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

CHAIRPERSON MILLER: Okay, good afternoon. I'm going to, much better, all right. Thank you. Okay. I'm calling Case Number 13-251-0068, Fur Factory located at 33 Patterson Street, NE, license number 60626 and ANC 6C.

And I see the parties have come to the table. Would you identify yourselves for the record?

MR. RIVERO: Good afternoon, Board Members. Fernando Rivero for the District of Columbia.

MR. MPRAS: Good afternoon, Emanuel Mpras for Fur Factory.

MR. ROMFU: Good afternoon, Michael Romfu Raymond (phonetic) for Fur Factory.

MEMBER SILVERSTEIN: I'm sorry, your name again, sir.

MR. ROMFU: He can't really speak,

1 so I can just share his name.

2 MR. MPRAS: Mr. Silverstein, Mr.
3 Shah had a sports injury and his jaw is wired
4 shut.

5 MALE PARTICIPANT: I'm sorry.

6 MR. ROMFU: He's here for Fur
7 Factory, Ahmed Shah.

8 CHAIRPERSON MILLER: Okay and can
9 you just tell us your positions with Fur
10 Factory?

11 MR. ROMFU: Ahmed is the general
12 manager of Fur Factory.

13 CHAIRPERSON MILLER: Okay and are
14 you an owner?

15 MR. ROMFU: An officer.

16 CHAIRPERSON MILLER: An officer,
17 okay. Okay this is a summary suspension
18 hearing. Do we have any preliminary matters?

19 MR. RIVERO: That is correct. The
20 parties have a settlement proposal to present
21 to the Board at this time.

22 CHAIRPERSON MILLER: Okay.

1 MR. RIVERO: Copies of that
2 settlement proposal are hopefully being
3 provided to the Board Members to make it
4 easier to follow along with what I'm about to
5 say.

6 CHAIRPERSON MILLER: Right, we
7 were just recently each handed a copy.

8 MR. RIVERO: That's great. Good
9 afternoon, Board Members. We're here in the
10 matter of Fur Factory licensed establishment
11 located at 33 Patterson Street, NE, Washington
12 D.C. for a summary suspension proceeding.

13 The MPD exercised its powers to
14 summarily suspend the establishments
15 operations for 96 hours under DC Official Code
16 25-827 on May 6, 2013, following a report of
17 a stabbing injury to a patron that took place
18 inside the establishment.

19 As investigations by ABRA,
20 investigative report number 13-251-00068,
21 substantiated the finding that on May 6th a
22 patron was stabbed during an altercation that

1 took place inside the premises. A knife was
2 recovered inside the establishment. The
3 patron injured was 19 years old. The
4 entertainment offered on the evening in
5 question, Sunday evening, was intended for
6 patrons 21 years and older.

7 The band known as TCB was featured
8 as the evening's entertainment. That evening
9 the establishment had 27 security members and
10 10 MPD reimbursable detail officers in place
11 and a camera system consisting of 40 cameras
12 that retain video recordings for at least 60
13 days.

14 The Board subsequently found that
15 the establishment's operations presented an
16 imminent danger and continued the suspension
17 initiated by MPD. This hearing followed. In
18 the interim, the Office of the Attorney
19 General investigated the case and met with the
20 licensee to discuss this serious incident.

21 I have formulated a plan with
22 which the licensee agrees that will address,

1 I believe, the imminent danger caused by the
2 establishment under the facts of this case.
3 First a review of the legal standard is in
4 order.

5 The legal standard that this plan
6 must meet is the "imminent danger standard"
7 found in DC Official Code 25-826, the 2001
8 edition. The complete phrase is "that the
9 operations of a licensee present an imminent
10 danger to the health and safety of the
11 public."

12 Although no more clarification is
13 provided in the statute, the imminent danger
14 standard is the same as that found in the code
15 provision permitting MPD to close the
16 establishment. And that provision contains
17 additional language that can be applicable to
18 the Board's standard.

19 The MPD provision found at 25-827,
20 states that MPD may close an establishment if
21 it "presents an imminent danger to the health
22 and welfare of the public" and "there is no

1 immediately available measure to ameliorate
2 the finding of imminent danger". That second
3 clause thus provides that the imminent danger
4 standard is a heightened standard from an
5 evidence perspective and that the standard can
6 be met if there is nothing else that can be
7 done to address the source of the imminent
8 danger.

9 Because our office has developed a
10 plan that we believe will address the imminent
11 danger based upon the facts of the case, we
12 therefore believe that the adoption of the
13 plan would be furtherance of the conclusion
14 that there would be no continued grounds to
15 maintain a suspension of the establishment's
16 operations.

17 Thus I go into the details of the
18 plan to ameliorate imminent danger. The
19 Government incorporates the investigative
20 report into its presentation, a copy of which
21 has been reviewed by the Board. Each element
22 in this proposed plan addresses specific facts

1 in the report. The parties are in agreement
2 as to the facts stated in the report.

3 Because the licensee was in
4 apparent compliance with its security plan on
5 this night in question, I scrutinized the
6 report and engaged the licensee in order to
7 determine the probable cracks or weaknesses in
8 the licensee's method of operation. And that
9 process has yielded the following plan.

10 The first element of the plan that
11 you have before you reads as follows. Night
12 and Day Management, LLC, trading as Fur
13 Factory, the licensee, agrees to request that
14 at least one MPD reimbursable detail officer
15 be posted near the establishment's exit to
16 permit the licensee's security employees to
17 more readily notify MPD of patrons being
18 escorted from the premises upon removal of the
19 patrons.

20 Licensee agrees to escort violent
21 aggressors to the MPD officer posted near the
22 exit. The report indicates that the

1 aggressors in the altercation were escorted by
2 club security officers, members to the
3 establishment's exit. Video footage then
4 shows the aggressors immediately fleeing the
5 scene.

6 As a proffer, evidence at a
7 hearing would show that the moment of
8 escorting the aggressors, MPD officers were
9 not immediately in front of the establishment,
10 but at other locations such as the parking
11 lot. Because it is likely that one of the
12 aggressors may have been the assailant who
13 injured the victim, then in order to increase
14 the likelihood of catching any perpetrator, a
15 plan should be in place to allow the
16 establishment to easily transfer the
17 aggressors into the hands of MPD.

18 The language in the plan
19 recognizes the fact, however, that MPD's
20 agreement would be required. The second
21 element of the plan before you reads as
22 follows. The licensee agrees to incorporate

1 revised training on escorting patrons who are
2 violent aggressors to the posted MPD officers.

3 Now this point is instituting the
4 licensee's plan in the portion of the plan
5 that I just described about ensuring the
6 presence of an MPD officer near an exit to
7 handle any aggressors as they are immediately
8 put out. The third element of the plan that
9 you have before you reads as follows. The
10 licensee will no longer permit the TCB Band or
11 its members to perform at the establishment.

12 This point in the plan gets at a
13 significant factor that likely contributed to
14 the incident on the night in question. The
15 report indicates that management was aware
16 that the entertainment act featured on Sunday
17 nights was associated with incidents of
18 violence in proximity to its performances.

19 However, as a proffer, evidence at
20 a hearing would show that the establishment
21 featured the band on Sunday nights over a
22 series of Sundays weeks prior to the incident

1 and that during the majority of those nights
2 no violent incidents arose in the connection,
3 in connection to the band. Because the
4 potential for a violent incident is reasonable
5 to appreciate based on the documented history
6 of performances at other venues associated
7 with this musical act, the licensee has
8 voluntarily agreed to not permit future
9 performances from the band nor from any of its
10 members.

11 We believe that the elimination of
12 these performances will go a long way,
13 frankly, to erasing the imminent danger to the
14 public, especially as a comparison with the
15 entertainment offered on other evenings.
16 Fridays and Saturdays would tend to show a
17 drastic reduction in the incidents of violence
18 with respect to those evenings.

19 The fourth element in the plan
20 before you reads as follows. Licensee agrees
21 to document the date on which any weapons are
22 recovered from patrons and to consult MPD on

1 the disposition of the weapons. Licensee also
2 agrees to post a sign indicating that any
3 weapons recovered from patrons will be
4 confiscated.

5 Now a photograph in the report
6 shows a container with several knives. As a
7 proffer, evidence at a hearing would show that
8 the knives were recovered from patrons at the
9 entrance of the establishment over several
10 nights. But it is unclear on what nights
11 those weapons were recovered.

12 I realized that the photograph
13 contained hidden and potential information
14 that could serve the licensee to improve its
15 operations. Thus if the date of weapon
16 recovery were documented and a pattern could
17 then be established to show, for instance,
18 that a majority, if not all, of the weapons in
19 the photograph were being recovered on Sunday
20 nights as opposed to, for instance, Friday or
21 Saturday nights.

22 This information could assist the

1 licensee in identifying problems that stem
2 from the establishment's clientele or the
3 entertainment offered that attracts that
4 clientele. The requirement to consult MPD on
5 the disposition of the weapons, protects both
6 the licensee and the public because all
7 concerned will rely on the judgment of MPD for
8 the disposition of the weapons. And such
9 reliance is presumptively reasonable.

10 The term weapons here of course is
11 broadly construed. Although the photograph
12 only contained knives, weapons can also be
13 guns or anything else. So the word weapon is
14 construed broadly in this agreement.

15 The fifth element of the document
16 you have in front of you reads as follows.
17 Licensee agrees to resume the use of "wands"
18 at the entrance to the establishment for the
19 purpose of detecting metal objects, including
20 weapons carried by patrons.

21 The report indicates that the
22 establishment used so-called wands, devices to

1 detect metal objects on patrons in the
2 entrance but that the use of those wands was
3 discontinued because somehow the devices were
4 not reliable, that they were unreliable. As
5 a proffer, evidence at a hearing would show
6 that the devices may have proven too sensitive
7 by continuing to emit sound near an area of
8 the body where there would be no apparent
9 metal object.

10 It seemed to us that this decision
11 may have been a contributing factor to the
12 evening's incident because the implication was
13 that a security member's hands would not be
14 used as a "backup" to assert the reason for
15 the wand's sound. Therefore, the method now
16 employed with this plan utilizes both wands
17 and hands to increase the likelihood of
18 detection of metal objects.

19 The sixth point in the plan that
20 you have before you reads as follows.
21 Licensee agrees to resume the use of
22 electronic devices to detect false ID's

1 presented by patrons. The report indicates
2 that the victim was 19 years old. And as I
3 have stated before, the intended audience that
4 evening was persons 21 years old or older.

5 As a proffer, evidence at a
6 hearing would show that the establishment
7 employed the use of electronic ID scanning
8 devices but that the use of the devices was
9 discontinued because the devices proved
10 unreliable. In the experience of the
11 licensee, manual detection and review of an ID
12 proved more reliable.

13 This is because the sophistication
14 of certain false ID's has increased to the
15 point of not being detected by electronic
16 scanners. The devices, for instance, would
17 not detect as a false ID identification
18 presented by a patron who was in fact using,
19 for instance, his brother's valid ID or
20 another similar ID.

21 However, the implementation of
22 both the electronic scanning and manual

1 scanning methods will increase the likelihood
2 of detecting a false ID. The electronic
3 scanner will display a red light immediately
4 upon scanning a false ID, thus sparing the
5 security member from using additional time to
6 manually verify the ID.

7 This "free time" can then be
8 employed to increase the time of ID scrutiny
9 when the electronic device emits a green light
10 indicating a valid ID. In other words, the
11 green light will indicate that the
12 verification process is not concluded and that
13 manual inspection is therefore necessary.

14 The seventh point in the plan
15 before you reads as follows. Licensee agrees
16 to provide training on the use of the ID
17 detecting devices to include the use of manual
18 ID review techniques in addition to the ID
19 detecting devices. This point is merely the
20 licensees part in instituting the plan that I
21 just described above via training.

22 The eighth point in the plan

1 before you reads as follows. Licensee agrees
2 to incorporate the change in its security
3 practices contained in this agreement into its
4 security plan and will provide a revised plan
5 within 14 days. This point allows ABRA to
6 have the licensee's most current plan on file
7 to assist in investigation of future
8 incidents. However, all points described in
9 this plan will be in effect immediately and
10 prior to the resumption of the establishment's
11 operations, which the licensee has represented
12 the licensee is able to do.

13 The ninth point in the plan before
14 you reads the revised security plan will also
15 address the establishment's procedures for
16 preserving a crime scene. This point is
17 designed to bring the licensee's security plan
18 in conformity with the Omnibus Alcoholic
19 Beverage Regulation Congressional Review
20 Emergency Amendment Act of 2013, Bill 20-208,
21 which increased the minimum requirement for a
22 security plan under DC Official Code 25-403

1 and became effective in April of 2013.

2 This is the provision for license
3 renewals that will be applicable to the
4 licensee. In addition, the report indicated
5 that an employee picked up the knife that was
6 found in the establishment on the ground and
7 placed it on the bar counter.

8 A police officer then picked up
9 the knife. Thus, this point will provide
10 training to the security employees of the
11 establishment in maintaining a crime scene by
12 not, for instance, handling any weapon that
13 may have been involved in the commission of a
14 crime.

15 The tenth point in your plan reads
16 as follows, the revised security plan will
17 also state that cameras utilized by the
18 establishment will be operational. In other
19 words, I the licensee agree to operate cameras
20 that work. This point is also designed to
21 bring the licensee's security plan in
22 compliance with the law that I just mentioned.

1 The eleventh point in the plan
2 before you reads as follows. The revised
3 security plan will also state that any footage
4 of a crime of violence or a crime involving a
5 gun will be maintained for minimum of 30 days
6 unless otherwise specified in the security
7 plan and that any security footage will be
8 made available within 48 hours upon request
9 from ABRA or MPD.

10 This point will also bring the
11 security plan in compliance with the new law.
12 It allows for the maintenance of footage for
13 longer than 30 days. And under no event can
14 footage be kept for less than 30 days because
15 that is now the minimum legal requirement.

16 The licensee's current plan allows
17 for the storage of video for up to 72 days.
18 And a settlement agreement in a prior matter,
19 Case Number 10-251-00059, already placed the
20 obligation on the licensee to maintain video
21 recordings for 30 days.

22 So this point presented to you

1 today simply maintains the status quo. As a
2 proffer, no evidence would show that the
3 licensee failed to maintain video recordings
4 or to provide the recording to ABRA upon
5 request.

6 The final point in the plan before
7 you reads as follows. This matter shall be
8 referred to the Office of the Attorney General
9 for a show cause review. The proposed plan
10 does not incorporate a fine because it is the
11 Government's view that a summary suspension
12 proceeding is not punitive in nature and is
13 focused on the health and safety of the
14 public.

15 Nevertheless, referral to our
16 office for show of cause review ensures a
17 proper consideration of these facts under the
18 separate standard that applies to show cause
19 proceedings, which includes a punitive
20 purpose. Thank you for listening to my
21 presentation today.

22 That concludes the Government's

1 presentation on the settlement plan and the
2 summary suspension proceeding. And the
3 Government is available for questions if there
4 are any.

5 CHAIRPERSON MILLER: Okay. And
6 I'll just ask if the licensee does concur with
7 this proposal?

8 MR. MPRAS: Madam Chairman, we do
9 concur.

10 CHAIRPERSON MILLER: Okay. I'm
11 just going to ask a couple questions and then
12 let other Board Members ask questions because
13 I'm pretty sure they have them. I thought at
14 the beginning of your discussion, Mr. Rivero,
15 that you said something about, that the
16 establishment had 40 cameras.

17 And I thought you made a reference
18 to footage being preserved for 60 days. Am I
19 mistaken?

20 MR. RIVERO: I believe that was a
21 statement made in the report by a witness.
22 The legal obligation of the licensee today

1 stems from the OIC that was brought in a prior
2 matter, the case number that I just mentioned.

3 And the floor in that agreement is
4 30 days, which comports with the current legal
5 requirement. And by the way, that 30 days
6 that I'm talking about in the prior agreement
7 became effective prior to the effective date
8 of the law that I just mentioned.

9 CHAIRPERSON MILLER: And again, I
10 want to make sure I understand your
11 representation. Is it your representation
12 that the licensee is able to do numbers one
13 through seven immediately?

14 MR. RIVERO: The only item here
15 that is allowed to take effect after
16 immediately, is the submission of the revised
17 plan in which I gave them 14 days to file that
18 plan. So for instance, if the licensee
19 contemplated opening for business this
20 weekend, all other elements would have to be
21 in place.

22 That includes the outreach to MPD,

1 the discussions about the agreement mentioned.
2 It includes all of the training that I have
3 discussed here. It includes the institution
4 of the use of the devices that I have
5 discussed here, everything else.

6 CHAIRPERSON MILLER: Okay. And do
7 you have any knowledge how likely it is that
8 MPD would go along with the request in number
9 one?

10 MR. RIVERO: A last note, MPD is
11 not, unfortunately under my purview and
12 they're an independent agency. They may make
13 their own determinations. But if there are
14 multiple MPD officers it might be reasonable
15 to have someone there in front of the
16 establishment for this purpose that I have
17 described.

18 However, it's also possible that
19 something may happen, for instance, in the
20 parking lot across the street that may
21 necessitate all four officers tending to the
22 matter, thus not having someone present. So

1 these things are possible. But I just,
2 unfortunately, can't say that MPD will in fact
3 agree. That's why the agreement understands
4 that it's not possible to have that
5 arrangement without MPD's cooperation.

6 CHAIRPERSON MILLER: So I guess my
7 question is with respect to immediate danger
8 and harm to the public that I'm under the
9 impression that if one through seven of the
10 proposal was implemented that it was your
11 position, the Government's position, that
12 there would not be immediate danger to the
13 public.

14 MR. RIVERO: That is correct. But
15 I want to make one point very, very clear.

16 CHAIRPERSON MILLER: Okay, so my
17 point is what happens if number one falls out?

18 MR. RIVERO: I want to make this
19 point very, very clear and I now understand
20 what the Chair's question is, I cannot say
21 that any one given point will be the point
22 that immediately and effectively erases the

1 imminent danger. This plan encompasses the
2 operation of all points, what we call the
3 totality of the circumstances in the law,
4 right.

5 The totality of the operation of
6 all of the elements is what reduces the
7 imminent danger. So I can't just take one
8 out, for instance, and say well if that
9 particular point is not in play then suddenly
10 everything falls apart. It is the operation
11 of all of them together.

12 So if number one is not in play, I
13 will not say that suddenly we have an imminent
14 danger situation because all of the other
15 points were premised on attacking what I saw
16 were the weaknesses in the establishment's
17 security and method of operation.

18 Largely, if I were to credit some
19 importance, it seems to me that the
20 elimination of the entertainment on Sunday
21 nights really will go a very long way to
22 eliminating the imminent danger given the

1 history of the establishment and the fact that
2 the history would show that this particular
3 act was associated with incidents of violence.

4 And prior to the institution of
5 the act at the establishment you didn't have
6 this kind of, there was no stabbing inside of
7 the club, excuse me.

8 CHAIRPERSON MILLER: Okay, thank
9 you. I'm going to let other Board Members ask
10 questions. Who has one? Anybody? Mr.
11 Brooks.

12 MEMBER BROOKS: How many exits do
13 you have?

14 MR. ROMFU: We have all together,
15 three exits.

16 MEMBER BROOKS: Three.

17 MR. ROMFU: Yes.

18 MEMBER BROOKS: Okay, so then when
19 patrons leave, do they leave by three
20 different exits?

21 MR. ROMFU: No, they leave, we had
22 to add another entrance at the front of our

1 building because there was a building behind
2 us. So it makes it actually easier now
3 because everybody comes out, they go in the
4 front door then you have the double doors on
5 the side on the main level that you come out
6 of, if the main level is open.

7 And these doors are two huge, wide
8 metal doors right outside. Like if you look
9 at this night, on this night we had ten police
10 officers with less than 300 patrons inside.
11 We had ten police officers, they said we could
12 have four. But we decided to have ten.

13 And everybody comes out that door.
14 It's one door that comes out. I mean, we
15 can't control the police officer where to be,
16 but when you have ten officers it's enough
17 officers pretty much to cover that whole area.

18 MEMBER BROOKS: Okay and speaking
19 of police officers, MPD, now has MPD agreed to
20 item number one here as to where they are
21 posted?

22 MR. RIVERO: I can answer that

1 question because item number one is just a
2 part of our negotiations that we've had in the
3 last two days. So MPD is likely not aware of
4 this arrangement. And it is the licensee's
5 agreement to approach the MPD and to make the
6 request that the next reimbursable detail
7 include one posting by the exit.

8 MEMBER BROOKS: Okay, and the, to
9 be sure I understand, the weapons that you may
10 confiscate, are they then turned over to the
11 police department?

12 MR. RIVERO: The agreement states
13 that the licensee will consult MPD on the
14 disposition. That means, for instance, that
15 if MPD says to the licensee in their view you
16 may destroy those knives, then their on
17 reliance of MPD, they will destroy the knives.

18 If for instance a gun is involved
19 and MPD decides give us that gun, then they
20 give them the gun. If MPD decides give us
21 those knives, then the licensee gives them the
22 knives.

1 So really it's MPD that calls the
2 shots. If MPD says give us all the weapons
3 then they just hand them over. That's why the
4 language simply says that MPD will be
5 consulted because we don't know in advance of
6 time whether MPD will simply say give them to
7 us or go ahead and throw them in the trash.

8 MEMBER BROOKS: Thank you, Madam
9 Chair, that's all I have.

10 CHAIRPERSON MILLER: Okay, thank
11 you. Others? Mr. Silverstein.

12 MEMBER SILVERSTEIN: Yes. First,
13 is the exit door to which you refer in number
14 one in public space? Is there anything that
15 would stop the police from manning or being
16 outside that door because they don't go onto
17 private space?

18 MR. ROMFU: No, it doesn't go,
19 it's the exit. The front door exit is level
20 with the front door they enter from. So on
21 one side of the building you have four double
22 doors, if this is the front of the building

1 you have four double doors on this side as an
2 exit.

3 And you have four doors that get
4 you in as far as the entrance on this side.
5 So everybody pretty much, like on a night like
6 this if the main level is open, which it was
7 open, they come out those double doors which
8 are right in the front.

9 MEMBER SILVERSTEIN: And they're
10 in public space. It's not that there's a yard
11 or something like that, that the police would,
12 okay.

13 MR. ROMFU: No, there's not, no.

14 MEMBER SILVERSTEIN: There were
15 three incidents of violence in the past three
16 months there. And you mention that on the
17 last one TCB, Total Control Band was
18 performing.

19 Were they performing for the other
20 two as well, for the quadruple stabbing and
21 for the shooting that was outside of the bar
22 but was somehow?

1 MR. ROMFU: Well the thing is that
2 on the week that they had this incident, we
3 weren't even open that week. What is it, I'm
4 sorry. There was two shootings back to back.
5 I think one occurred the same night that we
6 were open.

7 But they're not even sure if
8 that's any connection with us or not. This
9 happened after we closed. And then the
10 following, another incident happened. We
11 weren't even open that week. So I feel like
12 they wanted to pin it on somebody and but that
13 week we were not open.

14 So there's two incidents that
15 happened. But the following, we weren't even
16 open that week.

17 MEMBER SILVERSTEIN: No further
18 questions.

19 CHAIRPERSON MILLER: Okay.
20 Others? Mr. Jones.

21 MEMBER JONES: Thank you, Madam
22 Chair. Mr. Rivero, question for you.

1 Regarding item one considering the uncertainty
2 that you agree is there in terms of whether or
3 not the police will comply with that, was
4 there any consideration given to requiring the
5 licensee to escort the alleged assailant in an
6 incident and hand them over to their MPD
7 reimbursable detail regardless of where they
8 may be stationed?

9 MR. RIVERO: Well one of the
10 concerns is that for instance if the MPD
11 police officer happens to be, you know, I
12 thought about this, what if the MPD officer is
13 responding to something that happened across
14 in the parking lot area and the security
15 officer then escorts someone, that's a
16 considerable distance from the street to go
17 into the parking lot to search for officers
18 that may be addressing a particular situation.

19 I don't know whether that's
20 necessarily in fact the safest thing to do
21 given a situation where most of these
22 incidents may occur when or at least in the

1 experience of the cases I have reviewed, occur
2 when people are being led out. And there are
3 not just the security employee and the
4 supposed aggressor and police on the scene,
5 but also just lots of people being moved out.

6 And so I felt like the safest
7 thing to do was to have this pre-arranged
8 understanding where someone would be posted in
9 front and the distance then would be a safer
10 distance to cross, you know, to the sidewalk
11 or even the middle of the street right there
12 in front of the club because I believe the
13 street is blocked by both ends. People can't
14 drive in front of the club.

15 So that's a much safer distance
16 and that's the contemplation. So even if, for
17 instance, there isn't someone right at the
18 exit way it's still a reasonable distance to
19 cross where the police are often in fact
20 posted which is like at the sidewalk or right
21 in the middle of the street that has been
22 blocked.

1 That's not, I think, an
2 unreasonable distance to cross. If they are
3 further than that, however, that might raise
4 some issues and of public safety. And they
5 have in fact, the police officers, have in
6 fact on certain nights gone beyond those areas
7 simply to respond to something that is
8 happening that doesn't take place in front of
9 the club.

10 So that's why I think the onus I
11 placed it on the licensee to engage MPD and to
12 have somebody there. But the standard
13 practice, particularly on nights where there
14 isn't anything happening, is to have the
15 officers standing in that area that I
16 mentioned, like around the sidewalk or the
17 middle of the street. That's the
18 understanding of the parties when we discussed
19 this arrangement.

20 MEMBER JONES: Okay and in your
21 characterization of item one, is that how you
22 envisioned it in terms of them kind of being

1 stationed where they normally would be
2 stationed or would you --

3 MR. RIVERO: Either there or
4 closer. That distance range, I think I'm
5 comfortable with that distance range because
6 it's a, even if they were in the middle of the
7 streets I think it's a reasonable distance to
8 cross.

9 MEMBER JONES: Okay, now would it
10 be reasonable to have that language in there,
11 that being putting the onus on the licensee to
12 take that next step to try and least make an
13 effort to hand the alleged assailant over to
14 the MPD officer if he is within that
15 reasonable zone as we defined it?

16 MR. RIVERO: I don't think there's
17 a problem with that at all. Obviously when
18 you have words on a page that create mental
19 pictures, people are going to have different
20 mental pictures in their heads.

21 MEMBER JONES: Yes.

22 MR. RIVERO: So some people may

1 visualize that officer that we're talking
2 about six inches from the threshold of the
3 establishment, right and others may envision
4 that officer 20 feet from the threshold of
5 that establishment, a distance of which I
6 consider to be reasonable.

7 So when the language indicates,
8 when the language indicates that the licensee
9 agrees to escort violent aggressors to the MPD
10 officer posted near the exit, the use of the
11 word near was deliberate because near the exit
12 is, comports with the parties understanding
13 that the distance incorporates and includes
14 the customary position of the officer, which
15 is when we say, we can also use the language
16 immediately in front of the club, which again
17 is typically the sidewalk or that street area.

18 But also of course immediately in
19 front of the club could also mean six inches
20 in front of the threshold. So that's the
21 area, whether we use the word near or whether
22 we use the phrase immediately in front of the

1 club, I'm indifferent. I could use either
2 phrasing. But that's the distance that the
3 parties are contemplating.

4 MEMBER JONES: Okay, I guess --

5 MR. RIVERO: Does that get at the
6 question?

7 MEMBER JONES: Yes, for the most
8 part. My concern when I read this or heard
9 you speak to it and when I read it, was that
10 the firm burden or measure of compliance is
11 simply making a request. If MPD says no to
12 that request than the licensee has met their
13 burden and they passed item one.

14 The last sentence of that seems to
15 be tied to whether or not the MPD responds in
16 the affirmative. If they do not respond in
17 the affirmative than the licensee isn't
18 obligated to address the last sentence of item
19 one, based on how I interpret it and based on
20 how I read it. So I wanted to get
21 clarification on you, what your intent was for
22 item one to make sure we were in sync or

1 confirm that we were not.

2 MR. RIVERO: Right. What I
3 certainly didn't want to see is a repetition
4 of the facts of this case where there, you
5 know, people were let out and there was nobody
6 there, okay. The standard, as I understand
7 it, is to have officers posted immediately in
8 front of the club. And that means the
9 sidewalk space, the street there with the area
10 that is blocked.

11 That is the distance the parties
12 contemplated. That is what we mean with the
13 sentence licensee agrees to escort violent
14 aggressors to MPD officers posted near the
15 exit. And that does not necessarily hinge on
16 whether MPD agrees to have someone, for
17 instance, right at the door because under
18 their customary practice, they would be posted
19 immediately in front of the establishment.

20 And that's what was different in
21 this case. So had there been someone
22 immediately in front of the establishment and

1 had there been this training in place and this
2 understanding of the practice, then you would
3 have had, you would have seen or would have
4 anticipated the MPD officers to receive the
5 aggressor because the club employees would
6 just bring them across that distance that
7 we've been discussing.

8 MEMBER JONES: Fair enough.

9 Switching gears a little bit, shifting to item
10 four. I had a concern or a question regarding
11 the verification of consultation of MPD.

12 If the licensee confiscates a
13 weapon and the measure is to have them consult
14 with MPD and then follow MPD's guidance, what
15 verification do we have that the licensee
16 actually did perform and get consult or did
17 they just choose to not consult with MPD and
18 follow their own guidance?

19 MR. RIVERO: Okay. Well we could
20 have, this is a simple matter and it's a good
21 question to address, is that there will be a
22 documentation requirement quite simply. They

1 have to actually document what they did. So
2 it could be, it could take any number of
3 forms.

4 One of the reasons I hesitate, for
5 instance, to say okay, you must at the end of
6 the night ask a particular MPD reimbursable
7 detail officer what to do with the weapons
8 recovered that night because if there is some
9 sort of situation that requires that these MPD
10 officers be used elsewhere, which has often
11 happened, then I would set the licensee up for
12 automatic failure under that provision.

13 So under, if you contemplate that
14 kind of a situation, then it would be
15 reasonable for the licensee to call an officer
16 the next day, to send an e-mail, something
17 that could then be documented in the incident
18 log. We sent an e-mail to Officer Smith or we
19 called Officer Jones and we left a message or
20 we spoke and we requested what to do with
21 these weapons.

22 So that's what I would envision in

1 terms of documentation. I hesitated to pin
2 the act on that very night because you never
3 know if something might happen. But yes, the
4 consultation is not, is still a requirement.
5 It's on the licensee to do that.

6 MEMBER JONES: Okay. And the last
7 item regarding item five, the use of wands and
8 one's more a curiosity question or aspect of
9 it's more of a curiosity element and then the
10 other's more of a practical implementation
11 standpoint. So I'll stick to the practical
12 implementation aspect of it.

13 When will wands be used? Will
14 they be used at any point the establishment is
15 in operation, any time the doors are open,
16 throughout the entire day of Sunday only?
17 When you put this in here what did you
18 envision as being the guidance to provide the
19 licensee as to when they were expected to use
20 wands?

21 MR. RIVERO: Sure, I can answer
22 that question. The answer is whenever their

1 doors are open for business. The licensee is
2 normally open Friday and Saturday. To have
3 required a clientele on Sundays to be treated
4 differently from clientele's on Fridays and
5 Saturdays raised questions to me that I did
6 not think were appropriate.

7 I think it's important to treat
8 everybody the same. And so if we, if the
9 point is to protect the public, it's to
10 protect the public on Fridays and Saturdays
11 too, not just Sundays. And so that's why
12 these requirements apply when the licensee is
13 operating.

14 MEMBER JONES: Thank you. Thank
15 you, Madam Chair.

16 CHAIRPERSON MILLER: Okay, Mr.
17 Alberti.

18 MEMBER ALBERTI: I'm not sure if I
19 should be asking Mr. Rivero or Mr. Raymond.
20 But I'll throw the questions out. It's not
21 clear to me on number four that this requires
22 them to confiscate all weapons that they may

1 discover when they're either wandering or
2 patting someone down. Is that understood?

3 MR. RIVERO: Well, sure. There's
4 a sign posted because that's part of the
5 requirement, right. The public will be warned
6 that if there are any weapons recovered from
7 someone that those weapons will not be handed
8 back to the patron.

9 But this by the way, is their
10 standard practice today. So if today or, you
11 know, in the past when the licensee was
12 operating and a knife was discovered, the
13 knife was not handed back to the patron, it
14 was confiscated.

15 So the new element here is the
16 consultation with MPD such that the weapons
17 are not in any way, shape or form, returned to
18 the patron at any further point in time. So
19 the patron, because of the sign, is put on
20 notice that that patron risks losing
21 possession of that particular property if that
22 person chooses to stay in line and subject

1 himself or herself to a security pat down.

2 MEMBER ALBERTI: Thank you. In
3 number two, do we, does the current security
4 plan detail who is trained on escorting
5 patrons out and how often they are?

6 MR. RIVERO: The security plan
7 details that training in diffusing violent
8 altercations is provided. The security plan
9 is not specifically detailed with respect to
10 how, well it, the plan mentions such
11 techniques as using, for lack of a better term
12 verbal Judo in situations where you verbally
13 diffuse a situation and use the same
14 techniques until the exit.

15 But it does not very specifically
16 deal with the situation of what do you do when
17 the person reaches the threshold, which is of
18 course a fact of this case. And that's why we
19 have the situation where this agreement is
20 going to be a function of new training.

21 And so you have to tell them. But
22 you can't just escort them at the door and

1 there's your job because that's what the
2 current plan says right now. You have to tell
3 them something more because we have an
4 additional step. And so the security plan
5 will be changed to reflect that additional
6 step.

7 There is current training. But it
8 just doesn't go far enough.

9 MEMBER ALBERTI: Is it safe? But
10 okay, so thank you for that. But I'm still
11 curious as to what are the requirements on who
12 is trained, how soon new employees are trained
13 before their services?

14 MR. RIVERO: Security employees
15 are trained prior to employment and security
16 employees are trained on a regular basis. The
17 security plan does not specify, for instance,
18 and I will defer to the licensee on that
19 provision, that security employees are
20 trained, you know, every 60 days is on a
21 regular basis like that. That kind of an
22 interval time is not specified in the plan.

1 MEMBER ALBERTI: Would you care to
2 speak to that?

3 MR. MPRAS: There's a training for
4 new employees prior to hiring. But there's
5 also a I guess you have a refresher that's
6 done every six months, twice a year.

7 MEMBER ALBERTI: Every six months?

8 MR. MPRAS: Every six months. Two
9 times a year.

10 MEMBER ALBERTI: I guess lastly it
11 says here that you're going to resume the use
12 of electronic devices. And I'm a little
13 curious about what the manual techniques are
14 that you use and if those are detailed in the
15 security plan or will be.

16 MR. MPRAS: The manual techniques
17 are detailed in the security plan. It's
18 simply --

19 (Off the record comments)

20 MR. MPRAS: -- and there's good
21 reviews from MPD. But basically you have to
22 ask them to remove the ID from their wallets

1 and you inspect it. You make sure that person
2 standing in front of you is the person on the
3 ID. You verify that the ID is not expired and
4 the age of the person is the appropriate age
5 for that evening.

6 MEMBER ALBERTI: Do you use any
7 tools?

8 MR. MPRAS: A flashlight is used
9 to better inspect the ID in low light. And a
10 UV light is also present to detect holograms
11 if applicable for that ID.

12 MEMBER ALBERTI: And does that
13 include in the security plan that they will,
14 people at the door will be equipped with those
15 items, flashlight and UV light?

16 MR. MPRAS: Yes, sir. They're all
17 equipped with a flashlight. The UV light, I
18 cannot say for certain. But it is in use.
19 That I can say for certain.

20 MEMBER ALBERTI: I want to just
21 make a comment. It's disappointing that a 19
22 year old entered this evening because if those

1 techniques were properly applied I would have
2 hoped that they would have noticed that the
3 person was underage. And I won't say any more
4 on that. Thank you.

5 CHAIRPERSON MILLER: Okay, others?
6 All right. I just have a couple more
7 questions. One is, Mr. Rivero, did you say
8 that in your view if the, once the licensee
9 implemented one through seven provided they
10 could implement number one, we know that's up
11 to MPD, then it's your view there would not be
12 an imminent danger and the establishment could
13 open?

14 MR. RIVERO: That is correct. The
15 imminent danger standard, as I indicated is a
16 fairly heightened standard from a evidentiary
17 perspective. And so if we can reasonably
18 think of other things that can be done, such
19 that the establishment can continue operating,
20 then you don't have an imminent danger anymore
21 because it presumes every idea that we throw
22 out is not good.

1 And therefore we have to keep the
2 doors shut. That is not the case now because
3 the plan that we have devised is a reasonable
4 one. And I believe that if all of the
5 elements are working together, then we're not
6 going to have imminent danger situation.

7 Not only that, but the plan also
8 takes into account what the history of the
9 establishment has been. This is an
10 establishment with routine stabbings, for
11 instance. It's not --

12 MEMBER ALBERTI: What are you
13 saying this is?

14 MR. RIVERO: I said it's an
15 establishment where routinely people are found
16 inside stabbed. That would have, you know, I
17 have to factor in the actual history of the
18 establishment. And it is true that the
19 establishment has a long investigative
20 history.

21 But it is also true that the vast
22 majority of the entries in that investigative

1 history, when I inspected it, has you know, a
2 conclusion of no further action or no
3 violation found because largely speaking it's
4 a situation where there may have been
5 altercations, maybe even the patrons, you
6 know, got into a disagreement.

7 But they took it outside and they
8 went fighting on, you know, a street or a
9 block away. And no longer could that incident
10 be attributed to the establishment. So that
11 has to be taken into account too, which I did.

12 CHAIRPERSON MILLER: So the
13 trainings that are referenced in one through
14 seven would occur prior to the opening?

15 MR. RIVERO: That is correct.
16 That's the condition I placed.

17 CHAIRPERSON MILLER: Okay, I have
18 another question just for curiosity. When you
19 came up with the provision dealing with the
20 weapon confiscation, did you consider whether
21 or not it would be useful to take down the
22 identity of the patrons who came in with

1 weapons?

2 MR. RIVERO: I'm not, yes, I
3 considered that. I didn't think that it would
4 be ultimately useful because how would you go
5 about, you know, doing that and would it take
6 enough, I mean what is the ultimate goal of
7 the act of removing a weapon is just to make
8 sure that person doesn't have it to use
9 anymore.

10 And if it happens, if you give
11 someone sufficient warning to say you can lose
12 something, than I think that it's up to that
13 person to make that choice, that decision. If
14 someone really likes that knife or whatever is
15 in that person's pocket than they'll just go
16 back to their car and drive away, right.

17 And so it's no longer really a
18 concern about someone's property interest more
19 than the public safety interest. And in that
20 case then the most important thing is just to
21 get it out of that person's hand, which is the
22 establishment's current practice.

1 But when I looked at the photo and
2 I thought well were they all caught on the
3 same night? No, it was over a course of
4 nights. Well what if we documented the dates
5 then we can begin to see a correlation or a
6 pattern. Well they're all, you know, had we
7 learned for instance that all these knives
8 were caught on Sundays, that would tend to
9 send a strong signal that something is going
10 on on Sundays that's not going on on Fridays
11 or Saturdays.

12 So look at the people that are
13 coming in through the door. Is it a function
14 of the entertainment you're offering? Because
15 that's one of the reasons why people go to
16 this establishment is because of the
17 entertainment that's offered.

18 So that will be a way to sort of
19 quasi-scientifically figure out what's
20 happening in terms of violent incidents or a
21 clientele that is prone to violence by merely
22 possessing weapons.

1 CHAIRPERSON MILLER: Okay, any
2 other questions? Yes, Mr. Silverstein.

3 MEMBER SILVERSTEIN: Question for
4 both Mr. Rivero and Mr. Mpras. How long do
5 you think it would take if you were pressed to
6 come up with a new security plan if it was
7 absolutely necessary to reopen?

8 MR. MPRAS: A totally new security
9 plan?

10 MEMBER SILVERSTEIN: With the one
11 that you are promising us within 14 days. Is
12 14 days hard and fast or?

13 MR. MPRAS: No, sir. It could be
14 done much sooner if necessary.

15 MEMBER SILVERSTEIN: It could be
16 done by say 10 o'clock Friday morning?

17 MR. MPRAS: Yes, sir. Yes it can.

18 MEMBER SILVERSTEIN: Well we're in
19 a situation here where there have been
20 multiple incidents involving multiple
21 injuries, both inside and out. We don't want
22 to place an undue burden on you. But public

1 safety is the issue here and it's really the
2 only issue.

3 MR. MPRAS: No, sir. Your concern
4 is not unreasonable at all. And it could
5 definitely be done by that time frame if not
6 sooner.

7 MEMBER SILVERSTEIN: I think if
8 we're going to err, we want to err on the side
9 of public safety. And I'd like see that
10 revised security plan.

11 (Off microphone comment)

12 CHAIRPERSON MILLER: I just want
13 to ask about the weapon that was found. Was
14 it, is it your opinion that the weapon got
15 through because there wasn't any wanding and
16 that the wanding would prevent that from
17 happening again?

18 MR. MPRAS: Ma'am, as to how it
19 got through I can't speculate. But the
20 wanding would most definitely assist in
21 detecting metal objects. The knife, I haven't
22 seen it, but if it is metal, which I assume it

1 is, then it would increase the chances of it
2 being detected.

3 CHAIRPERSON MILLER: Okay. And it
4 was discontinued because it was too sensitive,
5 is that?

6 MR. MPRAS: They go off easily.

7 MR. RIVERO: Yes, I didn't think
8 that was a good enough reason to discontinue
9 hence my insistence on reimplementing the use
10 of the device.

11 MR. MPRAS: And sometimes when
12 you're just, when your using them if you
13 actually touch the person whether they have
14 metal or not it will go off. So they're
15 sensitive. But we agree with Mr. Rivero and
16 have agreed to start using them again every
17 night. And they already are there in
18 existence.

19 CHAIRPERSON MILLER: You already
20 have them?

21 MR. MPRAS: Yes.

22 CHAIRPERSON MILLER: Okay. And

1 the electronic devices that you referred to in
2 number six, what is that for detecting false
3 ID's? Is that the lights?

4 MR. MPRAS: Yes.

5 CHAIRPERSON MILLER: Okay. Sorry,
6 just a few clean up questions. Who was going
7 to do the training on the ID?

8 MR. MPRAS: The ID training?

9 CHAIRPERSON MILLER: Yes.

10 MR. MPRAS: We're going to have a
11 certified TIPS trainer do the ID training.

12 CHAIRPERSON MILLER: And that will
13 be before you open?

14 MR. MPRAS: Tentatively scheduled
15 for tomorrow.

16 CHAIRPERSON MILLER: Okay. And
17 who gets the training? Is it the security?

18 MR. MPRAS: There will be security
19 and then we'll make it available to all staff
20 that are, bar staff it's also available.
21 Basically it will be mandatory for security
22 and available to all staff that is able to

1 attend. No reason why not to re-educate
2 everybody while we're doing it.

3 CHAIRPERSON MILLER: All right.
4 If there are no further questions I would
5 suggest perhaps the Board consider this in
6 closed session and then we'll come back and
7 let you know.

8 As chairperson of the Alcohol and
9 Beverage Control Board for the District of
10 Columbia and in accordance with Section 405 of
11 the Open Meetings Amendment Act of 2010, I
12 move that the ABC Board hold a closed meeting
13 for the purpose of considering this offer and
14 compromise that has been presented with
15 respect to Case Number 13-251-00068, Fur
16 Factory per Section 405(b)(4) of the Open
17 Meetings Amendment Act of 2010 and
18 deliberating from this for reasons cited in
19 Section 405(b) 13 of the Open Meetings
20 Amendment Act of 2010. Is there a second?

21 MEMBER BROOKS: Second.

22 CHAIRPERSON MILLER: Mr. Brooks

1 has seconded the motion. I'm now going to
2 take a roll call vote. Mr. Brooks.

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti.

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Ms. Miller
7 agrees. Mr. Silverstein.

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: And Mr.
10 Jones.

11 MEMBER JONES: I agree.

12 CHAIRPERSON MILLER: Okay. It
13 appears the motion has passed on a vote of 5-
14 00. I hereby give notice that the ABC Board
15 will hold a closed meeting in the ABC Board
16 conference room now and then we will return
17 shortly. So if anyone wants to take a little
18 break you can also do that as well.

19 (Whereupon, the foregoing matter
20 went off the record at 2:48 p.m. and went back
21 on the record at 3:24 p.m.)

22 CHAIRPERSON MILLER: Okay, Board

1 is back on the record. And we have had an
2 opportunity to study the proposed OIC and
3 consider its terms. We'll see whether we need
4 to vote on it. But at this point what I'd
5 like to do is say that there's, there are many
6 good provisions in here and it's a good effort
7 at addressing the problem at this club.

8 But and we don't feel 100 percent
9 the way it's written represents a sufficient
10 plan for the Board to sign off on at this
11 point prior to the club opening. But we think
12 you're very close. And I think you said a lot
13 of things, especially Mr., Fernando, you said,
14 and both of you on the record that just aren't
15 in the OIC.

16 And what I want to do is just give
17 you some feedback. And if you feel that you
18 can take another stab at this, wrong word, at
19 this OIC and just bring it up to the place
20 where the Board is more comfortable I think
21 that it is very close. So I just want to give
22 you some feedback.

1 And it shouldn't be a surprise
2 because it's related pretty much to what we
3 discussed. Okay. Starting with number one.
4 The Board would just like it to be clear that
5 the last sentence, licensee agrees to escort
6 violent aggressors to the MPD officer posted
7 near the exit will be a requirement regardless
8 of whether or not the licensee is successful
9 in getting MPD to be at an exit. So that's
10 pretty simple.

11 And number two, with respect to
12 licensee agrees to incorporate revised
13 training on escorting patrons who are violent
14 aggressors to posted MPD officers. And I
15 think that is going to be in the security
16 plan. The Board would just like you to show
17 what the training was before with respect to
18 escorting patrons and how it is going to be
19 different under the new plan.

20 Number four, with respect to
21 documentation regarding weapons, I think we,
22 there was discussion on what kind of

1 documentation. And the Board would like to
2 see documentation with respect to who the
3 licensee spoke to, the date, the time, so that
4 there's a clear record about the licensee's
5 consultation with the MPD with respect to
6 disposition of weapons that are confiscated on
7 site.

8 Number five deals with resuming
9 the use of wands. The Board just would like
10 a clarification of and maybe this will be in
11 your security plan as well, but it's not clear
12 to the Board what exactly is the policy. How
13 will wands be used and particularly with
14 respect to pat-downs? The Board is of the
15 opinion that pat-downs are important as well.

16 Number six talks about electronic
17 devices to detect false ID's. And I believe
18 that Mr. Mpras also discussed in the hearing
19 checking for ID's in general. And we just
20 want to make sure that the security plan
21 contains a full explanation of all the ways in
22 which false ID's will be detected.

1 This was not discussed. But this
2 is something that the Board has found helpful
3 in situations like this. And that is that we
4 think the security plan should include a
5 diagram which would show where the cameras
6 are.

7 MR. MPRAS: That does exist right
8 now.

9 CHAIRPERSON MILLER: Okay, good.
10 And finally, the Board is of the view that
11 there must be an approved security plan,
12 revised security plan in place prior to the
13 reopening of the club. That's it for the
14 feedback unless other Board Members have
15 anything else to add.

16 MEMBER ALBERTI: Mr. Rivero has a
17 question.

18 CHAIRPERSON MILLER: Okay.

19 MR. RIVERO: I do because I've
20 been writing and I'm taken down notes so that
21 I can meet with the licensee and revise this
22 plan to address these concerns. But on the

1 last concern I'm unclear about how this plan
2 will contain in some term about an approved,
3 revised security plan. What does the Board
4 mean by that?

5 CHAIRPERSON MILLER: Okay. The
6 OIC as written says that, okay, that the
7 licensee will provide a revised security plan
8 within 14 days. It's been the Board's
9 practice, particularly in these types of
10 suspension cases, that we want to approve the
11 new plan before the club opens.

12 MR. RIVERO: Okay. So that's just
13 something that's submitted for the Board to
14 review? I'm trying to figure this out because
15 if the Government has to submit something, I
16 want to know.

17 CHAIRPERSON MILLER: The
18 Government should, well or the licensee --

19 MR. RIVERO: It would be the
20 licensee that will submit the plan, right?

21 CHAIRPERSON MILLER: Right, will
22 submit a revised plan as soon as it's ready.

1 And the Board will make every effort to review
2 that plan as soon as it can. And once the
3 Board approves the plan and these other
4 conditions are met then the club, the Board
5 would rule on opening the club.

6 MR. RIVERO: Then the next
7 question I would have is in order to present
8 a revised plan, either we submit the plan for
9 approval at the same time as this security
10 plan or we have another hearing. I don't take
11 a view as to either.

12 But the Government would be
13 available to submit a written document for the
14 Board's consideration at the same time as this
15 security plan is submitted. So we would have
16 a hand in the submission of this document, but
17 not the revised security plan.

18 CHAIRPERSON MILLER: Okay, this
19 document would just require that the plan be
20 submitted, be approved by the Board prior to
21 the Board's lifting the suspension.

22 MR. RIVERO: Right and the Board

1 refers to the revised security plan. But all
2 of these --

3 CHAIRPERSON MILLER: The
4 agreement.

5 MR. RIVERO: The agreement, okay.

6 CHAIRPERSON MILLER: I'm sorry.
7 Say that again?

8 MR. RIVERO: I was confused about
9 that. So if I work with the licensee and we
10 produce the revised plan, then I would just
11 then submit it to the Board, not necessarily
12 have to wait for a hearing to do that. That's
13 my question.

14 CHAIRPERSON MILLER: Right, no,
15 we're not saying that, we don't think a
16 hearing is necessary unless you do.

17 MR. RIVERO: No.

18 CHAIRPERSON MILLER: And you could
19 reference in the OIC the submission of the
20 plan. But the Board won't lift the suspension
21 until, you know, we approve the plan. Yes.

22 MR. RIVERO: So we would submit

1 that to the Board's counsel for instance?

2 MALE PARTICIPANT: Yes.

3 MR. RIVERO: Great.

4 CHAIRPERSON MILLER: I mean I
5 don't know how quickly, you know, you want to
6 take a look at this OIC revision. But the
7 Board will be here for several hours in the
8 event that you wanted to submit that later.
9 But obviously the security plan will take more
10 time.

11 MR. RIVERO: Correct, understood.

12 CHAIRPERSON MILLER: All right.

13 Any other questions?

14 MEMBER SILVERSTEIN: Mr.

15 Silverstein.

16 MEMBER SILVERSTEIN: I think that
17 Mr. Rivero used the term incorporating the
18 totality of the circumstances in their
19 entirety and opening, a decision to open is
20 not just simply one or two things, but to be
21 guaranteed or at least to our satisfaction
22 that in its entirety this is a safe package.

1 And we don't traditionally approve
2 security plans. They meet with our
3 satisfaction. And if we are satisfied at all
4 of these things in their entirety, than that's
5 how we move forward together.

6 MR. RIVERO: The Government has no
7 further questions.

8 CHAIRPERSON MILLER: Okay. Do you
9 have any questions?

10 MR. MPRAS: No, ma'am. We fully
11 understand what you are requesting and we
12 intend to comply as quickly as possible.

13 CHAIRPERSON MILLER: Okay, all
14 right. So, Mr. Jones.

15 MEMBER JONES: In reference to
16 item four I just want to make sure it's clear
17 that log should also include an area for a
18 badge number or some type of identifier
19 associated with that representative that you
20 spoke with for a consultation.

21 MR. MPRAS: Mr. Jones, I do have a
22 question for you. Should we, should it be

1 that we send an e-mail? Would that suffice?

2 MEMBER JONES: It would suffice as
3 long as it has the appropriate requisite
4 identifiers associated therewith.

5 MR. MPRAS: All right. Thank you.

6 MEMBER JONES: Secondly for
7 item two there was a speech, the Chairperson
8 made reference to a before and after. It
9 would help me to understand and appreciate the
10 delta between what was in place before and how
11 you augmented it to improve to help remove the
12 imminent danger that we perceive to be in
13 place at this time.

14 So what's going to be the
15 difference between the training that you were
16 doing before and the training that you are
17 going to be doing going forward to help
18 mitigate the issues that occurred. That's
19 what I'll be looking for.

20 MR. MPRAS: Understood.

21 MEMBER JONES: Thank you.

22 CHAIRPERSON MILLER: So as of now

1 there is a hearing scheduled for Friday at
2 10:00, no, but if you're going to submit a
3 revised OIC. It's only if you wanted to, it's
4 at your request. I mean it doesn't have to
5 stay on the calendar.

6 MR. RIVERO: I'm not aware of the
7 time. But I have no objection to it. I will
8 note it as Friday at 10:00. If we submit
9 something before that we will submit something
10 before that.

11 CHAIRPERSON MILLER: Right, right,
12 okay. Right, okay. Anything else? Well
13 we'll be here for several hours, so, thank you
14 very much. Okay. So we're going to take a
15 five minute break just before our next case.

16 (Whereupon, the foregoing matter
17 went off the record at 3:35 p.m. and went back
18 on the record at 3:48 p.m.)

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