

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

2 (2:10 p.m.)

3 MS. MILLER: Okay, good afternoon.

4 MR. KLINE: Could I beg the court's
5 indulgence?

6 MS. MILLER: Okay. I'm just going to
7 call the case. Case number 13-PRO-00173 and 14-
8 PRO-00057 Club Timehri located at 2439 18th Street
9 Northwest, license number 77730 and ANC 1C, and
10 I'm sorry for the delay. There was some other
11 business that the Board had to deal with. So,
12 we'll move right along here. This is a
13 combination hearing I believe, a protest
14 regarding renewal of the license and termination
15 of the settlement agreement. So why don't we
16 start next with introductions.

17 MR. KLINE: Good afternoon, Andrew
18 Kline on behalf of the applicant.

19 MR. WELLS: Christopher Wells, owner
20 of Timehri.

21 MS. MILLER: Okay.

22 MR. SIMPSON: William Simpson for

1 advisory neighbor commission 1C.

2 MR. JAMES: Dennis James representing
3 the Kalorama Citizens Association.

4 MS. AUBURN: Benedicte Auburn for the
5 Reed Cook Neighborhood Association.

6 MS. MILLER: Okay. Great. So I
7 understand that you all filed PIFs but Mr.
8 Simpson something came in later in the day
9 yesterday from ANC 1C, is that right? Your PIF,
10 an updated PIF?

11 MR. SIMPSON: I filed an amended PIF
12 to replace me instead of Commissioner Hart or
13 Guthrie who were referenced there. Commissioner
14 Hart had to go out of town and Commissioner
15 Guthrie is getting ready for a medical procedure.

16 MS. MILLER: Okay. Because I had
17 heard that came in but I didn't see it.

18 MR. SIMPSON: Oh. Yes, it was
19 submitted to Martha Jenkins.

20 MS. MILLER: Right, right. Okay.

21 MR. SIMPSON: Everything else was the
22 same. It just replaces me as the witness.

1 MS. MILLER: Okay. All right, good.
2 So I just wanted to ask you all before we started
3 maybe if you could just try to zero in what is,
4 is there specific concrete issues that can be
5 focused on so that we can focus the hearing. I
6 mean I know that there's a termination and I know
7 it's a renewal and it's a peace order quiet and I
8 just was wondering if you can just identify, I
9 don't recall it from the PIF and I not sure if
10 even the revisional one.

11 If anybody has anything to say because
12 I see an RCNA, I see some concerns to public
13 safety which, they're general and I didn't, if
14 there's anything else you want to say that will
15 help us focus more as to like the extended hours
16 is the issue or, so that we can really pay
17 attention to anything in particular. If you
18 don't have anything more to say on it we can just
19 move on but.

20 MR. SIMPSON: We could say it as part
21 of our opening statements perhaps?

22 MS. MILLER: Okay. That'd be good.

1 And are you, you know how this works, the hour
2 and a half bit and okay, the five minutes. Are
3 you all going to, you all meaning Protestants,
4 are you going to have individual opening
5 statements?

6 MR. JAMES: We will make an individual
7 opening statement.

8 MS. MILLER: Yes. Or is there anyone
9 representing the group as a whole?

10 MR. JAMES: I think that the
11 individual groups need to make their own opening
12 statements if they wish to because of the
13 possibility of one or another being dismissed for
14 various reasons.

15 MS. MILLER: That's fine. I'm just
16 asking if you are planning to.

17 MR. JAMES: Yes, okay.

18 MS. MILLER: All right.

19 MR. KLINE: Madam Chair, I have a
20 preliminary issue.

21 MS. MILLER: What?

22 MR. KLINE: I have a preliminary

1 issue.

2 MS. MILLER: Oh, all right. Okay.

3 MR. KLINE: We have a police officer,
4 a sergeant actually, who's here who's been
5 subpoenaed. We arranged for the Board to issue
6 the subpoena. He's just informed me that the
7 chief may not want him to testify. I suspect that
8 that one or more of the Protestants have
9 interfered with the subpoena that's been issued
10 and attempted to keep the Board from hearing this
11 witness.

12 I'm very troubled by it. I need to
13 bring it to the Board's attention. I'd like to
14 get the officer in here so he understands that he
15 is under subpoena and he does not leave
16 notwithstanding what the chief may or may not
17 have communicated to him, because I believe the
18 Board's power to subpoena even if it's true, even
19 if the chief did tell him not to be here, I
20 believe the Board's power of subpoena trumps
21 that.

22 MS. MILLER: Is he outside? Because

1 I would like.

2 MR. KLINE: He was the last time I
3 looked.

4 MS. MILLER: He's not leaving.

5 MR. JAMES: I would like to respond to
6 this. I would like to be heard when the Board is
7 ready to hear.

8 MS. MILLER: Okay. All right, Mr.
9 James.

10 MR. JAMES: Okay. So in preparing for
11 this hearing, KCA contacted Commander Kishter of
12 the third district and four different officers of
13 the third district seeking those who may know
14 something about this establishment and we found
15 that none of the officers knew anything about
16 Timehri, which was very surprising to us given
17 the record. So I let it drop because I didn't
18 want to waste the Board's time, MPD's time with
19 testimony that led nowhere. But then when I saw
20 the applicant's PIF and it listed Captain Mongal
21 and Sergeant Rooney who is a PSA 303 officer, I
22 was stunned that officers could be used against

1 the community that has protested this
2 establishment for good cause as you will see
3 during this hearing.

4 MS. MILLER: Could you hold on. Wait.
5 No, no, I just, I'm just thinking that I would
6 like to get my legal counsel in here because
7 you're talking about subpoenas and legal issues
8 so if you just hold a minute. Yes, I thought
9 it'd be a good idea to have our legal counsel in
10 here. And certainly Mr. Kline you, I may ask you
11 to repeat your concern with Ms. Jenkins present
12 so if you'll bear with us for a minute. Okay, as
13 I stated this is a legal issue and for me it's
14 one of first impression so and probably for all
15 the Board members here so I requested that at
16 least Ms. Jenkins, our general counsel, hear the
17 concerns, so Mr. Kline would you like to
18 reiterate?

19 MR. KLINE: Yes. Madam Chair, this is
20 a first impression for me also. In 30 years of
21 coming down here I've never had someone so
22 blatantly try to interfere with a witness that we

1 were attempting to call. As I indicated there
2 were two police officers that we spoke to that we
3 thought had information that was relevant to this
4 proceeding. Contrary to what Mr. James says we
5 don't see them as testifying for or against the
6 community. We see them here to tell the truth
7 which is what we expect all witnesses to do in
8 these proceedings. We arranged for the Board to
9 issue subpoenas to each of them.

10 I understand in speaking to Ms.
11 Jenkins that those were served I think by fax or
12 by email. We also emailed copies of the subpoenas
13 to them and just a few moments ago the one
14 witness who did appear, I handed him a copy of
15 the subpoena myself. He indicates to me that he,
16 I'd rather have him tell you himself but it's my
17 understanding that he has some hesitancy about
18 testifying based upon word that he's received
19 from the chief. I don't know if that's direct.
20 I don't know if it's indirect. My position is
21 this Board has the statutory authority to issue
22 subpoenas. Those were enforceable in superior

1 court.

2 Usually that's not necessary
3 particularly with employees of the District of
4 Columbia such as police officers. He's here. I
5 am extremely troubled if there's been an effort
6 by any member of the Protestants to interfere
7 with our right to call witnesses who might have
8 information that's relevant to this proceeding. I
9 find it very, very disturbing.

10 MS. MILLER: Okay.

11 MR. JAMES: I'll be glad to speak
12 about this now. The KCA did not in any way
13 interfere with a subpoena. We didn't know that
14 the officers were subpoenaed until I saw Sergeant
15 Rooney outside here today because I had been in
16 email communication and leaving voicemails for
17 assistant chief, Diane Groomes, Chief of Patrols.
18 And I have copies of our email exchange which
19 I'll be glad to share with the Board if this is
20 the moment to do so but it says, she says she is
21 copying Commander Kishter of the third district
22 no officer shall testify at such hearing, that

1 the police department has a policy and it says
2 that, I mean, to the best of my understanding
3 only the chief or perhaps district commanders can
4 testify and then they just testify about public
5 safety and, I think we need more knowledge than
6 we have right now. Apart from that, the KCA, the
7 protesters have a, I think we should have a right
8 to seek to quash subpoenas. We didn't even know
9 there was a subpoena issued.

10 MS. MILLER: Okay.

11 MR. KLINE: Madam Chair, this was on
12 a, timely filed on our PIF a week before the
13 hearing as required by the Board.

14 MR. JONES: Not that about subpoenas.
15 I mean.

16 MS. MILLER: Okay. Are the, how many
17 officers are they? Two?

18 MR. KLINE: There were two that were
19 subpoenaed; only one has appeared at this point.

20 MS. MILLER: One is here in the
21 hallway?

22 MR. KLINE: I beg your pardon?

1 MS. MILLER: Did you say that one is
2 here in the hallway?

3 MR. KLINE: Yes.

4 MS. MILLER: Well I'd like to hear
5 from the officer, not necessarily his testimony
6 on the case. I'd like to hear his position on
7 testifying or not testifying, so if someone can -
8 -

9 MR. KLINE: I'll bring him in.

10 MS. MILLER: bring him in. Okay.
11 What happened? Is he here?

12 MR. KLINE: Yes. He's right here.

13 MS. MILLER: Oh. Officer.

14 MR. KLINE: Where would you like him?

15 MS. MILLER: Sir, sergeant, how do I
16 address you, sergeant?

17 MR. KLINE: This is Sergeant Sean
18 Rooney for the record.

19 MS. MILLER: I'd like you near a
20 microphone. It looks like, I'm not going to put
21 you on the booth.

22 MR. KLINE: You want to put him on the

1 witness stand just for the sake of convenience?

2 MS. MILLER: Is that all right with
3 you?

4 SERGEANT ROONEY: I'm more comfortable
5 now that I just got a few messages.

6 MS. MILLER: Okay. So you can sit
7 down if you'd like. The mic is on the table.
8 Okay, so I will say that this is the first time
9 that we've seen this happen and we have police
10 officers testify in cases often, because they
11 walk the beat, they respond to calls when there's
12 violence or there's whatever, sales to minors to
13 I wanted to find out from you directly, I mean we
14 already heard from the parties. You are under a
15 subpoena to testify, why, whether or not you are
16 going to comply with the subpoena or have some
17 concerns about testifying and what are those
18 concerns.

19 SERGEANT ROONEY: I do. I was just
20 told not to testify that someone else would be
21 testifying.

22 MS. MILLER: Okay, so.

1 SERGEANT ROONEY: But that person's
2 not present.

3 MS. MILLER: You were told by whom?

4 SERGEANT ROONEY: A commanding
5 officer.

6 MS. MILLER: A commanding officer
7 wanted someone else other than you, another
8 sergeant or officer?

9 SERGEANT ROONEY: That's correct. It
10 would be a captain.

11 MS. MILLER: And who is that?

12 SERGEANT ROONEY: I believe Captain
13 Mongal.

14 MS. MILLER: Monica?

15 SERGEANT ROONEY: Mongal.

16 MS. MILLER: Mongal?

17 SERGEANT ROONEY: Yes.

18 MS. MILLER: Do you know why?

19 SERGEANT ROONEY: I've only been in
20 that area since 2014, since the beginning of the
21 year.

22 MS. MILLER: Since the beginning of

1 the year. Oh, Captain Mongal. Is Captain,
2 excuse me, Mr. Kline, is Captain Mongal the other
3 person that was subpoenaed as well?

4 MR. KLINE: Yes, yes.

5 MS. MILLER: And what's, where, do you
6 know where Captain Mongal is?

7 MR. KLINE: I do not. I spoke to him
8 yesterday and he'd indicated that he would be
9 here at 2:00. I told him he need not be here by
10 1:30, there was no way we'd get to him by then,
11 so I expected him here at 2:00.

12 MS. MILLER: So he was expected here
13 at 1:30 and hasn't appeared or called you?

14 MR. KLINE: At 2:00 is when I expected
15 him, yes.

16 MS. MILLER: 2:00, okay. Do you, I
17 don't want to put words in your mouth, so do you
18 know why or were you told why you shouldn't
19 testify? Is it in addition or in addition to Mr.
20 Mongal? Captain Mongal, sorry.

21 SERGEANT ROONEY: It was going to be
22 in addition to, I believe.

1 MS. MILLER: In addition to?

2 SERGEANT ROONEY: Yes.

3 MS. MILLER: Do you know how long
4 Captain Mongal has been in that area?

5 SERGEANT ROONEY: Yes, for I think
6 like six, seven years or more.

7 MR. KLINE: I would proffer to the
8 Board my information is he had been in Adams
9 Morgan for seven years. He's now at Seven Gate
10 and is no longer in Adams Morgan but had been
11 there for seven years.

12 MR. JAMES: If I might add, he would
13 publicly, you sign, emails to the community
14 something like club zone details, something along
15 those lines. I mean I'm very familiar with the
16 Captain as well and I believe some of the others
17 may --

18 MS. MILLER: Do you know why the
19 Captain is not here?

20 SERGEANT ROONEY: No, I'm not sure. I
21 was going to call him. I just got his cell phone
22 number, so.

1 MS. MILLER: Board members, do other
2 Board members have questions?

3 MR. SHORT: Yes, I'd just like, I
4 would be very curious to, Sergeant, how are you
5 doing today?

6 SERGEANT ROONEY: I'm doing well,
7 thanks.

8 MR. SHORT: And you said you've been
9 assigned to this area where the club is for,
10 since January?

11 SERGEANT ROONEY: Yes; however, I
12 cannot testify on behalf of anything right now.
13 I just got ordered not to testify here at the
14 hearing today, so, unfortunately I got to,
15 decline any kind of --

16 MR. SHORT: Knowing public safety the
17 way I know it in this city.

18 SERGEANT ROONEY: Yes.

19 MR. SHORT: I would suggest that you
20 follow your commander's orders.

21 SERGEANT ROONEY: Yes, sir.

22 MR. SHORT: You have a, how long have

1 you had with the department?

2 SERGEANT ROONEY: Well I'm, it's my
3 second time around. 2008 I was a financial
4 advisor for a while. I started in 99 and came
5 back to the department so 2008 I began from here,
6 so.

7 MR. SHORT: I'd just like to go on the
8 record just saying pretty much --

9 SERGEANT ROONEY: I appreciate it.

10 MR. SHORT: I'd just really like to go
11 on the record as saying the sergeant needs to
12 look out for his career and look out for the city
13 who pays him and citizens who pay him, so I would
14 think we're putting him in a very auspicious
15 situation.

16 SERGEANT ROONEY: Thank you, sir. I
17 apologize to everybody else. I got about ten
18 phone calls and emails and things like that in
19 the last probably five minutes so.

20 MR. KLINE: Madam Chair, I'm very
21 disturbed by what appears to be an effort to
22 interfere with the Board's processes and the

1 Board's statutory authority to hear cases
2 involving ABC licensees and the parties' rights
3 under the Administrative Procedures Act and under
4 the due process clauses of the constitution to
5 call forward witnesses to testify on their
6 behalf. This is one of the most outrageous
7 situations I have dealt with in my over 30 year
8 career. I've never seen anything like this in
9 any administrative hearing I've ever been
10 involved in and I would ask the Board to
11 investigate the circumstances under which this
12 interference with our rights has taken place
13 because it is nothing short of outrageous.

14 MS. MILLER: And I have to say that I
15 disagree with my colleague over here that he has
16 a great background in public safety and can
17 empathize with you but we are talking about the
18 law and that, and we have a legal subpoena that
19 can be brought, challenged in court or whatever
20 and you have been subpoenaed to testify as to
21 just basically your knowledge of the area and
22 your experience and it's not even, you may have

1 been even subpoenaed by one party, but when we
2 look at you as a witness, we look at you as a
3 real fact witness as somebody on the beat or
4 whatever who knows the area and it's very, it can
5 be very important to a case and I, you can't just
6 pull the rug out.

7 SERGEANT ROONEY: I completely,
8 wholeheartedly agree; however, do you have the
9 subpoena with you? That's the one thing that it
10 comes down to is that I was never served a
11 subpoena.

12 MS. MILLER: You were never served a
13 subpoena?

14 SERGEANT ROONEY: No, do you have, do
15 you have the serving of the subpoena? That's
16 what I was arguing with the, that was the whole
17 thing because I was, my whole intentions were
18 coming here was to be testifying here and to make
19 sure that within any manner that I possibly can
20 but the subpoena, unfortunately there, I was
21 never subpoenaed.

22 MR. KLINE: Well the fact of the

1 matter is if there's any doubt about service, any
2 doubt should have been resolved about ten minutes
3 ago when I handed the officer the subpoena in the
4 hall. I think the officer will concede that I
5 did that so even if there's some issue as to
6 whether or not he was served before, I had
7 presumed that when this agency, which is another
8 agency of the District of Columbia government,
9 subpoenas officers of the Metropolitan Police
10 Department it's done informally and the agencies
11 cooperate which is why when it was faxed over, or
12 I was informed that it was faxed over, that it
13 was not necessary for us to go out and hire a
14 private process server to get one agency in the
15 District of Columbia government to have this
16 representative appear before another agency of
17 the District of Columbia government. I certainly
18 was not aware of that, but if there's any doubt
19 about that issue it should have been resolved ten
20 minutes ago when I handed the sergeant the
21 subpoena.

22 MR. RODRIGUEZ: Madam Chair.

1 MS. MILLER: Yes.

2 MR. RODRIGUEZ: I have a few questions
3 as to --

4 MS. MILLER: Wait a second, I'm sorry.

5 MR. KLINE: Let the record reflect I
6 believe Captain Mongal just walked in. He did.

7 MS. MILLER: Great. Thank you.

8 MR. RODRIGUEZ: Madam Chair, I want to
9 be clear as to when the subpoenas were issued,
10 when they were received and that's very important
11 for me to know.

12 MS. MILLER: Our general counsel is
13 checking on it because it's our agency that
14 served it. It wasn't Mr. Kline. It's our agency
15 that serves it and they're checking on it, but we
16 did hear that he, the sergeant, sergeant you have
17 been served today with the subpoena by Mr. Kline,
18 correct?

19 SERGEANT ROONEY: I was handed a
20 subpoena.

21 MS. MILLER: What?

22 SERGEANT ROONEY: I was handed a

1 subpoena.

2 MS. MILLER: Yes, okay.

3 MR. BROOKS: Madam Chair, now it
4 appears that the, this officer's superior is here
5 now.

6 MS. MILLER: Yes.

7 MR. BROOKS: So what role does he play
8 vis-à-vis this gentleman?

9 MS. MILLER: I'm not sure. We need to
10 follow up on that. Mr. Kline, I think what I
11 heard the sergeant say is that his commanding
12 officer didn't want him to testify but wanted
13 Captain Mongal to testify and am I correct that
14 it's important to your case that both testify or
15 not or were you satisfied to go forward with
16 Captain Mongal if there's not an issue?

17 MR. KLINE: Well, I mean, we wanted
18 both of them and I can make a proffer if the
19 Board would prefer in that Captain Mongal as I
20 understand it had been in the area for six or
21 seven years as a captain, Sergeant Rooney was
22 started the first of the year and was brought

1 over as part of a nightlife detail and certainly
2 has testimony that's relevant to this proceeding.

3
4 I also don't understand why one agency
5 of the District of Columbia government is
6 instructing I guess me at this point who it is
7 I'm allowed to call as a witness in my ABC
8 proceeding. I mean I just think we're so far off
9 the tracks here I don't even know what to say. I
10 mean this is just as stunning turn of events as
11 far as I'm concerned.

12 MS. MILLER: And it's not like you
13 have met with these officers and prepared them to
14 testify, right?

15 MR. KLINE: I have spoken to each of
16 them.

17 MS. MILLER: Okay.

18 MR. JAMES: I think it would be fair
19 for me to say something then because Mr. Kline
20 has repeatedly asserted that something outrageous
21 has happened and no such thing has happened.

22 MS. MILLER: Okay, I understand that.

1 I really want to get to the facts though and --

2 MR. JAMES: Well, I have facts that --

3 MS. MILLER: No, I understand, well,
4 do you because what I would think what I would
5 like to have, it's already 2:36, is to hear from
6 Mr., from Captain Mongal and just get an idea of
7 what we're dealing with. Whether Captain Mongal
8 is on Board with testifying, too, and what,
9 whether he has anything to say with respect to
10 the sergeant's testifying so if you don't mind,
11 I'm, Captain Mongal can you come forward? Is
12 there some --

13 MR. JAMES: If I could, I'd like to
14 repeat, I'd like to just finish my statement
15 because it goes beyond your understanding of what
16 you thought I was going to say and that is this.
17 I was informed by Commander Kishter, the
18 commander of the third district, that MPD has a
19 policy against officers giving testimony at such
20 hearings.

21 MS. MILLER: What such hearings?

22 MR. JAMES: Hearings at the ABC Board.

1 MS. MILLER: We see officers all the
2 time that testify here so I'd say --

3 MR. JAMES: But that's not the point.
4 That's not what I'm getting to. So how can I get
5 an officer to be a witness if it's not allowed?
6 So then I see the PIF of the applicant and I see
7 not one, but two officers, one a senior officer
8 and not knowing that there's a subpoena I
9 contacted their superior who I've known since she
10 was a sergeant in the third district.

11 MS. MILLER: Who is that?

12 MR. JAMES: Sergeant, Assistant Chief
13 Groomes. And she said that it's not allowed and
14 she instructed, I mean, and I don't want to,
15 maybe that's the wrong word, she informed
16 Commander Kishter of this.

17 MR. KLINE: Well perhaps they're
18 wrong.

19 MS. MILLER: Right. Okay. Good
20 afternoon.

21 CAPTAIN MONGAL: Good Afternoon.

22 MS. MILLER: I don't know if you knew

1 what you were coming into this kind of
2 discussion.

3 CAPTAIN MONGAL: No but it seems nice.

4 MS. MILLER: Okay, so the applicant
5 subpoenaed two officers, you and Sergeant Rooney.

6 MR. KLINE: Sergeant Rooney.

7 MS. MILLER: Okay, and I'm wondering
8 whether anyone, any of your commanding officers
9 said anything to you with respect to testifying
10 at this hearing?

11 CAPTAIN MONGAL: I think they were
12 surprised.

13 MS. MILLER: Okay.

14 CAPTAIN MONGAL: But that's about it.
15 I mean they were surprised. I think the, though I
16 guess the email chains and maybe the attempt to
17 make notification to me, I think a couple of days
18 ago or maybe last week the command staff might
19 have thought that the actual, the subpoena was
20 coming from the government side and not from the
21 applicant, so today was, hey that was from the
22 defense or the club. That's it.

1 MS. MILLER: Okay. So there's no
2 issue with respect to your testifying today?

3 CAPTAIN MONGAL: No, never.

4 MS. MILLER: Okay, good. All right.
5 Then I guess if you can take a seat in the
6 audience then. Thank you. Wait, let me, one more
7 thing. That, so there was raised here by
8 Sergeant Rooney an issue with his testifying.
9 Are you aware of that?

10 CAPTAIN MONGAL: No, I wasn't here for
11 that. I walked in --

12 MS. MILLER: No, I know. I just, you
13 weren't aware of that before you came or
14 anything? You don't have any knowledge about
15 that do you?

16 CAPTAIN MONGAL: No. I just knew that
17 Sergeant Rooney was actually on the same beat, as
18 far as I'm in the Seventh District now and he's
19 in the, he's still in the third district so his
20 chain of command and supervisors are different
21 now, so I don't know --

22 MS. MILLER: Oh, okay.

1 CAPTAIN MONGAL: Commander Kishter and
2 that's a different chain of command so I have no
3 idea what went on over there today.

4 MS. MILLER: Oh, okay. That makes
5 sense.

6 CAPTAIN MONGAL: Right. I was only
7 dealing with my superior at seventh district.

8 MS. MILLER: Okay, okay. Mr. Rodriguez
9 has a question.

10 MR. RODRIGUEZ: Captain, I'm new to
11 the Board but have you ever testified before this
12 Board before?

13 CAPTAIN MONGAL: Never.

14 MR. RODRIGUEZ: Okay.

15 MS. MILLER: Okay. Thank you. You can
16 take a seat. Okay, this is how we would like to
17 proceed at this moment. I always feel like the
18 police officers' time is very important so I'm
19 going to give you all a choice, either there's no
20 question that Captain Mongal can testify, will
21 testify and has valuable information, so what
22 we'd like to do is have him testify first if

1 that's all right with the parties and then see
2 whether, then I'll have you assess perhaps how
3 important Officer, Sergeant Rooney's testimony
4 may be, whether after that, whether, because
5 sometimes parties have more than one witness and
6 they decide they want them or they don't want
7 them so I just kind of want to hold this in and
8 at bay just to see whether we'll need to go
9 forward with Sergeant Rooney. I would like him to
10 stay here, he's here, in the event that, that he
11 has important information for this decision. So
12 I want to ask the parties, number one, did you
13 want to do opening statements first anyway? And
14 it's only but, you know, if that's agreeable to
15 everyone to have Captain Mongal go first.

16 MR. KLINE: We're certainly agreeable
17 with having Captain Mongal go first. We share the
18 chair and the Board's concerns about seeing the
19 officers where they can do the best good for the
20 District of Columbia, which is not in a hearing
21 room, so we certainly concur with that. We would
22 make a very brief opening statement. I don't

1 think the issues are complicated in this case.

2 MS. MILLER: Okay. I don't see them
3 in the hearing room, but I assume that they're
4 out in the, okay. All right, so why don't we
5 start with the opening statements.

6 MR. JAMES: I object to MPD being
7 allowed as a witness when it's against department
8 policy as explained to me and I'd be glad to, I'm
9 going to put this into evidence during this
10 hearing.

11 MS. MILLER: I'm going to overrule
12 because the Captain has not been told by his
13 superiors that he cannot testify and he's a live
14 police officer telling us that so I'm not sure. I
15 don't want to get into your emails and we have a
16 valid subpoena nonetheless so that's our decision
17 unless I have a majority dissenting. Okay, I
18 don't hear that. Okay, so that, that's the end of
19 that issue, so why don't we start with opening
20 statements.

21 MR. KLINE: Good afternoon chair,
22 members of the Board. We are here today on

1 behalf of Club Timehri, which is an establishment
2 located in Adams Morgan. Seated to my left is
3 Johnathan Wells who's the proprietor/owner of
4 that establishment along with a partner. They've
5 operated that establishment for seven years and
6 we're here today to talk about two issues. One is
7 the renewal of their license which has been
8 protested and the other is a request to terminate
9 or amend the existing voluntary agreement, which
10 has also been protested. The two cases have been
11 consolidated.

12 The issues are basically the same,
13 which is whether the renewal of this license will
14 have an adverse impact on peace, order and quiet
15 and secondarily whether the renewal of the
16 license without the settlement agreement will
17 have an adverse impact on peace, order and quiet.
18 We believe the evidence that will be introduced
19 today will show you that with the exception of
20 one incident that happened back in 2012, which
21 the Board dealt with, that this establishment has
22 been run responsibly without incident, is a

1 respected member of the Adams Morgan community
2 and that there are circumstances which have
3 changed concerning the voluntary agreement.

4 The voluntary agreement is an older
5 agreement. It's loaded with everything but the
6 kitchen sink. It was done under the previous
7 ownership of this establishment. It was not
8 entered into by this gentleman but the group that
9 he bought the business from but one of the other
10 fundamental changes is the Board or the council
11 has allowed establishments all over the District
12 of Columbia to take advantage of extended hours
13 on certain weekends. This agreement restricts
14 this establishment's ability to do so and
15 restricts its ability to compete with other
16 establishments in the District of Columbia. This
17 ability did not exist when this settlement
18 agreement was entered into. It was not
19 contemplated and the settlement agreement
20 contains a restriction on hours which through no
21 fault of anyone who entered into it restricts the
22 ability of the establishment to take advantage of

1 those later hours.

2 In addition, the settlement agreement
3 restricts the establishment's ability to open
4 earlier and the evidence will show that there are
5 opportunities that this establishment has not
6 been able to take advantage of because of these
7 restrictions and I think if the Board reviews the
8 voluntary agreement it will see that it is way
9 out of line with what the Board would currently
10 permit in such an agreement and we would at the
11 conclusion of the case request that the agreement
12 be vacated and that the license be renewed.

13 Thank you.

14 MS. MILLER: Okay. Mr. Simpson.

15 MR. SIMPSON: Hi, William Simpson for
16 ANC-1C. Counsel for the establishment has
17 characterized Club Timehri as one of the
18 respected establishments in the Adams Morgan
19 business community. I think it's obvious to say
20 that the fact that you have both the ANC and the
21 two predominant neighborhood associations in the
22 community who are protesting both the renewal of

1 the license and the application to terminate the
2 settlement agreement, I think it's obvious that
3 the view of the establishment in the community is
4 otherwise.

5 There are always within Adams Morgan
6 half a dozen or so establishments whose names
7 come to your ears over and over again as places
8 that are creating problems and this is one of
9 them. The decision by the ANC to protest the
10 license back in November 2013 was unanimous. The
11 decision to protest the application to terminate
12 the settlement agreement in July 2014 was
13 unanimous and although efforts were made to try
14 to come up with an amended settlement agreement
15 over the past period of time, ANC-1C rejected the
16 proposed settlement agreement by a vote of five
17 to two, so again there are significant concerns
18 by ANC-1C that this establishment does create
19 problems for peace, order and quiet in the
20 community and that if the restrictions of the
21 current settlement agreement were lifted those
22 problems would increase. Thank you.

1 MS. MILLER: Mr. James.

2 MR. JAMES: I agree with what
3 Commissioner Simpson has said, that the
4 establishment is a cause of great concern to
5 peace, order and quiet and with a special
6 emphasis on violence. That is a major concern
7 and should be a major concern to the other
8 businesses in Adams Morgan. I think the file is
9 what we're going to be concentrating on during
10 this hearing.

11 Everything that we're going to be
12 presenting today is from your files or MPD files
13 and we've highlighted the parts of it which we
14 think are most telling and if the Board reads
15 those and pays attention to it and takes notice
16 of the actions it has previously taken then it
17 will not choose to terminate the settlement
18 agreement.

19 The settlement agreement is not
20 particularly stringent. It is somewhat older but
21 many of the provisions that are in it are very,
22 very similar to provisions which this Board

1 approves from Adams Morgan on a regular basis.

2 So, that's about all I have to say right now.

3 Thank you.

4 MS. AUBURN: Benedicte Auburn from the
5 Reed Cook neighborhood association. I just want
6 to emphasize the opening statement of
7 Commissioner Simpson and Mr. Denis James from the
8 Kalorama Citizens Association on the Timehri and
9 during our public meeting at the Reed Cook
10 neighborhood there was a majority of a vote to
11 protest the renewal of the license and especially
12 the termination of the settlement agreement for
13 very good reasons.

14 We are concerned about the fact that
15 again if you lift any restriction there will be
16 trouble and problems within the community that
17 according to history is a recurrent issue as you
18 are aware. Thank you.

19 MS. MILLER: Okay. Thank you. All
20 right, so what I said previously, normally the
21 Board's witness comes forth next in protest cases
22 but because we have police officers here, we are

1 going to call the police officers first. So,
2 well that's your call, Mr. Kline.

3 MR. KLINE: Yes, thank you. Call to
4 the stand Captain Aubrey Mongal.

5 MS. MILLER: Captain Mongal, I'm going
6 to swear you in. Do you swear to tell the truth,
7 the whole truth and nothing but the truth?

8 CAPTAIN MONGAL: I do.

9 MS. MILLER: Thank you. Okay.

10 DIRECT EXAMINATION

11 MR. KLINE: Good afternoon, Captain.

12 CAPTAIN MONGAL: Good afternoon.

13 MR. KLINE: Would you state your
14 full name for the record and tell the Board
15 where you're currently assigned.

16 CAPTAIN MONGAL: Aubrey Mongal,
17 Metropolitan Police Department, the Seventh
18 District.

19 MR. KLINE: And, Captain Mongal, how
20 long have you been at the Seventh District?

21 CAPTAIN MONGAL: Approximately a
22 month now.

1 MR. KLINE: And where were you prior
2 to that?

3 CAPTAIN MONGAL: The Third District.

4 MR. KLINE: Did your area encompass
5 the neighborhood known as Adams Morgan?

6 CAPTAIN MONGAL: It did.

7 MR. KLINE: And how long were you in
8 that area?

9 CAPTAIN MONGAL: I believe it was
10 since the end of 2008. Yes.

11 MR. KLINE: So about six years,
12 almost six years.

13 CAPTAIN MONGAL: Six years. Yes.

14 MR. KLINE: And during your occasion
15 there were you involved with the clubs,
16 nightclubs, restaurants and other licensees
17 along the 18th Street corridor?

18 CAPTAIN MONGAL: Yes.

19 MR. KLINE: And what was your
20 involvement?

21 CAPTAIN MONGAL: I was the captain
22 that oversaw in the beginning it was oversaw the

1 nightlife along those areas and then I think it
2 expanded to the 24-hour operations for those
3 same areas, the Adams Morgan area.

4 MR. KLINE: And do you have
5 familiarity with the establishment known at
6 Timehri or Club Timehri?

7 CAPTAIN MONGAL: I do. Yes.

8 MR. KLINE: And how do you have that
9 familiarity? How do you know about that
10 location?

11 CAPTAIN MONGAL: It's one of the
12 locations in the 2400 I believe it is, 2400
13 block of 18th Street that has been there a long
14 time. I can't tell you exactly, I don't know if
15 it was opened in 08 when I got there, but I know
16 it has definitely it is located in the 2400
17 block of 18th Street now.

18 MR. KLINE: During your time, and
19 you were a captain when you were over there at
20 3D, is that correct.

21 CAPTAIN MONGAL: Correct, yes.

22 MR. KLINE: All right. During your

1 time as a captain overseeing this area did you
2 form an opinion as to the way this particular
3 establishment was run during your time there?

4 CAPTAIN MONGAL: Form an opinion?

5 MR. KLINE: Yes, in terms of whether
6 it was a well-run place, a poorly run place, a
7 trouble maker. Do you have an opinion about how
8 the reputation of the establishment in the
9 community?

10 CAPTAIN MONGAL: No, not really. I
11 mean I had other things to do. It didn't pop up
12 on my radar screen as a problem area. It was
13 one of the establishments of the many along the
14 23, 2400 block of 18th Street that we had to
15 deal with during the course of our operations.

16 MR. KLINE: Okay. And during the
17 course of that from time to time you would get,
18 have some complaints about this establishment?

19 CAPTAIN MONGAL: Yes, over the time
20 period we did receive a few complaints, yes.

21 MR. KLINE: And the tenor of those
22 complaints was different than it was about other

1 establishments, wasn't it?

2 CAPTAIN MONGAL: Well we, any
3 complaints that came to me as far as whether it
4 was maybe an email complaint or a complaint that
5 was personally conveyed to me by someone,
6 whether it's through contact or through meetings
7 or anything of that, none of them ever panned
8 out to have any type of basis behind it. We
9 didn't find anything credible for any of them.

10 MR. KLINE: Okay, and were there a
11 number of those?

12 CAPTAIN MONGAL: I'd say maybe three
13 or four over the time that I can remember and,
14 again, I'm talking about complaints that came to
15 me, so this would be --

16 MR. KLINE: Understood. Was that
17 unusual that you would get complaints about a
18 place, you'd investigate them and find that
19 there's nothing there?

20 CAPTAIN MONGAL: Well, I mean that's
21 not unusual. I mean we do that, we get that a
22 lot of times where people will make complaints

1 about stuff and sometimes whether they're valid
2 or not we might not have just found something at
3 the time, so our investigation doesn't lead us
4 to a positive conclusion sometimes, so it is,
5 it's quite common that that would happen and
6 it's also quite common along the 18th Street
7 area where we've had other establishments where
8 someone might have complained about something
9 and we'd look into it and find out whether it
10 has basis or not.

11 MR. KLINE: You've been inside Club
12 Timehri at some point?

13 CAPTAIN MONGAL: I know I was in
14 there once. I could say that one, that I can
15 remember over my career, once.

16 MR. KLINE: All right. But you've
17 been by it?

18 CAPTAIN MONGAL: Oh, yes, yes.

19 MR. KLINE: You certainly knew the
20 area in front of it.

21 CAPTAIN MONGAL: Yes. Most, most of
22 my nights up there I positioned myself actually

1 within five, well maybe about a hundred feet
2 away, so I'm well familiar with the front of it
3 and everything that goes along as far as the
4 front areas.

5 MR. KLINE: So you were well
6 positioned to see what came in and went out of
7 the establishment in terms of effects on the
8 community, correct?

9 CAPTAIN MONGAL: I could say that I
10 monitored the traffic that was going on, foot
11 traffic, vehicle traffic and things of that
12 nature because that was my purpose of being up
13 there, not for one specific location. It was
14 just for the entire, to oversee, I had anywhere
15 from 10 to 20 officers that were deployed along
16 that two block area, so my job there was just to
17 monitor everything that was going on.

18 MR. KLINE: Does this establishment
19 have a negative impact on the peace, order and
20 quiet of the community, this particular
21 establishment?

22 CAPTAIN MONGAL: I wouldn't be able

1 to actually to answer that question as far as
2 does it have a negative, I don't think I can
3 give that type of answer as far as, it depends
4 on how you look at it.

5 MR. KLINE: During your time up
6 there, did you see anything from this
7 establishment or related to this establishment
8 that would give you the impression that the
9 establishment had a negative effect on the
10 peace, order and quiet of the community?

11 CAPTAIN MONGAL: Again, it depends
12 on what you're looking at as far as negative.
13 To some people it may have been negative the
14 mere fact that they were selling alcohol. To
15 some people it may be negative because of the
16 location of where it was in contrast to another
17 location. From a law enforcement perspective
18 there was nothing about this location at the
19 time that I was aware of up there that stood out
20 to where it put us on a, that we had to do
21 anything differently. We operated each weekend
22 accordingly and when we strategically deployed

1 our officers we didn't do anything any
2 differently in my deployment efforts as for
3 Timehri.

4 MR. KLINE: Now during your time up
5 there, there must have been places that were on
6 your radar, you knew which, who the good actors
7 were and who the bad actors were and the
8 troublesome places, correct?

9 CAPTAIN MONGAL: We had, we had
10 locations that received more complaints than
11 others. We don't have bad actors or good actors,
12 we have places that receive more complaints than
13 other, places that had a higher volume of calls
14 for service which means that had officers that
15 had to respond during the course of the night
16 for an incident related to their establishment
17 or something of that nature and based on that,
18 that's how we determined where we would place
19 officers for their line of sight.

20 MR. KLINE: And was Timehri one of
21 those places that had a higher incidence of
22 calls?

1 CAPTAIN MONGAL: From the top of my
2 head I don't have the data in front of me I do
3 not believe so. Timehri was never one that we
4 actually targeted as far as deployment
5 locations. It wasn't on my list. Now could it
6 been cause of, not to my knowledge.

7 MR. KLINE: Okay. Compared to other
8 of the licensed establishments up in Adams
9 Morgan, is, I mean can you say that Timehri was
10 not one of those that would have been on the
11 list as one to watch out for?

12 CAPTAIN MONGAL: Yes, I thought I
13 just answered that. It was not on my, right, my
14 deployment efforts, it was not on one for my
15 team to monitor.

16 MR. KLINE: And there are also
17 establishments up there that aren't particularly
18 cooperative with law enforcement, aren't there?

19 CAPTAIN MONGAL: Again, I don't know
20 what you mean when you say cooperative. You
21 have to define when you say cooperative.

22 MR. KLINE: Well, there are

1 establishments that will work with you and your
2 officers in the Adams Morgan community on a
3 regular basis, correct, or communicate with you?
4 Will tell you about problems and you'll work
5 together in terms of preserving the peace, order
6 and quiet there, right?

7 CAPTAIN MONGAL: Based on your
8 definition right now, I don't have anybody that
9 did not do that.

10 MR. KLINE: Okay.

11 CAPTAIN MONGAL: Everybody, every
12 establishment up there as long as I've been up
13 there cooperated with us from the surface, again
14 from the surface and communicated with us. They
15 provided information when we needed information
16 as far as things or whatever was going on and
17 there wasn't anybody in those two blocks, and
18 again when I'm talking Adams Morgan, I'm talking
19 those two block area, the 23 and 24, which is
20 our target area. We didn't have anybody that
21 didn't except for I believe there was one
22 location towards the end that became a nuisance

1 and that was across the street I believe but
2 everybody over there as far as from the law
3 enforcement side cooperated.

4 MR. KLINE: Now you testified about
5 certain complaints that were made were
6 unfounded. Do you have any reason to believe
7 that that those might have been made because of
8 the style of entertainment that was offered at
9 this establishment?

10 CAPTAIN MONGAL: I have no idea what
11 the basis of the allegations was. I mean we can
12 assume, but I mean factual, we have no idea. We
13 have no idea because we get the complaints
14 across the Board and it's sometimes it's just
15 interesting.

16 MR. KLINE: Okay. But, I mean just
17 to, not to be repetitious but you get more
18 complaints about some places than others,
19 correct?

20 CAPTAIN MONGAL: Yes, oh yes, yes.

21 MR. KLINE: And this was not one of
22 the places that you got more complaints about,

1 correct?

2 CAPTAIN MONGAL: Me, personally, no.
3 This was not one of the places that I received
4 complaints again, like I said, I got maybe three
5 or four that, off the top of my head. There are
6 some other establishments that I've gotten three
7 or four within the last 12 months alone
8 complaints about, so there are some other
9 establishments, there are other establishments
10 up there that got a lot more complaints that
11 were either voiced to me or came through my
12 office that I'm aware of.

13 MR. KLINE: Right, but as the
14 captain in that area, or a captain in that area,
15 you would have knowledge of other complaints
16 that might pertain to others not specifically to
17 you, correct?

18 CAPTAIN MONGAL: If it was
19 documented, yes. If the report, if the complaint
20 was documented. Sometimes other officials that
21 are actively working up there, sometimes some
22 officers up there get information or complaints

1 from individuals that might be up there, might
2 be working there that night and sometimes they
3 look into it themselves and sometimes that
4 information doesn't get funneled all the way
5 through because it may just be from a citizen to
6 an officer or another operator telling about
7 hey, that guy across the street is allowing
8 underage people in, dah, dah, dah, sometimes
9 that's transcribed to come up, sometimes it
10 doesn't, so there may be other, other complaints
11 that have been out there is what I'm saying. I
12 don't have them all. I wish I did.

13 MR. KLINE: Just one final question,
14 in Mr. Simpson's opening he mentioned and I'm
15 paraphrasing but that there were several
16 establishments that were repeatedly mentioned as
17 troublemakers in the community. That wouldn't
18 be club Timehri, would it?

19 CAPTAIN MONGAL: Again, it depends
20 on what the definition of troublemaker is as far
21 as I've never mentioned anybody being a
22 troublemaker. We don't have troublemakers. We

1 have individuals or establishments that have
2 high calls for service and incidents that lead
3 to however deemed necessary the proceedings that
4 we need to get to and Timehri was not on that
5 list as far as our deployment efforts at 3D, did
6 I say 7, 3D.

7 MR. KLINE: All right. Thank you.

8 I have nothing further of the witness at this
9 time.

10 MS. MILLER: Okay, is there any cross?

11 CROSS-EXAMINATION

12 MR. JAMES: I'd like to proffer a,
13 our Exhibit book to Captain Mongal.

14 MS. MILLER: Okay. Does Mr. Kline
15 have a copy?

16 MR. KLINE: No.

17 MR. JAMES: No.

18 MS. MILLER: Does the Board have a
19 copy?

20 MR. JAMES: It will.

21 MS. MILLER: Okay.

22 MR. KLINE: Thank you.

1 MR. JONES: Thank you, ma'am.

2 MS. MILLER: Thank you.

3 MR. RODRIGUEZ: Thank you.

4 MR. ALBERTI: Thank you.

5 MR. JAMES: Okay, so this is
6 contains a series of documents which relate to
7 this establishment or are MPD documents. That's
8 all that's in here.

9 MS. MILLER: Okay.

10 MR. JAMES: Nothing more. And
11 they're all already in ABC files, so we hope
12 that there will be no objections to their
13 admission into evidence. We would ask that they
14 be moved, you know, as evidence all at once now
15 so that we are finished with that hurdle and can
16 just proceed asking questions and moving along
17 with the hearing. All we've done is take some
18 of the most relevant statements that we want to
19 bring forward and highlighted them or simply the
20 inclusion of a document, like the investigative
21 history, yes. There's one that takes, I think
22 will take a little bit if explanation and that

1 is, this is from an Excel file. It's the Calls
2 for Service for 2439 18th Street. This was,
3 it's for a certain period of time.

4 MR. ALBERTI: Could we identify that
5 by page so or when I look at it I know what
6 you're talking about and I'm certainly Mr. Kline
7 would love to know, I'm sure, so if you could
8 identify it by page it would be helpful.

9 MR. JAMES: I'm sorry. We don't
10 have it numbered. I apologize for that. It's
11 the only one that is the print is at odds.

12 MS. AUBURN: It's the page before the
13 last one.

14 MR. KLINE: I have it. Thank you.

15 MS. MILLER: Yes, why don't, maybe
16 you can just, if you want to say something
17 specific about it why don't you just say what
18 the first line says across so we know what.

19 MR. JAMES: Well, just to, I just
20 wanted to give the basis of that being in the
21 Board's files. It's an excerpt from the
22 submission that Casey had made during the Adams

1 Morgan moratorium hearing. We provided a 3-year
2 period of calls for service in a big thick bound
3 document and I'm not a good computer whiz but
4 one of my fellow members is and that person
5 organized, you know, culled the addresses of
6 2439 18th and that's all the calls for service.

7 MS. MILLER: Okay so, every other
8 document is an official government document,
9 except this one so you put it together?

10 MR. JAMES: Well, but it's just --

11 MS. MILLER: It's from government
12 documents though?

13 MR. JAMES: An excerpt of this MPD
14 produced document which I submitted a paper copy
15 for the Board and because it just, this goes by
16 date so, you know, there may be not any for
17 Timehri for a number of days. I guess somebody
18 who's better at computers than me could you just
19 pull out the ones for that address.

20 MS. MILLER: Right.

21 MR. JAMES: And this is what we were
22 able to do.

1 MS. MILLER: Okay. Does that have a
2 title, I mean you said you give it to the Board
3 on a previous case, the moratorium case?

4 MR. JAMES: It's Government of the
5 District of Columbia Office of Unified
6 Communications and its calls for, it doesn't say
7 calls for service, calls 2000 to 4499 18th
8 Street and 1747 to 1864 Columbia Road from April
9 23, 2011 to April 2011, 2014. Now that doesn't
10 exactly jive with this renewal period for this
11 establishment but it's, none of it, it doesn't
12 include all the way back to the beginning of the
13 renewal period but it covers the rest of it from
14 April 23, 2011 to March 31, 2013 and then it's
15 got whatever else has happened since then up
16 until April 23 when this was, document was
17 created. So it's just the calls for service and
18 it, you know, lists what they are. That's for
19 the Board's information. I noted that this was
20 not a document that was included in the Board's
21 investigative report for this hearing so we
22 thought it was important to include that.

1 MS. MILLER: Okay, it wasn't -

2 MR. KLINE: We object to the
3 document.

4 MS. MILLER: Which document, Mr.
5 Kline?

6 MR. KLINE: The spreadsheet.

7 MS. MILLER: The spreadsheet.

8 MR. KLINE: There's no
9 identification. We don't know who created it.
10 It was created by some unknown person who has
11 better computer skills than Mr. James
12 apparently. Whether it's accurate or not we
13 have no way to verify. We don't even have the
14 person here who created it. It's not a
15 business record. It's something that's been
16 created the accuracy of which we have no way to
17 verify.

18 MR. JAMES: Well then we submit the
19 whole book again to you. It's in your files
20 already from the moratorium hearing, but we will
21 resubmit it now and one can look at each date on
22 the left column and go to this book and find

1 each one and confirm that those are listed in
2 this document. Hand this to Mr. Kline so he can
3 observe that this is a District of Columbia
4 government document.

5 MS. MILLER: Well that's in the
6 public record of the moratorium case?

7 MR. JAMES: Yes.

8 MS. MILLER: Okay. Okay.

9 MR. KLINE: Is this my copy?

10 MR. SIMPSON: We have to share.

11 MR. JAMES: I believe that if I'm
12 submitting it as evidence to move this hearing
13 along then I think I'm submitting it to the
14 Board, but he can certainly look at it because
15 we have the single page.

16 MR. KLINE: I mean subject to
17 verification that this is indeed the document
18 that was created by the Office of Unified
19 Communications I won't have any objection to
20 that.

21 MS. MILLER: Okay. So you, the only
22 document that you have an objection to is the

1 excerpts.

2 MR. KLINE: The one that purports to
3 be some sort of summary by some unidentified
4 person for some unidentified, well we have an
5 address, but -

6 MS. MILLER: Okay. All right.

7 MR. JAMES: If the Board would keep
8 the record open and after the hearing I can
9 submit the emails through which I asked for and
10 received that file. I can forward it with that
11 file attached to the Board from the official
12 with the Office of Combined Communications.

13 MS. MILLER: Okay. I think that
14 would be too late. So, I'm going to admit the
15 notebook.

16 MR. KLINE: Whoa, wait.

17 MS. MILLER: I'm sorry. Okay. I
18 think your objection, everything else is, is
19 there anything else that's not a government
20 document?

21 MR. KLINE: I would object to I'll
22 call it page two for lack of a different

1 description, as not being relevant. It's for a
2 period 04 through 07. This licensee didn't own
3 the establishment during most of that period so
4 we don't see how that's relevant.

5 MR. ALBERTI: Can I make a
6 suggestion that Mr. James number one copy or
7 maybe two copies, give one to Mr. Kline and one
8 to the Board for evidence files so that we have
9 pages and that as we go through this, because
10 I'm sure its evidence, someone's going to want
11 to refer to it I assume. Hopefully that's the
12 purpose of it. We, for the record, can know
13 what pages we're talking about. So I would just
14 hope that we could take a moment to do that.

15 MR. JAMES: Well one of them is done
16 and if we could have, we'll give that one to Mr.
17 Kline at this time.

18 MR. ALBERTI: Great.

19 MS. MILLER: Oh, okay.

20 MR. JAMES: We numbered that, would
21 the Board like us to do that for the other
22 copies that we submitted?

1 MR. ALBERTI: I don't know about
2 other Board members but I certainly would.

3 MR. JAMES: Thank you very much.

4 MR. ALBERTI: And that will be our,
5 that will be the one that's evi, just do one and
6 that will be the one that's in evidence or if
7 you want to do them all fine.

8 MS. MILLER: Now I know I don't have
9 anything to look at though, okay.

10 MR. ALBERTI: I'm concerned about
11 the officer's time. So are we, where are we
12 going with this? Are we going, is the officer
13 going to be asked questions? Is this going to be
14 used to cross-examine the officer?

15 MR. JAMES: Yes.

16 MR. ALBERTI: Okay.

17 MR. JAMES: No he's already.

18 MR. ALBERTI: Okay, fine. I just
19 wanted to make sure we weren't just doing this
20 as an exercise while the officer was waiting.

21 MR. JAMES: No. My God.

22 MS. MILLER: So I don't have to wait

1 for all the numbering I guess to hear, do you
2 have any more objections, Mr. Kline?

3 MR. KLINE: No. The only objections
4 I have are to pages 2, pages 34 and 35 at this
5 point on the grounds of relevance.

6 MS. MILLER: Okay, page 2 was with
7 respect to I don't have it in front of me but
8 the investigative history that would --

9 MR. KLINE: It's an investigative
10 history under a prior owner. I don't know what
11 the relevance is to this proceeding.

12 MS. MILLER: Okay.

13 MR. JAMES: It's, I believe that the
14 applicant owned it during part of this
15 investigative history.

16 MR. KLINE: Indeed, from the
17 document itself one can see that the last entry,
18 09/27/07, reflects that the Board requested a
19 Show Cause. The Board approved the cancellation
20 of the establishment's license and the issuance
21 of a new license. I'm presuming that's not this
22 establishment although I don't have any

1 firsthand knowledge.

2 MS. MILLER: Okay.

3 MR. JAMES: We would argue that part
4 of our argument for this hearing is that
5 locations get to be known by the public and
6 those who attend as a place where certain
7 activities go on or are tolerated and I think
8 it's relevant for the Board to be able to see
9 that going back in time and when it also looks
10 at the more recent investigative history. The
11 Board can give it whatever weight it chooses.

12 MS. MILLER: Right. Okay.

13 MR. KLINE: If Mr. James suggests
14 because this place has always been known as the
15 Caribbean establishment it's a troublemaker,
16 then, yes, that's the only relevance it has but
17 this is not during the period of this licensee's
18 ownership and we would submit that it's just not
19 relevant.

20 MR. JAMES: I hope the Board will be
21 cognizant that I didn't say any of those words.

22 MS. MILLER: Okay. Let's go through

1 34 and 35 so we can move on to the Captain.

2 MR. ALBERTI: So you're going to
3 hold your ruling on page, what page was that?

4 MR. KLINE: Page 2. Where are we on
5 page 2? Is that coming in?

6 MS. MILLER: So it's clear, I didn't
7 rule on it yet.

8 MR. ALBERTI: I'm asking, are we
9 holding the ruling on that?

10 MS. MILLER: Okay, I'm going to
11 overrule unless you want to, have something else
12 to say on it that I'm going to leave it in. I
13 don't think it has much relevance but it's in
14 the public record, so I don't see the harm in
15 leaving it in.

16 MR. KLINE: Madam Chair, there's
17 lots of stuff that's in the public record. It
18 doesn't make it relevant to this proceeding.

19 MS. MILLER: I know. Maybe the
20 contrast will show what a great, you know, how
21 the now owner has done in compared to the past.
22 If you all have an objection that's not, it's a

1 close one. I don't know that we would give it
2 too much weight if somebody has a, on the board
3 wants to object.

4 MR. ALBERTI: Well, I'm just going
5 to say that I haven't see it but if it is, if it
6 includes only information that predates this
7 owner, then I don't see the relevance.

8 MS. MILLER: Okay.

9 MR. ALBERTI: Mr. Jones?

10 MR. JONES: I concur with Board
11 Member Alberti; however, I'm inclined to let it
12 in and give it the weight that it deserves as we
13 go in past and previous situations and
14 circumstances.

15 MS. MILLER: Okay. Others?

16 MR. RODRIGUEZ: I agree with Mr.
17 Jones.

18 MS. MILLER: Okay.

19 MR. SILVERSTEIN: I have a question
20 here and the question is since this is a, since
21 this hearing has two functions one of which is
22 to determine whether the license should be

1 renewed, the other of which is to determine
2 whether the settlement agreement, voluntary
3 agreement, should be terminated and scrapped,
4 should not all information having to do with
5 both of those be considered and if this
6 voluntary agreement was prior to the ownership
7 change, does that then in some way alter what is
8 relevant?

9 MS. MILLER: Right. That's what I'm
10 saying. I mean it's possible that some of those
11 provisions in the older agreement were there
12 because of the way they establishment was
13 operating back then in contrast to how it may be
14 operating now, so I think it's somewhat
15 relevant.

16 MR. SILVERSTEIN: And might it be
17 helpful to both sides if it had something to do
18 with the change in the neighborhood.

19 MS. MILLER: Right. And the change
20 in the neighborhood. Yes. Okay. So where are
21 we? Okay, so, I mean, so, all right, so we're
22 going to let this in. That consensus up here.

1 Okay 34 is the one where there's a list of calls
2 with no author and it right there's a
3 reliability question here. Who did it, when it,
4 is that right? Okay, and so I'm inclined to not
5 admit that page. So Mr. Jones, but yes, I'm
6 withdrawing. Do you have a point on that?

7 MR. JONES: So, just for
8 clarification purposes, my understanding is that
9 the evidence or that particular exhibit was a,
10 I'll call it a two part exhibit. There's a part
11 one and a part 1a and a part 1b just for lack of
12 better nomenclature or a way to describe it.
13 Part 1a was a summary sheet, which is the Excel
14 spreadsheet, which was included in the booklet
15 and that, my understanding, was tied to a public
16 records document whereby you could look at that
17 summary document and find a particular reference
18 that was captured in an official public record
19 document for the purposes of evidentiary
20 proceeding. If that is the case then I would be
21 inclined to disagree with your original
22 statement and allow it in and give it the weight

1 that it deserves.

2 MR. KLINE: We'll withdraw our
3 objection.

4 MS. MILLER: Thank you. Point well
5 taken. So, okay, since I was going to switch as
6 well based on your convincing argument. Ok, so
7 34 is in as well, so 35, what's 35?

8 MR. KLINE: 35 is not relevant at
9 this time. It may be at some point relevant but
10 I don't know of any basis that it would be
11 relevant.

12 MS. MILLER: Okay, this doesn't --

13 MR. JAMES: We expect, you know,
14 argument discussion during this hearing upon
15 which this would be relevant.

16 MS. MILLER: Okay. Okay, so then I
17 would admit all the documents including the
18 document from the moratorium hearing. Three
19 pages, 34 and we'll hold 35 in abeyance till we
20 get to the point where the relevance might be
21 shown. Okay. All right, Mr. James, I, now.

22 MR. JAMES: Here we go.

1 MS. MILLER: Okay.

2 MR. JAMES: Captain Mongal, good
3 afternoon.

4 CAPTAIN MONGAL: Good afternoon.

5 MR. JAMES: So you have before you
6 some government documents, ABC documents and
7 some MPD-251s and some calls for service that
8 were called from a larger document. So just
9 leafing to page 3, what we've done, I get it, is
10 taken all of the case reports that this Board
11 reviewed and adjudicated during the renewal
12 period and taken the Board's action, items like
13 the case report and I left off almost all of the
14 like photographs and additional material but
15 then each one, if one has a 251 report attached
16 to it, it's included, an MPD-251.

17 MS. MILLER: Okay.

18 MR. JAMES: So, if you leaf to page
19 7, there's an incident report. Do you see that,
20 Captain Mongal?

21 CAPTAIN MONGAL: Yes.

22 MR. JAMES: And it, is it, it's

1 dated 2/21/2010, is that correct?

2 CAPTAIN MONGAL: Yes.

3 MR. JAMES: And that's during the
4 time that you were in command and stationed in
5 the Third District.

6 CAPTAIN MONGAL: Correct, yes.

7 MR. JAMES: So on the second page of
8 that, the narrative, would you mind reading the
9 part that's highlighted in yellow.

10 CAPTAIN MONGAL: C1 reports on the
11 listed date and time he was in the club dancing
12 with a girl when S1 struck him in the head with
13 a bottle. S1 then left the scene in an unknown
14 direction. C1 was transported to Georgetown
15 Hospital by Medic 21 where he was treated by Dr.
16 Hudson and released. CIC was notified at 0500
17 hours. Officer Sanders.

18 MR. JAMES: Thank you. I'm not
19 going to ask the Captain to interpret anything
20 that that's not an MPD document or, unless MPD
21 is referenced specifically so we would move
22 ahead to page 17. This is March 10, 2012 date

1 of occurrence investigation number 12251-00103.

2 CAPTAIN MONGAL: Got it.

3 MR. JAMES: Okay. And in the, on
4 page 17, well actually about a third of the way
5 down the page do you see where it says there was
6 request for suspension or revocation of license
7 by chief of police? It's highlighted in yellow.

8 CAPTAIN MONGAL: Oh, you're going to
9 the next page.

10 MR. JAMES: On page 17.

11 CAPTAIN MONGAL: Okay, I'm sorry.

12 MR. JAMES: Do you see that, among
13 the alleged violations and code regulation
14 citations.

15 CAPTAIN MONGAL: Okay.

16 MS. MILLER: Can I, Mr. James, I
17 have an inquiry from the Board as to why you're
18 asking the officer to read from these reports.

19 MR. ALBERTI: I mean, my question is
20 if the officer isn't the author or doesn't have
21 firsthand knowledge of this information why is
22 he being questioned about this and how is that

1 helpful to the Board? I mean I can read these
2 reports. I'm real good at that. I mean, you
3 know, since fourth grade I could read these
4 reports and understand them. I don't
5 understand, you know, having the officer read an
6 incident report doesn't help me at all. So,
7 where you going with this?

8 MR. SIMPSON: I'll offer an answer
9 to that. The attorney for the establishment,
10 you know, specifically questioned the officer in
11 an attempt to ascertain whether this
12 establishment was similar or different to other
13 establishments in Adams Morgan and portrayed it
14 as being perhaps not an area or an establishment
15 of particular concern and if the officer is not
16 familiar with each of these events I think it's
17 important to have the officer see the
18 information and then after confirming the
19 information maybe reassess the answer that was
20 given in the first instance.

21 MR. ALBERTI: Okay. Thank you.
22 That's helpful.

1 MS. MILLER: Okay. I don't think he
2 needs to read them aloud. I mean why, why,
3 maybe he is familiar with them. You didn't ask
4 him if he was familiar with these reports or.

5 MR. JAMES: I'm trying to establish,
6 I'm trying to offer him the ability to be
7 familiar and establish familiarity and then ask
8 him a question.

9 MS. MILLER: Okay.

10 MR. ALBERTI: Okay, let him proceed.
11 It's valid.

12 MS. MILLER: I thought you had good
13 point on it.

14 MR. JAMES: So, on the summary on
15 the middle of this page --

16 CAPTAIN MONGAL: Can you turn your
17 page to me so I can actually see cause mine's
18 not numbered?

19 MR. JAMES: Oh, I'm sorry. At the
20 top, it's dated March 10, 2012, about halfway
21 through the total of pages in that book.

22 MR. ALBERTI: Officer, I'm going to

1 hand you a copy that's numbered. I want to keep
2 moving things along.

3 CAPTAIN MONGAL: Thank you. I
4 appreciate it. These are numbered, right? Yes,
5 beautiful.

6 MS. MILLER: Thank you.

7 CAPTAIN MONGAL: Okay, this is a
8 report that's not done by Metropolitan Police
9 Department, correct? You're aware of that?

10 MR. JAMES: This is true but it's
11 because it references an action of the chief I
12 would ask you to, if you could just read the
13 last sentence under the summary.

14 CAPTAIN MONGAL: The last sentence
15 under the summary or in the summary?

16 MR. JAMES: Yes, the last sentence
17 in the summary.

18 CAPTAIN MONGAL: In the summary. It
19 would be additionally Club Timehri was not,
20 okay, I'm sorry. As a result of this incident
21 Chief of Police Cathy Linear closed the
22 establishment for up to 96 hours pursuant to her

1 authority and requested that the ABC Board
2 revoke Club Timehri's ABC license.

3 MR. JAMES: Okay. Thank you and
4 then moving on to page 21 and 22. This is a
5 MPD-251 incident based report.

6 CAPTAIN MONGAL: Yes.

7 MR. JAMES: And this is for the, do
8 you see that this is for the same day as the
9 ABRA report that we just looked at?

10 CAPTAIN MONGAL: Yes.

11 MR. JAMES: Okay, and turning to
12 page 2, could you please read the narrative
13 that's highlighted in yellow?

14 CAPTAIN MONGAL: C1 reports that he
15 was dancing inside of the risk location when he
16 stepped on S1's shoe. S1 became angry and a
17 verbal dispute ensued. The dispute escalated
18 when S1 stabbed C1 in the left torso with an
19 unknown sharp object. C1 then pushed S1 into a
20 wall as S1 continued to strike C1 with the
21 listed weapon. C1 reports that he noticed he
22 was bleeding from his hand and arm and released

1 S1. C1 sustained lacerations to his right hand,
2 upper left arm, and left torso. S1 then fled
3 the location through a rear door headed south in
4 the east alley of the 2400 block of 18th Street
5 Northwest. C1 was transported to MedStar where
6 he was treated for his injuries. 9234 Officer
7 Sylvester responded and processed the scene.
8 3D13 Detective Jackson was on the scene. ABRA
9 Investigators, Parker and Jones were also on the
10 scene. Officer Anderson 4383 at CIC was also
11 notified.

12 MR. JAMES: Thank you very much.

13 And then turning to page 34, this is the excerpt
14 from the Office of Combined Communications
15 report, which we had been discussing prior to
16 these questions. So do you see the between
17 April 30, 2011 and April 4, 2014, there were a
18 number of calls for service for this address,
19 2439 18th Street Northwest.

20 CAPTAIN MONGAL: Yes.

21 MR. JAMES: And among those do you
22 notice any that would seem to be associated with

1 public safety in particular, like associated
2 with violence?

3 CAPTAIN MONGAL: Any calls that are
4 associated with violence?

5 MR. JAMES: For instance the third
6 one down from the top, do you see assault
7 simple? Do you see on March 10, 2012 aggravated
8 assault? On September 22, 2012 assault simple
9 and so forth?

10 CAPTAIN MONGAL: Oh. Am I allowed
11 to ask a question?

12 MS. MILLER: If you don't understand
13 the question you can ask for a clarification.

14 CAPTAIN MONGAL: Okay. So this
15 document that's provided, I'm not aware of what
16 this actually is so can you explain to me what
17 this document is? Is this the calls for a 911
18 calls or are these concluded reports?

19 MR. JAMES: I would like to proffer
20 to Captain Mongal the Office of Combined Unified
21 Communications document and perhaps he could by
22 just observing one or two of them make certain

1 that, verify --

2 CAPTAIN MONGAL: Just the title. I
3 just need, what's the title of the document.
4 That's all.

5 MR. JAMES: If you were to look --

6 CAPTAIN MONGAL: Right. This would
7 be the calls to service.

8 MR. JAMES: Yes. So this is culled
9 from this document, just in a cut and paste
10 fashion. It was done, I believe that we were,
11 you know, extremely open about this. If we had
12 tried to make it seem like it was a government
13 document then we would have been falsifying
14 something. No, it's not. It's culled from a
15 government document, so anyway, those before
16 you, I mean.

17 CAPTAIN MONGAL: So your original
18 question was?

19 MR. JAMES: Do you notice among the
20 31 calls that are listed there that there are a
21 number that have to do with simple assault,
22 aggravated assault, disorderlies?

1 CAPTAIN MONGAL: Yes, their titles,
2 the title for the calls, there are a few. It
3 goes from burglar alarm to thefts to, let me
4 see, and destruction of property. There are
5 numerous different titles of the calls. I would
6 need more information to be able to I guess to
7 be able to go expound further because for the
8 address of 2439, that could be in front of, that
9 could be the sidewalk, that could have nothing
10 to do with the establishment itself. That could
11 be also inside, so I would need the actual
12 concluded report, the 251, to correlate with
13 each one of these to --

14 MR. JAMES: I understand.

15 CAPTAIN MONGAL: to find out and a
16 lot of this, this is the original call for
17 service, it doesn't mean that this is what it
18 ended to be. It could have been nothing at all.

19
20 MR. JAMES: Right.

21 CAPTAIN MONGAL: Unless I have a 251
22 that tells me that, a statement of fact or an

1 incident occurred.

2 MR. JAMES: Well, thank you. We just
3 wanted to bring that to the Board's attention
4 and your attention as it relates to this
5 establishment and the number of times that in a
6 3-year period MPD was called for some important
7 and perhaps some less important matters. I'm
8 done with.

9 MR. SIMPSON: I have just a couple
10 questions too.

11 MS. MILLER: All right.

12 MR. KLINE: Madam Chair, I object.

13 MS. MILLER: They're separate
14 parties. They're separate parties. We've, we've
15 --

16 MR. KLINE: I understand but I
17 thought it was the Board's, it's in the Board's
18 practice to require that the Protestants
19 designate one representative rather than double
20 and triple team the applicant. I've got another
21 partner. Should I bring him up here? Can he
22 ask questions?

1 MS. MILLER: We've been through. We
2 have been through this personally and you asked
3 me about that and I said the APA, which
4 supersedes our regs, which don't even go
5 contrary to that, says that each party can do
6 that and it's more efficient if you want to
7 voluntarily have one representative fine, but
8 otherwise, they share the same time, so it's the
9 90 minutes regardless.

10 MR. SIMPSON: Thank you.

11 MS. MILLER: Go ahead.

12 CROSS-EXAMINATION

13 BY MR. SIMPSON:

14 MR. SIMPSON: Captain Mongal, just
15 to confirm with your understanding that there
16 are approximately 75 or so alcohol serving
17 establishments in Adams Morgan.

18 CAPTAIN MONGAL: Some large number
19 like that, yes.

20 MR. ALBERTI: Mr. Simpson, can you
21 get a little closer to the mic, sir? Thank you.

22 MR. SIMPSON: So we were just

1 confirming that there are approximately 75 or so

2 --

3 CAPTAIN MONGAL: Off the top of my
4 head I believe it's definitely a high number in
5 the 60 or 70, yes, in that area of Adams Morgan.

6 MR. SIMPSON: And in the
7 approximately six years that you worked in that
8 part of Adams Morgan, how many of those
9 establishments, in how many of those
10 establishments did stabbings take place to your
11 recollection?

12 CAPTAIN MONGAL: I would have to
13 actually for an official number I wouldn't know.
14 Off the top of my head I'm going to say maybe
15 four or five.

16 MR. SIMPSON: So four or five out of
17 maybe 60 or 70 establishments?

18 CAPTAIN MONGAL: That I'm aware of,
19 off the top of my head, yes, yes.

20 MR. SIMPSON: And in your experience
21 as a police officer, when incidents of
22 significant violence occur in an establishment

1 are the police usually completely surprised by
2 the establishments that those take place in or
3 is there rather a sense that oh, yes, that's the
4 kind of an establishment where we're not
5 surprised that that sort of thing took place?

6 CAPTAIN MONGAL: Do you want me to
7 testify to officers' feelings?

8 MR. SIMPSON: To your and to your
9 experience as a police officer.

10 CAPTAIN MONGAL: I could tell you
11 what my experience is.

12 MR. SIMPSON: That's all I'd love to
13 hear.

14 CAPTAIN MONGAL: Is that things
15 happen and that's why we have police and that's
16 why we have the system that we have and we
17 handle it.

18 MR. SIMPSON: Are you surprised
19 usually in the places where things happen or -

20 MR. KLINE: Objection. Asked and
21 answered.

22 MR. SIMPSON: I don't know that he really

1 answered.

2 MS. MILLER: Yes, I think it, do you have
3 more to say on that, because I think that you
4 answered the question?

5 CAPTAIN MONGAL: Yes, I can
6 keep going.

7 MS. MILLER: All right, I'll give a little
8 leeway if you have any little bit more to say.

9 CAPTAIN MONGAL: I mean. Repeat it
10 again sir?

11 MR. SIMPSON: I'm just trying to get
12 a sense of in your experience as a police
13 officer, when an incident of significant
14 violence occurs in an establishment is it, does
15 it usually come as a complete surprise that
16 that's the establishment where things happened
17 or is it often easy to predict which kind of
18 establishments -

19 CAPTAIN MONGAL: No. You can't
20 predict it. There's no way you can predict it.
21 Then we would eliminate all crime.

22 MR. SIMPSON: Sir, I didn't mean

1 predict in that sense of the word.

2 CAPTAIN MONGAL: The surprise comes
3 when you look into a narrative like this and you
4 find that somebody would try to take another
5 person's life because they stepped on their foot
6 or, you know, bumped into somebody. It's really
7 has nothing, that has nothing to do with the
8 establishment per se, it has to do with the
9 mentality of an individual. So when we get down
10 into the nitty gritty of why something happens,
11 that's the only thing that surprises me at this
12 time after 20 years of this is that we, at this
13 point somebody's in the hospital and somebody's
14 close to death because of stepping on a shoe, so
15 that surprises, but as far as locations, I mean
16 nowadays it's common. It's something that's
17 common. There's going to be altercations,
18 people are going to do things for whatever
19 reason and they're going to react and that's why
20 we're there to try to prevent it or stop it in
21 the future.

22 CROSS-EXAMINATION

1 MS. AUBURN: Captain Mongal, what
2 was the reason for you to get into the
3 establishment because you're doing your
4 testimony with Mr. Kline you said you went to
5 the establishment once.

6 CAPTAIN MONGAL: Oh, oh no, oh the
7 reason, oh. I mean I did that a lot. I
8 patrolled up there. I did walks with community
9 members to go to different establishments,
10 inside, outside, took a look at everything that
11 went along the 2300, 2400 block of 18th Street.
12 The one time I did go in there was because I was
13 just being nosy. I didn't, I'd never been inside
14 of that location and it's very unique how you go
15 downstairs and I didn't think it was big enough
16 when somebody told me that it was actually an
17 environment that was a club and music and like I
18 said it was some time ago, like when, probably a
19 few years ago, when I went downstairs to see, so
20 it was just curiosity wise. It wasn't a call for
21 service or anything and for these incidents, the
22 two incidents that happened I was not working

1 that night so that would not have called me to
2 that location to go inside that night.

3 MS. AUBURN: Can you recall around
4 what time if the year it was, I mean when I say
5 that I mean the month and which year?

6 CAPTAIN MONGAL: When I went in?
7 Oh, it was the summertime. It was I want to
8 say, I want to say it was right before, change
9 that, I'm not going to say the summertime. I am
10 going to say it was probably around April or
11 May, getting close to summer before we kicked
12 off our, a new initiative that we were going to
13 start up there, so it would have been about four
14 years now, because this would have been the
15 fourth year of the operation.

16 MS. AUBURN: And can you describe
17 your experience, feeling and impression when you
18 entered the establishment?

19 CAPTAIN MONGAL: Client related?

20 MS. AUBURN: No. Was it during the
21 day or night?

22 CAPTAIN MONGAL: It was at night. It

1 was right after midnight.

2 MS. AUBURN: So, describe your, your
3 impression, your experience and your feeling
4 once you stepped into the establishment.

5 CAPTAIN MONGAL: I didn't have any
6 problems. I wasn't scared. I was okay. I mean
7 I went in there just to see what was, what it
8 was, the layout is what I was looking at and I,
9 I'm not going to say I was impressed. I mean
10 there was a small area and I stood there for
11 maybe about 10, 15 minutes, went back and forth
12 and then I went back upstairs.

13 MS. AUBURN: Can you describe the
14 ambience in the establishment? Was it like full
15 party or quiet?

16 CAPTAIN MONGAL: Yes, it was. It
17 was full, it was, there were party, it was
18 pretty dark, not dark, but it was a darker
19 environment typical for the nightlife or
20 whatever.

21 MS. AUBURN: Because you're a police
22 officer, you know, your interaction with fears

1 will be different than civilians, so may I ask
2 the question that as a civilian/patron and not
3 as a police officer, how will you feel when you
4 step into this establishment?

5 MR. KLINE: Objection. I don't
6 think there's any evidence that he's ever been a
7 patron of this establishment.

8 MS. MILLER: I'm going to sustain
9 that too. He's, I mean he's testifying as a
10 police officer.

11 MS. AUBURN: All right. Thank you.
12 Thank you so much.

13 MS. MILLER: Okay. Board questions.
14 Any?

15 MR. RODRIGUEZ: Yes, I have one
16 question.

17 MS. MILLER: Okay. Mr. Rodriguez.

18 MR. RODRIGUEZ: Captain, in terms
19 of, you mentioned that you see a lot of things
20 that are common all over the place. One of the
21 issues with us is, how staff handles some of
22 those common things. Like fights might be

1 common in places, but our concern is how did the
2 staff or if they had security, how did they
3 handle some of those common things like fights
4 and all that so things don't get carried away?
5 I just wanted to make that a point and I don't
6 know if you can comment on that.

7 CAPTAIN MONGAL: The only thing I
8 can say is that again it was, this establishment
9 wasn't on the radar screen so I can tell you
10 this, that one thing that was visible whenever I
11 was out there was that they had door staff,
12 which was security. They had cause, cause where
13 I was always positioned you could see where they
14 had someone there checking IDs, making sure that
15 the, you know, actively stopping individuals
16 going in and once from there on, there was
17 nothing else that came to the attention besides
18 what we have documented report wise. There was
19 never any complaints by my officers or anybody
20 else of non-cooperating parties, whether it's
21 like what you're saying, a fight takes place.
22 Typically I'm notified immediately if they have

1 a problem with staff. If they tried to hide it,
2 if they tried to clean up blood, something of
3 that nature, we're notified quick where they
4 don't want, don't want this to get to ABRA or
5 something of that nature, my officers let me
6 know.

7 MR. RODRIGUEZ: Okay. Thank you
8 sir.

9 MS. MILLER: Any other questions?
10 Any questions from the parties on that one
11 question?

12 MR. KLINE: I actually have redirect
13 based upon --

14 MS. MILLER: Redirect, okay.

15 MR. KLINE: Well, it's just a
16 couple.

17 MS. MILLER: Okay.

18 REDIRECT EXAMINATION

19 MR. KLINE: Captain, in looking at
20 page 34 of the notebook that's in front of you,
21 the calls for service.

22 CAPTAIN MONGAL: Okay.

1 MR. KLINE: Do you have any opinion
2 as to whether this represents an unusually high
3 number of calls for service for a particular
4 establishment?

5 CAPTAIN MONGAL: My experience for
6 Adams Morgan nightlife, this would be extremely
7 low.

8 MR. KLINE: Okay.

9 CAPTAIN MONGAL: I'm looking at
10 four, for this year there's only four calls of
11 which four, three of them are burglar alarms. My
12 guys, my old guys, I'm sorry, since I've been
13 gone, on a typical night up there would get
14 anywhere from I'm going to say five to ten calls
15 for service to an establishment in the 23, 2400
16 block so they carry those two blocks. That's a
17 night, five to ten, whether it's a fight,
18 argument, ticket being put on a car, whatever,
19 because there's an assortment of calls here,
20 thefts and stuff of that nature but to have from
21 2004 on, all I've got is three burglar alarms
22 and then one report of something of an other and

1 the same thing, the patter is what, six or seven
2 maybe per year. That's extremely low.

3 MR. JAMES: Point of information,
4 that this report ends on the --

5 MR. KLINE: Objection. Unless he's
6 got an objection or it's his time to question, I
7 think it's my time now.

8 MS. MILLER: Well, that's true.
9 That's true. You'll need to hold that, Mr.
10 James.

11 MR. KLINE: Captain, you mentioned
12 when you were asked that there were four or five
13 stabbings that you may be aware of in the 75 or
14 so ABC establishments in Adams Morgan. Is that
15 correct?

16 CAPTAIN MONGAL: Yes, yes.

17 MR. KLINE: Were there other acts of
18 violence that were not in ABC establishments in
19 Adams Morgan?

20 CAPTAIN MONGAL: Of course, yes,
21 we've had shootings, other incidents related to
22 guns where someone was hit with a gun or I

1 believe hit over the head with bottles, a chair,
2 so there's all types of assaults that have taken
3 place along there over my tenure up there. Yes.

4 MR. KLINE: Right. And they may be,
5 they may be in the street, they may be in non-
6 ABC establishments or they may be in ABC
7 establishments, correct?

8 CAPTAIN MONGAL: Correct.

9 MR. KLINE: Thank you. I have
10 nothing further.

11 MS. MILLER: Okay. All right. That
12 concludes this witness. Thank you very much.

13 CAPTAIN MONGAL: Thank you.

14 MR. KLINE: Thank you, Captain.

15 CAPTAIN MONGAL: At your service,
16 sir.

17 MS. MILLER: Which brings us to.

18 MR. KLINE: Call to the stand
19 Sergeant Sean Rooney.

20 MS. MILLER: Is he here?

21 MR. KLINE: I hope so. He's under a
22 subpoena. I hope he's here.

1 MR. ALBERTI: Did we call a rule on
2 witnesses or something?

3 MR. KLINE: May I go in the hall and
4 see if he's still present.

5 MS. MILLER: Yes.

6 MR. KLINE: Thank you, Madam. I'm
7 advised that he has left the premises. For the
8 record, we're advised that he was ordered to
9 leave; that conflicts with the subpoena that was
10 duly issued by the Board which the Board's a
11 statutory party to issue.

12 MS. MILLER: That's correct.

13 MR. KLINE: When this case is over,
14 I would request that the Board investigate the
15 situation. As I said before in my many years of
16 doing this, this is the most outrageous example
17 or the most outrageous situation of tampering
18 with the applicant's rights to present its case
19 before this Board that I have ever seen and I
20 would renew my request at the conclusion that
21 the Board either investigate or refer to
22 whatever body or official they deem appropriate

1 for investigation of this matter.

2 MS. MILLER: Okay.

3 MR. KLINE: And with that, call to
4 the stand Johnathan Chou, are you still here?

5 MS. MILLER: We haven't had our
6 Board witness testify.

7 MR. KLINE: Oh, I'm sorry.

8 MS. MILLER: That's okay. So I
9 think that that's what we, where we ought to go
10 at this point. If there aren't any police
11 officers waiting in the wings. Right, I know,
12 which it's too bad that he's not, but he's not,
13 so Mr. Brashears, are you ready to come up? Do
14 you swear to tell the truth, the whole truth and
15 nothing but the truth?

16 MR. BRASHEARS: I do.

17 MS. MILLER: Thank you. Okay. So
18 whenever you're ready if you'd like to give us
19 the highlights of the investigative report that
20 you prepared.

21 MR. BRASHEARS: Yes ma'am. I can go
22 through the highlights if you want me to forego

1 reading all the interviews and things.

2 MS. MILLER: You know, whatever you
3 think is most important.

4 MR. BRASHEARS: Okay.

5 MS. MILLER: Feel free to cover.

6 MR. BRASHEARS: Yes ma'am.

7 MS. MILLER: All right.

8 MR. BRASHEARS: My name is
9 Investigator Brashears here at ABRA. I
10 conducted a protest investigation of Caribbean
11 Vibes, Incorporated trading as Club Timehri
12 which is located at 2439 18th Street Northwest,
13 Washington, D.C. Club Timehri is listed as a
14 small establishment.

15 The renewal application and request
16 to terminate Club Timehri's settlement agreement
17 is being protested by the Advisory Neighborhood
18 Commission, ANC-1C, represented by Mr. Brian
19 Hart, the Kalorama Citizens Association
20 represented by Mr. Denis James and the Reed-Cook
21 Neighborhood Association represented by Ms.
22 Benedicte Auburn.

1 According to the District of
2 Columbia geographic information system there are
3 63 Board approved ABC establishments located
4 within 1200 feet of Club Timehri. According to
5 the District of Columbia geographic information
6 system there are no schools or public libraries
7 within 400 feet of the establishment. The
8 protest issues set forth were adverse impact on
9 peace, order and quiet. I talked to the
10 Protestants and it seems the main concern that
11 everyone voiced was peace, order and quiet.

12 I spoke on Tuesday, May 6, 2014, I
13 telephonically interviewed Mr. James regarding
14 the protest issues. He stated at that time the
15 Protestants were working on an agreement with
16 Club Timehri owner, Johnathan Wells. Mr. James
17 requested that more security measures be written
18 for Club Timehri and that Mr. Wells had complied
19 with the request. Mr. James said that he had
20 asked Mr. Wells to prioritize the holiday hour
21 extensions and that the Protestants would agree
22 to three per year to test to how things were

1 going.

2 Mr. James mentioned that there was,
3 in the past, there was an incident with a
4 stabbing but since that time Mr. Wells had
5 improved the management of Club Timehri. We also
6 spoke about the settlement agreement and Mr.
7 James basically stated that KCA was protesting
8 the termination of the settlement agreement
9 again on the basis of peace, order and quiet and
10 again the talks were ongoing and they were
11 working on an agreement.

12 On Friday, May 9, 2014, I
13 telephonically interviewed Ms. Auburn regarding
14 the protest issues. Basically the issue there
15 was again the parties involved looking for
16 common ground. Mr. Wells was to provide a
17 security plan and that he had complied with the
18 request. I also spoke with her about the
19 settlement agreement and again it was listed on
20 the basis of peace, order and quiet and
21 basically making sure that the applicant
22 complied with all established laws.

1 Ms. Auburn stated that the RCNA was
2 negotiating with the applicant and that they
3 were looking for a compromise that would suit
4 both the Protestants, the applicant and the
5 neighborhood. I spoke with Mr. Wells, the owner
6 of the establishment and he stated his desire
7 was to have the flexibility to utilize all the
8 holiday hours offered by ABRA. During
9 negotiations with Mr. James he said that three
10 holiday hour extensions were offered by the
11 Protestants. Mr. Wells had told me he believed
12 that to be unfair as one his neighbors, Mesa
13 (phonetic), an ABRA establishment next door, had
14 use of all of its holiday hour extensions and
15 basically Mr. Wells said he was looking for
16 something more equitable in the fact that he
17 could get all of the hours as well and that he
18 hoped a settlement could be reached.

19 I spoke with Mr. Brian Hart, ANC-1C
20 commissioner. Mr. Hart stated that his concern
21 was that Club Timehri was licensed as a tavern
22 but operating as a nightclub. Mr. Hart said

1 that Club Timehri contributed to the overall
2 noise, violence and nuisance issues in Adams
3 Morgan and that he was aware of the incident
4 several years ago referring to the stabbing.
5 Mr. Hart said he was currently working on
6 negotiating a settlement agreement with Mr.
7 Wells.

8 At the last time we spoke, he had
9 said there hadn't been any movement on the
10 agreement. Throughout the course of the
11 investigation, ABRA investigators monitored Club
12 Timehri 20 separate occasions from March 6, 2014
13 through May 31, 2014. During the hours that
14 ABRA investigators monitored the establishment,
15 there were no ABRA violations observed. On
16 Saturday, May 31, 2014, I conducted a regulatory
17 inspection at Club Timehri. There were no ABRA
18 violations found and the establishment's ABC
19 manager was present and knowledgeable at the
20 time of the inspection. As far as the Noise
21 Task Force, since its inception, based with
22 ABRA, DCRA and MPD we have not received any

1 complaints or had to monitor Club Timehri during
2 the protest period.

3 MS. MILLER: That's it?

4 MR. BRASHEARS: Yes, ma'am.

5 MS. MILLER: Thank you very much.

6 Okay. Board questions? Oh, all right. I have
7 some. With respect to this establishment
8 getting the full holiday hours do you have any
9 concern about that based on your knowledge of
10 how the establishment's been operating?

11 MR. BRASHEARS: No ma'am and, again,
12 when I look at an establishment, I look at the
13 history. In the past two years, it will
14 probably be brought up again, but there was an
15 incident a couple of years ago. Since then,
16 there have been two violations. One was minor
17 in the fact that it was a placard that had been
18 torn down. I made the ABC manager aware of it
19 and Mr. Wells took care of that and replaced it.
20 He was issued a warning citation.

21 Other than that, I spend a great
22 deal of time at Adams Morgan. That's one of the

1 places that I monitor and to be honest, I don't
2 have any more issue with Club Timehri than I
3 have with any other location. Any time I've
4 stopped by there's been an ABC manager present
5 and they've been cooperative and I've had no
6 real issues there.

7 MS. MILLER: So how long have you
8 been working for ABRA?

9 MR. BRASHEARS: One year, three
10 months.

11 MS. MILLER: Okay. So I'm not sure,
12 would you be aware of changes that the
13 establishment may have made since that stabbing
14 that occurred?

15 MR. BRASHEARS: No, ma'am. The, as
16 I said I've been with ABRA a year and three
17 months. Any time that I've gone there, there's
18 been an ABC manager, they've been cooperative.
19 The only real concern I've ever had with Timehri
20 is it is a very small establishment. Its
21 occupancy is only 48 persons if I remember
22 correctly and I brought that to the attention of

1 Mr. Wells. He said he routinely monitored that
2 and typically when I'm in Adams Morgan I will
3 routinely stop by and talk to the head of
4 security and he is aware of that, so I just
5 routinely make sure that they are staying on top
6 of that because from my perspective if you
7 overcrowd an establishment, that's when problems
8 and things can arise.

9 MS. MILLER: Do you see any credence
10 to the characterization that their license says
11 a tavern but they operate as a nightclub?

12 MR. BRASHEARS: Well I mean they are
13 licensed as a tavern. I've spoken to Mr. Wells
14 about basically what they do, they typically
15 have a reggae style of entertainment or a DJ and
16 they sell or offer Jamaican-style patties as
17 snack food, so they are meeting the basic
18 requirements of a tavern as far as I can see,
19 ma'am.

20 MS. MILLER: And are you aware of,
21 in the time that you've been monitoring them,
22 are you aware of any adverse impacts on peace,

1 order and quiet such as noise or violence,
2 things of that sort?

3 MR. BRASHEARS: No, ma'am. In my
4 time with ABRA monitoring Adams Morgan I don't
5 ever recall being assigned to monitor Club
6 Timehri as I have other establishments and I
7 don't think I've ever seen the police, fire
8 department or anything like that go to the
9 location and I've never had to caution them as
10 far as like going up and down the block, how we
11 have to caution some establishments to close the
12 door, close the window because they're making
13 excessive noise. I personally have never had to
14 do any of those things, no ma'am.

15 MS. MILLER: Have you noticed any
16 problems with trash and rodents around their
17 establishment?

18 MR. BRASHEARS: No, ma'am and I
19 typically, there is an alley, an alleyway that
20 runs behind Adams Morgan that basically all the
21 establishments down the right hand side on 18th
22 Street, I routinely cut through there as a means

1 to go from one end to the other to avoid traffic
2 and I've never seen any of their trash cans
3 overflowing or anything of that nature and they
4 tend to keep the front of the establishment
5 fairly clean.

6 MS. MILLER: Okay, good. Thank you.
7 Others? Mr. Rodriguez.

8 MR. RODRIGUEZ: Yes, Mr. Brashears,
9 thank you for your report. As I read parts of
10 your report, I see where there were cases where
11 both parties were cooperating it seemed like and
12 then it seemed like they were coming to some
13 kind of agreement that Mr. Wells had overhauled
14 his security plan and added security measures,
15 that there seemed to be a kind of give and take
16 here that they were communicating to try and
17 find a resolution here. What do you see, what,
18 why did we come to this point here, from your
19 point of view?

20 MR. BRASHEARS: I don't really know
21 if I'm qualified to answer that, sir. It just
22 seems like the compromise might have been a bit

1 much for both parties.

2 MS. MILLER: Okay, so we can't too
3 much into --

4 MR. RODRIGUEZ: Yes.

5 MS. MILLER: yes.

6 MR. RODRIGUEZ: Yes, that's as far
7 as I'll go with it.

8 MS. MILLER: Okay.

9 MR. BRASHEARS: But I was routinely
10 advised when I called to check on the status of
11 things that they were actively working it and we
12 could possibly have a settlement.

13 MR. RODRIGUEZ: Okay. Thank you.

14 MS. MILLER: Okay. Others? Mr.
15 Silverstein.

16 MR. SILVERSTEIN: Very briefly,
17 thank you for a very complete report, solid
18 report. Is there anything here that you see as
19 red light or a red flag warning, any problems
20 because it looks like, according to this report,
21 for the past year or two years, they have a
22 pretty clean slate.

1 MR. BRASHEARS: Yes sir, and again,
2 understand that, the history obviously is, are
3 things that are brought to ABRA's attention.
4 Obviously in any situation there can be things
5 that go on that we're not aware of but it just
6 isn't routinely one of the spots that I've had
7 to deal with other than just passing and
8 greeting the individuals and making sure
9 everything was in line and as I said earlier the
10 only real concern I've ever had there is the
11 capacity because it is a fairly small, small
12 place and keeping an eye on the occupancy has
13 been one of my concerns there and the owner is
14 very aware of that.

15 MR. SILVERSTEIN: But they haven't
16 gone beyond the 48 that's in the C of O?

17 MR. BRASHEARS: Not during any of my
18 visits, no sir.

19 MR. SILVERSTEIN: Thank you, sir.
20 Thank you for your report.

21 MS. MILLER: Any other questions?
22 Okay. Mr. Kline. Oh, sorry. I said any other

1 questions and not hearing any from Board
2 members, Mr. Kline.

3 MR. KLINE: Yes, thank you.

4 CROSS-EXAMINATION

5 MR. KLINE: Good afternoon,
6 Investigator Brashears.

7 MR. BRASHEARS: Good afternoon, sir.

8 MR. KLINE: So you, you went to the
9 establishment or you were in the area 20 times,
10 is that right?

11 MR. BRASHEARS: Not necessarily.

12 ABRA investigators, so basically any time that I
13 was on night shift and the club was operating I
14 would typically stop by. When it wasn't me, it
15 was someone on the other opposing shift.

16 MR. KLINE: And then they reported
17 back to you?

18 MR. BRASHEARS: Yes, sir.

19 MR. KLINE: That's the way it works
20 when you do these investigations?

21 MR. BRASHEARS: Yes, sir.

22 MR. KLINE: All right, and the times

1 that you were there, the 20 times that you were
2 there, it's kind of prime time isn't it?

3 MR. BRASHEARS: Yes, sir.

4 MR. KLINE: This isn't 10:00 on a
5 Tuesday. These are the Fridays and Saturday
6 nights in the hours when if you're going to have
7 problems you're going to see problems correct?

8 MR. BRASHEARS: Well yes, sir. We
9 typically try to go to an establishment when
10 they're operating normally in a busier time.

11 MR. KLINE: Now you said you'd been
12 with the agency I think you said a year and
13 three months.

14 MR. BRASHEARS: Yes, sir.

15
16 MR. KLINE: And you've been assigned
17 to Adams Morgan primarily or what's been your
18 tenure as you've been at the agency?

19 MR. BRASHEARS: It rotates, but I
20 have spent a great deal of time in Adams Morgan.
21 I pretty much know the establishments and the
22 owners and security and I have since moved to

1 other monitoring but that was primarily it for
2 about my first year.

3 MR. KLINE: Where were you before
4 you became an ABC investigator? Do you have
5 some background in law enforcement?

6 MR. BRASHEARS: Yes, sir. I was a
7 special agent with the Air Force Office of
8 Special Investigations. I retired with them in
9 2013.

10 MR. KLINE: So you obviously have a
11 long background in investigations it would
12 appear.

13 MR. BRASHEARS: Yes, sir.

14 MR. KLINE: Now, you indicated that
15 you had spoken to the Protestants to try to get
16 their perspective in terms of what their issues
17 and complaints were, correct?

18 MR. BRASHEARS: Yes, sir.

19
20 MR. KLINE: Did any of them mention
21 anything specific other than the 2012 incident
22 that you alluded to earlier?

1 MR. BRASHEARS: I don't recall
2 anything specific. It was the peace, order and
3 quiet and the holiday hours and basically a more
4 robust security plan or possibly settlement
5 agreement to basically make sure the operation
6 of the establishment was done accordingly or,
7 you know, properly.

8 MR. KLINE: So conclusions and
9 policy but not any facts other than the 2012
10 incident?

11 MR. BRASHEARS: Not that were, you
12 know, brought to my attention. Not that I
13 recall.

14 MR. KLINE: And you said in your
15 report, and I think you may have already
16 answered it but just to be clear, you're very
17 clear that during the 20 times that the
18 establishment was monitored there were no
19 violations. Was there any evidence that the
20 establishment has a negative effect on peace,
21 order and quiet? Any incidents that arose
22 during any of those 20 visits that would give

1 one the impression that this establishment has a
2 negative effect on peace, order and quiet?

3 MR. BRASHEARS: No, sir, not during
4 any of the, not during any of the noted 20
5 visits, no, sir.

6 MR. KLINE: You also mentioned that
7 there were, that this place may have been
8 monitored by the Noise Task Force?

9 MR. BRASHEARS: No, sir. I spoke
10 with the head, our representative from the Noise
11 Task Force and he stated that there were, there
12 was no monitoring that he was aware of that was
13 requested and we took no noise complaints from
14 the noise task force.

15 MR. KLINE: All right. Now during
16 your time monitoring Adams Morgan, you've become
17 familiar with most if not all of the licensed
18 establishments up and down on 18th Street?

19 MR. BRASHEARS: Most of them, yes,
20 sir.

21 MR. KLINE: And in your opinion are
22 there another witness wouldn't acknowledge this,

1 but are there good actors and bad actors in
2 Adams Morgan?

3 MR. BRASHEARS: I wouldn't
4 necessarily want to venture an opinion. Again, a
5 lot of the establishments or I will say some
6 establishments in Adams Morgan have more history
7 with ABRA than others and some get more
8 monitoring than others based on complaints and
9 issues that are brought forward and as I said
10 earlier in my time in Adams Morgan, other than
11 the protest I don't recall being requested to
12 monitor Club Timehri.

13 MR. KLINE: Were you here for
14 opening statements in this case?

15 MR. BRASHEARS: Yes.

16 MR. KLINE: Did you hear Mr. Simpson
17 talk about, and I'm paraphrasing, that there was
18 a list of places that are mentioned as
19 troublemakers or establishments in the
20 neighborhood to watch out for?

21 MR. BRASHEARS: Yes.

22 MR. KLINE: If there were such a

1 list, in your opinion, based on your experience
2 in Adams Morgan, would this establishment be on
3 it?

4 MR. BRASHEARS: Again sir, I think
5 what he's referring to is our actual monitoring
6 list and in my time monitoring Adams Morgan as I
7 said I have not, I have not received a
8 notification to monitor that establishment
9 although I have had occasion to have to monitor
10 others.

11 MR. KLINE: Great. All right. Thank
12 you. That's all I have at this time.

13 MS. MILLER:

14 Okay. Any of the Protestants have cross?

15 MR. JAMES: Yes, we'd like to offer
16 Investigator Brashears our evidence book or our
17 exhibits book.

18 CROSS-EXAMINATION

19 MR. JAMES: How are you today,
20 Investigator Brashears?

21 MR. BRASHEARS: I'm good. Thank you.

22 MR. JAMES: Are you, starting with

1 page 1, in preparation of your investigative
2 report for this hearing did you happen to read
3 these reports that are listed here? Are you
4 familiar with the contents of these reports?

5 MR. BRASHEARS: No, sir, I did not,
6 I did not review all of the reports. I looked
7 through basically what the 251 focused on,
8 whether it was a, I'm sorry, what the
9 investigation focused on, whether it was an
10 aggravated assault, supplemental report, things
11 of that nature.

12 MR. JAMES: Okay. So moving to the
13 actual reports starting on page 3. I'll go
14 through these quickly. On February 21, 2010,
15 under the summary can you tell us what time that
16 the ABRA investigators determined that there was
17 an assault with a deadly weapon?

18 MR. BRASHEARS: What's highlighted
19 on the report here is Sunday, February 21, 2010
20 at 2:55 a.m.

21 MR. JAMES: Okay. That's a Sunday,
22 so that's a Saturday night into Sunday morning,

1 right?

2 MR. BRASHEARS: Yes, sir.

3 MR. JAMES: So it was five minutes
4 before closing. Okay, and then moving along to
5 page 12 there's another ABRA Case Report and
6 this time the establishment was, is it correct
7 the establishment was charged with charging a
8 cover charge without first obtaining a cover
9 charge endorsement and violated its voluntary
10 agreement by not operating in compliance with
11 applicable laws and regulations?

12 MR. BRASHEARS: Yes, that's what
13 they were charged with in the report, yes, sir.

14 MR. JAMES: And what time of day did
15 this begin? This investigation occur during the
16 summary? It's actually not highlighted but it's
17 just above where the highlighting begins.

18 MR. BRASHEARS: I'm looking at page
19 12. It says December 31, 2010 at 11:45 p.m.

20 MR. JAMES: Yes, yes. Thank you.

21 And on the next page which is I believe this is
22 for a regulatory inspection, no, entertainment

1 endorsement application. The one part that's
2 highlighted there, to be completed by the
3 applicant, is the box for dancing checked or
4 cover charge? I see that entertainment is
5 checked, is that correct?

6 MR. BRASHEARS: Entertainment and
7 type of license tavern is checked. Dancing does
8 not appear to be checked although it doesn't
9 appear to be unchecked. It looks like it may
10 have been marked at some time and maybe erased
11 or, but it is not marked.

12 MR. JAMES: Right. There's not a
13 clear X in it as there are in entertainment and
14 tavern.

15 MR. BRASHEARS: Yes, sir.

16 MR. JAMES: Okay. Thank you. All
17 right, during the 20 visits that you made to the
18 establishment you relayed in your report for
19 this hearing, did you observe patrons in the
20 establishment dancing?

21 MR. BRASHEARS: No, sir.

22 MR. JAMES: The visits were, did

1 they go inside?

2 MR. BRASHEARS: Yes, sir.

3 MR. JAMES: I see. And every visit
4 they went inside the establishment?

5 MR. BRASHEARS: Yes, sir. If I may
6 as I've stated it's not a very big venue and on
7 the times that I was there, there were quite a
8 few people but they all seemed to just be
9 standing with drinks. No one was dancing. To be
10 honest, there wasn't really that I could see the
11 room to dance because it's a very long narrow
12 space.

13 MR. JAMES: Thank you. Turning to
14 page 17. Is it correct that the date of
15 occurrence was March 10, 2012?

16 MR. BRASHEARS: Saturday, March 10,
17 2012 is what's on the page 17, yes sir.

18 MR. JAMES: And I'm looking, I'd
19 like to ask you what time of day this incident
20 occurred and I think by, on the second, on page
21 18 could I direct you to the first paragraph?

22 MR. BRASHEARS: March 10, 2012 at

1 approximately 2:10 a.m.

2 MR. JAMES: Okay, 2:10. And if we
3 turn to the 251 incident report, could you just
4 read the first line of it?

5 MR. BRASHEARS: I don't see it.

6 MR. JAMES: I'm sorry, page 22.

7 MS. MILLER: Page 20?

8 MR. JAMES: Page 22.

9 MS. MILLER: Page 22.

10 MR. JAMES: Just the very first
11 line. This is in relation to the --

12 MR. BRASHEARS: Oh, under the
13 narrative?

14 MR. JAMES: Yes.

15 MR. BRASHEARS: C1 reports that he
16 was dancing inside of the listed location when
17 he stepped on S1's shoe.

18 MR. JAMES: Okay. That's fine.
19 Thank you. And are you familiar with the
20 additional security requirements that the Board
21 approved in an order that were required by the
22 Office of Attorney General, that's on page 27, a

1 court order approving those, the subsequent
2 three pages. Well to get to the point of my
3 question, is this something which you check for
4 compliance when you do check the establishment
5 along with the settlement agreement?

6 MR. BRASHEARS: As far as the
7 security plan, yes, sir.

8 MR. JAMES: okay, great. So is it,
9 I'm finally on page 29 and another ABRA Case
10 Report dated November 12, 2012. Could you read
11 the first sentence of the summary?

12 MR. BRASHEARS: On Monday, November
13 12, 2013 at approximately 2:20 a.m. Alcoholic
14 Beverage Regulation Administration ABRA
15 investigator, Erin Mathieson, determined that
16 Club Timehri was in violation of DC Codes 25723,
17 25446, 25826 Section 6 and Title 23DCMR705.

18 MR. JAMES: Yes. Thank you and
19 that, so that time was 2:20 a.m.

20 MR. BRASHEARS: 2:20 a.m., yes, sir.

21 MR. JAMES: Thank you. Okay. On
22 pages 30, well on page 32, can you identify that

1 document, please?

2 MR. BRASHEARS: Page 32 is a copy of
3 Club Timehri's ABRA license, ABC licenses.

4 MR. JAMES: That's an up to date
5 license, correct?

6 MR. BRASHEARS: Yes, sir.

7 MR. JAMES: And does it list any
8 endorsement beyond entertainment?

9 MR. BRASHEARS: No, sir.

10 MR. JAMES: And on page 33, can you
11 identify that document?

12 MR. BRASHEARS: Oh, this, I'm sorry.
13 Looks like their entertainment, lists their
14 entertainment hours, operating hours.

15 MR. JAMES: Isn't this an, would you
16 identify this as an ABC license? It's perhaps,
17 is it possible that it looks different than the
18 current -

19 MR. BRASHEARS: Possibly, yes, sir,
20 yes, sir.

21 MR. JAMES: this one is for 2010.

22 MR. BRASHEARS: Yes, sir unless the,

1 yes, yes, I'm sorry. It lists the hours of
2 operation.

3 MR. JAMES: Right.

4 MR. BRASHEARS: And the, with the
5 endorsements.

6 MR. JAMES: The endorsements are
7 limited to entertainment only.

8 MR. BRASHEARS: Yes, sir.

9 MR. JAMES: It doesn't include cover
10 charge, is that correct?

11 MR. BRASHEARS: Correct.

12 MR. JAMES: It doesn't include
13 dancing, is that correct?

14 MR. BRASHEARS: Correct.

15 MR. JAMES: Thank you. That's all
16 KCA has.

17 MR. SIMPSON: Nothing further ANC.

18 MS. MILLER: Okay.

19 MS. AUBURN: I just have a couple
20 questions.

21 CROSS-EXAMINATION
22

1 MS. AUBURN: Can you describe the
2 security plan in place when you enter the
3 establishment? When you are about to enter the
4 establishment, can you describe what you see for
5 the security plan in place, like do you see any
6 cameras, do you see any metal detector, do you
7 see any ID check? That's what my question --

8 MR. BRASHEARS: In the times that I
9 was there, they had, they had an ID, an
10 individual out front checking IDs and they had
11 an individual if I recall inside possibly more.
12 It's been a while since I've been there. But,
13 yes they were checking IDs. They were wearing
14 security attire and basically, you know,
15 monitoring the establishment.

16 MS. AUBURN: Do you find, did you
17 find it efficient? Did you find it safe enough
18 for patrons to prevent any type of incidents?

19 MR. BRASHEARS: I mean, I can't
20 really speak to that. I will say that most of
21 the security plans and things I've looked at
22 typically require one security person per 50

1 personnel. The capacity on the establishment is
2 48 and I've routinely seen two or more security
3 personnel there.

4 MS. AUBURN: How would you describe
5 the type of crowd that goes to the
6 establishment?

7 MR. BRASHEARS: How would I describe
8 the crowd?

9 MS. AUBURN: Yes. The type of
10 crowd.

11 MR. BRASHEARS: People.

12 MS. AUBURN: Yes, the people, yes.

13 MR. BRASHEARS: Well, I mean that's,
14 I mean I didn't, like interview them or get to
15 talk to them. I mean they were drinking,
16 conversing, nothing out of the ordinary. I
17 really can't speak to what type of people they
18 were or anything of that nature. Everyone
19 seemed to be behaving.

20 MS. AUBURN: Could you tell about
21 the approximately the age of the people there?

22 MR. BRASHEARS: I would actually say

1 it's a pretty diverse crowd. Some fairly
2 younger folks and some fairly older folks. I
3 don't want to drop any age numbers out there,
4 but some folks definitely younger than myself
5 and some folks definitely older than myself.

6 MS. AUBURN: Again to come back to
7 the security plan, do you feel, do you think
8 that the security plan in place is satisfactory
9 for the safety of the patrons in reference, due
10 to the fact that a couple years ago there was an
11 assault?

12 MR. BRASHEARS: Again, that's kind
13 of a subjective, question in that I've seen
14 establishments with 35 security have an
15 aggravated assault. I've seen locations with one
16 security and a lot of people not have an
17 assault. It really depends on the crowd and
18 it's very difficult to put a figure on what
19 exactly works and what doesn't. Obviously in
20 this situation my understanding was, I don't
21 know exactly what improvements were made since
22 the assault, I was just informed that the

1 Protestants had asked for a better security plan
2 and a better setup and from what I understand
3 Mr. Wells had complied.

4 MS. AUBURN: And this will be my
5 last question. During your visits on the
6 establishment have you noticed any time any
7 violation of the security plan?

8 MR. BRASHEARS: Not that I was aware
9 of, no.

10 MS. AUBURN: Thank you.

11 MS. MILLER: Redirect? Or not
12 redirect. He's not your witness. I'm sorry.
13 Are there any other Board questions? Okay.

14 MR. KLINE: May I ask one in light
15 of the cross we had over here?

16 MS. MILLER: I'll give you leave for
17 one.

18 MR. KLINE: Just one. Investigator,
19 let me help you out in terms of the type of
20 people, isn't it true they're primarily African
21 American?

22 MR. BRASHEARS: Yes.

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

3 MS. MILLER: Okay. All right. I
4 think that concludes your testimony. Thank you
5 very much.

6 MR. BRASHEARS: Thank you, ma'am.

7 MS. MILLER: Okay. No, it is your
8 witness now again, yes. How many more do you
9 have?

10 MR. KLINE: I don't know. I only
11 called one so far.

12 MS. MILLER: I should have asked
13 that question at the beginning. No, I didn't
14 mean it in a negative way. I was just
15 wondering.

16 MR. KLINE: I think three. Three or
17 four.

18 MS. MILLER: Three or four? Okay.

19 MR. KLINE: Call to the stand
20 Johnathan Chou.

21 MS. MILLER: Okay. Do you swear to
22 tell the truth, the whole truth and nothing but

1 the truth?

2 MR. CHOU: I do.

3 MS. MILLER: Okay.

4 DIRECT EXAMINATION

5 MR. KLINE: State your name for the
6 record please.

7 MR. CHOU: Johnathan Chou.

8 MR. KLINE: And you have a business
9 on Adams Morgan?

10 MR. CHOU: Yes, I do. I own the
11 restaurant right next door to Timehri.

12 MR. KLINE: And what's that called?

13 MR. CHOU: Its call Sakura Ramen.
14 It's a ramen noodle bar.

15 MR. KLINE: And how have you been
16 there?

17 MR. CHOU: We actually opened doors
18 for business on May 2012, but we've been kind of
19 like hanging out in that neighborhood for about
20 three years.

21 MR. KLINE: Okay. So you were
22 familiar with this establishment before you

1 opened your business there?

2 MR. CHOU: Oh, yes. We had to check
3 out our neighbors before we signed a lease, so.

4 MR. KLINE: So you're the
5 immediately adjacent business neighbor.

6 MR. CHOU: Yes, we are.

7 MR. KLINE: What is your impression
8 as to how Club Timehri is operated as it relates
9 to peace, order and quiet in the neighborhood?

10 MR. CHOU: Being immediate next door
11 neighbors, we haven't experienced any direct
12 issues ourselves. I mean it's Adams Morgan, if
13 you're familiar with Adams Morgan, you walk up
14 and down that 2400 block where we are and it's
15 hard to say when the street's packed with people
16 it's hard to say well are they there for our
17 restaurant, are they there for Timehri, are they
18 there for any of the other 30 clubs that are in
19 that immediate block.

20 But when we close, we close up
21 around probably 11:00, midnight or so. We walk
22 out around that time and the street, the whole

1 street, the whole 2400 block is just packed with
2 people. In terms of any additional
3 contributions to issues of peace, order, I don't
4 think you, I don't think I could at least single
5 out Timehri or any other single club to say that
6 it's been an issue. At least being an immediate
7 adjacent neighbor, we haven't experienced any
8 issues with peace and order, respective. I mean,
9 they're a nightclub and they have their music
10 going next door and our diners still dine
11 relatively in peace so, we haven't had any
12 issues and we haven't had any of our customers
13 complaining about issues or anything so, no.

14 MR. KLINE: Okay. Thank you.

15 That's all I have of this witness at this time.

16 MS. MILLER: Okay, cross?

17 CROSS-EXAMINATION

18 MR. SIMPSON: You close around 11:00
19 p.m. you said?

20 MR. CHOU: We, it depends on the
21 evenings. During the weekday we'll close the
22 kitchen at 10:30 but by the time we get out it's

1 about 11:30 close to midnight.

2 MR. SIMPSON: Okay. Were you here
3 when Mr. James was asking the investigator about
4 the various times that the various incidents
5 occurred?

6 MR. CHOU: Yes, I was here, yes.

7 MR. SIMPSON: And so those all
8 occurred after your closing time?

9 MR. CHOU: Yes, yes.

10 MR. SIMPSON: All right. And you
11 indicated that Timehri is a nightclub?

12 MR. CHOU: Timehri, I mean it's a
13 club. It's a reggae bar basically so, I mean
14 that's the way people come to hang out, have
15 fun.

16 MR. SIMPSON: Thank you.

17 MR. JAMES: I don't have anything.

18 MS. MILLER: Okay. Any other
19 questions? Ms. AUBURN?

20 CROSS-EXAMINATION

21 MS. AUBURN: Could you tell me when
22 during 2012 you opened your restaurant?

1 MR. CHOU: Yes, we opened May of
2 2012. During the week we're open for dinners
3 from 5:30 till you know kitchen 10:30, 11:00 and
4 then on the weekends we're open till about
5 11:00, 11:30 but yes, so we've been around every
6 day in Adams Morgan basically for the past two,
7 little over two and half years.

8 MS. MILLER: Is that it? Ms. AUBURN
9 does that complete your questioning?

10 MS. AUBURN: Yes.

11 MS. MILLER: Yes. Any Board
12 questions? Okay. Thank you very much.

13 MR. CHOU: Okay. Thank you.

14 MR. KLINE: Thank you, Mr. Chou.
15 Call to the stand Arianne Bennett.

16 MS. MILLER: Do you swear to tell
17 the truth, the whole truth and nothing but the
18 truth?

19 MS. BENNETT: I do.

20 MS. MILLER: Okay. Thank you.

21 DIRECT EXAMINATION

22 MR. KLINE: State your name for the

1 record, please.

2 MS. BENNETT: I'm Arianne Bennett.

3 MR. KLINE: And Ms. Bennett, where
4 do you reside?

5 MS. BENNETT: I live at 2425 18th
6 Street, which is about four doors south of
7 Timehri.

8 MR. KLINE: And how long have you
9 lived in that apartment?

10 MS. BENNETT: Since 2003, October.

11 MR. KLINE: And you also own a
12 business there, is that correct?

13 MS. BENNETT: I do. I own the
14 Amsterdam Falafel Shop and I live above my
15 business on the front side of the street.

16 MR. KLINE: You're familiar with the
17 business known as Timehri?

18 MS. BENNETT: Yes.

19 MR. KLINE: Do you have impressions
20 in terms of how this establishment is operated
21 under its current ownership?

22 MS. BENNETT: Sure. I walk on the

1 streets a lot there. I have a dog so I walk the
2 dog a lot in front of all the businesses. Our
3 path is right in front of their business all the
4 time. We have never, my husband or myself, but
5 I personally have never seen trouble in front of
6 the restaurant. I've not seen people littering.
7 I've not seen broken glass on the sidewalk. I've
8 not heard loud music coming out of the club.
9 I've not seen pushing or shoving right in front
10 of their club. I've not seen them operate after
11 hours. I've not seen them behave in an
12 irresponsible manner. I've always seen the
13 security guys out front.

14 The patrons seem to be a diverse
15 range of folks and I'm also although I'm not
16 here in that capacity, sit on the BID board and
17 I've worked extensively with Johnathan during
18 that time on the bid board so I know that he
19 comes to meetings that I go to and expresses
20 concern about peace, order and quiet, about
21 other businesses in the neighborhood that are
22 doing many of the things that I've talked about

1 not seeing at their club so I feel like they run
2 a responsible business and do what they can as
3 owners to provide quality entertainment and a
4 place for people to go that is civilized and
5 pleasant to be.

6 MR. KLINE: So, you live there.

7 MS. BENNETT: Yes.

8 MR. KLINE: You have a business
9 there.

10 MS. BENNETT: Yes.

11 MR. KLINE: And you're involved and
12 you're on the Business Improvement District
13 Board, correct?

14 MS. BENNETT: Mm-hmm.

15 MR. KLINE: So in those various
16 roles, do you get a sense of who the good actors
17 and the bad actors are up and down 18th Street?

18 MS. BENNETT: Yes, and whereas the
19 police may not call them bad actors or bad
20 apples amongst business owners, we ourselves
21 have called them bad actors or bad apples. And
22 we work hard to put pressure on those people to

1 behave differently and have taken active roles
2 as neighboring businesses outside of our role
3 with the BID because I'm not here in that
4 capacity but outside of that have taken roles or
5 taken action where we go and talk to businesses
6 that are bothering us. We've talked to people
7 who were across from us before. We've talked to
8 people who were south of us before. We've
9 talked to them with the police we've talked to
10 them independently and personally and worked to
11 better the neighborhood, but we've never had any
12 of those issues with Johnathan at all.

13 MR. KLINE: So were you here for
14 opening statements in this case?

15 MS. BENNETT: Yep.

16 MR. KLINE: Did it surprise you to
17 hear the ANC commissioner suggest that Timehri
18 would be on the bad list?

19 MS. BENNETT: I was surprised at
20 that.

21 MR. KLINE: That has not been your
22 experience?

1 MS. BENNETT: That's not been my
2 experience and in my experience there are other
3 people who you could tick off rather quickly on
4 the street that would be the first ones that
5 come to mind. One of them that just closed was
6 the New York New York Diva people and their
7 previous succession of ownership. There are
8 some people across from me who are problematic.
9 There are people that I walk by when I'm walking
10 the dog at 4:00 in the morning and there are
11 still people in there. And that's not been my
12 experience at all with them.

13 MR. KLINE: As someone who lives
14 right there and has a business right there, do
15 you see any issues with Timehri being allowed to
16 take advantage of the extended hours program
17 that was passed by the Council a couple of years
18 ago?

19 MS. BENNETT: No. And I feel
20 strongly about this sort of thing. I feel like
21 if the District government says that all of the
22 businesses should be allowed to do something,

1 then all of the businesses should be allowed to
2 do that thing. I get concerned when we have a
3 double standard about things. I've never seen
4 them behave irresponsibly but other people who
5 do behave irresponsibly are allowed to take
6 advantage of those hours and so I don't feel
7 like that's an appropriate problem for them. I
8 don't think that that's anything that they would
9 be contributing to negatively.

10 MR. KLINE: Okay.

11 MS. BENNETT: My business is open
12 late too, and so we see everything going on.
13 Our people see what's going on. We feel very
14 present in that community.

15 MR. KLINE: How late does your
16 business operate?

17 MS. BENNETT: Sundays and Mondays
18 till midnight, Tuesdays and Wednesdays till
19 2:30, Thursdays till 3:00, Friday, Saturday till
20 4:00.

21 MR. KLINE: So you actually are open
22 the weekends the extended hours that --

1 MS. BENNETT: Yes, and we don't have
2 an alcohol license, so we're outside of that,
3 but yes.

4 MR. KLINE: Great. I have no further
5 questions. Thank you very much for your
6 testimony.

7 MS. MILLER: Okay. Protestants.
8 Nobody, or somebody?

9 CROSS-EXAMINATION

10 MS. AUBURN: In your testimony you
11 were saying a few times that, you refer to
12 Timehri as a restaurant and a club. Are you
13 aware of the type of license that Timehri is
14 currently holding?

15 MS. BENNETT: Yes, I use those words
16 very loosely. Those are layman's terms that
17 don't have anything to do with the license and I
18 refer to myself as a shop or a restaurant. I
19 refer to bars as bars or restaurants or clubs
20 just because that happens to be the word that
21 gets used at that moment. I'm aware that they
22 are not an actual club. I'm aware that there

1 are not actually licensed clubs in Adams Morgan.
2 If I think about a club I think about a large
3 open space with lots of lights and dancing and
4 stuff like that, so I definitely don't think of
5 Timehri as that, so if they're a bar, they're a
6 bar. If they're a music venue, I just, I don't
7 know what the.

8 MS. AUBURN: What type of license is
9 your establishment currently holding?

10 MS. BENNETT: Me? Regular business
11 license and a restaurant's license. Yes, we
12 don't have any alcohol served in our
13 establishment at all.

14 MS. AUBURN: So comparing your
15 establishment with Timehri that is currently
16 holding a tavern license, don't you think is a
17 little bit out of place?

18 MS. BENNETT: I'm not comparing our
19 businesses at all. I just said that we are open
20 at the same time. We're open late like a lot of
21 businesses on the street and I have interacted
22 with the owners of Timehri in a business and

1 professional setting before. I've interacted
2 with them in a casual setting as we walk up and
3 the street. We consider them our neighbors in
4 the business district, but I actually don't
5 consider our restaurant or our shop anything
6 like anything else in Adams Morgan.

7 MS. AUBURN: Do you have an
8 entertainment endorsement?

9 MS. BENNETT: No. We do not have
10 live music. Sometimes our staff will sing
11 impulsively but that's about it, if you're nice
12 to them.

13 MS. AUBURN: Thank you. Nothing
14 else.

15 MS. MILLER: Okay. Board questions?
16 Okay thank you.

17 MR. KLINE: Thank you.

18 MS. MILLER: Or, you didn't have
19 redirect?

20 MR. KLINE: I don't have anything
21 else. Call to the stand Johnathan Wells.

22 MS. MILLER: Okay. Good afternoon

1 still. Do you swear to tell the truth, the
2 whole truth and nothing but the truth?

3 MR. WELLS: I do.

4 MS. MILLER: Okay. Thank you.

5 MR. JAMES: Could I just ask a point
6 of information of the Board? Can we note
7 approximately how much time has been used so
8 far?

9 MS. MILLER: Sure.

10 MR. JONES: So as it currently
11 stands, the licensee has used 34 minutes, has 56
12 minutes remaining. The Protestants have used
13 36, have 54 minutes remaining.

14 MR. KLINE: May I proceed?

15 MS. MILLER: Mm-hmm.

16 DIRECT EXAMINATION

17 MR. KLINE: Will you state your name
18 for the record, please?

19 MR. WELLS: Christopher Johnathan
20 Wells.

21 MR. KLINE: Mr. Wells, what's your
22 connection to the establishment known as

1 Timehri?

2 MR. WELLS: The owner.

3 MR. KLINE: And how long have you
4 been the owner?

5 MR. WELLS: Since 2007, late 2007.

6 MR. KLINE: All right. And give the
7 Board a little sense of your background, how it
8 is that you got into the hospitality business.

9 MR. WELLS: I'm originally from the
10 Caribbean. I wanted to basically have a place
11 to go that exposed our culture not to just us,
12 but other people in the community. My primary
13 business is I have several, couple businesses,
14 information technology being one of them. I'm a
15 consultant, but I wanted to have an
16 establishment with Caribbean and music and flare
17 to it.

18 MR. KLINE: Okay. And you were
19 previously involved in another business in Adams
20 Morgan?

21 MR. WELLS: Yes, Sutra Lounge and
22 Via Thai Restaurant, the old Felix.

1 MR. KLINE: Felix, okay.

2 MR. WELLS: In Adams Morgan.

3 MR. KLINE: All right. And when did
4 you get out of that?

5 MR. WELLS: February of 2013.

6 MR. KLINE: Okay. And you bought
7 this establishment, Timehri?

8 MR. WELLS: Yes.

9 MR. KLINE: It was already
10 operating, correct?

11 MR. WELLS: Yes.

12 MR. KLINE: All right. And that was
13 in 2007?

14 MR. WELLS: Correct.

15 MR. KLINE: Did you make any changes
16 when you took it over?

17 MR. WELLS: Yes, quite a few.

18 MR. KLINE: What were the changes
19 that you made?

20 MR. WELLS: Timehri had a history.
21 Lots of people knew the venue for things that we
22 wouldn't approve of running the establishment so

1 one of the first things we did was completely
2 overhaul the security. Put in a new security
3 company and just we're a lot more strict in how
4 we run the business.

5 MR. KLINE: Now despite that, there
6 was an incident in 2012, correct?

7 MR. WELLS: Yes, there was.

8 MR. KLINE: All right, and as a
9 result of that incident, the license was
10 summarily suspended for a period?

11 MR. WELLS: Yes, it was.

12 MR. KLINE: And in connection with
13 the summary suspension there was also a mandated
14 suspension along with that, correct? There was
15 a period of 10 days or until you made certain
16 changes, whichever came later?

17 MR. WELLS: Yes, yes, that's
18 correct.

19 MR. KLINE: Okay. And was there
20 also a Show Cause that followed that up?

21 MR. WELLS: Yes.

22 MR. KLINE: And were you sanctioned

1 in, or was the establishment sanctioned as a
2 result of that Show Cause proceeding?

3 MR. WELLS: Yes.

4 MR. KLINE: Now, and what were the
5 sanctions, do you recall off hand?

6 MR. WELLS: When you say sanctions,
7 you're talking about the requirements for the
8 additional --

9 MR. KLINE: I'm talking about fines
10 or suspensions.

11 MR. WELLS: Yes. We were fined
12 \$4000 and some days were applied, I don't
13 remember the exact amount, but we also got
14 credit for days closed while we were doing the
15 hearing and stuff like that.

16 MR. KLINE: And you paid the \$4000
17 fine?

18 MR. WELLS: Paid the \$4000 fine,
19 yes.

20 MR. KLINE: And you served the
21 suspension?

22 MR. WELLS: Served the suspension

1 completely, yes.

2 MR. KLINE: All right. Other than
3 that, during the period of your ownership,
4 there've been a couple violations here and
5 there?

6 MR. WELLS: Yes.

7 MR. KLINE: Anything major?

8 MR. WELLS: No, I mean some that I
9 would actually categorize as more a
10 misunderstanding as far as between myself and
11 what the ABRA investigator thought they
12 observed, so.

13 MR. KLINE: Okay. All right. After
14 that summary suspension, did you make further
15 changes in the establishment to address issues
16 that might have been raised as a result of the
17 incident that gave rise to the summary
18 suspension?

19 MR. WELLS: We implemented quite a
20 few things, quite a few security, additional
21 security measures because one of the things we
22 didn't have, for instance, was cameras, so we

1 weren't able to go back and actually see, so
2 that was one of the biggest things we did, but,
3 yes, there were a couple things.

4 MR. KLINE: And what else? Do you
5 recall what else you did? Was there a program
6 that you undertook as a result of that incident?

7 MR. WELLS: All security including
8 myself took two security classes on defensive
9 tactics and also alcohol offered, an ABRA
10 offered class on alcohol awareness, fake IDs,
11 how to spot patrons who are intoxicated. We
12 also took, there were two security classes
13 offered by a professional security company that
14 we took, all security myself included took the
15 class.

16 MR. KLINE: Okay. And there was
17 also an additional, there were additional
18 requirements in the security plan as a result of
19 an agreement you made with the Office of
20 Attorney General?

21 MR. WELLS: Yes.

22 MR. KLINE: And have you been in

1 compliance with the requirements of those plans?

2 MR. WELLS: Yes. Specifically they
3 wanted all patrons to wanded. Some of the
4 practices we already had in place. They wanted
5 to make sure that we had a number system in
6 place to monitor patrons entering and leaving
7 the establishment.

8 MR. KLINE: And is that something
9 you've done on a regular basis?

10 MR. WELLS: Yes, absolutely.

11 MR. KLINE: So you control the
12 capacity within the establishment?

13 MR. WELLS: Yes. Yes, we do.

14 MR. KLINE: Let's talk for a minute
15 about the establishment because some of us may
16 not have been there, may not know the layout.
17 It's been testified it's a capacity of 48?

18 MR. WELLS: Yes.

19 MR. KLINE: So, it's on one level?

20 MR. WELLS: It's on one level.

21 MR. KLINE: Walk the Board in
22 through the front door starting you get to the

1 front door, who do you first encounter and take
2 the Board on a little tour of your
3 establishment.

4 MR. WELLS: Okay, so we are located
5 in the basement. So you would first off the
6 pavement, you would walk down the stairs to
7 where you would be greeted by two security
8 checking IDs, also doing a wanding or pat down
9 depending on the attire.

10 At that point depending what night
11 it is you may encounter someone who charges a
12 cover charge. That's only on Friday, Saturday
13 night. Other nights you would walk straight into
14 the venue. You would open a glass door and it
15 walks you into the actual venue. Once you get
16 into the venue there's a bar that runs I would
17 say about a quarter of the establishment the
18 length of the establishment where you can order
19 drinks, beverages, cocktails, Jamaican patties
20 if you want and behind there's lounge area.
21 Towards the rear of the establishment there's a
22 female and males bathroom and another exit as

1 required by code, fire exit.

2 MR. KLINE: Now in terms of
3 activities, obviously there's a bar, so there's
4 alcohol service and I think there's been
5 testimony that there are Jamaican patties and
6 other food available, correct?

7 MR. WELLS: We stick to Jamaican
8 patties.

9 MR. KLINE: Okay.

10

11 MR. WELLS: We pretty much stick to
12 Jamaican, we have catered on occasion, on
13 several occasions but one thing that happened is
14 a lot of times food was left over and I hated
15 wasting food, so I stopped that practice because
16 too many times that was the case. We didn't do
17 nuts because they've been deemed almost the most
18 unhygienic bar food there is to have on a bar,
19 so.

20 MR. KLINE: And then you also have
21 entertainment, correct?

22 MR. WELLS: Yes, and we have

1 entertainment.

2 MR. KLINE: And that's live
3 entertainment, recorded?

4 MR. WELLS: So we have disc jockeys.
5 Just to give you a little background, Timehri is
6 known throughout the Caribbean for being a place
7 that provides very Caribbean authentic music and
8 entertainment. Our DJs have won road marches at
9 Carnival and Trinidad and Tobago, Carvana in
10 Canada, the Bahamas, lots of different. We
11 really pride ourselves on delivering an
12 entertainment, the best of the Caribbean
13 entertainment, entertainers they are as far as
14 disc jockeys go. We're known for it.

15 MR. KLINE: And in terms of your
16 clientele, could you give the Board sort of a
17 flavor of your clientele there?

18 MR. WELLS: I mean we really, we
19 have the, as the ABRA investigator said, we have
20 all the way from 21 to 60. I mean we have blue
21 collar, white collar. We have a lot of people
22 who come in because they want an authentic

1 Caribbean experience and they're a lot of times
2 Americans as much as they are international,
3 people from all over the world, you know, we
4 have a wide variety of people.

5 MR. KLINE: Now one of the reasons
6 that you want to amend or terminate your
7 settlement agreement is that you want to take
8 advantage of the extended hours that are
9 available under the law passed by the Council,
10 correct?

11 MR. WELLS: That's correct.

12 MR. KLINE: Is there any particular
13 reason that you want to do that in terms of what
14 your business model is?

15 MR. WELLS: I mean, primarily it's,
16 the thing is with those hours, its common
17 knowledge. A lot of our patrons know about it
18 and the first thing they do on a holiday night
19 is come to the door and say are you guys open
20 the extra hour. So it's a great promotional
21 tool. Sometimes you don't even necessarily take
22 the additional hour, because, I mean, it's been

1 our observation that people are usually done by
2 the regular time anyway and in that case you
3 close up. There's no use to stay open, you know
4 what I mean, most of the people have trickled
5 out, but you want to have that opportunity to
6 give your customers if that's what they want.

7 MR. KLINE: And do you have any
8 reason to believe that this is something other
9 than the questions that have been asked of you
10 about whether you do it, do you have any reason
11 to believe that your clientele specifically
12 would like to be able to take advantage of this?

13 MR. WELLS: I'm sorry, I'm not sure
14 I under, what's --

15 MR. KLINE: Well in other words,
16 Caribbean people, they like to be up late or --

17 MR. WELLS: Oh. You know, actually
18 I would like to speak to this. One of the
19 things that came up in our negotiation with the
20 ANC was --

21 MR. KLINE: Without getting into
22 substance of negotiation.

1 MR. WELLS: Okay, without getting
2 into too much detail, Caribbean people like to
3 go out on the eve of holidays, be it Christmas
4 Eve, be it Thanksgiving eve, it's a cultural
5 thing. They like to go out and party on those
6 nights, so, yes, they would appreciate, they
7 would like the extra hour on those nights.

8 MR. KLINE: Do you have the
9 Protestants exhibits in front of you? Is there
10 a book --

11 MR. WELLS: Yes, I do.

12 MR. KLINE: All right. Will you look
13 at number 32?

14 MR. WELLS: Okay.

15 MR. KLINE: Does that purports to be
16 your license, correct? Purports to be your
17 license. Just answer the question.

18 MR. WELLS: No.

19 MR. KLINE: No. All right. What's
20 the date of issue on that document?

21 MR. WELLS: November 19, 2014.

22 MR. KLINE: What's today?

1 MR. WELLS: November 19, 2014.

2 MR. KLINE: Was your license issued
3 today?

4 MR. WELLS: No, it was not.

5 MR. KLINE: Is that your license?

6 MR. WELLS: No.

7 MR. KLINE: All right. Now in
8 preparing for this hearing did you inquire about
9 police radio runs to perhaps your establishment
10 and other establishments in the neighborhood?

11 MR. WELLS: Yes, I did.

12 MR. KLINE: And how did you make
13 that inquiry?

14 MR. WELLS: Lieutenant Ashley Rosen,
15 Rosenthal and Captain Mongal.

16 MR. KLINE: Okay, and was that done
17 by email?

18 MR. WELLS: Yes, it was.

19 MR. KLINE: And what establishments
20 did you ask for?

21 MR. WELLS: I asked for the diner, I
22 asked for Pizza Mart, I asked for Rumba, I asked

1 for Sakuramen and I asked for Timehri.

2 MR. KLINE: All right, and you did
3 that by email?

4 MR. WELLS: Correct, yes.

5 MR. KLINE: I want to show you
6 what's marked as Applicant's 1. I'm asking you
7 if you can identify that.

8 MR. WELLS: Yes, this is the
9 response to my request from Lieutenant
10 Rosenthal, Ashley Rosenthal.

11 MR. KLINE: Okay, and your request
12 was for?

13 MR. WELLS: For basically the radio
14 logs, the radio runs on a few of the businesses
15 on 18th Street including my own.

16 MR. KLINE: All right, and she
17 responded to that in that email?

18 MR. WELLS: Yes. The only one that
19 isn't in here is mine because she had already
20 sent me mine in a prior email.

21 MR. KLINE: okay. And from what
22 period did you ask for those?

1 MR. WELLS: The last year.

2 MR. KLINE: All right, and did you
3 then take and compile that information in some
4 way?

5 MR. WELLS: Yes, I did.

6 MR. KLINE: All right. I'm going to
7 show you what we're marking as Applicant's 2 and
8 ask if you can identify what this document is.

9 (Whereupon, the above-referred to
10 document was marked as Applicant's Exhibit 2 for
11 identification.)

12 MR. WELLS: This is the list I, the
13 summary I compiled with reference to the last
14 year's radio runs for Timehri and indexes of
15 what some of the acronyms mean.

16 MR. KLINE: All right. So there are
17 ten in the last year?

18 MR. WELLS: Yes, correct.

19 MR. KLINE: All right. I would move
20 Applicant's 1, which is the email and
21 Applicant's 2, which is the Timehri summary at
22 this time.

1 MS. MILLER: Mr. Kline, I'm not real
2 clear on this, so I have a four page document.
3 Is that what you're referring to as email?

4 MR. KLINE: It says Gmail at the top
5 of it?

6 MS. MILLER: Mm-hmm.

7 MR. KLINE: Yes. He's identified
8 that as his exchange of emails with Lieutenant
9 Ashley Rosenthal. And we've asked that that be
10 moved into evidence at this time.

11 MS. MILLER: So, I just want to ask
12 you, it has in this body of the email, right,
13 the calls for service?

14 MR. KLINE: Correct.

15 MS. MILLER: Okay.

16 MR. KLINE: And then he's testified
17 that from those he made summaries for each
18 individual establishment and he's identified the
19 summary that he did for his establishment,
20 Timehri, and we've asked, we've marked that as
21 Applicant's 2 and we've asked that that be
22 admitted at this time as well.

1 MS. MILLER: I see. Okay. Are
2 there objections to these Exhibits?

3 MR. JAMES: No objection.

4 MS. MILLER: Okay.

5 MR. KLINE: All right.

6 MS. MILLER: So this is Exhibits 1
7 and 2, is that right?

8 MR. KLINE: Correct. One is the
9 email exchange, 2 is the summary of radio runs
10 for Timehri, actually it's not a summary. It's
11 a listing of radio runs during a year period for
12 Timehri.

13 MS. MILLER: Okay. They are
14 admitted.

15 (Whereupon, the above-referred to
16 documents were admitted as Applicant's Exhibits
17 1 and 2.)

18 MR. KLINE: So they're admitted?

19 MS. MILLER: Yes.

20 MR. KLINE: All right, Mr. Wells,
21 looking at the list of runs for Timehri, there
22 are ten incidents referenced there, correct?

1 MR. WELLS: Yes.

2 MR. KLINE: All right. Will you
3 walk the Board through what those ten incidents
4 are, either by summary or line by line? There's
5 only ten of them.

6 MR. WELLS: Okay. So, starting with
7 number one, disorderly in process and the
8 disposition if you notice is ADB. That basically
9 means that the officer just, this was somebody
10 in front of the establishment. The officer
11 advised them and they went on their way.

12 Number two, number two is ASSP,
13 which is a simple assault and what you want to
14 look at here is the disposition where it shows
15 assigned case. In summary, this entire
16 document, there are two, two issues that
17 actually had cases assigned. The second one
18 here was a case where and to notice actually I
19 used this document to have 3D pull the case
20 report. That case report basically showed the
21 incident that occurred was in front of Timehri
22 but it actually was, this specific incident was

1 an officer and a pedestrian who got into a
2 confrontation in front of the business and there
3 was an assault charge brought against him. This
4 was, again, nothing to do with inside Timehri.

5 The third item --

6 MR. KLINE: Now what item number is
7 that?

8 MR. WELLS: That's number two.

9 MR. KLINE: Number two.

10 MR. WELLS: Number two. Actually
11 since I'm doing a summary, let me go ahead and
12 mention here that of these ten incidents over
13 the last year, two of them were actually had
14 cases assigned. It's number two and number
15 seven. So number two was what I just mentioned
16 with an individual who assaulted an officer in
17 front of 2439 18th Street, Timehri. The second
18 incident, number seven, was another, if you look
19 under the subtype number seven it says other and
20 assigned a case number. So I traced that case
21 number. That second incident was also an
22 individual who sprayed pepper spray in the diner

1 and retreating was caught in front of Timehri.

2 MR. JAMES: We object. There's no,
3 he's not qualified to tell what these incidents
4 were, what they became. He's not a member of the
5 Metropolitan Police Department. We don't see
6 the actual reports that came beyond this.
7 Beyond that, it's, these are outside of the
8 renewal period ended on March 31, 2013.

9 MS. MILLER: Counter thoughts, Mr.
10 Kline.

11 MR. KLINE: Yes, he's testifying
12 about his interactions with MPD and investing
13 the police runs. He's telling you what he
14 discovered. We're in administrative hearing.
15 The correct objection and I don't fault the
16 Protestants who are not attorneys, so I'm not,
17 would be hearsay but as we all know hearsay is
18 admissible in an administrative proceeding.
19 He's merely explaining what he learned about the
20 various, the ten entries that were related to
21 his establishment.

22 MS. MILLER: Mr. Wells, can I just

1 ask you though how did you learn about that or
2 from whom did you learn what the incident
3 involved?

4 MR. WELLS: What the acronyms stand
5 for?

6 MS. MILLER: No, what the incident
7 involved. You said that the, it was an assault
8 related to a pizza parlor I think.

9 MR. WELLS: I pulled the police
10 reports and read the narrative.

11 MS. MILLER: Okay. Did you have
12 something? Thank you.

13 MR. SILVERSTEIN: Just a question to
14 counsel, and that is why are we asking him this
15 when we had a police officer here earlier?

16 MR. KLINE: Because I don't know
17 that the police officer had not reviewed the
18 individual cases at that point.

19 MR. SILVERSTEIN: You subpoenaed a
20 police officer but, okay.

21 MR. KLINE: I didn't subpoena him for
22 that purpose. I mean I didn't walk through, I

1 didn't take the captain's time and walk through
2 a list of incidents. I mean that to me did not
3 seem to be productive in terms of what we wanted
4 him here for.

5 MR. SILVERSTEIN: Very well. It's
6 our case.

7 MR. KLINE: And I had another
8 officer here who, as you know, is not here even
9 though he was subpoenaed.

10 MR. SILVERSTEIN: That's true.
11 Thank you.

12 MS. MILLER: Okay. I don't see Mr.
13 James, but I'm going to overrule his objection.
14 Okay.

15 MR. WELLS: Okay, so again, for the
16 past year, the ten calls on the run sheets for
17 associated with our address, 2439, only two of
18 those are actually cases that constitute an
19 assault and actually had a case generated and
20 both of those cases were incidents that occurred
21 outside the establishment and outside of the
22 business, on the sidewalk in front.

1 The origin of which one was the
2 diner, the second MPD pulled over someone on the
3 street and they proceeded to punch one of the
4 officers and that's in the report. Of the ten,
5 to speak to the other eight of them, three of
6 them were burglar alarms that went off. Timehri
7 doesn't have a burglar alarm so it was
8 associated with the actual address, 2439. One
9 was a transport which had no incident reported
10 and basically means that MPD referenced the
11 establishment as transporting someone off. One
12 was an accident report in where no report was
13 taken. So if really look at these
14 ten incidents, none of them actually occurred
15 inside of Timehri and they're actually the exact
16 same ten incidents listed on the last year of
17 Mr. James' display page 34 of his binder,
18 they're the same ten incidents and so I pulled
19 them from the same report he pulled.

20 MR. KLINE: All right, now you had
21 indicated that you did compilations of a few
22 other places, correct?

1 MR. WELLS: Yes.

2 MR. KLINE: All right. Let me show
3 you what we've marked as Applicant's 3, 4, and 5
4 and ask you are those compilations that you
5 prepared from, for other establishments on 18th
6 Street near your establishment?

7 (Whereupon, the above-referred to
8 documents were marked as Applicant's Exhibits 3
9 through 5 for identification.)

10 MR. WELLS: Yes, they are.

11 MR. KLINE: And tell the Board what
12 three is.

13 MR. WELLS: Three is basically all
14 the radio runs, the exact same document I just
15 went through for my establishment for Grand
16 Central, who is two, three doors down from me.

17 MR. KLINE: Okay, and how many
18 incidents are there?

19 MR. WELLS: They have 19.

20 MR. KLINE: All right, four?

21 MR. WELLS: Four would be Sakuramen,
22 which is next door to me and they have 16.

1 MR. KLINE: All right, and five?

2 MR. WELLS: Five would be the diner,
3 which is a couple, again, one, two, three, four,
4 four or five doors down and they have 32.

5 MR. KLINE: All right, now these
6 compilations of radio runs for each of these
7 establishments were compiled from the email that
8 you received from Lieutenant Ashley Rosenthal?

9 MR. WELLS: That's correct.

10 MR. KLINE: All right.

11 MR. KLINE: I would move to 3, 4,
12 and 5.

13 MS. MILLER: I don't have them
14 though.

15 MR. KLINE: Yes, I'll going to.

16 MS. MILLER: Are there any
17 objections?

18 MR. KLINE: Are they accepted?

19 MS. MILLER: Not yet.

20 MR. KLINE: Okay.

21 MS. MILLER: So, three is runs for
22 Grand Central, correct?

1 MR. KLINE: Correct.

2 MS. MILLER: Four is runs for
3 McDonald's, is that correct? 2441 18th Street.
4 I see a McDonald's in here, so I just want to
5 identify them properly.

6 MR. WELLS: Four is Sakuramen.

7 MS. MILLER: Sakuramen, okay and.

8 MR. WELLS: That property address I
9 should say.

10 MS. MILLER: Okay, and what is five?

11 MR. WELLS: Five is the diner.

12 MS. MILLER: The diner, 2453 18th
13 Street. Okay. Yes. Okay, 3, 4 and 5 of
14 Applicant's Exhibits are admitted.

15 (Whereupon, the above-referred to
16 documents were admitted as Applicant's Exhibits
17 3 through 5.)

18 MR. KLINE: All right. Mr. Wells,
19 as part of this proceeding you have requested
20 that your settlement agreement or voluntary
21 agreement be terminated.

22 MR. WELLS: Yes.

1 MR. KLINE: Correct?

2 MR. WELLS: Yes.

3 MR. KLINE: All right, now you were
4 not involved when that settlement agreement was
5 entered into were you?

6 MR. WELLS: No.

7 MR. KLINE: And has there been a
8 change in the law or some other change that some
9 circumstances that, some circumstance that was
10 not in effect when that agreement was entered
11 into?

12 MR. WELLS: Well for one thing none
13 of these holiday hours were available to any of
14 the establishments. ABRA hadn't put out these
15 guidelines which, acceptable, ABRA approved
16 holiday hours that you could take advantage of.

17 MR. KLINE: Okay. And are you aware
18 of establishments in the District of Columbia
19 that are able to take advantage of those holiday
20 hours?

21 MR. WELLS: Yes.

22 MR. KLINE: And those establishments

1 compete with you?

2 MR. WELLS: Some of them do.

3 MR. KLINE: And does the restriction
4 in the agreement impair your ability to complete
5 with some of these other establishments?

6 MR. WELLS: Yes.

7 MR. KLINE: And that's because you
8 can't take advantage of the holiday hour?

9 MR. WELLS: Exactly.

10 MR. KLINE: Is that anything that's
11 within your control, the fact that the Council
12 allowed other establishments that were not
13 subject to agreements such as this to open later
14 hours?

15 MR. WELLS: No. I mean I'm here to
16 request the same liberties.

17 MR. KLINE: Okay. But I mean
18 obviously you didn't control that the Council
19 passed a law that gave an advantage to some of
20 your competitors.

21 MR. WELLS: No.

22 MR. KLINE: Correct?

1 MR. WELLS: No, I did not.

2 MR. KLINE: All right. Now are
3 there other things in the agreement that you
4 believe are outdated or burdensome from which
5 you like relief?

6 MR. WELLS: Yes. For instance, I
7 would like to do happy hours on occasion. The
8 establishment is confined to open at 8:00 p.m.
9 It's totally unfair everyone else gets to open
10 at 5:00, 4:00, a lot of places don't even have
11 opening hours because usually the, usually ABRA
12 isn't too concerned about you opening earlier.
13 It's usually later on in the evening. The end
14 of the night hours, so yes, I would like the
15 ability to open for happy hour.

16 MR. KLINE: Have you also been
17 approached about some opportunities that might
18 even have you opening earlier than for a happy
19 hour?

20 MR. WELLS: Yes.

21 MR. KLINE: Tell the Board what
22 those might be.

1 MR. WELLS: So, I had a resident of
2 Woodley Park who approached me to do a kids'
3 themed reggae event to expose kids in the
4 neighborhood to the culture and they want to do
5 that at 3:00 p.m. on Saturday afternoons.
6 Again, something I couldn't take advantage of
7 and I would love to do.

8 MR. KLINE: Right. And that
9 wouldn't really involve alcohol, would it?

10 MR. WELLS: No.

11 MR. KLINE: But the fact of the
12 matter is --

13 MR. WELLS: This would be to
14 introduce the children to the culture. Roots,
15 style, music.

16 MR. KLINE: But you understand that
17 notwithstanding the fact that you would have no
18 plans to serve alcohol at such an event, your
19 agreement prohibits you from having such an
20 event, correct?

21 MR. WELLS: Absolutely, yes.

22 MR. KLINE: All right. Now, there

1 are other provisions in the agreement that
2 relate to your security and how you run your
3 business, correct?

4 MR. WELLS: Yes.

5 MR. KLINE: In terms of the
6 attention that you pay to your business and the
7 security that you will have there to assure the
8 safety of your patrons and peace, order and
9 quiet in Adams Morgan, is that really going to
10 change if this settlement agreement goes away?

11 MR. WELLS: No. Absolutely not.
12 It's security, security is for all our benefits.
13 It's for the owner of the establishment, for the
14 patrons that come in there. People want to come
15 to an establishment that they feel safe in. So,
16 we do our best to make sure that we provide
17 adequate security.

18 MR. KLINE: But, if for example, you
19 were to have a kiddie event at 3:00 on a
20 Saturday afternoon, you wouldn't need the same
21 level of security, would you?

22 MR. WELLS: No, I don't think I

1 would. Absolutely not.

2 MR. KLINE: So is it your position
3 that the agreement hampers your flexibility in
4 how you operate your business?

5 MR. WELLS: Yes, it does.

6 MR. KLINE: All right. And is that
7 one of the other reasons that you would like to
8 see it terminated?

9 MR. WELLS: Yes, yes.

10 MR. KLINE: And you're comfortable
11 with the restrictions that the Board has already
12 imposed on your operation in wake of the
13 unfortunate incident that happened in 2012,
14 correct?

15 MR. WELLS: Yes, absolutely, yes.

16

17 MR. KLINE: Great.

18 Great. I have no further questions of the
19 witness at this time. I'd make him available
20 for cross and to the Board's questions.

21 MS. MILLER: Okay. Cross?

22 CROSS-EXAMINATION

1 MR. SIMPSON: Mr. Wells, you
2 indicated that when you acquired Timehri it had
3 a history. Can you tell us more about what you
4 meant by that?

5 MR. WELLS: I can tell you right off
6 the bat that when, shortly after owning it ABRA
7 showed up with about 18 additional violations
8 that never even go to the books that was
9 presented here when they showed the history of
10 the establishment, so I know they had a history
11 of incidents of ABRA violations.

12 MR. SIMPSON: You indicated that on
13 Fridays and Saturday nights you have a cover
14 charge?

15 MR. WELLS: Yes.

16 MR. SIMPSON: Can I refer you again
17 to I think its page 34 of the booklet, 32, I'm
18 sorry page 32. And I you disputed that you
19 thought this was a copy of your license. I'll
20 just note we got this from Bill Hager today at
21 ABRA.

22 MS. MILLER: Which document are you

1 looking at?

2 MR. SIMPSON: Page 32.

3 MR. SIMPSON: Is it conceivable that
4 the issue date being the date of November 19
5 could mean the date that this copy was issued as
6 opposed to the issue date of the license?

7 MR. WELLS: Yes, but that's not the
8 only thing that's inaccurate on this. There's
9 only one endorsement here on this and it says
10 entertainment, which is incorrect. We have
11 multiple endorsements, so if this is actually my
12 license why aren't the additional endorsements
13 stated on it?

14 MR. SIMPSON: I guess we'd make just
15 notice to the Board, we're under the impression
16 that there aren't additional endorsements but
17 maybe --

18 MR. WELLS: That's incorrect.

19 MR. KLINE: Objection. Mr. Simpson
20 is now testifying. He certainly is welcome to
21 do so at the appropriate time, but not now.

22 MS. MILLER: Okay.

1 MR. SIMPSON: Oh, sorry, one last
2 question. Isn't it true, you referenced
3 opportunities to provide children themed reggae
4 events for example, isn't it true that this
5 wasn't even mentioned to the ANC until the very
6 night at which we were being asked to vote on
7 the proposed amended settlement agreement?

8 MR. WELLS: Only because this
9 actually came to me about six to eight weeks ago
10 from one of the residents of Woodley Park, a
11 gentleman by the name of Gustavo. He came and
12 asked me. He said he frequents the
13 establishment and he would love to do this for
14 his kids and some other kids in the community so
15 it hasn't been an ongoing request, no.

16 MR. SIMPSON: Thank you.

17 CROSS-EXAMINATION

18 BY MR. JAMES:

19 MR. JAMES: Good afternoon, Mr.
20 Wells. Do you have the booklet, the
21 protestant's booklet there?

22 MR. WELLS: Yes.

1 MR. JAMES: Okay. Exhibit, sorry. I
2 get that word in my head. So on page 3 of that
3 booklet, do you see that there's a report
4 discussing an assault with deadly weapon that
5 happened at 2:55 a.m. at your establishment?

6 MR. WELLS: Yes, I see the report.
7 Yes, okay.

8 MR. JAMES: Mm-hmm.

9 And on page 6, this is the same report
10 dated February 21, 2010. The highlighted part,
11 could you please read that?

12 MR. WELLS: Investigator Jones also
13 found that Timehri offered music amplified by a
14 disc jockey, Exhibit 8, without an entertainment
15 endorsement which is in violation of DCMR23-
16 1000. Investigator Jones advised both Mr. Ramdat
17 and Mr. Wells of this violation and provided
18 Club Timehri with an entertainment endorsement
19 application. Mr. Wells stated that he was under
20 the impression that we were able to have a disc
21 jockey amplify music through the establishment
22 without an entertainment endorsement as long as

1 it was not live music performances per my
2 voluntary agreement.

3 MR. JAMES: Okay. Have you been
4 approved for a cover charge by the ABC Board or
5 for a disc jockey?

6 MR. WELLS: Absolutely, we're
7 approved for both of them. It was actually
8 after this specific incident that we went out to
9 get the entertainment endorsement because I was
10 not aware, we had just purchased the
11 establishment and was under the impression that
12 you only needed an entertainment endorsement for
13 live bands. Did not know it was a requirement
14 for disc jockeys. We subsequently got the
15 entertainment endorsement.

16 MR. JAMES: Thank you. Turning to
17 page 9, in an ABRA investigative report from
18 March 25, 2010, isn't it accurate that in
19 details highlighted that the report details that
20 once again the establishment was offering
21 entertainment without first obtaining an
22 entertainment endorsement? I'm sorry; this is a

1 supplemental report to the previous one. I'm
2 sorry, to the previous one that I just
3 discussed. I apologize. But on December 31,
4 2010, on page 12, under the highlighted part of
5 the summary could you please read that one
6 sentence?

7 MR. WELLS: Specifically the
8 establishment charged a cover charge without
9 first obtaining a cover charge endorsement on
10 its ABC license and violated its voluntary
11 agreement by not operating in compliance with
12 all applicable laws and regulations.

13 MR. JAMES: So from the first
14 observance of that by ABRA on February 21, 2010
15 all the way till December 31, 2010, it seems
16 that Club Timehri still had not gotten the
17 necessary permissions. Do you agree with that?

18 MR. WELLS: I'm sorry from the
19 February 21 incident?

20 MR. JAMES: Correct. The first
21 report that we mentioned that I asked you a
22 question about, page 3.

1 MR. WELLS: So during the page, for
2 the page 3 incident, I don't remember charging a
3 cover charge being an issue. I remember the
4 entertainment endorsement was an issue. The
5 cover charge endorsement is a separate
6 endorsement that I also have. So the 21st was
7 the entertainment endorsement, the 31st which
8 was New Year's Eve and I remember it really well
9 because we had catered a whole bunch of food and
10 as most establishments on 18th Street do, we
11 charged a cover that night because of the
12 additional things that we were offering for that
13 night, and the ABRA officer walked in just
14 before midnight. I missed midnight standing
15 with him to actually speak towards me not having
16 a entertainment endorsement on that night.

17 MR. JAMES: Yet if you turn back to
18 page 6 --

19 MR. WELLS: I mean a cover charge.

20 MR. JAMES: isn't it accurate that
21 if you turn back to page 6 and read the
22 highlighted part that that the investigator

1 advised both Mr. Randat and Mr. Wells of the
2 violation of an inadequate entertainment
3 endorsement to have a disc jockey?

4 MR. WELLS: I'm sorry where were you
5 reading the highlighted part?

6 MR. JAMES: Correct. The question
7 was isn't it accurate that Investigator Jones
8 also advised you and Mr. Ramdat that it was a
9 violation to have the disc jockey without the
10 entertainment endorsement application that is
11 required?

12 MR. WELLS: I mean that's what it,
13 that's what it stated here. I mean I know if
14 we, if we have a current license we'll see these
15 endorsements.

16 MR. JAMES: Well, so I may be mixing
17 up, I mean we're going through here, so moving
18 to page 13, could you please explain that part
19 that is highlighted where it says the Board
20 approved the entertainment endorsement
21 application on June 9, 2010 and the boxes for
22 entertainment and tavern are checked. It looks

1 like perhaps, does it look to you as if
2 something was checked in the dancing box but
3 then perhaps erased or whited out and is not, do
4 you see an actual X there that it's checked?

5 MR. WELLS: Yes, it looks like
6 something was checked in dancing, but I don't
7 know, are we still speaking to the disc jockey
8 because if I look at number 10, it says would
9 like to have a disc jockey --

10 MR. JAMES: I'm asking the
11 questions.

12 MR. WELLS: Okay. I'm confused.

13 MR. JAMES: Well, do you see the
14 dancing box checked there the way that the
15 tavern and the entertainment boxes are checked?

16 MR. WELLS: No, it doesn't look
17 like, it looks like something was there, but
18 yes. No it's not, it's not clearly visible that
19 it's checked or unchecked.

20 MR. JAMES: Turning to the incident
21 of March 10, 2012.

22 MS. MILLER: What page?

1 MR. JAMES: Page 17.

2 MS. MILLER: Okay.

3 MR. WELLS: I'm sorry. Page 10 or
4 page 17?

5 MR. JAMES: Page 17. It says March
6 10, 2012 ABRA report. So, could you please, do
7 you agree that the second to last sentence reads
8 additionally Club Timehri was not utilizing a
9 handheld metal detecting wand on the night of
10 this incident, which is a violation of their
11 security plan?

12 MR. WELLS: I'm sorry this is on
13 page 17?

14 MR. JAMES: Yes it's on page 17
15 under summary and if you go to the end of that
16 highlighted paragraph and go back one, not the
17 last sentence, but the next to the last sentence
18 beginning with additionally, Club Timehri, do
19 you agree that it says Club Timehri was not
20 using a handheld metal detecting wand on the
21 night of this incident, which is a violation of
22 their security plan?

1 MR. WELLS: So I agree, I agree to
2 that we were not, where it says here we were not
3 using a metal detecting, but we did not have the
4 current security plan in place. This is March
5 10, 2012. The new security plan came after this
6 specific incident in question. On the March 10
7 incident, this is where the ABRA Board and us
8 came to the guidelines for the new security plan
9 which was in place going forward after as a
10 result also of this incident.

11 MR. JAMES: I'm curious as to why,
12 we've heard that all the testimony so far and
13 you've heard Captain Mongal read from the MPD-
14 251 on this, I'm curious as to why your security
15 staff that was there in the, that night wasn't
16 able to control that environment.

17 MR. WELLS: Okay, so I don't know,
18 from my experience running an establishment of
19 this nature for the last, since 2007 you're
20 always trying to identify individuals who are
21 going to, who display questionable behavior
22 where, we're looking out, we're on the lookout

1 for somebody who walks up to the door and has a
2 bad attitude, why do I need to show my ID,
3 whatever the case may be.

4 We're looking for that individual.
5 Problem is in this type of business sometimes
6 that individual will walk in and be the nicest,
7 most polite person walking through the door and
8 you don't necessarily see those characteristics
9 displayed at the door, which would automatically
10 say don't even, than you very much, please visit
11 someone else's establishment. It's not always
12 visible. This night in question somebody
13 clearly got in.

14 One thing I'd like to point out here
15 they clearly say that they were stabbed with
16 something, it was never determined to be a knife
17 so as far as getting past security with a knife,
18 that was never ever established but these things
19 happen and we regret it. I mean we worked
20 tirelessly with this Board, with Attorney Stern,
21 AG Stern, to come to all of the things that we
22 could put in place to make sure this, ensure

1 this never happened again. I don't know what
2 else I can tell you. We really feel like we
3 did, we had the security on hand. It happened.
4 Things happen sometimes that you don't, can't
5 necessarily foresee or control. You just try to
6 do the best you can.

7 MR. JAMES: On page 18, could you
8 read the sentence in the middle, sort of the
9 middle of the page there, the main paragraph
10 where it starts with Office Jacquez?

11 MR. WELLS: Officer Jacquez stated
12 that the victim's wounds were eight slices
13 across the back of the arm, triceps, a puncture
14 in the side and a small wound on the hand.
15 Officer Jacquez stated that the stab wound to
16 the back of the victim's arm was relatively deep
17 and caused a lot of blood loss. Officer Jacquez
18 stated that the wound across the back of the
19 victim's arm appeared to be consistent with a
20 knife wound.

21 MR. JAMES: Thank you. Then on, if
22 we turn to page 29, this is another ABRA report

1 dated November 12, 2012. Is it accurate that
2 the summary describes Timehri being in operation
3 at 2:20 a.m. on a Monday?

4 MR. WELLS: Twenty-nine?

5 MR. JAMES: Yes, page 29, yes.

6 First sentence of the summary.

7 MR. WELLS: Mm-hmm.

8 MR. JAMES: So do you agree that it
9 says that on Monday, November 12, 2013 at
10 approximately 2:20 a.m. Investigator Mathieson
11 determined that Club Timehri was in violation
12 specifically operating at 2:20 a.m.?

13 MR. WELLS: Yes. That was the
14 accusation yes.

15 MR. JAMES: The hour of closure for
16 Mondays is?

17 MR. WELLS: Two p.m.

18 MR. JAMES: Okay. Thank you.

19 MR. JAMES: That's all I have.

20 MS. MILLER: Okay. Is that it for
21 Protestants? Okay, Board members? Mr. Brooks.

22 MR. BROOKS: Yes, thank you, Madam

1 Chair. Mr. Wells, a part of this hearing is for
2 a request to terminate the settlement agreement.
3 Did you ever have a meeting with the ANC or KCA
4 regarding termination?

5 MR. WELLS: Well, termination was an
6 option that we always said we wanted to have
7 available but initially our conversation was to
8 amend the settlement agreement.

9 MR. BROOKS: Okay, so it wasn't for
10 termination?

11 MR. WELLS: I never approached it as
12 outright, we want to terminate the settlement
13 agreement, no. It was initially to try to find
14 a compromise, a mutual ground within the
15 settlement agreement.

16 MR. BROOKS: Thank you, Madam Chair.

17 MS. MILLER: Okay. Mr. Alberti.

18 MR. ALBERTI: I guess afternoon or
19 evening I'm not sure, Mr. Wells. Good evening.

20 MR. WELLS: Good evening.

21 MR. ALBERTI: I know it's probably
22 painful having dredged up all those hiccups in

1 the past but I want to actually go back to 2010,
2 so that's when you got your entertainment
3 endorsement?

4 MR. WELLS: I would have to check
5 the exact date.

6 MR. ALBERTI: Well, that's what our
7 record shows, 2010.

8 MR. WELLS: Okay, yes.

9 MR. ALBERTI: I know that was a while
10 ago. Do you remember anything about the
11 process? Do you remember if the Board placarded
12 your establishment and allowed for input from
13 the neighbors at that time?

14 MR. WELLS: I want to say we had a
15 red a placard. I can't remember. I honestly
16 don't remember 100 percent. I think we did have
17 a placard.

18 MR. ALBERTI: I mean, the reason I
19 ask is it would tell me whether or not and maybe
20 the Protestants will know but the reason I ask
21 is it would tell me whether the community had an
22 opportunity for input at that time.

1 MR. WELLS: I don't remember any
2 adjustment or endorsement that we didn't have a
3 placard.

4 MR. ALBERTI: All right. Thank you.
5 I have no further questions.

6 MS. MILLER: Others? Mr.
7 Silverstein.

8 MR. SILVERSTEIN: Thank you, Mr.
9 Wells. You did contact the signatories, those
10 who were involved in the original signing of the
11 voluntary agreement and inform them that you
12 wish to terminate?

13 MR. WELLS: Yes, I did.

14 MR. SILVERSTEIN: Let's look at
15 this, at the VA. Do you want to walk through it
16 bit by bit here or do you just want to tell me
17 what are the three things that you really want
18 to get, that you really want to be without?

19 MR. WELLS: I'm sorry. I don't have
20 the VA in front of me. Are we looking at the
21 current, the proposed, current?

22 MR. SILVERSTEIN: We're looking at

1 the one that you want to terminate, which is the
2 one that's --

3 MR. WELLS: You're looking at the
4 current VA?

5 MR. SILVERSTEIN: Sure.

6 MR. WELLS: I don't have a copy.

7 MR. KLINE: May I approach the
8 witness?

9 MS. MILLER: Yes. I assume with the
10 current voluntary agreement.

11 MR. KLINE: Yes.

12 MS. MILLER: Okay. Yes, okay.

13 MR. WELLS: I'm sorry, what's the
14 question?

15 MR. SILVERSTEIN: Yes, what are the,
16 name the three things in here that you really
17 want to be free of and explain to me why and why
18 you should have them.

19 MR. WELLS: Okay. First and
20 foremost would be the hours of operation. That
21 clearly 8:00 p.m. to 2:00 a.m. is an unfair,
22 it's unfair. All of my neighbors have are open

1 for happy hour earlier in the afternoon and like
2 I stated earlier a lot of them don't even have
3 restrictions on when they open to my knowledge,
4 so that's something immediately that jumps out
5 as something that I don't, I can't speak to what
6 reason that was agreed to by the prior, previous
7 owner, but clearly he accepted it. It's not
8 something I would like to continue going
9 forward.

10 MR. SILVERSTEIN: What hours would
11 you want? What hours do you think you would
12 need?

13 MR. WELLS: I would like the ability
14 to open for happy hour whenever I see fit I
15 would like to be able to open at happy hour,
16 earlier if necessary as I said.

17 MR. SILVERSTEIN: I don't think that
18 the law has a definition of happy hour. There
19 are a lot of things we don't have strict
20 definitions of.

21 MR. WELLS: Okay, so, I would like
22 to, I would like to open at 5:00 p.m. but then

1 as I said there are opportunities for business
2 earlier for things that I would like to, not
3 necessarily from a monetary perspective make
4 money on, but I'd like to, I'd like to introduce
5 the kids of 18th, the area to reggae and do that
6 at 3:00 if that's when it was convenient for
7 parents. So, I would like that flexibility.

8 MR. SILVERSTEIN: Okay. Weekend
9 hours?

10 MR. WELLS: Same thing. Say no
11 restriction on earlier openings and close the
12 regular times except for ABRA approved holidays.

13 MR. SILVERSTEIN: So you want full
14 hours?

15 MR. WELLS: I would like the
16 additional hour on ABRA approved holidays, the
17 Board issued holidays, or recognized holidays
18 and --

19 MR. SILVERSTEIN: You're asking for
20 full legal hours, is that what you're telling
21 me?

22 MR. WELLS: Sorry?

1 MR. SILVERSTEIN: You're asking for
2 the full legal hours?

3 MR. WELLS: Yes.

4 MR. SILVERSTEIN: Second point.
5 Okay.

6 MR. WELLS: Second point.

7 MR. SILVERSTEIN: Is there anything
8 else there that really bothers you or is that
9 it?

10 MR. WELLS: Well, first of all,
11 second point, there's a contract in here with
12 Stratisic, Inc., which we no longer, this was
13 the previous owner's security company and we
14 immediately one of the things we did without
15 even batting an eye was get rid of that security
16 company because we felt there was enough of a
17 history there that we wanted our own, so that
18 company has been gone ever since and along with
19 it, there's a lot of stipulations about their
20 guidelines for what they deem as adequate
21 security and, I mean it was an agreement that
22 entered into with them and a company that we no

1 longer employ.

2 MR. SILVERSTEIN: Okay.

3 MS. MILLER: Can I interrupt just to
4 find out where is that in the agreement? Oh,
5 under security.

6 MR. WELLS: It's Exhibit E in that.

7 MS. MILLER: Okay. Never mind.

8 MR. WELLS: I'm sorry, you're
9 waiting for a third?

10 MR. SILVERSTEIN: If there isn't
11 anything else that jumps out at you that's fine.

12 MR. WELLS: The other thing, one of
13 the other things that it says in here is that
14 the applicant must attend, it says that I must
15 attend all ANC-1C meetings, I guess the safety
16 community meetings, public safety meetings, a
17 lot of which I do attend, but I think to
18 actually have it explicitly outlined in a
19 settlement agreement, that can be again a little
20 hairy if I have a son's recital or something
21 that I think is a little more, depending on what
22 the issue is. I don't know, but, just things

1 like that. It needs to be updated.

2 MR. SILVERSTEIN: Thank you. No
3 further questions.

4 MS. MILLER: Other questions? I
5 just want to follow up to be clear then on the
6 security part of the voluntary agreement that's
7 objectionable to you is, is that just the
8 references to the other security company or is
9 there everything --

10 MR. WELLS: No. There, there's
11 specifics in there that I have a problem with.

12 MS. MILLER: So the, okay could you
13 explain then?

14 MR. WELLS: Sure. One thing, okay,
15 so security personnel. On Friday and Saturdays
16 it's busier than most nights. We have gotten
17 used to the additional security. We like having
18 them, everybody feels comfortable. For the size
19 of our establishment we have a lot but we got
20 used to it and we, it was something that was
21 implemented from since we took over the
22 establishment, we kept it in place, but

1 sometimes now it's outdated.

2 I mean on a Sunday night if we get
3 20 people to walk in it's a lot. To actually
4 have a security that requires three security.
5 It's just, it just needs to be updated. It just
6 needs to be updated because we are very
7 cognizant of what we need for the crowds that we
8 have when those crowds come, every other
9 establishment is able to manage their own
10 security. We feel we should be able to do the
11 same.

12 MS. MILLER: Okay. Two questions.
13 One is you have a security plan?

14 MR. WELLS: Yes, we do.

15 MS. MILLER: Does it address these
16 issues with respect to how many you're going to
17 have on the weekends or how many security or no?

18 MR. WELLS: I'm not sure. I'm not
19 sure if it addresses the actual personnel, the
20 amount, but it does, it does, it's very
21 comprehensive as far as procedures.

22 MS. MILLER: Right, okay. How do

1 you know how much security or what do you know
2 about how much security the other establishments
3 in the neighborhood or on the block provide?

4 MR. WELLS: Okay, as the ABRA
5 investigator earlier, I think it was Mr.
6 Brashears, was sitting on the stand said, I
7 think he made a reference to usually about 50
8 people to one security. I have four security.
9 My occupancy is 48. So, I mean we take extra
10 precautions in front of the, on entry, all
11 through the establishment so but if I use that
12 as a guideline we're way over what is actually
13 required. I mean what he thought was an
14 acceptable amount of security for an
15 establishment.

16 MS. MILLER: Okay.

17 MR. WELLS: That's just using what
18 he said earlier before me and I can tell you I
19 can speak to a lot of other establishments that
20 are not, we're only about, we're barely 1100
21 square feet. There are a lot bigger
22 establishments there who don't have four

1 security on any Friday and Saturday night.

2 MS. MILLER: So if we were to amend
3 the provision how would you want it to be
4 amended other than, I think it was pretty clear
5 that you had said to take out the references to
6 the prior security company. That's clear.
7 Could you, do you have this in front of you?

8 MR. WELLS: Yes, I have the current
9 VA in front of me.

10 MS. MILLER: Okay, so is there
11 another paragraph in here that you would want to
12 be amended to say something else?

13 MR. WELLS: Okay, so you want me to
14 go through all the paragraphs from Exhibit B,
15 sorry from Exhibit B and Exhibit A and tell you
16 any of the paragraphs that I feel should not be
17 in here, or you want me to?

18 MS. MILLER: I don't know. I mean I
19 was looking at Exhibit 16, yes the
20 Investigator's Exhibit 16 page 6, which is the
21 part I thought you were referring to which talks
22 about security in the voluntary agreement and it

1 has four paragraphs.

2 MR. WELL: Okay, you talking about
3 Exhibit B page 6.

4 MR. SILVERSTEIN: That's what you
5 said?

6 MS. MILLER: I don't know what
7 Exhibit B, oh, wait a second.

8 MR. SILVERSTEIN: Talking about the
9 voluntary agreement that you were looking at
10 with me?

11 MS. MILLER: No, no, you're right.
12 Go ahead.

13 MR. SILVERSTEIN: And it's listed
14 here, it says Exhibit 16 page 6. The portion of
15 it that says security and it has as long as the
16 ABC license is enforced that you looked through
17 when I asked you what you needed.

18 MR. WELLS: Yes, I have the VA in
19 front of me. I'm just not following which page
20 we're on. I'm not sure which page we're on.

21 MS. MILLER: Well the VA that we're
22 looking at is Exhibit 16 and it says page 6.

1 MR. SILVERSTEIN: So it would be
2 page, actually page 3 of the VA itself. She's
3 looking at the section that's titled security of
4 your voluntary agreement.

5 MR. KLINE: Mr. Wells is looking at
6 the Investigative report.

7 MR. WELLS: Yes, I'm sorry. I'm
8 looking at my VA. What am I? I'm looking at
9 the VA that's already in place. I'm sorry, I'm
10 just not following her.

11 MS. MILLER: Oh, no, that's all
12 right. We need you to follow.

13 MR. WELLS: I can answer if I know
14 what I'm answering to. Okay, so prior to this
15 VA, we have a security agreement that's, if I'm
16 not mistaken maybe 20 pages, and outlines very
17 specifically that's on file with ABRA mandated
18 that it's on file and updated every year. I
19 updated it this year with ABRA that specifically
20 outlines responses to every one of these
21 categories in here. Like, I mean, how to handle
22 patrons, procedures for entry, exit in the event

1 of an incident, so I've, I mean I guess what I'm
2 trying to say is this is completely being
3 addressed in the security requirement that we
4 have on file.

5 MS. MILLER: Okay, so, but --

6 MR. WELLS: So I don't think any of
7 it belongs, should be even referenced in here.

8 MS. MILLER: Okay, so you'd like it
9 all deleted.

10 MR. WELLS: Pardon?

11 MS. MILLER: You would like the whole
12 provision deleted or just say in accordance with
13 your security plan, right?

14 MR. WELLS: Reference security plan.

15 MS. MILLER: Okay; however, when I
16 asked you earlier about this, you said well no,
17 the security plan doesn't cover how many
18 security personnel are going to be assigned on a
19 specific night and that's addressed in here
20 where you said I thought that maybe it was too
21 many or something that on a Sunday you shouldn't
22 be required to have two security officers.

1 MR. WELLS: Yes, because we know, I
2 mean we know if we have a special event or
3 something or are going to have it on a --

4 MS. MILLER: Okay, so could you
5 clarify for me that that issue, the number of
6 security that you have on a weekend or a
7 weeknight, is not covered by the security plan?
8 Or is it? I mean, before you said it wasn't.

9 MR. WELLS: Yes, I don't think our
10 current security plan on file doesn't state
11 anything with the amount of personnel.

12 MS. MILLER: Okay. So, all right.

13 MR. WELLS: And, I'm sorry, and the
14 only reason I wasn't referencing them with the
15 personnel is because from the section that you
16 just presented to me the signatures at the end,
17 I didn't go to Exhibit B. That's why I was
18 confused as to where you were. I was looking at
19 a different, at an earlier section, because
20 that's under the actual contract with Stratisecc,
21 the company that we no longer have, right.

22 MS. MILLER: Okay, let me read the

1 sentence to you. Okay, that I see in the body
2 of the settlement agreement or voluntary
3 agreement. It says on weekends and as it is
4 deemed appropriate by management applicant will
5 have a member of the management staff posted at
6 the inner door in addition to the two security
7 officers contemplated by the security agreement
8 and addendum referred to above to further screen
9 patrons and supervise the security officers.

10 Okay, so what I understand you're
11 saying is the security agreement or whatever is
12 old, that you have a new security plan, right,
13 in place since then that's approved by, that's
14 filed with the Board, etcetera, so that part may
15 be outdated. I'm just questioning you about the
16 now the number of security officers. Would you
17 replace that number somehow or would you say it
18 shouldn't be in here for some reason?

19 MR. WELLS: On Friday, Saturday, we
20 would maintain the same level of security; two
21 in front, a male and a female, one in the center
22 of the establishment towards the end of the bar

1 and another in the rear kind of overlooking the
2 bathroom area and the, toward the back of the
3 establishment.

4 MS. MILLER: So it's really four?

5 MR. WELLS: So, it's four and we
6 currently have four every weekend and we would
7 maintain that.

8 MS. MILLER: Okay. Now the last
9 paragraph, just because I'm just asking you this
10 in the event that these provisions might be
11 important to the Protestants, applicant will
12 turn off the lights inside the premises 15
13 minutes before closing and stop all music and
14 amplifications five minutes before closing.

15 MR. WELLS: No problem with that.

16 MS. MILLER: Okay.

17 MR. WELLS: That's common practice.

18 MS. MILLER: Okay. I didn't read
19 the last line but, security officers will
20 facilitate the orderly exit of the premises by
21 patrons. Do you have a problem with that? No.
22 I just want to be clear so when we're

1 considering your request we really understand
2 what you are requesting.

3 MR. WELLS: If I may, a lot of this
4 you can reference in the security plan. A lot
5 of those procedures, procedural things are
6 mentioned, outlined in there.

7 MS. MILLER: Right. It just it's
8 also good to know whether they contradict each
9 other and then that could be a problem. But, I
10 mean, you brought up the security provision and
11 you said all four paragraphs, but now two of the
12 paragraphs are, well, the last paragraph is fine
13 and one of them is just change it to four. Are
14 you looking at the security agreement? Yes, Mr.
15 Short.

16 MR. SHORT: Good afternoon, Mr.
17 Wells.

18 MR. WELLS: Good afternoon.

19 MR. SHORT: I noticed you did have a
20 couple of officers here to testify for you
21 today. One testified, one didn't, the
22 lieutenant for 7D. Dealing with MPD, do you

1 have you ever had a reimbursable detail of
2 officers there in front of your place?

3 MR. WELLS: Actually, yes. I was
4 one of the original businesses that employed a
5 reimbursable RDO. Myself and the diner and Grand
6 Central were the first people to actually employ
7 and RDO. We did it because we all felt at that
8 time that we weren't getting enough enforcement
9 on the street, so we took it, we went ahead and
10 we got, we got additional RDOs, yes, and I was
11 part of that program.

12 MR. SHORT: When's the last time you
13 did that?

14 MR. WELLS: About maybe a year and a
15 half, two years ago. Actually, no, sorry, it
16 was, yes it was about two years ago when the
17 streetscape started and Adams Morgan, the
18 business community, as a whole we took a hard
19 hit and it became a little more than I could
20 afford to handle because of the lost revenue due
21 to the streetscape project and the construction.
22 We lost a lot of business, so I stopped at that

1 time.

2 MR. SHORT: But you haven't had any
3 problems since you stopped it?

4 MR. WELLS: No, I mean fortunately
5 all the businesses kicked in whereas it was just
6 myself, Grand Central and the diner that were
7 willing to partake in this because we reached
8 out to other businesses but they kind of felt
9 like it was an MPD responsibility more than
10 something that businesses need to pay for but
11 since then other businesses have gotten onboard
12 and hired, so.

13 MR. SHORT: Would the BID have
14 something to do with that?

15 MR. WELLS: No. That's purely,
16 that's on our own. The businesses, the
17 businesses do that, yes. The R, I mean the RDO
18 program, yes the BID, the BID, I mean I think
19 the BID had something to do with negotiating RDO
20 rates across maybe, I don't know. I can't really
21 speak to that. I believe they had something to
22 do with negotiating the rate business owners pay

1 them but it wasn't anything specific to my
2 establishment or, you know what I mean.

3 MR. SHORT: Okay. You sound like you
4 want to be a good neighbor there with all of
5 your community.

6 MR. WELLS: Yes.

7 MR. SHORT: And really get along
8 with them quite well, correct?

9 MR. WELLS: Absolutely, I consider
10 myself part of the Adams Morgan neighborhood.
11 I'm there more than I'm at my house, my
12 residence. I recently closed down a business
13 there, but that's not the only business that
14 I've had on 18th Street. I had two other
15 businesses on 18th Street.

16 MR. SHORT: So your voluntary
17 agreement for the, that you have with the
18 community now really has not been an impediment
19 to you, has it?

20 MR. WELLS: The problem is it's
21 outdated and it's not my agreement. It's an
22 agreement I inherited and that's what what's the

1 purpose of these negotiations to try to come to
2 an agreement, a settlement that we can both
3 agree on.

4 MR. SHORT: All right. Thank you.
5 That's all I have, Madam Chair.

6 MS. MILLER: Okay. I'm sorry. I
7 thought you were just stepping into my questions
8 on that security provision so I just want to
9 finish and I want to read you one other
10 paragraph and make sure this is okay with you or
11 not okay with you and that is applicant will
12 have security personnel posted outside the
13 establishment during business operations and
14 after closing to discourage loitering outside
15 the immediate vicinity and to serve as a
16 neighborhood watch to alert the Metropolitan
17 Police Department of any suspicious activity or
18 potential threat to the safety of the community.

19 MR. WELLS: I don't have a problem
20 with most of that. I mean, I couldn't
21 completely hear you but I believe one thing that
22 you mentioned was us policing loitering in front

1 of the establishment. Did one of the lines
2 speak to that?

3 MS. MILLER: To discourage loitering
4 it says.

5 MR. WELLS: Yes, discourage, I mean,
6 sure, yes. We, we absolutely do discourage, yes,
7 I thought that you were speaking more towards us
8 trying to, because there's no, DC doesn't have a
9 no loitering law so it comes into a whole other
10 conversation, but, anyway.

11 MS. MILLER: Okay. All right. I
12 think I know what, am understanding that, what
13 you were referring to, that provision. Okay.
14 Mr. Rodriguez.

15 MR. RODRIGUEZ: Mr. Wells. Thank you
16 for coming down and testifying. Wanted to ask
17 you about cameras and your plan. If you could
18 explain to us a little bit about your security
19 with respect to cameras.

20 MR. WELLS: Okay. So, one thing
21 that was a big hole in the security when that
22 incident occurred was that we didn't have a

1 camera. So we worked with ABRA. They said they
2 definitely suggested the cameras but we had one
3 of the actually investigators actually walk
4 through, walk the perimeter of the entire
5 establishment to make sure that there was no
6 point when somebody was not visible on one of
7 eight cameras. We have eight cameras stretching
8 from when you're walking into the establishment,
9 six on the, seven on the inside and then another
10 one when you're going out the rear exit.

11 MR. RODRIGUEZ: And while I'm on
12 asking a few questions I kind of was intrigued a
13 little bit about your cultural program with the
14 reggae and the kids and one of the things that
15 came out during the hearings for the Adams
16 Morgan is the trying to bring more business into
17 the impact area in Adams Morgan and try and
18 expand and I was just intrigued about that
19 program and if you want to change your hours a
20 little bit to bring more cultural visitors like
21 from the zoo and from that area into the Adams
22 Morgan area where need more lunch customers.

1 MR. WELLS: So I've already spoke
2 to, I mean and it's only preliminary
3 conversations because, like I said it's only
4 about six, eight weeks ago that the gentleman
5 brought it to my attention about doing it and
6 I've already talked to a couple of DJs who are
7 willing to do pro bono, you know what I mean,
8 just in the same interest as my own to promote
9 the culture. So, yes, I think it would be
10 great.

11 MR. RODRIGUEZ: And, I kind of want
12 to be a peacemaker sometimes when there's
13 diverse opinions and somebody as amicable as you
14 and some of the people over here at this side
15 who are very amicable, I was just wondering if
16 at some point we can get a good agreement here
17 to move things along and that's something that
18 I'm very much interested in.

19 MR. WELLS: And we are interested in
20 the same thing. We've been working on this for
21 over a year.

22 MR. RODRIGUEZ: Okay.

1 MR. WELLS: But there has to be
2 compromise.

3 MR. RODRIGUEZ: Right.

4 MR. WELLS: I haven't sensed enough
5 compromise. So that's where we are.

6 MR. RODRIGUEZ: That's all I have,
7 Madam Chair and I think things can be worked
8 out.

9 MS. MILLER: Okay. Others? Mr.
10 Jones.

11 MR. JONES: Thank you, Madam Chair.
12 Just really quickly, is the assay and DC law,
13 are those the only factors that impact the
14 nature of your operations; i.e. your hours?

15 MR. WELLS: Yep.

16 MR. JONES: That's it?

17 MR. WELLS: Mm-hmm.

18 MR. JONES: What, are you aware of
19 any stipulations related to any Board orders?

20 MR. WELLS: Any stipulations
21 relating to any Board orders?

22 MR. JONES: Yes.

1 MR. WELLS: No.

2 MR. JONES: No. Okay. So if you
3 have those items that you specifically noted
4 addressed and changed in your assay that you
5 responded to Board Member Silverstein's question
6 and order, then you will have exactly what it is
7 you want to have in terms of the nature of your
8 operations?

9 MR. WELLS: The ABRA approved
10 additional hours, opening early, amendments to
11 the security, yes.

12 MR. JONES: Yes, okay. So flipping
13 it around, what is the impact; i.e. dollars,
14 what is bottom line impact, dollars and cents-
15 wise of you having to abide by the requirements
16 in your assay?

17 MR. WELLS: It's not just about
18 dollars and cents. It's about --

19 MR. JONES: I understand. That's not
20 what I'm asking though.

21 MR. WELLS: -- it's about being fair.

22 MR. JONES: I'm just asking, what is

1 the bottom line impact to you of your operations
2 of being having to abide by the guidelines and
3 requirements in your assay?

4 MR. WELLS: Well, okay, so I've
5 gotten used to, like I said the biggest cost
6 factor I've gotten used to because we've been
7 doing from day one, security, because we, it's
8 important to use.

9 MR. JONES: That's not what the, how
10 much money would you save by changing the
11 requirements of your assay in order to comport
12 with what you responded to Chairman Miller's
13 question in terms of what --

14 MR. WELLS: None.

15 MR. JONES: None?

16 MR. WELLS: Because we do it
17 already.

18 MR. JONES: Okay, so --

19 MR. WELLS: And we're going to keep
20 doing it.

21 MR. JONES: zero dollar impact, got
22 it.

1 MR. WELLS: Zero dollar impact as
2 far as security, yes.

3 MR. JONES: The next item is you'd
4 like to have change in your assay, what is the
5 bottom line dollar impact to that?

6 MR. WELLS: It's hard to assess.
7 It's hard to assess because as I said sometimes
8 you utilize the tool, the additional hour, I
9 mean you will, sometimes you won't. It's a
10 promotional tool, so you, it's hard to put a
11 quantifiable figure on that for how many people
12 would actually say I'm not coming because I
13 don't have the hour, but I have had and I don't
14 currently get those hours but I have had a lot
15 of patrons come up and say why don't you guys
16 have the hours. You know what I mean, and turn
17 around and walk off. So, I haven't really been
18 able to put into dollars and cents yet because I
19 haven't really seen or reaped the benefits of it
20 but it's something that other people have and I
21 feel we are entitled to have.

22 MR. JONES: Okay, and is there a

1 dollar impact for the third item, which I don't
2 remember what that third item was. I think it
3 was related to having to go to, being required
4 to attend meetings?

5 MR. WELLS: Yes, that's, that's not
6 an issue. I mean, like I said I go to, I'm an
7 active member of the business community. I go to
8 a lot of the meetings.

9 MR. JONES: Okay.

10 MR. WELLS: Something to stipulate
11 there that, I need to attend every single
12 meeting, that's, nobody that I know attends
13 every single one. We get to as much as we can
14 because we have multiple organizations that we
15 balance some commitments.

16 MR. JONES: No, understood. Okay, so
17 bottom line is there's, you're certainly not
18 here telling us that you're going to have to
19 shutter your doors as a result of the ongoing
20 conditions associated with your existing assay?

21 MR. WELLS: No, no, no, no. No, no,
22 absolutely not.

1 MR. JONES: Okay.

2 MR. WELLS: No, I'm not saying that.

3 MR. JONES: Thank you. Thank you,
4 Madam Chair.

5 MS. MILLER: Okay. Any other
6 questions from the Board members? All right.
7 Mr. Kline, you have questions on board questions
8 and redirect?

9 MR. KLINE: Yes.

10 REDIRECT EXAMINATION

11 MR. KLINE: Mr. Wells, in response
12 to Mr. Jones' question about other stipulations,
13 there are stipulations pursuant to Board order
14 as a result of the resolution of the summary
15 suspension, correct? That you agreed to with
16 Mr. Stern and became part of your license?

17 MR. WELLS: Yes. There were --

18 MR. KLINE: Do you remember, you did
19 that, right?

20 MR. WELLS: Yes, yes, yes, yes, yes.

21 MR. KLINE: All right. So, and you
22 know you're bound by those, correct?

1 MR. WELLS: Yes.

2 MR. KLINE: And that's, and you're
3 not seeking to alter that in connection with
4 this process, correct?

5 MR. WELLS: No, I'm not and again,
6 forgive me, but I've gotten used to those
7 already as being part of our active security
8 plan so when I speak in reference to and I don't
9 even reference this current --

10 MR. KLINE: Mr. Wells, it's, that's
11 enough. I just wanted for the record to make it
12 clear and for the Board to know that you
13 understood that you still have these conditions-
14 -

15 MR. WELLS: Yes, yes, absolutely.

16 MR. KLINE: because I think you
17 momentarily forgot about them and I wanted to
18 make sure that the record was clear that you are
19 aware that they're there and you're not asking
20 that they be changed.

21 MR. WELLS: No.

22 MR. KLINE: All right.

1 MR. WELLS: No.

2 MR. KLINE: Now, I have to ask this
3 and I'll leave it to the Board, but given
4 questions by Board members, I got to ask it.
5 Isn't it a fact that we were ready to go to
6 hearing a few weeks ago and you had thought that
7 you had reached an agreement with the ANC but
8 that agreement was not approved by the ANC even
9 though their representative told you we had an
10 agreement and I'll leave it to the Board to rule
11 but the question was asked and it's on the
12 record, so I feel compelled to follow up.

13 MS. MILLER: Okay.

14 MR. WELLS: Yes, absolutely.

15 MR. KLINE: Whoa, whoa wait.

16 MS. MILLER: No, that's okay. Can
17 we just have a yes or no answer and then we'll
18 go on.

19 MR. WELLS: Yes, I did feel we had
20 an agreement.

21 MR. KLINE: All right, and then that
22 was not approved by the ANC, correct.

1 MR. WELLS: Correct.

2 MR. KLINE: All right. Then the
3 record is clear on that point. All right, and
4 then in terms of the agreement, I think there
5 was some confusion in your exchange with Mr.
6 Short. The agreement being an impediment to your
7 business. The agreement prevents you from
8 taking advantage of the extended hours, correct.

9 MR. WELLS: Yes.

10 MR. KLINE: And it prevents you from
11 opening for happy hour, correct?

12 MR. WELLS: Yes.

13 MR. KLINE: So it is an impediment
14 to your business, correct?

15 MR. WELLS: Yes.

16 MR. KLINE: All right.

17 MR. WELLS: Yes, it is an impediment
18 to my business.

19 MR. KLINE: And, and you would have
20 the ability to earn more profit if you were able
21 to open for happy hour, correct?

22 MR. WELLS: Correct, yes.

1 MR. KLINE: You don't know what that
2 number is.

3 MR. WELLS: I don't know what that
4 number is. Happy hour, the additional hour,
5 alcohol approved, I mean the ABRA approved
6 additional hours.

7 MR. KLINE: And you would have the
8 opportunity to be more profitable if you could
9 take advantage of the extended hours as well,
10 correct?

11 MR. WELLS: Yes.

12 MR. KLINE: And one of the extended
13 hours nights is New Year's Eve, right?

14 MR. WELLS: Correct.

15 MR. KLINE: And a lot of your
16 neighbors get to take advantage of that?

17 MR. WELLS: Yes.

18 MR. KLINE: Now in terms of the
19 details of the settlement agreement, we were
20 talking about in your exchange with Chairperson
21 Miller, we were talking about provisions
22 regarding security and those provisions which

1 you have in front of you require that on
2 weekends you have a certain level of security,
3 correct?

4 MR. WELLS: Yes.

5 MR. KLINE: And you said that you
6 think that that's still appropriate and you
7 would continue to do that, right?

8 MR. WELLS: Yes.

9 MR. KLINE: Do you feel like you
10 need the same level of security for a happy hour
11 on a Friday and Saturday night that you're
12 require to have under your agreement for
13 weekends?

14 MR. WELLS: No.

15 MR. KLINE: So, that's something
16 where you would like some flexibility.

17 MR. WELLS: Absolutely, yes.

18 MR. KLINE: All right. So the fact
19 of the matter is the security provision of this
20 agreement limits your flexibility to run your
21 business, doesn't it?

22 MR. WELLS: Yes.

1 MR. KLINE: And if you did these
2 kiddie parties that we've talked about, you
3 wouldn't expect to be required to have that
4 level of security even though they would be on a
5 weekend day, would you?

6 MR. WELLS: No. No.

7 MR. KLINE: But the literal terms of
8 the agreement that's in place would require you
9 to do that, wouldn't they?

10 MR. WELLS: Right. I would be bound
11 to these.

12 MR. KLINE: Okay. Now there's also
13 a provision concerning last call in there isn't
14 there? You have to announce last call at half
15 an hour before closing?

16 MR. WELLS: Yes.

17 MR. KLINE: You're open every night
18 of the week?

19 MR. WELLS: Except Tuesday, yes.

20 MR. KLINE: Okay. So you're open
21 Monday night?

22 MR. WELLS: Mm-hmm.

1 MR. KLINE: Do you stay open until
2 2:00 Monday night?

3 MR. WELLS: Most nights.

4 MR. KLINE: Okay, and what about
5 Wednesday night?

6 MR. WELLS: Most times. If we're
7 open we try to stay till people, even if we have
8 one person in there we feel we owe them, we're
9 compelled to stay open till we close, so.

10 MR. KLINE: Okay, so when you have
11 the one person in there, is it really, I'm not
12 going to ask you whether you do or you don't
13 because I'm not going to ask you whether you're
14 in violation of your agreement, but is it really
15 appropriate for you to go to that person a half
16 hour before closing and say last call, a half an
17 hour before closing, you're literally required
18 to do that by our voluntary agreement. Do you
19 think that's appropriate as a continuation of
20 restriction in your agreement?

21 MR. WELLS: It's not necessary
22 because we can, I mean a lot of the times the

1 bar staff knows when they're putting down the
2 last drink, so, they'll do last call and right
3 there and they'll say can I get you another
4 drink, so like if there are two people at the
5 bar, it's usually not something you need to do
6 over the PA system.

7 MR. KLINE: Right. But, in fact,
8 your agreement requires that you do it anyway,
9 doesn't it?

10 MR. WELLS: Yes, right.

11 MR. KLINE: So, this agreement like
12 many others even in this area limits your
13 flexibility to deal reasonably and appropriately
14 with the number of patrons you have in your
15 establishment, doesn't it?

16 MR. WELLS: Exactly, yes.

17 MR. KLINE: And during happy hour,
18 do you think you're going to need to count
19 people coming in and out to make sure you don't
20 exceed your occupancy?

21 MR. WELLS: We haven't had a happy
22 hour up to this point that's had any, no, 15, 20

1 people max maybe if you're lucky.

2 MR. KLINE: Now, just to make sure
3 we have one point clear for the record, you were
4 asked about it but I want to make sure that it's
5 clear. When you set out to amend or terminate
6 your agreement you had meetings with the other
7 signatories to the agreement, correct?

8 MR. WELLS: Yes.

9 MR. KLINE: You reached out to them
10 and said I want to make a change, let's sit down
11 and meet and you met, correct?

12 MR. WELLS: Yes.

13 MR. KLINE: A number of times?

14 MR. WELLS: Several times, yes.

15 MR. KLINE: And you were unable to
16 reach a new agreement, correct.

17 MR. WELLS: No.

18 MR. KLINE: All right, great.

19 MR. KLINE: Thank you. That's all I
20 have.

21 MS. MILLER: Okay. Protestants, any
22 questions on Board questions?

1 MR. JAMES: I don't think so.

2 MS. MILLER: Okay. Thank you very
3 much.

4 MR. WELLS: Thank you.

5 MR. KLINE: And with that, the
6 applicant rests.

7 MS. MILLER: Okay, I think it's a
8 good time for a break.

9 MR. JAMES: We do have a problem.
10 Mr. Simpson has to chair, well he's, Chair
11 Miller. Chair Miller.

12 MS. MILLER: What? Ten minutes
13 sound good to you?

14 MR. SIMPSON: Well, I actually have
15 an issue. I have an ANC Committee Meeting that
16 starts at 7:00 tonight. I'd love for the
17 opportunity to give my testimony and take --

18 MR. KLINE: As you well know, as you
19 well know --

20 MS. MILLER: Oh, so you're
21 requesting that we, we're almost done. I'm
22 sorry, my mic is off. Okay. All right, I don't

1 want to say we're almost done. We haven't heard
2 your protestant's case yet, so I'm just trying
3 to figure out, we're going to need a break at
4 some point. This is usually a natural place to
5 break, so, but if you're requesting that we
6 break after your testimony?

7 MR. SIMPSON: Yes.

8 MS. MILLER: Okay.

9 MR. SIMPSON: I defer to your
10 judgment.

11 MS. MILLER: Okay. Okay, yep, let's
12 do that then. Okay, we will now hear from ANC-
13 1C. Okay, do you swear to tell the truth, the
14 whole truth and nothing but the truth?

15 MR. SIMPSON: I do.

16 MS. MILLER: Okay. Thank you.

17 MR. SIMPSON: My name is William
18 Simpson. I'm here representing the Advisory
19 Neighborhood Commission 1C in Adams Morgan. I
20 opened at the beginning of the hearing by noting
21 that ANC protested the renewal of this license
22 unanimously in November 2013 and protested the

1 application to terminate the settlement
2 agreement unanimously in July of 2014 and we
3 rejected the proposed amended settlement
4 agreement at the beginning of this month by a
5 vote of 5 to 2. There's an open question of
6 whether this establishment is a benign
7 establishment in the community or whether there
8 are relevant concerns and I hope the Board will
9 take these ANC votes into consideration as
10 indications of community concern and I'll speak
11 to that in further depth.

12 I wanted to address one point right
13 at the outset. Counsel for the establishment
14 has made a couple of veiled suggestions that
15 perhaps the ANC's actions are racially motivated
16 and I would just like to note that I have a
17 beloved uncle who is from Trinidad and cousins
18 who are half-Trinidadian by default and the last
19 time you had the pleasure of seeing me here I
20 was here to protest against an application to
21 terminate a settlement agreement of an
22 establishment owned by an individual who is

1 every bit as white and Irish as myself. There
2 is no racial motivation here.

3 The community just has serious
4 concerns about liquor licensing in Adams Morgan.
5 We try our best to identify establishments where
6 improvements may be needed and we certainly are
7 concerned about efforts to get rid of settlement
8 agreements that were hard negotiated by previous
9 ANCs. This issue does go back to a significant
10 extent to the broad concept that ANC-1C brought
11 before this Board in connection with the Adams
12 Morgan moratorium discussions. We, ANC-1C is
13 very welcoming to having restaurants in Adams
14 Morgan. We are --

15 MR. KLINE: Madam Chair, I'm going
16 to object. This sounds like a closing argument
17 rather than factual testimony. I'm willing to
18 give leeway inasmuch as there's not counsel to
19 examine Mr. Simpson but if this is sworn
20 testimony, we're here to hear facts, not
21 argument. Argument is appropriate at the close
22 of the case, not at this point from the witness

1 stand.

2 MS. MILLER: Okay, I assume Mr.
3 Simpson's giving his reasons. I think I hear
4 reasons why the ANC is opposed. Correct?

5 MR. SIMPSON: That's right.

6 MR. KLINE: I hope we're going to
7 hear facts. I think that's what we're supposed
8 to hear from the witness stand.

9 MS. MILLER: Okay, I'm going to
10 overrule the objection right now, but --

11 MR. SIMPSON: So we welcome
12 restaurants; we have concerns about taverns and
13 we have particular concerns about establishments
14 that are not licensed as clubs but that are
15 operating as clubs. It is certainly the case
16 that speaking on behalf of the ANC and on behalf
17 of residents in Adams Morgan we understand that
18 people in the business community may have a
19 different view about which establishments are
20 more problematic than others but as I noted
21 earlier, Timehri is one of the establishments
22 that we hear about from residents and that's a

1 concern.

2 I've had positive interactions with
3 Mr. Wells every time we've encountered each
4 other and I want to believe that he is sincere
5 in his desires to improve the operations of
6 Timehri but the reality is we have a history
7 even during this most recent renewal period
8 leading up to the right to protest of numerous
9 instances of violence, one very significant.

10 I actually personally observed the
11 aftermath of the stabbing in March of 2012. I
12 was down in Dupont Circle earlier that night. I
13 was walking home. I walked up 18th Street and
14 it must have been within a very short time of
15 the stabbing. There was blood all over the
16 sidewalk. There were people in a panic state
17 out on the streets. It impacts the community.
18 It impacts the other businesses in the
19 community. It impacts the view that residents
20 have about 18th Street, whether they want to
21 patronize it or not and it impacts whether
22 people outside of Adams Morgan want to come and

1 patronize Adams Morgan or not.

2 I share the sentiment expressed by
3 some members of the Board and by I think Mr.
4 Wells that I actually had great hopes that the
5 negotiations leading up to this meeting were
6 going to result in a settlement agreement. I
7 think there are actually a lot of areas of
8 commonality, certainly this proposal about
9 having reggae events for children sounds
10 fantastic. I think the ANC commissioner who was
11 in charge of these negotiations would have
12 happily worked to create allowances for that in
13 the settlement agreement but it wasn't brought
14 to our attention until the very night that we
15 were called to vote on the settlement agreement
16 and it's very hard to engage in negotiations on
17 the floor of an ANC meeting with people in the
18 audience who are waiting for their matters to be
19 addressed.

20 I can't speak to why the specific
21 reasons why five of our ANC commissioners voted
22 against the draft settlement agreement that was

1 put before us. Some of the issues that were
2 raised were specifically concern about the
3 number of extended hours that the applicant was
4 seeking. There was willingness expressed on the
5 part of some of the commissioners including
6 myself to allow some later hours but the
7 applicant was seeking I think 12 or 13 nights
8 and that's far beyond any other establishment in
9 Adams Morgan and problematic for an
10 establishment where each of the violent and
11 challenging incidents that have been reported
12 have occurred within an hour of closing already
13 late at night.

14 It seems to be inviting problems
15 that we just don't need. There were also
16 concerns expressed at the ANC meeting about
17 pulling all of the security provisions from the
18 settlement agreement. We certainly recognize
19 that some of them are too specific and not
20 necessarily applicable. There was a willingness
21 to negotiate on that, but

22 MR. JONES: I want to just, and I

1 may be out of bounds here, but I felt a little
2 uncomfortable. I'm not trying to reign you in
3 any way, shape, or form beyond the fact that I
4 feel some of the statements that you're making
5 are somewhat specific to what items were
6 negotiated on and not agreed to and I'm a little
7 uncomfortable going further with that, so if you
8 could --

9 MR. SIMPSON: Understood.

10 MS. MILLER: Okay, could I --

11 MR. JONES: keep it at a higher
12 level it would be, from my standpoint but I'll
13 let the Chairperson

14 MS. MILLER: Okay, well I just want
15 to distinguish here because what I was hearing
16 was the ANC vote and there are specific
17 provisions that have been brought to our
18 attention that the applicant wants amended such
19 as the security provision and so I'm under the
20 impression that Mr. Simpson is trying to explain
21 the opposition to that amendment and I don't
22 think that's negotiations.

1 MR. JONES: Well I think that's
2 negotiations.

3 MS. MILLER: Negotiations in public?
4 The ANC is just taking positions on amendments?
5 I don't think that's negotiations.

6 MR. SIMPSON: I'm happy to stop in
7 any event.

8 MS. MILLER: Okay. It's your case,
9 you know.

10 MR. ALBERTI: Actually I want to
11 interject something. I'm also, we've given Mr.
12 Simpson, you've given Mr. Simpson a lot of
13 leeway but I haven't heard any factual
14 information from him and I think that this has,
15 I think it's gone beyond what we allow someone
16 to testify to. I mean basically we're being
17 lobbied by Mr. Simpson rather than giving facts
18 here and, you know, I'm concerned about Mr.
19 Kline's objection that it may now hold water.

20 MS. MILLER: Mr. Jones.

21 MR. JONES: I do not agree with
22 Board Member Alberti's assertion that we're not

1 getting facts. My concern is I believe that the
2 facts that we're getting are related to the
3 negotiations and may not be appropriate for
4 discussion as part of a testimony, so --

5 MS. MILLER: So maybe if we can just
6 cut to the chase, Mr. Simpson, and I'm not
7 accepting what position you're in because it
8 sounds like you may support something but your
9 ANC may not so I guess my question is just
10 looking at the termination issue or the
11 amendment issue. We got requested to amend
12 three provisions from Mr. Wells when he was on
13 the stand, I mean, so I guess I would, one was
14 and you started talking about the security. Can
15 you address the ANC's position on those three
16 items? One was the hours. Okay, well in your
17 testimony, okay, but everybody is jumping at
18 what you can and cannot say and I'm not, it
19 seems to me if you're going to address amending
20 the, the question of amending the agreement and
21 the ANC voted on that or discussed that at the
22 ANC meeting and took a position, I think that

1 was what I would be interested in hearing.

2 That's what we give great weight to.

3 MR. ALBERTI: Madam Chair, I don't
4 think I heard Mr. Simpson, in fact, I got the
5 impression that the, correct me Mr. Simpson, but
6 I didn't hear you say that the ANC actually had
7 a position.

8 MR. SIMPSON: The ANC voted --

9 MR. ALBERTI: Other than that they
10 rejected the, that was their position. I did not
11 hear any other position that the ANC adopted.

12 Am I correct?

13 MR. SIMPSON: So that's correct.

14 MR. ALBERTI: All right, so, as far
15 as I'm seeing is that Mr. Simpson can testify to
16 his own opinions but he can't testify to the
17 position of the ANC because they don't have one
18 other than they didn't accept the agreement that
19 was drafted.

20 MR. JONES: And with all due respect
21 I believe I heard in your testimony where you
22 indicated that you do not know why five,

1 specifically five, of your commissioners voted
2 not to accept, so, therefore, I do not see that
3 as a position being taken. I see that as a vote
4 against a position; therefore, there is no
5 position.

6 MR. SIMPSON: The official positions
7 of the ANC are that we are protesting the
8 renewal of the license on the grounds that
9 renewing it would have adverse effects on peace,
10 order and quiet, that we are --

11 MS. MILLER: And you are protesting
12 the renewal period, period. You think that they
13 should close?

14 MR. SIMPSON: That vote took place
15 by the ANC in November of 2013.

16 MS. MILLER: Okay, not as, you don't
17 want conditions, you just want them closed, not
18 to be renewed. The ANC that's their position?

19 MR. SIMPSON: So , as with all of
20 these votes to protest I think it's fair to say
21 that the ANC is aware that it's highly unlikely
22 that the Board will not end up not renewing a

1 license and the objective of protesting is to
2 try to get preferential operating terms in a
3 settlement agreement. I think that's a fair
4 statement.

5 MS. MILLER: But is there a position
6 that the ANC has taken that you can convey in
7 this hearing for preferential treatment --

8 MR. ALBERTI: He just said no.

9 MS. MILLER: Wait a minute, Mr.
10 Alberti, or is it just that, what is, what,
11 there is nothing to testify about then.

12 MR. SIMPSON: So, there are various
13 things to testify about and we do this each
14 time.

15 MS. MILLER: Well, what are you
16 authorized by the ANC to testify about?

17 MR. SIMPSON: So the second official
18 position that we've taken is that we are opposed
19 to a termination of the settlement agreement,
20 again, on the grounds that terminating it would
21 have an adverse effect on peace, order and
22 quiet. A third official action we have done is

1 to reject a specific proposed draft settlement
2 agreement that was offered up for our
3 consideration. So those are the three official
4 acts that we've done. Now I can certainly
5 testify, and we do this all time, I can
6 certainly testify as to other comments that were
7 made at the ANC meeting where we specifically
8 voted against the propose draft settlement
9 agreement and I can give you some of the reasons
10 that were offered. Those are not official
11 positions of the ANC, but they are reflective of
12 some of the concerns that some of the ANC
13 commissioners had and I can also, you know, give
14 you mine, for some of you that's useful too.

15 MR. KLINE: And I would object to
16 that as being completely irrelevant. The ANC,
17 single member district commissioners have no
18 other than to vote at an ANC meeting and be
19 involved in a decision by the ANC as a whole.
20 So whatever specific or individual commissioners
21 expressed is irrelevant. The issue we're here
22 to deal with are the facts concerning this

1 renewal, the facts concerning whether renewal of
2 this license without this settlement agreement
3 or with an amended settlement agreement is
4 appropriate. And how people felt at the meeting
5 is I just think is -

6 MS. MILLER: I agree.

7 MR. KLINE: -- irrelevant.

8 MR. ALBERTI: Can I speak to that?

9 Mr. Simpson's opinions as an SND representative
10 are not irrelevant. They don't carry the weight
11 of an ANC and we don't give them great weight
12 like we give the official opinions of an ANC but
13 he is here testifying as a member of the
14 community and he is called as a witness as a
15 member of the community and so we hear his
16 opinions like we do of any other witness who is
17 a member of a community. So they are not
18 irrelevant, Mr. Kline.

19 MR. KLINE: As an SND, they are
20 irrelevant. I agree with you and I think we're
21 perhaps saying the same thing. As a member of
22 the community certainly.

1 MR. ALBERTI: Well you heard me, you
2 heard me and I think you understand me.

3 MR. KLINE: I hope we understood
4 each other.

5 MS. MILLER: Well I mean I've been
6 on the ANC as well and I have to say that the
7 resolutions speak for the ANC and if you are
8 here for the ANC then I don't see how we can get
9 into your personal opinions. If you were a
10 witness for another party then that might be
11 something but you're not speaking for the ANC.
12 That's what you said, you cannot speak any
13 further for the ANC.

14 MR. SIMPSON: So I can report those
15 things that I reported on behalf of the ANC. My
16 experience, I mean, you guys make the rules, my
17 experience is that every other time we've come
18 here you've asked me beyond that so I defer to
19 you.

20 MR. ALBERTI: No. I think he's
21 wearing two hats. Mr. Simpson's wearing two
22 hats. He'll take off the ANC hat and now be a

1 part of --

2 MR. RODRIGUEZ: I have a question,
3 Madam Chair. This, and I don't know if it's
4 appropriate for Mr. Simpson to address this, but
5 it was mentioned by Mr. Wells or, no, no,
6 Counsel Kline that a plan was presented by Mr.
7 Wells to the ANC, which was rejected. I think
8 that's the kind of discussion I'd like to have
9 to see if that's, if we can get somewhere with
10 this.

11 MS. MILLER: No. We're not --

12 MR. RODRIGUEZ: We can't?

13 MS. MILLER: No. We are not
14 getting, our purpose is not to get anywhere with
15 the settlement agreement. They tried and they
16 didn't get it. Our purpose is to determine
17 whether or not to renew the license, whether to
18 terminate the agreement or amend the agreement
19 and if, and in that process whether we want to
20 impose any conditions for peace, order and quiet
21 purposes or remove any restrictions pursuant to
22 the statute governing termination of settlement

1 agreements, so if my fellow Board members want
2 to hear from opinions from, Mr. Simpson then
3 I'll give leave for him to do that but I clearly
4 understand that it's not on behalf of the ANC,
5 that the ANC hasn't authorized him, have they,
6 unless I have, that there's a resolution that
7 says that to espouse any further than the
8 position that they took in the resolution.

9 MR. RODRIGUEZ: Well, Madam Chair,
10 I'm for Mr. Simpson addressing the Board here as
11 a citizen and somebody who knows the impact
12 area, what we're talking about and I'm prepared
13 to hear what his observations are in order to
14 move this along.

15 MS. MILLER: Okay. Mr. Silverstein.

16 MR. SILVERSTEIN: Madam Chair, I
17 want to speak to everybody here. We've spent
18 the last half hour chasing our tail and having
19 accomplished a damn thing. Not a one of us. We
20 have --

21 MS. MILLER: Not a half an hour.

22 MR. SILVERSTEIN: Pardon? On this

1 particular matter, twenty minutes. We need to
2 concern ourselves with what are the facts of
3 this case. Not what individuals think but the
4 facts themselves and how those facts impact upon
5 what they think and how they live. Peace,
6 order, quiet, residential parking, on one hand.
7 Change in the neighborhood, no harm, those other
8 parts of 446 on the other hand. If we were to
9 simply limit ourselves on both sides to those
10 issues what happened in the negotiations is not
11 relevant here because we can't legally go there.
12 Let's please limit ourselves to what we can do
13 and not change, not chase our tails for what we
14 can't on all sides. Mr. Johnson.

15 MR. JOHNSON: With all due respect,
16 I think and in all fairness to, is it Mr.
17 Simmons?

18 MR. SIMPSON: Simpson.

19 MR. JOHNSON: Simpson, I apologize.
20 The Board quite often has ANC representatives
21 here that provide feedback on the sense and the
22 thoughts of the ANC as it relates to a

1 particular establishment and the nature in which
2 it operates even in the absence of a formal
3 resolution that takes a specific position or a
4 specific item so I'm actually at a loss and
5 confused as to what it is we want from Mr.
6 Simpson at this point and quite honestly I don't
7 know that it matters what we want because it's
8 the protestant's case to provide fact-based
9 testimony related to the matter at hand, so I
10 think the limit of what we should be providing
11 him guidance on is to limit his discussion to
12 fact-based testimony related to his position as
13 a representative of the ANC is my take on what
14 it is I would like to see happen going forward,
15 but, and that's all I have to say.

16 MS. MILLER: Let's just stop trying
17 to direct Mr. Simpson and let, you good?

18 MR. SIMPSON: I only have one more
19 thing I wanted to say, at which point I am
20 entirely in your hands.

21 MS. MILLER: But you know, there is
22 that confusion though between the ANC and so,

1 okay.

2 MR. SIMPSON: The only other thing I
3 have to say and I think I can say this on behalf
4 of the ANC as a whole is that we're all aware
5 that in March of 2012 there was a very serious
6 incident at this establishment following which
7 the Chief of Police for the District of Columbia
8 called for the revocation of this license and I
9 just think it would be incredibly strange that
10 with respect to the very renewal period in which
11 a revocation was called for by the Chief of
12 Police we got rid of the settlement agreement
13 that guides the operations of the establishment.
14 That's my only comment unless you have
15 questions.

16 MS. MILLER: Oh, there may be
17 questions. Mr. Kline?

18 MR. KLINE: Oh, it's my turn?

19 CROSS-EXAMINATION

20 MR. KLINE: All right, so Mr.
21 Simpson, are you aware that the Chief of Police
22 routinely asks for revocation whenever there's a

1 serious incident in an ABC licensed
2 establishment?

3 MR. SIMPSON: I don't doubt it, and
4 it sounds like a good approach.

5 MR. KLINE: Sounds like a good
6 approach. So regardless of who's at fault,
7 regardless of the circumstances, it's your
8 position that if there's an act of violence in
9 an ABC licensed establishment revocation of the
10 license is appropriate?

11 MR. SIMPSON: No. It's my position
12 that if the Chief of Police, who's been charged
13 with law enforcement in the District thinks it's
14 a good idea for a license to be revoked, then
15 that's probably the case.

16 MR. KLINE: Even if she routinely
17 does it whenever there's an act of violence in
18 an establishment?

19 MR. SIMPSON: Well I certainly can't
20 speak to whether she does it every time there's
21 an act of violence or not.

22 MR. KLINE: And even when this Board

1 in certain cases doesn't even follow up with a
2 summary suspension beyond the 72-hour closing by
3 the Chief of Police?

4 MR. SIMPSON: There's a constant
5 tension between the enforcement recommendations
6 of the police and the enforcement actions that
7 the ABC Board takes.

8 MR. KLINE: Now, you were here for
9 Captain Mongal's testimony?

10 MR. SIMPSON: I was.

11 MR. KLINE: And you heard him
12 testify that there are acts of violence in Adams
13 Morgan that take place in ABC licensed
14 establishments, in other establishments, and on
15 the street, correct?

16 MR. SIMPSON: I certainly did. I was
17 amused by the question because the whole point
18 here is to take --

19 MR. KLINE: My only question was did
20 you hear his testimony?

21 MR. SIMPSON: But the point is to
22 compare this establishment against the other

1 alcohol serving establishments in Adams Morgan.

2 MR. KLINE: All right, well that was
3 non-responsive and I ask that it be stricken.
4 My only question is you heard his testimony,
5 correct?

6 MR. SIMPSON: I did.

7 MR. KLINE: All right. Now, is it
8 your position that the businesses in which an
9 act of violence occurs that don't hold ABC
10 licenses should be closed when those incidents
11 occur?

12 MR. SIMPSON: I'm sorry. Can you
13 repeat the question?

14 MR. KLINE: In other words if an act
15 of violence occurs in a business that's not
16 licensed for ABC sales and service is it your
17 position that they should also be closed?

18 MR. SIMPSON: I don't have a policy
19 position on that question.

20 MR. KLINE: Okay. Now, you said
21 that when you started getting in to the details
22 of the discussions in terms of the settlement

1 agreement but you said and I'll summarize
2 basically that 12 or 13 nights of extended hours
3 goes far beyond any other establishment in Adams
4 Morgan, isn't that your testimony?

5 MR. SIMPSON: That I am aware of,
6 that's right.

7 MR. KLINE: All right. Isn't it
8 true we need only look next door to Meze to an
9 establishment that's able to open any night of
10 the extended hours that they want to operate?

11 MR. SIMPSON: So it's not true and
12 there's several distinctions. First of all, Meze
13 is a restaurant.

14 MR. KLINE: No, I asked you --

15 MR. SIMPSON: Second, second of all,
16 I'm going to answer your question because you
17 asked me a question and I'll answer it.

18 MR. KLINE: I asked to answer the
19 question. That's what I asked you.

20 MR. SIMPSON: And I answered no,
21 it's not true and I'd like to explain that if
22 the Board will indulge me.

1 MR. KLINE: Go ahead.

2 MR. SIMPSON: So, first of all Meze
3 is a restaurant, not a tavern. Second of all,
4 they have a very clean investigative history as
5 is shown in the materials that we provided and
6 third, although they have the right to open on
7 all those hours, it's our understanding and this
8 is hearsay on my part. I'll leave it to Mr.
9 James to testify to this more fully, but it's my
10 understanding that they actually only used four
11 of those in 2014 so I don't think it's the same
12 thing.

13 MR. KLINE: Okay, so but they're
14 entrusted with the ability to make their own
15 decision about which of those evenings that they
16 want to take advantage of for extended hours,
17 correct?

18 MR. SIMPSON: They are, they are
19 entrusted in a certain sense, because you
20 represented them and pushed for that and we have
21 to make strategic decisions every time we
22 negotiate a settlement agreement application and

1 in the case of a restaurant with no bad
2 investigative history that's a compromise you
3 sometimes have to make, so yes.

4 MR. KLINE: All right. So your
5 statement that this is far beyond what anybody
6 else has just simply isn't true, correct?

7 MR. SIMPSON: No, I don't agree with
8 that. I stand by my statement.

9 MR. KLINE: Even though the place
10 directly next door --

11 MR. SIMPSON: That opened four
12 nights last, in 2014 to our understanding, four
13 of extended hours.

14 MR. KLINE: But they have the right
15 to open every night, every extended hour night,
16 correct?

17 MR. SIMPSON: They do.

18 MR. KLINE: Okay. You also
19 testified something about not being licensed as
20 a club, operating as a club, what's your
21 definition of a club?

22 MR. SIMPSON: So the key components

1 of a club under the law as a nightclub are that
2 you have the ability to sell alcohol without the
3 sales restrictions and then you have
4 entertainment and, built in. That's sort of the
5 definitions of the nightclub under the law. So
6 we see establishments that have entertainment
7 endorsements and we see some that still keep a
8 focus on one type of business, more food
9 oriented or maybe drinking and talking oriented
10 and other establishments that move in the
11 direction of having entertainment all the time,
12 being more entertainment focused and driven by
13 the drinking and the entertainment component
14 combined and, it's a spectrum.

15 MR. KLINE: So, but do we agree that
16 a nightclub, a business with a nightclub license
17 under the statute and a business with a tavern
18 license under the statute with an entertainment
19 endorsement with one exception which is the size
20 of the dance floor, they have the same
21 privileges under the statute, isn't that
22 correct?

1 MR. SIMPSON: There's an additional
2 component which is the security component, the
3 security requirement component which again,
4 because that was imposed on Mr. Wells even
5 further makes it seem that he is, that Timehri
6 for practical purposes operates similar to the
7 way that a club does.

8 MR. KLINE: So your position is
9 anyone that files a, any tavern licensee that
10 files a security plan with the ABC Board is more
11 like a club than a tavern?

12 MR. SIMPSON: It would depend on the
13 operations and we, that's what we try to assess
14 on a case by case basis with the establishments
15 in Adams Morgan.

16 MR. KLINE: And for what purpose is
17 that assessed if there's otherwise compliance
18 with the licensing law?

19 MR. SIMPSON: Because the residents
20 of Adams Morgan make it very clear to us on the
21 ANC that they don't want establishments that
22 operate like nightclubs in Adams Morgan.

1 MR. KLINE: Even though under the
2 law there's no distinction between a tavern
3 operating with entertainment and a nightclub?

4 MR. SIMPSON: Yes, even though.

5 MR. KLINE: I have no further
6 questions of the witness.

7 MS. MILLER: Now, you're the same,
8 you're Protestants, so I'm pretty sure the rules
9 are you can't examine each other, you're under
10 the same umbrella. And if you want to take a
11 break and I'll double check my rules I will but
12 that's my understanding. And maybe we should
13 take a break. I certainly need a break. Yes.

14 MR. JONES: Just for clarification
15 purposes, was Mr. Simpson a witness for the
16 protestant group?

17 MS. MILLER: He, the protestant
18 group is made up of three Protestants, the ANC
19 and KCA and RCNA, right. And he is testifying
20 now for ANC.

21 MR. JONES: As a witness for the
22 protestant group? The reason why I'm asking is

1 because when we had the police officer up there
2 we allowed each of the three individuals to ask
3 questions of the witness. So, in this instance,
4 we had a witness who provided testimony as an
5 ANC party. Why wouldn't we allow the other
6 parties to ask that witness just like we allowed
7 the three parties to ask any other witness?

8 MS. MILLER: Yes, but I want to take
9 a break on this before we, before I rule on this
10 because I am pretty sure that the rule is set
11 out in the APA and I will double check it, but
12 it's like if Mr. Kline had somebody else at his
13 table and then they were both --

14 MR. JAMES: But we have our separate
15 representations.

16 MS. MILLER: I understand that. I
17 will check, I'll check then because I don't want
18 to just.

19 MR. SILVERSTEIN: I would point out
20 here on the dais that we had told Mr. Simpson
21 that he was testifying as a citizen and not as a
22 representative of the ANC on various matters.

1 MS. MILLER: Who did?

2 MR. JONES: Did we not?

3 MS. MILLER: No.

4 MR. SILVERSTEIN: And that he had
5 the same right as any other citizen to express
6 his --

7 MR. JONES: We said that, that he
8 had the right to express like any other citizen
9 but he is here as an official witness for the
10 ANC.

11 MR. SILVERSTEIN: And that there are
12 two other groups that are protesting and that
13 those two groups would have some opportunity, if
14 they want to waste their time, doing what they
15 want to waste their time doing fine. If they
16 want to spend it doing this or they want to
17 spend it doing something else they have the
18 right to put on their own case.

19 MS. MILLER: I think they have a
20 right to --

21 MR. JAMES: I hope that when the
22 Board has internal discussions it's not being

1 deducted from our time.

2 MS. MILLER: It's not. Of course
3 not.

4 MR. SILVERSTEIN: Of course not, no,
5 no, no.

6 MR. ALBERT: Of course not.

7 MR. JONES: Much to the chagrin of
8 some members of the Board, but I'm a stickler
9 for that, so.

10 MS. MILLER: Okay, I need to check
11 the rules because I thought that was the case.
12 Yes. I think I need, yes, I think we should
13 take a 10 minute break, but I know Mr. Simpson
14 has to leave.

15 MR. JONES: Yep. He has a 7:00.

16 MR. SILVERSTEIN: I withdraw that
17 recommendation.

18 MR. JONES: Why don't we just allow
19 him to?

20 MR. JAMES: I just have one question
21 for Mr. Simpson.

22 MR. KLINE: I have no objection.

1 MS. MILLER: All right. It's fine.

2 Go ahead.

3 MR. JAMES: Mr. Simpson, do you
4 believe that Timehri in its request to terminate
5 has fulfilled the requirements of 25-446D, just
6 one second, 4C that the amendment or termination
7 will not have an adverse impact on the
8 neighborhood where the establishment is located
9 as determined under 25313 or 25314 if
10 applicable?

11 MR. SIMPSON: No, I don't believe
12 they've satisfied that.

13 MR. JAMES: Could you elaborate just
14 a little bit?

15 MR. SIMPSON: I think for some of
16 the reasons referenced that termination of the
17 settlement agreement would have an adverse
18 effect on the community. The late hours have
19 already been discussed, the adjustments to some
20 of the security provisions have been discussed.

21 MR. JAMES: Do you believe that the
22 applicant has offered any testimony that would

1 show that it would be appropriate if this
2 voluntary settlement agreement was terminated?

3 MR. KLINE: Objection. That's for
4 the finder of fact, not for this witness.

5 MS. MILLER: I'm sorry. Could you
6 repeat the question?

7 MR. JAMES: I'm kind of lost.

8 MR. KLINE: The question was does the witness
9 believe
10 that the applicant's offered any testimony which
11 would support that the termination of the
12 agreement won't have an adverse impact on the
13 community. That's for you to decide, not him.

14 MS. MILLER: Well, I'm going to
15 overrule, go ahead, do you have an opinion?

16 MR. SIMPSON: I don't think they've
17 made that case.

18 MS. MILLER: Okay. Fine.

19 MR. JAMES: I would note that given
20 the way this hearing is going, the ANC isn't
21 going to be able to make a closing statement
22 because Mr. Simpson is leaving, so I appreciate

1 the Board allowing sort of a little wrap up in
2 that -

3 MS. MILLER: We did, I allowed him
4 to answer the question.

5 MR. JAMES: Yes. Well and I just
6 was expressing appreciation. I think we need a
7 break very badly.

8 MS. MILLER: Okay, does that
9 conclude? Okay, Mr. Silverstein.

10 MR. SILVERSTEIN: I have a couple of
11 questions of Mr. Simpson and I think we should
12 look at the most important provisions of the
13 voluntary agreement and let me ask first about
14 hours. How concerned, how much of a negative
15 impact would it be on the neighborhood if
16 they're allowed to open earlier? Does that
17 trouble you and if so, why?

18 MR. SIMPSON: Almost entirely not.
19 We were made aware of one situation where
20 another tenant in that building had initially
21 had significant concerns about the possibility
22 of them opening early because it's a retail

1 store and according to the information they sent
2 to us, the noise is very loud coming from down
3 below up above; however, it is my understanding
4 that those parties have reached some sort of
5 understanding among themselves. We don't know
6 the details of that but other than that specific
7 concern that was brought to us, we generally
8 like for establishments to open early on the
9 hopes that it will encourage a move toward more
10 food oriented activity, so, and as referenced,
11 the possibility of having them do things for
12 kids is fantastic.

13 MR. SILVERSTEIN: Okay, but now what
14 about the other end of it, the later?

15 MR. SIMPSON: The later hours are a
16 significant concern.

17
18 MR. SILVERSTEIN: Tell me why.

19 MR. SIMPSON: The history of the
20 establishment already shows that its late at
21 night when they've had incidents and so there's
22 a concern that extending even later just adds

1 that much more alcohol into people's systems and
2 creates a bigger problem.

3 MR. SILVERSTEIN: What, holiday
4 hours?

5 MR. SIMPSON: So, I think I can say
6 with significant confidence that if the
7 proposed, I can say with specific knowledge from
8 the confirmations of other commissioners that if
9 the holiday hours had been limited to six nights
10 in the year, that provision of the settlement
11 agreement would have been acceptable to a
12 majority of the commissioners of ANC-1C but as
13 it was they led out with twice that much.

14 MR. SILVERSTEIN: Okay, now if,
15 let's, why do you and I'm not, I don't want you
16 to talk about negotiations or anything like
17 that, why would you think that limiting it to a
18 certain number of nights would be better for
19 peace, order and quiet than allowing 19 nights
20 or whatever the number is?

21 MR. SIMPSON: At least two factors.
22 One just every additional night is additional

1 risk and so where we can limit the total amount
2 of risk, it's preferable. And then the other
3 piece of it which has been specifically
4 referenced here is that again, every time
5 anything is given to one establishment the
6 lawyers who do their business in Adams Morgan go
7 out and encourage other people to seek the exact
8 same thing regardless of different circumstances
9 --

10 MR. SILVERSTEIN: Level playing
11 field.

12 MR. SIMPSON: etcetera, yes.

13 MR. SILVERSTEIN: Now the other
14 issues here, do you have any issues with the
15 security company matters in the existing --

16 MR. SIMPSON: I agree with Mr. Wells
17 that some of the provisions are outdated in the
18 reference to the name of the security company,
19 etcetera. I think there could have been room to
20 strip out some of those things and get to a --

21 MR. SILVERSTEIN: Okay. And is
22 there anything else in this particular agreement

1 that jumps out at you and says oh my God, we got
2 to have this, if we don't the damn is going to
3 break and our neighborhood's going to be ruined
4 forever?

5 MR. SIMPSON: Well, I was actually
6 very pleased to hear that Mr. Wells only had
7 issues around the hours, the security company
8 and this requirement to attend our ABC committee
9 meetings, and if those are the limits of his
10 concerns I just, again, I'm sort of confused why
11 we didn't get to an agreement.

12 The other language we have in there
13 we like to have in there and we have it in most
14 of our settlement agreements. It deals with
15 noise and referencing the noise laws, it deals
16 with trash and litter. Again it acts as a road
17 map for our owners, our establishments to have
18 at the tip of their fingertips the specific
19 legal issues that are of particular concern to
20 the community.

21 MR. SILVERSTEIN: Thank you for your
22 service, commissioner, I have no further

1 questions.

2 MR. SIMPSON: Thank you.

3 MS. MILLER: Any other Board
4 questions? I would like to read the rule that I
5 was relying on. It's in our Board rules, 3DCMR
6 1714.1. It says in any proceeding before the
7 Board each party shall have the right to present
8 in person by counsel or by designated
9 representative the parties case or defense
10 including oral and documentary evidence, to
11 submit rebuttal evidence and to cross-examine
12 opposing witnesses unless the matter at issue
13 has been dismissed by the Board. The main point
14 is you have a right to cross-examine opposing
15 witnesses. He's not an opposing witness. The
16 police officer was an opposing witness.

17 MR. SIMPSON: Can he be an excused
18 witness?

19 MS. MILLER: What?

20 MR. SIMPSON: Can he be an excused
21 witness?

22 MS. MILLER: Yes, you may be an

1 excused witness.

2 MR. SIMPSON: Thank you very much.

3 MS. MILLER: Yes, thank you very
4 much. Thank you very much. Oh, I'm sorry. I
5 thought there were no more Board questions.

6 MR. JONES: It's not really a
7 question, it's more of well, a confirmation of
8 my ignorance. So, if KCA chose to call Mr.
9 Simpson as a witness to testify on behalf of KCA
10 are you saying based on the rule that you just
11 read that KCA would not be allowed to call Mr.
12 Simpson to the stand as a witness to testify?

13 MS. MILLER: No. I'm saying that
14 RCNA could not cross-examine KCA's witness.

15 MR. JONES: Understood, but he can,
16 he being KCA, can call Mr. Simpson as a witness,
17 can he not?

18 MS. MILLER: This doesn't preclude
19 that.

20 MR. JONES: Cool. So it seems like
21 it's more efficient for Mr. Simpson to remain
22 there and allow Mr. Simpson to give his

1 testimony on behalf of his represented party and
2 then allow KCA to call him as a witness if they
3 so choose to ask him the questions as opposed to
4 having him sit there, get up and sit down, and
5 then have KCA call him as a witness to get up
6 and go back to the chair again.

7 MS. MILLER: I don't know. I'm
8 saying and we, I can make an exception of you
9 think that an exception is --

10 MR. JONES: Not an exception.

11 MS. MILLER: you know, in --

12 MR. JONES: I don't see it as an
13 exception. That's what I'm not understanding.

14 MS. MILLER: Can he be or testify
15 for both?

16 MR. JONES: If he's being called, can
17 he not be called as a witness for KCA?

18 MS. MILLER: Yes, I think, I think
19 it's one or the other, though.

20 MR. JONES: How is it one or the
21 other?

22 MS. MILLER: You mean he's going to

1 come testify for ANC-1C.

2 MR. JONES: Correct.

3 MS. MILLER: Then go sit down and
4 then come testify for KCA?

5 MR. JONES: He's going to come as a
6 witness on behalf of the party known as KCA.

7 MS. MILLER: All right, I will have
8 to, let, it's, it's not a subject we need to
9 decide right this minute, so, I don't. Unless
10 Mr. James is going to pursue that. I just don't
11 --

12 MR. JAMES: I would pursue it if we
13 had listed Mr. Simpson as a witness. We didn't
14 do that, so lesson learned.

15 MR. JONES: Right, Mr. --

16 MS. MILLER: He's a party, he's
17 representing his own party. The point is not to
18 have all this cross-examination on your same
19 side. You should all know. You're on the same
20 side.

21 MR. JONES: So there's a difference
22 between cross-examination and direct?

1 MS. MILLER: Yes.

2 MR. JONES: So are you saying that
3 KCA cannot put Mr. Simpson on direct?

4 MS. MILLER: I'm not saying that.

5 MR. JONES: Okay, so.

6 MS. MILLER: Without looking further
7 at the rules. I don't think we need to go down
8 this road at all. It's 6:52.

9 MR. JONES: I'm just concerned, I'm
10 just concerned, I'm just concerned that you're
11 making a point that perhaps KCA and/or Mr.
12 Simpson or both are out of order in their
13 desired intent and I don't think that's the
14 message that we're trying to send. I think it's
15 a procedural item that if nothing else, I think
16 we should clearly articulate what is expected of
17 our Protestants since as the point has been made
18 many times they are quite often not lawyers,
19 that they not be caught up in the minutiae of
20 this lawyerism in the process of trying to put
21 on a simplistic and efficient case I, and
22 speaking on behalf of a non-lawyer myself.

1 MS. MILLER: I, we have rules but, I
2 mean there's, there's also --

3 MR. JONES: And I don't see that
4 this is being a violation of the rule if it is
5 applied appropriately, so I'm trying to
6 understand how it is that they violated the
7 rules.

8 MS. MILLER: Mr. Jones, I just, I
9 just want to say if the party wants to argue
10 that it's necessary for full and true disclosure
11 of the facts, we can go down that road under the
12 APA but I don't think anybody is doing that at
13 this point. So, I think are there other Board
14 questions for Mr. Simpson?

15 MR. RODRIGUEZ: Madam Chair,
16 initially the Protestants identified the role to
17 this Board that they were going to play in this
18 hearing, okay, and that's, that's what I expect
19 is going to be done.

20 MR. JONES: What does that mean
21 exactly?

22 MR. RODRIGUEZ: Mr. Simpson is here

1 to testify on behalf of the ANC. That's what
2 his role is. That's the topic right now, and
3 that's the role that we expect him to play. I
4 think that's the role he's been playing. Not
5 KCA. KCA is Mr. Denis James.

6 MR. JONES: And are you saying that
7 Mr. Denis James cannot call Mr. Simpson as a
8 witness?

9 MR. RODRIGUEZ: Right. That's what
10 I'm saying.

11 MR. JONES: Okay. And you're
12 relying on what the chairperson read as your
13 basis for that?

14 MR. RODRIGUEZ: That's right.

15 MR. JONES: Okay.

16 MS. MILLER: Okay. Are we finished
17 with Board questions? Mr. Kline do you have?

18 MR. KLINE: Just a couple.

19 CROSS-EXAMINATION

20 BY MR. KLINE:

21 MR. KLINE: Mr. Simpson, I know it
22 must be very late because you definitely ducked

1 Mr. Silverstein's question. So I'm going to ask
2 it again. What is it in this agreement that is
3 near and dear to you or your ANC that you think
4 should survive that you need to be comfortable
5 with the operation of this establishment?

6 MR. SIMPSON: Again, we want all of
7 the agreement to remain intact.

8 MR. KLINE: All of it?

9 MR. SIMPSON: That, I mean that's
10 the position of the ANC. We protested the
11 application to terminate the agreement. Now if
12 you want my personal views, I can go into that
13 if the Board wants me to, but.

14 MR. KLINE: No, that's fine. I
15 don't.

16 MR. JONES: You asked. Mr. Simpson
17 walked right in.

18 MS. MILLER: All right.

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

20 Thank you.

21 MS. MILLER: Now I believe you may
22 be excused.

1 MR. SIMPSON: Thank you very much.

2 MS. MILLER: Okay.

3 MR. JONES: Thank you, Mr. Simpson.

4 MS. MILLER: I think, I don't know
5 how much is left of the protestant's case but I
6 myself would like a five minute break but do you
7 want to tell us just what what's going to be
8 coming down the road?

9 MR. JAMES: Yes, the KCA wishes to
10 present Bryan Weaver as a witness.

11 MS. MILLER: Okay.

12 MR. JAMES: And I would also be
13 making a statement I think.

14 MS. MILLER: Okay.

15 MR. JAMES: And because RCNA listed
16 me as a witness, RCNA could ask me questions but
17 it could be that it will all come out in my
18 statement, so I'm not sure that that will happen
19 and I just can't predict. She, something might
20 strike RCNA as something that needs to be
21 covered, so.

22 MR. JONES: So are you asking, are

1 you asking would she be allowed to ask you?

2 MR. JAMES: Well, she listed me on
3 her PIF.

4 MR. JONES: Correct, so are you
5 asking to get confirmation from the Chair?

6 MS. MILLER: No, he's not asking.

7 MR. JONES: Well, I'm asking him
8 because I'm not clear on what he's saying.

9 MR. JAMES: I wasn't asking. I think
10 that that's my right under the rule. I just read
11 the same rule and it doesn't, you know.

12 MR. JONES: So you're not asking,
13 you're telling.

14 MR. JAMES: Well, I'm reading.

15 MR. JONES: Okay. Got it. So it's
16 your understanding and interpretation that she
17 would be allowed to ask you questions as a
18 witness on her behalf?

19 MR. JAMES: Yes.

20 MR. JONES: Okay.

21 MR. JAMES: Yes, yes.

22 MR. JONES: Okay.

1 MR. KLINE: And my only reservation
2 is again that Mr. James' statement if he's going
3 to be on the witness stand under oath be
4 confined to facts. If it's going to be an
5 argument then he should sit at the table and
6 make it as an argument.

7 MS. MILLER: Okay. All right, why
8 don't we take a 10 minute break. All right.

9 (Whereupon, the above-entitled
10 matter went off the record at 6:55 p.m. and
11 resumed at 7:15 p.m.)

12 MS. MILLER: Okay, we're back on the
13 record and it's my understanding that KCA is now
14 going to present its case. Is that correct?

15 MR. JAMES: I couldn't hear. I'm
16 sorry.

17 MS. MILLER: Couldn't hear? Oh. I
18 said we're back on the record and it's my
19 understanding that KCA is now going to present
20 its case.

21 MR. JAMES: Yes, KCA.

22 MR. SILVERSTEIN: Madam Chair.

1 MS. MILLER: Yes.

2

3 MR. SILVERSTEIN: May we have the
4 time?

5 MR. JONES: The Protestants have 20 minutes
6 remaining; the licensee has 15 minutes
7 remaining. Protestants have 20 minutes
8 remaining; the licensee has 15 minutes
9 remaining.

10 MR. JAMES: The KCA calls Bryan Weaver.

11 MS. MILLER: Good evening. Do you swear to tell
12 the truth, the whole truth and nothing but the
13 truth.

14 MR. WEAVER: I do.

15 MS. MILLER: Okay. Thank you.

16 DIRECT EXAMINATION

17 MR. WEAVER: It's Bryan with a Y.

18 MR. JAMES: I'd like to hand Mr.
19 Weaver the Board's investigative report that
20 includes the existing settlement agreement.

21 MR. WEAVER: Good times. Brings
22 back a lot of memories.

1 MR. JAMES: Also in the witness area
2 is a white notebook that contains the Exhibits
3 of the Protestants.

4 MR. WEAVER: Okay.

5 MR. JAMES: If you could open that
6 to the first page, please.

7 MR. WEAVER: Yes.

8 MR. JAMES: I'd like to ask you if
9 you could recall a period of time in which this
10 existing settlement agreement came into play and
11 the issues that were facing the community.

12 MR. WEAVER: Yes, during my time as
13 chair of the ANC and six years as the ABC chair
14 for ANC-1C hands down this was the most
15 complicated, most difficult settlement agreement
16 we ever had to go through.

17 There were a ton of issues regarding
18 violence from the establishment and we were not,
19 it was a very different Board back then and it
20 was a very different Metropolitan Police
21 Department so we kind of came up with the best
22 solution we had and I think it took almost a

1 year to come up with a settlement agreement and
2 several attempts coming back before the Board
3 and between the community and speaking
4 specifically to the security plan, the idea of
5 the security plan was the establishment did not
6 have a reputable security firm that had been
7 working with them in previous to that and if you
8 guys could go back and check through the records
9 one of the incidents that came before the ABC
10 Board and one of the things that was hot on the
11 list was that their security staff had actually
12 participated in a ADW on a patron in the
13 establishment and there was a hearing over that
14 before the Board.

15 MR. JAMES: All right. And while
16 this was under the ownership of a different
17 licensee, is it still the same location?

18 MR. WEAVER: Same location, same
19 name.

20 MR. JAMES: Right. And to the best
21 of your memory and knowledge had ANC-1C and the
22 Kalorama Citizens Association ever insisted on a

1 security plan and a settlement agreement?

2 MR. WEAVER: Not during my tenure as
3 an ANC commissioner.

4 MR. JAMES: So, why you ask? No, I
5 was going to ask what are your impressions of
6 Timehri under the ownership of the applicant,
7 Johnathan Wells?

8 MR. WEAVER: Under Mr. Wells? I
9 would say it's significantly better than Mr.
10 Adams. Mr. Adams was everything wrong with
11 Adams Morgan and the reason that we had the
12 provision of attending ANC meetings particularly
13 over the ABC and public safety meetings was
14 Metropolitan Police Department was his name
15 continually popped up as calls to service for
16 his establishment so we asked specifically that
17 the establishment would come to the joint
18 meetings of the PSA and the ABC Committee so
19 that he couldn't dodge and deny that like there
20 had ever been any of these, any problems in the
21 establishment which was a recurring issue that
22 was in the agreement. That's why that provision

1 is in there was that the establishment
2 constantly had calls to service and when we
3 would come before the Board he would just simply
4 say it wasn't us, somebody else.

5 MR. JAMES: So when you look at page
6 one of the Exhibits booklet and you see the
7 investigative history, which is to do with the
8 current Club Timehri under Mr. Wells' ownership,
9 do you see matters of concern, have sort of
10 bring back --

11 MR. WEAVER: Yes, for me and to be
12 honest I've, since I left the ANC I knew that
13 there was the, I knew there was a suspension and
14 I knew that it involved stabbing. We lived
15 through four cases of the previous ownership
16 where there was a stabbing so any time that I
17 see a stabbing it brings back bad memories and
18 it's something that like the reason that we went
19 through great detail in the security plan was to
20 try to avoid any of those from 2004 on.

21 MR. JAMES: And do you have any
22 perception of how establishments work over time?

1 I'm trying to get at this, without casting
2 aspersions on any particular group of patrons,
3 but in your belief, in your observations in your
4 long time in Adams Morgan, eight years on the
5 commission I believe, establishments tend to get
6 a crowd and in your opinion does it stay with
7 the establishment?

8 MR. WEAVER: The first, well, the
9 first thing I said when I was introduced to Mr.
10 Wells when he purchased the establishment, the
11 first thing I asked was if he was going to
12 change the name. Because in my mind that would
13 be a, just a definitive plant the flag, we are
14 no longer associated with Patrice Adams and the
15 previous problems.

16 He explained to me culturally, the
17 connection to Timehri and what it means to
18 Guyana has like a very, has a very important
19 significance. He did tell me that they were
20 going to put the Bob Marley mural in the front
21 and I was happy enough to go in and I made a
22 promise to myself that I would never step foot

1 in Timehri as long as Patrice Adams was the
2 owner and as soon as he bought it I went in a
3 bought a beer. But it was the thing that I was
4 most concerned about that there would be some
5 sort of linkage to the previous place and I
6 think that while definitely it seems to be a
7 different crowd there were huge issues with
8 people sort of loitering on the steps which
9 doesn't happen as much now, there was always
10 sort of a crowd in front of it, which that was
11 obviously connected to Timehri.

12 Now it just sort of seems to be part
13 of the Friday Saturday night crowd. Just from
14 working with kids in the neighborhood, young
15 people in the neighborhood, I know there are
16 some of them that still go there because they
17 like to think of it of back in the heyday and
18 they are folks that I'm sure that Mr. Wells
19 would like to weed out and probably in many
20 cases has.

21 MR. JAMES: So you've been inside
22 Timehri?

1 MR. WEAVER: Mm-hmm.

2 MR. JAMES: And its, is it a big
3 place?

4 MR. WEAVER: Very small.

5 MR. JAMES: Right. So when it's
6 dark, people are dancing and drinking, I mean
7 is, is there a chance for --

8 MR. WEAVER: I'm a father of a 10
9 and a 7-year-old so like I'm about 8:05 out the
10 door when I've been there so there wasn't really
11 a huge crowd on the two times I've been in there
12 recently, so if it was dark and full it would
13 be, it would be hard to see but when I was there
14 it was, it was fairly well lit. There was, it
15 just seemed to, it was a bar crowd, it was an
16 early bar crowd that was there.

17 MR. JAMES: So just to sum up, would
18 you, as a member of the community and a person
19 with civic responsibility dating back many
20 years, would you be interested in seeing the
21 security conditions continue at Timehri?

22 MR. WEAVER: I can understand why it

1 is that you would want to eliminate the portions
2 of it that have to do with the specific company
3 and that was a very time and place what we were
4 trying to essentially push Mr. Adams into to
5 getting a contract with a company and not just
6 sort of guys he knew from the neighborhood that
7 he wanted to like work the front door, but the
8 provisions that we, that we wanted there were
9 there for a very specific reason, which was that
10 there was a continual issue with, with physical
11 violence in the establishment and we wanted
12 there to be a full security staff at all times
13 that it was open and, and that was our push and
14 so I would like to see in any sort of settlement
15 agreement that went forward to have a definite
16 connection to a very significant, very detailed
17 security plan because there is a, there is
18 something that continually did happen.

19 Each of the stabbings, I don't,
20 maybe the first one there was someone that was
21 arrested, but without any other incident there's
22 a stabbing in the front of the establishment,

1 the person runs out the back door and is never
2 heard from again and that would be the thing
3 that always sort of is most fearful to me
4 because it's kind of a straight shot through the
5 back and into the alley. I would like to see a
6 very significant, very detailed security plan
7 for the establishment just because of the
8 history.

9 MR. JAMES: Okay. Thank you. That's
10 all I have.

11 CROSS-EXAMINATION

12 MR. KLINE: Mr. Weaver, you
13 mentioned that when this was entered into it was
14 a very different time in terms of the Board and
15 ABRA, correct?

16 MR. WEAVER: Correct.

17 MR. KLINE: At that time the Board
18 didn't pay as much attention to security plans,
19 did they?

20 MR. WEAVER: The Board had an
21 unwritten policy that was moving the ball along
22 for people to settle.

1 MR. KLINE: Right.

2 MR. WEAVER: It was almost
3 impossible --

4 MR. KLINE: But right now we're
5 talking about security plans, not, not --

6 MR. WEAVER: No in security plans,
7 not nearly as much. Yes, it was.

8 MR. KLINE: So, I mean the board had
9 little if any oversight over security plans at
10 that time.

11 MR. WEAVER: I viewed the security
12 plans when security plans came, when they talked
13 about security plans it really seemed
14 particularly flimsy. Are you going to hire a
15 company? Where are you checking IDs? That kind
16 of thing. It got much more significant later on
17 after that, after 2007, 2008, it got a bit more
18 strenuous under --

19 MR. KLINE: That indeed was one of
20 the reasons why you felt it was necessary at
21 that time in 2004 to, to be very, very detailed
22 in terms of what the requirements were, correct?

1 MR. WEAVER: We, we felt that like
2 after such, after two summary suspensions over
3 two ADWs within the establishment of the
4 previous owner and including one suspension for
5 21 day we felt that the, we felt that the ABC
6 Board was not taking it seriously and we felt
7 that what they had offered as security plans at
8 that time were very, very weak and so we tried
9 to push with something as specific as possible.

10 MR. KLINE: All right. But we agree
11 that times since then have changed in terms of
12 how ABRA is run and how the Board deals with
13 establishments.

14 MR. WEAVER: So, like, so, like a
15 cathedral, it's always under construction but
16 it's much better than it was then.

17 MR. KLINE: Okay, great. Now when
18 Mr. Wells first took over you and he sat down,
19 correct?

20 MR. WEAVER: Correct.

21 MR. KLINE: And he told you the
22 changes that he was going to make in terms of

1 how he was going to run the establishment,
2 correct?

3 MR. WEAVER: Correct.

4 MR. KLINE: All right. And has he
5 lived up to what he told you when you first sat
6 down when he first took it over?

7 MR. WEAVER: You know, I kind of had
8 a policy as an ANC commissioner, I think there's
9 a lot of ANC commissioners who want to go in and
10 kind of manage their own bar through somebody
11 else. I was not that person. It wasn't
12 anything like that necessarily the changes that
13 he made were necessarily changes that I would
14 have made, they but there weren't, there weren't
15 continual calls for service. He was open several
16 more days than the previous ownership had been
17 open. While you have like a, investigative
18 history that happens with the establishment it
19 wasn't for continual acts of violence. There's
20 only one act of violence, which I don't want to,
21 I don't want to underplay, is significant and is
22 troublesome.

1 MR. KLINE: Okay. But the main
2 concern I believe, if I may, based on your
3 testimony was the then ownership of the
4 establishment, correct?

5 MR. WEAVER: Yes, the extremely lax
6 security.

7 MR. KLINE: All right. And would
8 you agree that its 180 degree in the other
9 direction under the steward of Mr. Wells?

10 MR. WEAVER: I would say, I don't
11 know if I'd say 180. Let's, it is significantly
12 better. 180 would be that I'm not seeing
13 another ADW suspension and fine.

14
15 MR. KLINE: Understood.

16 MR. WEAVER: That to me is, that
17 was, I like him a lot and I think he's been very
18 active in the community and to see that, I know
19 it happens in many establishments but because of
20 the history of this place, it did kind of give
21 me a little heartache.

22 MR. KLINE: Other than that incident

1 which is there and we can't ignore it, is there
2 anything else about the way he has operated the
3 establishment since he's taken over that causes
4 you concern?

5 MR. WEAVER: As I look, and many of
6 these --

7 MR. KLINE: I'm not talking about
8 the investigative report. I'm talking about
9 your experience.

10 MR. WEAVER: Oh, my experience, my
11 experience no. My own personal experience no,
12 because once I left the ANC I was no longer
13 combing through investigative histories and
14 fines. As I'm looking at it, it's a bit
15 problematic but compared to the previous
16 ownership it's not violence, violence, violence.

17 MR. KLINE: Great. All right.
18 That's all I have. Thank you.

19 MS. MILLER: Okay, Board questions.
20 Mr. Silverstein.

21 MR. SILVERSTEIN: Thanks for coming,
22 Mr. Weaver. Thank you for all your years of

1 service on the ANC. What would be the effect of
2 terminating the VA in its entirety? Would that
3 have a negative impact on the community and if
4 so, how?

5 MR. WEAVER: I do think that in
6 terminating it in total, I do think there are
7 some negative impacts to it. I mean
8 particularly for somebody that has had a history
9 like this. I think there's an element of social
10 contract, well physical contract between the
11 community and the establishment.

12 Acknowledging that there's been
13 issues with violence in the past and that the
14 establishment is working on correcting those and
15 that the community is there to support but also
16 to be a watchdog, and so in that sense I like
17 the idea of settlement agreements. I think that
18 they can be maneuvered. I think that hearing
19 many of the discussions today it seems that
20 there seems to be room for growth but immediate
21 sort of impact I think for the community would
22 be a concrete permanent sort of idea of what is

1 the security outlay for that establishment and
2 what is it that this community can sort of do if
3 they don't hold up to that end of the bargain.

4 If you don't have adequate security on a
5 certain night and an incident happens, I think
6 the community wants to know that there is
7 actually a penalty in this body, not just in the
8 criminal one but also that there's a fine and a,
9 not as just like that is also a part a violation
10 to the settlement agreement.

11 MR. SILVERSTEIN: What I'm trying to
12 get at specifically 25446 tells us that we have
13 to, that we cannot eliminate or we cannot
14 terminate a voluntary agreement, a settlement
15 agreement if there is a negative impact on the
16 community, not, we're not defining why these are
17 good. I'm asking you what would be a negative
18 impact?

19 MR. WEAVER: A negative impact from
20 this would be that suddenly you would not have
21 the same amount of security that would be there,
22 that you would, that you had and, again this is

1 difficult to look at through the spectrum of the
2 current conditions, but not having adequate
3 security within the place and not having it sort
4 of detailed that, that a place that has had a
5 long history of violence is going to have the
6 same sort of security mechanisms every single
7 night, that you're not going to have the and I
8 know that we sort of talked about the last call
9 episode over the PA but I think that in those
10 terms of that there were questionable things
11 that took in the establishment previously that
12 when the community came together these were the
13 things that they said there would seem to be no
14 last call sort of bled into after those hours
15 but the security plan like didn't really
16 adequately talk about the type of security that
17 that establishment needed and so if those things
18 went away in the eyes of many of the community
19 it could bleed easily back into, into that sort
20 of atmosphere.

21 MR. SILVERSTEIN: Would there be a
22 spillover to other VAs, other establishments?

1 MR. WEAVER: Sure. Yes, I know
2 there, the ones that, the ones that would keep
3 me up at night are the ones that had similar,
4 that had similar histories and thankfully we've
5 been able to weed out most of the rest of them.
6 This is a unique situation because, because it's
7 the only establishment that, that once there's
8 been a change in ownership didn't dramatically
9 sort of say we're completely done with that.
10 Adams Mill Bar & Grill is no longer Adams Mill
11 Bar & Grill. So this is the only place that
12 sort of held on to an element of like its past
13 enterprises and, and so the community still
14 views it, rightly or wrongly, as the same
15 establishment.

16 MR. SILVERSTEIN: Would allowing
17 earlier hours have a negative impact?

18 MR. WEAVER: No, I mean I'm no
19 longer on the ANC but I mean I think that if
20 places were open earlier that doesn't, that
21 doesn't give me any heartache.

22 MR. SILVERSTEIN: Would allowing

1 later hours have a negative impact?

2 MR. WEAVER: I think there needs to
3 be a consistency in the service. I think that
4 like if its, and I think that you do reward
5 people that have been good players, that don't
6 have, that haven't had violations, that haven't
7 had after hours violations or violence
8 violations that if they want to open for all 13
9 I don't, that doesn't give me a lot of
10 heartache. I can understand why the ANC wants to
11 give a uniform number whether that's 6 or 8 or
12 13 I understand it, but for the most part I
13 think the reason that you guys passed, that the
14 Council passed those rules was that you could
15 have the extended hours.

16 MR. SILVERSTEIN: And you, you, you
17 spoke specifically of the VA and that there are
18 certain things in the VA that are outmoded,
19 naming people, organizations, what do we need to
20 keep in the VA to keep you happy?

21 MR. WEAVER: I mean to, for me,
22 anything that like really and this, this to me

1 is, is the starting point of this voluntary
2 agreement and any other voluntary agreement that
3 has to do with, with acts of violence in the
4 community because we've got to remember like for
5 the longest time, I mean there were multiple
6 homicides that, that happened in AB or outside
7 the doors of ABC establishments during my eight
8 years as an ANC commissioner, so I mean --

9 MR. SILVERSTEIN: Allegedly outside.

10 MR. WEAVER: -- any of those, only
11 one I can think of actually happened inside an
12 establishment, but of the, of those like we, you
13 really wanted to make sure that you were able to
14 blunt that and be able to create an atmosphere
15 where people felt safe walking up and down 18th
16 Street and felt safe walking in through the
17 doors of any establishment on 18th Street and so
18 in my opinion the most important thing and the
19 sort of starting aspect of this has to be the,
20 the security plan and I think I feel I'm
21 actually a little bit bothered that there wasn't
22 a way that everybody was able to come to

1 agreement on it but we spent a lot of time
2 trying to figure out like what that right number
3 was and if people were able to come back and say
4 like well maybe it's not 4 on Sunday nights,
5 it's 3 on Sunday nights, I think that that's,
6 but to me that has to be the thing that like you
7 have to keep in there, an aspect of it.

8 MR. SILVERSTEIN: Sure. You've been
9 very helpful to me.

10 MR. WEAVER: Okay.

11 MR. SILVERSTEIN: No further
12 questions.

13 MS. MILLER: Others?

14 MR. RODRIGUEZ: Yes, Mr. Weaver.

15 MR. WEAVER: How are you Mr.
16 Rodriguez? Can I call you pops?

17 MR. RODRIGUEZ: Thank you for your
18 tremendous service in Adams Morgan as an ANC
19 chairman. I gather from your testimony that
20 you're looking for a system with accountability
21 regardless of who is running the establishment
22 there has to be a system is what I'm, what I'm

1 gathering from you and that basically sometimes
2 the owner and from what I've heard from the
3 testimony that sometimes it's not the owner but
4 the visitors that come to Adams Morgan that
5 create certain challenges for everybody so I
6 gather that you want to continue the system of
7 accountability and the VA process and do I
8 gather that you feel there's some solution here
9 with the parties working on some kind of an
10 agreement here.

11 MR. WEAVER: I do, Exhibit B I think
12 from the ANC's perspective I think that there's
13 an element, and I haven't looked at this in a
14 few years, there's elements of it that have to
15 do with, with how much people are paid. There's
16 an, I think there's elements of types of color
17 of uniforms that people should wear. Those are
18 things that obviously I think all the parties
19 should be able to work through.

20 What's most important is how many
21 people are there, what the policy of it is and
22 why those policies were there because if there

1 was an issue with loitering of customers out
2 along the steps, that was something that we
3 really sort of asked for them, we'd ask for the
4 security to, to move along. If there had been
5 issues with people in the middle of the
6 establishment not having adequate security where
7 an incident could happen in the front or in the
8 back but something happened in the middle those
9 were all things that we really sort of went
10 through hammer and nail sort of to try to find
11 an adequate solution.

12 So in that sense I would really hope
13 that the ANC, or the CAN, and the establishment
14 could come up with a similar system that would
15 not necessarily have to like say what color
16 uniforms people should wear or how much they
17 should be paid an hour. I don't think that
18 exists.

19 MR. RODRIGUEZ: Thank you.

20 MS. MILLER: Okay. I mean I just
21 want to say again that at this point though it's
22 now in the Board's hands to determine the

1 question of termination or amendment but not to
2 say the parties can't continue to negotiate
3 afterwards down the road. I just want to make
4 sure, I was not sure if I understood you
5 correctly and I want to make sure I did.

6 MR. WEAVER: Sure.

7 MS. MILLER: But there was a
8 reference I think you made to a requirement that
9 I see in the settlement agreement that the
10 applicant attend certain public safety and ABC
11 Board meetings.

12 MR. WEAVER: Yes.

13 MS. MILLER: Every month it says in
14 the --

15 MR. WEAVER: So every month we have,
16 there was no connection from the establishment
17 to the community. You had other businesses on
18 that strip, retail and ABC establishments, that
19 were active participants. Timehri at the time
20 was not only were they not active participants
21 in the community, but they were hostile to
22 either the business associations, the ANC

1 neighborhood associations, often would only be
2 open for that sort of sweet spot of hours on
3 Thursday, Friday, Saturday and when they did
4 there always ended up being some sort of issue
5 with, with violence that happened in the
6 establishment or noise issues. That was really
7 where we were trying to get, we were trying to
8 get him to like to, he or one of his
9 representatives to come to the meetings.

10 MS. MILLER: So, so that provision
11 was geared in particular to that owner, correct?

12 MR. WEAVER: In particular, yes.

13 MS. MILLER: So do you think with
14 Mr. Wells if you had contact with him with the
15 community?

16 MR. WEAVER: Oh Mr., Mr. Wells is
17 pretty active in terms of coming to the meetings
18 and I know he served on the Business Improvement
19 District, so I mean, in that sense I think it's
20 probably a bit outdated. The thing that was
21 most important to use because there was such a
22 recurring level of violence was that we wanted

1 them to have more of a relationship with the
2 Metropolitan Police Department and I think Mr.
3 Wells just based on from what I've heard in
4 testimony today seems to have contact with local
5 police officers and the PSA and the captain of
6 the PSA.

7 MS. MILLER: Okay. Because the
8 statute, as you probably know.

9 MR. WEAVER: Yes.

10 MS. MILLER: Speaks in terms of
11 changes in the community or changes beyond his
12 control that might necessitate changing the
13 voluntary agreement so it sounds to me from what
14 you're saying is that the, number one there's a
15 change of ownership that's a totally different
16 type of relationship --

17 MR. WEAVER: It is.

18 MS. MILLER: -- in the community.

19 MR. WEAVER: But, as I look and I
20 think that Commissioner Simpson made the point
21 which is in the renewal period that this is
22 taking place, that you end up having another ADW

1 that happens in that pattern. Now there's a
2 gap, granted there was a pretty significant gap
3 in this but it does continue on that sort of
4 longer term sort of trajectory of the history of
5 the establishment is a bit problematic to the
6 community.

7 MS. MILLER: Right. And I thought
8 that point was very well taken but it doesn't
9 apply necessarily to every specific provision. I
10 mean the fact that there was that incident might
11 lead one to not want to get rid of a security
12 provision but it may not have an impact on this
13 reporting to the ABC --

14 MR. WEAVER: Reporting to the ABC,
15 yes.

16 MS. MILLER: I mean unless you don't
17 see that connection --

18 MR. WEAVER: I don't think anyone was
19 on the Board when Mr. Adams was the owner of the
20 establishment because he was escorted out of
21 the, I think he was escorted twice out 441 when
22 ABC Board was there so it was not a pleasure to

1 sort of say please come to our ANC meeting, but
2 it was something where we really wanted it to
3 sort of feel that like he would be held
4 accountable and that the community could raise
5 their concerns directly with him and the MPD
6 could raise their concerns directly to him
7 because every time that we came before an
8 administrative body it, the story changed and
9 that was, that was the idea behind it. I mean
10 with Mr. Wells I don't think it would be, it's
11 not nearly as necessary. It would be a joy to
12 see him at a, at a monthly meeting.

13 MS. MILLER: So, how about is that a
14 provision that, that's in a lot of other Adams
15 Morgan voluntary agreements? The provision
16 about requiring applicants to go to these
17 meetings?

18 MR. WEAVER: That's the only one.

19 MS. MILLER: That's the only one?

20 MR. WEAVER: That's the only one.

21 That, I mean it's, that's the only one and a
22 security plan that is this detailed is the only

1 one I can think of with cause for both.

2 MS. MILLER: Okay. Thank you.

3 Anybody else? Any questions of Board questions?

4 Yes.

5 RE CROSS-EXAMINATION

6 BY MR. KLINE:

7 MR. KLINE: Mr. Weaver, do you trust
8 this man running Timehri to be responsible for
9 his own security plan without the constraints
10 and the limitations on his business of one
11 contained in the settlement agreement?

12 MR. WEAVER: Oh, I see what you did
13 there. You took my whole thing about like not
14 wanting to micromanage a business. There's an
15 element of fences make good neighbors. It's of
16 all the things that I think that he is being
17 asked of in the agreement, like I really don't
18 have as much of an issue with hours or holidays
19 opening early for the reggae thing which seems
20 obvious.

21 In terms of this establishment and
22 the history with the community the one element

1 that I really would like to see remain intact is
2 a security plan in the business. I think that,
3 yes, he would probably be a much better, I don't
4 feel that we have to like go and shop for a
5 security company for him which we had to do
6 under a previous business. In this case it's
7 like, yes, I think that finding someone that we
8 trust and it would be bonded and like
9 professional, I have more faith that, that he
10 would be able to do that but in terms of a
11 contract with the community, I would still like
12 to see that in an agreement and I think that
13 that's a good fences make good neighbors sort of
14 provision.

15 MR. KLINE: And then the follow-up
16 question is do you trust this man running
17 Timehri to operate the extended hours on
18 holidays that have been approved by the Council
19 of the District of Columbia?

20 MR. WEAVER: You know, there's an
21 element, like I said earlier, there is an
22 element to a carrot and a stick and I don't know

1 what the current ANC's policy is and if, for me
2 if Meze has, if Meze has, if there's a policy of
3 six then I would think that, I think it should
4 go back to six. If people have incidents of
5 violence or service beyond hours or things like
6 that I can understand why an ANC would want to
7 restrict it. In my experience during my time in
8 the ANC when he was there, it was light and day
9 from the previous. We wouldn't want that place
10 be open one second more than it had to, than we
11 could stomach under the previous regimen.

12 MR. KLINE: Isn't a number like six
13 just arbitrary? I mean isn't it you either trust
14 them to operate the extended hours or you don't?

15 MR. WEAVER: Yes, I don't know what
16 the policy is of this ANC. I know --

17 MR. KLINE: I'm not asking you the
18 policy of the ANC. I'm asking you.

19 MR. WEAVER: For me, for me as a
20 private citizen, for me as a private citizen, I
21 have less of an issue with the extended hours
22 and I think that many current ANC commissioners

1 or civic association folks do but I lost many
2 votes on the ANC over that during my tenure on
3 the Commission.

4 MR. KLINE: Okay. Great. Nothing
5 further.

6 MS. MILLER: Okay. Thank you.

7 MR. JAMES: Do I have the right to
8 ask a question?

9 MS. MILLER: Oh, you have redirect?

10 MR. JAMES: Yes, just really brief.

11 MS. MILLER: Okay. Sorry. Yes you
12 do.

13 REDIRECT EXAMINATION

14 MR. JAMES: I'll just ask you do you
15 see a stark difference between Meze which is a
16 restaurant with less than 100 occupancy that
17 serves food every hour that it's open and
18 Timehri, a tavern which has had this history
19 that we've just been discussing, even under --

20 MR. WEAVER: No, I do, and
21 if you were, again it would be something if you
22 were saying that, that somebody had no ABRA

1 violations was granted 13 and somebody who had
2 certain ABRA violations was given 6, I mean,
3 there's an element of a carrot and a stick or if
4 there was somebody who was, I'll tell you right
5 now, if it, if at the time of this agreement
6 absolutely no way I would want like to give any
7 sort of extended hours to Timehri and if from
8 the outside it looked as if there have been some
9 changes so that I could understand that that you
10 would want to maybe help them out like you help
11 bring in revenue particularly on the early side,
12 but I do see a difference in sort of the
13 histories between Meze and Timehri.

14 MR. JAMES: And just to touch on
15 another aspect of things, you do, as someone who
16 negotiated many settlement agreements with
17 Kalorama citizens represented by me and many of
18 the licensees in Adams Morgan, I mean sometimes
19 is it accurate to say that you do a deal to get
20 the best deal you can get done but it's not
21 something you would want to apply across the
22 whole neighborhood?

1 MR. WEAVER: Yes.

2 MR. JAMES: That's all I have.

3 Thank you.

4 MS. MILLER: Okay. Thank you very
5 much.

6 MR. WEAVER: Thank you.

7 MR. JAMES: I would like to make a
8 statement and be available for questions and
9 that will be the end of our case.

10 MS. MILLER: Okay. You going to
11 take the stand?

12 MR. JAMES: Certainly.

13 MS. MILLER: Do you swear to tell the
14 truth, the whole truth and nothing but the
15 truth?

16 MR. JAMES: Yes, I do.

17 MS. MILLER: Thank you. Okay.

18 MR. JAMES: I'm Denis James, the
19 president of Kalorama Citizens Association and
20 as the Board knows we protested both the renewal
21 and the termination of this license based on
22 peace, order and quiet concerns and I believe

1 that security and violence are covered under
2 peace, order and quiet, particularly the order
3 part.

4 I just want to underscore for the
5 Board the facts that we presented, well I guess
6 that would be a closing. I want, as the Board
7 knows we, it's been, testimony's been given by
8 other witnesses that settlement was discussed
9 for a long period. It was discussed actually
10 with four different levels of representation for
11 this establishment. I'm not going to talk about
12 specifics unless the Board wants to go in that
13 direction or, the way it does these things but,
14 first with no representation, then with
15 representation --

16 MR. KLINE: I'm going to object to
17 this whole line of statement or testimony. Why
18 are we talking about settlement discussions?

19 MS. MILLER: Okay, right. We're
20 talking, we want to know what, if this, I'm
21 sorry, if want to know the facts if they're
22 renewed under certain conditions or if they're,

1 how do you feel about the agreement or?

2 MR. JAMES: Okay, I'd rather, okay,
3 let me just go straight to the point at hand and
4 that's the existing settlement agreement. KCA
5 is here to defend that agreement. I believe
6 that's why the ANC was here and I believe that's
7 why RCNA is here.

8 MS. MILLER: Okay.

9 MR. JAMES: But we recognize that it
10 is quite old and that some parts of it are no
11 longer precisely relevant to this establishment.
12 They're outdated so the parties discussed this
13 during the hearing and we have a proposal that
14 we have marked up some of the copies of the
15 existing agreement with parts that we would not
16 mind seeing removed from the agreement and we're
17 happy to present one to Mr. Kline and one to the
18 Board and I'll be glad to talk about it. I have
19 one copy so I'm afraid I don't have enough for
20 everybody because this is something we did as we
21 sat here.

22 MS. MILLER: Okay.

1 MR. SILVERSTEIN: We can share.

2 MS. MILLER: Yes, we'll share.

3 MR. JAMES: So I'm going to sort of
4 intersperse some comments about I guess I'm
5 going to have to, I'm trying to distinguish
6 between closing and just the testifying here,
7 so.

8 MS. MILLER: So let me just say this
9 without interjecting too much. I mean we went
10 with, we had dialogue with other witnesses about
11 certain provisions and why should they stay or
12 why should they go and so I think that if you're
13 going to go in that direction, that's fine.

14 MR. JAMES: Fine. Well, based on
15 the evidence given, this is going to sound like
16 closing I guess, but based on the evidence given
17 and presented in our Exhibits we don't think
18 that the establishment should qualify for any
19 extended holiday hours, therefore, the very
20 first provision hours of operation should remain
21 the same.

22 We think because it's a small

1 establishment that there should be, it should be
2 stated how many are allowed in there and that's
3 48 and to pack more people in a place that has
4 dancing whether or not its permitted is unclear
5 from the record, has entertainment and alcohol
6 and very little food, we want the occupancy
7 number to stay.

8 The noise and music provisions are
9 really very, very similar to those that you find
10 throughout Adams Morgan settlement agreements
11 and we have defended those practically every
12 time we've been in front of this Board and the
13 Board has approved agreements recently with
14 stricter provisions on noise and music than
15 this. The trash, garbage, rodents part, we think
16 is pretty standard and pretty straightforward
17 and not very detailed. The exterior including
18 public space, it's not terribly important to us
19 in the grand scheme of things. It's something
20 that is sort of routinely in agreements. It
21 would be nice for it to stay but it's not a deal
22 killer. The security part, we see that there's

1 --

2 MR. KLINE: I have to object. We're
3 talking about a deal killer. This is supposed to
4 be testimony about whether there's a basis to
5 terminate the voluntary agreement or deny the
6 renewal of a license. Why are we talking about
7 a deal killer? We're not here making a deal.
8 The time for that has passed.

9 MR. JAMES: Well, okay, I understand
10 that. I'm assuming, well maybe I should just
11 wait and maybe one of the Board members will ask
12 me the same questions that were asked of the
13 licensee and Mr. Simpson. So, we wind up going
14 through this sort of discussion anyway.

15 MS. MILLER: Okay. I think you're
16 almost done, but I think in particular the
17 applicant has asked for changes to specific
18 parts and so if you want to address that, that
19 would be --

20 MR. JAMES: I understand that. So
21 I've already mentioned why I don't think the
22 applicant should qualify for any extended hours.

1 MS. MILLER: Right.

2 MR. JAMES: The incidents that have
3 occurred have occurred late at night, very late
4 at night, very close to closing. Add an
5 additional hour of drinking to that and I think
6 that we heighten the possibility of additional
7 violent incidents occurring in a small space
8 that can get crowded when it's busy.

9 The earlier hours, I again, we've
10 never, KCA has always been willing to
11 accommodate in settlement agreement situations
12 where there's earlier hours, there's hours
13 stated but you could operate earlier, say for
14 lunch or brunch or even earlier in the
15 afternoon. In this case, though, it's a tavern
16 and it's all entertainment oriented and while I
17 don't know the details of an agreement with the
18 dress shop upstairs from it, but my
19 understanding is that they had issues and it
20 affected their business greatly because their
21 busy time is from 5:00 to 8:00 p.m. every day.

22 It's the kind of a thing where

1 they've attracted a certain clientele that shops
2 after work on their way home and they're very
3 successful and they're sort of a split in the
4 building. The emphasis on Timehri comes after
5 8:00. The emphasis on this other business ends
6 at 8:00, so again, I don't know how it would be
7 bridged, it might present difficulties which,
8 lead to disturbance of peace, order and quiet
9 issues for that particular business, which we
10 heard from during the protest times, so later,
11 extended holiday hours and earlier hours of
12 operation. What was the third?

13 MS. MILLER: There was a security
14 provision in particular the one that referred to
15 the first paragraph that refers to the previous
16 security company.

17 MR. JAMES: Correct. So under the
18 security provision, we would, we would suggest,
19 we would offer to the Board our, that we would
20 find it acceptable to remove the parts that are
21 highlighted and it hangs together as statements
22 that are meaningful to us and it extends over to

1 the back, the second page of the Exhibit B where
2 there's a statement that we say retain one
3 security officer shall be female for each shift.

4 We think that's very important
5 because many of the patrons there are females
6 and they can't be patted down by men, obviously,
7 so we would like to, we take note that there is
8 the establishment's own security plan that's
9 filed with the Board, the Board has approved it
10 and that there are the conditions, security
11 conditions put in place by, demanded by the OIG
12 and approved by this Board in an order but we
13 don't know that those will always be there.

14 We don't know how long, I mean the
15 applicant may say, well we've been, we've had a
16 good record for such and such a period of time.
17 We think we should be relieved of some of those,
18 but we would like there to be at least a basic
19 structure in place in the settlement agreement
20 that could last and we would at least be able to
21 defend it if they should seek to terminate it
22 again in the future, so my hope would be that

1 some significant security plan would always be
2 in place beyond what's in this agreement.
3 Obviously the other parts of the A and B
4 addendums are, specific to a company and it
5 seems that it would be good to get rid of those.
6 It's confusing and doesn't pertain to this
7 business.

8 MS. MILLER: Okay, I just want to
9 clarify because you gave me one copy, that says
10 marked up, so the part that is highlighted in
11 yellow, is that the part that you think could be
12 removed from the settlement agreement without
13 causing any harm to the community? Okay, let me
14 pass this around.

15 MR. JAMES: Yes, yes. With the one
16 exception that the one part from addendum B has
17 just got a big parenthesis around it instead of
18 being marked up it just says retain above it in
19 blue ink.

20 MS. MILLER: Okay, what page you on?

21 MR. JAMES: It's, well it's not
22 numbered, but it's this page that's part of the

1 addendum B.

2 MS. MILLER: Oh, okay. Oh, wait this
3 part that says highlighted on the sides and it
4 says retain.

5 MR. JAMES: Yes.

6 MS. MILLER: What does that mean,
7 retain in connection?

8 MR. JAMES: Retain it as part of the
9 agreement. Retain the language.

10 MS. MILLER: Oh, but the rest of the
11 agreement can go.

12 MR. JAMES: Part of the security
13 language because I don't really think you can
14 keep the addendums per se but they are improved
15 and incorporated as part of this settlement
16 agreement so I believe the Board has the ability
17 to stick that in the security section if it
18 wants to restate this agreement in an order.

19 MS. MILLER: Okay, and I know, I
20 mean I'm kind of going out of order because the
21 Board doesn't ask first, but the rest of the
22 addendums, do they go?

1 MR. JAMES: Yes.

2 MS. MILLER: In here? Okay. Want to
3 pass that down.

4 MR. JAMES: We the Protestants
5 discussed it and we just think it's not
6 pertinent to this licensee's operation to have
7 references to a different company than they use
8 and whatever the rates of pay that they are
9 included and how they will go about being paid
10 and all the rest of that, we just, we don't
11 think that's relevant to this establishment.

12 MS. MILLER: Okay, so it is, you're
13 finished with your testimony, right? Or no.

14 MR. JAMES: Yes, I think so.

15 MS. MILLER: Mr. Kline.

16 MR. KLINE: Mr. Jones, may I have a
17 time check, please?

18 MR. JONES: They, excuse me, so I
19 provided this information, but I guess, did you
20 want to speak on it?

21 MR. KLINE: I don't know.

22 MR. JONES: The Protestants are out

1 of time and the licensee has nine minutes
2 remaining.

3 MR. KLINE: Okay, great. Thank you.

4 CROSS-EXAMINATION

5 MR. KLINE: Mr. James, what role did
6 you have in Sergeant Rooney not testifying
7 today?

8 MR. JAMES: I don't know that I had
9 any role in that at all. I contacted Assistant
10 Chief Groomes after having learned from
11 Commander Kishter that it was department policy
12 that officers not give testimony in such
13 hearings.

14 MR. KLINE: Did you call anyone
15 today?

16 MR. JAMES: I did. I called
17 Commander Kishter to find out if my
18 understanding was incorrect. I didn't reach him,
19 left a voicemail.

20 MR. KLINE: And you did that because
21 you were concerned that his testimony was going
22 to be favorable to the applicant, didn't you?

1 MR. JAMES: No. I did it because I
2 think it's prejudicial to the Protestants to
3 have the official law enforcement body of this
4 city appearing for the applicant, which we have
5 found significant problems with.

6 MR. KLINE: So you don't believe
7 that the officer would have testified to the
8 truth on the witness stand? You thought he was
9 here to testify for or against a particular
10 party?

11 MR. JAMES: You're putting, you're
12 attempting to put words in my mouth. That's not
13 any way that I would describe it at all. I think
14 I can't help but just get past, I cannot get
15 past my feeling that it is prejudicial to have
16 MPD appear for the applicant.

17 MR. KLINE: So you took it upon
18 yourself to prevent him from testifying here
19 today, is that correct?

20 MR. JAMES: No. That's not
21 accurate.

22 MR. KLINE: Okay. Isn't it true

1 that you put in motion the actions which caused
2 him not to testify here today?

3 MR. JAMES: I --

4 MR. KLINE: Well let me withdraw
5 that. Let me put it in another way. You called
6 Chief Groomes today, correct?

7 MR. JAMES: No, I emailed her.

8 MR. KLINE: You emailed her.

9 MR. JAMES: Yes.

10 MR. KLINE: And it was after that
11 email that Sergeant Rooney indicated he wasn't
12 going to testify, wasn't it?

13 MR. JAMES: That may be the case.

14 MR. KLINE: All right. I'll move
15 on.

16 MR. JAMES: I don't know, I don't
17 know the --

18 MR. KLINE: Mr. James, let me direct
19 your attention to the marked up agreement which
20 you gave us. So it's your position that the
21 applicant should not be required to open, or
22 should not be allowed to open in the earlier

1 hours, is that your position?

2 MR. JAMES: I don't think we should
3 change the hours.

4 MR. KLINE: All right, and you, and
5 you take that position because of your concerns
6 for the tenant upstairs, the Violet Store,
7 wasn't that your testimony?

8 MR. JAMES: That's correct.

9 MR. KLINE: All right, and a witness
10 from the Violet Store was previously listed on
11 your PIF to testify today, weren't they?

12 MR. JAMES: That's correct, that's
13 correct.

14 MR. KLINE: But, in fact, they
15 notified you and told you that they had reached
16 an agreement with the applicant, didn't they?

17 MR. JAMES: They did, but they also

18 -

19 MR. KLINE: And that's why they're
20 not here, correct?

21 MR. JAMES: Yes.

22 MR. KLINE: So they were satisfied

1 with the agreement that they reached with the
2 applicant.

3 MR. JAMES: Well, it was represented
4 to me that it was that the focus in the building
5 would be on Timehri after 8:00. They would get
6 to do what they wanted to do and it was on
7 Violet prior to that. So anything --

8 MR. KLINE: My question to you was
9 Violet satisfied with the agreement that they
10 reached. That's my question.

11 MR. JAMES: I don't know. I don't
12 know.

13 MR. KLINE: Do not filibuster. I
14 have seven minutes left so I want you to answer
15 my questions because they're coming fast.

16 MR. JAMES: Uh-huh. Okay. Well I
17 don't think it's clear, it's nothing, I don't
18 know the terms of the agreement that was
19 reached, the private agreement that was reached.

20 MR. KLINE: But they did contact you
21 and told you that they did not want to further
22 testify, correct?

1 MR. JAMES: To testify at all.

2

3 MR. KLINE: Okay. All right, now
4 with respect to occupancy, occupancy is governed
5 by the Certificate of Occupancy, isn't it?

6 MR. JAMES: Yes.

7 MR. KLINE: With respect to noise
8 and music, number, letter A, that's a
9 restatement of the law, isn't it?

10 MR. JAMES: No, because it, the law
11 is not forever amended. This says as amended
12 and it also mentions the ABC regulations which
13 could change from time to time and --

14 MR. KLINE: Right, and the applicant
15 has an obligation to comply with the ABC
16 regulations whatever they are at all times under
17 the terms of the license, don't they?

18 MR. JAMES: Yes, they do.

19 MR. KLINE: Music being, let's look
20 at C music inside not audible in surrounding
21 residential housing areas, pretty imprecise,
22 isn't it?

1 MR. JAMES: I don't think so.

2 MR. KLINE: Is it capable of being
3 enforced?

4 MR. JAMES: I believe it is.
5 Anything that the Districts of government,
6 District of Columbia government licenses as a
7 place where residents can live, whether it's in
8 a C2B or an R zone, that's what that means.

9 MR. KLINE: All right, so it's
10 covered by existing law, correct?

11 MR. JAMES: Ah, no. This gives more
12 protection because it says will not be audible
13 and that means in a C2B as well as an R zone.

14 MR. KLINE: Does D provide any
15 protection to the community?

16 MR. JAMES: I think it does. I think
17 it's an, it's a question of buying into the good
18 neighbor idea of hey, I'm going to be concerned
19 about the outward effects of my establishment,
20 I'm going to make sure that I don't bother
21 anybody.

22 MR. KLINE: And do you believe the

1 Board has the ability to enforce the applicant
2 making a reasonable effort to preserve the
3 tranquility of the neighborhood?

4 MR. JAMES: I think it might. It
5 did, like if the window was open and there was
6 loud music coming out and an ABRA investigator
7 saw that and said hey, how about closing that
8 window.

9 MR. KLINE: E, you're aware that
10 there's no loitering law in the District of
11 Columbia? The applicant is incapable of, of
12 enforcing E, isn't that correct?

13 MR. JAMES: I don't know. I know
14 that there's not a loitering law, but I think
15 that there's, this again is something that goes
16 to intent and willingness to try to get along. I
17 think a lot of people would be responsive to Mr.
18 Wells or his security staff if he went and asked
19 them to move along.

20 MR. KLINE: And you think having
21 this in this agreement somehow ensures that
22 that's going to happen?

1 MR. JAMES: It might happen. If it's
2 not there, then it will not ever happen.

3 MR. KLINE: Because you don't trust
4 Mr. Wells to do that on his own?

5 MR. JAMES: I don't have an opinion
6 about that.

7 MR. KLINE: Well, you said it
8 wouldn't happen ever. I wanted to know what your
9 opinion was --

10 MR. JAMES: Well, if it's not in the
11 agreement then it's not going to be enforced.
12 That was my point.

13 MR. KLINE: Okay. Trash, garbage
14 and rodents. There's already a legal
15 requirement that the establishment maintain
16 regular trash garbage removal service, correct?

17 MR. JAMES: I, this is to do with
18 the operation under an ABC license. I'm not
19 sure what the solid waste laws are.

20 MR. KLINE: Are you aware that there
21 are other laws that govern solid waste and
22 require business establishments to comply with

1 managing and disposing of their solid waste?

2 MR. JAMES: Well I'm aware of parts
3 of it that have to do with recycling and that's
4 been stated numerous times in Adams Morgan
5 settlement agreements, but I'm not absolutely
6 sure of the specifics but one of the things we
7 have here is agreeing not to create noise
8 between the hours of 11:00 and 8:00 a.m.

9 MR. KLINE: I didn't get there yet.

10 MR. JAMES: Okay.

11 MR. KLINE: But you do also agree
12 that there are provisions concerning recycling,
13 correct?

14 MR. JAMES: Yes.

15 MR. KLINE: The exterior including
16 public space. Isn't that just a restatement of
17 what's required by law?

18 MR. JAMES: It is and that's not
19 prevented in a settlement agreement.

20 MR. KLINE: Wasn't my question to
21 you. With respect to alcohol service, is it
22 your position that it's critical that the

1 licensee be required to announce last call one
2 half hour prior to closing each night of
3 operation?

4 MR. JAMES: I think it's a good
5 policy for ABC establishments to have. It shows
6 that you're in control of the establishment, it
7 gives an opportunity for a last drink to be
8 consumed and the alcohol to be kept under
9 control. Just a good management policy.

10 MR. KLINE: If it's Wednesday night
11 and there are two people in the establishment,
12 do you think that the licensee should be
13 required to announce last call?

14 MR. JAMES: I just don't see that it
15 hurts anything for him to say gently to the two
16 folks who are there, you know what, closing in
17 half an hour. Don't see that that's something
18 that's should be meaningful but on occasions
19 when the establishment is full and people are
20 seeking additional drinks towards the end I
21 think it has a lot of meaning.

22 MR. KLINE: So if you ran the

1 establishment and you had this agreement you
2 would say closing in half an hour, is that what
3 you're saying and your opinion is you'd be in
4 compliance with the agreement?

5 MR. JAMES: I would say last call at
6 half an hour in advance.

7
8 MR. KLINE: And you believe telling
9 patrons that we're closing in half an hour is
10 sufficient to satisfy the requirements of this
11 agreement with respect to last call provision?

12 MR. JAMES: I, yes, I'm actually
13 missing a page here, I think. Let me go back
14 to, yes, I don't know where it is. Anyway, yes.
15 My basic, my simple answer is yes, that it's --

16 MR. KLINE: You think that's enough?

17 MR. JAMES: I'm sorry, could you
18 please --

19 MR. KLINE: My question to you is
20 you stated telling patrons that you're closing
21 in half an hour shouldn't be a big deal.

22 MR. JAMES: Yes.

1 MR. KLINE: And it was my impression
2 that you thought that that complied with the
3 provisions of this provision of the agreement.

4 MR. JAMES: Well, very honestly I
5 don't have that in front of me. The thing I've
6 picked up, maybe I've lost a page somewhere or
7 reshuffled them. I'm sorry they're loose.

8 MR. JONES: One minute.

9 MR. JAMES: Okay, so reading
10 further, it says that all sales of alcohol will
11 be stopped 15 minutes before closing, so it
12 doesn't, it gives notice and it gives 15 minutes
13 to fulfill any further drinks and then anyone
14 who has a drink can consume it until the actual
15 hour of closing.

16 MR. KLINE: All right. Thank you. I
17 have nothing further.

18 MS. MILLER: Board questions? No
19 Board questions? Okay. I think I asked mine
20 earlier.

21 MR. JONES: Me too.

22 MS. MILLER: Okay, does that --

1 MR. JAMES: Am I done?

2 MS. MILLER: Yes, you're done.

3 Unless you have any other, no, you can take, you
4 can leave the witness stand. I don't know if
5 you have any other documents you want to submit
6 into evidence.

7 MR. JAMES: Because Mr. Kline raised
8 the question of what role I might have played in
9 Sergeant Rooney's testimony, I would like to
10 submit to the Board the email exchange that I
11 had with Chief Groomes.

12 MS. MILLER: Okay. Do you have
13 copies for Mr. Kline as well or no?

14 MR. JAMES: I do, I just need to
15 locate them. I'm sorry. There's kind of a lot
16 of loose papers floating around here.

17 MS. MILLER: Okay.

18 MR. KLINE: Madam Chair, we need not
19 take the Board's time with this now. We will be
20 foraying all those documents I can assure you
21 and I will renew my request at the close of the
22 case that the Board investigate this matter or

1 refer it for investigation by the appropriate
2 authority.

3 MS. MILLER: Okay. I think that the
4 Board will accept the documents, in any event
5 that if they are asking for an investigation
6 that is a document we should have. So.

7 MR. JAMES: Isn't the regular order,
8 I mean I'm going to be looking for this and I've
9 got them here somewhere, just--

10 MS. MILLER: All right, so we can
11 wait for that.

12 MR. JAMES: Mr. Kline is going to
13 close, is that correct?

14 MS. MILLER: Yes. Let me ask you
15 also, Mr. James, you gave us a marked up copy of
16 the voluntary agreement indicating which
17 provisions you thought could be deleted without
18 causing adverse impact of peace, order, quiet,
19 right? Do you want to submit this as an
20 Exhibit?

21 MR. JAMES: Yes, please.

22 MS. MILLER: Okay. What Exhibit

1 would that be? Do you know? Have you submitted
2 any, oh, you did, your book which was --

3 MR. JAMES: I think the Exhibits
4 could be one as a whole if the Board would
5 accept that and if you're going to find that
6 acceptable and this settlement agreement could
7 be Exhibit number 2.

8 MS. MILLER: Okay. We did not admit
9 that last page also of the book. Just to remind
10 you we did not admit the last page that's in the
11 book because you said the relevance would be
12 shown later on and you never got to it as far as
13 I know, so --

14 MR. JAMES: Well actually we did
15 discuss, I mean the question of Meze was
16 discussed and so that is relevant to it.

17 MS. MILLER: Oh, so you can make
18 your argument now.

19 MR. JAMES: Mr. Simpson actually
20 said that Meze had a relatively clean record,
21 free of violence, and that's all that that is.
22 It's the investigative history for Meze.

1 MS. MILLER: Okay. So that's the
2 relevance.

3 MR. JAMES: Related to Meze because
4 they do have the ability to have whichever
5 extended holiday hours they want.

6 MS. MILLER: Okay.

7 MR. KLINE: Madam Chair, I would
8 object. The date on this investigative history
9 is 11/2012, so it is incomplete at best.

10 MR. JAMES: It was asked for from Mr.
11 Hager within the last week.

12 MS. MILLER: Okay.

13 MR. JAMES: And given to us by
14 email. I'll be glad to forward the email to all
15 parties concerned.

16 MS. MILLER: Okay. I'm going to
17 accept it and so the first book, the book is
18 Exhibit 1 and then the marked up copy of the
19 voluntary agreement is Exhibit 2. Okay. All
20 right. I guess we're ready for your closing,
21 correct. You don't mind if he starts closing at
22 this point?

1 MR. JAMES: I would love it.

2 MS. MILLER: Okay. Okay. Is that
3 going to distract you, Mr. Kline? Otherwise you
4 can look for it afterwards.

5 MR. KLINE: No I won't be
6 distracted.

7 MS. MILLER: Okay.

8 MR. KLINE: Laser focus.

9 MS. MILLER: Okay.

10 MR. KLINE: Thank you Madam Chair,
11 members of the Board. You've heard a lot of
12 testimony and a lot of argument this afternoon
13 and this evening. What's surprising when you
14 haven't heard testimony from anyone in support
15 of the Protestants that was not an interested
16 party.

17 Usually when you have these cases
18 and a concern about an establishment in a
19 particular neighborhood, these seats are taken.
20 Not by people here that are here to try a case,
21 not by someone who negotiated the agreement
22 initially and had a vested interest, but people

1 from the community who are engaged and involved
2 and concerned. We didn't see that. Instead
3 what did we see? We saw Mr. James who, if we
4 have a case in Adams Morgan, we're always going
5 to see Mr. James. We see Ms. AUBURN, the same.
6 We have a case in Adams Morgan, we're always
7 going to see them. We had Mr. Simpson, who
8 expressed his opinions but didn't introduce and
9 set forth a single fact other than his
10 unsupported concerns about this establishment.

11 Now granted, we had one thing that's
12 of concern to all of us and that was one
13 incident in 2012 in which a person unfortunately
14 was stabbed, injured and the establishment was
15 involved; however, the Board had a summary
16 suspension hearing about that and as a result of
17 that summary suspension hearing this gentleman
18 worked with the Office of Attorney General and
19 came up with a program that became conditions to
20 his license. Subsequent to that, this Board had
21 a Show Cause Hearing arising out of the same
22 incident and this establishment paid the price.

1 They were punished for whatever it is that they
2 did wrong in connection with that incident.

3 They paid a fine of \$4000 and they were
4 suspended 20 days with 10 days served and 10
5 days stayed.

6 Now fortunately, I don't think they
7 ever had to serve the other 10 days because
8 there was not a subsequent violation within a
9 year. The community would have this gentleman
10 continuing to pay for an incident that this
11 Board already adjudicated and he's already been
12 punished for but it's apparently supposed to
13 live on forever. Let's look at the objective
14 testimony that we have here to the extent that
15 we could have it.

16 Captain Mongal testified that
17 there's not unusual level of calls for service
18 to this establishment. That was a big part of
19 the Protestants' case. Look at the calls for
20 service. We gave you calls for service for
21 other establishments in the same block that had
22 greater numbers of calls for service than this

1 establishment and the calls for service to this
2 establishment, at least the ones in the last
3 year, not one of them involved an incident that
4 should be of concern. It was the address, it
5 was in front of the place, so they were
6 situations that were otherwise in no way the
7 fault of the establishment.

8 Now we are entitled to an inference
9 in this case and something very unusual. I've
10 never argued this to the Board before. It's
11 never been appropriate. It's called the missing
12 witness inference. Now what that inference is,
13 is when a witness is not here and the opposing
14 party has caused them not to be here, then
15 there's an inference that their testimony would
16 be favorable to the party that didn't cause them
17 not to be here. Now in this case, it's pretty
18 clear Mr. James did not want Sergeant Rooney to
19 testify.

20 Now, it would be improper for me to
21 tell you what Sergeant Rooney would have said
22 because that's not part of the record and this

1 is argument and I'm not, and I'm not a witness.
2 But it is appropriate for me, for you just to
3 imagine what Sergeant Rooney would have said and
4 why it was that Mr. James did not want him to
5 take the stand because clearly his testimony
6 would have been supportive of this
7 establishment, would have supported the requests
8 that we're making to you to renew the license
9 and relax the settlement agreement, so with the
10 evidence that you have in support of the
11 applicant and the lack of evidence that you have
12 in support of the Protestants, other than from
13 the very parties that are interested and biased
14 we would strongly urge you to renew the license,
15 keep those conditions of the agreement that you
16 in your reasonable judgment deem appropriate for
17 the protection of the community and put them as
18 conditions of the license in an order and free
19 this man from having to deal with this community
20 that he's tried to work with for over a year to
21 get these issues resolved. Thank you.

22 MS. MILLER: Okay. Mr. James?

1 MR. JAMES: And from my point of
2 view, we have tried to work with this applicant
3 and we went through four different variations
4 with this applicant, him representing himself --

5 MR. KLINE: I'm going to object.

6 MS. MILLER: I'm going to sustain the
7 objection. We're, we're not reviewing
8 negotiations.

9 MR. JAMES: But I'm not talking
10 about the negotiations, but in talking about the
11 changing nature of what we were talking about
12 there was, every five minutes there was a
13 different representative. Nevertheless, I'll
14 move on. So, the calls for service were not,
15 the calls for service as Mr. Kline said, he
16 claimed that they were a major part of our
17 presentation. They were not at all. They were
18 just missing from the Board's investigative
19 report because they didn't come in in time to be
20 included in it.

21 Investigator Brashears had asked for
22 it; it was not forthcoming. I happened to have

1 it from a previous request. It wasn't actually
2 complete, I want the Board to note that. It only
3 covered about two thirds of the renewal period.

4 So, there were what they are. They involved
5 some potentially incidents that may or may not
6 have been associated with the establishment.

7 That's, the Board gives it the weight that it
8 will and we understand that.

9 I think the thing that we care most
10 about is violence in our community and its
11 effect on residents, its effect on other
12 businesses. It's very chilling to the overall
13 business climate in the neighborhood to have
14 stabbings go on near your business. People say
15 I'm not going to go over to Adams Morgan. I'm a
16 young woman, I want to go buy a dress at Violet
17 but that place underneath, they had a stabbing
18 last week. Who knows? Maybe they're not going
19 to go back there. Just not the kind of thing
20 you want to have going on in your neighborhood.

21 We understand completely the Board
22 has adjudicated these matters, but the evidence

1 that we put forward showed that late at night is
2 when things tend to happen in this
3 establishment. After hours bottles hitting
4 patrons on the head, a stabbing and to ask to be
5 relieved of an agreement that just states the
6 current legal hours short of extended holiday
7 hours, this is reasonable.

8 The Board should have great concern
9 about letting this establishment have any later
10 hours. That's much more likely to have further
11 violent incidents in the later hours when more
12 drinking has gone. It's over a holiday times,
13 they're all holiday times, people let go on
14 holidays. This is a place that has dancing,
15 loud music, very dim circumstances inside, not
16 much lighting. So we, we think we've been
17 fairly flexible in the proposal that we put
18 forward in the marked up settlement agreement.

19 We recognize that parts of it are no
20 longer relevant to this establishment. We know
21 the Board has historically looked at things like
22 that and we, we're also trying to be in

1 compliant with the changes in the law from the
2 2012 Omnibus where certain things were forbidden
3 from being stated in agreements like
4 requirements to attend ANC meetings and so
5 forth, so we're happy to strike that. But for
6 this Board to allow later night operations I
7 think would just give the very rare wrong
8 message about what it sees as fitting for Adams
9 Morgan. To the best of my knowledge the only
10 establishment with a settlement agreement, my
11 understanding is there's about 45 establishments
12 with settlement agreements out of the --

13 MR. KLINE: Objection. Mr. James is
14 now testifying and introducing facts that are
15 not part of the record which is improper in a
16 closing argument.

17 MR. JAMES: Okay. All right. Very
18 few establishments in Adams Morgan have the
19 extended holiday hours. One just happens to be
20 next door.

21 MR. KLINE: Same objection.

22 MR. JAMES: No, we've talked about

1 this in this hearing today. The one that's
2 right next door. Meze. But it's a different
3 license, it's a restaurant and it serves food
4 all the hours that it's open, whether it's till
5 3:30 or 4:00 in the morning. So we don't think
6 because there's one little precedent and it just
7 happens to be next door to an establishment that
8 has shown a history of violence for many years
9 that the Board should grant any extended holiday
10 hours. So. That's all I have.

11 MS. MILLER: Ms. AUBURN, do you have
12 a closing?

13 MS. AUBURN: Yes. Thank you Madam
14 Chair and Board members. First of all, the
15 community is following ABRA procedure regarding
16 protests. ANC, a neighborhood association and
17 residents are coming in front of the Board
18 because they feel there is a problem with the
19 establishment and want to solve any issues, so
20 please let's not get personal on that part, like
21 Mr. Kline became a few minutes ago.

22 Second, RCNA is willing to work with

1 the establishment and make compromise on the
2 settlement agreement to reach an agreement that
3 would satisfy the applicant, the Protestants and
4 the community. Adams Morgan is subject to
5 chaos, violence, loitering, littering, noise,
6 etcetera and we're trying to minimize the
7 damage.

8 For that reason, RCNA asks the Board
9 not to terminate the settlement agreement for
10 the sake of our neighborhood but work on the
11 provisions that require revisions and some of
12 those requirements were the number of holidays
13 and the extended the late hours and keep some of
14 the provisions in the security plan but we agree
15 that some of the security plan provisions should
16 be revised. Thank you.

17 MS. MILLER: Okay. Thank you.

18 MR. JAMES: So just as a final
19 housekeeping matter, I would like to, I guess
20 this would be KCA Exhibit number 3. Just a
21 record of the emails, I thought I had them a
22 minute ago. I'm really, I really apologize.

1 Yes, yes, wait a minute, it's not the right.

2 MS. MILLER: Ms. AUBURN, for the
3 record the marked up version, you agree with KCA
4 on the mark up or not?

5 MS. AUBURN: Let me just make sure
6 that I.

7 MS. MILLER: You handed it to us so I
8 was assuming --

9 MS. AUBURN: I agree with some of it.

10 MS. MILLER: Okay, it's primarily
11 then from KCA and, and you agree to some of it.
12 Okay. Not necessarily all of it.

13 MS. AUBURN: Yes.

14 MS. MILLER: Okay. While you're looking for
15 that, Mr. James, I can keep going.

16 MR. KLINE: Madam Chair, if I may for the
17 record, I want to renew my request that the
18 Board look into this issue. The Board has
19 statutory authority to issue subpoenas and a
20 subpoena was issued in this case to a
21 Metropolitan Police Officer and it was ignored.
22 If the public and those of us that appear before

1 you are to have confidence in your ability to
2 compel witnesses we think it's imperative that
3 this matter be looked into. Why it was that
4 another employee of the District of Columbia,
5 specifically a Metropolitan Police Sergeant was
6 able to cavalierly ignore your duly issued
7 subpoena which you're authorized to issue by law
8 notwithstanding what his superiors may have
9 requested or directed.

10 MS. MILLER: Right. I agree and I was dismayed
11 that the sergeant had left. I didn't expect
12 that he was leaving. So, anyway, we will take
13 in the emails that Mr. James is going to be
14 providing and bring this to the attention of Mr.
15 Mesili and Ms. Jacobs is already aware of it as
16 is the Board obviously.

17 MR. KLINE: And we will forward in
18 the additional information that we're able to
19 acquire with respect to this matter.

20 MS. MILLER: Do you have any
21 objection to Mr. James submitting that?

22 MR. KLINE: No.

1 MS. MILLER: Exhibit 3?

2 MR. KLINE: I don't care.

3 MS. MILLER: Okay. So, Mr. James,
4 I'm going to admit that document while you're
5 looking for it so we can move on as Exhibit 3.
6 What shall we call it? Mr. James?

7 MR. JAMES: Yes.

8 MS. MILLER: While you're looking
9 can you tell me what we would call the Exhibit
10 3, the email?

11 MR. JAMES: Email from Denis James
12 to Assistant Chief Groomes.

13 MS. MILLER: Okay. Do you have it
14 in your hand?

15 MR. JAMES: I do. I, I thought I
16 had multiple copies. I don't know what's the
17 matter. I'm giving one copy to Mr. Kline. I
18 have a copy for the Board.

19 MS. MILLER: Would it be easier if
20 we just made, Ms. Jenkins just made copies at
21 this point?

22 MR. JAMES: It probably would. It's,

1 the chain begins on the backside. I think it's
2 self-explanatory and I would just, the only
3 thing I would like to restate is that the KCA
4 did not know that the subpoena had been issued
5 for MPD officers.

6 MS. MILLER: Okay. You thought he'd
7 just been requested to appear?

8 MR. JAMES: That's what we saw on
9 the PIF. It didn't say subpoenaed.

10 MS. MILLER: Okay. Just wanted to
11 get it clear on the record.

12 MR. JAMES: Yes. Thank you.

13 MS. MILLER: Okay. Okay, so there's
14 no objection to our admitting that into the
15 record, so that will be admitted as Exhibit 3.

16 (Whereupon, the above-referred to
17 document was admitted as Exhibit 3.)

18 MS. MILLER: Okay. I think at this
19 point that that's, is that all, anything else to
20 submit to the record?

21 MR. KLINE: I have nothing else.

22 Thank you.

1 MS. MILLER: All right then I'm
2 going to close the record in this case. Do the
3 parties wish to file proposed findings of facts
4 and conclusions of law?

5 MR. KLINE: We'll waive.

6 MS. MILLER: Okay.

7 MR. JAMES: Waive.

8 MS. AUBURN: I'm sorry. I didn't
9 hear.

10 MS. MILLER: Do you wish to file
11 proposed findings of facts and conclusions of
12 law or waive your right to do so?

13 MS. AUBURN: Waive my rights.

14 MS. MILLER: Okay. All right then.
15 What's left then is for the Board to vote on
16 deliberating this case in closed session. Okay.
17 As Chairperson of the Alcoholic Beverage Control
18 Board for the District of Columbia and in
19 accordance with Section 405 of the Open Meetings
20 Amendment Act of 2010, I move that the ABC Board
21 hold a closed meeting for the purpose of seeking
22 legal advice from our counsel on Case numbers

1 13-PRO-00173 and 14-PRO-00057, Club Timehri for
2 a Section 405B4 of the Open Meetings Amendment
3 Act of 2010 and deliberating upon this case for
4 the reasons cited in Section 405B13 of the Open
5 Meetings Act of 2010. Is there a second?

6 MR. RODRIGUEZ: Second.

7 MS. MILLER: Mr. Rodriguez seconded
8 the motion. I'll now take a roll call vote on
9 the motion before us now that it's been
10 seconded. Mr. Rodriguez?

11 MR. RODRIGUEZ: I approve.

12 MS. MILLER: Ms. Miller agrees. Mr.
13 Silverstein?

14 MR. SILVERSTEIN: I agree.

15 MS. MILLER: Mr. Short?

16 MR. SHORT: I agree.

17 MS. MILLER: And Mr. Jones.

18 MR. JONES: I agree.

19 MS. MILLER: The previous motion is
20 passed by a 5, 0, 0 vote. I hereby give notice
21 that the ABC Board will hold this aforementioned
22 closed meeting and we will issue an order within

1 90 days. All right. That completes this case.

2 MR. JAMES: Thank you for your
3 patience. I know these things take a long time.
4 I don't know why.

5 MS. MILLER: I don't know why
6 either. We're looking for a solution, so.

7 MR. JAMES: We appreciate the Board
8 searching for the answers. That's, I think
9 that's why it takes as long as it does because
10 the Board does want to be thorough and I think
11 that that's important.

12 MR. KLINE: Thank you.

13 (Whereupon, the above-entitled
14 matter concluded at 8:39 p.m.)
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