

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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PUBLIC HEARING

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IN THE MATTER OF: :

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Alcohol Certification : Rulemaking

Provider Rulemaking : Hearing

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Section 211 of the DCMR :

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February 28, 2013

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

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

10:11 a.m.

CHAIRPERSON MILLER: Good morning everyone. Welcome to the special scheduled meeting of the District of Columbia Alcoholic Beverage Control Board today in which we are going to be holding hearings on five rulemakings.

My name is Ruthanne Miller. I'm the Chair. To my far right is Mr. Donald Brooks and to my immediate right is Mr. Nick Alberti. We have three members in attendance today for the conduct of business and three constitutes a quorum.

Copies of today's calendar and agenda are available at the receptionist desk.

Please be aware that these proceedings are being recorded by a court reporter. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. If you have any electronic devices; cell phones or such,

1 please make certain they're turned off to
2 avoid any interruption of the proceedings.

3 Please note when you come forward
4 to take a seat at the table you'll find a
5 piece of paper. We'd very much like for you
6 to sign in with your name and whatever
7 organization, if any, that you're representing
8 so that we have that correct for the record.

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

18 Okay. So those are the
19 introductory remarks and I'm going to now
20 begin the first hearing, which is on Alcohol
21 Certification Provider Rulemaking as it
22 relates to Section 211 of the DCMR.

1 We're here today pursuant to D.C.
2 Official Code 25-211(b) to conduct a public
3 hearing and take comment on a proposed
4 rulemaking that amends Section 211.2 of
5 Chapter 2 of Title 23 of the District of
6 Columbia Municipal Regulations.

7 These proposed rules amend the
8 list of subjects that alcohol certification
9 providers must include in their alcohol and
10 education training. Specifically these
11 additional training subjects include
12 recognizing harmful or potentially harmful
13 situations that may lead to sexual harassment
14 or sexual assault and intervention techniques
15 to mitigate possible harm to patrons and
16 employees who are being subjected to sexual
17 harassment or sexual assault.

18 The Board initiated this
19 rulemaking to ensure that ABC licensed
20 managers are trained on all facets of public
21 safety issues related to the consumption of
22 alcoholic beverages.

1 I will begin this hearing by
2 calling on those witnesses who notified the
3 agency in advance regarding their desire to
4 address the Board. Each witness will be
5 granted five minutes to speak. The Board will
6 then entertain comments from other interested
7 parties who wish to be heard. If there's time
8 left at the end of the hearing, the Board may
9 consider granting additional time to
10 individuals.

11 If you have prepared written
12 remarks, please hand them to Ms. Danette
13 Walker. Is she here? Oh, Mr. Jonathan
14 Berman. And he will ensure they're properly
15 filed.

16 After the Board convenes this
17 hearing today, the record will remain open for
18 interested parties to submit additional
19 comments by Friday, March 8th, 2013 at 4:00
20 p.m.

21 All right. I have on the list --
22 let me see how many seats there are. At least

1 four can come up at one time. Denise Snyder,
2 Executive Director, D.C. Rape Crisis Center.
3 Is she here?

4 (No audible response.)

5 CHAIRPERSON MILLER: All right.
6 Maybe she'll be here later. Trevor Estelle,
7 Vice-President, TIPS Program.

8 MR. ESTELLE: Present.

9 CHAIRPERSON MILLER: Okay. You
10 want to come up and take a seat?

11 MR. ESTELLE: Sure.

12 CHAIRPERSON MILLER: Thank you.
13 Robert Smith? Come on up. CEO/President,
14 Nightclub Security Consultants.

15 Jeff Jackson? Is he here? Yes.
16 Come on up. President and CEO, Alcohol
17 Beverage Consultants.

18 Susan Mottet, President, D.C.
19 Chapter of the National Organization for
20 Women.

21 Okay. Why don't we start with you
22 all. We have two more here. Is Julia Strange

1 here? Okay. And Andrew Kline. I just think
2 rather than being crowded at the table, I'll
3 call you after them.

4 All right. So if you'll all sign
5 in. Okay. And I guess we can start over
6 here. If you'll introduce yourself for the
7 record, if you have testimony you want to
8 present.

9 MR. ESTELLE: Sure. My name's
10 Trevor Estelle. I'm the vice-president at
11 Health Communications, Inc. We are the
12 providers of the TIPS Program, the alcohol
13 server/seller certification program. Really
14 we're trained in all 50 states, D.C. as well,
15 and 40 different countries. We've certified
16 over 3.5 million people in our responsible
17 alcohol server/seller training program. In
18 D.C. alone we've certified over 30,000
19 personnel; this includes managers as well as
20 servers, in the program. So we have quite a
21 history within the District of Columbia as far
22 as offering responsible alcohol training.

1 Here to testify regarding Section
2 211, the proposals that are set forth. We
3 opposed the proposed additions to Section 211
4 for the following reasons: Our belief that
5 including a chapter on sexual harassment and
6 assault within a responsible alcohol server
7 training course is a distraction to the
8 learner and it detracts from -- or it
9 detracts, dilutes, it takes away from what the
10 core message of responsible alcohol server
11 training is, which is to prevent underage
12 sales, prevent intoxication and prevent drunk
13 driving.

14 Furthermore, alcohol awareness
15 training providers really are not experts in
16 the field of sexual harassment and sexual
17 assault, so asking us to weave in a module or
18 a chapter in that specific area would be
19 challenging in that we're not experts in that
20 field. We would have to find experts. So
21 that would be a burden to do if it even fits
22 into the framework of what responsible alcohol

1 server training is. So really it kind of
2 falls outside the purview of responsible
3 alcohol service. And to the best of your
4 knowledge, on this same point, there's really
5 no study or link or protocol or precedent
6 that's been set that demonstrates that
7 effective alcohol server/seller training will
8 decrease the likelihood of sexual harassment
9 or sexual assault.

10 In conclusion, while we applaud
11 the spirit of this proposal and certainly what
12 it's trying to accomplish, we just feel that
13 it's the wrong venue to do it in. And that's
14 it. I appreciate the time.

15 CHAIRPERSON MILLER: Thank you
16 very much. I think what we should do is hear
17 each of them and then open to questions for
18 the four of them, if that's all right with
19 everyone.

20 MEMBER ALBERTI: Yes.

21 CHAIRPERSON MILLER: Okay. All
22 right.

1 MR. SMITH: My name is Robert C.
2 Smith. I'm the owner and CEO of Nightclub
3 Security Consultants. I'm here to speak about
4 the proposed changes to Title 23.

5 We're the nation's leading bar and
6 club security consultants regarding bouncers,
7 in-house guards, door staff or door hosts. We
8 created the first bouncer training programs in
9 the country. Nationally we've trained over
10 5,000 in-house guards and locally in D.C. in
11 the last four-and-a-half, five years over 400
12 guards.

13 I'd like to speak today briefly
14 about my opposition to adding this topic of
15 sexual assault prevention training in server
16 training modules. First, understand I've been
17 a professional trainer for over 20 years.
18 I've developed training programs that fit
19 certain needs. In 1998 I found a need as a
20 police officer in San Diego to train in-house
21 guards or bouncers. I developed a curriculum
22 and I started training in 1998 while still a

1 police officer.

2 I feel the Board's got a real
3 opportunity here to address an important
4 issue. The fear of alcohol and drug-induced
5 sexual assault has been around and been a
6 worry for years. Before I started my company
7 there was a worry of that. In 1998 that was
8 the down side of the club drug era, but it was
9 still on the tongue of every cop working beat
10 around nightclubs or bars, or every club owner
11 regarding GHB, Rohypnol and ketamine, which
12 were used at the time I think a lot more than
13 they are today as a date rape-type drug.

14 I first addressed sexual assault
15 as a training topic in 1999 for my company
16 after volunteering at a rape crisis center in
17 San Diego as a police officer. I realized
18 that even cops don't get any training other
19 than the law-specific training on
20 investigating this type of stuff and I had no
21 clue the number of unreported sexual assaults,
22 and I thought it would be a good thing to

1 throw into my training in San Diego and the
2 western states. I've been teaching it on and
3 off since 1999.

4 I added it in our D.C. curriculum,
5 D.C. Host Program that we've been doing for
6 four-and-a-half, five years two months ago.
7 I added it into the curriculum because I heard
8 rumblings, I read rumblings about Chief Lanier
9 and her concern with an increased number of
10 sexual assaults. Although there were no local
11 statistics regarding a bar or club sexual
12 assault, I just felt the training might help
13 put out a fueling fire that was growing. From
14 my training sessions nationally there is no
15 palpable increase in club or bar-related
16 sexual assaults, although they're there and
17 I'm not denying them, the most statistical
18 number that is out there that I could find to
19 show an increase in those assaults.

20 The topic of sexual assault, as
21 mentioned earlier, is a complex and sensitive
22 topic. It's never easy to teach it while

1 still driving home the underlying message of
2 what you're trying to get across. My worry
3 with the opportunity the Board has presented
4 with is that you're mandating something that
5 doesn't exist. I've looked at every
6 curriculum out there from the TIPS program,
7 which has been around the longest, to one of
8 the newest online providers, Learn to Serve,
9 and none of them have anything to do with this
10 topic in their programs nationally, nor
11 locally.

12 Adding additional language to
13 Title 23 just doesn't mean that 10 or so of
14 these server companies are just going to throw
15 in sexual assault training. They're going to
16 have to do so much work to just come up to
17 that level, I don't think they'll do it. And
18 I think therefore we're in kind of an empty
19 area of having a law that is mandated for
20 qualified managers, but there's no training
21 program for them.

22 You got a chance to do something

1 really good here. About a year-and-a-half ago
2 in October of '11 I attended a security round
3 table, and at that round table one of the
4 topics was Board-approved security trainers.
5 And all's this was going to do, and from what
6 I remember hearing and talking to some of the
7 Board members about, was put security trainers
8 at the same level as responsible server
9 trainers like TIPS. So my company would
10 submit a fee good for three years. You'd see
11 our curriculum, approve it, but you could say
12 what's in the curriculum.

13 I brought that up. I wanted that
14 done because I knew there were unscrupulous
15 trainers out there already that weren't really
16 training but putting themselves off to you as
17 they were. You got a chance to make that
18 change now, and that doesn't require any
19 rulemaking, any proposed rulemaking. Just add
20 another caveat to mandate that trainers do
21 this as security trainers.

22 Finally, I've been training and

1 working in D.C. for almost five years. Our
2 training in the area of bouncers, nightclub
3 security, liquor liability is far and above
4 anything that's in this region. I've attended
5 Board meetings. I've brought myself up to
6 speed with Title 23, Title 25 and MPD issues.
7 For the last five years you've seen me at
8 Board meetings on and off on Wednesdays when
9 I'm here. You've got someone who is genuinely
10 interested in helping your community out and
11 it's never been taken advantage of. It's not
12 an ethical issue. For whatever reason, it's
13 never been taken advantage of.

14 I've offered a no-cost training on
15 fake and borrowed IDs and sexual assault
16 awareness and I was told no thank you. I
17 offer again the same two trainings at no cost.
18 Mind you, you're not going to sell anything.
19 You would just do what you do now for the
20 current ID training program that you offer
21 that you pay for a trainer to come into town.

22 This works out for you in four

1 ways, I believe: (1) You get a sexual assault
2 awareness program that's been being used
3 around the country when needed and asked for
4 for the last 13 years. Use it for the
5 community here. Use it for bar owners,
6 managers and their employees; (2) it doesn't
7 require any new language or rulemaking; (3)
8 MPD obviously wants some sort of program just
9 to help what they consider is a problem. You
10 get that here; and (4) it costs you nothing
11 and it doesn't create any tension with current
12 alcohol awareness trainers or the companies.

13 Board Members, please give the two
14 possible changes to what you're trying to do
15 real consideration instead of simply writing
16 language, adding regulations, mandating
17 training to a program or programs that just
18 don't have the capability of teaching it.

19 Thank you.

20 CHAIRPERSON MILLER: Thank you.

21 MR. JACKSON: Okay. My name is
22 Jeff Jackson and I'm the president and CEO of

1 Alcohol Beverage Consultants. I'm also a
2 former supervisory investigator with ABRA. I
3 was a supervisor here for approximately 12
4 years. I assisted Fred Moosally in drafting
5 the enforcement section of the regulations in
6 2000.

7 So I'm in support of this alcohol
8 awareness sexual assault training to be
9 included in the program. And the reason why,
10 I used to oversee all of the investigations
11 for ABRA. And sexual assault -- it's not
12 sexual assaults we're talking about. We're
13 talking about sexual harassment. A lot of the
14 investigations, we wasn't able to determine
15 who the sexual harassment was coming from. A
16 lot of times during the investigation we found
17 that was mainly on the employees. The
18 employees was sexually harassing employees or
19 owners.

20 On my staff I have Ron Monroe,
21 who's the assistant police chief for the
22 Metropolitan Police Department, and also Phil

1 Villanueva, who led the training academy for
2 the Metropolitan Police Department for 25
3 years. And during our security training we do
4 include sexual harassment. Now we don't teach
5 it, but we teach some things that the security
6 staff need to be aware of.

7 You know, when it talks about
8 alcohol awareness providers and trainers, what
9 I found during my experience, a lot of people
10 train people of alcohol awareness courses, but
11 they're not specific as to what they need to
12 know, you know? So we approach them from a
13 regulatory standpoint, because D.C. is a
14 different animal, you know? When I say "D.C.
15 is a different animal," there's certain
16 specific things you need to teach when it
17 comes to D.C., you know?

18 And there was a time that owners
19 had to produce a copy of the regulations
20 before they even got a license here in the
21 District of Columbia. And under 25-410(1) it
22 says "certification that he or she obtained a

1 copy and read a copy of this title." When I
2 do training for a lot of my clients, they
3 haven't even received a copy of the title, so
4 I say, well, what do these people train you
5 on? So I'm confused as to what they're
6 learning.

7 And one reason why I started my
8 business, because a lot of establishments,
9 they just don't have the proper information.
10 It's not that they want to do the wrong thing.
11 It's just that they don't know the right thing
12 to do. You know, back in the '90s when I was
13 here, like I said, before you even got a
14 license you had to have a copy of Title 23 and
15 D.C. Code. Now you don't have to have a copy.

16 We always focus on training the
17 ABC manager, but the ABC manager come and
18 goes. What I have proposed and suggested that
19 we have a owner certification training,
20 because the owner need to be aware of what's
21 going on, not the ABC manager. The owner's
22 primarily responsible for his business and his

1 establishment. So I feel that if we
2 incorporate this training, the sexual
3 harassment training, into the alcohol
4 awareness training, it would not eliminate
5 sexual harassment claims. But what it would
6 do will put the owner on notice that, hey,
7 your staff need to be aware and how to
8 identify when there is a sexual harassment
9 claim that is filed.

10 The gentleman spoke about
11 Metropolitan Police Department or the police
12 is not trained in that area. I disagree.
13 Like I said, on my staff I have Ron Monroe,
14 who's the assistant police chief, and my other
15 partner who headed the training academy. And
16 here in the District of Columbia at the
17 training academy they do train their
18 detectives and officers on how to identify
19 what sexual harassment is.

20 Now it's basically one person word
21 against another, but there are certain factors
22 that you would have to consider to see if it

1 rose to the level of sexual harassment. And
2 I think if we put that in the syllabus with
3 the alcohol awareness training it would just
4 educate the owners and the establishment to
5 you can't say certain things to certain
6 guests, you can't say certain things to
7 certain employees. And if you create a safe
8 environment and an atmosphere when the person
9 come in the door, I think that it would reduce
10 the possibility of sexual assaults occurring.
11 But when you mix alcohol with -- you talk
12 about sexual harassment, you're going to
13 receive comments like that, you know, because
14 people come to clubs to have a good time.

15 But I think it's more about
16 education and not trying to prevent sexual
17 assaults from occurring, but to educate the
18 owners and the ABC managers how to identify
19 sexual harassment. And that's what I believe
20 would prevent sexual assaults from occurring.

21 CHAIRPERSON MILLER: Thank you.

22 MR. JACKSON: So that's my take on

1 it. So I'm in support of it.

2 CHAIRPERSON MILLER: Okay.

3 MS. MOTTET: All right. Good
4 morning. I'm Susan Mottet, president of the
5 D.C. Chapter of the National Organization for
6 Women. We have 716 members in D.C. And I
7 want to thank you not only for the opportunity
8 to testify today, but also for taking
9 proactive action to prevent sexual harassment
10 and sexual assault in spaces that serve
11 alcohol in D.C.

12 Approximately 66,000 of the
13 333,000 women in girls who live in D.C. will
14 be raped in their lifetime. At least half of
15 all sexual assaults are facilitated by
16 alcohol. For that reason, ABRA and the ABC
17 Board have an important role to play in
18 helping to prevent sexual assault and I'm
19 appreciative to see that you are taking that
20 role seriously by issuing a proposed rule like
21 this.

22 That being said, I want to focus

1 my testimony on the importance of getting the
2 rulemaking right. Due to slow progress in
3 getting everybody in our community to
4 understand that victims of sexual assault are
5 not to blame, often well meaning people will
6 approach sexual assault prevention education
7 from a victim-blaming perspective, which is
8 often called risk reduction. And I'm here to
9 urge you to clarify in the rulemaking that
10 certification trainings must focus on
11 prevention, not risk reduction.

12 The difference between prevention
13 and risk reduction is critical. Prevention of
14 sexual assault typically involves
15 understanding the types of behaviors that lead
16 to it, intervening when a potentially
17 problematic situation has been identified and
18 creating an environment in which sexual
19 harassment and behaviors that lead to sexual
20 assault are not tolerated by staff, potential
21 victims and bystanders. And research shows
22 that this type of prevention does decrease the

1 rate of sexual assault.

2 In contrast, when the focus is on
3 risk reduction such as urging women not to
4 drink too much in order to reduce their own
5 chance of being raped, the number of sexual
6 assaults is not reduced. It merely makes one
7 individual woman less likely to be the
8 victim. There's been no intervention in the
9 perpetrator's behavior and he's just as likely
10 to choose a different victim.

11 Because our mutual goal here is to
12 reduce the rate of sexual harassment and
13 sexual harassment, I have submitted in my
14 written testimony a recommended amendment to
15 the proposed rulemaking that clarifies that
16 certification trainings should focus on
17 prevention rather than risk reduction.

18 I'm also submitting materials in
19 my written testimony that demonstrate best
20 practices in sexual harassment and assault
21 prevention, specifically for trainings for
22 bars and clubs. I noticed that someone said

1 before that this material and this curriculum
2 doesn't exist yet. It actually does exist and
3 it's being used across the nation and there
4 are national and local organizations in D.C.
5 that are equipped to provide training that
6 follows these best practices.

7 But I just wanted to quickly note
8 a couple of best practices. So first, it's to
9 make sure managers and staff understand the
10 definitions, dynamics and consequences of
11 sexual harassment and assault. And then
12 second, improving awareness about how sexually
13 violence is perpetrated including
14 understanding the sequence of behaviors that
15 lead to sexual assault, many of which do begin
16 in bars and clubs.

17 And I want to quickly run through
18 the first three. The first is target
19 selection, when the perpetrator identifies a
20 target victim who seems to be most vulnerable,
21 least likely to fight back and least likely to
22 report the crime. And often you can see in a

1 bar someone who is looking around for
2 especially drunk women to target.

3 The next step is approach and
4 evaluation, when the perpetrator engages the
5 victim often in a seeming flattering way but
6 with some subtle inappropriate behavior that's
7 sometimes called rape testing. You're
8 testing, you know, getting in their space too
9 close or something to see if they sort of
10 assertively push back on you or if they're too
11 frightened or, you know, timid to do that, in
12 which case they've identified that this might
13 be a good victim.

14 And there's a big role for staff
15 in bars and clubs to identify this type of
16 behavior and intervene. And the intervention
17 can be very simple. It can be looking both of
18 the people in the eye and saying is there
19 anything you need? It'll let the perpetrator
20 know that they're being watched and it lets
21 the victim know that the staff is there to
22 help them.

1 And then the third stage is
2 isolation, when the perpetrator removes the
3 victim from, you know, other people who might
4 intervene or be witnesses. And that's another
5 area where bar and club staff can intervene
6 when they see someone who's incapacitated or
7 who's unable to get home safety.

8 So those are some stages in which,
9 you know, bar and club staff could be very
10 instrumental in helping prevent sexual
11 violence.

12 A third best practice I wanted to
13 mention is helping people, staff, recognize
14 predatory behavior such in the steps I just
15 described. And the fourth best practice is
16 building skills for intervening in the
17 situation. And these trainings should be
18 scenario-based interactive activities that
19 enhance staff skills in intervening in
20 situations like the ones I described above.
21 And we recommend using a poster for staff
22 areas that remind them of what behaviors to

1 look out for and what they can do to intervene
2 to keep that training fresh in their mind.

3 The final best practice I wanted
4 to mention is creating the environment that
5 makes it clear that sexual harassment and
6 sexual violence is not tolerated. And there
7 are a number of materials that can assist in
8 this as well, including a poster here; it's
9 from Boston's Rape Crisis Center, that's
10 posted in the women's bathroom that basically
11 says we want you to have a good time. If
12 you're being bothered by a fellow patron,
13 please don't hesitate to ask for -- and you
14 can list names of people to ask for. And they
15 specify if you need, you know, help getting
16 someone off your back or a safe ride home, you
17 know, we can be of assistance.

18 Similarly there can be posters for
19 men's bathrooms that remind men of their role
20 in preventing sexual harassment and sexual
21 assault. And I have two examples here
22 reminding them of their role, but also giving

1 them examples of how they can do that in very
2 common situations.

3 And finally, I also included a tip
4 sheet that's for managers to remind them of
5 ways that they can ensure that their facility
6 maintains an environment that makes it clear
7 that sexual harassment and sexual assault are
8 not tolerated.

9 There are a number of national and
10 local organizations that can help construct
11 and help conduct these trainings in D.C. And
12 furthermore, DC NOW would be happy to help
13 ensure that, you know, these types of posters
14 and materials can be distributed for free to
15 bars in D.C. if they would like to use them.

16 Thank you for this opportunity to
17 testify and for your willingness to take
18 proactive action on this important issue.

19 CHAIRPERSON MILLER: Thank you. I
20 would just like to start with you follow up
21 since it's fresh. So you're saying that there
22 are organizations in the District who could do

1 this kind of training, separate from TIPS, who
2 does the general training?

3 MS. MOTTET: Sure. Yes, so Julia
4 from CASS is going to testify and they're an
5 example of an organization in D.C. that could
6 help us conduct these trainings.

7 CHAIRPERSON MILLER: Okay. So I
8 should follow up with her on the specifics of
9 that? Okay.

10 MS. MOTTET: Right. And also men
11 Cap Stop Rape is the national organizations
12 that's located in D.C., and they do a lot of
13 trainings like this.

14 CHAIRPERSON MILLER: Not
15 specifically to bars though, right, or it's
16 broader?

17 MS. MOTTET: They do a lot of
18 trainings that are very similar and follow
19 these best practices and they could tweak it
20 to fit the bar environment specifically.

21 CHAIRPERSON MILLER: Okay. Do you
22 know how big a problem sexual harassment and

1 assault is in liquor establishments?

2 MS. MOTTE: Well, the statistics
3 I'm familiar with is that alcohol is used to
4 facilitate about half of all sexual assaults.
5 And, you know, the majority of that is
6 certainly served outside of the home, but I
7 don't have specific details on that. It is a
8 very serious -- you know, a very prevalent
9 problem though.

10 CHAIRPERSON MILLER: Okay. And
11 would you say that the program that you're
12 talking about in general, which talks about
13 identifying behavior and intervening -- is
14 that similar to identifying when someone -- do
15 you know, when to identify like when someone's
16 intoxicated and what to do?

17 MS. MOTTE: Certainly when you're
18 trying to intervene when someone might be
19 isolated in that third stage, that's going to
20 be very similar to the training about
21 identifying when someone's too intoxicated to
22 be continued to be served. It just adds the

1 second step of make sure that they're able to
2 get home safely, yes.

3 CHAIRPERSON MILLER: Okay. I
4 guess I'll keep going and then I'll turn to my
5 colleagues.

6 Mr. Estelle?

7 MR. ESTELLE: Yes?

8 CHAIRPERSON MILLER: Is your point
9 that the TIPS program really isn't qualified
10 to take on this new area, not that it
11 shouldn't be taken on?

12 MR. ESTELLE: Yes, definitely not
13 that it shouldn't be taken on. We applaud the
14 effort, but it's just not in our expertise,
15 it's not in our range of expertise in being
16 able to provide that training. I mean to
17 Susan's point, I mean there is some
18 similarities in that we do have, you know,
19 identifying behavioral cues and once you've
20 identified someone that's, you know,
21 borderline or close to be intoxicated how to
22 handle the techniques and how to handle that

1 person. Well, the big picture of that is
2 really set up that way, but really that's
3 really different than identifying someone
4 that's intoxicated compared to the actual
5 strategies, the techniques to go in to -- in
6 order like to handle a refusal situation would
7 be a little bit different than what's in our
8 program.

9 CHAIRPERSON MILLER: Okay. So
10 you're not opposed to a program in general,
11 just that your organization doesn't have to
12 teach it because it's not your expertise?

13 MR. ESTELLE: Yes, I would be
14 opposed to incorporating or weaving in a
15 program into any sort of responsible alcohol
16 server/seller training program. It's just our
17 belief and our testimony would be that it just
18 is not the appropriate venue for it.

19 CHAIRPERSON MILLER: But does that
20 mean are you opposed to having it in
21 conjunction with yours, but done separately by
22 an organization that specializes in that area?

1 MR. ESTELLE: As long as it's not
2 done within the framework of responsible
3 alcohol server training, yes.

4 CHAIRPERSON MILLER: What do you
5 mean?

6 MR. ESTELLE: So being the
7 framework of alcohol server training that
8 we're providing, that we're in there, as long
9 as it's not included in and it's not
10 distracting the learner or it's taking away
11 from the message of responsible alcohol
12 service, absolutely. I mean it would be
13 something separate obviously from what we're
14 offering.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Smith, I just want to make sure I understand
17 your position, too. You do teach this?

18 MR. SMITH: I do.

19 CHAIRPERSON MILLER: So are you
20 supportive of it?

21 MR. SMITH: I'm not in support of
22 the way it's written now.

1 CHAIRPERSON MILLER: Okay.

2 MR. SMITH: I think that's a
3 mistake that will hurt many of these companies
4 out there, and not so much hurt them, but make
5 them try to adapt to this one law where -- and
6 to address that question, the curriculum
7 doesn't exist for server training companies.
8 It does exist all over the country. It exists
9 in San Diego through private organizations,
10 but getting their foot in the door to teach at
11 a nightclub or bar has been, from what I've
12 seen, extremely difficult unless you have one
13 proactive smart owner who wants that in there.
14 But it's a difficult task to even get servers
15 to show up at their program when it's only
16 mandated for qualified managers. So I'm
17 absolutely for this type of training, and
18 that's why I threw it in our host training for
19 in-house guards or bouncers, because I know
20 it's necessary.

21 CHAIRPERSON MILLER: Okay. Right.

22 MR. SMITH: So I am for this

1 training, but do it separate from server
2 training.

3 CHAIRPERSON MILLER: Okay. Well,
4 others have questions for --

5 MEMBER BROOKS: Yes.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Brooks?

8 MEMBER BROOKS: Yes, thank you.

9 CHAIRPERSON MILLER: Yes.

10 MEMBER BROOKS: So, Mr. Smith, I
11 just want to be clear. So you're saying that
12 you believe in the training, but that it
13 should not be a part of the TIPS training. Is
14 that what you're saying.

15 MR. SMITH: Or any responsible
16 sever training out there.

17 MEMBER BROOKS: Okay. So are you
18 suggesting then that that should be a separate
19 curriculum that should be developed and the
20 owner of an ABC licensed establishment should
21 pay for a different course?

22 MR. SMITH: My personal belief is

1 perfect trainers are people that are from that
2 industry.

3 MEMBER BROOKS: Okay.

4 MR. SMITH: And I think it should
5 be a voluntary -- I'm sorry, a no-cost
6 training for qualified managers, but more
7 importantly the employees that have to deal
8 with this behavior, and that is typically the
9 in-house guard or bouncer. They're the ones
10 that have to deal with unwanted sexual
11 contact, felony and misdemeanor sexual
12 assaults. Qualified managers usually say,
13 hey, go deal with that. They don't even know
14 what they're doing, but they're told to go
15 deal with it. So qualified managers and
16 owners having to go through this is good and
17 valuable, but it's not where the rubber hits
18 the road.

19 MEMBER BROOKS: Okay. And I think
20 I have another question. Jeff Smith, is
21 that --

22 MR. JACKSON: Jeff Jackson.

1 MEMBER BROOKS: Jackson. I'm
2 sorry. You mentioned that D.C. is a different
3 animal --

4 MR. JACKSON: Yes.

5 MEMBER BROOKS: -- from other
6 jurisdictions. Why is that?

7 MR. JACKSON: Okay.

8 MEMBER BROOKS: Or what do you
9 mean by that?

10 MR. JACKSON: Okay. Regulating
11 D.C., you know, you have companies that come
12 in from out of town that try to incorporate
13 what occur in other states into the District
14 of Columbia. And our rules and laws are
15 different and you have to be more specific.
16 For example, when it comes to security
17 training, we have certain recommended
18 suggestions that should be in your security
19 plan. When you come to training about back-up
20 drinks, every state doesn't regulate back-up
21 drinks, you see? So certain things. And what
22 we teach -- I teach the people from an

1 investigative end, being I used to head up the
2 investigative unit here, so I know
3 specifically what people need to learn at
4 their establishment.

5 When you talk about sexual
6 harassment, I investigated plenty sexual
7 harassment complaints. And I think the
8 servers need to be aware of how to identify
9 sexual harassment, because if someone is
10 sitting at the bar and I'm a bartender serving
11 somebody a drink and I see a customer saying
12 to a person, hey, baby, you look real good, or
13 touching a person in an inappropriate manner,
14 that's a form of sexual harassment. And it's
15 the responsibility of the establishment -- if
16 they see it or identify it, they should take
17 some action, not just sit back and say, well,
18 I don't know what's going on here. And what
19 they can do is alert security and say, hey, I
20 see a young lady over here being sexually
21 harassed. And then security can step in and
22 just observe the situation, not saying that

1 they're going to say to the individual, hey,
2 don't do this or don't do that, but you need
3 to know how to identify it.

4 And according to EEO and
5 specifically in the regulations and in the law
6 which was written back in 1980, there are
7 certain things that they can look for. For
8 example, they suggest that comments of a
9 sexual nature, comments about clothing, sexual
10 or sex-based jokes, requesting sexual favors
11 -- so it's things that we can incorporate into
12 the alcohol awareness training that can just
13 give them the knowledge and understanding,
14 because that's all the training is. You can't
15 make a person adapt to this training, but you
16 can educate them and they can't plead
17 ignorance.

18 And that's one thing that I see a
19 lot when I go out and train these
20 establishments and train some of these folks.
21 I'm like do you have a copy of the
22 regulations? They said, no, whoever trained

1 me didn't give me a copy of the regulations.
2 But it states specifically in the regulations
3 that you received a copy of it. So how can
4 you train somebody on something and you don't
5 provide them with the information that they
6 need to have to stay into compliance?

7 MEMBER BROOKS: Okay. All right.
8 Another issue I wanted to raise with you: You
9 indicated that you believe that the owners
10 should take ABC training, correct?

11 MR. JACKSON: Yes. Now what I did
12 was I proposed to the mayor as well as to the
13 Board about two years ago that they need an
14 owner certification program. There used to be
15 years ago a ABC manager was only able to work
16 at one specific establishment. Now ABC
17 managers can float. So if you can float to
18 another establishment, that means the owner
19 really don't know about the quarterly reports.
20 That's why we have so many people getting
21 cited for quarterly reports, getting cited for
22 no lettering on the window, getting cited for

1 no signage, because the owner is not aware.
2 It's always the ABC manager that we're
3 training. And if he fires the ABC manager,
4 you're exposed.

5 MEMBER BROOKS: Now would the
6 owner take the same training or differently
7 specifically for the owner?

8 MR. JACKSON: The owner would take
9 a different training.

10 MEMBER BROOKS: Okay.

11 MR. JACKSON: It would include
12 some of this, but it would be more extensive.

13 MEMBER BROOKS: Okay.

14 MR. JACKSON: For example, a ABC
15 manager really shouldn't be trained on
16 quarterly reports because it's the owner's
17 responsibility to make sure that his paperwork
18 is submitted in a timely manner.

19 MEMBER BROOKS: Okay. Ms. Mottet,
20 I'm interested in best practices that you may
21 be aware of. Do you know of any other cities
22 that you would recommend that we look at their

1 laws governing the behavior of sexual
2 harassment, other cities?

3 MS. MOTTET: I know that Boston
4 does a very good job of this. And so as a
5 result, all the material I brought actually
6 was from the Boston Rape Crisis Center, who is
7 paid to do these trainings.

8 MEMBER BROOKS: So Boston is a
9 city that you think we should take a look at?

10 MS. MOTTET: Yes, I would
11 recommend that.

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

14 CHAIRPERSON MILLER: Thank you.
15 Mr. Alberti?

16 MEMBER ALBERTI: I just want to
17 follow up with Ms. Mottet. So when you say
18 Boston does this training, who is the target
19 audience that's being trained?

20 MS. MOTTET: The bar managers and
21 servers is their target audience.

22 MEMBER ALBERTI: Okay. Gentlemen

1 -- this is really I think maybe to Mr. Smith
2 and Mr. Estelle. I'm hearing -- and even you
3 Mr. Smith, said that the materials are out
4 there. I mean the training practices are out
5 there. All right? So I don't think there's
6 -- except for Mr. Estelle who says maybe
7 you're not aware of them, but there seems to
8 be little dispute that the training materials
9 are out there. We have an example of how it
10 would apply to people in the business of
11 serving alcohol in Boston.

12 So but what I'm hearing and I'm
13 trying to understand from Mr. Smith and Mr.
14 Estelle is this notion that, one, that it
15 would be very difficult to incorporate into
16 the alcohol awareness training. And so I'm
17 wondering -- and the other comment from you,
18 Mr. Estelle, that it's not the appropriate
19 venue for that training. So maybe you could
20 speak more to those two comments.

21 MR. ESTELLE: Yes, I mean it's --
22 what I testified to, that it distracts from

1 what the core message of responsible alcohol
2 server/seller training is. It's about serving
3 and selling alcohol responsibly within the
4 confines of the law that governs the sale,
5 service and promotion of alcohol. And that's
6 what the core message is. That's what the
7 core course is.

8 our course, the TIPS program, when
9 a trainer goes into an establishment and
10 offers the training, it's a four to five-hour
11 course just for responsible alcohol server
12 training. It covers everything from the laws
13 and regulations as they pertain in the
14 District of Columbia to intervention
15 strategies to really fine tuning their skills.
16 They're already working people skills so they
17 can identify someone that's getting into
18 trouble with alcohol, and more importantly to
19 have strategies to handle that.

20 So when you start bringing in
21 sexual harassment and sexual assault or any
22 outside training, not to pick on sexual

1 assault or sexual harassment training, you
2 know training that perhaps deals with, you
3 know, how to keep your books in order for the
4 IRS within a bar or establishment. I mean
5 that's not included in responsible alcohol
6 service because it's outside the purview, it's
7 outside the venue. That's really what I'm
8 getting at. You already have a four to five-
9 hour program. I'm not sure how long the
10 program is in Boston. We do a lot of training
11 in Boston. I hadn't heard that they had a
12 program that's specifically for servers and
13 sellers. I don't believe that comes out
14 through the Liquor Control Commission in the
15 State of Massachusetts, but would be
16 interested in learning more.

17 MEMBER ALBERTI: Okay.

18 MR. SMITH: Sir, I'd like to
19 address --

20 MEMBER BROOKS: Well, maybe --
21 before you -- okay. For the issue of -- if
22 this went in effect, what would be the

1 difficulties of incorporating it?

2 MR. ESTELLE: Length of time.
3 Training the trainers that we have in place
4 out there in the program. They're going to be
5 -- these are mostly hospitality workers that
6 probably don't have a lot of familiarity with
7 sexual harassment and sexual assault training.

8 The other difficulty is separating
9 out the two. I mean we're talking about going
10 in and training someone in responsible alcohol
11 service and sales and then you bring in the
12 sexual harassment and sexual assault that's
13 really outside the purview of that. It's
14 outside the purview of the framework. I mean
15 I don't know how long it is, but you're
16 probably looking now instead of a four to
17 five-hour course, maybe a seven to eight or
18 eight to nine-hour course you're asking a
19 server of alcohol or a manager of alcohol to
20 through.

21 MEMBER ALBERTI: I have to tell
22 you that as I'm hearing this I'm hearing that

1 in alcohol awareness training, you do training
2 about cues that you get from the patrons. And
3 so it's not to me all that far from looking
4 for a different set of cues. The training
5 already teaches you how to be aware of your
6 surroundings and your customers and to look --

7 MR. ESTELLE: It teaches you how
8 to be aware, but the -- and sorry to
9 interrupt.

10 MEMBER ALBERTI: That's okay.

11 MR. ESTELLE: But the behavioral
12 cues for someone that's intoxicated compared
13 to the behavioral cues of someone that is
14 potentially going to sexually harass or
15 sexually assault someone are completely
16 different and require a completely different
17 skill set, in my opinion.

18 I agree with you though on the
19 overall picture. It makes them more aware of
20 their customers, our training does, but not
21 the specifics of identifying those cues.

22 MEMBER ALBERTI: Okay. Thank you.

1 Mr. Smith?

2 MR. SMITH: Well, first off, back
3 to Mr. Brooks' different animal comment, booze
4 does the same thing worldwide. The different
5 animal here, I think what he means is the
6 rules and regulations. And national programs
7 like theirs; and I don't do responsible server
8 trainings, they teach to the locality they're
9 in. And therefore, I decided to build my
10 model the same way. When I'm in Charleston,
11 I teach towards Charleston local laws and
12 rules. The core element of those rules
13 nationwide are the same. Booze can't leave
14 the building. Intoxicated people to an
15 certain extent is illegal. Over service is
16 illegal. Those kind of things are the
17 standard nationwide city-to-city.

18 Our programs -- now we're not
19 connected in any way. I teach just bouncers,
20 period, but I teach local down to the core
21 elements of Title 25, 23 and what the local
22 laws are. To that point, there's nothing in

1 local law regarding sexual harassment guest-
2 to-guest. And I believe that's what we're
3 talking about. We're not talking about sexual
4 assault, sexual harassment -- I'm sorry,
5 sexual assault or sexual contact from a
6 bartender to a customer, unless your training
7 means we don't want bartenders sexually
8 assaulting people. I think that's obvious.
9 I don't know that we have a case where we've
10 got a bartender who's drunk too much locally
11 and he sexually assaulted someone. You follow
12 what I'm saying?

13 MEMBER ALBERTI: I follow what
14 you're saying.

15 MR. ESTELLE: We're using a word
16 "sexual harassment." And the two laws at MPD,
17 locally the two laws, specifically sexual
18 contact, misdemeanor felony level; sexual
19 abuse, four felony levels, period. There's
20 nothing in that section on the criminal side
21 regarding sexual harassment. I totally
22 understand unwanted comments from a drunk

1 customer towards a possible victim that could
2 be misconstrued as sexual harassment. That's
3 not what the law says about EEO. That's a
4 power thing. That's an employee-to-employee,
5 employer-to-employee.

6 What we're dealing with is
7 inappropriate behavior by an aggressive
8 customer towards a potential victim. Does
9 that make sense to you? A potential customer
10 who's drunk cannot sexually harass, per the
11 law, a guest.

12 MEMBER BROOKS: That's not totally
13 it, Mr. Smith. And I can give you an example,
14 but continue.

15 MR. ESTELLE: Well, but I would
16 love -- and I've spoke to people about that.
17 The sexual harassment I think we're talking
18 about is unwanted sexual advances, comments or
19 whatever, guest-to-guest, absolutely against
20 the law, sexual harassment employee-to
21 employee, employer-to-employee, that type of
22 thing.

1 But a guest saying something
2 inappropriate to a female guest, that's not
3 illegal. It may be unwanted advances per
4 policy and we boot that aggressor out, but we
5 boot him out because we know in training that
6 it could lead to something worse, which is
7 next the unwanted sexual contact on the dance
8 floor where the woman feels I-can't-get-away
9 victim. She needs to be dealt with. He needs
10 to be arrested, or at least given the
11 opportunity to have him arrested by the
12 female.

13 I agree with this training. I
14 think it would be difficult to have a four-
15 hour training, four to five-hour training --
16 and if I can ask, how long is your training
17 component? Do you know how long the Boston
18 one is?

19 MS. MOTTET: I actually don't know
20 that.

21 MR. SMITH: Okay. I would guess
22 it's got to be a minimum of two hours. I

1 don't know. I'm just guessing. But I would
2 also be guessing to say that the program isn't
3 sponsored by any alcohol service industry
4 within Boston. So add another two hours to
5 that. I think everyone here would agree, all
6 four of us would agree that it is necessary.

7 I also think we would agree that
8 it -- I think it should be a separate animal
9 to itself that whether it's put in as a
10 rulemaking or whether it's offered through a
11 non-profit separate entity and they could
12 tweak their programs, whoever it is, NOW,
13 CASS, out of Boston, to do it not for just
14 qualified managers as your rulemaking exists.
15 Do it for the ground-level employees, servers
16 and guards, or review current programs on what
17 they are teaching regarding that to see if you
18 approve them.

19 MEMBER ALBERTI: Thank you.

20 MR. SMITH: Thanks.

21 MEMBER ALBERTI: I just will say
22 that it's an interesting suggestion; and we've

1 heard it before, that we should require
2 training for more than just the managers. So
3 that's definitely food for thought and I thank
4 you for that.

5 Mr. Jackson, you want to add
6 something?

7 MR. JACKSON: Yes, I have a copy
8 of the sexual harassment -- when we do our
9 security training; like I said, I have Ron
10 Monroe, who's the assistant police chief for
11 the Metropolitan Police Department, and Philip
12 Villanueva, who used to head of the training
13 academy for the Metropolitan Police
14 Department, in one section our sexual
15 harassment training it states that the
16 guidelines also hold employers responsible for
17 any acts of sexual harassment by a non-
18 employee in the work place under the same
19 standard. So a non-employee would be a guest
20 inside of your establishment as well.

21 MEMBER ALBERTI: Yes.

22 MR. JACKSON: So there's a lot of

1 liability that can occur on the owner and the
2 establishment if sexual harassment occurs in
3 an establishment. And if the servers or the
4 owners of the employees don't know how to
5 identify it, then it's a possibility that that
6 liability can extend to say a regulatory
7 agency for the simple reason that you have a
8 person inside your establishment that we
9 licensed and gave a license to to serve
10 alcoholic beverages, but we don't educate them
11 on certain things to identify.

12 When it comes to alcohol
13 awareness, and when I was saying D.C. is a
14 different animal, I think that the training
15 needs to extend beyond just TIPS training.
16 You know, we need to educate these people not
17 just on alcohol. In D.C. and in heading up
18 the investigative unit, there's other things
19 that occur inside of establishments that these
20 people need to be aware of. Because if it was
21 just alcohol awareness training that was so --
22 I guess so good and so effective, then you

1 won't have a lot of people serving back-up
2 drinks, you won't have a lot of people serving
3 intoxicated people. So then you question how
4 good is the training?

5 So I suggest that this training
6 and what I offer to people, that we come in
7 and train you every six months, because you
8 have new staff coming in and out, you know?
9 And like I said, the training is just for the
10 ABC managers, not for the servers. ABC
11 managers come and go.

12 MEMBER ALBERTI: Thank you. I
13 have no further questions.

14 CHAIRPERSON MILLER: Okay. I just
15 have one question. I think it was from Mr.
16 Smith, but somebody said that the training
17 should be at no cost. Did you say that?

18 MR. SMITH: Yes.

19 CHAIRPERSON MILLER: No cost to --
20 who should pay for it then?

21 MR. SMITH: Well, I've worked with
22 a couple of non-profits around the country.

1 CHAIRPERSON MILLER: Yes.

2 MR. SMITH: And they've done the
3 training at no cost. They're often times
4 grant funded, funded by other groups --

5 CHAIRPERSON MILLER: Okay.

6 MR. SMITH: -- because they want
7 to get their message out there and it's
8 important.

9 CHAIRPERSON MILLER: Okay.

10 MR. SMITH: There are other ways
11 to get the funds, but looking from within this
12 industry operator -- because we both want them
13 to get this training, but I'm speaking from
14 knowing this industry. It's hard enough to
15 get them to send a bartender to his training.

16 CHAIRPERSON MILLER: So even if
17 it's mandated?

18 MR. SMITH: Well, now that it's
19 mandated you got to have the correct training
20 platform for them to follow up on it. When it
21 becomes mandated, you'll get a trainer who
22 pops out of the woodwork and says, oh, I read

1 Boston's program. I can teach. Now they're
2 out there teaching. If you add that into the
3 curriculum where -- not just in the server
4 program, but if you want security training,
5 you want sexual harassment training or sexual
6 assault training, you see the curriculum. You
7 vet the trainer. Someone from your regulatory
8 agency attends the training. Now you've
9 really got a truly mandated program that you
10 can check and balance on.

11 If it's done free, my belief is
12 you'll get more attendance. You'll get
13 attendance from the lowest-level server;
14 especially because most of the industry has
15 female servers, you'll get attendance from
16 bouncers, guards, and you'll get attendance
17 from owners. It's a no-cost thing, but they
18 walk out of there with a little better
19 education that they can speak to at your
20 hearings if they have some sort of event.

21 CHAIRPERSON MILLER: Okay. Thank
22 you very much.

1 Okay. I think that completes this
2 panel. And the record is open until March
3 8th. And if you want to submit any
4 alternative language or any other statistics
5 or information, please do. Okay. Thank you.

6 All right. Julia Strange,
7 director of programs and policy, Collective
8 Action of Space Spaces. Andrew Kline,
9 representative of the Restaurant Association
10 of Metropolitan Washington.

11 Chief Burke, do you want to
12 testify?

13 CHIEF BURKE: Sure.

14 CHAIRPERSON MILLER: Okay. Great.
15 Is there somebody else? We have one more seat
16 up here if anyone else is waiting to testify.

17 Okay. I'm happy to start with --
18 your schedule's okay?

19 CHIEF BURKE: I'm fine.

20 CHAIRPERSON MILLER: Okay. All
21 right. Then, Ms. Strange?

22 MS. STRANGE: Okay. First I want

1 to thank you for this opportunity to submit
2 testimony regarding this proposed rulemaking
3 by ABRA.

4 My name is Julia Strange and I'm a
5 resident of Ward 1, as well as the director of
6 program and policy for Collective Action for
7 Safe Spaces. We're a local grassroots
8 organization that aims to empower D.C.
9 Metropolitan area to build a community free
10 from public sexual harassment and assault. In
11 both of these capacities I am submitting
12 testimony in support of amending Section 211
13 of Title 23 of DCMR to expand the subjects
14 that alcohol awareness certification providers
15 must include in their alcohol and education
16 training programs.

17 And I will also say, going off of
18 my testimony, after the first discussion that
19 was going on, I am seeing the benefits of
20 having this as a separate stand-alone
21 training. I'm beginning to think that may be
22 that is a better way of approaching this.

1 Okay. If we do move forward with
2 the language as is, I do support the D.C.
3 chapter of the National Organization for
4 Women's proposed amendment to include
5 specifically sexual assault prevention and not
6 risk reduction. That's a very important
7 distinction that needs to be made.

8 Since 2009 CASS has collected
9 stories of public sexual harassment and
10 assault through an anonymous online platform.
11 We have collected stories of over 500
12 experiences to date, some of which occur in or
13 around ABC establishments. For example, at a
14 bar in Adams Morgan one woman described being
15 kissed without consent by a patron who had
16 been bothering her all night while the bouncer
17 did nothing but laugh. Another woman
18 described how a man grabbed her by the
19 shoulders and shook her hard after she
20 repeatedly asked him to stop touching her.
21 And of course in December 2012 the Washington
22 Post reported on an alleged sexual assault

1 that took place at an after-hours gathering at
2 Bohemian Caverns. These individuals were
3 really brave for sharing their stories with us
4 and for reporting to police.

5 And just to echo what Susan was
6 saying, one in five women are raped in their
7 lifetime. This is according to CDC data. And
8 it's important to note that alcohol is the
9 most common substance used by perpetrators to
10 facilitate sexual assault. Fewer than one-
11 fifth of these incidents are perpetrated by
12 strangers and at least half of all
13 acquaintance sexual assaults involve alcohol
14 consumption by the perpetrator, the victim, or
15 more commonly both. In 2012, D.C. saw a 51
16 percent increase in sexual assault cases with
17 263 cases reported to the police, keeping in
18 mind that this is a very under-reported crime.

19 All sexual assaults, but
20 particularly those that are drug or alcohol-
21 facilitated, have a profoundly negative impact
22 on the individual survivor, as well as the

1 broader community. And both the connection
2 between alcohol and sexual assault and the
3 rising number of reported sexual assaults in
4 D.C. speak to the urgent need for ABC
5 establishment training.

6 The good news is that sexual
7 assault is preventable. The environment
8 around a sexual aggressor can make a
9 difference in their behavior and help prevent
10 sexual assaults from occurring. Bar owners,
11 managers and ground staff can play a key role
12 in prevention by establishing a respectful
13 environment where these types of behaviors are
14 not tolerated. The proposed additional
15 training requirements are key to ensuring that
16 these establishments are effectively do their
17 part.

18 So we have several specific
19 recommendations for this content. First, we
20 do recommend that this training curriculum
21 includes information on the dynamics of sexual
22 assault, including the continuum of behavior,

1 its causes and its effects on victims. We
2 also recommend that information on how to
3 recognize predatory behaviors, including the
4 common steps perpetrators will take to target
5 their victims, which Susan went into in
6 detail. And again, we also want to emphasize
7 that this training does need to be
8 interactive. It needs to be scenario-based to
9 actually build those skills to enhance their
10 ability to either directly or indirectly
11 intervene in situations involving sexual
12 harassment or sexual assault. And adequate
13 time does need to be made to actually practice
14 these skills that shows that they're able to
15 use these.

16 And second we recommend that
17 advocacy groups and subject matter experts in
18 sexual assault be engaged such as my
19 organization, Collective Action for Safety
20 Spaces, in the training development process.
21 Again, historically sexual assault prevention
22 training has utilized this risk reduction

1 model which can often be very victim-blaming
2 in tone and in content. Progressive sexual
3 assault prevention education shifts the onus
4 of prevention to both perpetrators and
5 bystanders, and research shows that this is
6 far more effective.

7 So again, thank you for this
8 opportunity to testify. I'm happy to answer
9 questions or to discuss further opportunities
10 for collaboration.

11 CHAIRPERSON MILLER: Thank you
12 very much.

13 Okay. So like the other panel,
14 we'll go through the panel and then we'll do
15 the questions. Thank you.

16 Mr. Kline?

17 MR. KLINE: Good morning. My name
18 is Andrew Kline. I'm here on behalf of
19 Restaurant Association of Metropolitan
20 Washington, which has in excess of 700
21 members, over half of which are licensed
22 restaurants in the District of Columbia.

1 First of all, I want to thank the
2 Board for taking up this important topic.
3 Although we don't necessarily agree with the
4 approach, the Restaurant Association does
5 recognize that this is an area of concern and
6 certainly something that bears addressing.
7 And I also want to thank Ms. Mottet and Ms.
8 Strange for their constructive comments
9 concerning a possible program and approaches
10 to deal with this issue and this problem.

11 Having said that, the Restaurant
12 Association takes a different approach with
13 respect to the proposal that the Board has put
14 forth. First of all, I think it's important
15 to look at the history of alcohol awareness
16 training and the background of it. Our
17 understanding is alcohol awareness training
18 was originally conceived by one of the
19 national beer wholesalers as a proactive means
20 of addressing the ill effects of alcohol. As
21 a result of that, tens of thousands of dollars
22 and who knows how many hours were spent

1 developing meaningful curriculum on a national
2 basis. And there were quite a few resources
3 that went into that.

4 The District ultimately decided to
5 require mandatory training for managers about
6 10 years ago. Before that there had been
7 quite a bit of voluntary training. And there
8 was a very good reason for that, which is,
9 number one, it's good business practices. No.
10 2, insurance companies will sometimes look at
11 this and discount premiums based upon
12 participation in such programs, and we think
13 that's a much better approach.

14 We have concerns with over-
15 localizing training, meaning alcohol awareness
16 training in the District of Columbia. As I
17 mentioned earlier, a lot of resources go into
18 developing these programs. If you localize
19 them to the point where only the local
20 operators will offer training, then you lose
21 the benefit of the resources that are poured
22 into developing these programs such as TIPS

1 and TAM and the National Restaurant
2 Association's ServeSafe Program, which used to
3 be called Barcode. And we think that's
4 important.

5 And we think that those resources
6 in terms of looking at best practices are
7 something that we want in the District. The
8 Restaurant Association does not want to see
9 TIPS, TAMs, ServeSafe or any of the other
10 national organizations pull out of the
11 District in terms of certification because
12 they don't feel like they can participate
13 based upon a localized curriculum.

14 I can tell you in my own
15 experience there are some trainers out there
16 where it's basically purchase a certificate.
17 Checks are written and certificates are given
18 and there isn't a whole of training. I've
19 never heard that with any of the national
20 operators, and I'm not saying that there
21 aren't good local operators, so don't get me
22 wrong, but we do have concern about that. And

1 if it's left only to local trainers because of
2 the localization of the program, we have great
3 concerns about that.

4 With respect to mandatory
5 training, I want to point out a couple things:
6 One is that we have some very good voluntary
7 programs that are going on right now such as
8 your own Alcohol ID Program, which I
9 understand from the director there's quite a
10 bit of participation in. We also have a new
11 licensee orientation class which is slated for
12 next month. And I understand even though it's
13 two weeks before the program and our members
14 and other operators tend to sign up late, that
15 there's already significant interest in the
16 program. So we would ask that you look at a
17 more voluntary approach.

18 Ten years ago when the Council was
19 considering mandatory training for all
20 managers and servers, I called up Adam
21 Chafetz, whose father developed the TIPS
22 program. He's actually Trevor Estelle's boss.

1 He's the president of the organization which
2 sponsors TIPS. And I said, hey, they're
3 thinking about doing mandatory server training
4 in the District of Columbia. What do you
5 think? He said that's a terrible idea. I
6 said you're in the training business. How
7 could you possibly take that position?

8 And he said, well, our experience
9 is that the carrot is much more effective than
10 the stick in getting buy-in programs such as
11 ours and we believe that it is a much
12 effective approach to provide incentives; for
13 example, by insurance premium reductions and
14 other means to get people to participate in
15 these programs because we get buy-in and the
16 people that attend actually learn something
17 and get something out of the program. The
18 programs are stronger because of that as
19 opposed to situation where people come to the
20 training, check it off the list and they're
21 done.

22 I'm no expert in training, but I

1 pass that along because I believe that their
2 organization has experts in training and
3 that's their position, which I found quite
4 enlightening.

5 I would also note that this is an
6 important problem, but our members are in
7 business and there is an issue of margins.
8 The restaurant industry has some of the lowest
9 margins in industry in the country. The
10 national average that NRA used to quote was a
11 four-percent profit margin. A few years ago
12 they revised that down to one-and-a-half
13 percent. So we understand that in terms of
14 public safety that, hey, I mean cost is
15 sometimes down the list of priorities, but it
16 does have to be something that should be
17 considered in terms of the cost to the
18 industry.

19 Lastly, if you are to proceed with
20 the language that's been proposed, we think it
21 needs to be refined. (d) and (e), the two new
22 subsections of 211.2 are quite broad. In fact

1 they deal with both sexual harassment and
2 sexual assault not even specifically related
3 to the sale and service of alcoholic
4 beverages. So if you are going to go down
5 this road in terms of adding it to 211.2, we
6 would ask that you take a sharper pencil in
7 terms of the language and refine it so we're
8 clear as to what we're talking about. Because
9 right now it could be employee harassment
10 situations. There are a wide variety of
11 situations which would be encompassed by this
12 language. We don't think that was your
13 intent. We just think that if you go in this
14 direction, the language needs to be refined.

15 I want to thank you for giving me
16 the opportunity to testify today and obviously
17 I'm happy to entertain any questions you might
18 have. Thank you.

19 CHAIRPERSON MILLER: Thank you.

20 Chief Burke?

21 CHIEF BURKE: Good morning. I'm
22 Assistant Chief Patrick Burke. I'm with the

1 D.C. Metropolitan Police Department. I
2 oversee Strategic Service Bureau.

3 Thank you for the opportunity to
4 be here today. I kind of jumped in at the
5 last minute to this, but I want to make sure
6 that you're aware that MPD does support the
7 language. We appreciate that you're taking
8 efforts to address this serious in the
9 District of Columbia.

10 We have been working and obviously
11 we recognize the problem with sexual assaults
12 that either happen in or emanate from ABC
13 establishments here in the District of
14 Columbia. We've been working for years
15 obviously with the multitude of universities
16 and young people especially in the city with
17 a wide array of partners to address these
18 issues, but I think that this is something
19 obviously that people need to take more
20 seriously and need to have some training on as
21 well, to include the police department. And
22 I will be overseeing the training academy as

1 well for MPD and this is something that we are
2 including in our curriculum as well.

3 We know that especially with the
4 economic development in the city there's a
5 burgeoning nightlife population, and the chief
6 I know mentioned specifically in her
7 performance hearing yesterday that she's
8 taking specific measures and implementing a
9 specific unit to address these ABC areas
10 throughout the city, and dealing with sexual
11 assaults is a big part of that program.

12 One of the things that MPD has
13 worked on recently with some of our partners
14 such as Julia and Collective Action for Safe
15 Spaces has been to put together a best
16 practices guideline, which we've had help from
17 ABRA; Fred and Martha have been very helpful
18 there, groups such as Collective Action for
19 Safe Spaces are partners to include folks in
20 the nightlife community and the D.C. Fire
21 Department. And essentially what we're trying
22 to do is we research worldwide what some

1 agencies are doing as far as best practices go
2 in the nightclub industry pertaining to
3 homeland security issues, fire safety issues,
4 and Faust from D.C. Fire and EMS helped us out
5 there with sexual assaults and sexual-related
6 instances that are occurring in bars and
7 issues relating to over service, etcetera.

8 So that's hopefully something
9 we'll have online. And we hope to keep that
10 as a living document that we can continue to
11 improve upon as additional partners become
12 involved with that as well.

13 Now from that what we hope to do
14 is develop not only training for our officers,
15 but we'd like to be involved in the training
16 curriculum. Obviously there are experts out
17 here in the field. There might be some great
18 things the Boston Police Department is doing
19 and we'd like to work with that, work with the
20 various groups. And I would like to see it be
21 free training and possibly mandatory.

22 Obviously with folks that have had

1 incidents we can start there, but I'd like to
2 see this training go out to everybody. And I
3 think it's something, especially with some of
4 our partners that are the experts here -- and
5 I enjoyed the testimony from the young woman
6 from the National Organization for Women. If
7 I were to give testimony formally, I think I
8 would mimic what Julia has written in her
9 comments. And we're right on board with that.

10 MPD will be a willing partner to
11 assist in that. My only concern is that --
12 I'd mentioned to Fred and Martha I'd love to
13 take it on completely and have MPD do the --
14 you know, teach ourselves to be the expert in
15 that area and do the training, but I think
16 it's important to have the experts work with
17 us. And we'll be involved in that effort as
18 well.

19 We've also developed a media
20 campaign. We've passed out posters talking
21 about sexual assaults to a myriad of ABC
22 establishments throughout the city. We'd like

1 to continue to work on those campaigns to get
2 the word out and not only educate the ABC
3 establishments at all levels; and I agree
4 we've got to deal with all levels, but
5 continue to work with our college populations
6 and our folks that are frequenting these
7 establishments as well. We see the safety
8 benefits for everybody involved.

9 CHAIRPERSON MILLER: Thank you.
10 That's really interesting. So I just want to
11 acknowledge Mr. Jones has joined us on the
12 dais.

13 When you go to the college areas,
14 I mean do you talk to the students about what
15 they should be aware of when they're in a bar?
16 I mean does it work that way as far as like
17 they are avoiding situations that could lead
18 to sexual harassment?

19 I'm sorry. Did you hear me? My
20 mic wasn't on.

21 CHIEF BURKE: You were a little
22 light.

1 CHAIRPERSON MILLER: Okay. Let me
2 start -- when you said that you went to the
3 colleges and the universities, which I am
4 aware of, but I just was wondering whether you
5 approach it from that angle where you talk to
6 students there about what they need to be wary
7 of when they go into a bar or what they
8 should, you know, be watchful of in order to
9 avoid getting in a situation.

10 CHIEF BURKE: We do. That's one
11 of the things that we address frequently. I
12 mean obviously as was mentioned and we see in
13 the statistics, it's people that -- we hear it
14 every day at our crime briefings. Someone
15 goes into a bar, they've had too much drink or
16 the other person's had too much to drink and
17 they wake up on somebody's couch the next
18 morning, we're investigating a sexual assault,
19 which can be a difficult case to investigate
20 as well because of the frequency of alcohol.

21 CHAIRPERSON MILLER: And I didn't
22 raise this earlier, but it also occurs to me

1 the whole situation where the drugs are put in
2 the alcohol. Is that something that you
3 address? Is that something that's another
4 awareness issue?

5 CHIEF BURKE: That is another
6 awareness issue as well.

7 CHAIRPERSON MILLER: The best
8 practices, like where are you with that? Are
9 you still putting that together or do you have
10 a --

11 CHIEF BURKE: We're very close
12 to --

13 CHAIRPERSON MILLER: Great.

14 CHIEF BURKE: -- pushing that out.
15 And once we do, we'll put it out online to
16 everybody. And then I'm sure we'll hear --
17 and I think we've had a great group, core
18 group of people. And once again, we've been
19 working with NYPD that's been doing this for
20 a few years. Toronto, London, Seattle, Kansas
21 City. There's a number of cities that have
22 taken similar efforts. So we've kind of

1 pushed that all and worked with our legal
2 counsel and some different groups including
3 representatives from the nightclub industry to
4 put together that document. And hopefully as
5 people read this and identify additional best
6 practices we can make addendums to include
7 those as well.

8 CHAIRPERSON MILLER: And that does
9 address alcohol establishments, or it's
10 broader?

11 CHIEF BURKE: ABC establishments,
12 correct.

13 CHAIRPERSON MILLER: It does?
14 Okay.

15 MR. KLINE: And let me just say on
16 behalf of our organization we're certainly
17 happy to, when that program is done, promote
18 it among our members and have them participate
19 in the program and encourage them to
20 participate in such a program.

21 CHAIRPERSON MILLER: As opposed to
22 a training? What do you mean by "the

1 program?"

2 MR. KLINE: Well, training,
3 program, however it's presented.

4 CHAIRPERSON MILLER: So right now
5 you could look at what best practices are.
6 You don't have a training yet. If someone
7 could look at that.

8 CHIEF BURKE: I think it helps to
9 guide ABC establishments to identify certain
10 areas that they might want to -- especially
11 being in Washington, D.C., I think something
12 that's frequently overlooked in the city are
13 the homeland security issues, and we know that
14 we're potentially a target. There have been
15 people arrested who have -- even in al Qaeda's
16 Inspire document that's published they've
17 said, you know, an attack on a busy Washington
18 restaurant at lunch time, you know, especially
19 targeting federal employees would garner
20 worldwide attention. So that's something we
21 want to raise the awareness of as well.

22 CHAIRPERSON MILLER: And I just

1 want to understand. You intend to have a
2 training obviously for your officers.

3 CHIEF BURKE: Yes.

4 CHAIRPERSON MILLER: Do you intend
5 to have a training for alcohol establishments,
6 or no?

7 CHIEF BURKE: We'd like to be
8 involved in that --

9 CHAIRPERSON MILLER: Be involved
10 with us?

11 CHIEF BURKE: -- working with the
12 curriculum and potentially, depending on the
13 amount of time involved in that --

14 CHAIRPERSON MILLER: Yes.

15 CHIEF BURKE: -- physically
16 participating in the training.

17 CHAIRPERSON MILLER: Okay. That's
18 great. This may be for all of you, or maybe
19 Mr. Kline, but my impression is that the
20 sexual harassment issue is really mainly at
21 clubs and bars and not your little cozy
22 neighborhood restaurant, per se. I'm

1 wondering if we should look at some kind of
2 restaurants as being in a different category
3 if there's a mandatory training.

4 MR. KLINE: That may be. I mean
5 that's certainly -- I think what we're
6 speaking about is establishments that are open
7 later hours or involved in late night
8 entertainment as opposed to establishments
9 that are strictly food service with wine and
10 drinks. Those certainly could happen there.
11 I mean, you know, I wouldn't say it couldn't
12 happen there. But there may be a distinction
13 in terms of frequency and in terms of risk.
14 There may be different risk factors between
15 the two types of establishments.

16 CHAIRPERSON MILLER: Does anybody
17 else have a comment on that?

18 MS. STRANGE: I think most of the
19 stories we get do tend to be like nightlife
20 establishments, but people are established at
21 -- or are harassed at, you know, Starbucks on
22 K Street. We get stories from everywhere.

1 CHAIRPERSON MILLER: But they
2 don't serve alcohol though. So would you --

3 MS. STRANGE: I'm just saying like
4 everywhere, in public spaces and -- yes.

5 CHAIRPERSON MILLER: I mean I was
6 just throwing it out also because Mr. Kline
7 was talking about margins for these businesses
8 and stuff. And if it's voluntary, that's not
9 really an issue I guess. But if it's
10 mandatory, do you think that any distinctions
11 should be made between like if it's open late
12 at night or it's, you know --

13 MS. STRANGE: If this is going to
14 be no cost for them, which I think probably
15 would help with encouraging participation, I
16 would say you need to focus those resources,
17 because there are limited resources out there.
18 I know my organization is all volunteer-run.
19 So to depend on organizations that may not
20 have a ton of funding to be giving these out
21 for everybody, I would say you need to focus
22 on hot spots, which would be night life

1 establishments.

2 CHAIRPERSON MILLER: And I think
3 you were the one we were going to get back to
4 with respect to what's happening in Boston,
5 what that model is.

6 MS. STRANGE: Yes, Boston was one
7 of the first cities. The Rape Crisis Center
8 came up -- I believe it's a two-hour training
9 module that they work with voluntary bars and
10 restaurants that are interested in
11 participating. It's been on a relatively
12 small scale, but they have developed a lot of
13 materials including the posters that Susan
14 showed, as well as this two-hour curriculum
15 that they have.

16 I did want to highlight that
17 Arizona is actually kind of at the forefront
18 of this. A small organization in Arizona
19 created what they call a Bar Bystander Program
20 where they're training managers and employees
21 to use these bystander intervention skills,
22 which are the skills that we've been

1 discussing. That's what they're called kind
2 of within our realm. And it was so
3 successful; I believe they started in
4 Flagstaff, that the Arizona Department of
5 Health took notice and decided that they
6 wanted to implement this statewide. This was
7 only last that they decided to do this, so
8 they are currently working on that
9 implementation. They're gathering evaluation
10 data right now, but I can reach out to them
11 again to see if they do have data that might
12 be helpful for D.C. to think about using the
13 model that they have implemented. So that was
14 through the Department of Health that they've
15 done that.

16 CHAIRPERSON MILLER: Thank you.

17 MS. STRANGE: Yes.

18 CHAIRPERSON MILLER: Okay. Other
19 Board questions? Mr. Alberti?

20 MEMBER ALBERTI: I want to follow
21 up with Ms. Strange. In Arizona, so this is
22 a voluntary program, this Bar Bystander

1 training, or do you know which direction
2 that's going there?

3 MS. STRANGE: I believe that it is
4 still voluntary. I think they may be aiming
5 to get this into regulations as mandatory.
6 The last report that they released on this was
7 from 2011 and at that point they had done a
8 number a number of focus groups with bar
9 owners, managers and staff, as well as bar
10 patrons. And all of them were very
11 enthusiastic about the development and the
12 availability of a training like this. Again
13 I can follow up with them to see where they
14 are at with this project, because that could
15 be a potential model.

16 MEMBER ALBERTI: Great. All
17 right. Thank you. Switching gears a little
18 bit, you made the distinction between assault
19 prevention and risk reduction.

20 MS. STRANGE: Yes.

21 MEMBER ALBERTI: Because I'm not
22 an expert here, I'm having trouble

1 understanding what the differences are and I'm
2 having trouble understanding your point that
3 our language is more risk reduction than
4 assault prevention. So maybe you could --

5 MS. STRANGE: The language itself
6 isn't, but sometimes if people see a new
7 regulation that they must include sexual
8 assault prevention, people often conflate that
9 with what is actually risk reduction.

10 MEMBER ALBERTI: Okay.

11 MS. STRANGE: And I think that
12 term is probably used differently in the
13 alcohol world, but --

14 MEMBER ALBERTI: Okay.

15 MR. KLINE: Can I help? Is risk
16 reduction focused on the patron as opposed to
17 the establishment?

18 MS. STRANGE: Risk reduction is
19 actually focused on potential victims.

20 MR. KLINE: Okay.

21 MS. STRANGE: So it's telling them
22 what they need to do.

1 MR. KLINE: Okay. That's what I
2 thought.

3 MEMBER ALBERTI: And the last
4 thing I want to ask you about is you said you
5 advocate a stand-alone training rather than
6 incorporating this into our current alcohol
7 awareness training. I'd like to hear more
8 from you about that.

9 MS. STRANGE: Yes. Having
10 listened to the first conversation that took
11 place and hearing everybody's testimony for
12 that first part, I think I would probably want
13 to think about how we could make this a
14 training that's available. I think it's very,
15 very important that this is out there. And
16 everybody seemed to agree with that, but I am
17 wondering if these alcohol awareness companies
18 are the best people to be giving this
19 training. If they are and if this moves
20 forward with this language, they do need to
21 pair with subject matter experts to develop
22 that curriculum, because I see a lot of risk

1 in having somebody who doesn't understand this
2 issue go and do trainings. That is
3 concerning.

4 MEMBER ALBERTI: Thank you very
5 much. No further questions. Thanks.

6 CHAIRPERSON MILLER: Okay. Any
7 other Board questions?

8 (No audible response.)

9 CHAIRPERSON MILLER: Any other
10 final comments?

11 (No audible response.)

12 CHAIRPERSON MILLER: Okay.

13 CHIEF BURKE: Thank you.

14 CHAIRPERSON MILLER: Thank you
15 very much for coming down.

16 MR. KLINE: Thank you.

17 MS. STRANGE: Thank you.

18 CHAIRPERSON MILLER: Anybody else
19 here to testify?

20 (No audible response.)

21 CHAIRPERSON MILLER: Mr. Kline,
22 you might not want to go -- I think you're

1 testifying in the next rulemaking. Am I
2 right? Let me see.

3 MR. KLINE: I don't remember.

4 CHAIRPERSON MILLER: The Safety
5 Plan Rulemaking?

6 MR. KLINE: Yes. Very briefly,
7 yes.

8 CHAIRPERSON MILLER: Okay. I
9 don't think there is anybody here else who
10 wants to testify on the Alcohol Certification
11 Provider Rulemaking. Okay. So that hearing
12 will come to a close. And please feel again
13 to submit documents, okay, until March 8th.

14 (Whereupon, the hearing was
15 concluded at 11:33 a.m.)

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