

Capital Reporting Company  
In the Matter of 1218 Wisconsin, Inc. t/a Third Edition 11-14-2012

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DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :  
 :  
1218 Wisconsin, Inc. :  
t/a Third Edition :  
1218 Wisconsin Avenue, NW :  
Retailer CT : Show Cause  
License No. 604 : Hearing  
ANC 2-E : (Status)  
Case No. 12-CMP-00153 :  
Violation of Voluntary Agreement:  
-----x

November 14, 2012

The Alcoholic Beverage Control

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

PRESENT

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
HERMAN JONES, Member  
CALVIN NOPHLIN, Member  
MIKE SILVERSTEIN, Member

ALSO PRESENT

LOUISE PHILLIPS, OAG

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

2 10:45 a.m.

3 MS. PHILLIPS: Madam Chair, I think we're all  
4 here.

5 CHAIRPERSON MILLER: You ready to start one  
6 minute early?

7 MR. KLINE: Yes, we're ready.

8 CHAIRPERSON MILLER: Good. Okay.

9 MR. KLINE: A good hour ago.

10 CHAIRPERSON MILLER: So I'm going to call the  
11 case then, and that is Case Number 12-CMP-00153, Third  
12 Edition, located at 1218 Wisconsin Avenue Northwest,  
13 License Number 604, an ANC 2-E. Would the parties  
14 introduce themselves for the record, please?

15 MS. PHILLIPS: Louise Phillips, Attorney  
16 General, District of Columbia. Good morning all.

17 CHAIRPERSON MILLER: Morning.

18 MR. KLINE: Good morning. Andrew Kline on  
19 behalf of the licensee.

20 MR. TALCOTT: Good morning. Gregory Talcott,  
21 president of 1218 Wisc. Inc.

22 CHAIRPERSON MILLER: Okay. So this is a show

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1 cause hearing. Are there any preliminary matters?

2 MS. PHILLIPS: I think we've done two  
3 stipulations. I'll let Mr. Kline state them, and then  
4 we'll still have to put on a hearing.

5 CHAIRPERSON MILLER: Okay.

6 MR. KLINE: Yes. The stipulations would be  
7 that the licensee has a DJ booth, and the second  
8 stipulation would be that the licensee has made use of  
9 a DJ booth for --

10 MR. TALCOTT: Forty-four years.

11 MR. KLINE: -- forty-four years and continues  
12 to make use of a DJ booth. Those would be the  
13 stipulations.

14 CHAIRPERSON MILLER: Okay. Stipulation is  
15 licensee has a DJ booth and the licensee has made use  
16 of a DJ booth for how many years?

17 MR. KLINE: For 44 years.

18 CHAIRPERSON MILLER: Forty-four years.

19 MR. KLINE: And continues to make use of the  
20 DJ booth.

21 CHAIRPERSON MILLER: Okay. So 44 years and  
22 continues to make use of the DJ booth. Okay.

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1 MR. KLINE: Yes.

2 CHAIRPERSON MILLER: Got it. Okay. So  
3 that's the stipulations.

4 MR. KLINE: Correct. Yes. Which, I would  
5 immeasurably shorten the hearing.

6 CHAIRPERSON MILLER: Okay. Good. And so you  
7 plan to go forward with the hearing and how many  
8 witnesses are you each going to have? Any?

9 MS. PHILLIPS: I'm going to have one  
10 investigator.

11 CHAIRPERSON MILLER: Okay.

12 MR. KLINE: One.

13 CHAIRPERSON MILLER: Okay. All right. You  
14 may proceed then.

15 MS. PHILLIPS: Good morning. This seems to  
16 be a narrow question. We have a stipulation that  
17 there's a DJ booth and a DJ booth for 44 years. We  
18 have two voluntary agreements and we have a law that  
19 defines what entertainment means.

20 The voluntary agreement has been amended  
21 once, but the second, the first amendment -- I believe  
22 it's the first. I only have two in my file, was

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1 February 4th, 2011, which amended, according to what I  
2 have, clauses one through seven. It didn't touch nine,  
3 which is the subject of this hearing.

4           And in the voluntary agreement number nine,  
5 which number nine remains in effect after the 2011  
6 amendment. This is a VA entered into in 2002 by order  
7 2002-65, and I can't read the case number. Number nine  
8 says there shall be no live entertainment, except that  
9 the applicant can continue to provide its weekly,  
10 single, acoustical guitar performance, and then  
11 applicant may provide recorded music and dancing for  
12 the patrons with a dance floor no larger than 400  
13 square feet.

14           And on the night in question, that the notice  
15 discusses, there was a DJ booth and a DJ in the DJ  
16 booth. The definition for entertainment for live music  
17 is -- includes live bands, karaoke, comedy shows,  
18 poetry readings, and disc jockeys, and therefore, the  
19 violation cited here is the violation of a voluntary  
20 agreement section nine, which I just read you up to the  
21 ellipses, which is not relevant. That's what we're  
22 here to do today.

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1           CHAIRPERSON MILLER: Okay. Thank you. Mr.  
2 Kline, do you have an opening statement?

3           MR. KLINE: Yes, I do. This, as was stated,  
4 is (inaudible) and the issue here is what governs the  
5 voluntary agreement, in terms of entertainment. Our  
6 opening argument and our closing argument will probably  
7 all be the same.

8           Basically what's at issue here is this. The  
9 entertainment endorsement provisions were put into the  
10 law in 2004. That was after the voluntary agreement  
11 was entered into. The voluntary agreement was entered  
12 into in 2002. Now at the time the voluntary agreement  
13 was entered into, the -- and he will attest, the  
14 evidence will show, that the -- and we have a  
15 stipulation, in fact, at this point, that the  
16 establishment was making use of a DJ at that time,  
17 intended to continue making use of the DJ. It was well  
18 known to all at that point, that he would be making use  
19 of a DJ, and the voluntary agreement references that  
20 there wouldn't be any live entertainment, other than  
21 the weekly acoustical guitar, and recorded music.

22           Now in 2002, it was thought, given no other

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1 guidance, that recorded music included a DJ. Now we're  
2 all conditioned, because dealing with the statute,  
3 those of you who have been on the Board, and me out  
4 here, for many years that entertainment means a DJ, but  
5 if you take yourself back to 2002, which I think we  
6 must do, many have said, many have argued, that this is  
7 a contract, which means that we look at the intention  
8 of the parties, and our evidence will demonstrate that  
9 it's beyond refute that the intent of the parties in  
10 2002 was to allow the establishment to continue making  
11 use of the DJ, that at that time it had already used  
12 for 32 years, if my math is (inaudible), and that's  
13 what we're here arguing right now, what we believe the  
14 evidence will show. Thank you.

15 CHAIRPERSON MILLER: Okay. Thank you.

16 MS. PHILLIPS: I call Felicia Martin, and if  
17 I may give her a copy of the investigation report,  
18 which I understand is part of the record.

19 CHAIRPERSON MILLER: Sure.

20 MS. PHILLIPS: Thank you.

21 CHAIRPERSON MILLER: Good morning. Do you  
22 swear to tell the truth, the whole truth, and nothing

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1 but the truth?

2 INVESTIGATOR MARTIN: I do.

3 CHAIRPERSON MILLER: Thank you.

4 MS. PHILLIPS: Ms. Martin, if you'll state  
5 your name for the record and spell it for the court  
6 reporter, please.

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

10 MS. PHILLIPS: Okay, and what is your  
11 occupation with the Alcohol Beverage?

12 INVESTIGATOR MARTIN: I am an investigator.

13 MS. PHILLIPS: And how long have you been an  
14 investigator?

15 INVESTIGATOR MARTIN: For approximately five  
16 years.

17 MS. PHILLIPS: And did you do any  
18 investigative work prior to coming to ABRA?

19 INVESTIGATOR MARTIN: Yes.

20 MS. PHILLIPS: And what was that?

21 INVESTIGATOR MARTIN: I had previously worked  
22 for the Metropolitan Police Department as a police

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1 officer.

2 MS. PHILLIPS: And does that include  
3 investigations?

4 INVESTIGATOR MARTIN: Yes, ma'am.

5 MS. PHILLIPS: All right and how many  
6 investigations, oh, strike that. Let's start with how  
7 long were you with MPD?

8 INVESTIGATOR MARTIN: Approximately 15 years.

9 MS. PHILLIPS: Fifteen years, and do you have  
10 an estimate of how many investigations you did during  
11 that time? Hundreds? Thousands?

12 INVESTIGATOR MARTIN: Well over 100. Yes.

13 MS. PHILLIPS: Okay. So in other words,  
14 you're doing investigations here in a similar manner  
15 you conducted them in MPD?

16 INVESTIGATOR MARTIN: Yes.

17 MS. PHILLIPS: And you follow the statutes  
18 that govern the Alcohol Beverage Regulation  
19 Administration, just as you follow the statutes that  
20 govern your police work. Is that fair?

21 INVESTIGATOR MARTIN: Yes, ma'am.

22 MS. PHILLIPS: Okay. In this case, at some

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1 point in time, did you take yourself to Third Edition?

2 INVESTIGATOR MARTIN: Yes.

3 MS. PHILLIPS: And do recall what dates those  
4 were?

5 INVESTIGATOR MARTIN: Yes. I went on  
6 Saturday, the 14th of April, 2012, and I was there  
7 Sunday morning, the 15th of April, 2012.

8 MS. PHILLIPS: And what brought you to the  
9 establishment?

10 INVESTIGATOR MARTIN: At the time, my  
11 supervisory investigator, Craig Stewart, instructed me  
12 to monitor Third Edition for possible VA violations and  
13 noise.

14 MS. PHILLIPS: Okay, and did you go to the  
15 establishment to do just that?

16 INVESTIGATOR MARTIN: Yes, I did.

17 MS. PHILLIPS: And what did you find?

18 INVESTIGATOR MARTIN: My first night was  
19 Saturday, the 14th of April, 2012. I sat across -- I  
20 sat in the 1200 block of Wisconsin Avenue, directly  
21 across from Third Edition. From that position, I was  
22 able to see that there was a DJ positioned in front of

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1 the window.

2 MS. PHILLIPS: And what did you do next?

3 INVESTIGATOR MARTIN: I next went to the  
4 establishment. I identified myself to an employee and  
5 requested to speak with the ABC manager or owner.

6 MS. PHILLIPS: And you did that?

7 INVESTIGATOR MARTIN: I did.

8 MS. PHILLIPS: And what else did you do, in a  
9 nutshell, while you were there?

10 INVESTIGATOR MARTIN: While I was there, I  
11 would have to refer to my report to give you the  
12 person's name that I spoke with.

13 MS. PHILLIPS: Okay. That would be good.

14 INVESTIGATOR MARTIN: Court's indulgence,  
15 please. The person I spoke with was Jeffery Smith, who  
16 identified himself as the ABC manager. I explained to  
17 Mr. Smith the reason for my visit and I also had in  
18 hand a copy of the establishment's voluntary agreement.

19 MS. PHILLIPS: At that point in time, did you  
20 have both of the voluntary agreements, because they  
21 seem to be a combined voluntary agreement.

22 INVESTIGATOR MARTIN: Yes.

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1 MS. PHILLIPS: The second one only amended  
2 part of the first. Is that correct?

3 INVESTIGATOR MARTIN: That's correct.

4 MS. PHILLIPS: All right. So you had both in  
5 your hand?

6 INVESTIGATOR MARTIN: I did.

7 MS. PHILLIPS: And then what did you do?

8 INVESTIGATOR MARTIN: I explained to Mr.  
9 Smith that the voluntary agreement prohibited live  
10 entertainment, such as a DJ. Mr. Smith then advised me  
11 that not only did they have one DJ, but they had two,  
12 which was located at the second floor.

13 MS. PHILLIPS: And did you witness the second  
14 DJ at the time you went out?

15 INVESTIGATOR MARTIN: No, not at that time I  
16 did not. I took Mr. Smith's word for it, and then I  
17 showed Mr. Smith the language in the voluntary  
18 agreement where it specifically states that a DJ was --

19 MS. PHILLIPS: And then you went back the  
20 next morning?

21 INVESTIGATOR MARTIN: I did.

22 MS. PHILLIPS: And then what -- or what had

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1 you done in the interim or the next morning?

2           INVESTIGATOR MARTIN: The next morning, on  
3 the 15th of April, 2012, I positioned myself again at  
4 the 1200 block of Wisconsin Avenue Northwest and  
5 monitored the establishment. It was orderly. At  
6 approximately 30 minutes later, I repositioned my  
7 vehicle to the 3200 block of Prospect Street Northwest  
8 on the east side -- the south side of the street facing  
9 eastbound.

10           As I sat there, a gentleman approached me and  
11 engaged me in a conversation. I later learned that  
12 this gentleman's name was Mr. Goss, and Mr. Goss had  
13 relayed to me that he knew the reason why I was there.

14           MS. PHILLIPS: Was he just a civilian or was  
15 he related to Third Edition, or did you ever find out?

16           INVESTIGATOR MARTIN: He advised me that he  
17 was related to Third Edition as a manager, and that he  
18 was working really hard to change the image of Third  
19 Edition.

20           MS. PHILLIPS: Was there a DJ on the 15th  
21 when you were there?

22           INVESTIGATOR MARTIN: Yes, ma'am, there was.

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1 MS. PHILLIPS: Did you check both levels this  
2 time, or no?

3 INVESTIGATOR MARTIN: Yes, I did. I actually  
4 -- what prompted me to go inside was that I can hear  
5 music emanating from the establishment and so I then  
6 followed the music.

7 Mr. Goss had relayed to me that the music was  
8 not coming from the Tiki Bar, that it was actually from  
9 the DJ on the second floor. Mr. Goss accompanied me  
10 inside of the establishment and I went to the second  
11 floor and after making my way through the crowd, I saw  
12 that there was a DJ booth set up, the gentleman had  
13 earphones on and he was also taking request for music.

14 MS. PHILLIPS: Now, just for the record and  
15 for me, what's the Tiki Bar?

16 INVESTIGATOR MARTIN: The Tiki Bar is  
17 relevant to our summer garden. For illustration --

18 MS. PHILLIPS: So, is it a summer garden for  
19 The Third Edition?

20 INVESTIGATOR MARTIN: Yes.

21 MS. PHILLIPS: Oh, okay. So, is it, like, on  
22 a balcony or is it out in front or is it in the back or

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1 in the side?

2 INVESTIGATOR MARTIN: It's on the -- it's at  
3 the rear of the establishment.

4 MS. PHILLIPS: All right. So, in other words  
5 Mr. Goss was saying, the music isn't too loud outside,  
6 it coming from inside.

7 INVESTIGATOR MARTIN: Correct.

8 MS. PHILLIPS: Is that a fair summary?

9 INVESTIGATOR MARTIN: Yes.

10 MS. PHILLIPS: Okay. All right. Is there  
11 anything else you looked at when you were looking at --  
12 strike that.

13 After you finished your investigation, do you  
14 render this information into a report?

15 INVESTIGATOR MARTIN: Yes.

16 MS. PHILLIPS: And did you do so in this  
17 case?

18 INVESTIGATOR MARTIN: I did.

19 MS. PHILLIPS: And did you include any  
20 attachments?

21 INVESTIGATOR MARTIN: I did.

22 MS. PHILLIPS: And what were the attachments?

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1 INVESTIGATOR MARTIN: After reducing the  
2 report to writing I included exhibits. I included the  
3 DJ that was on the first floor, the DJ that was on the  
4 second floor.

5 MS. PHILLIPS: And the voluntary agreements  
6 was here?

7 INVESTIGATOR MARTIN: And the voluntary  
8 agreement.

9 MS. PHILLIPS: Okay. So, how many exhibits  
10 is that all totaled?

11 INVESTIGATOR MARTIN: It totals, the ones I  
12 spoke upon are three.

13 MS. PHILLIPS: Okay. Well, I have four  
14 exhibits mentioned at the back of the report on this  
15 matter. Am I mistaken?

16 INVESTIGATOR MARTIN: I need to look at my  
17 report. Court's indulgence, please.

18 Yes. Yes.

19 MS. PHILLIPS: So, the one we didn't discuss  
20 was?

21 INVESTIGATOR MARTIN: The one we didn't  
22 discuss was the position my vehicle was located in the

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1 3200 block of Prospect.

2 MS. PHILLIPS: Oh, I see. So, that's Exhibit  
3 Number 4?

4 INVESTIGATOR MARTIN: That exhibit, on my  
5 report, is actually Exhibit Number 3.

6 MS. PHILLIPS: Oh, okay.

7 CHAIRPERSON MILLER: Okay, do you think you  
8 identify the exhibits, 1, 2, 3, 4 that you're referring  
9 to? They're attached to your investigative report,  
10 correct?

11 INVESTIGATOR MARTIN: Yes, ma'am.

12 CHAIRPERSON MILLER: But I don't see exactly  
13 which one is 1 and 2 and 3 and 4. If you don't mind.

14 MR. KLINE: We'll stipulate to the report,  
15 it'll save some time.

16 CHAIRPERSON MILLER: I just wanted to know --  
17 you'll stipulate to the --

18 MR. KLINE: The report.

19 CHAIRPERSON MILLER: Right. Okay. But  
20 what's the Exhibit 4 she's referring to right now then?  
21 I guess I just want to make sure that we're following.

22 MS. PHILLIPS: Exhibit 4?

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1 CHAIRPERSON MILLER: Is that what you're  
2 referring to right now?

3 MS. PHILLIPS: No, that was Exhibit 2 --

4 CHAIRPERSON MILLER: Or --

5 MS. PHILLIPS: -- was the one apparently that  
6 -- or it's 3 that she didn't count.

7 INVESTIGATOR MARTIN: Yes.

8 MS. PHILLIPS: So, on the second page of the  
9 report it says, Exhibit 1, voluntary agreement; Exhibit  
10 2, photo of DJ on first floor; Exhibit 3, photo of Tiki  
11 Bar/Investigator Martin's location; Exhibit 4,  
12 photograph of DJ on second floor. Correct, Ms. Martin?  
13 I'm just reading it.

14 INVESTIGATOR MARTIN: Okay.

15 CHAIRPERSON MILLER: Right. Okay, thank you.

16 MS. PHILLIPS: All right.

17 CHAIRPERSON MILLER: That's right there on  
18 Page 2. Thank you.

19 MS. PHILLIPS: All right.

20 CHAIRPERSON MILLER: Okay.

21 MS. PHILLIPS: And did you -- the report has  
22 been stipulated to, so that concludes our discussion.

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1 INVESTIGATOR MARTIN: Yes.

2 MS. PHILLIPS: Did you refer to any of the  
3 code from an investigary (sic) perspective when you did  
4 this investigation?

5 INVESTIGATOR MARTIN: Yes, I did.

6 MS. PHILLIPS: And what section did you look  
7 at?

8 INVESTIGATOR MARTIN: I enforced the -- I  
9 have to refer to my report.

10 MS. PHILLIPS: Okay.

11 INVESTIGATOR MARTIN: I enforced the D.C.  
12 Official Code 25823 as it pertains to voluntary  
13 agreements.

14 MS. PHILLIPS: And did you look up the  
15 definition of entertainment as it appears in the code?

16 INVESTIGATOR MARTIN: Yes, I did.

17 MS. PHILLIPS: And what did you determine  
18 about the presence or absence of a DJ versus the  
19 voluntary agreement?

20 INVESTIGATOR MARTIN: The voluntary agreement  
21 specifically spoke upon the acoustic playing of a  
22 guitarist. And so when I looked at the definition for

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1 entertainment, for live entertainment, it showed that a  
2 DJ is considered live entertainment.

3 MS. PHILLIPS: And do you -- did you hear the  
4 opening statement of Mr. Kline to say that the law  
5 changed in 2004?

6 INVESTIGATOR MARTIN: Yes, I did.

7 MS. PHILLIPS: Okay. Were you able to  
8 determine when that law changed?

9 INVESTIGATOR MARTIN: No.

10 MS. PHILLIPS: Okay. All right. That's all  
11 for the District.

12 CHAIRPERSON MILLER: Okay, I'd like to note  
13 that Mr. Jones has joined us on the dais.

14 MR. JONES: (inaudible).

15 CHAIRPERSON MILLER: And Mr. Kline, do you  
16 have some cross?

17 MR. KLINE: Yes. Investigator Martin, so  
18 when you went there you didn't see any acoustic guitar  
19 player, correct?

20 INVESTIGATOR MARTIN: Good morning, Mr.  
21 Kline. No, I did not.

22 MR. KLINE: Okay. And you didn't see any

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1 other live entertainment, did you?

2 INVESTIGATOR MARTIN: Other than the DJ?

3 MR. KLINE: Correct.

4 INVESTIGATOR MARTIN: No.

5 MR. KLINE: Now, without reference to the  
6 D.C. Code, you didn't have any reason to believe that  
7 the DJ was live entertainment, did you?

8 MS. PHILLIPS: Objection.

9 MR. KLINE: Is this?

10 CHAIRPERSON MILLER: Do -- I -- do you want  
11 to respond to that?

12 MR. KLINE: I don't know what the objection  
13 is. I don't understand the basis of the objection.

14 CHAIRPERSON MILLER: Okay, right.

15 MR. KLINE: She opened the door on this  
16 issue.

17 CHAIRPERSON MILLER: You did ask her --

18 MS. PHILLIPS: Right.

19 CHAIRPERSON MILLER: -- if she relied on the  
20 code, correct?

21 MS. PHILLIPS: I did ask her if she relied on  
22 the code.

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1 CHAIRPERSON MILLER: So, what's your  
2 objection?

3 MS. PHILLIPS: She stated that she relied on  
4 the code, you know, asking "other than if you relied on  
5 the code," that's what investigators do, rely on the  
6 code.

7 CHAIRPERSON MILLER: What was --

8 MS. PHILLIPS: That's my objection.

9 CHAIRPERSON MILLER: -- question?

10 MR. KLINE: My question was, without -- I'll  
11 paraphrase it, because I don't remember exactly.

12 CHAIRPERSON MILLER: Okay.

13 MR. KLINE: That without looking at the code,  
14 that she wouldn't have concluded that this was live  
15 entertainment. It's really the reverse of the question  
16 that was asked by Ms. Phillips.

17 CHAIRPERSON MILLER: Do you have objection to  
18 that?

19 (No audible response.)

20 CHAIRPERSON MILLER: No. Okay, go ahead.  
21 You can answer the question.

22 INVESTIGATOR MARTIN: I believe the DJ was

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1 live entertainment.

2 MR. KLINE: And what do -- and why do you  
3 believe that?

4 INVESTIGATOR MARTIN: Because there -- he's -  
5 - a DJ is the person who provides the -- who's  
6 providing the music, the entertainment for the patron.

7 MR. KLINE: All right. So, in your mind is  
8 recorded music entertainment?

9 INVESTIGATOR MARTIN: Pre-recorded music?

10 MR. KLINE: Yes.

11 INVESTIGATOR MARTIN: Yes.

12 MR. KLINE: It is entertainment?

13 INVESTIGATOR MARTIN: Yes.

14 MR. KLINE: All right. So, in your mind any  
15 pre-recorded music would be entertainment, correct?

16 INVESTIGATOR MARTIN: Yes.

17 MR. KLINE: Okay. And any pre-recorded music  
18 would be live entertainment?

19 INVESTIGATOR MARTIN: Absent the law or are  
20 you still asking me my opinion?

21 MR. KLINE: Well, do you see a difference  
22 between the law and your opinion?

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1 INVESTIGATOR MARTIN: Well, I only enforce  
2 the laws. So --

3 MR. KLINE: So, you don't have an opinion if  
4 it's not written in the law?

5 INVESTIGATOR MARTIN: That's what I need to  
6 go by, Mr. Kline.

7 MR. KLINE: Okay. But do you have an  
8 opinion, other than what you read in the law?

9 INVESTIGATOR MARTIN: I do.

10 MR. KLINE: Okay. So, let me ask you your  
11 opinion. In your opinion is a DJ live entertainment?

12 INVESTIGATOR MARTIN: Yes.

13 MR. KLINE: In your opinion, is recorded  
14 music live entertainment?

15 MS. PHILLIPS: I'm going to object to  
16 relevance.

17 CHAIRPERSON MILLER: Okay.

18 MR. KLINE: I think the Government opened  
19 this door on this issue. They asked the investigator -  
20 - the investigator was asked how she came to this  
21 conclusion. She relied on the law, now we're dealing  
22 with her personal experiences. It seems to me --

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1 CHAIRPERSON MILLER: She relies on the law --

2 MR. KLINE: -- perfectly relevant.

3 CHAIRPERSON MILLER: -- what's the relevant  
4 of her personal experience?

5 MR. KLINE: Well, we would proffer that there  
6 isn't any showing that this particular law was entered  
7 into -- was -- that this particular law was in  
8 existence when the voluntary agreement was entered  
9 into. And what we're talking about here is not a  
10 violation of the entertainment endorsement statute or  
11 regulations, we're talking about a violation of the  
12 voluntary agreement and what's in the voluntary  
13 agreement.

14 CHAIRPERSON MILLER: Okay, I --

15 MS. PHILLIPS: Same objection.

16 CHAIRPERSON MILLER: Right. I understand. I  
17 thought I understood your other question more. Her  
18 personal opinion is almost I don't think relevant. If  
19 she has a job to do she says she relies on the code.  
20 If you wanted to ask her if she looked to anything else  
21 in reliance.

22 MR. KLINE: That's fine. I'll wait for that

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1 one.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: I don't have any other questions  
4 of the witness.

5 CHAIRPERSON MILLER: Board questions?

6 I just have one question. First in this  
7 case, when you are making an assessment whether the  
8 voluntary agreement has been violated, well what do you  
9 look at to make that decision?

10 INVESTIGATOR MARTIN: Well, in general I read  
11 whatever is applicable to that particular establishment  
12 and I look for anything that's outside of that.

13 CHAIRPERSON MILLER: I mean for instance, you  
14 looked at the code. Isn't that correct?

15 INVESTIGATOR MARTIN: Yes.

16 CHAIRPERSON MILLER: And you looked at the  
17 voluntary agreement?

18 INVESTIGATOR MARTIN: Yes.

19 CHAIRPERSON MILLER: Do you consult with any  
20 signatories on the voluntary agreement?

21 INVESTIGATOR MARTIN: Yes, I do at times.

22 Yes.

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1 CHAIRPERSON MILLER: As to what was their  
2 intent, for instance?

3 INVESTIGATOR MARTIN: At times I would have  
4 to say sometimes the intent is not there, it's just  
5 implied. Then there are times where it's just the  
6 language is direct.

7 CHAIRPERSON MILLER: Well, how would you  
8 characterize the language in this case?

9 INVESTIGATOR MARTIN: That it was direct.

10 CHAIRPERSON MILLER: Direct?

11 INVESTIGATOR MARTIN: Yes.

12 CHAIRPERSON MILLER: Okay. Did you ask the  
13 licensee what his understanding of the intent of the  
14 language was?

15 INVESTIGATOR MARTIN: No, I did not.

16 CHAIRPERSON MILLER: Okay. And you didn't  
17 ask any of the other parties. Is that correct?

18 INVESTIGATOR MARTIN: No.

19 CHAIRPERSON MILLER: Okay. Yeah, Mr.  
20 Silverstein?

21 MR. SILVERSTEIN: Thank you, Investigator  
22 Martin for, as usually, a thorough and fine report.

1           A voluntary agreement is not a contract  
2 between the -- our agency and an establishment, it's a  
3 contract between two parties that we are required to  
4 enforce or we will choose to enforce if we find it to  
5 be enforceable and if we accept it. And in this case  
6 do we have any knowledge of what they meant in 2002,  
7 when they say said no live entertainment?

8           INVESTIGATOR MARTIN: I have no idea. I'm  
9 quite sure a lot of things were kicked around and the  
10 ANC and the licensee did what they thought was best for  
11 the community.

12           MR. SILVERSTEIN: The licensee's counsel has  
13 stated that they had had this DJ booth for two score  
14 and four years or something to that effect. And the  
15 (audio cuts out) because this would get into the state  
16 of mind of --

17           (Off microphone comment.)

18           MR. SILVERSTEIN: Oh, that again. Do you  
19 know if that is the case?

20           CHAIRPERSON MILLER: Did you get it? Okay.

21           COURT REPORTER: (inaudible).

22           MR. SILVERSTEIN: Is it still cutting out?

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1 CHAIRPERSON MILLER: No.

2 THE COURT REPORTER: Now it's fine.

3 MR. SILVERSTEIN: Okay. If this was there at  
4 this time and if this voluntary agreement might have  
5 been created to (audio cuts out) back then. Do we have  
6 any knowledge of that at all? Or would it even be far  
7 to --

8 MS. PHILLIPS: Well, if you're asking her, I  
9 think it calls for speculation, because -- but did you  
10 -- can you answer that question --

11 MR. SILVERSTEIN: No, I asked do you have any  
12 knowledge of it.

13 MS. PHILLIPS: -- (inaudible). Right. Thank  
14 you.

15 INVESTIGATOR MARTIN: Any of what?

16 MR. SILVERSTEIN: Of how (audio cuts out),  
17 you know, sort of the (audio cuts out).

18 INVESTIGATOR MARTIN: I really can't answer  
19 to 2002 what was intended for the parties. I don't  
20 know.

21 MR. SILVERSTEIN: Okay. That's not the kind  
22 of thing that you would normally -- that you even have

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1 access to in your work, and you've got a lot of things  
2 to do?

3 INVESTIGATOR MARTIN: Access to?

4 MR. SILVERSTEIN: To dig up what happened ten  
5 years ago in a voluntary agreement and what the  
6 negotiations were all about and what the state of mind  
7 of the people who signed it might have been at that  
8 time. It's just not fair for you to have to figure that  
9 out. Is that what you're saying?

10 INVESTIGATOR MARTIN: That's pretty much what  
11 I'm saying.

12 MR. SILVERSTEIN: Okay.

13 INVESTIGATOR MARTIN: Our work doesn't lead  
14 us to go to the archives and read the transcript. I  
15 don't even know if transcripts was available then to  
16 read to understand, you know, where the disconnect may  
17 be.

18 MR. SILVERSTEIN: Okay. Thank you very much.

19 INVESTIGATOR MARTIN: You're welcome.

20 CHAIRPERSON MILLER: Other board member  
21 questions? Yes.

22 INVESTIGATOR MARTIN: Good morning, Mr.

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1 Alberti.

2 MR. ALBERTI: Good work. When you were asked  
3 -- you were instructed to monitor (inaudible)?

4 INVESTIGATOR MARTIN: Yes, sir.

5 MR. ALBERTI: Do you know --

6 CHAIRPERSON MILLER: You okay?

7 THE COURT REPORTER: Yeah, can you say the  
8 question again?

9 MR. ALBERTI: Yes. Investigator Martin, you  
10 were instructed to monitor Third Edition, by your  
11 investigator -- your supervisor, Investigator Stewart  
12 (ph). Do you know what prompted him to instruct you to  
13 do that?

14 INVESTIGATOR MARTIN: No, I do not.

15 MR. ALBERTI: Okay. Thank you. That's --

16 INVESTIGATOR MARTIN: You're welcome.

17 MR. ALBERTI: -- all my questions.

18 CHAIRPERSON MILLER: Okay. Is there any --  
19 no other board questions?

20 MR. BROOKS: Yeah, I do have a question.

21 CHAIRPERSON MILLER: Oh, Mr. Brooks.

22 MR. BROOKS: Yes. Investigator Martin, have

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1 you had an occasion to monitor Third Edition previously  
2 because of noise?

3 INVESTIGATOR MARTIN: Yes.

4 MR. BROOKS: And what was that about?

5 INVESTIGATOR MARTIN: It was primarily for  
6 the Tiki Bar, the noise in the Tiki Bar area.

7 MR. BROOKS: And when you say "noise," what  
8 kind of noise are you referring to?

9 INVESTIGATOR MARTIN: My understanding of the  
10 complaint was that the Tiki Bar had had music emanating  
11 into the community.

12 MR. BROOKS: Okay. And the complaint came  
13 from the community?

14 INVESTIGATOR MARTIN: Yes, sir.

15 MR. BROOKS: All right. Thank you, Madam  
16 Chair.

17 CHAIRPERSON MILLER: Okay. Thank you.  
18 Anybody else? Any redirect or any other board  
19 questions? No. Okay.

20 MS. PHILLIPS: No thank you, Madam Chair.

21 CHAIRPERSON MILLER: Thank you very much.

22 INVESTIGATOR MARTIN: Thank you.

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1 CHAIRPERSON MILLER: Okay, is that -- do you  
2 rest your case?

3 MS. PHILLIPS: If the exhibit isn't already  
4 part of the record, I move the admission of the  
5 investigator report and the exhibits, but I understand  
6 that it's usually part of the record.

7 CHAIRPERSON MILLER: It's part of the record  
8 and Mr. Kline didn't objection. And it's -- okay, it's  
9 in. Yeah. All right?

10 MS. PHILLIPS: So the District rests.

11 CHAIRPERSON MILLER: Thank you.

12 Mr. Kline?

13 MR. KLINE: Yes. I'll call to the stand  
14 Gregory Talcott. No, leave them here. You want me --  
15 you might --

16 MS. PHILLIPS: Because you need it.

17 MR. KLINE: I recognize it.

18 CHAIRPERSON MILLER: Swear to tell the truth,  
19 the whole truth, nothing but the truth?

20 MR. TALCOTT: Sure.

21 CHAIRPERSON MILLER: Okay, thank you.

22 MR. KLINE: State your name for the record,

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1 please.

2 MR. TALCOTT: Gregory Talcott.

3 MR. KLINE: And what is your relationship to  
4 the Third Edition?

5 MR. TALCOTT: President of the corporation.

6 MR. KLINE: And how long have you been  
7 involved with the corporation?

8 MR. TALCOTT: Since 1977.

9 MR. KLINE: 1977. Okay. And how long had  
10 the business been in existence before that, I should  
11 ask?

12 MR. TALCOTT: Since 1969.

13 MR. KLINE: Since 1969? Okay. And what's  
14 been your connection with the business over all these  
15 years, from '77.

16 MR. TALCOTT: I was an employee in various  
17 positions to management and then purchased half of it  
18 from the original owner, some time around 1982 and then  
19 to make a long story short, bought him out a few years  
20 later.

21 MR. KLINE: Okay. Now, tell the board what  
22 entertainment, if any, has been featured in the

1 establishment over the years that you've been involved.

2 MR. TALCOTT: Oh, at least from the early  
3 '70s, because I'd known of the establishment before I  
4 started working there, even, there's always been a DJ,  
5 generally it's been Thursday, Friday, Saturday night on  
6 the second floor, often enough on a Wednesday night as  
7 well. And for probably most of four years we've had a  
8 DJ on the first floor on Sunday nights, for local  
9 restaurant and retailers, sort of a employee night,  
10 sort of a rock and roll, oldies night on Sunday nights,  
11 on the first floor, in the front window.

12 MR. KLINE: All right. Now --

13 MR. TALCOTT: And very limited live  
14 entertainment. At the time we were working out the  
15 voluntary agreement between myself, Peter Pulsifer (ph)  
16 and Bill Starrels (ph), we were doing one -- as noted,  
17 one night of an acoustical guitarist who comes in. And  
18 that's -- it was generally on a Thursday night or  
19 possibly a Tuesday night, but, you know, about once a  
20 week and that was the extent of our live entertainment.

21 MR. KLINE: All right. Now, in terms of the  
22 DJ, so you became involved in '77 you said --

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1 MR. TALCOTT: Yes.

2 MR. KLINE: -- correct? At that time there  
3 was already a DJ?

4 MR. TALCOTT: Yes.

5 MR. KLINE: And that continued from '77 until  
6 when? Did it ever --

7 MR. TALCOTT: Current.

8 MR. KLINE: -- cease?

9 MR. TALCOTT: No.

10 MR. KLINE: Currently?

11 MR. TALCOTT: Still.

12 MR. KLINE: All right. So, it's gone on --  
13 you said, and it's stipulated at this point, as a  
14 result of information from you, that this has gone on  
15 for 44 years?

16 MR. TALCOTT: Yes.

17 MR. KLINE: All right. Now, in 2002  
18 mentioned Peter Pulsifer and Bill Starrels. Who are  
19 they, just so the record's clear.

20 MR. TALCOTT: At the time Peter Pulsifer was  
21 president, it could be noted on the voluntary  
22 agreement. And Bill Starrels I believe was the

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1 commissioner and it was essentially --

2 MR. KLINE: What?

3 MR. TALCOTT: ANC.

4 MR. KLINE: Okay, the Advisory Neighborhood  
5 Commission?

6 MR. TALCOTT: Yes.

7 MR. KLINE: Okay.

8 MR. TALCOTT: And it was only the three of us  
9 who negotiated over, probably over a year, the  
10 voluntary agreement. I know it started well early into  
11 2001. I have several drafts of the agreement that are  
12 dated. It could go back to 2000.

13 MR. KLINE: Now, what led to the negotiation  
14 of that voluntary agreement? Was it triggered by a  
15 protest?

16 MR. TALCOTT: I don't recall. I mean, I was  
17 contacted to -- I think they were -- the ANC was of a  
18 mind to get voluntary agreements out of ABC licensed  
19 establishment at the time. I don't recall that there  
20 was a protest.

21 MR. KLINE: Okay. And so you entered into  
22 this voluntary agreement. Now the voluntary agreement

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1 that you entered into has a paragraph concerning  
2 entertainment. And I'm going to, with the board's  
3 commission, hand a licensee a copy of the agreement,  
4 because there's already one in the record and we need  
5 not mark it and all that.

6 CHAIRPERSON MILLER: Okay.

7 MR. KLINE: I believe I know it by heart.

8 MR. TALCOTT: Thank you.

9 MR. KLINE: And you've seen the report in  
10 this matter --

11 MR. TALCOTT: Yes.

12 MR. KLINE: -- correct?

13 MR. TALCOTT: I have.

14 MR. KLINE: And the voluntary agreement  
15 that's attached to the report is the voluntary  
16 agreement that you entered into?

17 MR. TALCOTT: Correct.

18 MR. KLINE: And the report that -- the -- I'm  
19 sorry, the voluntary agreement that you have in front  
20 of you is identical to the one attached to the report?

21 MR. TALCOTT: Correct.

22 MR. KLINE: So that we're all clear. All

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1 right. And what's the paragraph in there that deals  
2 with entertainment?

3 MR. TALCOTT: Paragraph 9.

4 MR. KLINE: All right and read Paragraph 9.

5 MR. TALCOTT: There shall be no live  
6 entertainment except that the applicant may continue to  
7 provide its weekly single acoustical guitar  
8 performance. Applicant may provide recorded information  
9 and dancing by patrons with a dance floor no larger  
10 than 400 square feet, provided that no noise is  
11 generated external to the establishment in violation of  
12 the law, including 23 DCMR (inaudible).

13 MR. KLINE: Now what was your understanding  
14 of this provision when you executed this voluntary  
15 agreement back in actually 2001, it looks like,  
16 December 19th. Is that the date on the second page?

17 MR. TALCOTT: Well, yeah, that's what I  
18 recalled. And I believe this was an original. I don't  
19 know why we may have gone back and have a 2002 date,  
20 I'm not sure.

21 MR. KLINE: Just for the record, I think the  
22 2002 date refers to the date of the board's order.

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1 MR. TALCOTT: It may have been filed.

2 MR. KLINE: Given that it was executed  
3 (inaudible).

4 MR. TALCOTT: Yeah, well this is December of  
5 2001, late December, so I see that.

6 MR. KLINE: So, we're -- let me repeat my  
7 question.

8 MR. TALCOTT: Right.

9 MR. KLINE: What's your understanding of the  
10 meaning of Paragraph 9 in the voluntary agreement?

11 MR. TALCOTT: They were hoping -- they were  
12 suggesting that they would not want me to come in with  
13 bands and provide live entertainment.

14 MR. KLINE: All right. Now, the Paragraph 9  
15 also contemplates, in fact allows you to have a dance  
16 floor, correct?

17 MR. TALCOTT: Correct.

18 MR. KLINE: And it also says that you may, as  
19 awkward as it is, provide dancing.

20 MR. TALCOTT: Correct.

21 MR. KLINE: All right. What -- in your mind  
22 what did that mean, provide dancing?

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1 MR. TALCOTT: Well, it was well known and  
2 understood and agreed that I had a DJ at the Third  
3 Edition, from basically its inception. The reason that  
4 live -- the acoustical guitarist is even identified in  
5 that paragraph is because it was an -- the exception to  
6 the live entertainment. It wasn't even contemplated  
7 that a DJ was an exception to that or -- I mean, at the  
8 time Bill Starrels had probably spent as many hours in  
9 that establishment as I had. Well known there was a DJ  
10 there, it wasn't addressed, it wasn't considered live  
11 entertainment.

12 MR. KLINE: Okay. So, you're saying it  
13 wasn't considered live entertainment --

14 MR. TALCOTT: Correct.

15 MR. KLINE: -- at that time?

16 MR. TALCOTT: A DJ. Correct.

17 MR. KLINE: Okay. All right. So, in terms  
18 of the dancing that would quote/unquote be provided, it  
19 was understand -- understood that people would be  
20 dancing to the music spun by a DJ?

21 MR. TALCOTT: Certainly.

22 MR. KLINE: You've been in this business a

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1 long time, obviously. In your experience, how else  
2 might music be provided for people to dance, other than  
3 by a  
4 DJ?

5 MR. TALCOTT: I can't imagine.

6 MR. KLINE: Okay. A band?

7 MR. TALCOTT: Live entertainment.

8 MR. KLINE: All right. Now there came a time  
9 in 2010 when the voluntary agreement was amended,  
10 correct?

11 MR. TALCOTT: Yes.

12 MR. KLINE: Or 2011, actually. I think the  
13 date of the amendment is February 4, 2011. Would you  
14 agree with that, if that's what the record shows?

15 MR. TALCOTT: If that's what the record  
16 shows. I don't have it in front of me.

17 MR. KLINE: How did that amendment to the  
18 voluntary agreement come about?

19 MR. TALCOTT: You might refresh my memory as  
20 to the catalyst of that. I don't recall.

21 MR. KLINE: All right. Was there a protest  
22 of the renewal of the license, if you recall?

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1 MR. TALCOTT: I don't recall.

2 MR. KLINE: All right. Were there any issues  
3 raised with respect to the DJ that you've admitted you  
4 had on the premises all these years?

5 MR. TALCOTT: No.

6 MR. KLINE: No?

7 MR. TALCOTT: No.

8 MR. KLINE: Now, in terms of the DJ or DJs  
9 that you've had on the premises, has this been a secret  
10 or is it -- would everybody know that that's what's  
11 going on?

12 MR. TALCOTT: Everybody knows that.  
13 Everybody involved in any negotiations with the ANC,  
14 the ABRA I'm assuming has known there's been a DJ there  
15 for 44 years. It's certainly not a secret, nothing we  
16 would hide, as there's a DJ in the front window, on the  
17 first floor, once a week.

18 MR. KLINE: There's a DJ in the front window  
19 on the first floor?

20 MR. TALCOTT: There -- not lately, not in the  
21 last couple of years too much. I mean, occasionally  
22 there has been, but for 40 years there was a DJ every

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1 Sunday night, on the first floor, in the front window.

2 MR. KLINE: And after 2001 when this  
3 voluntary agreement was entered into, was there a DJ in  
4 the front window on the first floor?

5 MR. TALCOTT: Yes.

6 MR. KLINE: All right. Approximately when  
7 did that stop?

8 MR. TALCOTT: It might have been within the  
9 last two years. I mean, we might have had a special  
10 occasion where we've had a DJ set up there for oldies  
11 again, but it's not a regular Sunday night part of the  
12 business model, currently.

13 MR. KLINE: Since you entered into the  
14 voluntary agreement, in 2001, has anyone complained to  
15 you that you've somehow violated the voluntary  
16 agreement by having a DJ on the premises?

17 MR. TALCOTT: Not until Inspector Martin.  
18 Not a complaint, but the notice that it might be an  
19 issue. No complaints, no.

20 MR. KLINE: Have you had contact with Mr.  
21 Starrels who you referenced previously?

22 MR. TALCOTT: Many, many times.

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1 MR. KLINE: And has he voiced complaints  
2 about your establishment from time to time?

3 MR. TALCOTT: Not about a DJ.

4 MR. KLINE: Okay, but he has -- you -- he has  
5 not been shy about voicing complaints when he believed  
6 that there was some violation of the VA or law going  
7 on. Is that --

8 MR. TALCOTT: Correct.

9 MR. KLINE: -- is that fair? But at no time  
10 did he voice to you any complaint concerning the fact  
11 that you had a DJ in violation of the voluntary  
12 agreement?

13 MR. TALCOTT: Correct.

14 MR. KLINE: All right. I want to show you  
15 what we'll mark as Applicant's 1 and ask you -- flip  
16 through it and ask you if you -- tell me if you  
17 recognize that document.

18 MR. TALCOTT: I do recognize it.

19 MR. KLINE: What is it?

20 MR. TALCOTT: Part of the application process  
21 for I believe this might have been '92. A final --  
22 when I purchased the remaining shares from the original

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1 owner I think there was a finance period that took some  
2 while for me to perform. So, this was the final  
3 transaction of transferring the license from Thomas  
4 Gregory Smith over to me, again, to make a long story  
5 short. But this was part of my application process to  
6 take over 100 percent ownership of 1218 Wisc, Inc.

7 MR. KLINE: All right. Would you turn to the  
8 last page?

9 MR. TALCOTT: Second to last page?

10 MR. KLINE: The last page.

11 MR. TALCOTT: Okay. Yes.

12 MR. KLINE: Did you sign -- does your  
13 signature appear there?

14 MR. TALCOTT: Yes.

15 MR. KLINE: Is it notarized?

16 MR. TALCOTT: Yes.

17 MR. KLINE: What's the date?

18 MR. TALCOTT: August, '92, the 13th.

19 MR. KLINE: Okay. So, to the best of your  
20 recollection is that when that was all done?

21 MR. TALCOTT: Yes.

22 MR. KLINE: Now, turning your attention to

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1 the third page, Number 25. Would you read 25 A, B, C  
2 and D?

3 MR. TALCOTT: Yes. A.) Describe the nature  
4 of the operation. Answer is: Restaurant, tavern  
5 offering full American menu with dancing provided for  
6 patrons.

7 B.) MS. PHILLIPS: Describe the kind of  
8 entertainment to be offered, including specifically  
9 whether any nude performances are to take place.  
10 Answer: No live entertainment or nude performances.  
11 Recorded music provided by tapes and disc jockey. C.)

12 MS. PHILLIPS:

13 Describe the kind of music to be provided.  
14 Answer: Contemporary. Do you want D as well?

15 MR. KLINE: D, as long as we might as well  
16 finish it out.

17 MR. TALCOTT: MS. PHILLIPS: What age group  
18 do you expect to frequent your establishment? Answer:  
19 25 and older.

20 MR. KLINE: All right. Thank you. Has the  
21 model of the operation of your business changed at all  
22 since this was filed with the board in 1992?

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1 MR. TALCOTT: No.

2 MR. KLINE: You did add some acoustic music,  
3 correct?

4 MR. TALCOTT: We might have -- no, we would  
5 have had that before the voluntary agreement as well.

6 MR. KLINE: No, I'm talking about in '92.

7 MR. TALCOTT: You know, I think it had  
8 happened, but probably not necessarily on a weekly  
9 basis. At the time the voluntary agreement was  
10 negotiated we were doing it weekly, acoustical  
11 guitarist and so we put it in there as the live  
12 entertainment portion.

13 MR. KLINE: Now, you were doing that weekly.  
14 Was there a specific night or nights that you were  
15 doing it?

16 MR. TALCOTT: It was generally either a  
17 Tuesday or a Thursday night.

18 MR. KLINE: And you are aware that at the  
19 time that you sought your entertainment endorsement you  
20 knew that you needed an entertainment endorsement to  
21 cover the DJ operations as well, correct?

22 MR. TALCOTT: Yes.

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1 MR. KLINE: All right. And I note that your  
2 application allows you entertainment activities seven  
3 days a week. Is that correct?

4 MR. TALCOTT: Correct.

5 MR. KLINE: Why is that if you only had the  
6 acoustic player once or twice a week at most?

7 MR. TALCOTT: Because we always had a DJ up  
8 to five nights a week.

9 MR. KLINE: I would move Licensee's Exhibit  
10 1, it is in the board's official file, but we have it,  
11 so we can move it.

12 CHAIRPERSON MILLER: Okay. I need to see it.  
13 I -- thank you. No objection, correct? Ms. Phillips?  
14 Oh, it's in the files.

15 MR. ALBERTI: It's in our files.

16 CHAIRPERSON MILLER: Yeah. Thanks. Okay,  
17 it's admitted. It's in the file.

18 (Licensee's Exhibit 1 admitted into the  
19 record.)

20 MR. KLINE: And I don't have any other  
21 questions of the witness at this time. Thank you.

22 CHAIRPERSON MILLER: Okay. Ms. Phillips?

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1 MS. PHILLIPS: Thank you, Madam Chair. Is it  
2 afternoon yet? Not quite. Good morning.

3 MR. TALCOTT: Good day.

4 MS. PHILLIPS: You've looked at the voluntary  
5 agreements. Your signature's on both of them. Is that  
6 fair?

7 MR. TALCOTT: Yes.

8 MS. PHILLIPS: Okay. Did you -- when he --  
9 when Mr. Kline handed you the report with the exhibits,  
10 did you get a letter dated December 19th, 2001 attached  
11 with your copy here?

12 MR. KLINE: I didn't hand him that --

13 MR. TALCOTT: I don't have that.

14 MR. KLINE: -- for the record.

15 MR. TALCOTT: I don't have the report with  
16 exhibits.

17 MS. PHILLIPS: Well, I'll just give you a  
18 whole one.

19 MR. TALCOTT: Okay.

20 MS. PHILLIPS: If I may approach, Madam  
21 Chair?

22 CHAIRPERSON MILLER: Okay.

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1 BOARD MEMBER: You can approach.

2 MS. PHILLIPS: All right. I don't know how  
3 to tell you how many pages in, but there's a letter  
4 dated December 19th, 2001 attached as part of the  
5 voluntary agreements. Have you found that?

6 MR. TALCOTT: Not quite.

7 MS. PHILLIPS: Just take your time. That's  
8 Exhibit 1, but it's deep into Exhibit 1.

9 MR. TALCOTT: Thirteen -- the date again?  
10 December 19th?

11 MS. PHILLIPS: Yes.

12 MR. TALCOTT: I have the agreement dated  
13 December 19th.

14 MS. PHILLIPS: It's a letter from the  
15 Advisory --

16 MR. TALCOTT: Okay.

17 MS. PHILLIPS: -- Neighborhood Commission  
18 that --

19 MR. TALCOTT: I have it.

20 MS. PHILLIPS: It was all incorporated in  
21 what I got, so I believe it's part of the voluntary  
22 agreement.

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1 MR. TALCOTT: I have it.

2 MS. PHILLIPS: You have it?

3 MR. TALCOTT: Yes.

4 MS. PHILLIPS: Do you recall, if you read the  
5 first line, that the ANC protested in 2001 the  
6 application, in part because of recurring problems with  
7 overcrowding, increased noise, rowdy behavior and  
8 vandalism?

9 MR. TALCOTT: I did not recall that there was  
10 a protest, but I'm reading it here.

11 MS. PHILLIPS: Does that refresh your  
12 recollection or you still don't recall it?

13 MR. TALCOTT: I still don't recall the  
14 protest, but....

15 MS. PHILLIPS: All right. And I think I  
16 asked you if your signatures were at the end of both of  
17 those voluntary agreements.

18 MR. TALCOTT: Yes, you did. They are.

19 MS. PHILLIPS: Thank you. You did and they  
20 are. Thank you.

21 And I think you told Mr. Kline that you did  
22 not recognize that -- the reason for the amendment to

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1 the voluntary agreement in 2011? And there's a letter,  
2 February 8th, 2011 which -- of which you got a copy at  
3 that time, it says. Do you see it? It's the last page  
4 before you get to the pictures.

5 MR. TALCOTT: Okay.

6 MS. PHILLIPS: Can you find it?

7 MR. TALCOTT: Amendment. The letter with the  
8 Veritas letterhead?

9 MS. PHILLIPS: Yes. That's it. February  
10 8th, 2011?

11 MR. TALCOTT: Yes.

12 MS. PHILLIPS: That's signed by your  
13 attorney, Andrew Kline?

14 MR. TALCOTT: Yes.

15 MS. PHILLIPS: And he helped you with the  
16 voluntary agreement revisions the second time. Did he  
17 with the first?

18 MR. TALCOTT: That's a yes.

19 MS. PHILLIPS: Both times? Or do you not  
20 know?

21 MR. TALCOTT: I see that he -- if this is the  
22 second one, I see that he did here. I believe so.

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1 MS. PHILLIPS: Okay. And it says the parties  
2 were able to come to an agreement to resolve the  
3 protest that was filed. So, this second one was in  
4 regards to a protest. Is that fair?

5 MR. TALCOTT: Yes.

6 MS. PHILLIPS: In that particular protest you  
7 only amended 1 through 7. Is that fair?

8 MR. TALCOTT: Let me go back. I'm not  
9 exactly sure if they're all amendments. There may be  
10 additions as well. I'd have to review both side by  
11 side.

12 MS. PHILLIPS: Right. It just looks to me  
13 that the second voluntary agreement might have had to  
14 do with your outside summer garden, Tiki Bar.

15 MR. TALCOTT: At least some of it does, yes.  
16 As --

17 MS. PHILLIPS: Was it all about that, as you  
18 look at it closely?

19 MR. TALCOTT: Let me look. One does relate  
20 to the Tiki Bar, the rear of the restaurant. Two, Tiki  
21 Bar. Three, yes. Four, yes. Five, no, not focused on  
22 the Tiki Bar, including the Tiki Bar. Six, not --

1 yeah.

2 MS. PHILLIPS: And six talks about that this  
3 one adds to, but does not subtract from the first  
4 voluntary agreement. Is that how you interpreted six?

5 MR. TALCOTT: Well, it subtracts a couple of  
6 things. One being there's a clarification of the -- in  
7 Paragraph 4, as to the intent of the location of public  
8 space. There's an alley right at the entrance to the  
9 Tiki Bar that at times had been assumed was public  
10 space but was, again, an issue of the voluntary  
11 agreement. It was not intended that you couldn't hear  
12 any noise at all from the outside door to the area, so  
13 that was a clarification. And then also a  
14 clarification in Paragraph 5.

15 MS. PHILLIPS: Right. And as part of your  
16 job as owner, are -- do you keep up with the rules and  
17 regulations that govern establishments? You know  
18 you're supposed to, right?

19 MR. TALCOTT: Yeah. Yeah. I must have  
20 missed the one about live entertainment, including a  
21 DJ.

22 MS. PHILLIPS: Okay. All right. But in your

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1 amendment agreement you did do some clarifications of  
2 definitions in the earlier voluntary agreement. Would  
3 that be fair?

4 MR. TALCOTT: Yeah, that's fair.

5 MS. PHILLIPS: Okay. All right. But you  
6 didn't clarify that live entertainment was now included  
7 a DJ. Is that fair?

8 MR. KLINE: Objection. It presumes facts in  
9 evidence that it -- not in evidence that it needed to  
10 be clarified. There isn't any evidence that it needed  
11 to be clarified. The only evidence that it needed to  
12 be clarified is a statute that was looked at by the  
13 investigator. We don't have Georgetown here, we don't  
14 have anyone saying that there's any confusion about  
15 what this meant, at all. So, to ask him, you didn't  
16 clarify this part, did you, assumes that it needed  
17 clarifying, which I don't think is in evidence at this  
18 point.

19 CHAIRPERSON MILLER: Sustained.

20 MS. PHILLIPS: Could I be heard on that  
21 before it's sustained?

22 CHAIRPERSON MILLER: Oh, you want to be --

1 I'm so sorry. Go ahead.

2 MS. PHILLIPS: I mean just a minor point.

3 CHAIRPERSON MILLER: All right. Excuse me.

4 Yeah.

5 MS. PHILLIPS: This is the whole point of the  
6 argument is that when there's a law change, perhaps  
7 things need to be clarified. And if public space needs  
8 to be clarified because the public space definition I  
9 don't think changed, but that's not at issue here, but  
10 if public space needed to be clarified, then perhaps  
11 changes in the law should or shouldn't, that's for you  
12 to determine. But the question shouldn't be stricken,  
13 because it is relevant.

14 CHAIRPERSON MILLER: Well, maybe you should  
15 rephrase it. Did they have a need -- did they see a  
16 need to clarify?

17 MS. PHILLIPS: That's not my point.

18 CHAIRPERSON MILLER: Well, state your  
19 question again.

20 MS. PHILLIPS: My point is that the law  
21 changed, he acknowledges that he should keep up with  
22 the law and they did a clarification of the earlier

1 one. And I asked the question but he didn't clarify  
2 the DJ clause with the change of the law. And all that  
3 requires is a yes or no, he doesn't need to speculate,  
4 doesn't even need to be determined, because his  
5 testimony is he didn't see the need. His opening  
6 statement, Mr. Kline's opening statement is, you know,  
7 everybody knows, but everybody's supposed to --

8 CHAIRPERSON MILLER: Is your question --

9 MS. PHILLIPS: -- know the law.

10 CHAIRPERSON MILLER: -- did he clarify  
11 whether he knew it needed clarification or not? What  
12 is your --

13 MS. PHILLIPS: What I --

14 CHAIRPERSON MILLER: Go ahead. Say your  
15 question again, please.

16 MS. PHILLIPS: Well, now I've lost my  
17 question Madam Chair.

18 MS. PHILLIPS: But you didn't clarify the  
19 point about the DJ in the 2011 voluntary agreement. Is  
20 that fair?

21 MR. TALCOTT: It had never been brought up.

22 MS. PHILLIPS: Right. Public space --

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1 MR. TALCOTT: Like the public space --

2 MS. PHILLIPS: -- was brought up.

3 MR. TALCOTT: -- had been brought up, like  
4 the - - being able to do something special on New Years  
5 Eve had been brought up by both parties, by all  
6 involved.

7 MS. PHILLIPS: But the law change wasn't  
8 brought up by anyone. Is that what you're saying?

9 MR. TALCOTT: It was not brought up by  
10 anyone.

11 MS. PHILLIPS: Okay. Thank you.

12 CHAIRPERSON MILLER: Okay. Thank you.

13 Are there board questions? Mr. Alberti.

14 MR. ALBERTI: Mr. Talcott, Investigator  
15 Martin had a discussion with your manager, Mr. Smith,  
16 back in April and you were served notice in July of  
17 this infraction. Is that correct?

18 MR. TALCOTT: Yes.

19 MR. ALBERTI: So, when did you first become  
20 knowledgeable about this issue, the fact that you were  
21 being charged with a VA violation --

22 MR. TALCOTT: I --

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1 MR. ALBERTI: -- with respect to the DJ?

2 MR. TALCOTT: I assume it would have been  
3 upon that notification.

4 MR. ALBERTI: Okay. And not before?

5 (No audible response.)

6 MR. ALBERTI: Okay. So, at least from July  
7 you knew about this. Is that correct?

8 MR. TALCOTT: I knew about the perspective  
9 that it could be a violation. I don't agree or believe  
10 that it is a violation.

11 MR. ALBERTI: I'm not asking you that.

12 MR. TALCOTT: Okay.

13 MR. ALBERTI: You knew about the --

14 MR. TALCOTT: Timing?

15 MR. ALBERTI: -- you knew about the  
16 allegation since July?

17 MR. TALCOTT: Yes.

18 MR. ALBERTI: Okay. When did you consult  
19 with Mr. Kline?

20 MR. KLINE: Objection as to relevance.

21 MR. ALBERTI: I'll get there.

22 MR. TALCOTT: Some time after. I don't

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1 recall.

2 MR. ALBERTI: Okay. Would it have been more  
3 than a month ago?

4 MR. TALCOTT: Yeah, I believe so.

5 MR. ALBERTI: Okay. And at that time you  
6 would have understood the issues surrounding this. Is  
7 that correct?

8 MR. TALCOTT: Yes.

9 MR. ALBERTI: Okay. Have you spoken to the  
10 ANC since then, about this issue?

11 MR. TALCOTT: I tried to contact Peter  
12 Pulsifer and was unsuccessful.

13 MR. ALBERTI: Who's Peter Pulsifer?

14 MR. TALCOTT: He was the president of the ANC  
15 who helped me and Bill Starrels negotiate the voluntary  
16 agreement back in 2001 or thereabouts.

17 MR. ALBERTI: Okay. But the amendment to the  
18 voluntary agreement, you spoke with what commissioners?

19 MR. TALCOTT: I don't believe I -- I think I  
20 would have spoken to Bill Starrels.

21 MR. ALBERTI: Okay. So, how -- so, since  
22 July or since you spoke -- you -- since you became

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1 knowledgeable of what this allegation involves, have  
2 you spoken with anyone in the current ANC about this  
3 voluntary agreement?

4 MR. TALCOTT: Not that I recall.

5 MR. ALBERTI: Okay. Is there any reason?

6 MR. TALCOTT: No. I've tried. Well, as I  
7 said, I tried to contact Peter Pulsifer because I would  
8 have liked for him to have noted or testified on my  
9 behalf, to Third Edition's behalf, that the DJ was not,  
10 in any way, intended to be encompassed in a live  
11 entertainment issue.

12 MR. ALBERTI: Is it your opinion that the --  
13 knowing what you know now, in hindsight, that this VA  
14 should be amended?

15 MR. TALCOTT: My VA should be clarified, yes.  
16 Yes.

17 MR. ALBERTI: Have you taken any steps to do  
18 that?

19 MR. KLINE: Madam Chairman, I -- that's very  
20 delicate, I'm going to object and I guess make a  
21 proffer, if that's appropriate. I certainly don't want  
22 to put myself in the position of testifying, but I

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1 would proffer to the board that I contacted the ANC and  
2 attempted to get this matter amended.

3 I don't know that we want to go any further  
4 than that. My -- I'm a little uncomfortable even doing  
5 that because it seems to make me a witness.

6 CHAIRPERSON MILLER: Well --

7 MR. KLINE: But I would certainly make that  
8 proffer.

9 MR. ALBERTI: And Mr. Kline, I will say to  
10 that that I always assume that the client and attorney  
11 are speaking to I don't really need to know the content  
12 of those, and I'm not going to the content, just the  
13 fact that your client would have instructed you or have  
14 had knowledge of your actions in that regard, I would  
15 hope.

16 CHAIRPERSON MILLER: Can I interrupt here  
17 just for a minute, because we also have always held  
18 that negotiations are not admissible. So, I don't  
19 think we should be getting into the area of --

20 MR. ALBERTI: I'm not going into content.  
21 I'm not going --

22 CHAIRPERSON MILLER: No, it's not even

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1 content.

2 MR. ALBERTI: -- into content.

3 CHAIRPERSON MILLER: Whether they're  
4 negotiating a new --

5 MR. ALBERTI: I didn't ask --

6 CHAIRPERSON MILLER: -- agreement.

7 MR. ALBERTI: -- whether they were  
8 negotiating, I just asked if he contacted them to talk  
9 about the VA. And I asked him whether it needed to be  
10 amended, he thought it needed to be amended. I did not  
11 ask anything about his interactions with the ANC, the  
12 content of his action -- interactions with ANC  
13 commissioners.

14 CHAIRPERSON MILLER: Okay, I think that was  
15 answered, though, so I don't know --

16 MR. ALBERTI: I will -- that's all the  
17 questions I need to ask. Thank you.

18 CHAIRPERSON MILLER: Okay.

19 MR. TALCOTT: May I continue my answer?

20 MR. ALBERTI: I'm done. Thank you.

21 MR. TALCOTT: Okay.

22 INVESTIGATOR MARTIN: Mr. Jones?

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1 MR. JONES: Thank you, Madam Chair. Just to  
2 clarify, you were aware of the fact that an ABRA -- a  
3 representative of ABRA considered it to be a violation  
4 of some sort? Whether you agreed with it or not --

5 MR. TALCOTT: I'm aware of the report.

6 MR. JONES: -- you were aware of the fact  
7 that a representative of ABRA considered it to be a  
8 violation?

9 MR. TALCOTT: Yeah, I'm aware of the report,  
10 yes.

11 MR. JONES: Okay. At what point did you  
12 become aware of that?

13 MR. TALCOTT: Just when I received the  
14 report.

15 MR. JONES: Which was?

16 MR. TALCOTT: It would have been -- was it  
17 July? I would have received the report fairly quickly  
18 after it was delivered on -- to the business.

19 MR. JONES: Okay. What actions did you take  
20 in order to clarify that discrepancy between your  
21 opinion and the ABRA representative's opinion of that  
22 situation? What steps have you taken since then?

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1 MR. TALCOTT: I noted that there was at least  
2 a status hearing dated for today, at some point. And I  
3 assumed we'd reach some sort of a clarification on my  
4 original voluntary agreement.

5 MR. JONES: When you say you assumed, what --  
6 on what basis did you make that assumption?

7 MR. TALCOTT: That I'd be before the board  
8 today to discuss it.

9 MR. JONES: So the measures or the things  
10 that you've done to attempt to clarify or reconcile  
11 that difference in opinion, between what the ABRA  
12 representative told you was a violation and what you  
13 thought your VA said, was to wait until today?

14 MR. TALCOTT: Well, I -- to sort of research  
15 the issues and come together with this paperwork that  
16 supports my position. And if I felt that there was a  
17 reason to amend the voluntary agreement, it was for the  
18 board's clarification, not for mine. I believed --

19 MR. JONES: Just to be clear. I'm not asking  
20 you whether or not you feel like you needed to amend  
21 your voluntary agreement, I'm not asking that at all.  
22 I'm just asking, what steps, if any, have you taken to

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1 reconcile? So, for example, have you -- do you -- have  
2 you had a live DJ providing pre-recorded music at your  
3 establishment since you became aware of the report?

4 MR. TALCOTT: Yes.

5 MR. JONES: You have?

6 MR. TALCOTT: Yes.

7 MR. JONES: Okay. So, you haven't ceased  
8 those activities?

9 MR. TALCOTT: Correct.

10 MR. JONES: Okay. And that's based on your  
11 opinion that there is no violation of the voluntary  
12 agreement, as noted to you by the ABRA representative?

13 MR. TALCOTT: Correct.

14 MR. JONES: Okay. Thank you. Thank you,  
15 Madam Chair.

16 CHAIRPERSON MILLER: Okay. Others?

17 I just have a couple questions. It may seem  
18 odd but I would like to ask you what your DJ actually  
19 does. Does he have a microphone, does he -- what does  
20 he do?

21 MR. TALCOTT: He --

22 CHAIRPERSON MILLER: Or she.

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1 MR. TALCOTT: -- generally does not have a  
2 microphone. I know that approximately a year or so ago  
3 a DJ had used a microphone. Generally the only reason  
4 they would use a microphone is to say, thanks for  
5 coming to the Third Edition. Please get home safely,  
6 take a cab if you need to. We appreciate your  
7 business, come back and join us again soon. It's last  
8 call. But not to speak during or introduce songs or  
9 say anything other than -- not during the music. He  
10 plays music. He selects songs and plays the music.

11 CHAIRPERSON MILLER: So, is it safe to say he  
12 himself doesn't act as an entertainer while he's  
13 playing the music?

14 MR. TALCOTT: Yes. Absolutely.

15 CHAIRPERSON MILLER: Okay. So, his primary  
16 function is just arranging the music played?

17 MR. TALCOTT: My bartenders are entirely more  
18 entertaining than my music producer.

19 CHAIRPERSON MILLER: So, does he turn the  
20 volume up and down or anything like that?

21 MR. TALCOTT: Just to maintain the  
22 appropriate level, volume level, yeah.

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1 CHAIRPERSON MILLER: Depending on how many  
2 people are in the room, that it might have to be a  
3 little louder or --

4 MR. TALCOTT: Sure.

5 CHAIRPERSON MILLER: -- softer? Okay. Do  
6 you use different DJs or do you basically have a DJ you  
7 almost always use?

8 MR. TALCOTT: In the 44 years I'm assuming  
9 that many, many different DJs, yes.

10 CHAIRPERSON MILLER: Okay. That's all for  
11 me.

12 Mr. Jones?

13 MR. JONES: Thank you, Madam Chair.

14 Who selects the music to be played?

15 MR. TALCOTT: The DJ with the overall, you  
16 know, management and ownership would give direction,  
17 but then there can be a -- if someone makes a request,  
18 if it's appropriate he might play it, it's likely on  
19 his playlist, regardless.

20 MR. JONES: Okay. So, is the list a dynamic  
21 list? The list being the playlist that the DJ would  
22 play at your establishment, is it dynamic or is it

1 fixed?

2 MR. TALCOTT: No, it changes. I mean, every  
3 day there's a top 40 new songs out that might be  
4 appropriate for our business model.

5 MR. JONES: Okay. And you said the process  
6 of determining what's on this list is a collaborative  
7 effort between the DJ and management?

8 MR. TALCOTT: Yes.

9 MR. JONES: Can you walk me through that  
10 process? Is that done at the beginning of the night?  
11 Is it done during the course of the night? Who makes  
12 the final decision? How do you know when management  
13 has approved?

14 MR. TALCOTT: I think it's just been a  
15 general overall -- general parameters. This is, you  
16 know, the kind of music we want to play, nothing too  
17 angry, nothing too offensive and part of that process  
18 would be if management -- every song is not approved in  
19 the beginning of the night. But if management heard a  
20 song he didn't like, he'd say, don't ever play that one  
21 again or, you know, let's tune that one out and you're  
22 done with that one.

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1 MR. JONES: Okay. So, what I'm hearing more  
2 so is that management has more like a veto authority or  
3 right as opposed to an integral part in the selection  
4 of the music at the beginning of the process.

5 MR. TALCOTT: Integral part in the general  
6 overriding type, theme of music. But, yeah, the veto,  
7 if he heard a song he didn't like, yeah sure, he could  
8 veto that song.

9 MR. JONES: Okay. And you mentioned requests  
10 could be made?

11 MR. TALCOTT: Yes.

12 MR. JONES: I'm assuming you mean requests  
13 from your patrons?

14 MR. TALCOTT: Yes.

15 MR. JONES: If it was an appropriate request  
16 I think you indicated it could be played --

17 MR. TALCOTT: Yes.

18 MR. JONES: -- if it was a request from a  
19 patron. Is that correct?

20 MR. TALCOTT: Yes.

21 MR. JONES: How does that get to the DJ?

22 MR. TALCOTT: He's accessible. He's within

1 view.

2 MR. JONES: Understood. So, how does that  
3 get to the DJ?

4 MR. TALCOTT: A patron could have a  
5 conversation with him.

6 MR. JONES: Okay, so the patron could walk up  
7 to the DJ booth, request his attention --

8 MR. TALCOTT: Yes.

9 MR. JONES: -- communicate that to him. So,  
10 in that instance that is a decision that's being made  
11 by the DJ whether or not to play that request?

12 MR. TALCOTT: Again --

13 MR. JONES: It's not -- is that something  
14 that is weighed in on by management?

15 MR. TALCOTT: Not -- the DJ's not going to go  
16 ask for approval for the requested song, he's going to  
17 take the general parameters of our choice of style of  
18 music into account and requests are denied as well as  
19 accepted.

20 MR. JONES: Okay. So, if it fits within the  
21 general guidelines that management has given, then the  
22 request that comes from the patron, the DJ has the say

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1 as to whether or not that request is honored or not at  
2 that point in time?

3 MR. TALCOTT: Yes. And if he felt it was  
4 appropriate and had access to the music requested, he  
5 might play it. Yes.

6 MR. JONES: Understood. And last question or  
7 related to that, you mentioned the microphone is no  
8 longer used by your DJ?

9 MR. TALCOTT: Well, there was some question  
10 as to whether the DJs were using the microphone. And  
11 as previously testified, we've had many DJs, so it's a  
12 constant attention to make sure that they're performing  
13 to our preferred conduct of business. And if a DJ had  
14 improperly used a microphone, he was instructed not to.  
15 And now all the DJs are instructed to not use a  
16 microphone at all, unless at the end of the night to  
17 call last call and thank them for coming to our  
18 business. Get home safely.

19 MR. JONES: Okay. On the -- do you know the  
20 date of the night of the alleged violation?

21 MR. TALCOTT: It's in the report. Date of  
22 complaint, is that April 13th, 2012? That's the date

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1 I'm looking at, the case report.

2 MR. JONES: Okay. On that night did you  
3 have a DJ there?

4 MR. TALCOTT: Yes.

5 MR. JONES: Did that DJ have a microphone?

6 MR. TALCOTT: I don't know.

7 MR. JONES: Okay. At what point was it  
8 indicated to staff, to management or to whomever, that  
9 the DJ was not to have and/or use a mic, unless it was  
10 for last call?

11 MR. TALCOTT: Well, it had been discussed  
12 prior to April 13th and April 13th. It's been  
13 discussed several times. Just as I said we have --  
14 we'll have a new DJ come in, apply for a job, and it's  
15 part of the application and accepting him as an  
16 employee.

17 MR. JONES: Understood. At what point was it  
18 established as a rule that the DJ was to be instructed  
19 not to use the microphone, unless to make an  
20 announcement about last call?

21 MR. TALCOTT: I think we became more defined  
22 about that after the issue of the -- after April 13th

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1 when we sort of thought about the perspective of a DJ  
2 possibly being live -- construed as live entertainment  
3 and what that could possibly mean. So, we sort of  
4 discussed that within management and said, make sure  
5 the DJs aren't using a microphone, other than to  
6 welcome our patrons out.

7 MR. JONES: Okay. So, it became a point of  
8 emphasis, I can't say, based on what you said to me,  
9 that -- you're not telling me that it was new as a  
10 result of the incident, but you're saying that it  
11 definitely became a point of emphasis?

12 MR. TALCOTT: Re-emphasized.

13 MR. JONES: Re-emphasized?

14 MR. TALCOTT: Yes.

15 MR. JONES: Okay. But, you cannot say when  
16 it became a licensed establishment, managerial rule to  
17 indicate and inform the DJ not to do that?

18 MR. TALCOTT: It's always been the policy.

19 MR. JONES: Always been the policy? Okay.

20 MR. TALCOTT: Yeah.

21 MR. JONES: Always being defined as when?

22 MR. TALCOTT: As far back as 1977 at least.

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1 MR. JONES: Okay, so it's always been the  
2 policy that the DJ is not to use the microphone, unless  
3 to announce last call?

4 MR. TALCOTT: Yeah, or I'm trying to think if  
5 there's any other reason he might have used it. But as  
6 I said, last -- at the time of last call, and also to  
7 thank people for coming --

8 MR. JONES: Understood.

9 MR. TALCOTT: -- to the Third Edition and get  
10 home safely and --

11 MR. JONES: Okay, and just to clarify --

12 MR. TALCOTT: -- come back and join us.

13 MR. JONES: -- you mentioned inappropriate  
14 use of the microphone. What would you define as  
15 inappropriate use?

16 MR. TALCOTT: Well, I've been to places where  
17 I've heard DJs, in between songs yelling, you know, get  
18 up, clap your hands, whatever.

19 MR. JONES: Okay, so --

20 MR. TALCOTT: I'd --

21 MR. JONES: -- that would be inappropriate  
22 use?

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1 MR. TALCOTT: That's -- for my business model  
2 it is.

3 MR. JONES: Right. Okay.

4 MR. TALCOTT: Yes.

5 MR. JONES: Has that ever occurred at your  
6 establishment?

7 MR. TALCOTT: I've never heard it.

8 MR. JONES: You never heard it?

9 MR. TALCOTT: I've never been there when  
10 that's happened.

11 MR. JONES: Have you ever been told by your  
12 staff that it was --

13 MR. TALCOTT: I believe I heard one time that  
14 -- all I can recall is I recall one instance where a --  
15 I don't know what he said or when he said it, but he  
16 used the microphone in the middle of the evening. And I  
17 told management, make sure he knows that's not our  
18 business model.

19 MR. JONES: Okay. And do you have any idea  
20 how far -- when that was?

21 MR. TALCOTT: I do not.

22 MR. JONES: Okay. Thank you. Thank you,

1 Madam Chair.

2 CHAIRPERSON MILLER: OK.. No other questions  
3 from board members? Is there any redirect, recross on  
4 our questions?

5 Yes, Ms. Phillips.

6 MS. PHILLIPS: I haven't heard this, but I  
7 assume you weren't there on the nights that -- when  
8 Inspector Martin was there?

9 MR. TALCOTT: That's correct.

10 MS. PHILLIPS: That's a fair assumption?  
11 Both times she was there?

12 MR. TALCOTT: Yes.

13 MS. PHILLIPS: And I was just -- these  
14 pictures of your DJ, I gave you a full packet, do you  
15 want to turn to those? And mine are in color. Are  
16 yours?

17 MR. TALCOTT: I believe what I saw was in  
18 color.

19 MS. PHILLIPS: Now, when I think of a booth,  
20 you know, there are lots of different booths, but when  
21 you sometimes think of a booth they're all enclosed,  
22 but this DJ booth, on either floor, take your pick,

1 they're not enclosed, right?

2 MR. TALCOTT: The one -- the one on the  
3 second floor is. The one that you see as a temporary  
4 table set up, that was on the first floor, which is no  
5 longer in use and hasn't been. That was temporary,  
6 prior management was trying to see how that might work,  
7 I said I don't like it, don't do it again and we  
8 haven't had that table on the first floor for months.  
9 I don't know when the last time that was used was.

10 MS. PHILLIPS: So, in the 44 years you said  
11 something about having a DJ on the first floor in the  
12 window.

13 MR. TALCOTT: Yes.

14 MS. PHILLIPS: So, when the DJ was on the  
15 first floor in the window, is that what it looked like,  
16 in Exhibit 2?

17 MR. TALCOTT: No.

18 MS. PHILLIPS: So you tore down something?

19 MR. TALCOTT: No. This is not the front  
20 window, this is in the back of the restaurant.

21 MS. PHILLIPS: Oh, I see.

22 MR. TALCOTT: Exhibit 2.

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1 MS. PHILLIPS: Well, what I --

2 MR. TALCOTT: Those are mirrors, not windows.

3 MS. PHILLIPS: They looked like windows to  
4 me. So, was there a booth that, you know, had floor to  
5 ceiling glass with a door, which the DJ was in and then  
6 the amps were outside or was --

7 MR. TALCOTT: You know what, I take that  
8 back. This is the front. See, it looks like the back.  
9 That is the front -- those are the front windows.

10 MS. PHILLIPS: Okay.

11 MR. TALCOTT: Yeah.

12 MS. PHILLIPS: Now, I didn't ask for an  
13 inspection, you know, so --

14 MR. TALCOTT: Okay. It's a dark photo. I  
15 thought that -- because he had set that table up in the  
16 back.

17 MS. PHILLIPS: Right.

18 MR. TALCOTT: I don't recall them ever  
19 setting it up like this in the front window, but I  
20 would have told them the same thing, it's not  
21 attractive, it's not to our standard and let's not do  
22 that.

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1           In answer to your question about how it was  
2 set up for 44 years in the front window, what's changed  
3 is that that where he's standing there used to be a  
4 step up. That used to be a two step up, raised platform  
5 where there -- those steps are no longer there. There  
6 was a minor modification to the first floor there, and  
7 it's not a raised -- it was two steps up for a couple  
8 of dining tables in the front window and we had a DJ  
9 that would come in and set up there on that little  
10 raised --

11           MS. PHILLIPS: Dias.

12           MR. TALCOTT: Yeah, sure. Thank you.

13           MS. PHILLIPS: Right.

14           MR. TALCOTT: But it was more attractive than  
15 this.

16           MS. PHILLIPS: Okay. I'll stipulate that  
17 this is not attractive.

18           MR. TALCOTT: I -- as will I. As will I.

19           MS. PHILLIPS: All right. But, my question  
20 is, is your DJ totally enclosed or is he, you know -- I  
21 mean, is it just sort of table-esque?

22           MR. TALCOTT: There is --

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1           MS. PHILLIPS: And it was there and it looked  
2 attractive?

3           MR. TALCOTT: There's no longer a set  
4 location for a DJ on the first floor. He is now in the  
5 service area at the -- where the bar meets the service  
6 area. He's back there enclosed and all he does is play  
7 music. He has no microphone, on the first floor.

8           MS. PHILLIPS: And, you know, I'm good with  
9 what he's doing now, but --

10          MR. TALCOTT: But upstairs --

11          MS. PHILLIPS: No, I -- stay with Picture 2,  
12 please.

13          MR. TALCOTT: Okay. He's not enclosed.

14          MS. PHILLIPS: When Ms. --

15          MR. TALCOTT: Neither of them are enclosed.

16          MS. PHILLIPS: Right. So, when it was in the  
17 front, not now, I'm not interested in now, see I'm  
18 really interested in then, because we're talking about  
19 when Ms. Martin came --

20          MR. TALCOTT: Martin.

21          MS. PHILLIPS: -- Investigator Markin (sic)  
22 came. So, it wasn't enclosed and, you know, it was a

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1 table but more attractive than this. Is that fair?

2 MR. TALCOTT: Yes.

3 MS. PHILLIPS: Okay. And so, there's nothing  
4 to stop the DJ, in a normal tone of voice with talking  
5 to the dancing crowd. Would that be fair?

6 MR. KLINE: Objection as to relevance.

7 MS. PHILLIPS: I'm answering -- I'm going  
8 further on questions from the board.

9 CHAIRPERSON MILLER: Well, but what is these  
10 relevance? Because you know, we might have gone so  
11 far, but you could get -- go on and on and on and it  
12 might not be relevant.

13 MS. PHILLIPS: You know, the problem with  
14 questions from the judges is, is if I don't respond to  
15 the questions from the judges, then the record is  
16 incomplete. And if this goes up on appeal, then I'm  
17 limited to what I ask on redirect.

18 CHAIRPERSON MILLER: I understand you're in  
19 the area somewhat, but how -- why? Where -- what point  
20 are you going toward?

21 MS. PHILLIPS: Well see, I don't know why the  
22 questions were asked from the board. All I know is

1 that I want to repair what I conceive of information  
2 that might be now lacking in the record, based on the  
3 answers to the questions from the board.

4 CHAIRPERSON MILLER: All right. Let me just  
5 -- without saying too much, there have been a couple of  
6 decisions that the board issued with respect to a DJ  
7 and so some of it involved, I believe, how engaged the  
8 DJ was, how active, whether it was entertainment. So,  
9 that's why I think the board was coming from.

10 Are you looking as to how engaged the DJ was?

11 MS. PHILLIPS: Well, my interpretation of the  
12 questions of the board is that's what the board was  
13 asking. In fact, the board asked direct questions  
14 about how engaged the DJ was. And therefore, in good  
15 faith and in representing what I believe is the law  
16 we're now following, I have to answer and fill those  
17 holes on redirect.

18 So, you can shut me down by sustaining his  
19 objection --

20 CHAIRPERSON MILLER: No, just tell me --

21 MS. PHILLIPS: -- or I can go forward.

22 CHAIRPERSON MILLER: -- could you just -- but

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1 we need to move forward, but just say -- I've already  
2 forgotten now what your question was again, which  
3 happens to us.

4 MR. TALCOTT: (inaudible) answer it.

5 CHAIRPERSON MILLER: You know, he had an  
6 objection --

7 MS. PHILLIPS: And it was answered.

8 CHAIRPERSON MILLER: And it was already  
9 answered? All right, then we can just move on.

10 MR. TALCOTT: No.

11 CHAIRPERSON MILLER: No?

12 MS. PHILLIPS: All right, so that he can  
13 engage the dancers?

14 MR. TALCOTT: It is possible for the disc  
15 jockey to have a normal conversation with a patron.

16 MS. PHILLIPS: Right. And say encouraging  
17 words? Stand up, sit down --

18 MR. TALCOTT: Is it --

19 MS. PHILLIPS: -- raise your hands, clap your  
20 hands?

21 MR. TALCOTT: Well, he wouldn't do that.

22 MS. PHILLIPS: Ah, but you weren't there, so

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1 you don't know, right?

2 MR. TALCOTT: But it's not our business  
3 model.

4 MS. PHILLIPS: Ah. Is your business model  
5 written, did I see it come in --

6 MR. TALCOTT: Yes.

7 MS. PHILLIPS: -- your case in chief?

8 MR. KLINE: Objection. Argumentative.

9 CHAIRPERSON MILLER: How far are you going,  
10 Ms. Phillips, with this?

11 MS. PHILLIPS: I'm asking a question --

12 CHAIRPERSON MILLER: Because --

13 MS. PHILLIPS: -- it's not answered. Do --  
14 are you sustaining --

15 CHAIRPERSON MILLER: He did say --

16 MS. PHILLIPS: -- his objection?

17 CHAIRPERSON MILLER: -- he did say earlier  
18 that he said that their guidelines were the DJs not  
19 encourage people to get up and dance -- get up and clap  
20 hands and all that.

21 MS. PHILLIPS: I heard that testimony. I did  
22 hear that.

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1 CHAIRPERSON MILLER: So, it sounds  
2 redundant.

3 MS. PHILLIPS: Right. But one of the things  
4 that happens is if Mr. Kline asks the question and gets  
5 the answer, I can ask the very same question, worded  
6 exactly the same way and get an answer, just as the  
7 board can ask the very same questions --

8 CHAIRPERSON MILLER: No --

9 MS. PHILLIPS: -- that either we ask --

10 CHAIRPERSON MILLER: -- I don't think all  
11 three -- the board -- we can't be redundant and ask the  
12 same questions. We're already at 12:20. I don't see a  
13 purpose in your asking the same question. If it's been  
14 asked and answered, you should move on. Ask a  
15 different question in the same area, if you'd like.

16 MS. PHILLIPS: I did ask and it wasn't  
17 answered for me, that is my response to your question.

18 CHAIRPERSON MILLER: You did -- are you  
19 saying the board didn't ask that question and get an  
20 answer?

21 MS. PHILLIPS: I didn't say that. I said the  
22 district.

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1 CHAIRPERSON MILLER: I just don't understand  
2 why -- I don't understand why you have to ask the same  
3 question that the board asked.

4 MS. PHILLIPS: I don't believe that it is the  
5 same -- I don't want to be argumentative. You know,  
6 sustain or let me go forward.

7 MR. KLINE: I think the last question was, is  
8 it written down somewhere. I don't recall that being a  
9 question asked before.

10 CHAIRPERSON MILLER: No, it wasn't -- I  
11 didn't object to that. I object to your asking him,  
12 can they jump up and down, can he tell the crowd to  
13 jump up and down. So that question I -- okay, just  
14 move on. Don't ask that question, it's been asked and  
15 answered.

16 MS. PHILLIPS: Yes. I --

17 CHAIRPERSON MILLER: The question about a  
18 rule - - a policy being written down, fine, we didn't  
19 ask that.

20 MS. PHILLIPS: Okay. Is it written down?

21 MR. TALCOTT: The policy is part of the  
22 hiring process. The interview and hiring process. No.

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1 MS. PHILLIPS: Thank you. All right.

2 MR. TALCOTT: Not that I recall.

3 MS. PHILLIPS: Okay. But you didn't bring it  
4 here today if it is?

5 MR. TALCOTT: Correct.

6 MS. PHILLIPS: All right. And then we go to  
7 Exhibit 3. Is this -- this is floor two, three?

8 MR. TALCOTT: That's the second floor.

9 MS. PHILLIPS: Right. And that's the DJ  
10 booth?

11 MR. TALCOTT: Yes.

12 MS. PHILLIPS: All right.

13 MR. TALCOTT: Also not very attractive.

14 MS. PHILLIPS: Okay, I agree. All right.  
15 Now, do -- in this blue shirt, in this -- in the head  
16 in the right side of the picture, those are all  
17 patrons?

18 MR. TALCOTT: I'm black and white.

19 MS. PHILLIPS: Patrons to the right?

20 MR. TALCOTT: Yes.

21 MS. PHILLIPS: Patrons. And that's the DJ  
22 standing there, in a non-enclosed booth, right?

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1 MR. TALCOTT: Yes.

2 MS. PHILLIPS: Okay. All right. And since  
3 you weren't there, you don't know what the DJ was doing  
4 when Ms. Martin was there. Is that fair?

5 MR. KLINE: Objection. Asked and answered.  
6 I'll withdraw it.

7 MR. TALCOTT: I was not present --

8 MS. PHILLIPS: Thank you.

9 MR. TALCOTT: -- that evening.

10 MS. PHILLIPS: And the next time, too, right?

11 MR. TALCOTT: Correct.

12 CHAIRPERSON MILLER: All right. Thank you.  
13 That's all the questions I have.

14 Do you have any redirect?

15 MR. KLINE: Just a couple.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: Mr. Talcott, the music that's  
18 played from the DJ booth is dance music?

19 MR. TALCOTT: Generally, yes. I mean, you  
20 know, later in the evening it's maybe more towards a  
21 dance music. In the early hours, when it's not --  
22 aren't many people in there, he might play less dance

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1 music, you know, less -- just background music.

2 MR. KLINE: It's for people younger than us.  
3 It's loud. Isn't it?

4 MR. TALCOTT: I have to admit that. I have  
5 to -- all right. Yes.

6 MR. KLINE: Yes. Loud, correct?

7 MR. TALCOTT: Yes.

8 MR. KLINE: Isn't it fair to say that a DJ or  
9 another person who was attempting to be heard would  
10 have difficulty making themselves heard, over the  
11 music, to the crowd, without a microphone?

12 MR. TALCOTT: Yes.

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

14 CHAIRPERSON MILLER: Okay. Thank you very --  
15 well, you can be excused.

16 That's your only witness, correct, Mr. Kline?

17 MR. KLINE: Yes.

18 CHAIRPERSON MILLER: Okay. Great. So, we  
19 are at closing. Ready?

20 MS. PHILLIPS: Yes.

21 CHAIRPERSON MILLER: Okay. Good.

22 MS. PHILLIPS: We're just here to look at the

1 plan language of voluntary agreements. There are many  
2 times when people allege that there are agreements  
3 outside the contract and in this case we're just going  
4 with what the contract says. One of the things we know  
5 is that there was an initial voluntary agreement and  
6 the language of the voluntary agreement is in the  
7 record. We know that there was an amendment in 2011  
8 and the fact that the law had changed, if indeed the  
9 law did change, as defined as Mr. Kline said, that's a  
10 matter of law for you to determine, points weren't  
11 clarified. There's an opportunity to clarify points.

12           The law had changed, entertainment has now --  
13 live entertainment is now defined to include a DJ.  
14 Many times there are precursors that exist and then  
15 laws happen and you have to change to abide by the law,  
16 or you have to follow the mechanism that whatever your  
17 laws that you're governing under allow.

18           In this case, they didn't choose to, and  
19 maybe it didn't -- wasn't brought up, maybe it wasn't  
20 an issue, whatever, they didn't choose to adopt --  
21 change the voluntary agreement to reflect the change in  
22 the law. But the law did indeed change and the law now

1 defines live music as including DJs.

2           There is a mechanism that ABRA has for  
3 amending and clarifying, changing voluntary agreements.  
4 It's written into the law, and apparently we all know  
5 how to do it, because this voluntary agreement was  
6 amended. All we can do, and the district suggests all  
7 the board can do, is look at the voluntary agreements,  
8 what they say in plain English and look at the law and  
9 make a determination.

10           Now, the board can choose to grandfather this  
11 in upon request. The board can choose a lot of things,  
12 but I haven't heard, nor have I seen that a request was  
13 made. And usually if those things are done, they're  
14 proffered at hearings such as these, that a change in  
15 the voluntary agreement was asked for, those are  
16 usually proffered.

17           But, as it stands now, the plain language of  
18 the voluntary agreement, in 2002, makes a statement.  
19 The law changed in 2004, if that's indeed the correct  
20 date, and I usually trust Mr. Kline on these things,  
21 but that's in the record, in the law. They amended it  
22 and they didn't amend this portion to reflect the

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1 changes in the law. Therefore, it is a violation of the  
2 law and the voluntary agreement, as it is written. And  
3 the rest is for you to determine.

4 CHAIRPERSON MILLER: I have to ask you a  
5 legal question, it has nothing to do with the evidence,  
6 about your closing argument, though. Is it just  
7 prosecutorial discretion that you chose to bring a case  
8 for violation of the voluntary agreement, but not a  
9 violation of the law?

10 MS. PHILLIPS: That is --

11 CHAIRPERSON MILLER: Am I missing something  
12 here?

13 MS. PHILLIPS: Well --

14 CHAIRPERSON MILLER: Because you just argued  
15 that --

16 MS. PHILLIPS: -- that is the law. You have  
17 a voluntary agreement in place.

18 CHAIRPERSON MILLER: No, I mean --

19 MS. PHILLIPS: It's a violation of 823-6.

20 CHAIRPERSON MILLER: I'm not talking about  
21 that. I mean, were you alleging a violation of the law  
22 dealing with definition of a DJ and entertainment.

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1 MS. PHILLIPS: The violation is the violation  
2 of the law that looks at the voluntary agreement. The  
3 one I'm talking about is just a definition. So, ABRA  
4 has defined terms in its definitional section --

5 CHAIRPERSON MILLER: Okay.

6 MS. PHILLIPS: -- that's the definitional  
7 section not --

8 CHAIRPERSON MILLER: Definition.

9 MS. PHILLIPS: -- a law.

10 CHAIRPERSON MILLER: Great. Thank you. That  
11 clarifies it for me.

12 MS. PHILLIPS: But we -- but ABRA has spoken --

13 CHAIRPERSON MILLER: I got it.

14 MS. PHILLIPS: -- to what these things --

15 CHAIRPERSON MILLER: Thank you.

16 MS. PHILLIPS: -- mean. I mean, it's  
17 complicated for me to --

18 CHAIRPERSON MILLER: No, I --

19 MS. PHILLIPS: -- understand, but that's what  
20 it is.

21 CHAIRPERSON MILLER: That's what you're  
22 saying, it's a violation of the definition.

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1 MS. PHILLIPS: It -- well, it's not a  
2 violation of the definition. ABRA has now chosen to  
3 define what live entertainment means. Live  
4 entertainment includes DJ. The voluntary agreement  
5 doesn't say anything about DJ. No matter what was in  
6 the minds of people in 1992 or 1977 or 2001, DJ wasn't  
7 mentioned. It was amended in 2011, after the date, in  
8 his opening, that Mr. Kline says the law had changed to  
9 include DJs as live entertainment.

10 At that time, or at any time after the law  
11 had changed, they could have sought an amendment, to  
12 comply with the law. That's what one does when the law  
13 changes.

14 CHAIRPERSON MILLER: Okay. Thank you. Okay.

15 MS. PHILLIPS: So, they violated the law, the  
16 district has met its burden and within the four corners  
17 of the voluntary agreement it becomes a violation.

18 CHAIRPERSON MILLER: Thank you.

19 MS. PHILLIPS: You're welcome.

20 CHAIRPERSON MILLER: Mr. Kline?

21 MR. KLINE: It's confused, because we're  
22 really dealing with apples and oranges. There was a

1 change in the law, in fact it wasn't even a change,  
2 because there wasn't previously a definition of  
3 entertainment in the law. So, there was an amendment  
4 to the law that added a definition of entertainment.  
5 That definition of entertainment, nowhere in the law  
6 does it say, this is what will govern voluntary  
7 agreements. Instead, what the law says, if you're  
8 doing entertainment, as defined by the statute, then  
9 you need an entertainment endorsement.

10           And I think the chair's question is very  
11 relevant. Well, there's no charge of having a DJ  
12 without an entertainment endorsement, because the  
13 licensee has an entertainment endorsement, as it's  
14 required to, under the law, if it has entertainment, as  
15 defined in the law.

16           And that is the whole fallacy of the  
17 government's case. A voluntary agreement is an  
18 agreement between two parties to resolve a protest  
19 pending before you. The parties can agree to whatever  
20 they want, as long as you bless it and incorporate it  
21 as part of the order.

22           Now, in interpreting that voluntary

1 agreement, what we look at first is the plain language.  
2 Now the plain language back in 2002 doesn't all of a  
3 sudden get retroactively changed by something that  
4 happened in 2004. The plain language is what it was in  
5 2002. If there's some ambiguity, and in this case we  
6 would submit the only reason there's an ambiguity is  
7 because of the 2004 definition of entertainment, then  
8 the board is obligated, as all bodies looking at  
9 agreements are obligated to do, to look at the  
10 intention of the parties.

11           Now, there's lots of evidence of the  
12 intention of the parties. There's the application that  
13 was filed in -- back in '92 that says, we have a DJ,  
14 it's part of our application. There's Mr. Talcott's  
15 testimony that says, we've always had a DJ, that's what  
16 we've always done. Why would he even enter it into an  
17 agreement in 2002 prohibiting himself from having a DJ  
18 if that's what he's always done and that's what he  
19 intended to do?

20           Lastly, what's missing here is where's the  
21 ANC? Where's the neighborhood? Where are they coming  
22 in and saying, he's in violation of the VA? You don't

1 have a shred of that, because they don't believe that  
2 he is in violation of the VA. And given the record of  
3 this establishment, don't you think if they thought he  
4 was in violation of the agreement that they entered  
5 into with him, that they would have complained? Look  
6 at the record, you'll see lots of contact from the ANC  
7 concerning this establishment. If they thought it was  
8 a problem, I think you would have heard from them. And  
9 the fact that you haven't, and the fact that they're  
10 not here today, we think speaks volumes as to the  
11 intention of the parties.

12           Now, the suggestion that somehow because the  
13 law incorporated a definition of entertainment for  
14 purposes of an entertainment endorsement, that means  
15 that the applicant has to go back and get his agreement  
16 amended, well how is that fair? That means, if he asks  
17 the other side is allowed to say, okay, but we want  
18 something, which may have happened in this case. It's  
19 not -- there's no evidence in the record at this point,  
20 but certainly that is the possibility that I present to  
21 you.

22           In terms of a process, like it's so simple,

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1 how many VA contests were there the last renewal go  
2 round? I think there were close to 20. I think the  
3 board knows it's not a question necessarily of saying,  
4 okay, hey, we want a -- we have a problem, we want to  
5 amend our VA. It's a negotiation. Our position is,  
6 quite clearly, if it was the intention of the parties,  
7 in 2002, that this establishment be allowed to have a  
8 DJ, and there really isn't any evidence -- there's not  
9 a shred of evidence to the contrary except the 2004  
10 amendment, not one person has come forward and said, we  
11 meant something different than that, we meant for him  
12 not to have a DJ.

13           And it's the government's burden, so our  
14 position is the evidence before you establishes, quite  
15 clearly, what the intent of the parties was.

16           Now, there was one other issue here, and  
17 frankly the board raised it, but I think it's on point.  
18 If we're going to use the definition of entertainment  
19 from the entertainment endorsement provision, which we  
20 think is improper, in construing language from an  
21 agreement that was negotiated two years before, then  
22 we've got to look at all of it.

1           And in terms of this being live  
2 entertainment, if you look at the photos that are  
3 exhibits to the report, there's no microphone. The  
4 investigator didn't testify that anyone was doing any  
5 shout outs. Mr. Talcott's testimony was very clear as  
6 to what their policy is, in terms of what the DJ is  
7 supposed to do. They -- the DJ, from what we've heard  
8 described today, is no more than what I've called  
9 before you on previous occasions, a music programmer,  
10 somebody that puts on the music. They're not a live  
11 entertainer. Without a microphone and without -- I  
12 mean, look at the way these people are dressed. Do we  
13 really think they're entertainers? I don't think so.

14           It seems to me that if the board is going to  
15 take the position that this agreement somehow prohibits  
16 a DJ because of the 2004 amendment to the statute, then  
17 the board also has to look at whether it is a DJ,  
18 within the meaning of the statute, meaning someone who  
19 entertains, separate and apart from playing live music.  
20 And we don't have any evidence that this person is any  
21 different than the bartender who plugs in the  
22 proverbial iPod and selects the music. And if a

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1 customer says, hey Joe, I'd like to hear such and such,  
2 request, as was asked by one board member, that doing  
3 that -- that's not a DJ.

4 I mean, a DJ is live entertainment and we've  
5 contended that they have to do more than merely play  
6 music. And the evidence before you, that's all this DJ  
7 did was play music for people to dance.

8 Now, the voluntary agreement contemplated  
9 that people would dance. The ANC agreed that they  
10 could provide dancing. With, that didn't mean have go-  
11 go dancers, that meant patrons would be allowed to  
12 dance. What were the patrons going to dance to?  
13 Recorded music. Who was going to play that recorded  
14 music? Well in the absence of piped in Sirius or XM  
15 music, it would seem to me you have to have somebody  
16 play the music.

17 So, however you get there, it seems to me you  
18 get to the same place, which is this applicant was not  
19 operating in violation and the charges should be  
20 withdrawn. Thank you.

21 CHAIRPERSON MILLER: Thank you. Okay, so I  
22 think that concludes the hearing. We'll close the

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1 record at this time.

2 MR. KLINE: The only thing I would do is  
3 request that the board take administrative notice as to  
4 when the entertainment endorsement provision went into  
5 effect, along with the definition of entertainment.

6 If the board would prefer that we supplement  
7 the record with the legislative history, we're happy to  
8 do that. If the board wants to rely on its legal  
9 counsel to do that, we're happy with that as well. We  
10 just want to make sure that that part of the loop is  
11 closed and the board is clear as to when that law took  
12 effect.

13 CHAIRPERSON MILLER: Okay. Yeah, I think we  
14 can do that. That's a big part of this record, you've  
15 referred to it all throughout.

16 MR. KLINE: So, would you prefer that I --

17 CHAIRPERSON MILLER: And we can take --

18 MR. KLINE: -- do that?

19 CHAIRPERSON MILLER: Sure. Okay.

20 MR. KLINE: Go ahead. But we'll do that --

21 CHAIRPERSON MILLER: All right, I mean, it  
22 just --

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1 MR. KLINE: -- and we'll provide a capacity.

2 CHAIRPERSON MILLER: -- makes it easier for  
3 us. It's judicial notice, so that's fine. Thank you.

4 MR. KLINE: Sure.

5 CHAIRPERSON MILLER: Okay. Anything else?

6 All right, so the record is closed. Parties  
7 want to file proposed findings of fact and conclusions  
8 of law?

9 MR. KLINE: We'll waive.

10 CHAIRPERSON MILLER: Waive?

11 MS. PHILLIPS: Waive.

12 CHAIRPERSON MILLER: Okay. All right. Then  
13 I just need to read the instructions for the closed  
14 meeting and that will complete everything.

15 As chairperson of the Alcoholic Beverage  
16 Control Board for the District of Columbia, and in  
17 accordance with Section 405 of the Opening Meetings  
18 Amendment Act of 2010, I move that the ABC Board hold a  
19 closed meeting for the purpose of seeking legal advice  
20 from our counsel on Case Number 12-CMP-00153, Third  
21 Edition, per Section 405(B)4 of the Open Meetings  
22 Amendment Act of 2010 and deliberating upon this case

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1 for the reasons cited in 405(B)13 of the Open Meetings  
2 Amendment Act of 2010.

3 Is there a second?

4 MR. SILVERSTEIN: Second.

5 CHAIRPERSON MILLER: Motion's been seconded  
6 by Mr. Silverstein. I'll now take a roll call vote.

7 Mr. Brooks?

8 MR. BROOKS: I agree.

9 CHAIRPERSON MILLER: Mr. Alberti?

10 MR. ALBERTI: I agree.

11 CHAIRPERSON MILLER: Ms. Miller agrees.

12 Mr. Silverstein?

13 MR. SILVERSTEIN: I agree.

14 CHAIRPERSON MILLER: Mr. Jones?

15 MR. JONES: I agree.

16 CHAIRPERSON MILLER: As it appears the motion  
17 has passed by a 5-0-0 vote, I hereby give notice that  
18 the ABC Board will hold a closed meeting in the ABC  
19 Board conference room today, pursuant to the Opening  
20 Meetings Amendment Act of 2010 and issue an order  
21 within 90 days.

22 Thank you.

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1 MS. PHILLIPS: Thank you.

2 MR. KLINE: Thank you.

3 CHAIRPERSON MILLER: Have a good afternoon.

4 It is now afternoon. Okay, I think that concludes our  
5 cases for the morning's calendar and the board will now  
6 take a recess.

7 (The hearing concluded at 12:20 p.m.)

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1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, ANDREW KNOUS, the officer before whom the  
4 foregoing hearing was taken, do hereby certify that the  
5 testimony appearing in the foregoing pages was recorded  
6 by me and thereafter reduced to typewriting under my  
7 direction; that said transcription is a true record of  
8 the testimony given by said parties; that I am neither  
9 counsel for, related to, nor employed by any of the  
10 parties to the action in which this hearing was taken;  
11 and, further, that I am not a relative or employee of  
12 any counsel or attorney employed by the parties hereto,  
13 nor financially or otherwise interested in the outcome  
14 of this action.

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ANDREW KNOUS

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Notary Public in and for the

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District of Columbia

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CERTIFICATE OF TRANSCRIPTION

I, SUSAN LaPOOH, hereby certify that I am not the Court Reporter who reported the proceeding and that I have typed the transcript of the proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

\_\_\_\_\_

Date

\_\_\_\_\_

SUSAN LaPOOH

Transcriptionist

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