2 again, where customers comment on the
3 establishment.

4 [Pause.]

5 MR. RODRIGUEZ: Do you see that?

6 MR. KLINE: Madam Chair, I'm not sure
7 where we're going. But if we're going to be
8 relying on hearsay, that's fine. But hearsay
9 from unidentified individuals posted on Yelp, the
10 credibility of which is suspect all over the
11 media, I would vehemently object to it.

12 CHAIRPERSON MILLER: Okay. Let's hear
13 the question and then --

14 MR. RODRIGUEZ: Well, I just noticed that
15 there were four out of six customers had
16 mentioned, "Crowded, crowded, crowded." And I
17 just want to know, I'm trying to determine if
18 that was a consistent situation or not.

19 MR. KLINE: Right. And media reports are
20 that at least two out of ten of those are made
21 up. So --

22 CHAIRPERSON MILLER: Okay. So, are you

1 asking -- but are you asking Mr. Stewart whether
2 or not it was crowded when he observed it? Or
3 whether he read a lot of comments about the
4 crowd?

5 MR. RODRIGUEZ: Well, I think it's
6 already been established that it was crowded when
7 he observed it.

8 CHAIRPERSON MILLER: Okay.

9 MR. RODRIGUEZ: So I'll just leave it at
10 that.

11 CHAIRPERSON MILLER: Leave it at that.
12 Okay.

13 MR. RODRIGUEZ: I'll leave it at that.

14 MR. KLINE: And, Madam Chair, in the
15 future, I would request the board to instruct
16 investigators not to attach media clippings to
17 their investigative reports, particularly
18 unidentified comments on an online site. It's
19 just completely unfair.

20 CHAIRPERSON MILLER: Well, let me just --
21 before I would do that, though, let -- it's
22 unusual, I think, to see that attached to a

1 report. Is there some reason it was?

2 THE WITNESS: It's not unusual, ma'am.
3 We use a lot of social media to gather
4 information.

5 CHAIRPERSON MILLER: Yes.

6 THE WITNESS: In this instance, we
7 weren't looking for "overcrowding." We just
8 wanted to see what was being said about the
9 establishment. And these are some of the things
10 that we found.

11 Now, I think what Mr. Rodriguez was
12 getting at, trying to walk through the
13 establishment, I was groped several times by
14 several different people. I can't tell you if
15 they were men or women. But I know it was
16 crowded.

17 MR. KLINE: As long as you had fun.

18 [Laughter.]

19 THE WITNESS: So. Right.

20 MR. RODRIGUEZ: I won't go any further
21 than that.

22 MR. KLINE: Strike that from the record.

1 CHAIRPERSON MILLER: Okay. Okay. But I
2 understand what you're saying, Mr. Kline, about
3 hearsay. And it pretty much goes to the weight
4 that the board gives. And I hear you. Okay.

5 So, anything else? Any other questions?

6 MR. KLINE: I don't have any. Thank you.

7 CHAIRPERSON MILLER: Do you have any
8 questions?

9 MR. SILVERSTEIN: Not after that.

10 [Laughter.]

11 MR. ALBERTI: Touche.

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

14 THE WITNESS: Yes, ma'am. Thank you.

15 [The Witness was excused.]

16 CHAIRPERSON MILLER: So.

17 MS. SCHMIDT: So, the Government has
18 shown, has proven its --

19 CHAIRPERSON MILLER: Wait a minute.
20 Wait, wait a second.

21 MS. SCHMIDT: I thought you said for --

22 [Cross-talk.]

1 CHAIRPERSON MILLER: No. Well, we just
2 finished your witness. Are you resting your
3 case, number one?

4 MS. SCHMIDT: I'm sorry. Yes, I'm sorry.
5 We're resting our case.

6 CHAIRPERSON MILLER: Okay.

7 MS. SCHMIDT: I got so distracted. We're
8 resting our case.

9 CHAIRPERSON MILLER: I do want to make a
10 reference to this case report. I didn't say it
11 before, but I think we all know it. But just for
12 the record, you know, you didn't move it into
13 evidence. But these case reports are a part of
14 the record.

15 MS. SCHMIDT: Yes, ma'am.

16 MR. KLINE: Oh, whoa, whoa, whoa. No,
17 they're not, Madam Chair. I vehemently object.
18 They are not part of the record. Not of this
19 proceeding unless they're moved.

20 CHAIRPERSON MILLER: So, the board has
21 been treating them as part of the record.

22 MR. KLINE: I strongly disagree with that

1 proposition because there are lots of records
2 down here. And that doesn't mean they're
3 evidence in any particular case. These are
4 discrete cases. The evidence needs to be moved
5 in each case. That's the Administrative
6 Procedures Act.

7 CHAIRPERSON MILLER: Well, I need to go
8 back to the other --

9 MR. KLINE: The record has been closed in
10 the other case.

11 CHAIRPERSON MILLER: Well, the board can
12 reopen the record. And it was closed on that
13 premise, that we always say that -- it's often --

14 [Cross-talk.]

15 MS. SCHMIDT: Also --

16 CHAIRPERSON MILLER: So we always say
17 that the case report is a part of the --

18 MS. SCHMIDT: It's not closed until the
19 findings of facts and conclusions of law are
20 submitted anyway.

21 MR. KLINE: The record is still closed
22 with the exception of the submission of findings

1 of fact and conclusions of law. There are only
2 certain things that have been identified. The
3 whole report doesn't come in.

4 MS. SCHMIDT: I move -- based on, okay,
5 based on custom and practice --

6 CHAIRPERSON MILLER: Okay. Let's deal
7 with -- let's deal with --

8 MS. SCHMIDT: I'm going to make a motion.

9 CHAIRPERSON MILLER: Wait a second.

10 I just want to say we're going to deal
11 with this right now then.

12 MS. SCHMIDT: I move --

13 CHAIRPERSON MILLER: I would -- I would
14 say that, and the board can vote on this, that I
15 would go back and reopen the record in the other
16 case, because we were operating under the
17 assumption that it's never been an issue. I
18 haven't heard it as an issue that the case report
19 is not automatically a part of the record.

20 MR. KLINE: It has to be moved, Madam
21 Chair. I mean, I was operating under the
22 assumption that we were operating under the

1 regulations in the statute. And regulations in
2 the statute say that the Government has the
3 burden of going forward and putting on the
4 evidence.

5 And to the extent, I guess we'll find
6 that out in the case that's pending in the Court
7 of Appeals right now -- to the extent that the
8 Government doesn't make its case and doesn't put
9 on its evidence, then the charge can't be
10 sustained. And, you know, at this point, the
11 Government hadn't rested -- the Government --
12 well, you know, the question is whether the
13 Government has rested or not.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: But the evidence has to be
16 moved. It's not just, "Oh, we're going to go
17 look at the Agency's" --

18 [Cross-talk.]

19 MR. ALBERTI: Can we just deal with this
20 one right now?

21 CHAIRPERSON MILLER: Okay. Yes, that's
22 right. Okay. We're going to deal with this case

1 --

2 MS. SCHMIDT: In this case, I move that
3 the case report and all the exhibits be moved
4 into evidence.

5 MR. KLINE: I object. There are certain

6 --

7 CHAIRPERSON MILLER: Case closed.

8 MR. KLINE: May I be heard, please?

9 CHAIRPERSON MILLER: What are you going
10 to object to?

11 MR. KLINE: I certainly have no objection
12 to those exhibits that were identified and which
13 were deemed to be relevant, which would not
14 include the Yelp comments, I don't think. But
15 according to my notes, I think we are talking
16 about -- the photographs were identified.

17 Exhibits 1, 2, 3, 4. Exhibit 5 is the
18 license. That was identified. Exhibit -- I
19 don't believe Exhibit 6 was identified, which is
20 the certificate of use. Exhibit 7, the
21 certificate of occupancy, was identified.
22 Exhibit 8 was identified. I don't believe the

1 settlement agreement was identified.

2 MS. SCHMIDT: Yes, it was. Yes, it was.
3 There's testimony on that.

4 CHAIRPERSON MILLER: It was the
5 certificate of use. The certificate of
6 occupancy, the certificate of use. What exhibit?

7 MR. ALBERTI: So, I have a question, Ms.
8 Miller.

9 CHAIRPERSON MILLER: Yeah.

10 MR. ALBERTI: What is the legal basis,
11 what is the legal standing of our use of the
12 administrative record? Are they in our records?

13 CHAIRPERSON MILLER: Well, I have heard
14 Mr. Kline say before that if you're talking about
15 some administrative record, you know, that's in
16 our files, and they don't have a chance to, you
17 know, see it and address it that that doesn't
18 mean that we automatically should take
19 administrative notice of it.

20 I've heard that line. But we have all,
21 this whole case is our record. They have it. So
22 that argument wouldn't apply.

1 MR. ALBERTI: Documents that are in their
2 possession also, like the C of O's are documents
3 that are in our possession and they are
4 administrative records that we have in our files.

5 CHAIRPERSON MILLER: Right.

6 MR. KLINE: There are lots of things that
7 are in our possession. Our health certificate is
8 in our possession, too, but that doesn't make it
9 part of the record.

10 CHAIRPERSON MILLER: What I don't
11 understand --

12 [Cross-talk.]

13 MR. KLINE: And it may --

14 MR. ALBERTI: Your health certificate is
15 not in our records.

16 MR. KLINE: Our business license is in
17 your records and our records.

18 MR. ALBERTI: Yeah.

19 MR. KLINE: But it's not part of this
20 proceeding. This is an adversary --

21 CHAIRPERSON MILLER: What we're talking
22 about --

1 MR. KLINE: Well, I'm not going to talk
2 while you guys talk.

3 CHAIRPERSON MILLER: What has been served
4 on --

5 MR. KLINE: So when it's my turn, let me
6 know, please.

7 CHAIRPERSON MILLER: -- the Applicant.
8 We're not talking about documents in our files
9 that haven't been served. This has been served
10 as part of the case report, that this is the case
11 that the Government is bringing against you. So
12 I don't -- I think that if you're saying they
13 didn't mention it in their testimony today, I
14 don't think that's grounds for exclusion.

15 MR. KLINE: Madam Chair, this is an
16 adversary contested case proceeding. The
17 Administrative Procedures Act provides that
18 there's an official record of the proceeding and
19 that during the hearing that's held in accordance
20 with 1-1509, if I'm correct, although I may have
21 the old cite, that everything that's to be going
22 to be considered as part of the record in making

1 the decision will be made a part of the record.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: The way that it's made a part
4 of the record is by introducing it into evidence,
5 not mailing it to the other side --

6 CHAIRPERSON MILLER: All right.

7 MR. KLINE: -- and saying, "Gee, we might
8 -- you know, we might use this."

9 CHAIRPERSON MILLER: That's not --

10 MR. KLINE: There were only certain
11 documents that were used in this case. And those
12 I would have no objection to. But in terms of
13 the whole thing coming in, that I strenuously
14 object to. And I think it flies in the face of
15 the Administrative Procedures Act.

16 MR. ALBERTI: So, may I ask, Ms. Miller,
17 Ms. Schmidt asked us to take administrative note
18 of the settlement agreement. And is that
19 admissible, because she has then introduced it
20 and it's something -- it's a public document
21 that's available to both sides and is part of
22 this report that was --

1 CHAIRPERSON MILLER: It was addressed in
2 testimony, as well. So I don't see any issues.

3 MR. KLINE: But that's why it's important
4 that the Government's lawyer move the evidence.

5 CHAIRPERSON MILLER: It's moving now.

6 MR. KLINE: She rested her case!

7 MS. SCHMIDT: I didn't rest the case. I
8 was going to, but then I was interrupted. So I
9 have not rested my case yet. If you go back to,
10 if you look at the transcript.

11 MR. KLINE: For purposes of the Court of
12 Appeals, let me note the record will reflect that
13 Ms. Schmidt rested her case. I'll leave it at
14 that.

15 CHAIRPERSON MILLER: For the record, I
16 hear what you're saying, Mr. Kline, and I think
17 that I have to say that the practice of the
18 board, on advice of counsel, has been that the
19 case reports are always admitted into evidence.
20 And I think that -- but if she rested her case, I
21 didn't clearly hear her.

22 MR. ALBERTI: I don't believe she did.

1 So I would prefer that Ms. Schmidt proceed with
2 the introduction of evidence to satisfy Mr.
3 Kline's concerns. And if Mr. Kline thinks that
4 she rested her case, then he can deal with that
5 in another venue.

6 [Pause.]

7 MR. ALBERTI: It's simple. Just move
8 forward. Let's let Ms. Schmidt finish.

9 MS. SCHMIDT: I move that the record --
10 that the investigative report and all the
11 exhibits be moved into evidence.

12 MR. ALBERTI: Just overrule his objection
13 and move them.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: And I would object for the
16 reasons previously stated.

17 CHAIRPERSON MILLER: You would object to
18 the whole report?

19 MR. KLINE: I would object to any of the
20 documents that were not specifically identified
21 by witnesses.

22 MS. SCHMIDT: The settlement agreement

1 was specifically identified by the witness.

2 MR. KLINE: We can clean that up in post
3 findings of fact and conclusions of law. Perhaps
4 it was.

5 MR. ALBERTI: Well, Ms. Miller, I would
6 like to note that this was available to Mr. Kline
7 and the Licensee. And it is part of our
8 administrative record. In fact, many of the
9 documents that he objects to are part of our
10 administrative record. So I see no reason why we
11 shouldn't accept this, this whole report, into
12 evidence.

13 CHAIRPERSON MILLER: Okay. I think
14 that's too vague an objection. I think you'd
15 have to identify the document and why it would be
16 prejudicial.

17 Because certainly you said something
18 about settlement agreement. And settlement was a
19 discussion of testimony.

20 MR. KLINE: All right. If I may, so our
21 record is clear, because I suspect it will need
22 to be --

1 CHAIRPERSON MILLER: Okay.

2 MR. KLINE: The case report was not
3 specifically identified. It was talked about,
4 but it wasn't specifically identified by anyone.
5 The photographs, I believe, were identified. We
6 will address those in the proposed findings of
7 fact and conclusions of law if any were not.

8 The certificate of use was not
9 identified.

10 CHAIRPERSON MILLER: What exhibit is
11 that?

12 MR. KLINE: That is Exhibit 6.

13 MR. ALBERTI: I believe it was. I
14 believe someone asked a question about what was
15 on it. I believe someone asked the question
16 about the number that it said on it.

17 MR. KLINE: Perhaps you're correct. The
18 transcript will certainly reveal that. And as I
19 said, we'll address that in proposed findings.

20 MR. ALBERTI: Fine.

21 MR. KLINE: Exhibit 7 we have no
22 objection to. Exhibit 8 we have no objection to.

1 Exhibit 9 we object to.

2 MS. SCHMIDT: What exhibit is that?

3 MR. ALBERTI: Settlement agreement.

4 MS. SCHMIDT: Settlement agreement?

5 MR. KLINE: Order and amendment to
6 settlement agreement.

7 [Pause.]

8 MR. ALBERTI: Well, Exhibit 9 is the
9 amendment and the settlement agreement.

10 MR. KLINE: I'm a little unclear as to
11 what -- oh, here we go. Exhibit 10 we object to.
12 It was never identified.

13 MS. SCHMIDT: What was that?

14 MR. KLINE: The ABRA application. And
15 number 11 we strenuously object to, which was the
16 Internet reviews, I guess they're called.

17 MS. SCHMIDT: And with respect to the
18 investigator's report, Mr. Kline himself asked
19 the investigator about the investigator's report.
20 He asked Investigator Stewart whether he signed
21 it, whether he approved it. So as directed in
22 the record.

1 And the settlement agreement, I asked a
2 series of questions of Investigator Suero about
3 the settlement agreement. In fact, he's the one
4 who said -- in fact, his testimony did reveal
5 that the settlement agreement did say over 100
6 people.

7 CHAIRPERSON MILLER: Okay.

8 MR. SILVERSTEIN: Can I ask a question?
9 I think Mr. Jones has been trying to -- I asked
10 questions regarding it as well.

11 CHAIRPERSON MILLER: Okay.

12 [Cross-talk.]

13 CHAIRPERSON MILLER: I guess I just want
14 to ask a question. Then Mr. Jones can ask a
15 question so I can look at my APA.

16 What provision of the Administrative
17 Procedures Act are you relying on in your
18 objection?

19 MR. KLINE: The section regarding
20 contesting cases and the rights of the parties in
21 contested cases.

22 CHAIRPERSON MILLER: Okay. So, all

1 right. Mr. Jones.

2 MR. KLINE: I'll bring the cite if you
3 wish.

4 CHAIRPERSON MILLER: I have that right
5 here, 2-509, contested cases.

6 MR. ALBERTI: So, Ms. Miller, do we need
7 to adjourn and get legal advice?

8 CHAIRPERSON MILLER: Well, here is legal,
9 I think.

10 MR. ALBERTI: Well, I mean, I think we
11 need to adjourn if we're going to consult with
12 legal.

13 MR. ALBERTI: Mr. Jones?

14 CHAIRPERSON MILLER: Mr. Jones has a
15 question.

16 MR. JONES: Just a point of
17 clarification. The report is inclusive of all
18 the exhibits, is it not? If you look at page 2
19 and 3 of the report, it references "exhibits
20 attached." And it lists all the exhibits
21 associated with the report.

22 You also read the report, and sprinkled

1 throughout the entire report, you'll look and see
2 parentheses where they are speaking to specific
3 exhibits that they're referencing as part of the
4 report.

5 So, it seems as though this is a
6 distinction without a difference in the sense
7 that the report, in its entirety, was referenced,
8 discussed, and referred to multiple times. And
9 the report, in and of itself, is inclusive of all
10 the exhibits associated therewith by reference if
11 you read the actual report itself.

12 So I'm not really sure what we're doing
13 at this point.

14 CHAIRPERSON MILLER: Okay. We're taking
15 into consideration Mr. Kline's objection.

16 MR. KLINE: So, what we're talking about
17 is 2-509, contested cases.

18 CHAIRPERSON MILLER: Yeah.

19 MR. KLINE: Which says, "In contested
20 cases, the proponent -- or rule of order shall
21 have the burden of proof. Any oral and any
22 documentary evidence may be received." But that,

1 of course, presumes that somebody moves it.

2 And then C says, "The Mayor or the
3 Agency," in this case, the board, "shall maintain
4 an official record in each contested case to
5 include testimony and exhibits.

6 "The testimony and exhibits, together
7 with all papers and requests filed in the
8 proceeding and all material facts not appearing
9 in the evidence, but with respect to which the
10 official notice is taken, shall constitute the
11 exclusive record for purposes of the decision."

12 So this notion that everything in your
13 records is part of this case is clearly
14 contradicted by the provisions of the
15 Administrative Procedures Act, because it is the
16 record in this case.

17 MR. JONES: So, just to be clear, if the
18 item was referenced and discussed and testified
19 to during the hearing, is that -- you're saying
20 that that doesn't constitute it being part of the
21 record?

22 MR. KLINE: It doesn't constitute it

1 being admitted, no. Because --

2 MR. JONES: No, no, no. I didn't ask
3 that. I'm asking does it constitute it being
4 part of the record?

5 MR. KLINE: No. The testimony is part of
6 the record, but the exhibits aren't part of the
7 record unless they're moved.

8 MR. JONES: Okay.

9 CHAIRPERSON MILLER: The Government --

10 MR. KLINE: It's Perry Mason stuff. I
11 mean, just watch TV.

12 [Cross-talk.]

13 MR. JONES: I'm not Perry Mason. I'm not
14 a -- as you pointed out many times, I'm not a
15 lawyer.

16 MR. KLINE: You don't need to be.

17 MR. JONES: So I'm just asking for --

18 MR. KLINE: Watch Perry Mason.

19 MR. JONES: For obviously, our Chair
20 disagrees with you.

21 CHAIRPERSON MILLER: And the language
22 "may be received" -- it could be received by the

1 board. It does not have to be moved in. It just
2 says "may be received." The board can move it on
3 its own motion, too. And the custom of the board
4 has been to treat these reports as part of the
5 record.

6 MR. KLINE: And that would seem to
7 conflict with the provisions of the
8 Administrative --

9 CHAIRPERSON MILLER: You know what?

10 MR. KLINE: -- Proceedings --

11 CHAIRPERSON MILLER: I'm sorry. But I
12 didn't really catch the line that we're
13 conflicting with. I mean, I see what it says,
14 "The Mayor and every Agency shall exclude
15 irrelevant, immaterial and unduly repetitious
16 evidence." Okay. You're not claiming that?

17 MR. KLINE: No.

18 CHAIRPERSON MILLER: So you jumped
19 around. And I'm really not sure what --

20 MR. KLINE: Look at, say, "And the Agency
21 shall maintain an official record in each
22 contested case."

1 CHAIRPERSON MILLER: Okay.

2 MR. KLINE: Now, that's different from
3 your general records.

4 CHAIRPERSON MILLER: Right. And in this
5 case.

6 MR. KLINE: That's a record in this case.

7 CHAIRPERSON MILLER: Okay. Got that.

8 MR. KLINE: To include testimony and
9 exhibits -- you know, "exhibits" is a term of
10 art. It means things that are moved into
11 evidence during the course of a proceeding.

12 CHAIRPERSON MILLER: Sure.

13 MR. KLINE: It's not everything that's
14 talked about.

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: It's what's moved into
17 evidence during the course of a proceeding. The
18 testimony and the exhibits --

19 CHAIRPERSON MILLER: Okay. Where are you
20 on now?

21 MR. KLINE: On C.

22 CHAIRPERSON MILLER: Okay.

1 MR. KLINE: "Together with all papers and
2 requests filed in the proceeding, and all
3 material facts not appearing in the evidence, but
4 with respect to which official notice is taken --
5 and there's another process for taking official
6 notice, which we can go through if need be --
7 "shall constitute the exclusive record for an
8 award or a decision."

9 CHAIRPERSON MILLER: Okay. I don't see
10 where the case report is excluded under that.

11 MR. KLINE: It's not an exhibit. It was
12 never admitted. Well, I guess it's been moved
13 now.

14 CHAIRPERSON MILLER: She wants to move it
15 now. She didn't rest her case.

16 MR. SILVERSTEIN: She has moved it.

17 MR. KLINE: It has to be identified in
18 order to be moved.

19 MS. SCHMIDT: I moved it.

20 CHAIRPERSON MILLER: It's identified.

21 MS. SCHMIDT: I moved the case. I moved
22 the --

1 CHAIRPERSON MILLER: Where does it say
2 that a witness -- where does it say that?

3 MR. KLINE: My objection is on the
4 record. Let it stand. We'll deal with a higher
5 order on these issues.

6 CHAIRPERSON MILLER: Okay. All right.

7 MS. SCHMIDT: The Government moves into
8 evidence the case report for Case Number 15-CMP-
9 223, and all the exhibits that are attached
10 thereto.

11 MR. KLINE: I think we did that, and I
12 objected to it. And it sounds like the board is
13 going to overrule me, which is, of course, its
14 right.

15 CHAIRPERSON MILLER: Okay. I just want
16 to make sure that -- I am ready to overrule the
17 objection. But I want to make sure that --
18 unless the board would like to recess. And is
19 our counsel still here?

20 [Pause.]

21 CHAIRPERSON MILLER: Okay. So we don't
22 have -- our legal counsel doesn't have anything

1 to --

2 MR. ALBERTI: I think someone wants to
3 talk.

4 CHAIRPERSON MILLER: Oh, you do want to,
5 do you want to convene before I rule on this
6 procedural issue?

7 MR. JONES: Yeah. I'd like to speak with
8 our attorney based on my lack of clear
9 understanding of what Attorney Kline is
10 referencing and how it does not comport with our
11 practice.

12 CHAIRPERSON MILLER: Okay. All right.

13 MR. SHORT: Madam, I agree with that.
14 I've seen the practice used here consistently.

15 CHAIRPERSON MILLER: Right.

16 MR. SHORT: So I'm confused here. So I'd
17 like to clear that up with the attorney.

18 [Pause.]

19 CHAIRPERSON MILLER: Okay.

20 [Pause.]

21 CHAIRPERSON MILLER: As Chairperson of
22 the Alcoholic Beverage Control Board for the

1 District of Columbia, and in accordance with
2 Section 405 of the Open Meetings Amendment Act of
3 2010, I move that the ABC Board hold a closed
4 meeting for the purpose of seeking legal advice
5 from our counsel on Case Number 15-CMP-00223,
6 Dacha Beer Garden.

7 Per Section 405B4 of the Open Meetings
8 Amendment Act of 2010 on deliberating upon the
9 issue before us with respect to evidence and
10 exhibits thereof, for the reasons cited in
11 Section 405B13 of the Open Meetings Amendment Act
12 of 2010.

13 Is there a second?

14 MR. RODRIGUEZ: I second it.

15 CHAIRPERSON MILLER: Mr. Rodriguez has
16 seconded the motion. I'll now take a roll call
17 vote on the motion before us now that it's been
18 seconded.

19 Mr. Alberti?

20 MR. ALBERTI: I agree.

21 CHAIRPERSON MILLER: Mr. Rodriguez?

22 MR. RODRIGUEZ: I agree.

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

3 MR. SILVERSTEIN: I agree.

4 CHAIRPERSON MILLER: Mr. Short?

5 MR. SHORT: I agree.

6 CHAIRPERSON MILLER: And Mr. Jones?

7 MR. JONES: I agree.

8 CHAIRPERSON MILLER: Okay. So the vote
9 is 6-0-0. The board will hereby recess the
10 proceedings and hold a brief closed meeting in
11 the ABC conference room pursuant to the Open
12 Meetings Amendment Act of 2010. And we will then
13 return with a ruling on the motion. So I'm sure
14 we'll be at least five minutes, if you want to
15 take a five-minute break.

16 MALE VOICE: Nothing we do is less than
17 five.

18 [Laughter.]

19 MR. KLINE: Thank you.

20 [Whereupon, at 4:03 p.m., a recess was
21 taken for the board to convene in closed meeting
22 to confer with legal counsel, to resume at 4:16

1 p.m.]

2 CHAIRPERSON MILLER: So, the board is
3 back on the record in the Dacha Beer Garden case,
4 having consulted with a counsel with respect to
5 the objections that Mr. Kline has made regarding
6 the admission of the case report in this case
7 into evidence.

8 And having conferred with counsel, it's
9 our view that the best recourse would be to allow
10 the exhibit to be identified by a witness.

11 Ms. Schmidt, if you would like to do
12 that.

13 MR. KLINE: I object.

14 CHAIRPERSON MILLER: Object? Okay. And
15 the nature of your objection is?

16 MR. KLINE: The nature of my objection is
17 the Government rested. The Government was done
18 with her witnesses. The Government bears the
19 burden of going forward with the evidence. And
20 it seems that the Government has quite a bit of
21 help in putting on its case. And that's not the
22 way this process, in my mind, is supposed to

1 work.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: And to the extent that we're
4 going to recall a witness who's already
5 testified, I would object to that as well on the
6 ground that we don't recall the same witnesses
7 over and over again just because we may have
8 forgotten something.

9 CHAIRPERSON MILLER: Okay. I just want
10 to say, Mr. Kline, what is unusual here is that
11 it has been the practice that the case reports
12 are automatically accepted into the record, and
13 you are the first to raise an objection. And
14 your objection was based on failure to have a
15 witness identify it, I believe. So we're trying
16 to correct that.

17 MR. KLINE: My objection is noted for the
18 record.

19 MS. SCHMIDT: And it should also -- it
20 also should be noted that all the testimony
21 concerning these exhibits is still in the record.

22 CHAIRPERSON MILLER: Correct.

1 MS. SCHMIDT: So the Government is
2 calling Investigator John Suero for limited
3 purposes at this point.

4 MR. KLINE: I would object. The
5 investigator has already testified. It's most
6 unusual for a witness to be recalled in the same
7 portion of the case. If Ms. Schmidt wants to
8 call him on rebuttal, should there be any, of
9 course, that would be appropriate, but only if
10 the Licensee puts on evidence to be rebutted.

11 CHAIRPERSON MILLER: Okay.

12 MS. SCHMIDT: Ms. Miller --

13 CHAIRPERSON MILLER: Overruled. It is
14 just to be -- it will just be limited to
15 identification of the case report.

16 MS. SCHMIDT: Yes. And he's already
17 testified to the report. It's not anything
18 that's not already in the record. And he's
19 already been asked questions about the report,
20 also, before.

21 CHAIRPERSON MILLER: You're sworn in
22 already. I don't believe I have to swear you in

1 each time you come in here.

2 Whereupon,

3 JOHN SUERO

4 was recalled as a witness and, having been
5 previously duly sworn, was examined and testified
6 as follows:

7 FURTHER DIRECT EXAMINATION

8 BY MS. SCHMIDT:

9 Q Mr. Suero, I refer you to case report --
10 to the case report for the investigation number
11 15-CMP-0023. Did you compose that report?

12 A I did.

13 Q And is that the report you testified to
14 today?

15 A It is.

16 Q And you filed all the exhibits in this
17 reports?

18 A I did.

19 MS. SCHMIDT: The Government moves that
20 this case report be moved into evidence.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: May I voir dire the Witness?

1 [Pause, no audible response.]

2 MR. KLINE: Ask the Witness questions
3 concerning the evidence to be introduced?

4 CHAIRPERSON MILLER: Okay.

5 MALE VOICE: Sure.

6 VOIR DIRE

7 BY MR. KLINE:

8 Q Investigator, you're not the record-
9 keeper for ABRA, are you?

10 A I'm not.

11 Q So you're not in the position to state
12 whether the exhibits that are attached to the
13 report that purportedly represent exhibits from
14 ABRA's records are from ABRA's records, are you?

15 A If you could rephrase that question,
16 please?

17 Q Okay. I'll certainly try. Attached to
18 the report is the copy of the ABC License. Where
19 did you get that from?

20 A I got it from the ABRA file room, the
21 file for Dacha Beer Garden.

22 Q Okay. But you're not the custodian of

1 records, are you, with respect to records of the
2 ABC Board?

3 A I am not the custodian of records for
4 anyone.

5 Q Okay. So, what other records do you
6 believe that -- that are exhibits that you
7 believe came from ABRA's files, that are listed
8 on the report? Do you want me to walk you
9 through them?

10 A I don't have a copy of the report.

11 Q Oh, I'm sorry.

12 [Pause.]

13 THE WITNESS: And your question was,
14 which records are a part of ABRA file? Is that
15 what --

16 BY MR. KLINE:

17 Q Which records do you believe are part of
18 ABRA's files?

19 CHAIRPERSON MILLER: Is it clean?

20 MALE VOICE: Yeah.

21 CHAIRPERSON MILLER: Ms. Schmidt, do you
22 need an extra copy?

1 MS. SCHMIDT: Yes, if I can use that
2 document.

3 THE WITNESS: Thank you very much.

4 BY MR. KLINE:

5 Q First of all, 1 through 4 are
6 photographs. Did you take those photographs?

7 A I did.

8 Q Okay. Exhibit 5 is a copy of the ABC
9 License --

10 A Which came from the file.

11 Q Did that purportedly come from ABRA's
12 files?

13 A Yes.

14 Q Exhibit 6, the certificate of use for the
15 sidewalk cafe, did that purportedly come from
16 ABRA's files?

17 A It does.

18 Q Exhibit 7, the certificate of occupancy
19 issued on 4-13-15, where did you get that
20 document?

21 A I took a photograph of it while we were
22 at the scene at Dacha Beer Garden.

1 MR. KLINE: All right. I have no
2 objection to that one.

3 BY MR. KLINE:

4 Q Exhibit 8 is a photo that you took.
5 Exhibit 9, a copy of the settlement agreement,
6 purportedly came from ABRA's files?

7 A Correct.

8 Q Exhibit 10, copy of the ABC License
9 application purportedly came from ABRA's files?

10 A It did come from the file.

11 MR. KLINE: And we do not, I hope, speak
12 about Exhibit 11. All right. So we would object
13 to 5, 6, 9, and 10.

14 MR. ALBERTI: Five is a picture.

15 MR. KLINE: I beg your pardon?

16 MR. ALBERTI: Five is a picture.

17 MR. KLINE: No. Five is, according to
18 the list, and maybe they're misnumbered on the --

19 MR. ALBERTI: They're misnumbered.

20 MR. KLINE: I apologize. I was looking
21 at --

22 CHAIRPERSON MILLER: Have you got the

1 right one?

2 MR. ALBERTI: Oh, I'm sorry.

3 CHAIRPERSON MILLER: You're looking at
4 the other case, right?

5 MR. ALBERTI: I'm looking at the other
6 case. I pulled up the wrong file. I'm sorry.

7 CHAIRPERSON MILLER: Okay.

8 MR. ALBERTI: Too many papers. It's
9 frustrating.

10 CHAIRPERSON MILLER: All right. Five,
11 but the -- five, what is that? The license?

12 MR. KLINE: Yes.

13 CHAIRPERSON MILLER: You would object to
14 the license. Okay.

15 MR. KLINE: Five, six --

16 CHAIRPERSON MILLER: Certificate of use,
17 okay.

18 MR. KLINE: Nine and ten.

19 CHAIRPERSON MILLER: Occupancy and 10 --
20 wait, 9 and 10 are what?

21 MR. KLINE: Nine is the settlement
22 agreement. I'm sorry, let me just make sure.

1 CHAIRPERSON MILLER: Okay.

2 [Pause.]

3 MR. KLINE: Nine is the settlement
4 agreement. Ten is the ABC license application.

5 MS. SCHMIDT: And I would just like to
6 proffer out there that since they are business
7 records kept in the ordinary course of business,
8 there's presumption of their regularity. They
9 have not been altered. And especially since
10 these are in ABRA files, there's a presumption of
11 it. I'm just saying that there's a presumption
12 of their authenticity.

13 MR. KLINE: I appreciate Ms. Schmidt's
14 testimony, and I'm happy to have her take the
15 stand if that's what she wants --

16 MS. SCHMIDT: It's legal argument.

17 CHAIRPERSON MILLER: Correct. It is a
18 legal argument.

19 MS. SCHMIDT: It's in the Rules of
20 Evidence. It is not testimony; it's a legal
21 argument.

22 MR. KLINE: Well, there hasn't been any

1 testimony as to how these records are kept or --

2 MS. SCHMIDT: He said they were in ABRA's
3 files.

4 MR. KLINE: Madam Chair, I certainly am
5 trying to be respectful. But --

6 CHAIRPERSON MILLER: Okay.

7 MR. KLINE: But I don't want to talk when
8 other people are talking. And I'd appreciate the
9 same courtesy.

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: There has been no testimony
12 as to where these licenses were retrieved.
13 There's been no testimony from the custodian of
14 records. There's been nothing that reflects that
15 these are indeed records that were kept in the
16 ordinary course of business, which is what would
17 be required to establish that that's where they
18 came from and that's what they are.

19 CHAIRPERSON MILLER: Okay. I'm going to
20 --

21 MR. KLINE: I mean, I understand we may
22 know certain things in our general purview. But

1 this is an evidentiary proceeding with a limited
2 record, and that's just the way it is. That's
3 what the APA requires.

4 CHAIRPERSON MILLER: Okay. I disagree.
5 I think that these are records that we can take
6 administrative notice of, at least. And they
7 were records that were, according to the APA,
8 provided to you all ahead of time so that you
9 could have notice of them. So, and they are
10 really basic records -- license, which you should
11 have anyway.

12 In any event, okay. So I'm going to
13 overrule that objection. And I will allow the
14 case report to come in as Government's Exhibit
15 Number 1.

16 [Government Exhibit No. 1, having been
17 previously marked for identification, was
18 admitted into evidence.]

19 CHAIRPERSON MILLER: All right. Anything
20 else? Ms. Schmidt, do you rest your case?

21 MS. SCHMIDT: Yes.

22 MR. KLINE: The Applicant is not making

1 an opening statement, not presenting any
2 evidence, will not make a closing statement, but
3 will instead rely on its proposed findings of
4 fact and conclusions of law, which it has the
5 right to submit in accordance with the
6 regulations.

7 CHAIRPERSON MILLER: Correct. Okay.
8 Then I'm going to close the record in this case.
9 Ms. Schmidt, are you going to waive your right to
10 submit post findings of fact --

11 MS. SCHMIDT: I will reserve my right
12 until --

13 CHAIRPERSON MILLER: Okay. Then what's
14 going to happen is that the two of you will be
15 emailed a copy of the transcript in two or three
16 weeks.

17 And then you will have 30 days to submit
18 to the board and opposing counsel proposed
19 findings of facts and conclusions of law. And
20 then the board will issue a written decision 90
21 days after it receives the proposed findings of
22 facts and conclusions of law, or if there's any

1 change of mind on that, let us know and we'll
2 proceed with deliberations. Okay.

3 MR. KLINE: Yes, we will. Thank you.

4 CHAIRPERSON MILLER: All right. Then I'm
5 going to read the instructions and take a vote
6 for deliberation of this case in closed session.

7 As Chairperson of the Alcoholic Beverage
8 Control Board for the District of Columbia, and
9 in accordance with Section 405 of the Open
10 Meetings Amendment Act of 2010, I move that the
11 ABC Board hold a closed meeting for the purpose
12 of seeking legal advice from our counsel on Case
13 Number 15-CMP-00223, Dacha Beer Garden.

14 Per Section 405B4 of the Open Meetings
15 Amendment Act of 2010 on deliberating upon this
16 case for the reasons cited in Section 405B13 of
17 the Open Meetings Amendment Act of 2010. Is
18 there a second?

19 MR. RODRIGUEZ: Second.

20 CHAIRPERSON MILLER: Mr. Rodriguez
21 seconded the motion. I'll now take a roll call
22 vote on the motion before us now that it's been

1 seconded.

2 Mr. Alberti?

3 MR. ALBERTI: I agree.

4 CHAIRPERSON MILLER: Mr. Rodriguez?

5 MR. RODRIGUEZ: I agree.

6 CHAIRPERSON MILLER: Ms. Miller agrees.

7 Mr. Silverstein?

8 MR. SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Mr. Short?

10 MR. SHORT: I agree.

11 CHAIRPERSON MILLER: And Mr. Jones?

12 MR. JONES: I agree.

13 CHAIRPERSON MILLER: Okay. It appears
14 that the motion has passed by a 6-0-0 vote. I
15 hereby give notice that the ABC Board will hold
16 this aforementioned closed meeting pursuant to
17 the Open Meetings Amendment Act of 2010. And
18 we'll issue a decision within 90 days from
19 receipt of the proposed findings of facts and
20 conclusions thereof or a word from counsel that
21 such pleadings will be done.

22 Okay. Thank you very much. That

1 concludes this case. The board is going to take
2 a 10-minute break right now and then come back
3 for the Tico protest case.

4 [Whereupon, the above-entitled matter
5 concluded.]

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