

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

2 (10:02 a.m.)

3 ACTING CHAIRMAN ALBERTI: We are
4 back on the record. I am going to introduce
5 the next case for this morning and this is a
6 Fact-Finding Hearing. It's case number, oh,
7 boy, I don't think it has a case number. This
8 is a Fact-Finding Hearing regarding Colin
9 Unlimited, LLC t/a the District Restaurant-the
10 District Underground a/k/a Saki. That's what
11 we have in our records. If there is some
12 confusion, we can amend that.

13 It's Colin Unlimited, LLC. Is
14 that the LLC?

15 MR. KLINE: That's correct.

16 ACTING CHAIRMAN ALBERTI: Okay.
17 And it's regarding the establishment which at
18 least when this issue was started, was known
19 as Saki. Is that correct?

20 MR. KLINE: That's correct.

21 ACTING CHAIRMAN ALBERTI: Okay.
22 2477 18th Street, N.W., License No. 81909.

1 This regards -- this Fact-Finding
2 regards a request from the owners of Saki to
3 expand the premises into the adjacent space,
4 currently known as the District Lounge. And
5 this comes to us today as a Motion for
6 Reconsideration.

7 We held a Fact-Finding in July,
8 July 27, 2011, on this topic. And we
9 entertained that we would entertain a Motion
10 for Reconsideration, which the Board granted,
11 to hold a Contested Fact-Finding on this
12 matter.

13 Mr. Kline, you are looking at me
14 like I have this wrong or parts of it wrong.

15 MR. KLINE: Well, I don't know tat
16 you have it wrong. It's just that a Contested
17 Fact-Finding Hearing is an oxymoron under your
18 regulations and under your statutes.

19 So I don't know whether we are
20 fish or fowl. A Fact-Finding Hearing is
21 specifically not a contested case hearing. So
22 I'm confused even by the Board's notice of

1 this hearing originally.

2 ACTING CHAIRMAN ALBERTI: Okay.

3 Then I'll drop that moniker and I'm not sure
4 we have a name for this type of hearing, but
5 this will be a hearing on the appropriateness
6 of this expansion. And it will be a hearing
7 at which we will have sworn testimony, have
8 direct and cross-examination of witnesses and
9 we will allow or I will allow Mr. Kline 10
10 minutes for an opening statement, which is
11 more than usual.

12 If you need more, let me know, Mr.
13 Kline, because if there are other issues you
14 would like to address, the Board -- if there
15 are issues you would like to address with the
16 Board that would take longer than that, I'll
17 consider granting more time.

18 And at the end, Mr. Kline, I'll
19 allow you another five minutes for closing
20 statements.

21 Any comments on how I'm suggesting
22 we proceed here?

1 MR. KLINE: No. I would just
2 direct the Board to its order of -- I'm not
3 sure of the date.

4 ACTING CHAIRMAN ALBERTI: I
5 believe that you may be talking about -- well,
6 I don't know if I have the date here either.

7 MR. KLINE: January 25, 2012,
8 which seems to layout the issues that the
9 Board wanted addressed today in the order on
10 page 6 of that order.

11 ACTING CHAIRMAN ALBERTI: Okay.
12 Just one moment. Let me make sure I have a
13 copy. I'm searching for a copy of that order.
14 Oh, okay, that's why I can't find it.

15 Okay. Mr. Kline, continue. I'm
16 sorry, on page 6 of that?

17 MR. KLINE: Yes. Which stated the
18 issues that I thought were to be addressed
19 originally in the February 22nd hearing, which
20 was continued until today.

21 ACTING CHAIRMAN ALBERTI: Yes,
22 absolutely.

1 MR. KLINE: Okay.

2 ACTING CHAIRMAN ALBERTI: I think
3 we are on the same page.

4 MR. KLINE: Great.

5 ACTING CHAIRMAN ALBERTI: So I
6 guess I didn't make it clear, and I apologize
7 for that, that's why I'm giving you some time
8 at the beginning to make statements, because
9 I believe in those statements I would -- if
10 you wish, you can speak to Items 1 and 2,
11 whether or not the voluntary agreement
12 complies with the laws and regulations and
13 whether or not the submission of the voluntary
14 agreement mandates approval of the license by
15 the Board.

16 And then we will continue on to
17 Item 3. Item 3 we have testimony. We have
18 testimony, although not sworn testimony, from
19 the first Fact-Finding, which is in the record
20 in Item 3. And you can speak to any of these
21 items, but, again, that's why I'm giving you
22 some additional time at the beginning to speak

1 to the items that are listed on page 6.

2 So I'll be lenient in my time with
3 you, so --

4 MR. KLINE: All right.

5 ACTING CHAIRMAN ALBERTI: And then
6 -- okay. Before we proceed, the Board will
7 call its first witness at the beginning of the
8 hearing before we go on and collect testimony
9 from the ABRA Investigator, Investigator
10 Parker, and then we will return to you, Mr.
11 Kline, to present your witnesses.

12 How many witnesses do you have
13 today?

14 MR. KLINE: We are not sure that
15 we are going to call any, but if we do, we
16 would call two.

17 ACTING CHAIRMAN ALBERTI: Okay.

18 MR. KLINE: At most.

19 ACTING CHAIRMAN ALBERTI: Okay.
20 So with that, I think we are ready to proceed,
21 Mr. Kline.

22 MR. KLINE: Yes. Thank you,

1 Members of the Board. And thank you for
2 holding this hearing. This has been a long
3 process. This application for substantial
4 change has been pending for a year and a half,
5 at this point, which is quite unusual.

6 It was originally submitted on
7 September 27, 2010. And it has enjoyed a long
8 tortured history.

9 At the outset, I want to address
10 what I think is troubling the Board and what
11 I think has caused the Board to go outside of
12 what we see as normal procedure in these
13 cases.

14 And that is the background of this
15 license. I don't personally feel it is
16 particularly relevant to this decision, but I
17 think the Board does, so I want to address it.

18 And that relates back to a Fact-
19 Finding that was held prior to this licensee
20 being transferred the license when the
21 establishment was operated by other operators
22 and the operator was having difficulty meeting

1 its food service percentages and requirements.

2 And as the Board, I'm sure, knows,
3 there was a hearing and before any action was
4 taken, the Board was presented with some of
5 these current operators and they presented a
6 plan as to how they were going to sell food in
7 the establishment.

8 Based on the Board's order and
9 questioning during other hearings, it seems
10 pretty clear that the Board feels that it was
11 in some way misled about what the intentions
12 of the parties were.

13 I want to try to dispel that to
14 the extent that I can. There was an exchange
15 in that hearing that's actually quoted in the
16 Board's Order in which Mr. Feather is
17 questioning the applicant and trying to get
18 assurances that food will be sold, the
19 establishment will not be operated as a
20 nightclub.

21 And in response to that, there was
22 a description of the premises as being a hip

1 kind of lounging kind of place, which I don't
2 think is really inconsistent with what they
3 have done.

4 Mr. Feather fleshed it out further
5 and started asking questions and there was an
6 acknowledgement at that time that look, if we
7 don't do it, we know we are going to be right
8 back here in front of you and here we are.

9 But prior to that happening, I
10 want the Board to appreciate this applicant's
11 concerns and the actions that this applicant
12 took. The establishment that was previously
13 known as Chloe did not actually open for
14 business until around January of 2010,
15 although the transfer was approved much prior
16 to that and the Saki establishment on the
17 first floor, which is what we are before you
18 on today, opened almost immediately after the
19 transfer.

20 So in 2010, they reopened the
21 establishment. In a matter of months, they
22 realized that notwithstanding their promises

1 and assurances to the Board, they weren't
2 going to hit -- it was going to be very
3 difficult for them to hit their numbers. And
4 they were very close, they were trying to sell
5 food. They were trying to push food. It
6 wasn't working.

7 And they came to me and they said
8 well, what can we do? Well, they couldn't
9 convert to a tavern, because there is a
10 moratorium in place. We all know that. So we
11 looked at it and said well, you know, you have
12 this establishment on the first floor. You
13 can attempt to expand it to the second floor.

14 Keep in mind, however, that you
15 are going to have to satisfy the Adams Morgan
16 community and you will have to either reach
17 agreement by way of voluntary agreement with
18 the Adams Morgan community and come up with a
19 substitute voluntary agreement or an amended
20 voluntary agreement or we are going to have to
21 go to hearing and, at that point, we will have
22 to convince the Board.

1 The reason I'm telling you all
2 this is because it's not as if this applicant
3 took this place over and said well, let's see
4 how long we can get away with this. You know,
5 we told the Board one thing. We will run it
6 as long as we can. We will make as much money
7 as we can. Ultimately, they are going to
8 catch up with us, because we know we can't
9 meet our food numbers.

10 That's not what happened here.
11 What happened is in opening the second floor
12 establishment, as District, which has always
13 been challenged in terms of food services,
14 they tried for several months. And it became
15 apparent with the difficulties that have been
16 previously explained to this Board, the second
17 floor location, lack of visibility, not a
18 clear entrance in terms of being able to draw
19 people up to the second floor, it became
20 apparent that they weren't going to make it.

21 So they came to you. They didn't
22 wait for you to come to them and say we are

1 not -- you're not meeting your food numbers.
2 We are bringing you in. We're going to do an
3 audit.

4 In September of 2010, when they
5 had been open less than a year, they said man,
6 we've got a problem. You know, we've got to
7 figure it out. And I figured out how to
8 approach it, because that's what I do. As the
9 Board knows, I'm here almost every Wednesday.

10 So we brought this forward. And
11 against that background, in September of 2010,
12 the application was filed. And I think that's
13 critical and important in terms of this issue
14 that I know is troubling the Board, that these
15 -- that this licensee was proactive.

16 They weren't renting it out and
17 waiting until you found them. They recognized
18 immediately that it was difficult. They were
19 close. We still submit that they made their
20 numbers barely, based on the evidence that was
21 presented to you at another hearing in
22 connection with the other licensee, District.

1 But they were close and they knew
2 that they were putting a lot of money into
3 trying to sell food and it was not going to be
4 successful. So that's the backdrop.

5 Now, turning to the Board's Order,
6 let me attempt to address those issues. The
7 first issue is whether the voluntary agreement
8 complies with all applicable laws and
9 regulations.

10 Now, I have been through the
11 voluntary agreement point-by-point. I don't
12 see any provision in there that violates any
13 law or regulation of the District of Columbia.
14 And if the Board has a particular one that it
15 feels may violate the rules and regulations of
16 the District of Columbia, I would be happy to
17 try to address that, but I'm not aware of one.

18 And I have carefully gone through
19 the agreement. I could go through it line-by-
20 line now. I don't think it would be good use
21 of the Board's time. And I would be happy to
22 address any particular provision that the

1 Board might be troubled by, in terms of not
2 complying with rules and regulations.

3 So we would submit the inquiry --
4 well, then that brings us to the second
5 inquiry. Does it comply with all applicable
6 laws and regulations? We believe it does. If
7 the Board has a concern, we would be happy to
8 address it.

9 The second issue is whether their
10 submission of a valid voluntary agreement
11 mandates approval of the license by the Board.
12 Now, this is a very important issue not only
13 to this licensee, but to the industry, for one
14 very important reason.

15 Before this Board and its
16 immediate predecessors under Mr. Feather's
17 tenure, this process in terms of not this
18 process, but a new application dragged on
19 interminably. If an operator from out of town
20 came to see me or one of the other people that
21 come before you with these license
22 applications and said how long will this

1 process take, the answer was well, if you
2 don't get protested, 10 to 12 weeks.

3 What if we do get protested? I
4 don't know, it could be two years, it could be
5 three years. I will tell you that I
6 personally, and this will stun those of you
7 that have not heard this before, went through
8 a period where I did not try a single protest
9 case before this Board for a period of five
10 years. Five years because no licensee, no
11 applicant could hold out that long and wait
12 two years for a hearing.

13 And ultimately, starting under Mr.
14 Feather's tenure, that changed. He said we're
15 going to put an end to this. We're going to
16 have some certainty in the process.

17 And starting with that Board and
18 continuing with you, which we appreciate and
19 respect, we have pretty much held to that.
20 Somebody comes to me now and they say how long
21 does it take? I give them the first scenario
22 and the second is seven or eight months in

1 almost every case that we have seen.

2 The Board has been consistent
3 about promptly scheduling hearings and then
4 making decisions within the 90 day statutory
5 requirement, their goal is to do it within 60
6 days, seven to eight months and we should be
7 done.

8 And I don't know of any instance
9 in terms of a new application or I know a few
10 instances, I think there have been a couple,
11 in which that has not been the case.

12 So we can say with confidence when
13 someone comes to town or someone is in town
14 how long is this process going to take, how
15 long it is going to take.

16 Now, let's say we get through that
17 discussion and then they say well, what if we
18 want to make a change once we get open? What
19 if we decide we want to add a summer garden?
20 You know, we want to add a rooftop. We want
21 to expand to the second floor.

22 Well, up until this case, I could

1 tell them the same thing. I could tell them
2 that it will take 10 to 12 weeks, because
3 you've got to be placarded. If there is no
4 opposition, it will be approved at that point.
5 If it is not approved -- or if it's protested,
6 then you will be in the protest process. And
7 if we have to go the distance, it will take
8 seven or eight months. But if you make an
9 agreement with the community, it will be over.

10 And that was the case with the new
11 applications also. Seven or eight months, but
12 if you make an agreement with the community,
13 it will be over. And that has been our
14 experience in these cases.

15 Now, this case comes along and for
16 reasons known to the Board, it is filed in
17 September of 2010. Here we are a year and a
18 half later and we are having presumably our
19 first contested case hearing, if that's what
20 this is and we still don't have a decision on
21 this case.

22 So now, if this decision is

1 allowed to stand, people like myself that have
2 to counsel people that are coming into town or
3 are already in town, people who are opening
4 places or if you want to make changes, you
5 know, we don't know. That's how long it
6 should take. And even if you make an
7 agreement with the community, there aren't any
8 guarantees.

9 So I want the Board to focus on
10 that, because it's very important what the
11 Board has done in terms of establishing time
12 lines, establishing certainty in the process.
13 And it's against that backdrop that we look at
14 whether a submission of a voluntary agreement
15 mandates approval of the license by the Board.

16 I mean, we would submit that
17 that's a very important policy reason for the
18 Board to take the position that it does, so
19 that there is certainty out there in the world
20 as to what will happen under certain
21 circumstances.

22 Just as in this case, the licensee

1 believed that if they could satisfy the
2 community and enter into a voluntary
3 agreement, this case would be over.

4 Now, in looking at the statute,
5 the Board, in this case, has taken the
6 position that it has an independent right,
7 responsibility, duty, whatever word the Board
8 prefers to look at appropriateness, because ^U
9 313 says, D.C. Code ^U 25-313, that "To qualify
10 for issuance of a license or a substantial
11 change in operation," which is what we are
12 dealing with here, "an applicant shall
13 demonstrate to the satisfaction of the Board
14 that the establishment is appropriate."

15 And the appropriateness, as the
16 Board knows, has certain criteria. I do
17 believe that it would be a proper
18 interpretation for the Board to say yes, given
19 that language, if you submit a voluntary
20 agreement, we are still supposed to look at
21 appropriateness.

22 Just because the community and the

1 applicant reach an agreement, you have the
2 right to construe the statute, you get to make
3 that determination as to what it means and you
4 could say, yes, you know what, there is an
5 agreement, but we still have to look at
6 appropriateness.

7 25-313 gives us that right. It
8 gives us that responsibility. However, if you
9 do that, then you have to do that in every
10 case. You can't single out one case and say,
11 you know what, in this case, because we don't
12 like these guys because we think they lied to
13 us, we are going to look at appropriateness
14 despite the fact that there is a voluntary
15 agreement that has been submitted that
16 otherwise complies with the law and
17 regulations.

18 You can't do that. That's the
19 very definition of arbitrary and capricious.
20 The people out here that rely on you to make
21 decisions and rely on process are entitled to
22 know what that process is. They are entitled

1 to know what to expect. They are entitled to
2 know that when they submit an application,
3 that it is going to through a process and
4 within seven or eight months, they are going
5 to have a decision to either a new application
6 or an application, as in this case, for a
7 substantial change.

8 So we would submit to you that
9 although the Board could have -- could
10 certainly have construed its statute that way,
11 that to do so, just in this one case, is
12 completely arbitrary and capricious. And the
13 Board can't say well, we're going to do it
14 this way this time, because there is a
15 moratorium in place.

16 Well, there have been plenty of
17 requests that have come before you in which
18 the applicant is in a moratorium zone where
19 the applicant applied for a transfer within
20 the Moratorium Zone or the applicant applied
21 for a substantial change within the Moratorium
22 Zone, as is before you in this case, where the

1 applicant entered into a voluntary agreement
2 with the neighborhood and the Board looked at
3 the voluntary agreement.

4 If it had concerns with a
5 particular provision, it commented on those
6 concerns, but if the voluntary agreement
7 complied with law, then the application was
8 approved subject to the provisions of the
9 voluntary agreement being incorporated into
10 the license, which is what 25-446 says.

11 Is that if you have a voluntary
12 agreement that complies with law and
13 regulations, then the Board is to accept it
14 and make it part of the licensed application.

15 Now, there is a discussion in the
16 order and I credit the lawyers for trying to
17 come up with something to justify what was
18 done here, that somehow this means that if one
19 party enters into a voluntary agreement, the
20 case is over. We have never argued that,
21 that's ridiculous. I mean, that's absurd.

22 The point is this is a contested

1 case process. That's what this process is all
2 about. A contested case process means that
3 you make a decision based upon a fight between
4 parties. There has to be somebody sitting at
5 this table and I don't mean the investigator.
6 I mean another party. Because without another
7 party at the table, we don't have a contested
8 case.

9 There can't be a contested case
10 between the applicant and the Board. Somebody
11 has got to be in this other chair and say we
12 are against this. We don't want this to
13 happen. Please, don't approve it. We are
14 going to put on witnesses. We are going to
15 show you with evidence that you shouldn't
16 approve it. That's what the contested case
17 process is all about.

18 That's what our judicial system is
19 based on and our administrative proceedings in
20 many cases are based on exactly that. That
21 through this fight between two parties, the
22 truth will emerge and the fact-finder, in this

1 case the Board, will make a determination
2 between those two competing positions.

3 In this case, as in many cases
4 that the Board sees, we have seen a settlement
5 between the two parties. The party that
6 timely protested the license application and
7 the applicant entered into a settlement
8 agreement, sometimes known as a voluntary
9 agreement, which resolved the issues.

10 And even issues that were pointed
11 out in the Board's Order as being of concern,
12 food numbers, the voluntary agreement
13 addressed that. The voluntary agreement made
14 this a modified tavern license, if you will.
15 It says yes, you're a tavern, but you still
16 have to sell some food.

17 And there is a minimum food
18 threshold set forth in the voluntary agreement
19 and you still have to sell food a certain
20 number of hours a week. We are not going to
21 hold you to set hours per day, but we want to
22 make sure that you are selling food a good

1 portion of the time.

2 So all of those issues were
3 thought out and addressed by the parties to
4 the voluntary agreement. The ANC was
5 satisfied. If the ANC felt that it wasn't
6 satisfied, then it would not have approved the
7 voluntary agreement.

8 Now, there is language in the
9 Board's Order that I think merit some comment.

10 ACTING CHAIRMAN ALBERTI: Which
11 order are you speaking of?

12 MR. KLINE: I'm speaking of the
13 order dated January 25, 2012.

14 ACTING CHAIRMAN ALBERTI: Okay.

15 MR. KLINE: On page 4 it says "The
16 purpose of the District of Columbia's
17 Alcoholic Beverage Control Laws is to strike
18 a reasonable balance between the very
19 legitimate concerns of residents and the
20 legitimate needs of business."

21 And this is from the counsel of
22 the District of Columbia Committee on Consumer

1 Regulatory Affairs Report on Bill 13-449 on
2 November 20, 2000.

3 ACTING CHAIRMAN ALBERTI: Where is
4 this? Oh, I see it. Okay. Go ahead.

5 MR. KLINE: It's in the fourth
6 paragraph.

7 ACTING CHAIRMAN ALBERTI: I
8 understand. Okay.

9 MR. KLINE: We agree with that.
10 Absolutely. Now, one of the ways that balance
11 was struck, and it was struck in this case, is
12 by the business, the applicant and the
13 community, in this case represented by a duly
14 elected ANC official, coming to an agreement
15 and saying all right, how can we best address
16 the issues that your application, be it a new
17 application or in this case an application for
18 a substantial change, the concerns that we
19 have under the appropriateness rubric?

20 And in this case, that's exactly
21 what happened. The parties came together and
22 it took -- it wasn't easy. It didn't happen

1 in one sitting. The parties spent a great
2 deal of time and put a great deal of thought
3 into this voluntary agreement in terms of the
4 concerns that were raised by the community
5 through the ANC and the concerns of the
6 licensee and having the needed flexibility to
7 run its business.

8 And they came to what we think is
9 a comprehensive enforceable effective and good
10 voluntary agreement to submit to you for
11 approval. And we would submit unless the
12 Board wants to completely change how it is
13 going to administer this statute in terms of
14 dealing with applications and dealing with
15 applications where there has been a settlement
16 by way of voluntary agreement, that that
17 mandates that the Board approve it and move
18 on.

19 Notwithstanding the fact that
20 somebody thinks that the Board was lied to or
21 that somebody misrepresented their future
22 intentions or someone was trying to pull one

1 over on you, we submit that that's not the
2 case.

3 And I think that the time line in
4 terms of the licensee's proactivity in
5 addressing this issue, hopefully, will put an
6 end to that. But even if it doesn't, we would
7 ask that you put that aside, follow the law,
8 follow what you have done in other cases and
9 approve this and let's move on.

10 That's what we have to say about 1
11 and 2. I would ask before we get to 3 that
12 the Board consider that and make a decision as
13 to whether we need to go any further.

14 ACTING CHAIRMAN ALBERTI: Well, on
15 that last comment, we will proceed to 3 today
16 and we will address your concerns in our order
17 when it is issued.

18 MR. KLINE: Well --

19 ACTING CHAIRMAN ALBERTI: But I
20 will --

21 MR. KLINE: -- I'm sorry.

22 ACTING CHAIRMAN ALBERTI: -- say,

1 Mr. Kline, this is not the first time we have
2 held a Fact-Finding to consider the
3 appropriateness for fitness of licensure
4 hearing, but we have had Fact-Findings in the
5 past to consider appropriateness or fitness
6 for licensure of the licensee.

7 Irregardless of whether there was
8 a VA or a protest pending, we have done that
9 in the past.

10 As with respect to timing, we did
11 -- we, in a timely manner, held a Fact-Finding
12 in July of 2011. We are here today because
13 you filed a Motion for Reconsideration and now
14 we are back, and we granted that motion, here
15 today to continue collecting information on
16 this case.

17 As to how you categorize this
18 hearing, maybe I shouldn't have called it a
19 Contested Fact-Finding. And you agreed with
20 that earlier. The way I have laid this out
21 was is that this is a hearing, I'll call it a
22 Fact-Finding, where unlike our other Fact-

1 Finding hearings, we are going to collect
2 sworn testimony, which will allow to be cross-
3 examined.

4 All right. So I don't think it's
5 out of the ordinary to have such a hearing.

6 MR. KLINE: With all due respect,
7 Mr. Chairman, I've got this book here, all
8 right. This book has Title 23 in it. I'm
9 sorry, Title 25, I misspoke, and 23 DCMR.
10 These are the rules and regulations that
11 govern you.

12 We don't -- in terms of we are
13 going to make up a new procedure, I mean, with
14 all due respect, we are entitled to know what
15 the procedure is. And just to say well, yes,
16 we're going to do it this way today, because
17 it doesn't fit into our box, it has to fit
18 into one of your boxes.

19 ACTING CHAIRMAN ALBERTI: Okay.

20 MR. KLINE: That's what this is
21 all about.

22 ACTING CHAIRMAN ALBERTI: I hear

1 you, Mr. Kline. So that leaves me confused as
2 to -- sort of explain to me again what was the
3 basis for your Motion for Reconsideration.

4 And my confusion part -- and I'm asking partly
5 because my confusion is that maybe this was a
6 misunderstanding on my part, but I understood
7 it to be partly because there was not sworn
8 testimony as the first Fact-Finding, which was
9 our normal procedure to investigate and delve
10 into appropriateness standards for an
11 establishment.

12 And you filed a Motion for
13 Reconsideration. So maybe you can tell me or
14 explain to me better, so I can understand
15 more, explain to me further what the basis for
16 your Motion for Reconsideration is.

17 I mean, if you don't want to have
18 a Fact-Finding where we continue with Item 3
19 and you think that -- if you believe that
20 there is not a Fact-Finding necessary to
21 collect -- to address Item 3, which really
22 Item 3 was the purpose of our initial Fact-

1 Finding Hearing and that's what we covered in
2 our initial Fact-Finding Hearing, if you don't
3 believe there is a purpose for continuing this
4 hearing with regards to Item 3 where we
5 collect sworn testimony for the
6 appropriateness of this application, then tell
7 me and then the Board will consider that.

8 And we can rely on the record from
9 the first Fact-Finding.

10 MR. KLINE: Okay. Fact-Finding
11 Hearings are governed by 23 DCMR 1611. They
12 are under sub-Chapter 3. They are
13 specifically non-contested cases. And so they
14 are the opportunity for the Board to bring
15 someone before you and ask questions.

16 ACTING CHAIRMAN ALBERTI: So this
17 is in 2316?

18 MR. KLINE: 23 DCMR 1611.

19 ACTING CHAIRMAN ALBERTI: Okay.

20 MR. KLINE: Fact-Finding Hearings.

21 ACTING CHAIRMAN ALBERTI: Okay.

22 Go ahead. Continue, please.

1 MR. KLINE: It says "Prior to
2 rendering a final decision on a licensing
3 request, the Board may hold a Fact-Finding
4 Hearing to obtain further information from an
5 applicant or licensee. The licensee shall not
6 be fined, suspended or revoked at a Fact-
7 Finding Hearing." And that's 1611.2.

8 The whole licensing process is
9 predicated on a contested case hearing under
10 D.C. Code 1-1509, if memory serves me
11 correctly, which is the Administrative
12 Procedures Act.

13 The Administrative Procedures Act
14 requires that before you make an adverse
15 decision -- and the Administrative Procedures
16 Act doesn't just apply to ABC licensing, it
17 applies to any proceeding where some of these
18 rights are at stake. And it requires that
19 before taking adverse action that there be,
20 what is called, a Contested Case Hearing.

21 A Contested Case Hearing is the
22 formal trial-type hearing that you conduct

1 every week in the form of a Show Cause Hearing
2 or a Protest Hearing.

3 Now, in a Show Cause Hearing, it
4 is a Contested Case Hearing because me and a
5 licensee or someone else on behalf of a
6 licensee or just the licensee are at this
7 table over here on the left and seated at the
8 right table is a representative of the D.C.
9 Government and it is contested. They put on
10 their case. We put on our case. The Board
11 makes a decision.

12 In a licensing context, we have
13 the same procedure, except at that table would
14 be a protestant who would be urging that the
15 license request or the licensee be denied and
16 at this table would be the licensee. And they
17 would put on their evidence, the protestant,
18 the licensee would put on its evidence and the
19 Board listening to that competing evidence and
20 also with the aid of testimony from its
21 investigator would make a decision.

22 That's what is contemplated by the

1 statute. That is what is contemplated by the
2 Administrative Procedures Act. So this notion
3 that somehow we are going to have this hearing
4 without anybody at that table where the party
5 at that table has said we support it, we
6 agree, they -- we have a voluntary agreement.
7 It addresses our concerns, we are done.

8 I mean, I don't -- you are looking
9 at me and saying well, what should be doing
10 here today? I don't have any clue.

11 ACTING CHAIRMAN ALBERTI: Okay.
12 Let me ask you some questions then. Would you
13 agree that -- do you -- would you say that the
14 denial by the Board of an application in a
15 licensing issue is an adverse action?

16 MR. KLINE: Absolutely.

17 ACTING CHAIRMAN ALBERTI: Okay.
18 Do you believe that there are any instances
19 where the Board can deny a license without --
20 or a license application without a request --
21 without a protest?

22 MR. KLINE: If the Board

1 determines that the licensee, for example, is
2 not fit for licensure on an initial
3 application, then that would certainly be a
4 situation in which the Board could deny a
5 license application where there was not a
6 protest done.

7 ACTING CHAIRMAN ALBERTI: And
8 that's one standard for a license.

9 MR. KLINE: Sure. You have to --
10 for licensure --

11 ACTING CHAIRMAN ALBERTI: And
12 another standard is appropriateness for the
13 locale or section/portion of the neighborhood
14 also.

15 MR. KLINE: Which in the absence
16 of a protest is presumed and if there is a
17 protest, that's resolved by either a voluntary
18 agreement in which that issue is dealt with or
19 by a decision after a Contested Case Hearing
20 with the protestant at this table and the
21 applicant at this table.

22 ACTING CHAIRMAN ALBERTI: But I

1 don't see where the regs or the statute lays
2 that out. I mean, what I see in 1611 it says
3 "Prior to rendering a final decision on a
4 licensing request or an ABRA Investigator
5 report, the Board may hold a Fact-Finding
6 Hearing to obtain further information from an
7 applicant or a licensee."

8 And that's what we did in July.

9 MR. KLINE: Okay.

10 ACTING CHAIRMAN ALBERTI: Just it
11 clearly allows us to hold a Fact-Finding
12 before we make a decision on a licensing
13 request. I don't -- I think it's very clear
14 in the law that it says that.

15 MR. KLINE: I don't disagree.

16 ACTING CHAIRMAN ALBERTI: ^U 25 --
17 Title 25, ^U 404, paragraph (B)(1)(b) says "The
18 applicant requesting approval for a
19 substantial change shall demonstrate
20 appropriateness as set forth in ^U 25-313 and
21 314." Right?

22 It further goes on in 404(b)(2),

1 "There shall be no presumption of
2 appropriateness with respect to a substantial
3 change application. If the applicant fails to
4 demonstrate the proposed change and the nature
5 of operation, it is appropriate for the
6 locality, section or portion of the District
7 where the establishment is located, the Board
8 shall disapprove the proposed change."

9 So there is a presumption that if
10 the -- that the Board can require the licensee
11 to demonstrate the appropriateness. Would you
12 want to comment on that?

13 MR. KLINE: There is a presumption
14 that the Board -- that the licensee has to
15 demonstrate appropriateness.

16 ACTING CHAIRMAN ALBERTI: That the
17 Board can require the licensee to demonstrate
18 the appropriateness. It says because -- "The
19 applicant requesting approval of a substantial
20 change will demonstrate the appropriateness as
21 set forth in 25-313."

22 And before I do this, I want to go

1 back to one of your other remarks about how
2 the Board approves the licenses. All right.
3 Whether we look at appropriateness, it is one
4 of the standards we always use when we approve
5 any licensing request, Mr. Kline.

6 Whether or not there is a protest
7 or not, sometimes simply if there is not a
8 protest, all right, the Board will issue and
9 approve the licensing request and it may not
10 be clear that, in its deliberations, the Board
11 considered that standard, but it is always one
12 of the standards that this Board considers
13 when reviewing any licensing request.

14 MR. KLINE: Well --

15 ACTING CHAIRMAN ALBERTI: I think
16 we are bound to do that by the law.

17 MR. KLINE: -- from our
18 standpoint, if it's not on the record and it
19 doesn't exist in the order, then it doesn't
20 exist. I mean, I don't know what you do in
21 the back room.

22 ACTING CHAIRMAN ALBERTI: All

1 right, fine, fine.

2 MR. KLINE: So but if it's not on
3 the record and it's not in the order, then
4 it's not part of any official action. So
5 maybe you do that and that's all very well and
6 good, but it's not part of the official
7 record. It's not part of the official action.

8 My experience, and maybe others
9 have had other experiences, is when there is
10 an issue of appropriateness, which, as far as
11 I can remember, every case I have ever been
12 involved in, has resulted from a protest being
13 filed.

14 The Board renders the decision
15 based upon the voluntary agreement and either
16 approves it or rejects it as the case may be.
17 And let me finish.

18 ACTING CHAIRMAN ALBERTI: All
19 right.

20 MR. KLINE: And if there is no
21 protest, then the Board approves the license.
22 I'm not aware of cases in which the Board says

1 you know what, we're going to think about this
2 differently. We know there is no protest, but
3 why don't you come in and have a hearing, as
4 we are doing here today, and talk about
5 appropriateness or alternatively, as seems to
6 be suggested by the Acting Chair, that the
7 Board has said we're going to deny it because
8 we think it's inappropriate without a hearing.

9 ACTING CHAIRMAN ALBERTI: Well,
10 that's fine. I hate to interrupt you, but
11 that's precisely what we did in the District
12 Lounge case. We held a Fact-Finding before we
13 issued that license. And it wasn't a Protest
14 Hearing. It was just a Fact-Finding to
15 discuss that license.

16 MR. KLINE: On a transfer of a
17 license --

18 ACTING CHAIRMAN ALBERTI: It was a
19 licensing application.

20 MR. KLINE: On a transfer on a
21 license that was already in.

22 ACTING CHAIRMAN ALBERTI: I'm sure

1 it was a licensing issue, Mr. Kline. How is
2 it different from -- it doesn't matter the
3 particular nature of the licensing request.
4 We are talking about licensing requests in
5 general.

6 MR. KLINE: May I respond?

7 ACTING CHAIRMAN ALBERTI: Sure.

8 MR. KLINE: In that case, there
9 was a pending enforcement action. So it
10 wasn't just any licensing request. It was in
11 the context of an enforcement proceeding. It
12 was in the context of a Show Cause. It was on
13 the heels of a Show Cause Hearing that had
14 been held by this Board.

15 In the case where there is no such
16 action pending -- and that's what we are
17 dealing with here, there is no Show Cause
18 action pending here.

19 ACTING CHAIRMAN ALBERTI: All
20 right.

21 MR. KLINE: Mr. Chairman, you are
22 shaking your head, but if the Board is going

1 to -- let me say this. If the Board is going
2 to say that in certain cases it will hold
3 hearings concerning appropriateness or make
4 determinations concerning appropriateness,
5 even though there is no protest or in the
6 alternative even though any protest had been
7 resolved by way of a voluntary agreement, then
8 we are entitled to know under what standard
9 you are going to do that, because that's the
10 certainty that we are talking about.

11 Otherwise, we are out here going
12 well, we don't know when they are going to do
13 it. And we don't want to be in that position.
14 We want you -- and we think no that we want
15 you, we believe that you are required to have
16 guidelines either by way of the statute, the
17 regulations or a subsequent rulemaking or a
18 consistent policy, otherwise, we don't have
19 anything to rely on.

20 If we know you do it in certain
21 cases and that's the Board's policy and the
22 Board says, you know, this is what we are

1 going to do in these cases, we have had these
2 fights before over different issues, including
3 on the food issue in terms of should there be
4 a rule, should there not be a rule.

5 So I would submit to you in the
6 absence of a rule or in the absence of a
7 consistent Board policy, then it is arbitrary
8 and capricious for the Board to single out a
9 particular case and say we are going to bring
10 you in even though there is no protest or the
11 protest has been resolved by way of voluntary
12 agreement and determine appropriateness.

13 ACTING CHAIRMAN ALBERTI: Thank
14 you, Mr. Kline.

15 The Board recognizes that Board
16 Member Herman Jones has joined us on the dias.
17 Mr. Jones, we are now still sort of in the
18 realm of opening statements here.

19 MEMBER JONES: Again, sir, thank
20 you.

21 ACTING CHAIRMAN ALBERTI: Before I
22 move on, are there any other questions that

1 Board Members may have for Mr. Kline?

2 MEMBER SILVERSTEIN: Just a quick
3 statement. And that is, Mr. Kline, ANCs have
4 no power. They can simply recommend support.
5 And we are not slaves to them nor to their
6 opinions. Whether they file a protest or not,
7 does not obviate our responsibility.

8 Whether a community organization
9 files a protest or not, does not relieve us of
10 our oversight responsibility.

11 We may have questions about what
12 are the guidelines, but the buck starts here
13 and the buck stops here. That is clear in the
14 statute. ANCs are advisory organizations.
15 You must give them great weight. But if an
16 ANC chooses not to file a protest, that does
17 not mean that we cannot exercise our oversight
18 responsibility. That is what we are doing
19 here for better or worse, whether you agree or
20 whether you do not.

21 ACTING CHAIRMAN ALBERTI: Thank
22 you, Mr. Silverstein. I'll remind everybody

1 that the statements made by individual Board
2 Members are those of individual Board Members,
3 including myself, and may not reflect the
4 opinion of the entire Board.

5 MR. KLINE: May I respond to that?

6 ACTING CHAIRMAN ALBERTI:

7 Actually, no. That was a statement by Mr.
8 Silverstein. I don't think there was a
9 question there. I don't think it's pertinent
10 to really where we are in this hearing.

11 So we will proceed with the third
12 item, which is whether the applicant will
13 adversely impact the neighborhood under
14 District of Columbia Official Code 25-313,
15 etcetera, which is Item 3 of the order which
16 we have been talking about, unless there is an
17 objection.

18 We are really here because of your
19 Motion for Reconsideration. I mean, I will
20 discuss this with the Board, but I would
21 propose that the Board, if you were
22 comfortable and agreed to it, rely on the

1 record of the first Fact-Finding and the Board
2 would discuss that, but that's not my decision
3 to make. It's the Board's decision.

4 But I would like to hear you on
5 that. Should we proceed today, Mr. Kline, or
6 should we -- or do you think we should rely on
7 the record from the first Fact-Finding
8 Hearing?

9 MR. KLINE: I guess I'm a little
10 confused because the order that was entered by
11 the Board says "if the answer to No. 2 is no,"
12 so has the Board already determined that the
13 answer to No. 2 is no?

14 ACTING CHAIRMAN ALBERTI: The
15 Board has not made a determination.

16 MR. KLINE: Well, then I don't
17 know how we can proceed to 3 if we don't -- if
18 we haven't satisfied the condition of the
19 order.

20 ACTING CHAIRMAN ALBERTI: Well,
21 easily. You can collect information on Item
22 3 without having decided 2.

1 MR. KLINE: Mr. Alberti, we are
2 not here to collect information. This is a
3 hearing. I mean, this isn't -- we have rules
4 and procedures. This isn't make it up as we
5 go along, we are going to collect information.

6 The licensee is guaranteed certain
7 rights under the statute and the regulations.

8 ACTING CHAIRMAN ALBERTI: Mr.
9 Kline, you may not like how we are proceeding
10 and you may not agree with how we are
11 proceeding, I'm just asking whether or not you
12 want to proceed to Item 3. And this is your
13 opportunity to --

14 MR. KLINE: I'll leave that to the
15 Board.

16 ACTING CHAIRMAN ALBERTI: --
17 present evidence, present testimony and sworn
18 testimony on the record with regards to the
19 appropriateness of this license application.

20 Should we proceed or not, Mr.
21 Kline?

22 MR. KLINE: I beg the Board's

1 indulgence.

2 ACTING CHAIRMAN ALBERTI: Okay.

3 MR. KLINE: We will proceed.

4 ACTING CHAIRMAN ALBERTI: Okay.

5 Great. Thank you. All right. So just to be
6 clear for the record since we're proceeding
7 with -- we're proceeding with collecting
8 testimony on all of the items, 1 through 4, in
9 our record.

10 MR. KLINE: Mr. Chairperson, I
11 would note that No. 4 is not applicable to
12 this proceeding under 301. 301(a) is before
13 issuing, transferring to a new owner or
14 renewing a license. This is none of those.
15 This is an application for a substantial
16 change.

17 ACTING CHAIRMAN ALBERTI: Thank
18 you for that, Mr. Kline. The Board will take
19 that into consideration in its deliberation on
20 this matter.

21 MR. KLINE: So it's the Board's
22 position it's going to consider that, even

1 though it's not set forth in the statute?

2 ACTING CHAIRMAN ALBERTI: The
3 Board has not made a decision on that. We
4 will do that in our deliberations.

5 MR. KLINE: Okay.

6 ACTING CHAIRMAN ALBERTI: You have
7 made your point on that, on Item 4. The Board
8 has heard you and we will take that into
9 consideration when we decide whether we are
10 going to consider that question and use what's
11 in our record in this case.

12 MR. KLINE: Okay.

13 ACTING CHAIRMAN ALBERTI: All
14 right. That said, we will -- I mean, you are
15 free to --

16 MR. KLINE: Do I get a choice?

17 ACTING CHAIRMAN ALBERTI: --
18 address it here at this hearing.

19 MR. KLINE: I mean, I think I have
20 addressed it through 25-301 is very clear.
21 25-301(a) says "Before issuing, transferring
22 to a new owner or renewing a license, the

1 Board shall determine that the applicant meets
2 all of the following criteria."

3 Given that we are dealing with
4 none of those issues today, it is pretty clear
5 that 25-301(a) would not apply to this request
6 for a substantial change. It's pretty simple.

7 ACTING CHAIRMAN ALBERTI: Thank
8 you, Mr. Kline. Okay. So let's proceed with
9 the Board's first witness, Investigator
10 Parker.

11 Investigator Parker?

12 INVESTIGATOR PARKER: Yes.

13 ACTING CHAIRMAN ALBERTI: Let's go
14 to the witness now.

15 INVESTIGATOR PARKER: Okay.

16 ACTING CHAIRMAN ALBERTI: Approach
17 the witness stand and raise your right hand
18 for me, please.

19 INVESTIGATOR PARKER: Yes, sir.

20 Whereupon,

21 INVESTIGATOR VINCENT PARKER

22 was called as a witness by the ABRA Board, and

1 having been first duly sworn, assumed the
2 witness stand and was examined and testified
3 as follows:

4 ACTING CHAIRMAN ALBERTI: Thank
5 you. Please, be seated. Investigator Parker,
6 would you, please, tell us -- state your name
7 and your position with ABRA and then summarize
8 your report for us, please?

9 INVESTIGATOR PARKER: My name is
10 Vincent Parker. I'm an ABRA Investigator.
11 I've been employed with ABRA for,
12 approximately, four years.

13 In the course of my duty as the
14 ABRA Investigator, I investigate -- conduct
15 inspections and investigations with licensed
16 ABC establishments in D.C.

17 This informational report that I
18 composed for this hearing will rehash some of
19 the dates and events that have already been
20 mentioned here. And it's, basically, going to
21 serve as a time line and some background
22 information regarding this.

1 On April 16, 2009, the ABC Board
2 created a moratorium in the Adams Morgan area
3 of Washington, D.C. The moratorium stated
4 that no new establishments of any class shall
5 be issued in Adams Morgan Moratorium Zone.

6 It also limits the number of CN,
7 CT, CX, DN, DT or DX retailers.

8 The moratorium went on to state
9 that a holder of a retailer's License CR or DR
10 located within the Moratorium Zone shall be
11 prohibited from changing its license class,
12 except when the number of retailer's licenses
13 class in Adams Morgan is fewer than 10.

14 On September 27, 2010 -- the
15 District Restaurant-the District Underground,
16 which I'll refer to as Saki, because that was
17 the trade name at the time of the application.
18 Saki is a Retailer Class CT located at 2477
19 18th Street, which is within the Adams Morgan
20 Moratorium Zone.

21 Saki submitted the substantial
22 change application and they requested to

1 expand their premises to additional floors,
2 being the second and third floor of the
3 building, which houses Saki currently.

4 Saki currently is located on the
5 first floor and basement of that same
6 building. The building encompasses three
7 addresses from my investigation, which is
8 2473, 2475 and 2477 18th Street, N.W.

9 The second and third floors of the
10 building mentioned are currently housed by or
11 are currently occupied by District, which is
12 another ABC establishment, License No. 81908.
13 District Lounge and Grill is the full trade
14 name.

15 District Lounge and Grill and
16 Saki, according to ABRA records, are both
17 owned, at least in part, by William Patrick
18 Dildine. He is the managing member for both.

19 As part of the substantial change
20 request, Saki's expansion would go to the
21 second and third floor and District Lounge and
22 Grill would cease operations. As a result,

1 Saki would encompass the basement, first,
2 second and third floors of the building.

3 There are also other businesses in
4 that building, but the establishment would
5 encompass the entire floor.

6 On December 10, 2010, ANC-1C
7 submitted a protest to the substantial change
8 application of Saki followed by on May 4, 2011
9 a voluntary agreement was submitted between --
10 from ANC-1C and Saki.

11 The Board -- on October 19, 2011,
12 the ABC Board denied Saki's substantial change
13 request and ordered all these actions that are
14 attached to the report.

15 On October 31, 2011, Saki
16 submitted a motion for reconsideration to the
17 ABC Board. And On January 27, 2011, the ABC
18 Board issued an order addressing Saki's Motion
19 for Reconsideration and scheduled this
20 hearing, which we are here for today.

21 As I mentioned previously, Saki is
22 a Class CT Retailer License, which does not,

1 under the statute, have any food sales
2 requirement, whereas District Lounge and Grill
3 is a CR Class licensee, which has food sales
4 requirements, according to D.C. Official Code.

5 In February 2011, ABRA compliance
6 analyst, Mr. Neil, conducted an audit at
7 District Lounge and Grill. As a result of
8 this audit, Mr. Neil determined that District
9 Lounge and Grill was not in compliance with
10 the statutory requirements of a restaurant.

11 According to Mr. Neil's audit
12 report, District Lounge was in violation of
13 D.C. Official Code 25-113 DCMR 23-1204 and
14 DCMR 23-2100.

15 Mr. Neil concluded that District
16 Lounge and Grill did not provide sufficient
17 evidence that the establishment's food sales
18 accounted for 45 percent of their gross annual
19 receipts and/or their annual sales total was
20 not at least \$2,000 per seat.

21 There was a Show Cause Hearing
22 held regarding this audit and at the

1 conclusion or in subsequent days to this
2 hearing, the licensee was ordered to pay a
3 \$2,000 fine and received a five day suspension
4 from the ABC Board. Those suspension days
5 have been served.

6 In January of -- January 13, 2012,
7 Mr. Neil completed a supplemental audit
8 report. In this supplemental report, he
9 further describes violations regarding
10 District Lounge and Grill's food sale
11 requirements as well as maintaining books and
12 records and not meeting the qualifications for
13 restaurant licensing.

14 And that concludes my report.

15 ACTING CHAIRMAN ALBERTI: Thank
16 you, Investigator Parker. Questions from
17 Board Members? Investigator Parker, I know
18 you didn't mention this, but did you in your
19 review of the licensed establishment, did you
20 at all look at the current licenses for both
21 establishments?

22 And I'm particularly interested as

1 to what the C of O is going to say as to how
2 large these establishments are. If you don't
3 know, that's fine.

4 INVESTIGATOR PARKER: I can get
5 that information, Mr. Chairman. I reviewed
6 that information in the past. It was not
7 included in this report.

8 ACTING CHAIRMAN ALBERTI: Okay.
9 If not, we'll look in our records.

10 INVESTIGATOR PARKER: Okay.

11 ACTING CHAIRMAN ALBERTI: I
12 thought you might have it and could state it
13 for the record here.

14 Any other questions from Board
15 Members? Thank you. Mr. Kline?

16 MR. KLINE: Yes.

17 CROSS-EXAMINATION

18 MR. KLINE: Good morning,
19 Investigator Parker. Investigator Parker,
20 your report cites information from Auditor
21 Adejunmobi, correct?

22 INVESTIGATOR PARKER: Yes, yes,

1 sir.

2 MR. KLINE: And you reviewed his
3 report, correct?

4 INVESTIGATOR PARKER: Yes, sir.

5 MR. KLINE: In his report, he
6 wasn't able to conclude that they didn't meet
7 the minimum food sales requirement, isn't that
8 correct?

9 INVESTIGATOR PARKER: The
10 determination, I believe, that he stated that
11 they did not.

12 MR. KLINE: Isn't it true that he
13 made a determination that he couldn't make a
14 determination concerning food sales because of
15 the lack of records?

16 INVESTIGATOR PARKER: Well, he
17 made the official determination that they were
18 in violation of 113, 1204 DCMR and 2100
19 stating that they were not operating as a
20 restaurant and failed to maintain the required
21 books and records, failed to establish
22 compliance with the District's food sales

1 requirement. That's the first case.

2 On the subsequent supplemental
3 report, I'm not sure which one we're talking
4 about.

5 MR. KLINE: All right. When you
6 say official determination?

7 INVESTIGATOR PARKER: Well, that
8 was he --

9 MR. KLINE: His determination? He
10 is, in fact, an investigator just like you
11 are, isn't he?

12 INVESTIGATOR PARKER: Well, he is
13 a compliance analyst auditor, sir.

14 MR. KLINE: So in terms of
15 official determinations, aren't those made by
16 the ABC Board?

17 INVESTIGATOR PARKER: Yes, sir.

18 MR. KLINE: So he wouldn't make an
19 official determination, would he?

20 INVESTIGATOR PARKER: Yes.
21 According to his determination, his
22 investigation or his audit I should say.

1 MR. KLINE: And did that audit --
2 was that audit able to determine how much food
3 was sold?

4 INVESTIGATOR PARKER: I'm not
5 sure. Mr. Neil is available if need be to
6 further describe his report.

7 MR. KLINE: Well, I'm talking
8 about your report now. Okay. Now, you
9 indicated that the tavern license had no food
10 sale requirement, correct? Isn't that what
11 you testified to?

12 INVESTIGATOR PARKER: Yes, sir.

13 MR. KLINE: This tavern license,
14 however, does have a food sale requirement,
15 doesn't it?

16 INVESTIGATOR PARKER: Saki's does,
17 yes.

18 MR. KLINE: It does. And have you
19 reviewed the voluntary agreement that was
20 submitted in connection with resolution of the
21 protest of the substantial change?

22 INVESTIGATOR PARKER: Yes, sir,

1 it's attached to the report.

2 MR. KLINE: That also has the food
3 sale requirement, doesn't it?

4 INVESTIGATOR PARKER: I mentioned
5 -- I'm not sure if it has a percentage number.
6 A total amount of annual gross sales,
7 \$250,000.

8 MR. KLINE: And that's greater
9 than the number in the Saki voluntary
10 agreement, isn't it, in the original Saki
11 voluntary agreement?

12 INVESTIGATOR PARKER: I don't
13 recall the original Saki voluntary agreement.

14 MR. KLINE: All right. But the
15 point is your testimony is that there is no
16 food sale requirement for CT isn't precisely
17 relevant to this application, is it?

18 INVESTIGATOR PARKER: Well, this
19 voluntary agreement hasn't been approved by
20 the ABC Board, so, therefore, I didn't take it
21 into account as far as that statement being
22 that taverns in general don't have that

1 requirement.

2 ACTING CHAIRMAN ALBERTI: Mr.
3 Kline, the relevancy here is not for the
4 Investigator to determine, that's for the
5 Board to determine.

6 MR. KLINE: And I think --

7 ACTING CHAIRMAN ALBERTI: He is
8 just stating his facts.

9 MR. KLINE: Understand.

10 ACTING CHAIRMAN ALBERTI: Whether
11 what he states is relevant or not, that's for
12 the Board to determine. Please continue.

13 MR. KLINE: right. And I think I
14 get the point that by way of questions as to
15 whether it's --

16 ACTING CHAIRMAN ALBERTI: Fine.

17 MR. KLINE: -- relevant or not.

18 ACTING CHAIRMAN ALBERTI: Fine.

19 MR. KLINE: I think that's what my
20 job is over here --

21 ACTING CHAIRMAN ALBERTI: I
22 understand.

1 MR. KLINE: -- at this table.

2 ACTING CHAIRMAN ALBERTI:

3 Continue, Mr. Kline.

4 MR. KLINE: You have done many
5 investigations concerning substantial change
6 requests in the past, correct?

7 INVESTIGATOR PARKER: Yes, sir.

8 MR. KLINE: All right. And
9 typically, as part of that investigation, you
10 investigate whether the requested change will
11 have an adverse impact on peace, order and
12 quiet, correct?

13 INVESTIGATOR PARKER: As well as
14 other factors.

15 MR. KLINE: As well as the other
16 factors of the statute?

17 INVESTIGATOR PARKER: Yes, sir.

18 MR. KLINE: All right. In this
19 case, you didn't conclude that this requested
20 change, if approved, would have any adverse
21 impact on peace, order and quiet, did you?

22 INVESTIGATOR PARKER: No, sir, I

1 don't think that was my duty in this
2 assignment to make that determination.

3 MR. KLINE: Fair enough. Did you
4 find any evidence during the course of your
5 investigation which would lead you to conclude
6 that the granting of this request would have
7 an adverse impact on peace, order and quiet?

8 INVESTIGATOR PARKER: Again, the
9 point of my -- when I'm given this assignment,
10 page 1 of the assignment, it was classified as
11 informational report and that was the way I
12 approached it. Being just to gather the facts
13 and compile them into one report and present
14 that at this hearing.

15 As far as the investigation of how
16 I would determine peace, order and quiet, I
17 didn't take those steps I normally take in
18 protest investigations or other types of
19 hearings.

20 MR. KLINE: Why not?

21 INVESTIGATOR PARKER: Because like
22 I said, I was tasked with just compiling the

1 information for this hearing, exactly what you
2 see.

3 MR. KLINE: And you indicated that
4 you are given some sort of written direction?

5 INVESTIGATOR PARKER: Not written,
6 no. Nothing -- there was nothing written. I
7 was told to prepare an informational report
8 for this hearing.

9 MR. KLINE: Were you led to
10 believe that this hearing was any different
11 than any normal Protest Hearing in which the
12 Board makes a peace, order and quiet
13 determination?

14 INVESTIGATOR PARKER: I didn't --

15 ACTING CHAIRMAN ALBERTI: I'm
16 going to object here because this is not a
17 Protest Hearing, Mr. Kline. I think we have
18 established that.

19 MR. KLINE: Well, what is it?

20 ACTING CHAIRMAN ALBERTI: Mr.
21 Kline, you may proceed.

22 MR. KLINE: So I mean, I want to

1 make sure that I'm clear. The Chairperson is
2 objecting to my question?

3 ACTING CHAIRMAN ALBERTI: I'm just
4 pointing out for the benefit of the witness,
5 because it seems to be -- I don't want the
6 witness to be confused. And the use of the
7 term protest is not correct. A Protest
8 Hearing is not correct. So I'm just, for the
9 sake of the witness, making sure the witness
10 understands your -- understands what the
11 question is.

12 MR. KLINE: Mr. Chairperson, with
13 all due respect, one of my jobs over here is
14 to confuse the witness. That's one of my
15 jobs. And if the Chairperson would like to
16 sit at this table, then it would seem to me it
17 would be appropriate for the Chairperson to
18 then make a case against the applicant.
19 Otherwise, I strenuously object to the
20 Chairperson objecting to my questions.

21 ACTING CHAIRMAN ALBERTI: Point
22 well taken, Mr. Kline. Please, continue.

1 MR. KLINE: Can the witness be
2 directed to answer the question?

3 ACTING CHAIRMAN ALBERTI: Sure.
4 Please, continue. Mr. Parker, please, answer
5 the question.

6 INVESTIGATOR PARKER: Please,
7 repeat it.

8 MR. KLINE: All right. So my
9 question was so you were not directed to do
10 the same type of investigation that you would
11 do in connection with a normal Protest
12 Hearing. Is that right?

13 INVESTIGATOR PARKER: No, this
14 wasn't -- a protest report was not requested.

15 MR. KLINE: All right. Now, when
16 you do the normal protest investigation, you
17 do look into issues concerning peace, order
18 and quiet, correct?

19 INVESTIGATOR PARKER: If that's a
20 protest issue, yes.

21 MR. KLINE: All right. And if
22 it's not a protest issue, then that's not

1 something that you look at?

2 INVESTIGATOR PARKER: I look at
3 whatever protest issues are established at the
4 hearing prior to me getting assigned the case.

5 MR. KLINE: And how are those
6 protest issues established? Or withdraw that.

7 How do you know what protest
8 issues to look at?

9 INVESTIGATOR PARKER: When I'm
10 assigned the protest investigation, it's
11 listed and that is determined, I guess, from
12 the Roll Call Hearings or prior hearings or
13 protestants make them known.

14 MR. KLINE: Do you get a written
15 communication concerning what to include in
16 your investigation?

17 INVESTIGATOR PARKER: We get a
18 folder that has all the relevant documents.

19 MR. KLINE: All right. And within
20 those documents are -- what is contained
21 within that folder?

22 INVESTIGATOR PARKER: Protest

1 letters, correspondence between the parties,
2 everything like that.

3 MR. KLINE: So you look at the
4 protest letters and make a determination as to
5 what the protest issues are?

6 INVESTIGATOR PARKER: They are
7 also spelled out. I believe that there is a
8 form or some form that staff uses to have
9 protestants identify the specific issues and
10 that is attached in the report -- in the
11 folder also.

12 MR. KLINE: And then you look at
13 that and you determine what to investigate?

14 INVESTIGATOR PARKER: Yes, sir.

15 MR. KLINE: All right. So in this
16 case, you didn't have that kind of guidance?

17 INVESTIGATOR PARKER: Well, I
18 conducted the initial Saki protest. I began
19 before the voluntary agreement was submitted,
20 so I still had that folder, the initial
21 protest, which was -- I forgot the date. That
22 protest -- I had that folder and I was

1 familiar with some of the issues that were
2 going on with the establishment.

3 MR. KLINE: But that was not
4 included as part of what you were tasked with
5 in terms of preparing this report?

6 INVESTIGATOR PARKER: No, sir. I
7 included that there was a protest and there
8 was a voluntary agreement.

9 MR. KLINE: And that's it?

10 INVESTIGATOR PARKER: Yes, sir.

11 MR. KLINE: I have no further
12 questions of the witness.

13 ACTING CHAIRMAN ALBERTI: Any
14 questions by Board Members? Investigator
15 Parker, thank you for your report. Thank you.

16 Mr. Kline, you may call your first
17 witness.

18 MR. KLINE: I call to the stand
19 Matthew Cronin.

20 ACTING CHAIRMAN ALBERTI: Okay.
21 Mr. Kline, I'm going to beg your indulgence.
22 We are going to take a five minute pause here

1 in this hearing. We have some other business,
2 another case. It will go very quickly, I
3 promise.

4 MR. KLINE: Okay. Great. Thank
5 you.

6 ACTING CHAIRMAN ALBERTI: Just
7 give us five minutes. I appreciate that.
8 Thank you, Mr. Kline. We're off the record.

9 (Whereupon, at 11:12 a.m. a recess
10 until 11:13 a.m.)

11 ACTING CHAIRMAN ALBERTI: We're
12 trying to make the best use of citizens' time
13 here.

14 MR. KLINE: Understood,
15 understood.

16 ACTING CHAIRMAN ALBERTI: Of
17 everyone's time.

18 MR. KLINE: It's not an issue.

19 ACTING CHAIRMAN ALBERTI: Thank
20 you. We are back on the record. Okay.
21 Please, call your first witness, Mr. Kline.

22 MR. KLINE: I call to the stand

1 Matthew Cronin. State your name for the
2 record, please. Oh, be sworn in, please. I'm
3 sorry.

4 ACTING CHAIRMAN ALBERTI: Mr.
5 Cronin, would you, please, stand and raise
6 your right hand?

7 MR. CRONIN: Yes.

8 Whereupon,

9 MATTHEW CRONIN
10 was called as a witness by Counsel for the
11 applicant, and having been first duly sworn,
12 assumed the witness stand and was examined and
13 testified as follows:

14 ACTING CHAIRMAN ALBERTI: Thank
15 you. Please, be seated. Okay.

16 DIRECT EXAMINATION

17 MR. KLINE: State your name for
18 the record, please.

19 MR. CRONIN: Matthew Cronin.

20 MR. KLINE: And you are the
21 operating manager of what businesses?

22 MR. CRONIN: C. Fields Group and

1 Colin Unlimited, which are District and
2 currently Underground.

3 MR. KLINE: Okay. And what about
4 Saki? What's your role with respect to Saki?

5 MR. CRONIN: I was the operations
6 manager of Saki since we took over in 2009.

7 MR. KLINE: And --

8 MEMBER SILVERSTEIN: Please, speak
9 up.

10 MR. CRONIN: I'm sorry.

11 MEMBER SILVERSTEIN: And face us.

12 MR. CRONIN: Operations manager at
13 Saki since we took over in 2009.

14 ACTING CHAIRMAN ALBERTI: Mr.
15 Cronin, there is a little mike -- flat mike in
16 front of you. Is the little green light lit?

17 MR. CRONIN: A little bit closer?

18 ACTING CHAIRMAN ALBERTI: Is the
19 little green light lit?

20 MR. CRONIN: Yes.

21 ACTING CHAIRMAN ALBERTI: Okay.

22 If you would speak into that, we would

1 appreciate that. Thank you.

2 MR. CRONIN: Okay. Is that any
3 better?

4 ACTING CHAIRMAN ALBERTI: Yes,
5 that's very good.

6 MR. CRONIN: Okay.

7 ACTING CHAIRMAN ALBERTI: Thank
8 you.

9 MR. KLINE: So Saki at some point
10 changed its trade name. Is that correct?

11 MR. CRONIN: That is correct.

12 MR. KLINE: And it is now known as
13 what?

14 MR. CRONIN: District Underground.

15 MR. KLINE: So you are involved
16 with the establishment currently known as
17 District Underground, previously known as
18 Saki. Is that correct?

19 MR. CRONIN: That is correct.

20 MR. KLINE: And you are also
21 involved with a business known as District?

22 MR. CRONIN: That is correct.

1 MR. KLINE: And we are here today
2 in connection with the request of District
3 Underground. Is that correct?

4 MR. CRONIN: Yes, that is also
5 correct.

6 MR. KLINE: All right. And what
7 is your understanding of that request?

8 MR. CRONIN: To my understanding,
9 we were instructed the best course of action
10 to make sure that we were meeting all of our
11 legal requirements regarding food numbers was
12 to try to come to an agreement with the
13 neighborhood and to submit a substantial
14 change to try to combine our tavern license
15 with the space which is currently known a
16 District and come to a food number that we
17 felt was manageable based off of our first
18 roughly year of sales.

19 MR. KLINE: Right. And I think we
20 got a little confused.

21 MR. CRONIN: Okay.

22 MR. KLINE: Just to the record is

1 real clear and everybody in the room is clear,
2 District Underground has what kind of license?

3 MR. CRONIN: It's a modified
4 tavern.

5 MR. KLINE: And when you say
6 modified tavern, what does that mean?

7 MR. CRONIN: Traditionally, to my
8 understanding, tavern licenses don't require
9 food sales. And we do have a food sale
10 requirement attached to the tavern license.

11 MR. KLINE: And then that's on the
12 first floor of the premises?

13 MR. CRONIN: First and basement
14 level, yes.

15 MR. KLINE: And then District is
16 upstairs, correct?

17 MR. CRONIN: That is correct.

18 MR. KLINE: On what level?

19 MR. CRONIN: The second and third
20 floors.

21 MR. KLINE: And District holds
22 what kind of license?

1 MR. CRONIN: It's a restaurant
2 license.

3 MR. KLINE: So a CR?

4 MR. CRONIN: Yes.

5 MR. KLINE: So the request is to
6 expand the District Underground license to
7 encompass the currently licensed District
8 premises?

9 MR. CRONIN: Yes, that is correct.

10 MR. KLINE: Will this expansion
11 result in any increase in the areas that are
12 currently licensed for the sale of alcoholic
13 beverages?

14 MR. CRONIN: No.

15 MR. KLINE: So in other words, the
16 District Underground expansion is intended
17 only to encompass the current District space?

18 MR. CRONIN: That is correct.

19 MR. KLINE: Not attempting to
20 expand in any other areas of the building?

21 MR. CRONIN: No, sir.

22 MR. KLINE: Now, have you been

1 involved with this business since it was taken
2 -- since the two businesses were taken over by
3 Colin Unlimited and what's the other entity?

4 MR. CRONIN: C. Fields Group.

5 MR. KLINE: I'm sorry, C. Fields
6 Group?

7 MR. CRONIN: Yes, sir, I have
8 been.

9 MR. KLINE: And were you here the
10 day that the presentation was made to the
11 Board concerning food sales at the outset?

12 MR. CRONIN: The initial hearing?

13 MR. KLINE: Yes.

14 MR. CRONIN: Yes, sir.

15 MR. KLINE: All right. Mr. Ben
16 Dalley was primarily involved in that
17 presentation. Is that correct?

18 MR. CRONIN: That is correct.

19 MR. KLINE: Is he currently
20 involved with either business?

21 MR. CRONIN: No, sir, he is not in
22 either company.

1 MR. KLINE: Okay. And is that a
2 fairly recent development?

3 MR. CRONIN: Recent, yes, sir, in
4 the last couple months.

5 MR. KLINE: Okay. And did he
6 withdraw from those companies?

7 MR. CRONIN: Yes.

8 MR. KLINE: Did that have anything
9 to do with this proceeding or these
10 procedures?

11 MR. CRONIN: I don't believe so,
12 sir.

13 MR. KLINE: Okay. Was there an
14 independent reason for his withdraw from the
15 companies?

16 MR. CRONIN: Yes.

17 MR. KLINE: Okay. And your role
18 with District Underground is it general
19 manager?

20 MR. CRONIN: That's probably the
21 best way to describe it, yes, sir.

22 MR. KLINE: And is that the same

1 role that you have with respect to District
2 upstairs?

3 MR. CRONIN: Yes, sir.

4 MR. KLINE: So are you in charge
5 of such things as security?

6 MR. CRONIN: We have individual
7 managers tasked with that, but, yes, I'm
8 overall responsible for all departments.

9 MR. KLINE: Okay. And what is --
10 let's start with District Underground. First
11 of all, what does it do with respect to
12 security, if anything?

13 MR. CRONIN: I mean, we have an
14 operating camera system. We have multiple
15 uniformed security personnel.

16 MR. KLINE: Well, let me stop you
17 there. So there is a camera system for
18 District Underground?

19 MR. CRONIN: Yes.

20 MR. KLINE: That's a video
21 recording system?

22 MR. CRONIN: Yes, sir.

1 MR. KLINE: How many cameras are
2 there?

3 MR. CRONIN: Currently
4 operational, I believe there are six.

5 MR. KLINE: Six cameras?

6 MR. CRONIN: Yes.

7 MR. KLINE: And you indicated that
8 there is a security staff?

9 MR. CRONIN: Yes, sir.

10 MR. KLINE: How many security
11 staff are used in connection with District
12 Underground?

13 MR. CRONIN: During hours of like
14 alcohol sales, where it's later in the
15 evening, typically, four to five.

16 MR. KLINE: Okay. And what about
17 in connection with District?

18 MR. CRONIN: District operates 12
19 to 15, depending on the evening and has, I
20 believe, 12 working cameras, maybe 13 right
21 now.

22 MR. KLINE: Do the number of

1 security personnel vary with the night of the
2 week?

3 MR. CRONIN: Yes, not often, but
4 it is usually based off -- the staffing is
5 usually based off of crowd expectancy.

6 MR. KLINE: Okay. Do the
7 establishments draw the same kind of crowd?

8 MR. CRONIN: In reference to?

9 MR. KLINE: The clientele.

10 MR. CRONIN: Between the two
11 establishments?

12 MR. KLINE: Yes.

13 MR. CRONIN: Yes, I would say they
14 are pretty similar. Yes, sir.

15 MR. KLINE: Are there differences
16 between the two?

17 MR. CRONIN: In terms of crowd?
18 No, sir.

19 MR. KLINE: So who is the
20 clientele of these two establishments?

21 MR. CRONIN: In my opinion, it's a
22 lot of local residents, traditionally, and I

1 would say age 25 to 30, young professional is
2 our bread and butter, so to speak.

3 MR. KLINE: All right. Have you
4 found the need to have metal detectors in your
5 establishment?

6 MR. CRONIN: No, sir.

7 MR. KLINE: Have you found the
8 need to do pat-downs of people entering your
9 establishment?

10 MR. CRONIN: No, sir.

11 MR. KLINE: Why is that? Why
12 don't you feel the need for either of those
13 things?

14 MR. CRONIN: We have instituted a
15 number of -- we try to think of ourselves as
16 a high class establishment. I know that
17 sounds weird, but we have a dress code. We
18 have our own standards of what we believe
19 someone should be presenting themselves as
20 when they come in. So we have a strict dress
21 code.

22 We have a high entrance charge.

1 And we also make sure that -- you know, we
2 really don't like anybody even remotely that
3 looks like they have been drinking before they
4 came in come in too often. We want it to be
5 an enjoyable atmosphere, not too wild.

6 MR. KLINE: Now, in terms of
7 standards, you talked about a dress code. Can
8 you tell the Board what the dress code is?

9 MR. CRONIN: The dress code is,
10 basically, colored shirts, no hats, no
11 sneakers, things of that nature. No work
12 clothes, basically.

13 MR. KLINE: All right.

14 MR. CRONIN: And boots, things of
15 that nature.

16 MR. KLINE: And what other
17 standards? Are there other standards in terms
18 of clientele in terms of -- that you enforce?
19 You don't search people, we have already
20 established that, correct?

21 MR. CRONIN: No, sir.

22 MR. KLINE: And District

1 Underground previously known as Saki you have
2 operated for how long?

3 MR. CRONIN: Three years.

4 MR. KLINE: Do you remember
5 starting when?

6 MR. CRONIN: It was spring of
7 2009, I believe.

8 MR. KLINE: Have you had any
9 incidents or violations in connection with
10 that license?

11 MR. CRONIN: I do not believe so,
12 no.

13 MR. KLINE: Okay. Have you
14 received complaints from neighbors about the
15 operation of the establishment?

16 MR. CRONIN: No, sir.

17 MR. KLINE: No noise complaints
18 concerning the operation of the establishment?

19 MR. CRONIN: Not at Saki or
20 Underground. No, sir.

21 MR. KLINE: Okay. Now, you do
22 serve food at District Underground, correct?

1 MR. CRONIN: Yes.

2 MR. KLINE: And what's the nature
3 of the food that you serve?

4 MR. CRONIN: It's upscale
5 continental like bar-fare. We have all kinds
6 of things. Our specialty, I guess, would be
7 gourmet burgers. We have six or seven
8 different types of patties. Almost 80-some
9 different topping combinations. That's kind
10 of what our primary focus is, but we have a
11 pretty substantial menu.

12 MR. KLINE: All right. It's the
13 Board's position that what they are
14 considering today is to whether this request
15 at expansion of the Saki premises of the
16 District Underground premises is appropriate,
17 given the criteria under the statute.

18 What would you tell the Board in
19 terms of appropriateness with respect to
20 peace, order and quiet? Why wouldn't this
21 expansion have a negative effect on peace,
22 order and quiet?

1 MR. CRONIN: I guess what I would
2 tell the Board is this wouldn't change the
3 number of people that would be expected. It
4 wouldn't affect our food sales. I mean, we
5 still would have to have a strong kitchen and
6 strong food service.

7 I would also tell the Board that
8 we have tried, to the best of our abilities,
9 to maintain a safe environment and to listen
10 to whatever we were told by investigators that
11 would come by and told by the community as
12 well. We have attended numerous ANC meetings.
13 We have actually seen Board Members at
14 different local meetings.

15 We have just tried the best we
16 could to be a safe and good neighbor in the
17 neighborhood and the reason for this change is
18 just, you know, primarily financial hardships.
19 things aren't great in Adams Morgan with the
20 Streetscape and things aren't great with, you
21 know, the economy in general.

22 So we are just trying to put a

1 working business together. And if we came in
2 three years ago and what we told the Board
3 didn't work, I would beg their indulgence that
4 it was maybe a little naive some of the things
5 we expected, but in no way was meant to
6 mislead the Board.

7 We tried exactly what we said we
8 would and we have made numerous changes since
9 then to try to meet the demands of the market
10 and to try to be successful and take care of
11 our employees and that's pretty much what I
12 would tell the Board.

13 MR. KLINE: What did -- when you
14 say that you tried to do what you set out to
15 do, what is it that you did in connection with
16 both businesses in terms of what you told the
17 Board back in 2009?

18 MR. CRONIN: I mean, we, and
19 specifically with the space that is known as
20 District, initially came forward with a
21 steakhouse concept. The initial concept we
22 brought forward and menu that was launched was

1 steak-heavy. It was, you know, a lot of
2 different cuts.

3 It didn't work. It wasn't
4 connecting with the neighborhood. I don't
5 think it was in line with a lot of the other
6 businesses in the area. We weren't getting
7 the clientele we were looking for. So we had
8 to adapt our menu rather rapidly.

9 So we are pretty much on a third
10 draft of what our original menu was trying to
11 adapt to our crowd and to the neighborhood, so
12 that we can sell more and more food and
13 maintain our numbers.

14 MR. KLINE: Now, at some point you
15 learned that you were going to have difficulty
16 meeting your minimum food service requirements
17 at District. Is that correct?

18 MR. CRONIN: That's correct.

19 MR. KLINE: Do you recall when
20 that was?

21 MR. CRONIN: It was about seven or
22 eight months in. I believe, six or seven

1 months in. It was the late -- at tail end, I
2 believe, the summer of 2009 or 2010. I mean,
3 we had been going for a while and once we
4 started to get close to that deadline for the
5 first year's numbers, we looked at it and it
6 looked like we were going to hit them, but it
7 was going to be really close.

8 And that was when we came to the
9 realization, you know, that we needed to
10 figure out a way to where this massive boulder
11 wasn't hanging over our head every year and
12 where we weren't throwing money down the drain
13 with ridiculous specials and ridiculous
14 amounts of advertising just trying to get
15 those food requirements met.

16 It became a point where we were
17 losing money just trying to hit the food
18 requirements and it was hurting our business.

19 MR. KLINE: All right. How long
20 have you been working in Adams Morgan?

21 MR. CRONIN: About three years.

22 MR. KLINE: Since you started in

1 this establishment?

2 MR. CRONIN: Yes.

3 MR. KLINE: Are you generally
4 aware of what has happened with respect to the
5 real estate in the neighborhood?

6 MR. CRONIN: Yes, I mean, I attend
7 BID meetings, ANC meetings. I try to keep in
8 touch with the neighborhood business owners.

9 MR. KLINE: You mentioned that you
10 have attended a number of meetings in the
11 community?

12 MR. CRONIN: Yes, sir.

13 MR. KLINE: And the BID
14 specifically and what else?

15 MR. CRONIN: ANC and I have
16 attended a number of -- a couple KCABs as
17 well.

18 MR. KLINE: How many ANC meetings
19 do you go to a year?

20 MR. CRONIN: Last year I probably
21 attended, I would say, 80 percent of them. So
22 there was -- I would say I probably attended

1 at least eight of the regular ANC meetings and
2 then of the PZT Subcommittee meetings, I
3 probably attended another eight.

4 MR. KLINE: And what's PZST?

5 MR. CRONIN: I believe it is
6 Public Zoning Safety Transportation something
7 like that.

8 MR. KLINE: So that's a
9 subcommittee of the ANC there in Adams Morgan?

10 MR. CRONIN: That's correct.

11 MR. KLINE: What about in 2012,
12 have you continued to attend meetings there?

13 MR. CRONIN: Not as many, but I
14 have been attending a couple.

15 MR. KLINE: And what's your reason
16 for attending ANC meetings?

17 MR. CRONIN: The reason for
18 attending ANC meetings, since we initially
19 came down here, was because I figured there's
20 a strong connection with the neighborhood and
21 knowing what their expectations were, would
22 help us out with our business and just make us

1 a stronger entity.

2 MR. KLINE: All right. You
3 indicated that you are generally aware of real
4 property values in the neighborhood?

5 MR. CRONIN: Yes.

6 MR. KLINE: Will this expansion
7 have any affect on real property values in the
8 neighborhood?

9 MR. CRONIN: Again, I couldn't see
10 how it could. It's the same number of patrons
11 that are allowed in and it's the same area of
12 service. It really would make no difference
13 in any way, shape or form to what is going on
14 in the neighborhood.

15 MR. KLINE: If this request is
16 granted, will you be changing your marketing
17 or attempting to attract a different type of
18 clientele than you attract now?

19 MR. CRONIN: No, sir.

20 MR. KLINE: Now, parking in the
21 neighborhood is pretty tight, isn't it?

22 MR. CRONIN: That's correct.

1 MR. KLINE: Do you have any reason
2 to believe one way or another whether this
3 expansion of the District Underground premises
4 will have an effect upon residential parking
5 needs?

6 MR. CRONIN: I don't see how it
7 possibly could. Again, it's the same number
8 of patrons attending. There is no difference
9 in marketing. You know, we have attempted to
10 maintain our valet, although it's currently
11 suspended due to construction on our end of
12 the block, but we have done everything we can
13 to help out with the parking situation.

14 MR. KLINE: What about with
15 respect to vehicular and pedestrian safety?
16 Do you have a sense as to whether the
17 expansion of the District Underground premises
18 to include the District premises will have an
19 effect on residential parking needs -- I'm
20 sorry, have an affect on vehicular and
21 pedestrian safety?

22 MR. CRONIN: I don't believe it

1 would, sir. And also, with the increase in
2 the sidewalks, which was much needed, there is
3 plenty of space/room. I see no way it could
4 possibly change the way the sidewalks are
5 operating.

6 MR. KLINE: Will this requested
7 expansion of the District Underground premises
8 provide you with any different opportunities
9 in terms of food service?

10 MR. CRONIN: Well, yes. The way
11 the building is set up right now, because it's
12 two different licenses, we are not allowed to
13 have customers go between the second and third
14 floor and the first floor, which is ground
15 level and the basement.

16 We do have a connecting stairwell,
17 which right now no one is allowed to use. The
18 Underground space has a really nice
19 storefront, a glassed-in storefront which
20 helps out in food sales tremendously. And it
21 would be a wonderful entrance point to drive
22 traffic to the upstairs portion to increase

1 our ability to utilize all of our space
2 towards food sales, yes.

3 MR. KLINE: All right. I don't
4 have any further questions of the witness, at
5 this time.

6 ACTING CHAIRMAN ALBERTI: Thank
7 you, Mr. Kline. Board Members, any questions
8 of Mr. Cronin?

9 MEMBER NOPHLIN: I have just one
10 question, Mr. Chair.

11 ACTING CHAIRMAN ALBERTI: Mr.
12 Nophlin?

13 MEMBER NOPHLIN: I'm sorry, in
14 your introduction you mentioned you were a
15 manager before you became whatever your
16 position is now. What is your position now?

17 MR. CRONIN: I have always been
18 operations manager and general manager, CEO,
19 whatever you want to call it. I run almost
20 all the operations.

21 MEMBER NOPHLIN: You would still
22 do so?

1 MR. CRONIN: Yes, sir.

2 MEMBER NOPHLIN: How long have you
3 been with them?

4 MR. CRONIN: Since it started
5 three years ago.

6 MEMBER NOPHLIN: Okay. The other
7 part of the question is you mentioned after
8 the change over to a new, I guess, ownership
9 several months went by and you were making
10 ends meet or maybe weren't doing as well as
11 you thought you were, what was that situation?

12 MR. CRONIN: I'm sorry, I couldn't
13 hear the last part.

14 MEMBER NOPHLIN: What was the
15 problem?

16 MR. CRONIN: Again, it's the same
17 problem with District. We have tried a number
18 of things. We have done brunches. We have
19 done all kinds of specials. We have used
20 promoters. We have used any advertisement we
21 can find outside banners. The problem is that
22 our door is very small. And we can only fit

1 a canopy that is maybe as wide as the booth
2 I'm sitting in right now.

3 Now, this is a place that has, you
4 know, 100 and some seats, 160 odd seats or
5 something more than that. It's a large
6 establishment and our door is so small and
7 it's wedged in between two brightly lit
8 storefronts. It's very hard to see. People
9 walk past all the time and constantly even
10 when customers are specifically coming to our
11 location, I see them spinning around looking
12 out front trying to find where we are located.

13 So we just don't have any
14 visibility. It's very difficult to attract in
15 a place like Adams Morgan any of the new
16 customers. Anyone who is just going to Adams
17 Morgan looking for dinner is going to see
18 dozens and dozens of options that look more
19 tempting than our front door, because it is so
20 small.

21 Our entrance is literally as wide
22 as this and then we have this massive space

1 upstairs with hundreds of seats that we, you
2 know, have food requirements on. So we have
3 tried, you know, banquets. We have reached
4 out to corporate companies. We have done
5 everything within our power to really, really
6 push food, including ridiculous food specials
7 that I mentioned earlier, where we actually
8 were taking a loss just to drive food sales.

9 It became pretty obvious that we
10 had underestimated how bad our street level
11 appeal was and then the obvious next choice
12 for us was well, we have this location as part
13 of the same building that is, you know, right
14 here on street level. It's got a nice
15 entrance. It's got a staircase that goes
16 right upstairs. This would be a much better
17 entrance and choice for this establishment.

18 And that's where we came into the
19 licensing issue where with two different
20 licenses, you can't have people going up and
21 down. And then it just became something
22 where, you know, we really, really needed to

1 figure it out.

2 MEMBER NOPHLIN: Thank you. Thank
3 you, Mr. Chair.

4 ACTING CHAIRMAN ALBERTI: Thank
5 you, Mr. Nophlin. Mr. Jones?

6 MEMBER JONES: Thank you, Mr.
7 Chairman. You are affiliated with what used
8 to be known as Saki and is now District
9 Underground?

10 MR. CRONIN: Yes, sir.

11 MEMBER JONES: Okay. What is the
12 current business operations of District
13 Underground? What are the current operations
14 for District Underground?

15 MR. CRONIN: I'm sorry, I don't
16 understand. Business operations meaning?

17 MEMBER JONES: So does District
18 Underground exist?

19 MR. CRONIN: Yes.

20 MEMBER JONES: What is the purpose
21 of its existence?

22 MR. CRONIN: To make money.

1 MEMBER JONES: How?

2 MR. CRONIN: By selling food and
3 alcohol.

4 MEMBER JONES: Does it currently
5 do that?

6 MR. CRONIN: Yes, sir.

7 MEMBER JONES: Okay. Cool. So
8 was it at some point a sushi bar?

9 MR. CRONIN: Yes, sir.

10 MEMBER JONES: Okay. Did you
11 change your business model away from sushi bar
12 to something else?

13 MR. CRONIN: Yes, sir.

14 MEMBER JONES: Okay. How has your
15 success been once you made that conversion
16 from sushi bar? Actually, when did you make
17 that conversion?

18 MR. CRONIN: The conversion, I
19 believe, was last spring.

20 MEMBER JONES: Last spring?

21 MR. CRONIN: As far as menu.

22 MEMBER JONES: Okay.

1 MR. CRONIN: Yes, sir.

2 MEMBER JONES: All right. And
3 that is currently governed by a CT license
4 with an attached VA, correct?

5 MR. CRONIN: Yes, sir.

6 MEMBER JONES: All right. What
7 has been your success in that conversion? How
8 would you rate or classify your success? And
9 now more specifically, about how you got to
10 that point.

11 MR. CRONIN: In all honesty, I
12 would say it is minimal as far as with the
13 menu change. I would say it's slightly
14 better, but not to the level we had honestly
15 hoped for.

16 MEMBER JONES: Okay.

17 MR. CRONIN: As far as sales. But
18 we are saving money on cost. Fresh fish was
19 killing us and the sushi chef was much more
20 expensive. So from a financial standpoint, we
21 are doing about the same sales we were doing
22 as a sushi concept, but we are saving a lot of

1 money on -- back in expenses.

2 MEMBER JONES: Okay. So you're
3 doing about the same amount of gross sales,
4 but you are saying that your net profit has
5 increased because your expenses have gone down
6 due to the nature of the food that you're
7 selling? If I understood you correctly.

8 MR. CRONIN: That's correct, sir.

9 MEMBER JONES: All right. So now
10 that I'm following, your sales aren't
11 significantly more than what they were before
12 when you were operating as a sushi-style
13 restaurant, i.e., Saki?

14 MR. CRONIN: The gross sales?

15 MEMBER JONES: Gross sales.

16 MR. CRONIN: No, sir.

17 MEMBER JONES: Okay. How do your
18 gross sales of District Underground compare to
19 your gross sales of any type related to
20 District?

21 MR. CRONIN: If I'm correct, I
22 would say downstairs does -- compared to up --

1 I mean, I really don't know. I'll try to
2 throw a number out there. 40 percent of
3 overall sales between those establishments
4 probably come from downstairs. I guess that's
5 the easiest way to put it.

6 MEMBER JONES: So if I were to
7 look at what you told me and look at both
8 establishments and look at them as the
9 combined sales of them being 100 percent --

10 MR. CRONIN: Yes.

11 MEMBER JONES: -- you are telling
12 me that District Underground accounts for 40
13 percent of that 100 percent and, therefore,
14 District accounts for the 60 percent?

15 MR. CRONIN: Yes. Again --

16 MEMBER JONES: Okay.

17 MR. CRONIN: Okay. Yes.

18 MEMBER JONES: So how has that
19 increased from, i.e., I'm speaking about the
20 difference between your Saki conversion to
21 District Underground. If I were to take you
22 at what you said earlier, then it would still

1 be around 40 percent because you said your
2 gross sales haven't really changed from the
3 times you made the conversion to now. They
4 are roughly the same. It's just that you have
5 increased your profit by reducing your
6 expenditures.

7 MR. CRONIN: Yes.

8 MEMBER JONES: Right. So that
9 hasn't changed. So in terms of your gross
10 sales, is it about the same as it was when you
11 were operating as a Sushi-style restaurant,
12 i.e., Saki versus now? And if now you are
13 accounting for 40 percent of your sales, is it
14 -- I'm asking is it fair to say that you were
15 accounting for 40 percent of your sales when
16 you were operating as a sushi-style
17 restaurant?

18 MR. CRONIN: Probably about that,
19 yes.

20 MEMBER JONES: About that. Okay.
21 So you make the statement earlier about this
22 store frontage, right, being a big driver for

1 why you want to be able to utilize that as a
2 mechanism to increase food sales for the
3 upstairs. Can you explain how? Because you
4 are operating as a restaurant, i.e., as a
5 tavern, but you are selling food in your
6 tavern establishment, correct?

7 MR. CRONIN: Yes, sir.

8 MEMBER JONES: So you are, in some
9 respects, operating as a restaurant would in
10 your tavern licensed establishment, District
11 Underground, right?

12 MR. CRONIN: Absolutely.

13 MEMBER JONES: How has that store
14 frontage helped you in that sense, given there
15 has been no significant increase from Saki to
16 now and it actually accounts for fewer sales
17 of your total gross than the establishment
18 that you said has a very small door and no one
19 sees and no one recognizes?

20 MR. CRONIN: Well, I guess the
21 easiest way to explain it, you know, because,
22 obviously, I don't know if the Board is

1 familiar with the space, our street level that
2 that location has, the Underground formerly
3 known as Saki, is a very narrow space. It is
4 probably only about 20 feet wide, so it's
5 much, much smaller. It -- literally the
6 entire basement and main floor is about half
7 the size of what the District is.

8 So even though 40 percent may not
9 sound like a lot, when you take that as it's
10 literally our main dining area in that space,
11 the Underground, it's maybe 1/5th as large as
12 the District. So you are talking about a much
13 smaller space with this concept and storefront
14 dealing significantly more per square foot
15 sales than District does.

16 MEMBER JONES: So you're saying
17 the size of Saki -- the C of O is roughly 99?

18 MR. CRONIN: 99 seats.

19 MEMBER JONES: 99 seats. And your
20 size for District is 385?

21 MR. CRONIN: Yes, yes.

22 MEMBER JONES: I mean that's what

1 it says on the C of O.

2 MR. CRONIN: The occupancy, yes.

3 MEMBER JONES: Okay. So you are
4 saying that because the size of -- the size
5 difference that you are able to generate more
6 dollar per square foot or more dollar per seat
7 in your Saki space or your District
8 Underground space than you are in your
9 District space, based on the fact that it's at
10 ground level and you are able to maximize or
11 utilize that --

12 MR. CRONIN: Absolutely.

13 MEMBER JONES: -- to your
14 advantage to generate traffic for food?

15 MR. CRONIN: Yes, sir.

16 MEMBER JONES: So do you have a
17 breakdown of what your food sales versus your
18 alcohol sales are for District Underground?

19 MR. CRONIN: Not off the top of my
20 head. Sorry, I do not. I'm sorry.

21 MEMBER JONES: Okay. Do you have
22 any type of feel for that?

1 MR. CRONIN: Um --

2 MEMBER JONES: Are your food sales
3 more or less than your alcohol sales or can
4 you not answer that?

5 MR. CRONIN: I would say less, but
6 not like significantly substantially less. We
7 do a good amount of food. I would say, if I
8 had to guess again, about 35 percent or close
9 to of that location is food.

10 MEMBER JONES: Okay. So roughly
11 about 35 percent of the District Underground
12 space, even with the store frontage the way
13 that it is, based on your statement, that's
14 one of the big reasons why you want to be able
15 to do this conversion is to be able to
16 capitalize on the store frontage and thus
17 bringing more people for food sales?

18 MR. CRONIN: Yes.

19 MEMBER JONES: Your food sales
20 based on your, and I'll give you the benefit
21 of the doubt, recollection, not necessarily
22 having it written in front of you, but it's

1 roughly 35 percent of your gross sales for
2 District Underground? You're not talking
3 about gross sales for the combined two,
4 correct?

5 MR. CRONIN: No, sir.

6 MEMBER JONES: Just District
7 Underground?

8 MR. CRONIN: Yes, sir.

9 MEMBER JONES: So roughly 35
10 percent is food sales there, even with this
11 magnanimous front store frontage and, I guess,
12 to bring in people or patrons there, you
13 changed your business model from X to Y from
14 the sushi-style to the District-style. I'm
15 assuming the District Underground has roughly
16 the same food, based on statements you made at
17 previous times you have been before us that
18 the intent was to change the menu to support
19 menu items that are similar to the menu items
20 you serve in the District?

21 MR. CRONIN: Yes, sir.

22 MEMBER JONES: Okay. So the same

1 foods roughly are available in District
2 Underground as would be available or are
3 available at District, correct?

4 MR. CRONIN: Yes, sir.

5 MEMBER JONES: Okay. So from that
6 standpoint, would it be reasonable to -- in
7 your business model, I guess, let me ask
8 what's reasonable. In your business plan, in
9 your business projections, how would you
10 anticipate the level of food sales increasing
11 for the combined structure or combined
12 entities or combined establishments from where
13 they are now to what they would be over the
14 next two or three years based on this, your
15 business proposal?

16 MR. CRONIN: When we are dealing
17 with our locations, the reason we don't deal
18 with percentages too much, we tend to deal
19 with dollar amounts, is because, as I stated
20 earlier, we tend to think of ourselves as
21 having an upscale environment, which means our
22 mark-up for that environment is substantial on

1 drinks.

2 Substantially higher than would be
3 for food, so it tends to skew the food numbers
4 when one drink may cost our company \$1.50 to
5 create and then we charge \$12 for that drink.
6 Whereas, a food item may cost us \$4 to
7 prepare, but, you know, it's like \$8 what we
8 can charge, because that's much more in line
9 with what is in the market and the
10 neighborhood of what people are expecting to
11 spend.

12 So that kind of throws us all off
13 as far as percentages. As far as to answer
14 your question of what I would think an
15 increase would be, I think it would absolutely
16 be for the District space, I think it would
17 be, an increase of I would hope for 20 to 25
18 percent.

19 MEMBER JONES: Above where it is
20 now?

21 MR. CRONIN: Yes, sir.

22 MEMBER JONES: Okay. So we are

1 looking in the 50 to 55 range, based on what
2 you reported in your --

3 MR. CRONIN: For District?

4 MEMBER JONES: Yes.

5 MR. CRONIN: 50, 55. I'm sorry.

6 MEMBER JONES: Do you have
7 quarterly filings?

8 MR. CRONIN: Yes, sir.

9 MEMBER JONES: Are you making
10 quarterly filings?

11 MR. CRONIN: Yes, sir.

12 MEMBER JONES: What were your
13 percentages in your quarterly filings?

14 MR. CRONIN: I don't --

15 MEMBER JONES: The last time.

16 MR. CRONIN: I don't recall.

17 MEMBER JONES: Okay. Who prepared
18 them?

19 MR. CRONIN: Mr. Dildine did.

20 MEMBER JONES: Him?

21 MR. CRONIN: Yes, sir.

22 MEMBER JONES: Okay. So you

1 wouldn't be able to answer that question.

2 You're just speculating then it would go up 20
3 to 25 percent?

4 MR. CRONIN: I can't --

5 MEMBER JONES: On top of where you
6 are.

7 MR. CRONIN: Yes, but I can't
8 guarantee what I think the future will bring,
9 but I would hope for 20 to 25 percent. That's
10 what I would expect.

11 MEMBER JONES: Okay.

12 MR. CRONIN: But I mean, again,
13 that is just an opinion, sir.

14 MEMBER JONES: But is that a -- so
15 you aren't -- when you did your business
16 planning and you said okay, this is what --
17 I'm going to invest X to make these
18 renovations to make this change and I project
19 I'm going to increase my sales by whatever
20 dollar amount.

21 Well, I don't know. How do you do
22 your business planning? Maybe that's a better

1 question. Because I'm assuming some things
2 and I may be wrong.

3 MR. CRONIN: Are we talking about
4 during the renovation or the initial concept
5 three years ago?

6 MEMBER JONES: No, no, no.
7 Because, obviously, the initial concept three
8 years ago is thrown out the window, because
9 you are not following it. You don't have the
10 ability to follow it and you can't do it. So
11 that's out the window.

12 So what you pitched to us a long
13 time ago is irrelevant. By your own
14 statement, it's moot. It can't work, right?
15 So I want to understand what your projections
16 are, because that's what we are talking
17 about --

18 MR. CRONIN: Okay.

19 MEMBER JONES: -- for the future.

20 MR. CRONIN: Well, what we did is
21 we looked at our sales over the last -- we
22 were coming up to this time, we were looking

1 at our sales over a two year period.

2 MEMBER JONES: Sales of what?

3 MR. CRONIN: Food.

4 MEMBER JONES: Sales of which
5 establishment? Both establishments?

6 MR. CRONIN: Both.

7 MEMBER JONES: Combined?

8 MR. CRONIN: Both.

9 MEMBER JONES: So when you are
10 projecting, you are projecting the combined
11 two establishments?

12 MR. CRONIN: No, not --

13 MEMBER JONES: Okay.

14 MR. CRONIN: -- combined. We
15 looked at sales from both locations.

16 MEMBER JONES: Individually?

17 MR. CRONIN: Yes.

18 MEMBER JONES: Okay.

19 MR. CRONIN: And we looked at the
20 food sales from both. We saw that we were
21 having a great deal of success with food
22 ironically at the tavern location, which was

1 attributed to the storefront and the location.
2 Not for lack of effort at District, and we saw
3 that we were having a lot of trouble getting
4 people upstairs at District unless it was
5 event-oriented, because of the poor street
6 visibility.

7 MEMBER JONES: Okay.

8 MR. CRONIN: Getting people
9 upstairs to purchase food up there. So to us
10 it was just let's maximize on the potential of
11 the building and what we have. Let's get that
12 front -- storefront, so that we can advertise
13 what is upstairs. We don't even have room to
14 put like a posterboard if we wanted to of what
15 is upstairs, that's how tiny our entrance is.

16 So if we could come up with
17 something with our big storefront at the other
18 part of the building, which is currently known
19 as Saki or it was Saki and it's now
20 Underground, we looked at that and based off
21 of, like I had mentioned earlier, the space,
22 the disproportionate amount of food sales we

1 were getting out of that tiny space as
2 compared to much larger space, which is right
3 next door with much more storefront, to us a
4 logical conclusion was people want to be able
5 to see what they are walking into.

6 They want to be able to see -- you
7 know, first of all, they have to notice the
8 place. So it just -- when we looked at that
9 and we looked at our food sales over the
10 years, it made perfect sense to us that if a
11 smaller location is doing this kind of revenue
12 with food and there is so much effort behind
13 the larger location, but you just can't see it
14 and we identified the numerous complaints from
15 customers of people saying I just couldn't
16 find the place, it just made sense to us that
17 that would increase our revenue.

18 I mean, more visibility, better
19 advertising, it tends to make sense that you
20 will sell more of what you are trying to sell
21 if people, first of all, know it's there.
22 And, second of all, it's more appealing and it

1 looks better.

2 So it just -- from everything we
3 have ever learned, it just seemed like that
4 was the best course of action.

5 MEMBER JONES: But the reality
6 appears, to me, based on what you said about
7 mark-ups, and I'm not in the restaurant
8 business, so I'm speaking from the standpoint
9 of ignorance, so excuse me, but it doesn't
10 seem as if your driver would be to increase
11 your food sales, because you are going to
12 maximize your profit on the sale of the items
13 you get the largest mark-up in.

14 So I'm confused as to why you are
15 pitching so heavily right now your drive to
16 try to increase the food sales, because it
17 doesn't seem like that's in the best interest
18 of the business if it weren't for laws, VA,
19 regulations and things like that.

20 So realistically, you are not
21 pitching. Your business model isn't about
22 trying to increase food sales. Like you said,

1 you're in the business to make money. That's
2 what your initial statement was --

3 MR. CRONIN: Correct.

4 MEMBER JONES: -- when I first
5 started asking you questions.

6 MR. CRONIN: Correct.

7 MEMBER JONES: So you're going to
8 make the most money off of maximizing your
9 sales on things that you have the highest
10 mark-up in. So I'm at a loss. I'm confused
11 a little bit as to how in your business plan
12 you are making a drive to increase food sales
13 for the purpose of -- for the sake of the
14 business to generate revenue.

15 It really sounds like you are
16 doing it more so to meet the requirements.

17 MR. CRONIN: Let me --

18 MEMBER JONES: Which is fine. I
19 just want to -- you are confusing me with your
20 statements, because you sound like hey, we
21 want to be this restaurant. We want to be
22 upscale and sell food. We want to drive more

1 food sales. But it's not really what your --
2 it doesn't appear to be what your real motive
3 is.

4 MR. CRONIN: I guess --

5 MEMBER JONES: Do you understand
6 my point?

7 MR. CRONIN: Yes, I understand
8 what you're saying.

9 MEMBER JONES: Yes.

10 MR. CRONIN: I guess the best way
11 I can answer that is if the Board offered
12 every restaurant license in the city and they
13 wanted to switch over to just selling liquor,
14 I would speculate 95 percent of them would say
15 yes, I don't want food percentages over my
16 head and I would love to sell the higher mark-
17 up.

18 MEMBER JONES: Right.

19 MR. CRONIN: I mean, that's how
20 you make more money. There is no denying
21 that. But there is law and we respect the law
22 and we realized very early on that we needed

1 to meet the law and that's why we came and
2 said hey, let's work together with the
3 neighborhood, let's work together with the
4 Board and let's figure out how we can satisfy
5 everybody's needs and still be a successful
6 business.

7 But, yes, I mean, a huge motivator
8 is respecting the law and respecting the fact
9 that we do need to hit food percentages. Are
10 we -- would I love to sell millions in food?
11 Yes, of course. But I'm dealing with the
12 realities here and I know what pushing with my
13 business about the food numbers I can hit and
14 that's what we negotiated out with the ANC,
15 based off of numbers we showed them.

16 I said, you know, I think this is
17 what we can hit. I want to give it a good
18 shot and be honest with you and up front with
19 what our food sales are and our business
20 model. And I want to try to meet this.

21 But I can't, you know, promise
22 that we are going to do what is on paper right

1 now, because it's high. And I think that
2 number was made long before the market went
3 down and long before the Streetscape in Adams
4 Morgan.

5 So there is a lot that we are
6 trying to do, but, you know, it has been with
7 honesty. If we were not even in the
8 beginning, we are being honest. We have come
9 and told you we are struggling and we want to
10 hit these numbers. We went to the ANC and
11 told them. We are not trying to vacate our
12 voluntary agreement. We are not trying to get
13 out of it.

14 We are trying to put a strong
15 restaurant/bar concept together and that's
16 just honesty. That's just the most honest I
17 can be with the whole situation. But, yes, I
18 mean, we make more money off liquor, but we
19 respect the food service and I want to sell
20 food.

21 My brother is the head chef in our
22 restaurant. My mom would kill me if we quit

1 serving food, so trust me, we are absolutely
2 serving food. Even if the Board told me I
3 didn't have to, my mother would tell me I had
4 to. I promise. So we are serving food.

5 MEMBER JONES: It's good to know
6 mom is in the mix.

7 MR. CRONIN: Right, always.

8 MEMBER JONES: You refer to your
9 VA quite often, so the VA really is a
10 governing entity associated with your CT when
11 it comes to food sales, because otherwise you
12 wouldn't have a food sales percentage
13 requirement, correct?

14 MR. CRONIN: That's correct, sir.

15 MEMBER JONES: All right. So
16 let's talk about that a little bit. What are
17 the requirements that you know of to be in
18 this unapproved VA?

19 MR. CRONIN: I'm sorry, can you
20 repeat?

21 MEMBER JONES: So you submitted a
22 VA, but it wasn't -- well, maybe I'm wrong.

1 There was a VA that was submitted that you
2 worked out and negotiated with the ANC,
3 correct?

4 MR. CRONIN: Yes, sir.

5 MEMBER JONES: What were the
6 conditions of that VA as relates to the --
7 voluntary agreement as relates to food sales?

8 MR. CRONIN: It was a quarter
9 million, I believe, a year and it was
10 negotiated with the space and food sales.

11 MEMBER JONES: It's space and food
12 sales? And that's the combined space?

13 MR. CRONIN: Yes, sir.

14 MEMBER JONES: Okay. And how -- a
15 quarter million of sales, but it was not a
16 percentage?

17 MR. CRONIN: No, sir.

18 MEMBER JONES: Correct. So it's
19 just you hit a quarter million?

20 MR. CRONIN: The quarter million
21 was based off of the 2000 receipt, so it was
22 basically --

1 MEMBER JONES: Right.

2 MR. CRONIN: It was modified. I
3 mean, it was changed. So at that time, it
4 went out the window, but it was a quarter
5 million in that space needed to be done in
6 food sales a year.

7 MEMBER JONES: Okay. And so you
8 could technically do a 10:1 or 100:1, there is
9 nothing that is going to regulate and keep you
10 from -- when I say 10:1, 10:1 of alcohol sales
11 versus food sales in the voluntary agreement-
12 regulated scenario, you could do \$100 million
13 worth of alcohol sales and \$250,000 worth of
14 food sales and you would be okay. You would
15 be within -- you would be in compliance with
16 that VA, correct?

17 MR. CRONIN: Technically, yes,
18 sir.

19 MEMBER JONES: That's my
20 understanding. Okay. So you could
21 technically, based on how -- you indicated the
22 driver is to make money. You are going to be

1 able to make more money by selling more
2 alcohol, because you have a higher mark-up on
3 that.

4 MR. CRONIN: Yes, that's true of
5 any establishment. Yes, sir.

6 MEMBER JONES: That's fine. I'm
7 not saying that's unique to you.

8 MR. CRONIN: Yes, we agree.

9 MEMBER JONES: That's fine.

10 MR. CRONIN: We usually do more --

11 MEMBER JONES: I kind of asking
12 about generalities.

13 MR. CRONIN: Yes.

14 MEMBER JONES: That's what I'm
15 trying to get to, these common sense things.
16 So to try and deviate where more economic
17 sense would dictate would be a challenge for
18 me, so that's why I'm asking you. This seems
19 to make sense. It seems like we can easily
20 agree on these things.

21 MR. CRONIN: Yes, sir.

22 MEMBER JONES: So if you are able

1 to make more money by selling the items you
2 have a higher mark-up on, and you are in the
3 business to make money, and you no longer have
4 a cap, based on percentages, that you have to
5 hit, then it seems like the sky is the limit.
6 You could pack your place, pack your
7 establishment with individuals that are driven
8 to primarily not buy food, but buy alcohol and
9 just make it so that you can find a way to
10 meet the \$250,000 mark.

11 But you could have the maximum
12 number. You could go all out with alcohol
13 sales just as long as you get to that \$250,000
14 mark?

15 MR. CRONIN: To my understanding
16 that --

17 MEMBER JONES: Is that not true?

18 MR. CRONIN: I mean, you could do
19 that, yes, sir. But to my understanding as it
20 stands right now, there is an option to hit
21 the \$2,000 food requirement per seat or a
22 percentage.

1 MEMBER JONES: No, I'm sorry. I'm
2 talking about -- so let me clarify. There is
3 a desire on your part, if I understood
4 correctly, to combine District with District
5 Underground whereby District Underground would
6 take over the District space and, therefore,
7 the entire space, all four floors would be
8 governed by a CT license?

9 MR. CRONIN: Modified, yes.

10 MEMBER JONES: Is that correct?

11 MR. CRONIN: Modified, yes.

12 MEMBER JONES: A CT License
13 period. And then there is an associated VA
14 which, if approved, would be -- would have the
15 stipulation of meeting the food sales of
16 \$250,000 period?

17 MR. CRONIN: Yes, sir.

18 MEMBER JONES: Correct? Okay. So
19 is that -- did I characterize your
20 understanding of your desire?

21 MR. CRONIN: I mean, that sounds
22 accurate, sir, yes.

1 MEMBER JONES: Okay. So in that
2 instance, in that sense, there are no issues
3 with \$2,000 per seat or percentage. You are
4 no longer a CR. You are not governed by the
5 CR Regulations, at that point.

6 MR. CRONIN: As far as I know,
7 based off of the terminology that I'm
8 remembering right now from the voluntary
9 agreement that is in question, I don't think
10 there is any other stipulating factors. I
11 believe it was just a minimum of \$250,000. So
12 I would answer your question with yes, I
13 believe it was just \$250,000 was the
14 requirement.

15 MEMBER JONES: Okay. So you could
16 -- based on what you conveyed to me as to your
17 understanding, your understanding also
18 comports with the fact that you could sell an
19 infinite amount of money -- an infinite amount
20 of alcohol in your establishment, as long as
21 you are meeting the \$250,000 of food sales?
22 There is no cap. There is no percentages you

1 have to meet. No ratio that you have to meet.
2 No dollar per seat that you have to meet. It's
3 just a raw \$250,000 of food sales?

4 MR. CRONIN: That's correct.

5 MEMBER JONES: Correct? Okay.

6 Are there any guidelines or situations related
7 to how you go about making those food sales?

8 MR. CRONIN: Yes.

9 MEMBER JONES: There are? Okay.
10 Can you characterize those?

11 MR. CRONIN: Off the top of my
12 head, there was a set amount of time that we
13 were required to be open for dinner service.
14 I don't know if it goes directly to hours, but
15 I know there was days stipulated. So there
16 was a number of ways that were said that were
17 required of the establishment in regards to
18 food sales.

19 MEMBER JONES: Okay. What is the
20 typical -- what is your capacity of District
21 only?

22 MR. CRONIN: I believe it is 370-

1 something.

2 MEMBER JONES: 370-something?

3 MR. CRONIN: Yes.

4 MEMBER JONES: On a good night,
5 would you -- what would you characterize as a
6 good night for District in terms of, what I
7 call, people traffic?

8 MR. CRONIN: Well, 300 or 400
9 throughout the whole evening from, you know,
10 5:00 to close.

11 MEMBER JONES: 5:00 to close?

12 MR. CRONIN: Yes.

13 MEMBER JONES: Okay. Is that an
14 unusual occurrence for you?

15 MR. CRONIN: No, it's pretty usual
16 on the weekends.

17 MEMBER JONES: Pretty usual on the
18 weekends. Okay. Would you anticipate being
19 able to -- so once -- if you were combined,
20 I'm assuming you would use the same model as
21 far as promotions, advertisements to get
22 people into your establishment that you use

1 for people that went to District?

2 MR. CRONIN: The same model except
3 for in regards to dinner time service and
4 brunches and things of that nature, we would
5 be changing the whole approach to utilize the
6 entrance.

7 MEMBER JONES: Understood.

8 MR. CRONIN: We take it for
9 Underground.

10 MEMBER JONES: Right.

11 MR. CRONIN: Other than that, I
12 don't really anticipate changing too much,
13 other than really driving during those key
14 hours of dinner sales into the main floor of
15 the upstairs for overflow, because we do have
16 a limited space on the main floor.

17 MEMBER JONES: Okay.

18 MR. CRONIN: But, yes, that's
19 absolutely what we would be looking to do.

20 MEMBER JONES: Okay.

21 MR. CRONIN: We do.

22 MEMBER JONES: Okay.

1 MR. CRONIN: We do make more money
2 by selling food during those hours as well, so
3 that is a motivator. You know, a good happy
4 hour and a good dinner and a good restaurant
5 service during that time is a strong
6 motivator. It's good food sales and it helps
7 out a lot and even liquor sales during that
8 time help out.

9 So we are trying to drive business
10 during those hours as well.

11 MEMBER JONES: Understood. So
12 currently, the District Underground, the hours
13 associated with District Underground are what?
14 Do you know what the business hours are?

15 MR. CRONIN: Currently, we open at
16 5:00 p.m. every day of the week and we close
17 usually between 10:00 and 11:00 and 3:00 a.m.

18 MEMBER JONES: 10:00, 11:00 and
19 3:00 a.m.?

20 MR. CRONIN: Yes.

21 MEMBER JONES: 10:00, 11:00 and
22 3:00 a.m.?

1 MR. CRONIN: Well, 2:30 a.m., I'm
2 sorry.

3 MEMBER JONES: 2:30, okay. And
4 what days again? I'm sorry.

5 MR. CRONIN: Every day of the
6 week.

7 MEMBER JONES: Every day of the
8 week. Does the same apply? What are the
9 hours for District?

10 MR. CRONIN: District's hours vary
11 slightly, but, in general, if we have good
12 events booked and stuff like that, it's
13 usually open between anywhere from 4:00 or
14 5:00, sometimes noon to close, but pretty much
15 our only regular hours right now, based off of
16 a lack of business, are probably Wednesday
17 through Sunday. Monday and Tuesday, we tend
18 to be closed.

19 MEMBER JONES: So Wednesday
20 through what again?

21 MR. CRONIN: Sunday.

22 MEMBER JONES: Wednesday through

1 Sunday?

2 MR. CRONIN: Yes.

3 MEMBER JONES: Okay. So which way
4 would the tide turn if they were combined?
5 Would you be open more like the District
6 Underground schedule or would you be open more
7 like the District schedule?

8 MR. CRONIN: It would be open with
9 the exact same schedules we are running at
10 Underground now, because we would have the
11 entrance and it would be easier. I think
12 anyone can understand that Monday and Tuesday
13 are typically a slow restaurant night. Even
14 Wednesday, so to speak.

15 MEMBER JONES: Yes.

16 MR. CRONIN: But if we had that
17 entrance, we would hope and we would open up
18 and anticipate being able to grab some of that
19 limited foot traffic to bring inside, but it's
20 -- I mean, we're competing with much larger
21 storefronts and much more appetizing
22 storefronts.

1 MEMBER JONES: Would the hours for
2 District Underground be the governing hours
3 for the combined place?

4 MR. CRONIN: Yes. If it was --

5 MEMBER JONES: So what are the --
6 what days are you open until 2:30?

7 MR. CRONIN: The only days we are
8 allowed to be open until 2:30, any
9 establishment, is Friday and Saturday.

10 MEMBER JONES: Friday and
11 Saturday. So those are the hours that pertain
12 to District Underground right now. For
13 District, what are your hours again? Just to
14 make sure I'm clear.

15 MR. CRONIN: Again, it does vary.

16 MEMBER JONES: So if you --

17 MR. CRONIN: But --

18 MEMBER JONES: You mentioned like
19 Wednesday to Sunday?

20 MR. CRONIN: Sunday.

21 MEMBER JONES: What would be your
22 hours if you were open from Wednesday to

1 Sunday?

2 MR. CRONIN: All right. Well,
3 starting at Wednesday would probably be more
4 event-driven and would be about 5:00 p.m., if
5 we have the happy hour going on, to 1:30 a.m.,
6 which is closing time.

7 MEMBER JONES: Yes.

8 MR. CRONIN: And then Thursday,
9 Friday, Saturday, would be much of the same.
10 Sunday is different. Sunday we have a
11 successful brunch that we have been
12 instituting and pushing aggressively and that
13 opens at 11:00 a.m. or noon Sundays and goes
14 until as late as 8:00 or 9:00, depending on
15 how long you can maintain the crowd up there.

16 MEMBER JONES: And this is
17 District, correct?

18 MR. CRONIN: That's correct.

19 MEMBER JONES: Okay. So Wednesday
20 through Saturday, 1:30 a.m.?

21 MR. CRONIN: Wednesday through
22 Thursday would be 1:30, Friday and Saturday

1 would be 2:30, yes.

2 MEMBER JONES: All right. So how
3 does that compare with District Underground?

4 MR. CRONIN: Really, the only --

5 MEMBER JONES: Wednesday through
6 the same days. Pretty much the same thing?

7 MR. CRONIN: They are pretty much
8 identical Wednesday through Saturday.

9 MEMBER JONES: Wednesday through
10 Saturday?

11 MR. CRONIN: Yes. The only
12 difference is that Underground is always open,
13 because it has a better possibility of making
14 money Monday and Tuesday on that street.

15 MEMBER JONES: Okay. And what's
16 your typical crowd at the 1:30 -- I mean,
17 after -- let's say after 11:00 at District
18 Underground? What's your typical crowd there?
19 Is it on the level or on the order of -- is it
20 on the order of what you would have on a
21 relative basis? I understand the size of the
22 establishments are different.

1 But on a -- proportionately
2 speaking, is it roughly about the same as you
3 would have at District? It seems based on my
4 -- I'm asking it from this standpoint. Based
5 on how you have described the nature of the
6 crowds and the nature of your patronage there,
7 it seems as if your crowd at District
8 Underground would kind of start to taper off
9 as your crowd at District seems to increase.

10 You seem to have more of a late
11 night crowd, if I'm characterizing it
12 properly, I may be not, but I apologize if I'm
13 not, but that's the best way I can think of
14 right now. But a late night crowd that
15 typically is the bulk of your traffic at
16 District and it seems like your restaurant --
17 more of your restaurant patronage type of
18 individuals are associated with your District
19 Underground establishment.

20 So as the flow goes, as your
21 nighttime patronage starts to increase at
22 District, your nighttime patronage at District

1 Underground would seem to tape off. But I'm
2 asking you, because I don't know.

3 MR. CRONIN: It's kind of
4 interesting. We try to keep any nighttime --
5 they are two very distinctive entities. You
6 are correct in that.

7 MEMBER JONES: Yes.

8 MR. CRONIN: The easiest way to
9 answer that and categorize it simply is that
10 the -- what we call the glow bar area, which
11 is the main floor entrance, which has the
12 entrance of Underground, that is kind of a
13 quieter space. We don't turn the music up.
14 You know, it's like more of like a very
15 relaxed atmosphere. There are candles lit,
16 stuff like that. That's sort of true pretty
17 consistently late into the night, sometimes
18 1:00, 1:30, 2:00 a.m. we will have the --

19 MEMBER JONES: Which one is this
20 again? I'm sorry.

21 MR. CRONIN: The main floor of
22 Underground.

1 MEMBER JONES: Underground, got
2 it.

3 MR. CRONIN: I'm starting there
4 and I'm going to spread out. So that gets a
5 lot of late-night diners, people just sitting
6 around having a cocktail and discussing, that
7 would be your like very, very like relaxed
8 loungy, late-night eating experience.

9 MEMBER JONES: Could you quantify
10 that for me? When you say your late-night
11 patrons there would be the, you know,
12 candlelight, what have you. What are we
13 talking about? Like are we talking about full
14 capacity 99 or --

15 MR. CRONIN: Oh --

16 MEMBER JONES: -- are you talking
17 about --

18 MR. CRONIN: Yes, downstairs. It
19 doesn't really hit capacity too often. It
20 tends to be slower. Sometimes we do on a
21 Friday or Saturday, it just depends.
22 Sometimes we are shut down by midnight. I

1 mean, I think we shut down early last week.
2 We were shut down by 12:30 because it was just
3 -- you know, I believe it was passover and
4 Easter was the next day.

5 MEMBER JONES: Oh, gotcha.

6 MR. CRONIN: So I mean, it just
7 depends. On busy nights, we stay open late.
8 On slower -- well, not late, but to our hours.

9 MEMBER JONES: Yes.

10 MR. CRONIN: But on slower nights
11 not really, I mean.

12 MEMBER JONES: Well, how often do
13 you have crowds at capacity in District
14 Underground at closing?

15 MR. CRONIN: At closing?

16 MEMBER JONES: At closing.

17 MR. CRONIN: Never. I don't think
18 we have had a capacity crowd at closing --

19 MEMBER JONES: Okay.

20 MR. CRONIN: -- since we opened
21 it.

22 MEMBER JONES: How often do you

1 have a capacity crowd at District at closing?

2 MR. CRONIN: Never. I mean, I
3 don't mean to mislead, so I'm just going to go
4 ahead and -- I think I'm trying to get the
5 point of your question. At the end of the
6 night, typically, we are at maybe half
7 capacity.

8 MEMBER JONES: Which --

9 MR. CRONIN: How often do we hit--

10 MEMBER JONES: -- location? I'm
11 sorry.

12 MR. CRONIN: Both locations.

13 MEMBER JONES: Both, okay.

14 MR. CRONIN: How often do we hit
15 capacity at both locations? I'm assuming
16 that's what your next question will be. At
17 District to hit capacity, at this point with
18 the Streetscape, maybe a couple times a month.
19 Underground maybe once a month hits capacity.
20 It just is not what it used to be. I mean, we
21 used to be more successful.

22 MEMBER JONES: Yes.

1 MR. CRONIN: But I mean, that's an
2 honest answer. Every now and then is the
3 general answer that we hit capacity.

4 MEMBER JONES: Understood.

5 MR. CRONIN: But at the end of the
6 night, we are usually very slow. People don't
7 tend to stay out, especially because we are in
8 Adams Morgan with the hike to get to the
9 Metro, the dilemma with trying to get a taxi
10 cab before everyone comes out. Our crowd
11 tends to clear out fairly early.

12 MEMBER JONES: Okay. Fair enough.
13 Last bit of questions here. You mentioned Mr.
14 Benjamin Dalley.

15 MR. CRONIN: That's correct.

16 MEMBER JONES: He is no longer
17 related with your organization?

18 MR. CRONIN: No, sir.

19 MEMBER JONES: Either one?

20 MR. CRONIN: No.

21 MEMBER JONES: All right. Why is
22 that?

1 MR. CRONIN: He chose to move on
2 for personal reasons. I think he had had
3 enough.

4 MEMBER JONES: Okay.

5 MR. CRONIN: I don't think he
6 could deal with it any more.

7 MEMBER JONES: How did that, from
8 a business standpoint, from a percentage
9 ownership standpoint, manifest itself? How
10 was that facilitated within both
11 organizations?

12 MR. CRONIN: Well, we are in the
13 process of all the paper, but as far as I
14 understand it, just kind of he dissolved it
15 into the company, so to speak. Was purchased
16 out by the company.

17 MEMBER JONES: So you are the CEO?

18 MR. CRONIN: That's correct.

19 MEMBER JONES: You are the CEO.
20 Was there a document that was signed? How was
21 that facilitated? Was --

22 MR. CRONIN: He --

1 MEMBER JONES: -- there a document
2 or did somebody prepare a document and he
3 signed a document saying I'm going to sell
4 back my X, Y, Z percentage of this company to
5 you in exchange for -- like how did that --

6 MR. CRONIN: Yes.

7 MEMBER JONES: Do you have that
8 document? Not with you, but do you have a
9 copy of that?

10 MR. CRONIN: Yes. His lawyer
11 presented a document which basically said will
12 you purchase my shares and dissolve, etcetera?
13 Then we had to go through the process with our
14 partnership to figure out how the share is
15 dissolved, how the ownership breakdown would
16 be after he dissolved his shares. And now, we
17 are in the process of all the filings,
18 etcetera, changing of everything. It's a
19 process that I'm not very familiar with, but
20 it is all being worked on.

21 MEMBER JONES: Okay. And who is
22 handling that process for you?

1 MR. CRONIN: I presented Mr. Kline
2 with our updated documents and that should be,
3 as far as I've understood, in the works.

4 MEMBER JONES: Okay. And so at a
5 high level, his percentage of ownership, do
6 you have any idea of what it was?

7 MR. CRONIN: Yes, I believe it was
8 40 percent.

9 MEMBER JONES: 40 percent?

10 MR. CRONIN: Yes.

11 MEMBER JONES: Across both?

12 MR. CRONIN: Across both, yes.

13 MEMBER JONES: Okay.

14 MR. CRONIN: They are both mirror
15 images of each other as far as ownership
16 percentage.

17 MEMBER JONES: Got it. Okay. So
18 individually he had 40 percent of each entity?

19 MR. CRONIN: Yes.

20 MEMBER JONES: Okay. And then
21 that 40 percent -- well, I guess 40 percent is
22 40 percent. I was about to say would be a

1 sizable chunk of money to buy out, but also
2 handling the terms that you negotiated. So
3 that's irrelevant.

4 How were those percentages
5 redistributed amongst the partnership? Do you
6 have any idea? I mean, the other partners, do
7 you have any idea?

8 MR. CRONIN: I don't, because
9 there is a number of percentage changes.

10 MEMBER JONES: Okay. Do you
11 happen to know if your percentage increased?

12 MR. CRONIN: Slightly.

13 MEMBER JONES: Slightly?

14 MR. CRONIN: Yes.

15 MEMBER JONES: Did you have to
16 come out of pocket --

17 MR. CRONIN: No, sir.

18 MEMBER JONES: -- or anything? So
19 how is it your percentage increased?

20 MR. CRONIN: Because he -- the
21 company purchased it as a whole, so
22 everybody's percentages increased.

1 MEMBER JONES: Okay. So the
2 company bought it. And then based on your
3 vested interest in the company, then your
4 percentage increased by the nature of that
5 process?

6 MR. CRONIN: Dissolving, yes.

7 MEMBER JONES: Okay. How do you
8 explain, this is the last question, your
9 success operating District not as a
10 restaurant, but -- I mean, that's the cards on
11 the table. I mean, I'm barely familiar with
12 your establishment, District.

13 It's a very successful, very
14 popular, by my interpretation, club-like
15 establishment. How do you explain the success
16 that you had being able to promote it as such
17 an establishment to date, even given the
18 narrow door and the things like that? And how
19 can you -- how is that going to translate when
20 you convert from -- if you convert from the
21 CR, CT to one big CT?

22 MR. CRONIN: Okay. Well, since

1 we're speaking candidly, you mentioned you
2 have heard of District, in general, etcetera.
3 Was that through advertising?

4 MEMBER JONES: I can even go
5 further than that, but I'll --

6 MR. CRONIN: Okay.

7 MEMBER JONES: -- just ask -- I'll
8 stop there. I'm very familiar with your
9 establishment.

10 MR. CRONIN: My point is we spend
11 a lot of money advertising it. I mean,
12 complete disclosure, we spend a lot of money
13 advertising District. We try to bring people
14 in there, because we have bills to pay and we
15 have things to pay. So, of course, we're
16 going to promote every aspect that we legally
17 can of our business to bring as much money
18 through the door at all hours with regards to
19 what we can do.

20 MEMBER JONES: Okay.

21 MR. CRONIN: But as far as
22 successful --

1 MEMBER JONES: And how -- yes.

2 MR. CRONIN: -- I will tell you no
3 one in the ownership group has ever pulled a
4 dollar out of his own bank. We only ever put
5 money -- and that's honest. We only ever put
6 money into this company, never pulled a dollar
7 and that's the truth.

8 My managers make more -- made more
9 last year than I did. And that's an honest
10 truth, because that's what they were promised
11 when they signed on and we anticipated
12 revenues and we never received those.

13 There was a number of mistakes
14 that we made, as far as thinking we had enough
15 start-up capital, etcetera, things of that
16 nature, very typical business mistakes that
17 were made and we are struggling through those.
18 And we are trying to pay off our obligations.

19 MEMBER JONES: I'm sorry, not to
20 cut you off, but just to refocus. So you have
21 a process of marketing District.

22 MR. CRONIN: Yes.

1 MEMBER JONES: And I was just
2 trying to get clarification on how would that
3 translate from the CR, CT to just the one big
4 CT? I guess to be more candid, would you use
5 the same marketing approach that you are
6 currently using for District for the entire
7 combined District Underground space all four
8 floors or would you use the same marketing
9 approach that you are using for District
10 Underground to apply for all four spaces or
11 all four floors?

12 MR. CRONIN: I think it would be a
13 combination of the two.

14 MEMBER JONES: Okay.

15 MR. CRONIN: I think we would keep
16 some of both, but the primary change would be
17 absolutely heavy, heavy marketing with all of
18 our resources, every marketing tool that we
19 use to really let people know get down here at
20 5:00 p.m., come check out the menu, come
21 upstairs. We are open, you know, during the
22 day. It is nice. You can still come up here

1 and have a nice -- you know, have a beer, but
2 you can also get a nice meal.

3 Like with that front entrance
4 also, we would be able to put, you know, this
5 is connected to District. Come get your food
6 and there is a lot of options that would be
7 opened up to us and it would absolutely change
8 our marketing strategy in that sense.

9 I don't know how much of a change
10 of what we refer to as late-night hours --

11 MEMBER JONES: Right.

12 MR. CRONIN: -- between both
13 places, it would probably stay the same
14 because we have to keep them separate as far
15 as marketing. Otherwise, one would
16 cannibalize the other. But, you know, during
17 those hours, I mean, absolutely it would
18 change our ability to do things. We could
19 walk people directly in and upstairs and
20 utilize more of the space.

21 MEMBER JONES: Fair enough.

22 MR. CRONIN: Yes.

1 MEMBER JONES: Thank you and thank
2 you, Mr. Chairman.

3 ACTING CHAIRMAN ALBERTI: Thank
4 you, Mr. Jones. Anyone else? Mr. Cronin, I
5 have -- I'll try to make this quick, but I
6 have several questions.

7 First of all, remind me again what
8 your position is and what your function is
9 with the company and with the operations of
10 the establishment.

11 MR. CRONIN: I'm CEO, partner of
12 the company and just I pretty much oversee all
13 operations.

14 ACTING CHAIRMAN ALBERTI: Okay.
15 You oversee the daily operations. Is that --

16 MR. CRONIN: That is correct, sir.

17 ACTING CHAIRMAN ALBERTI: --
18 correct? Okay. It's unclear to me how many
19 seats. I know that the District Underground
20 isn't a restaurant, so it's not required to
21 have seats, but how many dining seats do you
22 have? If you can --

1 MR. CRONIN: Like just average
2 seats?

3 ACTING CHAIRMAN ALBERTI: --
4 categorize that? Dining seats. I mean, you
5 have an overall capacity of 99.

6 MR. CRONIN: Yes.

7 ACTING CHAIRMAN ALBERTI: That's
8 fire marshal max. How many dining seats do
9 you have?

10 MR. CRONIN: Pardon me one second.
11 I'm just going to run through it in my mind.

12 ACTING CHAIRMAN ALBERTI: Sure.

13 MR. CRONIN: On the main floor,
14 close to 40. It's pretty crammed in there.
15 Downstairs, I would say you have seating for
16 another 60, actually. So it's pretty on par.

17 ACTING CHAIRMAN ALBERTI: 60
18 total?

19 MR. CRONIN: No, I'm saying 40
20 upstairs, 60 downstairs, so I would say you
21 have seats for actual dining.

22 ACTING CHAIRMAN ALBERTI: You have

1 a total capacity of 99 persons.

2 MR. CRONIN: That's correct.

3 ACTING CHAIRMAN ALBERTI: That's
4 standing.

5 MR. CRONIN: That's correct.

6 ACTING CHAIRMAN ALBERTI: And you
7 have restaurant seats for 100 seats?

8 MR. CRONIN: Yes. I didn't make
9 the occupancy, that's just how it is.

10 ACTING CHAIRMAN ALBERTI: Okay.

11 MR. CRONIN: I mean, the occupancy
12 is fairly low in my opinion for that space.

13 ACTING CHAIRMAN ALBERTI: Okay.

14 MR. CRONIN: It's 7,000 square
15 feet.

16 ACTING CHAIRMAN ALBERTI: Okay.
17 The District Lounge, you have a total capacity
18 of 385. How many dining seats do you have?

19 MR. CRONIN: It's tough to say. I
20 mean, I would really -- we have -- a lot of it
21 is --

22 ACTING CHAIRMAN ALBERTI: Okay.

1 Let me stop you right there. Are you familiar
2 with the quarterly reporting and your license
3 that you have with ABRA?

4 MR. CRONIN: The quality report?
5 Is that what you said?

6 ACTING CHAIRMAN ALBERTI:
7 Quarterly reports that you file with ABRA.

8 MR. CRONIN: Yes, sir.

9 ACTING CHAIRMAN ALBERTI: And your
10 license that you --

11 MR. CRONIN: Yes, sir.

12 ACTING CHAIRMAN ALBERTI: So I may
13 have those right here. Because those would be
14 on your license. Oh, you have a number of --
15 okay. Never mind. Our records show that you
16 have 120 seats.

17 MR. CRONIN: Yes, about that.

18 ACTING CHAIRMAN ALBERTI: Does
19 that sound about right?

20 MR. CRONIN: That's about right,
21 yes. I was just trying to name how many seats
22 we have, because --

1 ACTING CHAIRMAN ALBERTI: All
2 right. No, that's fine.

3 MR. CRONIN: Okay. Yes.

4 ACTING CHAIRMAN ALBERTI: How many
5 square feet in District Underground?

6 MR. CRONIN: District Underground,
7 I believe, is 6,000 or 7,000 and I believe
8 upstairs is about 9,000. That's the -- I
9 believe that's correct. I think the total --

10 ACTING CHAIRMAN ALBERTI: And
11 upstairs a total of about 900 square feet?

12 MR. CRONIN: Upstairs?

13 ACTING CHAIRMAN ALBERTI: Yes. I'm
14 trying to get the square feet.

15 MR. CRONIN: I think upstairs is
16 8,000, 9,000.

17 ACTING CHAIRMAN ALBERTI: 8,000?
18 Okay.

19 MR. CRONIN: Yes. And downstairs
20 would be --

21 ACTING CHAIRMAN ALBERTI: And
22 downstairs is?

1 MR. CRONIN: -- I believe it's
2 almost 5,000 or 6,000, yes.

3 ACTING CHAIRMAN ALBERTI: Oh,
4 5,000 or 6,000. Okay. So I guess I'm
5 curious, how did you come about -- it appears
6 from seats to square footage, you know,
7 looking at those comparisons, it seems to me
8 just off the top of my head that it's just
9 more of an emphasis on dining in the District
10 Underground, even though it's a tavern.

11 MR. CRONIN: I would not say it's
12 an emphasis, sir. I would classify it as what
13 we have said. It gets more attention for
14 dining based purely off the sense that you can
15 see it and you know it's there. And when you
16 walk by, you see people eating a nice meal and
17 it opens up to the street.

18 We have a nice swinging open door.
19 It just naturally is a more desirable dining
20 location.

21 ACTING CHAIRMAN ALBERTI: Did you
22 ever, at any time, emphasize -- I see a sign

1 here that says Saki in front of this.

2 MR. CRONIN: Yes.

3 ACTING CHAIRMAN ALBERTI: I'm sure
4 this is an old picture?

5 MR. CRONIN: Yes, that's the old
6 facade, yes.

7 ACTING CHAIRMAN ALBERTI: Yes.
8 Did you ever, at any time, emphasize District
9 Lounge with signage out front?

10 MR. CRONIN: It's an historical
11 building. We weren't allowed to put anything
12 across the front of it.

13 ACTING CHAIRMAN ALBERTI: Well,
14 you have Saki across the front of it.

15 MR. CRONIN: That was there. That
16 was the facade. The upstairs that --

17 ACTING CHAIRMAN ALBERTI: I'm
18 asking you, did you ever create signage that
19 emphasized District Lounge?

20 MR. CRONIN: The legal -- well,
21 you can see it on the right hand side. There
22 is a little canopy, the District and that's

1 what we were allowed to put up there.

2 ACTING CHAIRMAN ALBERTI: On the
3 right hand side of this.

4 MR. CRONIN: That's the entrance.
5 You can see the entrance to District in that
6 picture. It's in between Caliyogurt and
7 Asylum. It's the tiny little silver door and
8 that's District's entrance.

9 ACTING CHAIRMAN ALBERTI: Okay.
10 Oh, okay, I see it.

11 MR. CRONIN: So now you can see
12 what we --

13 ACTING CHAIRMAN ALBERTI: Oh, I
14 see. So that goes up there?

15 MR. CRONIN: Yes.

16 ACTING CHAIRMAN ALBERTI: Okay.

17 MR. CRONIN: So that should make
18 it pretty clear the difficulties we had with
19 the differences in visibility.

20 ACTING CHAIRMAN ALBERTI: And is
21 there access? Was there any way of creating
22 access from Saki to District?

1 MR. CRONIN: There is access.
2 It's just because of the two licenses, we
3 can't allow people to go up and down the
4 stairs.

5 ACTING CHAIRMAN ALBERTI: Okay.

6 MR. CRONIN: Because actually if
7 you look at where the Saki entrance is, that's
8 -- there is a staircase right after you go
9 inside the front door that leads up to the
10 District space.

11 ACTING CHAIRMAN ALBERTI: All
12 right.

13 MR. CRONIN: So I mean, pretty
14 much our work is done for us as far as
15 combining them, because legally there is
16 obviously a --

17 ACTING CHAIRMAN ALBERTI: Okay. I
18 got you. All right. What's your involvement
19 with filing the quarterly reports?

20 MR. CRONIN: I have never had
21 involvement. Prior to Mr. Dalley leaving, he
22 filed the quarterly reports. Mr. Dildine

1 recently took over the quarterly reports. I'm
2 familiar with what they are.

3 ACTING CHAIRMAN ALBERTI: Okay.

4 MR. CRONIN: I have seen them.

5 ACTING CHAIRMAN ALBERTI: Okay.

6 MR. CRONIN: But I have never --

7 ACTING CHAIRMAN ALBERTI: So --

8 MR. CRONIN: -- filed them.

9 ACTING CHAIRMAN ALBERTI: -- how
10 familiar are you with the books and records
11 that are kept with respect to the requirements
12 that the District has on restaurants?

13 MR. CRONIN: Pretty -- I would say
14 after the process with our food audit, I'm
15 close to an expert, at this point.

16 ACTING CHAIRMAN ALBERTI: Okay.
17 Well, let me ask you then, just so I have it
18 clear. Okay. The current VA that you have
19 with the ANC-1C --

20 MR. CRONIN: Yes.

21 ACTING CHAIRMAN ALBERTI: -- for
22 District Underground, it requires food sales

1 of \$135,000. Annual food sales of \$135,000.

2 Is that correct?

3 MR. CRONIN: That's correct.

4 ACTING CHAIRMAN ALBERTI: Okay.

5 It also requires that you shall continue to
6 keep and maintain the same books and records
7 as required by the District Code for
8 restaurants. I'm paraphrasing here.

9 MR. CRONIN: Yes.

10 ACTING CHAIRMAN ALBERTI: Is that
11 correct? Okay. Okay. In the VA, how is the
12 VA that you signed with ANC-1C that would take
13 affect if District Underground was allowed to
14 expand, there is a total food sales, annual
15 food sales of \$250,000. Is that correct?

16 MR. CRONIN: That's correct.

17 ACTING CHAIRMAN ALBERTI: And you
18 are required to keep and maintain the same
19 books and records as required for a
20 restaurant. Is that correct?

21 MR. CRONIN: Yes, sir.

22 ACTING CHAIRMAN ALBERTI: And it

1 also says file quarterly reports as described
2 for a restaurant under District Law.

3 MR. CRONIN: That's correct.

4 ACTING CHAIRMAN ALBERTI: Okay.

5 Who is your understanding that you would file
6 them with?

7 MR. CRONIN: The quarterlies?

8 ACTING CHAIRMAN ALBERTI: Yes.

9 MR. CRONIN: My understanding is
10 it went directly to ABRA or an ABRA governing
11 body, either to ABRA or KCRA or I'm assuming
12 it went to ABRA. I haven't filed. I haven't
13 actually submitted them, but I'm assuming --

14 ACTING CHAIRMAN ALBERTI: No, no,
15 no. Under this VA.

16 MR. CRONIN: Oh, under the VA?

17 ACTING CHAIRMAN ALBERTI: Yes.

18 Who would they be submitted to? I mean, ABRA
19 is not requiring them, obviously.

20 MR. CRONIN: To my understanding,
21 it wouldn't change anything. To my
22 understanding, it would still go through ABRA.

1 ACTING CHAIRMAN ALBERTI: So you
2 would file quarterly reports to ABRA?

3 MR. CRONIN: Or whoever we always
4 file quarterly reports to.

5 ACTING CHAIRMAN ALBERTI: Okay.

6 MR. CRONIN: I guess so.

7 ACTING CHAIRMAN ALBERTI: So --

8 MR. CRONIN: It's not my area of
9 expertise.

10 ACTING CHAIRMAN ALBERTI: -- at
11 the very least, we know you have an intent to
12 file them to somebody, either it's ABRA or at
13 least ANC-1C?

14 MR. CRONIN: Yes. I didn't know
15 that --

16 ACTING CHAIRMAN ALBERTI: It has
17 become unclear to me from this VA who they get
18 filed with. But anyway, that's not the point.
19 The point is that you have an expectation to
20 file them.

21 MR. CRONIN: Absolutely, sir.

22 ACTING CHAIRMAN ALBERTI: To

1 submit them to somebody.

2 MR. CRONIN: Absolutely, sir.

3 ACTING CHAIRMAN ALBERTI: Okay.

4 Isn't it true that the District was recently
5 cited for violation of failure to file a
6 quarterly report?

7 MR. CRONIN: We did file a
8 quarterly report. We submitted receipts to
9 show that we did. When the investigator
10 showed up, I believe, Mr. Dildine was present.
11 He --

12 ACTING CHAIRMAN ALBERTI: No. I
13 think you were charged and found guilty of
14 failure to file a quarterly report.

15 MR. CRONIN: We did receive a
16 penalty, sir, that was delivered by an
17 investigator, at which point Mr. Dildine
18 presented the receipts that showed that when
19 we -- because we didn't receive it for the
20 Underground space. We received it for the
21 District space.

22 ACTING CHAIRMAN ALBERTI: Yes.

1 MR. CRONIN: Which was strange to
2 us, because we had receipts for the same day
3 for the same time submitting both places. So
4 it was strange to us that one would go through
5 and the other one wouldn't.

6 ACTING CHAIRMAN ALBERTI: Okay.

7 MR. CRONIN: And I can't answer
8 any more than that. I wasn't present. Mr.
9 Dildine could.

10 ACTING CHAIRMAN ALBERTI: Well,
11 I'm going by the District's records that there
12 was -- you were found guilty in November.

13 MR. CRONIN: I mean --

14 ACTING CHAIRMAN ALBERTI: Okay.
15 The District files quarterly reports? I mean,
16 does the District Underground file quarterly
17 reports?

18 MR. CRONIN: Yes, sir.

19 ACTING CHAIRMAN ALBERTI: And to
20 whom?

21 MR. CRONIN: Again, I would have
22 to ask Mr. Dildine who submitted them last.

1 ACTING CHAIRMAN ALBERTI: Okay. I
2 will ask.

3 MR. CRONIN: There is an on-line--

4 ACTING CHAIRMAN ALBERTI: Back --

5 MR. CRONIN: -- website where you
6 can do it or something.

7 ACTING CHAIRMAN ALBERTI: Oh, I
8 understand. I understand.

9 MR. CRONIN: Back in -- I'm trying
10 to remember when it was. Back at our last
11 hearing regarding the District's food sales,
12 there was a statement made by your
13 representative that because of -- for some
14 reason, the records to support the quarterly
15 reports for fiscal -- for 2010 and the period
16 from January through the end of September of
17 2011 did not exist.

18 MR. CRONIN: That's not correct.

19 ACTING CHAIRMAN ALBERTI: That's
20 not correct? They do exist?

21 MR. CRONIN: They do exist.

22 ACTING CHAIRMAN ALBERTI: That's

1 not what your representative told us and I can
2 go to the transcript for that. So I will
3 leave it at that, Mr. Cronin.

4 MR. KLINE: Point of personal
5 privilege, if there is such a thing in a
6 hearing.

7 ACTING CHAIRMAN ALBERTI: Sure.

8 MR. KLINE: Please, do go to the
9 transcript, because that was not the
10 representation.

11 ACTING CHAIRMAN ALBERTI: Oh,
12 okay, we will, Mr. Kline. Then fine. Thank
13 you. Just so I'm clear, at that hearing, I
14 thought I was told that because of a change in
15 menu, that there was some items that could not
16 be attributed to food or alcohol, which I
17 concluded meant that you did not have the
18 records to support the quarterly reports.
19 Because if you can't attribute sales to food
20 or alcohol, then you don't have the records to
21 support the quarterly reports.

22 Am I correct in my

1 characterization of what was represented to
2 us, Mr. Cronin?

3 MR. CRONIN: In that way you just
4 phrased that, sir, that is more accurate. I
5 do wish we had the auditor here, because I
6 personally did sit with him through the --

7 ACTING CHAIRMAN ALBERTI: Okay. I
8 just want to know what was said at that
9 hearing. I'm asking if what was characterized
10 at the hearing is correct.

11 MR. CRONIN: Well, I mean, first
12 you said there were no records. Now, you are
13 saying they were false?

14 ACTING CHAIRMAN ALBERTI: I said
15 you did not have the records to support. I
16 didn't say there were no records. I said you
17 did not have the records to support your
18 quarterly reports.

19 MR. CRONIN: As are required, no,
20 sir, we did not.

21 ACTING CHAIRMAN ALBERTI: Okay.
22 Thank you. So that happened at the District,

1 right, because of a change in menu? Is that
2 correct?

3 MR. CRONIN: As classified by the
4 auditor, yes, sir.

5 ACTING CHAIRMAN ALBERTI: No, not
6 as classified by the auditor. As represented
7 by you. Is that correct?

8 MR. CRONIN: No. We represented
9 that we did have it. We were told that it was
10 not in the format that was required, so I --

11 ACTING CHAIRMAN ALBERTI: No. I
12 was told -- okay. Let's step back, Mr.
13 Cronin. I was told, and you showed us some
14 printouts where you could not -- you had a
15 sales figure number and you couldn't attribute
16 it to whether it was a sale of food or a sale
17 of alcohol.

18 And you said to us well, because
19 of that, you know, we don't have complete
20 records to substantiate the figures in our
21 quarterly reports. Am I missing something
22 here?

1 MR. CRONIN: I don't remember what
2 was exactly said at the last hearing, but I
3 can tell you what was gone over extensively
4 with the auditor and what the actual --

5 ACTING CHAIRMAN ALBERTI: No, I
6 don't care what was going on with the auditor.
7 I'm -- because the auditor wasn't involved in
8 the last hearing and what was told to us. And
9 you were here, so --

10 MR. CRONIN: The auditor wasn't at
11 the last? Which hearing are we speaking
12 about?

13 ACTING CHAIRMAN ALBERTI: Well, he
14 is not -- what was represented to us did not
15 involve the testimony. It was not relevant to
16 the testimony of what -- of the auditor. It
17 was solely a representation of what records
18 existed for 2010 through and then going -- and
19 then January through September of 2011.

20 MR. CRONIN: Yes, sir. There was
21 -- we did represent that there was an error
22 with the menu system where it was altered. It

1 would not show up. But we never said that
2 that would be interchangeable with food or
3 liquor. Because as our system is set up,
4 there is a food category and there is a liquor
5 category and there is really no way you could
6 change anything that was rung in in the past
7 as food to liquor.

8 ACTING CHAIRMAN ALBERTI: Okay.

9 MR. CRONIN: It just doesn't
10 exist --

11 ACTING CHAIRMAN ALBERTI: Well,
12 that's --

13 MR. CRONIN: -- in our system.

14 ACTING CHAIRMAN ALBERTI: Well,
15 that's interesting. Okay. Thank you for
16 that. So those items that we were shown at
17 that hearing where you couldn't tell what it
18 was, you are saying were all what? Food or
19 alcohol?

20 MR. CRONIN: Well, what you were
21 shown at the hearing, to my recollection from
22 the receipts, was you were shown food items

1 that had changed labels when we changed the
2 menu. But they were still food items in the
3 past and they were food items in the --

4 ACTING CHAIRMAN ALBERTI: Well, we
5 had some that had no labels, I believe.

6 MR. CRONIN: I'm sorry?

7 ACTING CHAIRMAN ALBERTI: We had
8 some that had no labels, I believe.

9 MR. CRONIN: Yes. And the ones
10 that had no labels we still tracked their ID
11 number and went directly back to the food
12 menu. What I actually did with the auditor
13 was typed in the word food into every single
14 blank in the food menu and it --

15 ACTING CHAIRMAN ALBERTI: Okay.

16 MR. CRONIN: -- filled in all
17 those gaps. So it showed that every thing
18 came from the food menu that had any gaps or
19 that came from -- that were mislabeled. I
20 just typed food.

21 ACTING CHAIRMAN ALBERTI: And it's
22 your representation that every one of those is

1 food?

2 MR. CRONIN: Yes, sir, 100
3 percent.

4 ACTING CHAIRMAN ALBERTI: Okay.
5 Did that same problem exist for District
6 Underground or previously --

7 MR. CRONIN: I have --

8 ACTING CHAIRMAN ALBERTI: -- with
9 Saki?

10 MR. CRONIN: We haven't been
11 audited, but yes. The restaurant manager's
12 system as a whole, and we have contacted them,
13 does have this issue.

14 ACTING CHAIRMAN ALBERTI: Okay.
15 Okay. Let's move on. Have we got any violent
16 incidents where MPD had to respond at District
17 Underground?

18 MR. CRONIN: On premise?

19 ACTING CHAIRMAN ALBERTI: With a
20 nexus to the establishment that MPD had to
21 respond to, either within the establishment or
22 with a patron who just exited?

1 MR. CRONIN: And this is for
2 Underground?

3 ACTING CHAIRMAN ALBERTI: Yes.

4 MR. CRONIN: To my knowledge, no,
5 sir.

6 ACTING CHAIRMAN ALBERTI: Okay. I
7 have the same question for the District
8 Lounge. Have there been any violent incidents
9 that MPD has had to respond to?

10 MR. CRONIN: On the record, I can
11 think of one. And as far as anything that --
12 like scuffles of that nature that MPD -- we
13 always go and get the police if there is an
14 issue that is physical. I can think of a few,
15 but nothing that I believe ever was a major
16 issue. I can only think of like maybe one.

17 ACTING CHAIRMAN ALBERTI: I'm not
18 asking you to categorize them. So there were
19 some. Is that correct?

20 MR. CRONIN: Yes, sir, there is
21 always going to be the occasional patron, but
22 as far as issues that we actually came before

1 the Board for, I don't --

2 ACTING CHAIRMAN ALBERTI: But
3 there were none at Saki?

4 MR. CRONIN: No.

5 ACTING CHAIRMAN ALBERTI: Okay.
6 When is the last time the police had to be
7 summoned for a violent incident at District
8 Lounge?

9 MR. CRONIN: At District?

10 ACTING CHAIRMAN ALBERTI: Well,
11 let me ask it this way.

12 MR. CRONIN: I can think of about
13 -- here is like --

14 ACTING CHAIRMAN ALBERTI: Is it
15 not true that on February 12, 2012 the
16 District reported or responded to the
17 District?

18 MR. KLINE: Objection. Before the
19 question is answered, if the Board is relying
20 on something that is not before us, I would
21 request that it be made available to the
22 licensee.

1 ACTING CHAIRMAN ALBERTI: I'm
2 asking. I'm asking. If it's not -- if it's
3 true or not.

4 MR. KLINE: But it seems apparent,
5 Mr. Alberti, that you have in front of you
6 some report and the law requires that if the
7 Board is going to rely on information in a
8 Contested Case Hearing or whatever this
9 hearing is --

10 ACTING CHAIRMAN ALBERTI: I'll
11 change my question. When is the last time you
12 had a violent incident?

13 MR. KLINE: Mr. Chairman, I wasn't
14 done with my objection.

15 ACTING CHAIRMAN ALBERTI: Okay.
16 Fine.

17 MR. KLINE: And I would like to
18 get it on the record, because I suspect there
19 is a very good chance that this case is going
20 to get looked up by someone else. And my
21 objection is if the Board has before it some
22 record that is being considered as part of

1 this hearing, be it a Contested Case Hearing
2 or whatever it is, that the law requires that
3 it be made available to the licensee, because
4 the Board is not allowed under the case law
5 and under the statute and under the
6 Administrative Procedures Act to rely on
7 things that are not made available to the
8 parties, so that the parties have an
9 opportunity to rebut that.

10 ACTING CHAIRMAN ALBERTI: Just one
11 moment, please. Just a moment, please. Okay.
12 I will withdraw that question. But I will
13 still ask the question when is the last time
14 the police were summoned to the District
15 Lounge?

16 MR. CRONIN: I can't give a
17 specific answer to that, sir. I remember
18 there was an incident that they were brought
19 to the -- it was maybe a month, month and a
20 half ago, I'm not positive.

21 ACTING CHAIRMAN ALBERTI: Okay.
22 Thank you. I have no further questions.

1 Thank you. Mr. Jones, you have a question?

2 MEMBER JONES: Just a quick
3 follow-up based on some of the questions or
4 one of the questions you asked and one thing
5 I forgot or neglected to ask before about
6 security.

7 Would you be in a position to
8 answer questions related to the number of
9 security and when they were employed for
10 District?

11 MR. CRONIN: Yes, sir.

12 MEMBER JONES: Okay. On your
13 typical -- your nights you mentioned Wednesday
14 through Sunday?

15 MR. CRONIN: Yes.

16 MEMBER JONES: My recollection,
17 sir, is correct? How many security personnel
18 do you have working?

19 MR. CRONIN: Which one?

20 MEMBER JONES: I'm sorry,
21 District.

22 MR. CRONIN: District, Wednesday

1 and Thursday tend to be slower nights.
2 Approximately, four to six. I said if it's a
3 busier night, it would be 10 on Wednesday and
4 Thursday. On the Friday, Saturdays, it's
5 pretty standard 12 to 13. Sometimes as high
6 as 15.

7 MEMBER JONES: All right. So just
8 to make sure I'm clear. So Wednesday,
9 Thursday, four to six; Friday 10?

10 MR. CRONIN: Friday, no.
11 Wednesday, Thursday the high would be 10.
12 Friday, Saturday, we operate at about 12 or
13 13. Sometimes as high as 15. 12 to 13 being
14 the standard.

15 MEMBER JONES: So 12. So minimum
16 of 12?

17 MR. CRONIN: Yes.

18 MEMBER JONES: Up to 15 depending
19 on what you expect to be the flow?

20 MR. CRONIN: Yes, sir.

21 MEMBER JONES: All right. And how
22 do you make the call as to how many you are

1 going to bring in? Or is it standard
2 Wednesday, Thursday, we're going to do four to
3 six? So start off with four and then like how
4 do you -- I'll say, when you are pointing
5 things out, you can't do it generally -- well,
6 in most circumstances from a budgetary
7 standpoint and being able to make sure you
8 have that coverage, it's not wise to wait
9 until the day of to make that call.

10 So I'm just trying to figure out
11 how you plan your -- how do you make your
12 plans?

13 MR. CRONIN: A lot of times we
14 will have special events.

15 MEMBER JONES: Okay.

16 MR. CRONIN: Or if we have a --
17 you know, like we know we have 300 people
18 coming from the Young Republican's Convention
19 or the Young Democrats, it's stuff like that.
20 I mean, if you know you have those types of
21 events coming in, they have made it known,
22 you, obviously, anticipate a higher volume, so

1 you increase your staff.

2 MEMBER JONES: Right.

3 MR. CRONIN: So it's mainly off of
4 any knowledge we have gathered. Usually a
5 week or two, sometimes months ahead of time
6 with any big things that may be coming
7 through. Also, some times it's just often
8 funnel traffic in general. It grows as to the
9 nights, but and also seasonally, it goes up
10 and down pretty consistently.

11 In colder months, we tend to lose
12 a little bit of people and then during the
13 extreme hot of the summer, people are
14 traveling a lot and -- so you tend to drop in
15 summer as well.

16 MEMBER JONES: Okay.

17 MR. CRONIN: So it's -- that's
18 kind of where that three to four gap would
19 occur.

20 MEMBER JONES: So and that's for
21 District, correct?

22 MR. CRONIN: Yes.

1 MEMBER JONES: And how does that
2 compare to District Underground?

3 MR. CRONIN: Smaller, but pretty
4 much the same. I mean, you usually bump
5 between three to four --

6 MEMBER JONES: So what -- give --

7 MR. CRONIN: -- smaller sets.

8 MEMBER JONES: Can you give me
9 numbers like you gave before?

10 MR. CRONIN: Yes, I mean --

11 MEMBER JONES: Just so forth.

12 MR. CRONIN: -- I would say
13 average at Underground on the weekend would be
14 four and then if it was going to be extremely
15 busy, which is rare, it would be six high.

16 MEMBER JONES: So four to six
17 Friday and Saturday?

18 MR. CRONIN: That's correct.

19 MEMBER JONES: Okay. And then
20 what about --

21 MR. CRONIN: I mean, it could --

22 MEMBER JONES: -- Wednesday --

1 MR. CRONIN: -- be --

2 MEMBER JONES: -- and Thursday?

3 MR. CRONIN: If they were a
4 private event, it could be during the week,
5 but that's our general --

6 MEMBER JONES: Understood. So
7 it's generally nonprofit events, just general
8 and open for business Wednesday, Thursday,
9 what are your -- do you have security and if
10 so, how many people?

11 MR. CRONIN: Thursday usually like
12 two, because it's very slow.

13 MEMBER JONES: So does that
14 Wednesday include -- does that Thursday
15 include --

16 MR. CRONIN: Wednesday, Thursday.

17 MEMBER JONES: Okay.

18 MR. CRONIN: We are open at like
19 late and you will have two. You need one for
20 the door and then one to keep an eye on the
21 downstairs, which will not be visible from the
22 door --

1 MEMBER JONES: Right, right.

2 MR. CRONIN: -- to make sure, you
3 know, you have someone down there.

4 MEMBER JONES: So a minimum of
5 two?

6 MR. CRONIN: Minimum of two, yes.

7 MEMBER JONES: All right. Up to?

8 MR. CRONIN: For a very busy
9 evening or event, four, five, yes.

10 MEMBER JONES: Two, three, four?
11 Okay. And how does that compare to how many
12 security personnel you used to have to employ
13 to serve at the Saki when it was Saki?

14 MR. CRONIN: Identical.

15 MEMBER JONES: Identical? Okay.
16 Cool. Thank you. Thank you, Mr. Chairman.

17 ACTING CHAIRMAN ALBERTI: Thank
18 you. Any other questions from the Board? Mr.
19 Kline, any redirect?

20 MR. KLINE: Yes.

21 REDIRECT EXAMINATION

22 MR. KLINE: Mr. Cronin, I'm going

1 to show you what we're going to mark as
2 Licensee's Exhibit 1 and ask you if you can
3 identify that?

4 MR. CRONIN: I'm sorry?

5 MR. KLINE: Can you identify what
6 the document is?

7 MR. CRONIN: This is the --

8 MR. KLINE: First of all, how many
9 pages is it?

10 MR. CRONIN: It appears to be
11 seven.

12 MR. KLINE: Okay. Do you know
13 what the first page is?

14 MR. CRONIN: It's an email, sir.

15 MR. KLINE: An email or a letter,
16 what is it, if you know?

17 MR. CRONIN: It appears to be a
18 letter to Ms. Davis at ABRA.

19 MR. KLINE: All right. And then
20 the following six pages, can you identify what
21 those are?

22 MR. CRONIN: It's the operating

1 agreement -- I'm sorry, the voluntary
2 agreement that we negotiated and worked out
3 with the ANC.

4 MR. KLINE: Okay. You're familiar
5 with that document? You have seen it before?

6 MR. CRONIN: Yes, sir.

7 MR. KLINE: All right. I would
8 move Licensee's Exhibit 1. I think it's in
9 your records, but, based on the questioning of
10 one of the Board Members --

11 ACTING CHAIRMAN ALBERTI: We will
12 accept it.

13 MR. KLINE: Great. Thank you.

14 (Whereupon, the document was
15 marked for identification as
16 Licensee Exhibit 1 and was
17 received in evidence.)

18 ACTING CHAIRMAN ALBERTI: All
19 right. I will note it is in our records
20 already.

21 MR. KLINE: Thank you. Now, Mr.
22 Cronin, under the replacement voluntary

1 agreement or the replacement cooperative
2 agreement, there are certain obligations with
3 respect to food sales. Is that correct?

4 MR. CRONIN: That is correct.

5 MR. KLINE: We talked about it
6 before. You have the agreement in front of
7 you. Does that help you recollect more
8 specifically what those requirements are?

9 MR. CRONIN: Yes.

10 MR. KLINE: All right. Would you
11 tell the Board what they are, based upon
12 what's in the document?

13 MR. CRONIN: In Section A, it
14 categorizes clearly that it is to be a full
15 kitchen staff, full kitchen preparations,
16 including entrees, prepared food items, snack
17 foods will not be acceptable. This is
18 basically saying that we have a full
19 restaurant service with a real menu serving
20 real food, not just store bought items, would
21 be my classification.

22 Section B establishes the number

1 of hours and minimum number of days a week we
2 are allowed to be -- I mean, that we are
3 required to be open to serve food.

4 MR. KLINE: And what is the
5 requirement there?

6 MR. CRONIN: Five days and 37.5
7 hours.

8 MR. KLINE: Okay.

9 MR. CRONIN: And we have to have
10 food available until two and a half hours
11 before close. And then there is some holiday
12 allowances in there.

13 Then Section C says that the first
14 floor of 2477, which we have been referring to
15 as the Grill Bar or Underground first floor,
16 will be required to have the seating for the
17 number of patrons and be a dedicated
18 restaurant space, which it is.

19 D says promote food sales inside/
20 outside of the establishment. Menu boards,
21 food items, all of those things.

22 And then E, make sure that we

1 emphasize food sales outside the establishment
2 with our -- the exterior signage over any kind
3 of liquor advertisements.

4 And then Section F goes into the
5 requirements of actual dollar amounts in food
6 sales.

7 Then G goes into what we mentioned
8 before, which are books and records, quarterly
9 reports in Section H.

10 And then I was to meet with the
11 ANC Public Safety Committee once quarterly to
12 just kind of discuss our progress.

13 MR. KLINE: Right. That's --
14 mainly I was focused on paragraph 1. So under
15 F, the replacement cooperative agreement has
16 a \$250,000 gross annual food sales
17 requirement, correct?

18 MR. CRONIN: Yes, sir.

19 MR. KLINE: Now, under the
20 existing cooperative agreement for Saki, there
21 is a \$135,000 minimum food sales requirement,
22 correct?

1 MR. CRONIN: Correct.

2 MR. KLINE: Under District's
3 current license, it has a 120 seats, correct?

4 MR. CRONIN: Correct.

5 MR. KLINE: So it has on a per
6 seat basis a \$240,000 minimum food service
7 requirement?

8 MR. CRONIN: That's correct.

9 MR. KLINE: So between the two
10 establishments, you currently have a \$375,000
11 minimum food service requirement?

12 MR. CRONIN: That's correct.

13 MR. KLINE: And the replacement
14 cooperative agreement sets it at \$250,000?

15 MR. CRONIN: Yes, sir.

16 MR. KLINE: So this whole thing is
17 about a difference of \$125,000 in food sales.
18 Is that fair?

19 MR. CRONIN: Yes, and the
20 legalities of moving between the two
21 buildings, but, yes.

22 MR. KLINE: Understood. Okay.

1 But you didn't seek to eliminate the
2 replacement voluntary agreement, it just
3 reduces it. Is that correct?

4 MR. CRONIN: Yes, sir.

5 MR. KLINE: And that's to give you
6 comfort to make sure that you comply with the
7 law?

8 MR. CRONIN: Yes, sir.

9 MR. KLINE: Now, you were asked
10 questions about a case that is not strictly
11 related to this licensee, but is related to
12 one that has been discussed many times during
13 this hearing, District, in terms of minimum
14 food service requirements.

15 And I want to go over those with
16 you. In terms of the problems that you had
17 with the system and the lack of records that
18 you were able to produce to the auditor,
19 clarify, let's make sure we are crystal clear
20 as to what those issues were.

21 MR. CRONIN: To all of our
22 knowledge, we had the accurate books and

1 records. We kept the receipts. We kept
2 everything. We had the computer system. We
3 are actually quite proud of how detailed we
4 were with our bookkeeping.

5 When the audit happened, we
6 brought up the assessment summaries. We
7 brought up the reports, everything went fine.
8 We showed them this is what we sold, etcetera.

9 We were surprised and somewhat
10 devastated to find out that every time we
11 changed menu items, it would change the menu
12 items that were stored on the guest checks
13 from years ago.

14 Meaning, when whatever was stored
15 under that guest check, whatever the label was
16 next to the dollar amount and the different
17 categories would just change it to whatever it
18 was currently.

19 MR. KLINE: Can you give us an
20 example?

21 MR. CRONIN: What used to be
22 District wings or what used to be the ribeye

1 steak three years ago would be changed to
2 something like on the new structure of the
3 menu like mashed potatoes or a lot of times it
4 would be asparagus or it would change to a
5 burger.

6 So about 75 percent of the menu
7 items from the past were replaced with new
8 labels of the new menu's food. And then a
9 quarter of those on the section of the boxes
10 were left empty. And I think the main point
11 of contention that came up, because it wasn't
12 used on our new touch screen system, those
13 boxes are empty, I don't know how familiar
14 with Board is with the POS, but you just have
15 boxes filled in with labels.

16 You don't always use all the
17 buttons. So 75 percent were used on the new
18 menu by the new items. And those were clearly
19 -- you can see the new name attached to what
20 used to be something different. 25 percent of
21 them were left blank.

22 So at the audit I went through and

1 plugged in the word food into those blank
2 buttons and when we went back to all the
3 records from three years ago, lo and behold
4 food popped up and filled in every blank.

5 However, it was deemed by the
6 auditor that that was not, you know, accurate
7 records, was not what was required, so we were
8 told that that was not acceptable.

9 MR. KLINE: Is there a distinction
10 between food buttons and alcohol buttons in
11 the POS system?

12 MR. CRONIN: They are in two
13 different -- completely different sub-menus.
14 Yes, sir.

15 MR. KLINE: Is there any way to
16 change -- well, let me withdraw that.

17 In this case, was there any
18 evidence that any of the alcohol items in the
19 alcohol sub-menu had been relabeled to be food
20 items?

21 MR. CRONIN: No, sir.

22 MR. KLINE: Okay. And was there

1 any evidence that any of the items that had
2 previously been food buttons were now alcohol
3 buttons?

4 MR. CRONIN: No, sir.

5 MR. KLINE: Would that be sort of
6 difficult to do?

7 MR. CRONIN: It's a template that
8 you come with to work with on the system. And
9 it already comes pre-setup with different
10 categories. So you have your liquor
11 categories. You have your beer categories.
12 You have your food categories. And those are
13 kind of like you can't select that. That's
14 like a tree menu on the side.

15 And then when you click on that,
16 that's what opens up all the different buttons
17 where you can plug in your information. But
18 you can't change the food category to a
19 different category. It just -- that's just
20 the category where you plug in your buttons.

21 MR. KLINE: Now, you have
22 testified at other hearings, not necessarily

1 today, that you have worked in the industry
2 quite a number of years, correct?

3 MR. CRONIN: About 12 years, yes,
4 sir.

5 MR. KLINE: In how many different
6 places?

7 MR. CRONIN: Oh, five or six. A
8 half dozen at least.

9 MR. KLINE: The system that you
10 use is called Restaurant Manager?

11 MR. CRONIN: That's correct.

12 MR. KLINE: Is that something that
13 is prevalently used in D.C. among restaurant
14 operations?

15 MR. CRONIN: It's used by a number
16 of establishments. It is pretty well-known in
17 the city and used in a lot of different
18 places.

19 MR. KLINE: Okay. And when you
20 discovered this, did you learn that perhaps
21 some other establishments may have this same
22 problem?

1 MR. CRONIN: When we found the
2 issue, we contacted the TACs, so to speak, the
3 owners of the Restaurant Manager Division in
4 the city and they informed us that there was
5 nothing we could do to change the way it
6 works. This just is how it was. This is just
7 how the system works. And we were pretty
8 stunned by that and very curious to see if
9 anyone else had run into these issues before
10 with the Restaurant Manager system that might
11 have been audited or whatnot because we would
12 have loved that sort of vindication in showing
13 that this problem existed with the software
14 and not really with us.

15 MR. KLINE: Have you taken steps
16 to assure that this doesn't happen again?

17 MR. CRONIN: Yes. I mean, the
18 steps are pretty much: (1) We have got to
19 make sure we never change our menu and if we
20 do, we are going to have to take, I guess,
21 photographic evidence. Even though we had
22 menus, printed menu evidence showing our

1 previous menus before, actually had pictures
2 of the previous menu items that were on the --
3 I mean, I don't know.

4 I guess we'll just have to take
5 pictures of the screen to make sure that they
6 see that that's what it was and it correlates
7 with exactly what the new button is. I guess
8 as of right now our one solution until the
9 Restaurant Manager lets us know something
10 better is we just can't change the menu.

11 MR. KLINE: Okay. Fine. Thank
12 you. I don't have any further questions of
13 the witness.

14 ACTING CHAIRMAN ALBERTI: Okay. I
15 have just on that topic, Mr. Cronin.

16 So over time do you ever print out
17 the information?

18 MR. CRONIN: Yes.

19 ACTING CHAIRMAN ALBERTI: From
20 that system?

21 MR. CRONIN: We print out every
22 day. We print out a session summary and then

1 every month we print out a session summary.

2 ACTING CHAIRMAN ALBERTI: Well,
3 does it show that detail?

4 MR. CRONIN: That's the problem is
5 that everything always came up fine. It would
6 show you your food numbers, your category
7 numbers and show you your liquor sales, beer
8 sales, etcetera.

9 Because it's a summary report.
10 Like that's what you print out --

11 ACTING CHAIRMAN ALBERTI: Right,
12 right.

13 MR. CRONIN: -- every day or week.
14 If we wanted to print out detailed items
15 reports, it would be hundreds of pages long,
16 especially on a monthly basis, so we never
17 printed out daily itemized reports. There was
18 no reason for it. It was stored in the
19 computer system.

20 ACTING CHAIRMAN ALBERTI: When you
21 refer to guest checks, what do you mean by a
22 guest check?

1 MR. CRONIN: Look at any
2 restaurant if you are presented with your
3 bill, the printout that would show either the
4 itemized or closed sales amount is what I
5 would refer to.

6 ACTING CHAIRMAN ALBERTI: And do
7 you keep those?

8 MR. CRONIN: Yes. I mean, those
9 were stored. We keep two different methods of
10 storing that. One is in the computer system
11 you can bring up any guest check that was ever
12 printed for a customer.

13 ACTING CHAIRMAN ALBERTI: Okay.

14 MR. CRONIN: Also, any credit card
15 receipts we store all credit card signed
16 copies, obviously. We have huge boxes of all
17 credit card receipts.

18 ACTING CHAIRMAN ALBERTI: So in
19 the system, the guest check would show -- you
20 know, does it show like the individual items?

21 MR. CRONIN: Yes, sir.

22 ACTING CHAIRMAN ALBERTI: Okay.

1 So you have a record of individual items that
2 were sold --

3 MR. CRONIN: Absolutely.

4 ACTING CHAIRMAN ALBERTI: --
5 throughout the year?

6 MR. CRONIN: Yes, sir.

7 ACTING CHAIRMAN ALBERTI: And that
8 should coincide with your summary reports?

9 MR. CRONIN: Yes, sir.

10 ACTING CHAIRMAN ALBERTI: Okay.

11 Thank you, Mr. Cronin. I have no further
12 questions. Now, Mr. Kline, I think we have
13 exhausted this.

14 MR. KLINE: It's my witness. I
15 think I'm entitled --

16 ACTING CHAIRMAN ALBERTI: Okay.

17 MR. KLINE: -- to the last --

18 ACTING CHAIRMAN ALBERTI: Fine.

19 Yes, you are.

20 MR. KLINE: Thank you.

21 ACTING CHAIRMAN ALBERTI: All
22 right, please, continue.

1 RE-REDIRECT EXAMINATION

2 MR. KLINE: Mr. Cronin --

3 ACTING CHAIRMAN ALBERTI: Just on
4 the question I asked.

5 MR. KLINE: That's all it is.

6 ACTING CHAIRMAN ALBERTI: Okay.

7 MR. KLINE: Mr. Cronin, just so we
8 are clear, you said that you can print up any
9 guest check from the past, correct?

10 MR. CRONIN: Yes, sir.

11 MR. KLINE: All right. But how
12 would the changing of the codes affect the
13 printing of that guest check? Would it be an
14 accurate representation of the guest check on
15 that given day or would the new labels be on
16 the reprinted guest check?

17 MR. CRONIN: It would show the new
18 labels.

19 MR. KLINE: It would show the new
20 label?

21 MR. CRONIN: Yes.

22 MR. KLINE: Okay. That's all I

1 have.

2 ACTING CHAIRMAN ALBERTI: Okay.

3 Thank you, Mr. Kline.

4 MR. KLINE: Thank you.

5 ACTING CHAIRMAN ALBERTI: I have
6 no further questions. Mr. Jones?

7 MEMBER JONES: I guess it's to
8 clarify the clarification. If you printed it
9 out before you changed -- I'm sorry, sir? If
10 you printed it out before you changed the menu
11 item, would it not have or show the unchanged
12 menu item or the original menu item?

13 MR. CRONIN: Yes, sir.

14 MEMBER JONES: And then if you had
15 that printout, you can save that printout,
16 correct?

17 MR. CRONIN: You mean of the
18 individual guest check?

19 MEMBER JONES: Yes.

20 MR. CRONIN: Yes. I mean, yes, up
21 until last spring when we changed the menu, I
22 could have printed out any check from the

1 past, I guess, two years before that and it
2 would have printed out exactly the way it did
3 that day.

4 MEMBER JONES: Correct. So you
5 can print out any and thus, you could print
6 out all?

7 MR. CRONIN: Yes.

8 MEMBER JONES: And then you could
9 save those, correct?

10 MR. CRONIN: Save them? You mean
11 like just print all of them out and store
12 them?

13 MEMBER JONES: Print them out and
14 store them in a box.

15 MR. CRONIN: It would be a lot of
16 boxes.

17 MEMBER JONES: I'm not challenging
18 that.

19 MR. CRONIN: It would be -- yes.

20 MEMBER JONES: I'm just making
21 sure I'm understanding you.

22 MR. CRONIN: Yes, sir.

1 MEMBER JONES: As an effective
2 mitigation to the issue that you have
3 indicated was created by you changing the menu
4 items, a mitigating step could be to print out
5 prior to making any menu changes, so that this
6 should never happen again. This being you
7 changing a menu item and then you have not the
8 ability to reconcile against what you did in
9 the past.

10 MR. CRONIN: I can show what the
11 menu was before on the computer buttons. I
12 can show what it was after. I can show how it
13 affected it. I can show all that. The issue
14 I was told is unless it is on the actual guest
15 check, then it doesn't do anything. So the
16 only way to do what is expected would be for
17 us to literally every cash transaction,
18 everything that went over -- every payment
19 ever would have to be stored.

20 Which because we are a large
21 establishment and because we do sell some
22 times a beer here or a soda there or just a

1 Red Bull, you are talking about thousands of
2 receipts a week. You are talking about
3 hundreds of thousands of receipts a year,
4 hundreds of thousands.

5 So it just gets to that point
6 where it's how -- that's why people have
7 computer systems, I guess, is what I'm trying
8 to say, is to store that information.

9 So as of right now, as long as we
10 don't change the menu, which we know now not
11 to do, I can print out any check you wanted me
12 to from the last nine months and it would be
13 fine. There would be no problem. It would
14 match up perfectly.

15 But the issue was that when we
16 switched the menu, it wiped everything. So I
17 mean, for us --

18 MEMBER JONES: I told you I'm not
19 going to fight. So it sounds like this
20 problem could happen again.

21 MR. CRONIN: If we suddenly
22 decided to wipe the whole menu, but we would--

1 now that we have identified the --

2 MEMBER JONES: If you wanted to
3 change the --

4 MR. CRONIN: -- problem, we would
5 take adequate steps to make sure that it was
6 clearly documented everything that had gone on
7 before, all the guest checks were available
8 and we know --

9 MEMBER JONES: So pause for a
10 second. What would those steps be? Because
11 that's what I'm not clear on.

12 MR. CRONIN: I don't know. We may
13 go like one of those --

14 MEMBER JONES: You don't know
15 either, right now?

16 MR. CRONIN: -- companies. Right
17 now, the only step we know of is to not change
18 the menu.

19 MEMBER JONES: That's the only
20 thing. So in hindsight --

21 MR. CRONIN: I can't print out a
22 hundred -- it would take months to print out

1 hundreds of thousands of checks.

2 MEMBER JONES: So to answer the
3 question, the only thing you could do is not
4 change the menu items?

5 MR. CRONIN: Correct.

6 MEMBER JONES: Okay. Thank you.

7 MR. CRONIN: Unless -- I do have
8 another idea, which would be -- there are a
9 lot of legal law firms, and I have talked to
10 some people about this, that have experts that
11 come in and actually take their data and do
12 print out hard copies for them in mass, like
13 giant amounts of information and stuff like
14 that.

15 So I have talked to them about is
16 there a possibility they could come and
17 somehow take the existing data and literally
18 print it out in mass for us, because that's
19 what they do. They have the giant printers
20 and they can just take digital information and
21 make it hard copies easily. So we have
22 explored our options. We have been talking to

1 different people, but it is a tricky
2 situation.

3 And right now, just to make sure
4 we don't make any mistakes, no changes to the
5 menu items until we do figure out a solution.

6 MEMBER JONES: Just out of
7 curiosity, is there a POS system that doesn't
8 suffer from this anomaly?

9 MR. CRONIN: Not to my knowledge.
10 I mean, I don't know. I haven't been audited
11 anywhere else in a food audit in my other 12
12 years of experience and six places. But it's
13 -- usually, I mean, I have used Aloha, I have
14 used MICROS, I have used a bunch, but I don't
15 know. I couldn't answer that, sir.

16 MEMBER JONES: Okay. Thank you.
17 Thank you, Mr. Chairman.

18 ACTING CHAIRMAN ALBERTI: Mr.
19 Cronin, I have a question on that. I hate to
20 belabor this, but backup, do you backup your
21 system? Is it possible to backup the
22 database? And this is a database.

1 MR. CRONIN: I'm not a tech guy.
2 Mr. Dildine can answer that.

3 ACTING CHAIRMAN ALBERTI: Okay.
4 Great.

5 MR. CRONIN: I'm not.

6 ACTING CHAIRMAN ALBERTI: Well,
7 I'll hold that for him.

8 MR. CRONIN: Sorry.

9 ACTING CHAIRMAN ALBERTI: Thank
10 you. Mr. Cronin, you may step down.

11 MR. CRONIN: Thank you, sir.

12 ACTING CHAIRMAN ALBERTI: We're
13 going to suspend the hearing for five minutes
14 while we address another matter that has been
15 sitting in the wings.

16 MR. KLINE: Elliot was here.

17 ACTING CHAIRMAN ALBERTI: Yes, I
18 believe. Yes, you can.

19 (Whereupon, at 12:56 p.m. a recess
20 until 1:02 p.m.)

21 ACTING CHAIRMAN ALBERTI: Okay.
22 We are now back on the record and we are going

1 to reconvene the Fact-Finding Hearing
2 regarding Colin Unlimited, LLC.

3 The parties have returned to the
4 front table. Mr. Kline, if you would like,
5 please, call your next witness.

6 MR. KLINE: Thank you. I'll call
7 to the stand William Patrick Dildine.

8 ACTING CHAIRMAN ALBERTI: Mr.
9 Dildine, would you, please, raise your right
10 hand?

11 Whereupon,

12 WILLIAM PATRICK DILDINE
13 was called as a witness by Counsel for the
14 applicant, and having been first duly sworn,
15 assumed the witness stand and was examined and
16 testified as follows:

17 ACTING CHAIRMAN ALBERTI: Thank
18 you. Please, be seated.

19 DIRECT EXAMINATION

20 MR. KLINE: State your name for
21 the record, please.

22 MR. DILDINE: William Patrick

1 Dildine.

2 MR. KLINE: And what is your
3 connection with the establishment known as --
4 previously known as Saki, now known as
5 District Underground?

6 MR. DILDINE: I'm an operating
7 manager and an administrative officer.

8 MR. KLINE: And you are also one
9 of the owners?

10 MR. DILDINE: Um-hum, yes.

11 MR. KLINE: And what's your
12 connection with the establishment known as
13 District?

14 MR. DILDINE: It's the same,
15 identical relationship.

16 MR. KLINE: And do you have the
17 same duties with respect to each company?

18 MR. DILDINE: Yes, I do.

19 MR. KLINE: And what are those
20 duties to support that?

21 MR. DILDINE: For the most part, I
22 maintain the infrastructure in the place. I

1 do a lot of design work within it. I do -- I
2 handle the staff on a lot of nights. I handle
3 some of the marketing as well. It's kind of
4 a split duty. I think that's it pretty much.

5 MR. KLINE: All right. And you
6 have been involved with this establishment
7 since it was taken over by your group in 2009?

8 MR. DILDINE: Actually prior.
9 Well, the building itself prior, but, yes,
10 I've been involved since 2009.

11 MR. KLINE: Okay. When you say
12 the building itself, what was your involvement
13 with the building previously?

14 MR. DILDINE: I have been there
15 since -- working there in some capacity since
16 2003.

17 MR. KLINE: Okay. All right. And
18 you are, of course, familiar with the request
19 that brings us before the Board today?

20 MR. DILDINE: Yes, I am.

21 MR. KLINE: From your standpoint,
22 why was this request made?

1 MR. DILDINE: The request for?

2 MR. KLINE: The request to expand
3 the premises covered by the District
4 Underground license to cover the premises
5 currently occupied by District license.

6 MR. DILDINE: Well, one, it would
7 streamline our financials. The other things
8 it would do was it would enable us to utilize
9 different, alternative marketing strategies
10 that my partner was talking about. It enables
11 us as well to utilize the space in different
12 capacities that we couldn't do before,
13 compartmentalize the building, hold multiple
14 events in different ways.

15 Basically, it enables us to more
16 readily distribute and reorganize our
17 resources to make more efficient use of the
18 building itself.

19 MR. KLINE: Okay. Now, you said
20 streamline operational costs, how would it do
21 that?

22 MR. DILDINE: For one, it becomes

1 a lot more difficult for us when we are -- we
2 have to kind of separate the businesses and do
3 double duty for everything. It just causes us
4 more of a financial stress to run two
5 businesses when we could easily consolidate
6 them into one business itself.

7 I mean, I can go over details, but
8 I think a CPA would probably be more qualified
9 to kind of go over those kinds of issues.

10 MR. KLINE: Fair enough. Now, you
11 are the one, at this point, that is
12 responsible for completing the quarterly food
13 reports?

14 MR. DILDINE: Yes. With Ben's
15 departure, it was fairly abrupt. I kind of
16 had to pick up where he left off and kind of
17 worked through all those elements of the
18 filings and such.

19 MR. KLINE: And have you done the
20 filings for District Underground?

21 MR. DILDINE: Yes, both District
22 Underground and upstairs were filed.

1 MR. KLINE: And you get that
2 information from the POS system?

3 MR. DILDINE: The filings?

4 MR. KLINE: Yes.

5 MR. DILDINE: Yes. I do, yes.

6 And the paperwork, I kind of had to whip up
7 some Excel sheets to, you know, organize the
8 way our -- food purchases and things like that
9 of that nature.

10 MR. KLINE: You mean for the
11 purchase side, not for the --

12 MR. DILDINE: Yes.

13 MR. KLINE: -- sale side.

14 MR. DILDINE: Yes.

15 MR. KLINE: Is that right?

16 MR. DILDINE: Yes.

17 MR. KLINE: All right. And how
18 many employees are in these two
19 establishments?

20 MR. DILDINE: I would say about,
21 between both places, 68 employees.

22 MR. KLINE: And what's the

1 breakdown between them?

2 MR. DILDINE: I think it would be
3 about 20 to 21 security. We have about --

4 MR. KLINE: No, I mean between the
5 two places. How many in connection with
6 District Underground? How many in connection
7 with District?

8 MR. DILDINE: Five security.

9 MR. KLINE: Total, total, total.

10 MR. DILDINE: Total?

11 MR. KLINE: Yes. Total for --

12 MR. DILDINE: 21.

13 MR. KLINE: You said 68.

14 MR. DILDINE: Okay. 68.

15 MR. KLINE: And then how many for
16 District?

17 MR. DILDINE: Oh, oh, oh, I would
18 say about 27 for downstairs and 41 or so.

19 MR. KLINE: For upstairs?

20 MR. DILDINE: For upstairs, yes.

21 MR. KLINE: Now, is District
22 upstairs?

1 MR. DILDINE: Yes, upstairs, yes.

2 MR. KLINE: All right. Now, if
3 the Board does not grant this request, what do
4 you expect will happen with respect to the
5 employees of District?

6 MR. DILDINE: Well, one, there is
7 -- we risk the potential of the revocation of
8 the license.

9 MR. KLINE: And why is that?

10 MR. DILDINE: Because of a failure
11 to comply with food numbers. If that was the
12 case, then I would expect for us probably to
13 have to lay off a majority of our staff
14 immediately. I would say probably the entire
15 District staff would have to get laid off.

16 MR. KLINE: And that's 41 you're
17 talking about?

18 MR. DILDINE: Yes.

19 MR. KLINE: And will your staffing
20 needs change if this request is granted?

21 MR. DILDINE: No, it would stay
22 the same, the staffing would. Yes, it

1 wouldn't really change our staffing.

2 MR. KLINE: You have heard -- you
3 are the one that actually is more familiar
4 with the computer system. Is that right?

5 MR. DILDINE: Yes.

6 MR. KLINE: The POS system?

7 MR. DILDINE: Yes.

8 MR. KLINE: And you -- is there a
9 way that the data is backed up?

10 MR. DILDINE: It is. It goes to a
11 cloud station, but again, that's what I was
12 saying, it is a PLU number. And so that data
13 corresponds to a specific tag in the computer
14 system itself. So it's just a series of
15 numbers. So it is backed up off-site. But
16 again, it's the issue of it's just a number.
17 You have to assign values to it to give it a
18 context.

19 MR. KLINE: So the PLU number
20 would be the description --

21 MR. DILDINE: Yes.

22 MR. KLINE: -- of the item?

1 MR. DILDINE: Yes.

2 MR. KLINE: And --

3 MR. DILDINE: The PLU assigns it
4 to a cluster in the computer that has all of
5 that data. So it would be that -- that would
6 be the food items, the modifiers, all of those
7 things with all of that data would be assigned
8 to a PLU number.

9 MR. KLINE: And that resides
10 locally on the computer?

11 MR. DILDINE: Yes, it does.

12 MR. KLINE: So when the data is
13 backed up, that's not transmitted with the --

14 MR. DILDINE: No. That
15 information resides locally. It's just if
16 specifically the numerical values are sent to
17 cloud storage.

18 MR. KLINE: Now, you heard the
19 discussion with the previous witness
20 concerning how you correct this problem when
21 you change your menu.

22 MR. DILDINE: Yes.

1 MR. KLINE: Given that you are the
2 person that has some expertise in this area,
3 have you given that some thought?

4 MR. DILDINE: Yes. There are
5 several different methods you could use. I
6 think one of the most efficient ways to
7 correct it would be that under the food you
8 can refine -- you have a series of -- like you
9 were saying it's a tree list, you could create
10 new categories under the food category and
11 continue your -- creating new PLU numbers
12 under each of the categories. And that would
13 be one way you could go about doing it. So
14 you would retain all that data.

15 MR. KLINE: So basically what you
16 are saying instead of replacing PLUs --

17 MR. DILDINE: Yes.

18 MEMBER JONES: -- you would never
19 replace them and you would just add PLUs?

20 MR. DILDINE: Right. It was --
21 what we had done in the past was an efficiency
22 thing. I never gave it a thought that it was

1 only a PLU number which was specific data that
2 the computer was accessing. But it is done
3 that way for a reason. And it's probably
4 common to other systems.

5 The reason it is done that way is
6 because when you are dealing with that much of
7 a volume of data, the only way to access huge
8 amounts of it is to assign it new number
9 values. The more content you put into each of
10 those, into each of that data, the more
11 information that gets shifted around and it
12 becomes heavy and kind of clunky.

13 If you, just for an example, just
14 do a quarterly report to look at our sales
15 summaries, it takes about 15 minutes just to
16 run that report just from the computer
17 processing and processing and processing and
18 that's strictly PLU numbers.

19 If you are talking about adding
20 the information such as what that specific
21 item is, what the modifiers are, we are
22 looking at something that could take upwards

1 of four to eight hours just to run one report.

2 MR. KLINE: All right. But you do
3 understand, at this point, the Board's
4 requirements for recordkeeping --

5 MR. DILDINE: Yes.

6 MR. KLINE: Well, let me finish my
7 question, because this young woman gets to
8 write down everything we say and it's hard for
9 her if you don't.

10 You understand at this point the
11 Board's recordkeeping requirements for CR
12 licenses, correct?

13 MR. DILDINE: Yes.

14 MR. KLINE: All right. And you
15 understand that under the voluntary agreement
16 that you have entered into, if it's accepted,
17 that you still have a responsibility to keep
18 those records forever?

19 MR. DILDINE: Yes.

20 MR. KLINE: And you understand the
21 challenges that you faced before and you know
22 how to address them, at this point?

1 MR. DILDINE: Yes.

2 MR. KLINE: Okay. Notwithstanding
3 the limitations or difficulty with size of
4 files or data storage, right?

5 MR. DILDINE: Yes.

6 MR. KLINE: All right. I don't
7 have any further questions of the witness, at
8 this time. I'll make him available to the
9 Board questions.

10 ACTING CHAIRMAN ALBERTI: Okay.
11 I'm going to start with just some real
12 questions on the database and then I'll hand
13 it over to my other Board Members, because I'm
14 real curious here.

15 Mr. Dildine, it sounds like you
16 have some understanding of the database that
17 you are working with.

18 MR. DILDINE: Yes.

19 ACTING CHAIRMAN ALBERTI:
20 Actually, I understand completely what you are
21 talking about. All right?

22 MR. DILDINE: Okay.

1 ACTING CHAIRMAN ALBERTI: Because
2 I have experience with that large database.
3 So basically, let me describe it one way. You
4 have got a list of items that are all just
5 numbered, referred to by numbers.

6 MR. DILDINE: Yes.

7 ACTING CHAIRMAN ALBERTI: Okay.
8 You also have, what I'll call, a look-up list.
9 And that look-up list associates each one of
10 those numbers with a food item. All right?
11 And what you are changing is that look-up list
12 from time to time.

13 When you change those buttons on
14 the screen, you are changing the look-up list.
15 So that the item that is labeled No. 1 used to
16 be wings it's now legs.

17 MR. DILDINE: Yes.

18 ACTING CHAIRMAN ALBERTI: Right?

19 MR. DILDINE: Yes.

20 ACTING CHAIRMAN ALBERTI: Do you
21 have changed the look-up list, but not that
22 list of items that have -- that are labeled

1 with numbers, right? So that's what you are
2 changing. You can add to that list of
3 numbers. You can add items to that list of --

4 MR. DILDINE: Yes. Well --

5 ACTING CHAIRMAN ALBERTI: But
6 you --

7 MR. DILDINE: -- I'm a little
8 confused as to what you mean by look-up list.
9 I'm not --

10 ACTING CHAIRMAN ALBERTI: Okay.

11 MR. DILDINE: I'm sort of
12 understanding the system.

13 ACTING CHAIRMAN ALBERTI: You have
14 Item 1. The item labeled No. 1 --

15 MR. DILDINE: Yes.

16 ACTING CHAIRMAN ALBERTI: -- all
17 right, that's what comes up on your POS system
18 when you print it out. All right?

19 MR. DILDINE: Um-hum.

20 ACTING CHAIRMAN ALBERTI: To
21 understand what item labeled No. 1 is, you --
22 there is a list that says oh, Item No. 1 is

1 actually wings.

2 MR. DILDINE: Um-hum.

3 ACTING CHAIRMAN ALBERTI: From
4 time to time, you change that look-up list.

5 MR. DILDINE: Right.

6 ACTING CHAIRMAN ALBERTI: So that
7 Item 1 now is associated with legs, right?

8 MR. DILDINE: Um-hum.

9 ACTING CHAIRMAN ALBERTI: Can your
10 system archive that look-up list? Because
11 that's what is being changed as well as the
12 food, the cost data, the sales data.

13 MR. DILDINE: What you are talking
14 about is a software issue with the Restaurant
15 Manager system itself. And that goes above
16 the local retailers of the systems had. I
17 would have to contact the -- actually the
18 company that owns Restaurant Manager and ask
19 them to implement this kind of system.

20 But it's a nationwide system.

21 ACTING CHAIRMAN ALBERTI: Okay.

22 So you're telling me that if you changed your

1 buttons around, all right, then you decided,
2 you know, I don't like that. I want to go
3 back to that old configuration buttons was.
4 You can't do that.

5 MR. DILDINE: Well --

6 ACTING CHAIRMAN ALBERTI: Unless
7 you have it written down some place.

8 MR. DILDINE: No, no. See the
9 difference is that the buttons that are
10 available on the computer screen --

11 ACTING CHAIRMAN ALBERTI: Um-hum.

12 MR. DILDINE: -- can be moved
13 around. You can put one in this body and one
14 in that body. The one that you are physically
15 touching --

16 ACTING CHAIRMAN ALBERTI: Yes.

17 MR. DILDINE: -- on it.

18 ACTING CHAIRMAN ALBERTI: You can
19 move them around. I know.

20 MR. DILDINE: Now, what the
21 difference is is that it doesn't change the
22 PLU number. What changed the PLU number is

1 when you physically change that button.

2 Now, since we didn't know about
3 that -- how the system worked at first, and it
4 wasn't discovered until this audit, most of
5 the time we were just making the most
6 efficient use of our system, which would be
7 not creating new items when we would be like
8 oh, well, you know, this is off the menu now,
9 so let's just change this from wings to tater
10 tots.

11 ACTING CHAIRMAN ALBERTI: Right.

12 MR. DILDINE: Because that made
13 the most sense to us.

14 ACTING CHAIRMAN ALBERTI: Right.

15 MR. DILDINE: Now, after we
16 learned about this flaw, we were like okay,
17 well, this is something that we have to
18 address.

19 ACTING CHAIRMAN ALBERTI: So you
20 couldn't have gone back? You changed it from
21 wings to tater tots and you decide let's -- it
22 was decided that, you know, you didn't like

1 that configuration, you wanted to go back to
2 the one that had the wings, you couldn't do
3 that without having -- remembering where you
4 put those buttons and how you had assigned
5 them?

6 MR. DILDINE: Well, again, some of
7 the reports we were looking at were -- was of
8 the --

9 ACTING CHAIRMAN ALBERTI: No, no,
10 no. Just my question is --

11 MR. DILDINE: I don't remember.

12 ACTING CHAIRMAN ALBERTI: -- there
13 is no way or there was no way for the system
14 unless you had --

15 MR. DILDINE: No.

16 ACTING CHAIRMAN ALBERTI: --
17 written it down?

18 MR. DILDINE: No, there wasn't,
19 no.

20 ACTING CHAIRMAN ALBERTI: To say
21 this button used to be wings?

22 MR. DILDINE: Not unless there was

1 a hard copy --

2 ACTING CHAIRMAN ALBERTI: You
3 couldn't go back?

4 MR. DILDINE: -- of the original
5 configuration.

6 ACTING CHAIRMAN ALBERTI: Unless
7 there was what?

8 MR. DILDINE: A hard copy.

9 ACTING CHAIRMAN ALBERTI: Of the
10 original configuration?

11 MR. DILDINE: Yes.

12 ACTING CHAIRMAN ALBERTI: And does
13 the system create that for you?

14 MR. DILDINE: No.

15 ACTING CHAIRMAN ALBERTI: Okay.

16 Okay. Thank you. I have no further
17 questions. Anyone else from the Board? Mr.
18 Jones?

19 MEMBER JONES: Thank you, Mr.
20 Chairman. You said you had to pick up
21 abruptly when Mr. Dalley left?

22 MR. DILDINE: I'm sorry, what?

1 MEMBER JONES: Did you -- if I
2 heard you correctly --

3 MR. DILDINE: Yes.

4 MEMBER JONES: -- you indicated
5 that you needed to pick up quickly --

6 MR. DILDINE: Yes.

7 MEMBER JONES: -- when Mr. Dalley
8 left.

9 MR. DILDINE: Yes.

10 MEMBER JONES: Ben left --

11 MR. DILDINE: Yes.

12 MEMBER JONES: -- the company.
13 What was your function prior to his departure?

14 MR. DILDINE: It was the same
15 function. I just picked up a few elements of
16 it. And that's since --

17 MEMBER JONES: I'm just -- so what
18 were your functions --

19 MR. DILDINE: I didn't handle --

20 MEMBER JONES: -- prior to --

21 MR. DILDINE: I --

22 MEMBER JONES: Were you submitting

1 quarterly reports before?

2 MR. DILDINE: No.

3 MEMBER JONES: So you picked up
4 some additional functions --

5 MR. DILDINE: Yes.

6 MEMBER JONES: -- or items as a
7 result of his departing. I want to know what
8 yours were before.

9 MR. DILDINE: I picked -- okay.
10 Do you want me to express what I picked up
11 now?

12 MEMBER JONES: No.

13 MR. DILDINE: Okay.

14 MEMBER JONES: I want you to tell
15 me what you were doing prior to Mr. Dalley.

16 MR. DILDINE: Maintaining
17 infrastructure.

18 MEMBER JONES: Okay.

19 MR. DILDINE: And that goes
20 through all elements, website, computer
21 systems. I was handling some of the marketing
22 as well. I was handling general day-to-day

1 management stuff, on the floor managing.

2 Let's see, I think that was pretty much it.

3 MEMBER JONES: Okay.

4 MR. DILDINE: Pretty much.

5 MEMBER JONES: So it sounds like a
6 fairly -- I don't want to characterize it
7 inappropriately, but it wasn't a trivial
8 amount of duty or responsibility that you were
9 burdened with prior to Mr. Dalley leaving that
10 you were responsible for based on how you just
11 described it.

12 MR. DILDINE: Yes.

13 MEMBER JONES: Infrastructure,
14 personnel, day-to-day --

15 MR. DILDINE: Yes.

16 MEMBER JONES: -- activities.
17 Day-to-day activities could be a handful in
18 and of itself --

19 MR. DILDINE: Yes.

20 MEMBER JONES: -- considering the
21 size of your establishment, as well as you
22 said marketing, advertising?

1 MR. DILDINE: Um-hum.

2 MEMBER JONES: Okay. So were any
3 of those duties off-loaded onto someone else
4 once you picked up Mr. Dalley's duties or were
5 you now superman and you are taking on all
6 that you had before and all that he did
7 before?

8 MR. DILDINE: Well, Mr. Dalley's
9 duties were divided among several people.

10 MEMBER JONES: Okay.

11 MR. DILDINE: And there -- we did
12 start training up a new manager.

13 MEMBER JONES: Okay.

14 MR. DILDINE: I picked up a few of
15 his duties as well.

16 MEMBER JONES: Cool.

17 MR. DILDINE: So I only picked up
18 a handful.

19 MEMBER JONES: Okay.

20 MR. DILDINE: So it wasn't --

21 MEMBER JONES: Okay.

22 MR. DILDINE: Yes.

1 MEMBER JONES: All right. So you
2 consider it to be well within your, I don't
3 want to say capabilities -- time management
4 allows you to effectively address all of the
5 duties that you had before as well as the new
6 duties that were now levied on you by the
7 departure of Mr. Dalley?

8 MR. DILDINE: That's correct.

9 MEMBER JONES: Okay. When you
10 jumped in to take on the POS system, had you
11 received any formal training in that before?
12 Had you used it to the extent that would allow
13 you to be able to generate quarterly filings,
14 quarterly reports and things of that nature?

15 MR. DILDINE: I had --

16 MEMBER JONES: I ask, because I
17 got the impression from testimony in previous
18 activities that Mr. Dalley was the owner, if
19 you will, the domain master, domain expert as
20 far as your organization was concerned, as far
21 as the POS system. But apparently if you had
22 had some training or you had interfaced with

1 it before, then that wouldn't necessarily be
2 the case.

3 So I'm trying to get clarification
4 on the record solving that discrepancy in my
5 mind.

6 MR. DILDINE: Well, pretty much in
7 the building when it comes to infrastructure,
8 I know the most out of everyone.

9 MEMBER JONES: Okay.

10 MR. DILDINE: Even the Restaurant
11 Manager people when I call them, they are
12 surprised when I call them, because I do know
13 the system very, very well. But I just have--
14 I'm just good with computer systems, with
15 electronics and things of that nature.

16 MEMBER JONES: Okay. So were you
17 present during any of the on-site audits?

18 MR. DILDINE: During --

19 MEMBER JONES: -- from the ABRA
20 audits?

21 MR. DILDINE: -- the second audit,
22 the one in -- when it was Neil. Was that the

1 -- when he came in.

2 MEMBER JONES: Yes. The
3 compliance person.

4 MR. DILDINE: Yes, that's the one
5 that I was present for. And that's when we
6 discovered the flaws in the system.

7 MEMBER JONES: Okay. Have you
8 always been the most knowledgeable of the POS
9 system or was Dalley, at some point, more
10 knowledgeable of the system than you? Based
11 on your understanding.

12 MR. DILDINE: No. I'm
13 predominantly the most knowledgeable person of
14 the system.

15 MEMBER JONES: Okay. Are you
16 aware of the fact that there were more than
17 one opportunity for an audit to occur?

18 MR. DILDINE: Yes, I am aware of
19 that fact.

20 MEMBER JONES: Okay. Were you
21 present at all of the audits and just didn't
22 participate or were you not aware or not

1 present? Were you only present at the one
2 that you mentioned?

3 MR. DILDINE: I was present at the
4 one that was mentioned.

5 MEMBER JONES: Were you only
6 present at the one that you mentioned?

7 MR. DILDINE: Yes, I believe so.

8 MEMBER JONES: Were you aware of
9 the other instances where audits were
10 attempted and/or conducted?

11 MR. DILDINE: I was -- it was kind
12 of an after the fact on one of the -- one or
13 two of the audits. And then the initial one
14 was -- the initial audit itself was -- it was
15 told to me, but being handled by the CPA and
16 Mr. Dalley.

17 MEMBER JONES: Okay. Based on
18 your understanding, why weren't we able to
19 reconcile the discrepancy or the inability to
20 close the records based on the audit that was
21 conducted by the ABRA representative that came
22 up to conduct an audit of your system?

1 He put down some information, but
2 I want to understand what your understanding
3 of that exchange was and what you walked away
4 from that with.

5 MR. DILDINE: The reason that it
6 was not able to be reconciled was because too
7 much of the system had been altered over an
8 extended period of time over numerous changes
9 to the menu and such, that the records were
10 not going to be identifiable at an item line
11 level.

12 MEMBER JONES: Okay.

13 MR. DILDINE: Now, the overall
14 numerical values of them are consist -- are
15 still consistent, but the itemized versions of
16 them were now inaccurate.

17 MEMBER JONES: All right. So
18 would you, independent of the ABRA auditor or
19 the ABRA compliance analyst, be able to
20 reconcile to the penny or at least to the
21 dollar the dollar figures that you put into
22 the quarterly filings and submit it, the ones

1 that you submitted --

2 MR. DILDINE: Yes.

3 MEMBER JONES: -- would you be
4 able to reconcile that to discrete line items
5 in your POS system?

6 MR. DILDINE: Yes, I would.

7 MEMBER JONES: As of today?

8 MR. DILDINE: Yes.

9 MEMBER JONES: Okay. At what
10 point did you become able to do that?

11 MR. DILDINE: It would have been--
12 it was immediately after the investigator came
13 in. We put a hold on changes on line items in
14 our system.

15 MEMBER JONES: Roughly, do you
16 have any idea of month, year?

17 MR. DILDINE: Well, it was
18 whenever the last audit was, that was the
19 exact date.

20 MEMBER JONES: Okay. So as of
21 that date and time or that date --

22 MR. DILDINE: Yes.

1 MEMBER JONES: -- then you
2 consider your system to be base line from that
3 point forward and you would be able to
4 reconcile to the dollar --

5 MR. DILDINE: Yes.

6 MEMBER JONES: -- anything that
7 you submit in your quarterly filings and you
8 would be able to show our compliance analyst
9 how you arrived at that exact number, each
10 exact number on your quarterly filing report?

11 MR. DILDINE: Well, I believe it
12 would be the most -- the next quarterly
13 filing. I'm trying to remember. Oh, no, it
14 would be March. I would have to look at the
15 date of when --

16 MEMBER JONES: Right. I'm talking
17 about when you base lined the system --

18 MR. DILDINE: Yes.

19 MEMBER JONES: -- what dictates
20 when the quarterly --

21 MR. DILDINE: Yes.

22 MEMBER JONES: -- filing would be

1 able to be reconciled. So you indicated you
2 would be able to reconcile to the quarterly
3 reports that you just -- you filled out the
4 last one, correct?

5 MR. DILDINE: Yes.

6 MEMBER JONES: But you would be
7 able to reconcile that one?

8 MR. DILDINE: Yes.

9 MEMBER JONES: So at a minimum,
10 I'm expecting you to be able to reconcile to
11 that report.

12 MR. DILDINE: Yes, that's fine.

13 MEMBER JONES: So I'm assuming
14 that you base lined. I'm characterizing as
15 base line, but --

16 MR. DILDINE: Okay.

17 MEMBER JONES: -- whatever
18 correcting measure you took to be able to
19 reconcile to the penny or to the dollar --

20 MR. DILDINE: Yes.

21 MEMBER JONES: -- to what you
22 submitted, you would be able to do that as of

1 the last report that you submitted?

2 MR. DILDINE: That's correct.

3 MEMBER JONES: Okay. Thank you.

4 Thank you, Mr. Chairman.

5 ACTING CHAIRMAN ALBERTI: Mr.
6 Dildine, I'm going to beat a dead horse here,
7 but I'm really curious about the system that
8 you are using.

9 MR. DILDINE: Yes.

10 ACTING CHAIRMAN ALBERTI: If I
11 went to you today and I said can you show me
12 every number, what are you calling them, the
13 POS numbers?

14 MR. DILDINE: Well, it's a PLU
15 number.

16 ACTING CHAIRMAN ALBERTI: PLU
17 number. Every PLU number, can you tell me
18 what every PLU number represents?

19 MR. DILDINE: Well --

20 ACTING CHAIRMAN ALBERTI: Could
21 you do that if I came in to the establishment?

22 MR. DILDINE: -- I would be taking

1 an educated guess, but I'm assuming that the
2 way it would breakdown would be that maybe
3 it's four to six digits long. Each digit
4 corresponds to a certain area of the computer.
5 But honestly, I'm just taking a stab at it.

6 ACTING CHAIRMAN ALBERTI: So you
7 don't -- you never get a list that says this
8 PLU number belongs to this food item?

9 MR. DILDINE: It assigns a -- when
10 you -- you get assigned a PLU number via your
11 location, I believe --

12 ACTING CHAIRMAN ALBERTI: Okay.

13 MR. DILDINE: -- in the database.

14 ACTING CHAIRMAN ALBERTI: Okay.

15 MR. DILDINE: So it's something
16 where you have undefined.

17 ACTING CHAIRMAN ALBERTI: All
18 right. But you have --

19 MR. DILDINE: And --

20 ACTING CHAIRMAN ALBERTI: -- are
21 aware of that.

22 MR. DILDINE: As soon as --

1 ACTING CHAIRMAN ALBERTI: Right?

2 MR. DILDINE: -- take -- click
3 that undefined, that already -- undefined
4 already has a PLU number on it.

5 ACTING CHAIRMAN ALBERTI: Right,
6 right. I understand.

7 MR. DILDINE: Okay.

8 ACTING CHAIRMAN ALBERTI: And you
9 label that area in the database, right?
10 That's how you assign --

11 MR. DILDINE: Not the categories.
12 We only label the items.

13 ACTING CHAIRMAN ALBERTI: Okay.
14 You label the items, but you -- but for each
15 item there is a PLU number that corresponds to
16 it at any given time like today, right now.

17 MR. DILDINE: Yes.

18 ACTING CHAIRMAN ALBERTI: For each
19 item there is a PLU number that corresponds to
20 that.

21 MR. DILDINE: Correct.

22 ACTING CHAIRMAN ALBERTI: Do you

1 ever -- are you capable of seeing a complete
2 list of items and PLU numbers, corresponding
3 PLU numbers?

4 MR. DILDINE: That's a good
5 question. I'm sure that there is a way to.
6 I would have to ask the Restaurant Manager, if
7 you will, because usually when it gets into
8 things like that, I call them up and they go
9 into see that.

10 ACTING CHAIRMAN ALBERTI: How do
11 you keep track of this, just by the computer
12 screen?

13 MR. DILDINE: How do I what?

14 ACTING CHAIRMAN ALBERTI: How do
15 you keep track of that, just by the computer
16 screen?

17 MR. DILDINE: The PLU numbers.

18 ACTING CHAIRMAN ALBERTI: Yes.
19 No, no. How you are assigning things.

20 MR. DILDINE: Oh.

21 ACTING CHAIRMAN ALBERTI: How do
22 you know it's right when it comes out?

1 MR. DILDINE: How do I keep track
2 of it?

3 ACTING CHAIRMAN ALBERTI: How do
4 you know? I mean, how do you verify that you
5 don't have the same number going to two
6 different PLU numbers?

7 MR. DILDINE: You can't have --

8 ACTING CHAIRMAN ALBERTI: The same
9 item going to two different PLU numbers.

10 MR. DILDINE: You can't have that.
11 PLU number is a unique identification in the
12 database.

13 ACTING CHAIRMAN ALBERTI: But you
14 could assign it whatever.

15 MR. DILDINE: No, you can't. You
16 can't assign PLU numbers.

17 ACTING CHAIRMAN ALBERTI: Okay.

18 MR. DILDINE: They are built into
19 the database.

20 ACTING CHAIRMAN ALBERTI: Not the
21 PLU number, but the item. I have a button
22 that is labeled wings and I have a second

1 button that is labeled wings. And they both
2 go to --

3 MR. DILDINE: It's --

4 ACTING CHAIRMAN ALBERTI: Oh, I
5 see what you are saying.

6 MR. DILDINE: -- categorized.

7 ACTING CHAIRMAN ALBERTI: Okay.

8 MR. DILDINE: Yes.

9 ACTING CHAIRMAN ALBERTI: And how
10 do you know you don't have two PLU numbers for
11 chicken wings?

12 MR. DILDINE: Because if there
13 were two PLU numbers, you would have an error
14 in the database.

15 ACTING CHAIRMAN ALBERTI: For
16 chicken wings?

17 MR. DILDINE: Yes. So if it had
18 the same PLU number --

19 ACTING CHAIRMAN ALBERTI: I'm
20 still confused. All right. But I understand.
21 I just -- I'll let that go. I'm just trying
22 to understand what we are facing in the

1 future.

2 MR. DILDINE: Well, okay.

3 ACTING CHAIRMAN ALBERTI: I mean,
4 what these systems are capable of doing.

5 MR. DILDINE: What I can do is --

6 ACTING CHAIRMAN ALBERTI: Because,
7 you know, it seems to me that systems like
8 this should be able to take a snapshot in time
9 of how things are assigned.

10 MR. DILDINE: Well, initially
11 during these investigations and when we found
12 out about this, I contacted Restaurant Manager
13 and asked them about this problem. They said
14 it was a known problem. What to do about it,
15 that was what they suggested.

16 I then asked them about the cloud
17 storage. I actually might have asked them
18 about that at a later time point, because I
19 was curious as to what was going on at night
20 with the computer system. And they mentioned
21 that it uploads to an external database. But
22 again, it doesn't retain any of that

1 information.

2 ACTING CHAIRMAN ALBERTI: Okay.

3 So their solution is to never use the same PLU
4 number twice?

5 MR. DILDINE: Yes, that was their
6 solution.

7 ACTING CHAIRMAN ALBERTI: Okay.

8 Thank you. Any other questions? Mr. Kline?

9 MR. KLINE: Just a couple follow-
10 ups.

11 REDIRECT EXAMINATION

12 MR. KLINE: I think you said that
13 you could label the items, but not the
14 categories. Is that what you said?

15 MR. DILDINE: Right. You can't
16 change categories.

17 MR. KLINE: And what are
18 categories, just so we're all clear?

19 MR. DILDINE: Categories are
20 things -- basically, you have food and you
21 have alcohol and it's separated into those two
22 categories. Now, you can have subcategories

1 amongst that where alcohol can be divided into
2 wine, hard liquor and however many other
3 subcategories that you might choose. And
4 that's all specifically for tracking purposes,
5 if you want to sync it up to some sort of
6 inventory management.

7 The system gets complicated enough
8 that you can get down to, you know, how much
9 food is in a track thing and you can track
10 your inventory that way. It gets pretty deep
11 and heavy into much tracking you can do.

12 MR. KLINE: Now, each PLU number
13 is assigned to a particular button on the
14 register, what we will call the register, on
15 the POS system, correct?

16 MR. DILDINE: No. It's not
17 assigned until you physically assign it.

18 MR. KLINE: Okay.

19 MR. DILDINE: It is basically a
20 loose number in space. You have to define all
21 the parameters for it. The only thing that it
22 is is it's assigned to a category.

1 MR. KLINE: Gotcha. Okay. Thank
2 you.

3 ACTING CHAIRMAN ALBERTI: Okay.
4 Thank you.

5 MR. KLINE: That's all I have of
6 the witness.

7 ACTING CHAIRMAN ALBERTI: Mr.
8 Dildine, I think you can step down. Thank
9 you.

10 Mr. Kline, I'm going to give you
11 five minutes for closing statement.

12 MR. KLINE: Oh, I don't think I'll
13 take that long. Thank you.

14 ACTING CHAIRMAN ALBERTI: Great.
15 Thank you.

16 MR. KLINE: Members of the Board,
17 thank you for having this hearing today. I
18 hope that the Board will return to what we
19 discussed at the outset in terms of what the
20 statute provides and what the Board's
21 procedures have been with respect to contested
22 applications.

1 I did not mean to suggest in
2 anything that I argued earlier that I think
3 that ANCs have any more authority than I
4 routinely argue that they have before the
5 Board. So I want to make that perfectly
6 clear.

7 But my point is when there is a
8 contested application, the way the Board has
9 resolved them, in all the cases of which I'm
10 aware, is to either accept the voluntary
11 agreement and resolve the matter or send the
12 matter to a Protest Hearing in which case
13 there is another party at the other table
14 known as the protestant who proceeds in this
15 case.

16 I think that the difficulties that
17 we have seen today in terms of how this
18 hearing has proceeded, in small measure
19 because it wasn't that difficult, sort of
20 highlights what the problem is with doing it
21 another way, is that we have an adversary
22 system that is based upon two sides battling

1 it out and then the truth finder, which is you
2 guys, in the case of the absent Board Members,
3 gals, making decisions.

4 And that doesn't change in these
5 circumstances. And I think that what we have
6 seen is the departure from that. And we would
7 ask the Board to return to that. And I think
8 that the testimony of the two individuals that
9 you have heard from today, who were the people
10 that have much to lose if this goes the other
11 way, was honest and direct.

12 There was nothing nefarious here.
13 There was no effort to mislead the Board when
14 they took over. They recognized at the outset
15 that there was a problem. The law was looked
16 at and there was an effort to try to address
17 the problem. And that's all this is about.

18 At the end of the day, what we are
19 really talking about in this case is a
20 difference in minimum food sales of \$125,000,
21 which is what is required under the existing
22 CR License and the existing modified tavern

1 license and that which would be required under
2 the amended cooperative agreement that has
3 been submitted to you.

4 So we would ask that you take that
5 all into account and would ask that you
6 approve the request for the substantial
7 change. Thank you.

8 ACTING CHAIRMAN ALBERTI: Thank
9 you, Mr. Kline. I think that concludes this
10 hearing. The Board will close the record, if
11 there is no objections.

12 As a Member of the Alcoholic
13 Beverage Control Board for the District of
14 Columbia and in accordance with ^U 405 of the
15 Open Meetings Amendment Act of 2010, I move
16 that the ABC Board hold a closed meeting for
17 the purpose of deliberating upon the request
18 for reconsideration of our decision and Board
19 Order No. -- I apologize.

20 Just one moment, please. We are
21 off the record.

22 (Whereupon, off the record for a

1 recess.)

2 ACTING CHAIRMAN ALBERTI: Okay.

3 We are back on the record for the
4 reconsideration of motion -- regarding the
5 Motion for Reconsideration with regards to
6 License No. 81909 per ^U 405(b)(4) of the Open
7 Meetings Amendment Act of 2010. Do I have a
8 second?

9 MEMBER SILVERSTEIN: Second.

10 ACTING CHAIRMAN ALBERTI: Thank
11 you. How say you, Mr. Nophlin?

12 MEMBER NOPHLIN: I agree.

13 ACTING CHAIRMAN ALBERTI: Mr.
14 Brooks?

15 MEMBER BROOKS: I agree.

16 ACTING CHAIRMAN ALBERTI: Mr.
17 Jones?

18 MEMBER JONES: I agree.

19 ACTING CHAIRMAN ALBERTI: Mr.
20 Silverstein?

21 MEMBER SILVERSTEIN: I agree.

22 ACTING CHAIRMAN ALBERTI: And I

1 agree, that's 5-0. As it appears the motion
2 has passed, I hereby give notice that the ABC
3 Board will recess this proceeding to hold a
4 closed meeting in the ABC Board Conference
5 Room pursuant to the Open Meetings Amendment
6 Act of 2010 and issue an order within 90 days.

7 MR. KLINE: Great. Thank you.

8 ACTING CHAIRMAN ALBERTI: Thank
9 you for coming.

10 (Whereupon, the Fact-Finding
11 (Contested) Hearing in the above-entitled
12 matter was concluded at 1:36 p.m.)

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