

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
 + + + + +
 MEETING

IN THE MATTER OF:	*
	*
Neighborhood Restaurant Group XV,	*
LLC t/a Red Apron Butchery/The	* Show
Partisan	* Cause
709 D Street, NW	* Hearing
Retailer CR - ANC-2C	*
License No. 90742	*
Case #14-CMP-00706	*
	*
(Failed to Take Steps Necessary	*
to Ensure Property is Free of	*
Litter)	*

September 9, 2015

The Alcoholic Beverage Control Board
 met in the Alcoholic Beverage Control Hearing
 Room, Reeves Building, 2000 14th Street, N.W.,
 Suite 400S, Washington, D.C. 20009, Chairperson
 Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
 NICK ALBERTI, Member
 DONALD BROOKS, Member
 HERMAN JONES, Member
 MIKE SILVERSTEIN, Member
 HECTOR RODRIGUEZ, Member
 JAMES SHORT, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG
 EARL JONES, ABRA Investigator

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

Opening Statement by Government.	6
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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Earl Jones	8	20	29	30
Peter Koll	32	55	59	--
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E-X-H-I-B-I-T-S

GOVERNMENT

No.	Description	Mrk'd	Rec'd
1	Red Apron Front Photo	11	18
2	Alleyway Photo	11	18

LICENSEE

No.	Description	Mrk'd	Rec'd
1	Trash Photo	38	54
2	Dumpster Photo	48	54
3	Dumpster Photo	48	54

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

2 1:51 p.m.

3 CHAIRPERSON MILLER: Okay. Why don't
4 we get started here. Good afternoon. I believe
5 that you are here on two cases, correct?

6 MS. BABIN: Correct.

7 CHAIRPERSON MILLER: Okay. So I'm
8 going to call both cases, though I anticipate we
9 are going to hear them one at a time.

10 The first case is Case No. 15-CMP-
11 00706. Okay. Red Apron Butchery/The Partisan
12 located at 709 D Street, N.W., License No. 90742,
13 in ANC-2C.

14 And the next case would be Case No.
15 15-CMP-00059.

16 All right. So why don't we start with
17 introductions for the record?

18 MS. BABIN: I am Stephanie Babin,
19 member of Red Apron, Neighborhood Restaurant
20 Group.

21 CHAIRPERSON MILLER: What's your last
22 name again?

1 MS. BABIN: Babin, B-A-B-I-N.

2 CHAIRPERSON MILLER: Babin. Are you
3 related to --

4 MS. BABIN: Yes.

5 CHAIRPERSON MILLER: We just saw him
6 this morning.

7 MS. BABIN: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MS. BABIN: For Georgetown, right.

10 CHAIRPERSON MILLER: All right. And
11 you are with what?

12 MR. KOLL: I'm Peter Koll. I am the
13 general manager of Red Apron Butchery and The
14 Partisan.

15 CHAIRPERSON MILLER: You are Peter
16 Koll?

17 MR. KOLL: Yes, K-O-L-L.

18 CHAIRPERSON MILLER: Okay. Koll, K-O-
19 L-L. All right. Great. And for the Government?

20 MS. GEPHARDT: Yes. My name is
21 Chrissy Gephardt. I'm here on behalf of the
22 Office of the Attorney General.

1 CHAIRPERSON MILLER: Okay. These two
2 cases, starting with the first one, involve
3 failure to take steps necessary to ensure
4 property is free of litter. Okay.

5 Have you participated in a hearing
6 before this Board before?

7 MS. BABIN: Not in ABRA, not ABRA, no.

8 CHAIRPERSON MILLER: Okay. So I just
9 want to give you a general overview. It works
10 like most litigation in administrative hearings.
11 And if you have any questions, you can ask us.

12 The Government has the burden of proof
13 and she will do her case first, basically, but I
14 would begin with opening statements. And Ms.
15 Gephardt will make, I'm sure, an opening
16 statement and then you have the option of making
17 yours now or when you begin your case. And,
18 obviously, it is voluntary.

19 Okay. And then Ms. Gephardt will
20 produce her witnesses. You will have an
21 opportunity to cross-exam and so will the Board.
22 And then you will put on your case and,

1 basically, that's how it goes.

2 And also, if you want any documents in
3 evidence, you need to offer them and the other
4 side can object and I'll rule on it.

5 All right. Any questions before we
6 start? Do you have any preliminary matters?

7 MS. GEPHARDT: Nope, no preliminary
8 matters.

9 CHAIRPERSON MILLER: Okay. Then why
10 don't we start with -- well, let me just ask you
11 how many witnesses you have, just so --

12 MS. BABIN: Just Peter and myself.

13 CHAIRPERSON MILLER: Okay. And you?

14 MS. GEPHARDT: I have one witness.

15 CHAIRPERSON MILLER: Okay. All right.
16 Then, Ms. Gephardt, you have an opening
17 statement?

18 MS. GEPHARDT: Yes, just briefly.

19 CHAIRPERSON MILLER: Okay.

20 MS. GEPHARDT: Ladies and gentlemen of
21 the Board, this is a fairly straightforward case.
22 This is about a violation of D.C. Official Code

1 25-726, which is essentially a litter violation.
2 And it is failing to take reasonable measures to
3 ensure that the immediately environment of your
4 establishment, including adjacent alley,
5 sidewalks or other public property immediately
6 adjacent to the establishment are kept free of
7 litter.

8 You will hear in this case that on
9 October 22, 2014, an Investigator from ABRA
10 visited this establishment and found in the alley
11 in their trash receptacle trash overflowing from
12 the container and Mr. Jones, who is the
13 Investigator, cited the establishment and that
14 brings us here today for this Show Cause Hearing.

15 CHAIRPERSON MILLER: Okay. Thank you.
16 Do you have an opening statement, at this time?

17 MS. BABIN: I will reserve it until
18 it's our time.

19 CHAIRPERSON MILLER: Okay. Good. All
20 right. Then, Ms. Gephardt, do you want to call
21 your first witness?

22 MS. GEPHARDT: Yeah. I will call Earl

1 Jones to the stand.

2 CHAIRPERSON MILLER: Good morning. I
3 mean, good afternoon.

4 INVESTIGATOR JONES: Good afternoon.
5 Whereupon,

6 INVESTIGATOR EARL JONES
7 was called as a witness by Counsel for the
8 Government, and having been first duly sworn,
9 assumed the witness stand and was examined and
10 testified as follows:

11 INVESTIGATOR JONES: I do.

12 CHAIRPERSON MILLER: Thank you.

13 DIRECT EXAMINATION

14 MS. GEPHARDT: Investigator, good
15 afternoon.

16 INVESTIGATOR JONES: Good afternoon.

17 MS. GEPHARDT: Can you, please, state
18 your name and spell it for the record?

19 INVESTIGATOR JONES: Earl Jones.

20 First name E-A-R-L last name J-O-N-E-S.

21 MS. GEPHARDT: Where do you work?

22 INVESTIGATOR JONES: For the Alcoholic

1 Beverage Regulation Administration.

2 MS. GEPHARDT: And what is your title?

3 INVESTIGATOR JONES: Investigator.

4 MS. GEPHARDT: And how long have you
5 been an Investigator for ABRA?

6 INVESTIGATOR JONES: Since September
7 of 2009.

8 MS. GEPHARDT: And are you familiar
9 with an establishment by the name of Red Apron
10 Butchery/The Partisan?

11 INVESTIGATOR JONES: Yes, ma'am.

12 MS. GEPHARDT: And did you have
13 occasion to visit Red Apron on October 22, 2014
14 at approximately 1:30 a.m.?

15 INVESTIGATOR JONES: Yes, ma'am.

16 MS. GEPHARDT: And what was the
17 purpose of your visit?

18 INVESTIGATOR JONES: I was actually
19 monitoring the area. The D Street Northwest for
20 controlling different issues. We have been
21 mandated from the higher-ups to start looking at
22 these things, because we get a lot of complaints

1 from the ANCs regarding trash and litter.

2 So at that time, I was monitoring that
3 700 Block of D Street.

4 MS. GEPHARDT: And was -- this
5 establishment just happened to be one of them
6 that you were monitoring out of other ones on the
7 block?

8 INVESTIGATOR JONES: Yes, ma'am.

9 MS. GEPHARDT: Okay. And what, in
10 particular, when you went to Red Apron Butchery,
11 were you looking for?

12 INVESTIGATOR JONES: Well, dealing
13 with this certain issue, a lot of the -- well,
14 mainly what we are looking for are trash
15 receptacles and dumpsters that -- where the tops
16 are wide open, you have trash that is overflowing
17 and spilling and it's litter on the ground.
18 Those investigations, those type of things.

19 MS. GEPHARDT: Okay. And when you
20 went into the alley, what did you observe?

21 INVESTIGATOR JONES: Well, I observed
22 right next to Red Apron there is a very narrow

1 alleyway. And there may be, I would say,
2 probably, about six to seven dumpsters along that
3 -- in that corridor of the alleyway.

4 And there were a number of dumpsters
5 that were -- the tops were wide open and there
6 was trash that was overflowing. And at that
7 point, I had gone into Red Apron and I asked to
8 speak to an ABC Manager.

9 MS. GEPHARDT: Okay. And let me just
10 -- while we are talking about the location here,
11 I would like to show the witness what has been
12 marked as Government Exhibit No. 1. There is
13 actually 2 pages to it. It's actually Exhibit 1
14 and Exhibit 2. It's just you will see, one is
15 one picture and Exhibit 2 is the second.

16 (Whereupon, the above-referred to
17 documents were marked as Government Exhibit No. 1
18 and No. 2 for identification.)

19 INVESTIGATOR JONES: Okay.

20 CHAIRPERSON MILLER: Ms. Gephardt,
21 would you --

22 MS. GEPHARDT: Okay. Thanks.

1 CHAIRPERSON MILLER: Is this Exhibit
2 1 and 2 to the investigative report?

3 MS. GEPHARDT: Yes, that's correct.
4 They are already in the investigative report.

5 CHAIRPERSON MILLER: Okay.

6 MS. GEPHARDT: I just made copies in
7 case the Board didn't have them.

8 Okay. Mr. Jones, can you, first of
9 all, tell the Board what Exhibit No. 1 is?

10 INVESTIGATOR JONES: Exhibit No. 1 is
11 a photograph of Red Apron, the front of Red Apron
12 as well as the alleyway that is right next to the
13 establishment that I just mentioned. And this
14 photograph was taken on the night of or the
15 morning of.

16 MS. GEPHARDT: When you say the night
17 of or the morning of, what was the date?

18 INVESTIGATOR JONES: 10/22/2014.

19 MS. GEPHARDT: Okay. And if you turn
20 the page to Exhibit No. 2, which is in the back,
21 what is this a rendition of?

22 INVESTIGATOR JONES: This is actually

1 a closer-in shot of the alleyway that I just
2 spoke of where Red Apron houses their dumpsters
3 as well as a few other ABC establishments.

4 MS. GEPHARDT: And which -- in this
5 photograph, which picture or which dumpster is
6 Red Apron's?

7 INVESTIGATOR JONES: That would be the
8 dumpster that is the closest to you in this
9 photograph.

10 MEMBER SILVERSTEIN: It's the closest
11 to?

12 INVESTIGATOR JONES: It says
13 Tenleytown on it.

14 MS. GEPHARDT: Is it the one that has
15 the lid open?

16 INVESTIGATOR JONES: It's the green.
17 Yes, ma'am.

18 MS. GEPHARDT: Okay. And what about
19 this trash receptacle sparked your curiosity or
20 flagged -- was a flag for you?

21 INVESTIGATOR JONES: So one of the
22 biggest issues that we are having here in the

1 District is -- well, I should say are ABC
2 establishments when they serve or they throw out
3 their food and trash, it is put into the
4 dumpsters or trash receptacles and a lot of
5 times, because trash, you know, again isn't
6 picked up on the hour, so trash goes accumulate.
7 And what happens is throughout the night, the
8 dumpsters are being packed. The tops are being
9 left open and trash is being exposed to the
10 environment, the atmosphere we have.

11 You know, at that point, you have a
12 rodent issue, which we -- which is a very serious
13 situation in the District.

14 MS. GEPHARDT: You had a what issue?

15 INVESTIGATOR JONES: Rodents.

16 MS. GEPHARDT: Rodent issue.

17 INVESTIGATOR JONES: Yes.

18 MS. GEPHARDT: Okay. Did you observe
19 rodents in the alley on this night?

20 INVESTIGATOR JONES: As soon as I
21 walked up, there were three that came out amongst
22 the dumpsters that were there.

1 MS. GEPHARDT: Okay. Did any rodents,
2 did you notice, come out of the Red Apron
3 dumpster?

4 INVESTIGATOR JONES: There were --
5 there was a rodent that came from under the
6 dumpster and ran towards the rear dumpster,
7 towards the end of the alleyway.

8 MS. GEPHARDT: Okay. And what is the
9 -- are the dumpsters -- I mean, how are they
10 supposed to be secured in terms of the
11 containment of the garbage?

12 INVESTIGATOR JONES: Well, what we
13 would ask is that all dumpsters, the lids are
14 closed. Preferably if they have a chain or
15 locking mechanism to them, but we would really
16 prefer that the lids remain closed, so they are
17 not exposed to the environment as far as the
18 trash is concerned.

19 MS. GEPHARDT: Okay. So when you saw
20 this dumpster, this to you was not to the level
21 of what the statute requires and, therefore, you
22 thought to issue a citation to the licensee?

1 INVESTIGATOR JONES: Well, I didn't
2 issue a citation. I advised -- I went in and I
3 spoke to Mr. Koll and I spoke -- and we talked
4 about it. And so what I did was I gave the
5 advisement to Mr. Koll of what I had found.

6 MS. GEPHARDT: Okay.

7 CHAIRPERSON MILLER: I'm sorry, could
8 you repeat the last thing you said?

9 INVESTIGATOR JONES: I gave the
10 advisement to Mr. Koll as far as what I had
11 found.

12 CHAIRPERSON MILLER: Okay.

13 INVESTIGATOR JONES: In the alley.

14 CHAIRPERSON MILLER: Thank you.

15 INVESTIGATOR JONES: So I didn't issue
16 a citation.

17 MS. GEPHARDT: One other question.
18 Did you find any garbage or litter on the ground
19 in this alley around the dumpster?

20 INVESTIGATOR JONES: Yes, there was
21 litter. There was litter under the dumpster as
22 well as the other dumpsters going towards in the

1 alleyway as well. And I know that they are not
2 associated with Red Apron, but there was litter
3 throughout the alleyway around those dumpsters.

4 MS. GEPHARDT: Okay. And in terms of
5 this Exhibit No. 1 and Exhibit No. 2, are these
6 photographs as close to what you observed that
7 evening?

8 INVESTIGATOR JONES: Yes, ma'am.

9 MS. GEPHARDT: Okay. The Government
10 would ask that we enter into evidence Exhibit 1
11 and Exhibit 2 in this case.

12 CHAIRPERSON MILLER: Okay. I believe
13 that the investigative report is in the record
14 anyway, but you want to do that additionally?
15 That's okay.

16 MS. GEPHARDT: I mean, I guess, yes.
17 I mean, I usually admitted them separately, but--

18 CHAIRPERSON MILLER: Okay.

19 MS. GEPHARDT: -- if the Board is okay
20 with just having them as part of the record,
21 that's fine, too.

22 CHAIRPERSON MILLER: Any objections?

1 MS. BABIN: No.

2 CHAIRPERSON MILLER: Okay. I'll admit
3 them just better to be redundant than, you know--

4 MS. GEPHARDT: Okay.

5 CHAIRPERSON MILLER: All right.

6 Exhibit 1 and 2.

7 MS. GEPHARDT: Okay.

8 (Whereupon, the above-referred to
9 documents were received into evidence as
10 Government Exhibit No. 1 and No. 2.)

11 MS. GEPHARDT: And, Mr. Jones, did you
12 return on Saturday, October 25th, to Red Apron?

13 INVESTIGATOR JONES: The 25th? I don't
14 have the report in front of me, but I do believe
15 I did, because I had to make the advisement, at
16 that point.

17 MS. GEPHARDT: Right.

18 INVESTIGATOR JONES: Yes.

19 MS. GEPHARDT: Oh, I'm sorry, go
20 ahead.

21 INVESTIGATOR JONES: I believe I did,
22 because I had to make the advisement, at that

1 point.

2 MS. GEPHARDT: Okay. And when you
3 said you had to make the advisement, did you have
4 to speak to somebody at the establishment?

5 INVESTIGATOR JONES: Yes, ma'am.

6 MS. GEPHARDT: And who did you speak
7 to?

8 INVESTIGATOR JONES: Mr. Koll.

9 MS. GEPHARDT: And what did you say to
10 Mr. Koll?

11 INVESTIGATOR JONES: I advised him
12 that on the 22nd I found that the -- I advised of
13 the violation of the controlled litter regarding
14 the dumpster in the alleyway.

15 MS. GEPHARDT: And what did Mr. Koll
16 say?

17 INVESTIGATOR JONES: He said that he
18 understood, also that he did mention that they
19 had been having issues regarding the dumpsters as
20 well as issues with another ABC establishment
21 that pretty much has been dumping trash into
22 their dumpster instead of their own dumpster.

1 MS. GEPHARDT: Okay. And regarding
2 what you just said --

3 INVESTIGATOR JONES: Yes.

4 MS. GEPHARDT: -- did you notice the
5 type or the identification of the trash in their
6 dumpster? Was it -- I mean, could you tell to
7 that much specificity whether it was their trash
8 versus another establishment's trash?

9 INVESTIGATOR JONES: On this occasion,
10 I did not go into the alleyway and kind of
11 rummage through the dumpster, only because there
12 were a number of rodents that were just kind of
13 all over the place, so no, I didn't rummage
14 through the trash.

15 MS. GEPHARDT: Okay. Okay. All
16 right. That's all I have for this witness.
17 Thank you very much.

18 INVESTIGATOR JONES: Thank you.

19 CHAIRPERSON MILLER: Okay. Cross?

20 CROSS-EXAMINATION

21 MS. BABIN: Mr. Jones, how did you
22 distinguish the dumpsters on your first visit to

1 Red Apron?

2 INVESTIGATOR JONES: What do you mean?

3 MS. BABIN: How did you determine
4 which dumpster belonged to Red Apron?

5 INVESTIGATOR JONES: Well, and that
6 was -- well, that was the reason for me coming
7 back, because I never want to assign blame to
8 anyone. I want to ask, you know, whose dumpsters
9 are assigned to who and that's when I was advised
10 that these were, as far as Red Apron, that's what
11 I was advised about the dumpsters.

12 MS. BABIN: Okay. Could you clarify
13 for me when you -- because I understood that you
14 did not actually go into the alley on your second
15 visit. So could you clarify for me what the --
16 when you were -- when you walked through which
17 dumpsters belonged to whom and who might have
18 pointed out to you which dumpsters belonged to
19 us?

20 INVESTIGATOR JONES: So on the Exhibit
21 2, again, as I identified the green dumpster, the
22 first dumpster that is here, as far as the top is

1 concerned, I was advised that this was Red
2 Apron's dumpster.

3 MS. BABIN: Okay.

4 INVESTIGATOR JONES: Okay.

5 MS. BABIN: And that's a green
6 dumpster?

7 INVESTIGATOR JONES: Yes, ma'am.

8 MS. BABIN: Correct? Okay. And you
9 went to Red Apron a total of two times, correct?

10 INVESTIGATOR JONES: Yes, ma'am.

11 MS. BABIN: That was the total of your
12 visits in 2014?

13 INVESTIGATOR JONES: Yes, ma'am.

14 MS. BABIN: Okay. I have -- and you
15 met Mr. Koll on both of those visits?

16 INVESTIGATOR JONES: Yes, ma'am.

17 MS. BABIN: Correct? And did Mr. Koll
18 show you any of the items that in the general
19 area that may or may not have belonged to us in
20 that conversation you had with Mr. Koll?

21 INVESTIGATOR JONES: Yes. We did. He
22 identified that some of the dumpsters -- well, I

1 should say some, but there are dumpsters towards
2 the -- because that was another question of mine,
3 I wanted to know who were -- who the other
4 dumpsters belonged to, because as far as I was
5 concerned, that was another violation and it was
6 pretty egregious from what I saw.

7 MS. BABIN: And when --

8 INVESTIGATOR JONES: And so he did
9 point out and say that that was -- I'm not going
10 to say --

11 MS. BABIN: Right, yes.

12 INVESTIGATOR JONES: -- the legal
13 establishment, but he did point out --

14 MS. BABIN: Right, yes, yes.

15 INVESTIGATOR JONES: -- that there was
16 another establishment.

17 MS. BABIN: So he identified --

18 INVESTIGATOR JONES: Yes, ma'am.

19 MEMBER SILVERSTEIN: Will you allow
20 him to complete his statements?

21 MS. BABIN: Oh, apologies.

22 MEMBER SILVERSTEIN: He did say what?

1 INVESTIGATOR JONES: He identified
2 that that was another ABC establishment's
3 dumpsters. And like I said, I indicated that I
4 wasn't going to mention the neighborhood
5 establishment.

6 MEMBER ALBERTI: Okay. So just for
7 the record, when you say that was another, what
8 are you referring to? That was another
9 establishment's dumpster?

10 INVESTIGATOR JONES: That the other
11 dumpsters that had the trash that was overflowing
12 onto the ground --

13 MEMBER ALBERTI: You mean the one that
14 was --

15 INVESTIGATOR JONES: -- was the one --

16 MEMBER ALBERTI: -- the farther into
17 the alley?

18 INVESTIGATOR JONES: Yes, sir. Yes,
19 sir.

20 MEMBER ALBERTI: Okay.

21 INVESTIGATOR JONES: That that was
22 another ABC establishment's dumpster.

1 MEMBER ALBERTI: Just for the record,
2 I wanted to make sure that it's clear. All
3 right. Thank you.

4 MS. BABIN: And just to be clear, you
5 came out twice and the second time when you
6 issued the advisement, you did not go in the
7 alley?

8 INVESTIGATOR JONES: No, I didn't.

9 MS. BABIN: Okay. I don't have any
10 further questions.

11 CHAIRPERSON MILLER: Okay. Thank you.
12 Board Members have questions? Mr. Alberti?

13 MEMBER ALBERTI: Yes. So help me out
14 here, Investigator Jones. How did -- when you
15 were communicating with Mr. Koll, how did you
16 identify which dumpsters you were talking about
17 and which ones you weren't? Which dumpsters you
18 were referring to in your discussion?

19 INVESTIGATOR JONES: Okay. So again,
20 this was we are talking October of last year, so
21 I can't tell you verbatim the conversation or how
22 everything happened. What I will tell you is

1 that we spoke. I asked which dumpsters were
2 associated with the establishment and he did tell
3 me that they were the first couple of dumpsters.

4 MEMBER ALBERTI: Okay. So I'm
5 assuming you are sort of paraphrasing what he
6 said.

7 INVESTIGATOR JONES: Sure.

8 MEMBER ALBERTI: But it was your
9 understanding that the first couple of dumpsters,
10 meaning -- and you interpreted that from this
11 picture to mean which ones?

12 INVESTIGATOR JONES: And I showed him
13 the picture as well and he identified that these
14 were.

15 MEMBER ALBERTI: Oh.

16 INVESTIGATOR JONES: Yes.

17 MEMBER ALBERTI: You showed him this
18 picture?

19 INVESTIGATOR JONES: Well, I always
20 bring -- I always show the picture when I come in
21 and do --

22 MEMBER ALBERTI: So you showed him the

1 picture that is in Exhibit 2?

2 INVESTIGATOR JONES: Yes.

3 MEMBER ALBERTI: And so you are
4 confident that he understand the one with the
5 overflowing, top open and overflowing was one of
6 the ones he identified as being part owned by or
7 used by Red Apron?

8 INVESTIGATOR JONES: I do. Because at
9 that point, he said that, you know, he indicated
10 that he understood and stated that he knew that
11 there was other issues with the dumpsters in the
12 alleyway. And that, you know, going forward they
13 would try to mitigate the situation by using
14 maybe a locking mechanisms or something.

15 MEMBER ALBERTI: Okay. Thank you.
16 That clears that up for me. Thank you, Mr.
17 Jones. Thank you.

18 CHAIRPERSON MILLER: Others? Okay.
19 Mr. Jones, do you have Exhibit 2 in front of you?

20 INVESTIGATOR JONES: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay. So there
22 is a trash container that says Tenleytown Trash

1 and a telephone number on it, 202-364-9694. Is
2 that the trash can that we are talking about?

3 INVESTIGATOR JONES: Yes, ma'am.

4 CHAIRPERSON MILLER: Okay. And so
5 it's your testimony that Mr. Koll said that --
6 you showed him this picture and that this
7 particular trash can belong to that
8 establishment?

9 INVESTIGATOR JONES: Yes, ma'am.

10 CHAIRPERSON MILLER: Okay. And I know
11 we will hear from him himself, but did he offer
12 an explanation as to why the trash lid was open
13 and the trash exposed?

14 INVESTIGATOR JONES: I don't recall an
15 explanation as to why the lid was open. I know
16 that there was a statement that was made
17 regarding another ABC establishment using their
18 dumpster. You know, dumping their trash into
19 their dumpster. So I know that that was an issue
20 with that.

21 CHAIRPERSON MILLER: Okay. Did you
22 ask him what efforts he had taken to control

1 their trash from being exposed?

2 INVESTIGATOR JONES: No, ma'am.

3 CHAIRPERSON MILLER: Okay. All right.

4 I have no other questions. Anyone else? Any
5 questions on Board questions? Redirect?

6 MS. GEPHARDT: No.

7 MS. BABIN: I have. I would like --
8 I just want to be clear about identifying --

9 CHAIRPERSON MILLER: Okay.

10 MS. BABIN: -- the dumpster.

11 INVESTIGATOR JONES: Um-hum.

12 RECROSS

13 MS. BABIN: When you walked in, when
14 you showed Mr. Koll the pictures --

15 INVESTIGATOR JONES: Um-hum.

16 MS. BABIN: -- he specifically said
17 that was our dumpster or --

18 INVESTIGATOR JONES: From what I
19 understood, yes.

20 MS. BABIN: Okay.

21 CHAIRPERSON MILLER: Okay. Anything
22 else?

1 MS. GEPHARDT: I have one other
2 question.

3 CHAIRPERSON MILLER: Okay.

4 REDIRECT

5 MS. GEPHARDT: When you spoke to Mr.
6 Koll and you explained the violation and what you
7 observed in the alley, do you believe that Mr.
8 Koll understood what you were talking about and
9 what he needed to do or what the establishment
10 needed to do to remedy it?

11 INVESTIGATOR JONES: Yes. But I also
12 know that, from the conversation that we had, it
13 seemed to be an ongoing issue because of the
14 narrowing of the alleyway and the way the
15 dumpsters are positioned and the number of ABC
16 establishments that were using the dumpsters.
17 They just -- you know, from the conversations
18 that I got, it seemed to be a pre-indication for
19 the bulk of them using that alley.

20 So from what I understand, I -- from
21 what I got, he did understand what I was
22 advising.

1 MS. GEPHARDT: Okay. All right.

2 That's all I have.

3 CHAIRPERSON MILLER: Okay. Thank you,
4 Mr. Jones.

5 INVESTIGATOR JONES: Thank you.

6 CHAIRPERSON MILLER: Does that
7 complete your case?

8 MS. GEPHARDT: Yes, that is my only
9 witness and my last witness in this case.

10 CHAIRPERSON MILLER: Okay.
11 Respondent's case? Are you ready?

12 MS. BABIN: We would like a copy of
13 the photo.

14 CHAIRPERSON MILLER: Okay.

15 MS. BABIN: You will have to be
16 patient as I am not intimately familiar with the
17 protocol.

18 CHAIRPERSON MILLER: That's fine.
19 Yes, that's fine.

20 MS. BABIN: All right.

21 Whereupon,

22 PETER KOLL

1 was called as a witness by Counsel for the
2 licensee, and having been first duly sworn,
3 assumed the witness stand and was examined and
4 testified as follows:

5 MR. KOLL: I do.

6 CHAIRPERSON MILLER: All right. Thank
7 you.

8 DIRECT EXAMINATION

9 MS. BABIN: Mr. Koll, could you
10 identify yourself for the record?

11 MR. KOLL: I am Peter Koll. P-E-T-E-R
12 K-O-L-L. I'm the general manager of Red Apron/
13 The Partisan.

14 MS. BABIN: And how long have you been
15 the general manager or one of the managers at Red
16 Apron?

17 MR. KOLL: Since we have opened last
18 March of '15.

19 MS. BABIN: Okay. So let's talk about
20 when the Red Apron opened. The Red Apron opened
21 the -- Red Apron has how many parts to it?

22 MR. KOLL: There is two components.

1 There is Red Apron, which is our retail butcher
2 shop, and The Partisan, which is a full-service
3 restaurant.

4 MS. BABIN: And what --

5 CHAIRPERSON MILLER: Could you all
6 speak up just a little bit louder?

7 MS. BABIN: Yes.

8 CHAIRPERSON MILLER: That's okay. And
9 there is a microphone.

10 MR. KOLL: Sure.

11 MS. BABIN: I don't know if this is a
12 mike. Is this is a mike?

13 CHAIRPERSON MILLER: Yes, it is. Is
14 the green light on actually?

15 MS. BABIN: It is.

16 CHAIRPERSON MILLER: Okay.

17 MS. BABIN: When did the restaurant
18 open?

19 MR. KOLL: The restaurant opened --

20 MS. BABIN: To full-service?

21 MR. KOLL: -- The Partisan opened one
22 month later in the end of April 2014.

1 MS. BABIN: How many dumpsters are
2 there currently in the alley? And how many
3 dumpsters have there been in the alley?

4 MR. KOLL: There have been five total.
5 Two green recycling and three large trash
6 receptacles. And that has been the entire time
7 we have been open.

8 MS. BABIN: How many belong to Red
9 Apron?

10 MR. KOLL: There is one recycling and
11 one trash can.

12 MS. BABIN: And the other three belong
13 to a local business?

14 MR. KOLL: Yes, there is one around
15 the corner that is on the front of 2nd Street.

16 MS. BABIN: With respect to the local
17 business, do you have any knowledge about what
18 their primary use is for theirs?

19 MR. KOLL: As far as I know, they have
20 almost entirely business disposables.

21 MS. BABIN: All right. Does Red Apron
22 have -- use disposables?

1 MR. KOLL: Not -- a little bit for the
2 regular butchery portion, but very few for any
3 actual restaurant.

4 MS. BABIN: The ones for the butcher
5 portion would be?

6 MR. KOLL: All to-go items.

7 MS. BABIN: To-go items. They are not
8 on-property.

9 MR. KOLL: Correct.

10 MS. BABIN: Do we -- currently on our
11 menu do we carry Pabst Blue Ribbon?

12 MR. KOLL: Never have.

13 CHAIRPERSON MILLER: I'm sorry, could
14 you repeat the question?

15 MS. BABIN: Do we carry -- I'm going
16 to name some specific menu items.

17 Do we carry Pabst Blue Ribbon?

18 MR. KOLL: We never have carried that
19 item.

20 MS. BABIN: Blue Bell Ice Cream?

21 MS. GEPHARDT: These are -- I mean, I
22 know that this is not -- they are not used to

1 this, but these are leading questions.

2 MS. BABIN: Okay. Can you tell us
3 some of the items that --

4 CHAIRPERSON MILLER: Are you
5 objecting?

6 MS. GEPHARDT: So I'm objecting. Yes.

7 CHAIRPERSON MILLER: You are
8 objecting?

9 MS. GEPHARDT: Yes.

10 CHAIRPERSON MILLER: Would you
11 respond? She is objecting because --

12 MS. BABIN: Yes. I can rephrase.

13 CHAIRPERSON MILLER: -- you're asking
14 leading questions.

15 MS. BABIN: Can you tell us what some
16 of the items are that the neighboring businesses
17 use that we do not?

18 MR. KOLL: Sure. There are some
19 prepackaged cornbread items. There are Pabst
20 Blue Ribbon, which is a beverage. There is Bells
21 Ice Cream. A lot of white paper and just brown
22 paper bags.

1 MS. BABIN: I have one photograph I
2 would like to enter in as evidence. I do not
3 have more copies. I'm not sure if that's an
4 issue.

5 MS. GEPHARDT: Oh, I just want to see
6 what it looks like. Do we know what the date is?
7 When this was taken?

8 MS. BABIN: I can ask Mr. Koll.

9 CHAIRPERSON MILLER: Okay. Okay.

10 MS. BABIN: Approximately.

11 MS. GEPHARDT: Okay.

12 MS. BABIN: I'm going to show this to
13 Mr. Koll.

14 CHAIRPERSON MILLER: Okay.

15 MS. BABIN: Would you identify whether
16 or not the trash in this picture is -- belongs to
17 Red Apron?

18 MR. KOLL: It does not.

19 MS. BABIN: Okay. Can you tell the
20 Board why you are certain that it is -- how did
21 you come to the conclusion that it is not Red
22 Apron's?

1 MR. KOLL: The clear plastic bags that
2 we use are only used for recycling, whereas this
3 has trash in the clear bags as well as the
4 recycling.

5 MEMBER SILVERSTEIN: Please, speak up,
6 Mr. Koll.

7 MR. KOLL: Sorry. The clear plastic
8 bags in the trash can are not ones that we use
9 for trash. We only use that for recycling. And
10 the beer cardboard case is not one that we carry.

11 CHAIRPERSON MILLER: And the beer
12 what?

13 MR. KOLL: The broken down cardboard
14 beer -- case of beer --

15 CHAIRPERSON MILLER: Yes.

16 MR. KOLL: -- is not a beer product
17 that we carry in the restaurant.

18 (Whereupon, the above-referred to
19 document was marked as Licensee Exhibit No. 1 for
20 identification.)

21 MS. BABIN: Mr. Koll, when we -- when
22 Red Apron is done disposing their trash at the

1 end of the night, how do they typically leave the
2 dumpster?

3 MR. KOLL: They bring it outside.
4 They fill the trash cans and then they close the
5 lid.

6 MS. BABIN: Close the lid. So are
7 there ever instances where we have gone out after
8 we have closed for the evening and noticed
9 anything unusual about the trash? And could you
10 speak to that?

11 MR. KOLL: On numerous occasions, and
12 I did speak with Mr. Jones, as he had discussed
13 earlier, on numerous occasions when we go outside
14 to try to dispose of our trash, all of the trash
15 cans are completely filled and overflowing with
16 trash that does not belong to us.

17 MS. BABIN: And what measures do you
18 take in order to attempt to secure a dumpster at
19 that -- or did you?

20 MR. KOLL: Typically, we try to do our
21 best to get trash cans in the receptacles and
22 close the lids to the best of our abilities. We

1 have also taken numerous steps to discuss with
2 management of the other establishments about
3 which receptacles are ours.

4 MS. BABIN: What color is our trash
5 dumpster?

6 MR. KOLL: The trash dumpster is an
7 orange dumpster.

8 MS. BABIN: Okay. And when Mr. Jones
9 came out, did you identify which specific
10 dumpster was ours?

11 MR. KOLL: He asked which dumpster
12 belonged to which establishments. I explained
13 that typically ours are the first two in the
14 alley. And that the other establishments have
15 the second three. But at the time, there was no
16 established organization to any of the dumpsters.

17 MS. BABIN: And were the dumpsters
18 marked at that time?

19 MR. KOLL: They were not.

20 MS. BABIN: So upon discovering that
21 Hill County -- I'm sorry, our neighboring
22 business was using our dumpsters, can you tell

1 the Board what measures we took to try to prevent
2 them from using our dumpsters?

3 MR. KOLL: So in addition to
4 communication with management, per Mr. Jones'
5 recommendation, he suggested labeling the
6 dumpsters and as well as for helping with the
7 rodent issues, getting metal dumpsters that have
8 firm closing lids.

9 The first step we took as labeling our
10 dumpsters, one trash and one for recycling. The
11 Partisan was very clearly labeled on both the
12 tops as well as the front of the receptacles.
13 And then as quickly as we were able, we switched
14 all of our receptacles over next to theirs.

15 MS. BABIN: And was there a gap
16 between the time that you labeled and --

17 MR. KOLL: Yes. It took us a little--
18 I think about a month or two for us to be able to
19 get in touch with Tenleytown. They had an issue
20 with having metal containers available, both in
21 trash and recycling. And as soon as we were able
22 to get those, we got them.

1 MS. BABIN: And during that interim
2 period, did our neighboring businesses comply
3 with our requests to not put their trash in our
4 dumpster?

5 MR. KOLL: After we had labeled our
6 trash, we continued to find trash from other
7 establishments and are labeled from there.

8 MS. BABIN: And what would happen when
9 you would go to the establishment at the moment?
10 Did you -- what was your response at the moment
11 when you found that the trash was overflowing and
12 what was the response of the neighboring
13 establishments?

14 MR. KOLL: It was difficult to get in
15 contact with anyone. There were numerous
16 occasions where we attempted to contact the
17 manager on-site. When there was a kitchen
18 manager or a front pass manager and we were not
19 able to receive any response. There were also
20 times, occasions where we did speak with a
21 kitchen manager and there was no attempt to
22 correct the situation.

1 MS. BABIN: And why -- can you speak
2 to your efforts or why you might not consider
3 locking the dumpster?

4 MR. KOLL: Both businesses combined,
5 Red Apron as well as The Partisan, are open for a
6 total of 21 services throughout the entire week,
7 so breakfast, lunch and dinner, seven days a
8 week. The number of people who are required to
9 go out and dispose of trash as well as recycling,
10 the opportunity to lose keys, lock the mechanism
11 would be detrimental to us being able to actually
12 dispose of our trash.

13 MS. BABIN: Okay. I have another
14 picture I would like to enter into evidence,
15 please.

16 MS. GEPHARDT: I mean, I do have to
17 object to this. There is no date on here, so it
18 is kind of irrelevant, because this occurred on
19 the 22nd of October 2014.

20 MS. BABIN: I understand that.

21 MS. GEPHARDT: For all I know, this
22 could have been taken yesterday.

1 MEMBER SHORT: Um-hum.

2 MS. GEPHARDT: So it doesn't really
3 matter.

4 MS. BABIN: Well, not -- we are not
5 going to speak to it. Actually, I can
6 authenticate the date with Mr. Koll of this, an
7 approximate date.

8 CHAIRPERSON MILLER: Yes.

9 MS. BABIN: And I think we can -- I
10 don't think we -- we are not alleging that this
11 was prior to the complaint.

12 MR. KOLL: After his recommendation,
13 Mr. Jones also said that if we wanted to document
14 the situation, because we were having continued
15 issues, that he recommended we do so.

16 CHAIRPERSON MILLER: Yes.

17 MR. KOLL: So after the first contact
18 and once we had labeled our dumpsters and
19 recycling receptacle, we were encouraged to take
20 pictures periodically to document the situation.

21 All of the pictures I took were
22 between his first visit all the way through, I

1 believe, March of 2015, which is when there was
2 an effort from numerous businesses in that block
3 to really kind of control the rodent infestation.

4 And all of the businesses were
5 required, at that point, to switch over to the
6 metal containers that we had already done,
7 personally we had already done.

8 MS. BABIN: Okay. May I approach the
9 witness with pictures that depicts --

10 CHAIRPERSON MILLER: Could you just --
11 you took this picture?

12 MR. KOLL: Yes, ma'am.

13 CHAIRPERSON MILLER: Okay. So number
14 one, we know who took the picture. And I heard
15 you say that it was after Mr. Jones came by and
16 took the other pictures that are in the
17 Government's exhibits, correct?

18 MR. KOLL: Yes, ma'am.

19 MS. BABIN: When is this picture --

20 CHAIRPERSON MILLER: When after that?
21 How long after that?

22 MR. KOLL: I didn't -- I have dates on

1 my phone with which I took them. I mean, I can
2 get those for you.

3 CHAIRPERSON MILLER: I just want to
4 clarify what you said though. You gave a range
5 of --

6 MR. KOLL: Yes, I'm sorry. So it was
7 after his first visit in October.

8 CHAIRPERSON MILLER: Okay.

9 MR. KOLL: And I believe I took
10 pictures documenting it all the way through March
11 of 2015.

12 MS. BABIN: We have a lot of pictures.

13 CHAIRPERSON MILLER: Okay. You know,
14 it's not my turn to really ask questions, at this
15 point.

16 MR. KOLL: Okay.

17 CHAIRPERSON MILLER: Except to just
18 clarify what you said, so that we all got it.

19 MS. BABIN: Referred to. And as a
20 point of clarification, Mr. Koll, can you tell
21 the Board what dumpster that is? Is that one of
22 the plastic containers or --

1 MR. KOLL: So that was in the interim
2 while -- after we had started labeling the
3 containers, but before we were able to receive
4 the metal containers that we currently have now.

5 MS. BABIN: Okay. I'm going to ask,
6 Mr. Koll, if you can identify these two pictures?
7 If you could describe the dumpsters? This
8 dumpster and this dumpster?

9 CHAIRPERSON MILLER: May I interrupt
10 you for one second?

11 MS. BABIN: Pardon?

12 CHAIRPERSON MILLER: Just for the
13 record, this proposed is that No. 1?

14 MS. BABIN: Yes, it is. I think I
15 might have written on them.

16 CHAIRPERSON MILLER: I haven't
17 admitted them yet, but just so that we know which
18 pictures you are referring to in the record.

19 MS. BABIN: I wrote number -- yes, I
20 wrote Number 1 on that one. And I'm sorry, these
21 are Defense Exhibits No. 2 and 3.

22 CHAIRPERSON MILLER: Okay. And you

1 have shown them to Ms. Gephardt?

2 (Whereupon, the above-referred to
3 documents were marked as Licensee Exhibit No. 2
4 and No. 3 for identification.)

5 MS. GEPHARDT: I have the same
6 objection. They are not dated, so it doesn't --
7 it's not relevant to the charge here.

8 CHAIRPERSON MILLER: Oh, I'm sorry.
9 Did you have any --

10 MS. GEPHARDT: I objected on the other
11 one, too.

12 CHAIRPERSON MILLER: So there is still
13 an outstanding objection that it's not dated?

14 MS. GEPHARDT: Yes.

15 CHAIRPERSON MILLER: Okay. I'm going
16 to wait and see. And Mr. Koll said something
17 like you could look at your phone and get the
18 date. Is that correct?

19 MR. KOLL: I can pull up the dates for
20 all of the pictures.

21 CHAIRPERSON MILLER: You can pull the
22 dates. Okay. Which would make the record more

1 complete. But are you still objecting?

2 MS. GEPHARDT: Well, I mean, if it's
3 not October 22nd, which is the date of the
4 incident, you know, they can prove that that
5 wasn't the case on the date of the incident, then
6 that's relevant. But if it's, you know, January
7 23rd of the next year, it doesn't say anything
8 about this incident.

9 MS. BABIN: I have -- I would argue
10 that it is relevant.

11 CHAIRPERSON MILLER: Okay. Do you
12 want to address why they are relevant?

13 MS. BABIN: I would argue that they
14 are relative -- relevant, sorry, because they --
15 this picture, in particular, demonstrates that
16 the trash in the dumpster is not ours. That it
17 shows that the neighbors are putting their trash
18 in our dumpster.

19 And as Mr. Koll testified, following
20 viewing that dumpster what the measures were that
21 they would take to ensure that the dumpsters were
22 closed and probably secured, even though we had

1 trash from our neighbors. So that's with respect
2 to this one.

3 This one I think is relevant because
4 it is -- there are pictures here that show,
5 number one, that the dumpster is not green, as
6 Mr. Jones stated. And number two, you know, that
7 our efforts to continue to comply, because we are
8 of the opinion that we were complying at the
9 time, that the trash that was put there was put
10 there not by us and that we did our -- we made as
11 many efforts as we really could do ensure that
12 the dumpster was clear, free of trash. And that
13 these also show the results of -- following Mr.
14 Jones' recommendations for the metal dumpsters.

15 CHAIRPERSON MILLER: Okay. And you
16 are going to have Mr. Koll identify?

17 MS. BABIN: Identify, yes. Could you
18 identify which dumpsters belong to Partisan?

19 MR. KOLL: So the one in Exhibit 3 is
20 depictive of what was the content on Partisan
21 trash labeled on top. And Exhibit 2 is in the
22 same position as the one in Exhibit 1 located

1 directly next to the door leading into our
2 restaurant.

3 MS. BABIN: And what type of dumpsters
4 are they?

5 MR. KOLL: They are both the orange
6 metal dumpsters that Mr. Jones had recommended we
7 switch over to once we were able to get them.

8 MS. BABIN: And what color were the
9 plastic dumpsters?

10 MR. KOLL: The -- at the time of Mr.
11 Jones' first visit, all dumpsters were plastic,
12 two green and two orange. When he returned, all
13 the plastic ones were simply orange.

14 MS. BABIN: And what color was our
15 plastic one?

16 MR. KOLL: Orange.

17 MS. BABIN: And can you identify
18 whether or not the trash can immediately adjacent
19 to ours belongs to -- immediately next to The
20 Partisan belongs to The Partisan?

21 MR. KOLL: No, it's not.

22 MS. BABIN: And would you -- is this

1 typical of how we find the trash in ours?

2 MR. KOLL: It has been that case since
3 we opened.

4 MS. BABIN: And has it actually been
5 cured?

6 MR. KOLL: Not entirely.

7 CHAIRPERSON MILLER: I'm sorry, I --

8 MS. BABIN: I said have they actually
9 cured their dump -- their trash disposal habits?

10 CHAIRPERSON MILLER: Who?

11 MS. BABIN: The people who own the
12 adjacent dumpster.

13 CHAIRPERSON MILLER: Okay.

14 MS. BABIN: Has there continued to be
15 trash in the adjacent dumpsters?

16 MR. KOLL: It's still a continue --
17 continuing exercise.

18 MS. BABIN: And since we went to the
19 metal containers, has it -- has our -- have we
20 been more effective in --

21 MS. GEPHARDT: These are all very
22 leading questions.

1 MS. BABIN: Okay. Since then, can you
2 tell us the circumstances surrounding the trash
3 after we implemented the metal dumpsters?

4 MR. KOLL: Well, on occasion, there is
5 still other establishments' trash in our
6 receptacles. For the most part, our dumpsters,
7 both the recycling as well as the trash dumpster,
8 have been clear with the metal lids completely
9 shut and pulled down.

10 MS. BABIN: Okay.

11 CHAIRPERSON MILLER: Do you -- if you
12 are finished questioning with respect to those
13 pictures, do you want to move them into evidence?

14 MS. BABIN: I would like to make these
15 Defense Exhibit 2 and 3 moved into evidence.

16 CHAIRPERSON MILLER: And 1? We didn't
17 move --

18 MS. BABIN: And 1.

19 CHAIRPERSON MILLER: And 1. Okay.
20 Any sustaining objection?

21 MS. GEPHARDT: I sustain my objection,
22 yes.

1 CHAIRPERSON MILLER: Okay. As to
2 relevance. Is that right?

3 MS. GEPHARDT: Relevance, yes.

4 CHAIRPERSON MILLER: Okay. I'm going
5 to overrule the objection then. I find them
6 relevant. And we will take them into evidence.

7 MS. BABIN: So do I need to bring it
8 to you or somebody can get it?

9 CHAIRPERSON MILLER: Someone will come
10 get it. It's Exhibits 1, 2 and 3.

11 (Whereupon, the above-referred to
12 documents were received into evidence as Licensee
13 Exhibit No. 1 through No. 3.)

14 MS. BABIN: Mr. Koll, does The
15 Partisan -- no, I'm sorry. Let me rephrase that
16 question.

17 How does The Partisan treat its trash
18 cans and what are some of the rules associated
19 with our own procedures for our own trash?

20 MR. KOLL: On a regular basis, all --
21 after all morning deliveries are received, boxes
22 are broken down, flattened and put in the

1 recycling bin, again, lids are closed. Trash is
2 removed from the building after breakfast, after
3 lunch and then again after dinner. And
4 potentially between in the middle of a dinner
5 service as well.

6 So three or four times a day and
7 brought immediately outside and placed in the
8 receptacles and the lids are closed.

9 MS. BABIN: And could you -- I think
10 you might have touched on it, but could you talk
11 about the color of our trash bags? This is a
12 final distinguishing --

13 MR. KOLL: In -- throughout the
14 restaurant, all trash receptacles have solid
15 black trash bags in them and all recycling
16 receptacles have clear plastic bags in them.

17 MS. BABIN: Thank you. I don't have
18 any further questions.

19 CHAIRPERSON MILLER: Okay. Cross?

20 MS. GEPHARDT: Okay.

21 CROSS-EXAMINATION

22 MS. GEPHARDT: Mr. Koll, do you recall

1 when Mr. Jones came out to visit your
2 establishment on October 22, 2014?

3 MR. KOLL: I do.

4 MS. GEPHARDT: And when he showed you
5 this picture, he said he showed you from his
6 camera. Do you recall this photograph?

7 MR. KOLL: I believe on his iPad and,
8 yes, I do recall.

9 CHAIRPERSON MILLER: Ms. Gephardt,
10 could you refer to the --

11 MS. GEPHARDT: I'm sorry. I'm
12 referring to --

13 CHAIRPERSON MILLER: -- exhibit for
14 the record?

15 MS. GEPHARDT: -- Government Exhibit
16 No. 2.

17 CHAIRPERSON MILLER: Okay.

18 MS. GEPHARDT: Or actually, it would
19 be Board file Exhibit No. 2.

20 CHAIRPERSON MILLER: Yes.

21 MS. GEPHARDT: So do you recall
22 pointing out to him which receptacle belonged to

1 Red Apron?

2 MR. KOLL: He asked if that was ours
3 and I said it quite well may be ours. Typically
4 the first and second receptacles, one for trash,
5 one for recycling, and at the time, there was no
6 reasonable organization to any of the receptacles
7 and that the surrounding establishments were
8 using all receptacles.

9 MS. GEPHARDT: So would you state that
10 this was the state of your trash receptacle on
11 October 22, 2014?

12 MR. KOLL: If that was ours? Yes.

13 MS. GEPHARDT: And there is materials
14 and trash coming out of the top and the lid is
15 not on?

16 MR. KOLL: Yes.

17 MS. GEPHARDT: Okay. Let's see, and
18 Mr. Koll, do you -- are those photos that you
19 admitted into evidence or counsel admitted into
20 evidence, were any of those dated?

21 MR. KOLL: No, they were not.

22 MS. GEPHARDT: So you don't know that

1 those were taken on October 22, 2014?

2 MR. KOLL: Correct.

3 MS. GEPHARDT: Let's see, and, Mr.
4 Koll, are you -- were you aware, at least at this
5 time, on October the 22nd was there a rodent
6 problem in that alley?

7 MR. KOLL: Yes, there was.

8 MS. GEPHARDT: And did Mr. Jones make
9 you aware of it as well? Did you discuss it?

10 MR. KOLL: Yes, we did.

11 MS. GEPHARDT: Okay. Were you aware
12 that rodents were living underneath or within
13 your dumpster?

14 MR. KOLL: We were aware that there
15 were rodents out in the alleyway where they were
16 at any given time.

17 MS. GEPHARDT: Okay. One moment.
18 That's all I have.

19 MS. BABIN: I --

20 CHAIRPERSON MILLER: Okay. Did you
21 want to do redirect?

22 MS. BABIN: I would like to --

1 CHAIRPERSON MILLER: Just based on her
2 questions.

3 MS. BABIN: I have two real quick
4 redirect questions.

5 CHAIRPERSON MILLER: Okay. Well, I'll
6 let you do that and then we will do Board
7 questions.

8 MS. BABIN: Okay.

9 REDIRECT

10 MS. BABIN: Just to clarify, Mr. Koll,
11 could you tell us, could you identify is this a
12 dumpster?

13 MS. GEPHARDT: What? No one knows
14 what the witness is seeing.

15 CHAIRPERSON MILLER: Are you showing
16 him a picture that has been referenced as an
17 exhibit?

18 MS. BABIN: Yes, in Exhibit 2.

19 CHAIRPERSON MILLER: Okay.

20 MS. BABIN: Just for the -- could you
21 identify --

22 CHAIRPERSON MILLER: Government's

1 Exhibit 2. Okay.

2 MR. KOLL: So the first couple of
3 small units belong to the businesses -- the
4 office. Oh, I'm sorry, yes.

5 MS. BABIN: And what color is this
6 dumpster right here?

7 MR. KOLL: It's the yellow one.

8 MS. BABIN: And what color is the
9 third one?

10 MR. KOLL: That's green.

11 MS. BABIN: Okay. No further
12 questions.

13 CHAIRPERSON MILLER: Okay. Board
14 questions?

15 MEMBER SHORT: I have one.

16 CHAIRPERSON MILLER: Yes, Mr. Short?

17 MEMBER SHORT: Good afternoon, sir.

18 MR. KOLL: Good afternoon.

19 MEMBER SHORT: How long have you been
20 in business there?

21 MR. KOLL: Since March of 2014.

22 MEMBER SHORT: March of 2014.

1 MR. KOLL: Yes, sir.

2 MEMBER SHORT: Business pretty good?

3 MR. KOLL: Yes, sir.

4 MEMBER SHORT: How often do you -- is
5 your trash picked up?

6 MR. KOLL: Daily.

7 MEMBER SHORT: It's picked up daily?

8 MR. KOLL: Yes, five days a week.

9 MEMBER SHORT: And so you -- how many
10 dumpsters do you have?

11 MR. KOLL: One dumpster and one
12 recycling, sir.

13 MEMBER SHORT: Is that normally in one
14 day you fill it up or?

15 MR. KOLL: Normal average business, I
16 would say our recycling is close to full and
17 trash is about halfway full.

18 MEMBER SHORT: Every day?

19 MR. KOLL: Average, yes.

20 MEMBER SHORT: On average. Well, when
21 you find someone that is putting trash into your
22 receptacles --

1 MR. KOLL: Yes.

2 MEMBER SHORT: -- what -- how do you
3 report it or do you report it or have you talked
4 with the establishment?

5 MR. KOLL: We have spoken to the
6 establishment on numerous occasions. Often when
7 we say someone in the act doing it, we would try
8 to alert the establishment's manager on duty,
9 both in the kitchen as well as front of house.
10 Often there was no response taken.

11 MEMBER SHORT: So you have seen
12 someone or you have caught someone in action.
13 You reported it and that's as far as it went?
14 You didn't call the police or you didn't take any
15 further actions to stop this? Knowing that if
16 ABRA Inspectors come by that you are going to
17 have to answer for it?

18 MR. KOLL: Correct.

19 MEMBER SHORT: So you did nothing
20 else?

21 MR. KOLL: We took Mr. Jones'
22 recommendations to label our receptacles

1 continually trying to come to terms with the
2 establishments around us and then switched over
3 to the metal receptacles and that has, for the
4 most part, alleviated the situation, but still
5 not entirely.

6 MEMBER SHORT: Okay. So since Mr.
7 Jones' visit, you have changed the receptacles
8 and your problem has kind of been taken care of?

9 MR. KOLL: For the most part, yes,
10 sir.

11 MEMBER SHORT: So if you had done that
12 prior to the inspection, you probably wouldn't be
13 sitting here today?

14 MR. KOLL: I can't attest to what it
15 would have been like in that situation.

16 MEMBER SHORT: No further questions.
17 Thank you.

18 CHAIRPERSON MILLER: Okay. Others?
19 Mr. Alberti?

20 MEMBER ALBERTI: Yes. I'm going to
21 cover some ground that has been covered before,
22 but I'm still not crystal clear --

1 MR. KOLL: Of course.

2 MEMBER ALBERTI: -- on just what we
3 are looking at. So --

4 MR. KOLL: Yes, sir.

5 MEMBER ALBERTI: -- let's go to
6 Exhibit 2 from the Investigator's report. So in
7 the very front of that, I see a trash receptacle
8 with a chain going across it. Who does that
9 belong to?

10 MR. KOLL: I believe that belonged to
11 the business, the offices on the corner of 7th and
12 E Street. I don't know if they actually --

13 MEMBER ALBERTI: Okay. All right.
14 Now, as I'm looking at that to the left of that,
15 is that one or two receptacles that I see there?

16 MR. KOLL: I believe it is just one
17 directly adjacent to it.

18 MEMBER ALBERTI: To the left?

19 MR. KOLL: Correct.

20 MEMBER ALBERTI: All right.

21 MR. KOLL: Oh, I'm sorry, to the left?

22 MEMBER ALBERTI: To the left.

1 MR. KOLL: No, that's --

2 MEMBER ALBERTI: I'm facing it --

3 CHAIRPERSON MILLER: Are you looking--

4 MR. KOLL: -- there is the smaller

5 one.

6 MEMBER ALBERTI: They are shorter than
7 the one with the chain on it?

8 MR. KOLL: Those I believe also belong
9 to those officers.

10 MEMBER ALBERTI: So they -- and okay.
11 Okay. To the right of the one that you just --

12 CHAIRPERSON MILLER: Can I interrupt
13 for a minute? I'm sorry. But do you not have a
14 picture of Exhibit 2 in front of you?

15 MR. KOLL: I don't. I can kind of see
16 his.

17 CHAIRPERSON MILLER: Do we have a
18 picture?

19 MEMBER ALBERTI: Oh, I'm sorry. Thank
20 you, Ms. Miller. That will be helpful.

21 CHAIRPERSON MILLER: Okay. If we can
22 make sure it's really after it.

1 MEMBER ALBERTI: That will be helpful.
2 Okay. And does he have all of the other
3 pictures?

4 MS. BABIN: Yes, he has got them now.

5 MS. GEPHARDT: Oh, of those other
6 ones?

7 MEMBER ALBERTI: Yes.

8 MS. BABIN: Of ours? No, they have
9 been submitted.

10 MEMBER ALBERTI: All right. Well, we
11 will try to get him copies of those when I get to
12 them.

13 CHAIRPERSON MILLER: We can give them
14 back if you --

15 MEMBER ALBERTI: Well, he needs copies
16 when I get to them, but --

17 CHAIRPERSON MILLER: He needs them
18 more than I do if you are going to question him
19 on it.

20 MEMBER ALBERTI: All right. Well,
21 I'll be short on that. So the next one down is--
22 it says Tenleytown Trash on it. The next one to

1 the right of the one with a chain on it that is--
2 who does that belong to?

3 First of all, is that one receptacle
4 that looks like it has got a split hood, lid?

5 MR. KOLL: Yes, the receptacles all
6 have split lids.

7 MEMBER ALBERTI: Okay.

8 MR. KOLL: I don't recall if that was
9 ours at the time or not. At the first visit, as
10 I explained to him that typically ours were the
11 first two large Tenleytown dumpsters, so that not
12 that yellow one, but the first two large ones,
13 but that there was no real organization to any of
14 the dumpsters in that alley.

15 MEMBER ALBERTI: So how did your staff
16 know which ones to use?

17 MR. KOLL: At the time, they were
18 using the one green and the one orange that were
19 in front. However, until we labeled --

20 MEMBER ALBERTI: The one green and the
21 one orange. What do you mean orange?

22 MR. KOLL: So the typical organization

1 of that alley was there are --

2 MEMBER ALBERTI: Don't give me colors,
3 because this --

4 MR. KOLL: I'm sorry.

5 MEMBER ALBERTI: -- is distorted.
6 Give me positions here.

7 MR. KOLL: Yes. So the first large
8 dumpster in the location where --

9 MEMBER ALBERTI: With the chain on it?

10 MR. KOLL: Pardon?

11 MEMBER ALBERTI: With the chain on it?

12 MR. KOLL: The one to the right of
13 that.

14 MEMBER ALBERTI: The one to the right
15 of that?

16 MR. KOLL: Yes.

17 MEMBER ALBERTI: Okay.

18 CHAIRPERSON MILLER: Can you -- I know
19 we can't see pointing in the record, but just so
20 that we are really following you --

21 MR. KOLL: Certainly.

22 CHAIRPERSON MILLER: -- could you show

1 which one you are referring to?

2 MR. KOLL: So typically there was this
3 dumpster.

4 MEMBER ALBERTI: Right. Which is to
5 the right of the one with the chain on it.

6 MR. KOLL: Correct.

7 CHAIRPERSON MILLER: Okay.

8 MR. KOLL: Immediately next to that,
9 there was either another dumpster or our linen
10 basket. There is a grease receptacle. and then
11 three more dumpsters. Typically, we tried to
12 keep the organization where there were a large
13 green dumpster next to each other, that we would
14 use and then there were the three additional
15 orange dumpsters that the other establishments
16 used.

17 MEMBER ALBERTI: So this is more of a
18 statement than a question, but I'll pose it as a
19 question. Since you were using all of those
20 dumpsters, do you think that you had assumed some
21 responsibility for the trash in that alley for
22 all of the dumpsters?

1 MS. BABIN: I would like to object to
2 that question. He didn't state that he used all
3 the dumpsters. He didn't use all the dumpsters.
4 They only used our dumpster.

5 MEMBER ALBERTI: I will go back to
6 what he said. He said typically, they use this
7 first dumpster, which signals to me that they use
8 other dumpsters if it wasn't always. So I'm
9 going by the word typically. So since you only
10 typically used that --

11 MR. KOLL: So it was not --

12 MEMBER ALBERTI: -- one, did you --

13 MR. KOLL: It was not always.

14 MEMBER ALBERTI: -- assume
15 responsibility for the trash in all of the
16 receptacles? Some responsibility or shared
17 responsibility?

18 MR. KOLL: It was not always the case
19 that the front dumpster was the green recycling
20 one that belongs to us, so it was not always used
21 by our establishment.

22 MEMBER ALBERTI: How did you identify

1 which ones were your dumpster, your
2 establishment's dumpster?

3 MR. KOLL: At the time, when you ar a
4 newer business, there was a dumpster that was
5 newer that came into that alley that belonged to
6 us and the other dumpsters that had been there
7 for the entirety of the others before we opened
8 had clear wear and tear and that differentiated.

9 MEMBER ALBERTI: Okay. Great. So I'm
10 going to point you to your exhibit. Oh, geez, I
11 don't know, they are not numbered, so I'm having
12 trouble here.

13 CHAIRPERSON MILLER: There are numbers
14 at the top.

15 MEMBER ALBERTI: They are numbered?

16 MEMBER SHORT: Yes.

17 MEMBER ALBERTI: I've got two numbers
18 here.

19 CHAIRPERSON MILLER: At the very top?

20 MEMBER SHORT: It's cut off at the
21 very top.

22 MEMBER ALBERTI: So -- oh, I see.

1 Representative for the licensee, which number is
2 this?

3 MS. BABIN: I believe that's No. 2.
4 I didn't get a copy, so I would have to walk up
5 and look at it.

6 CHAIRPERSON MILLER: Okay. This is
7 Exhibit No. 1.

8 MEMBER ALBERTI: Okay. So this is No.
9 2?

10 CHAIRPERSON MILLER: Correct?

11 MS. BABIN: Correct.

12 MEMBER ALBERTI: Okay.

13 MS. BABIN: That's No. 1.

14 MEMBER ALBERTI: So No. 2 and I'll
15 describe it for you. It's a dumpster with both
16 lids open, piled high with trash. There is trash
17 bags to the left of it, to the right of it
18 appears to be a different color dumpster, a
19 lighter colored dumpster. Do you have that
20 picture?

21 MR. KOLL: Is this it, sir?

22 MEMBER ALBERTI: Yes. Does that look

1 like the receptacle that you would have believed
2 to be yours?

3 MR. KOLL: It is similar.

4 MEMBER ALBERTI: Your establishments?

5 MR. KOLL: The front of it is labeled
6 with the other establishment's name on it.

7 MEMBER ALBERTI: So it's not your
8 establishments?

9 MR. KOLL: No, the one next to it is.

10 MEMBER ALBERTI: No, the -- it looks
11 like it's kind of colored green there. The one
12 piled high with trash.

13 MR. KOLL: Yes, sir, this was --

14 MEMBER ALBERTI: Does that look like
15 the one that you identified which would probably
16 be yours?

17 MR. KOLL: It is a similar style.

18 MEMBER ALBERTI: Does that look like
19 the one? Does it appear to you to be the one
20 that is in question in Exhibit 2? The one to the
21 right of the receptacle with the chain?

22 MR. KOLL: No, those are different.

1 CHAIRPERSON MILLER: Government's
2 Exhibit 2?

3 MR. KOLL: At the time --

4 CHAIRPERSON MILLER: Excuse me. Are
5 you --

6 MEMBER ALBERTI: Are they different?

7 CHAIRPERSON MILLER: Government's
8 Exhibit 2?

9 MEMBER ALBERTI: The Government's
10 exhibit.

11 CHAIRPERSON MILLER: Okay.

12 MR. KOLL: So on Government's Exhibit
13 2, all the dumpsters in the alley were plastic.
14 The --

15 MEMBER ALBERTI: Oh.

16 MR. KOLL: -- pictures that we
17 submitted were after that, after we had switched
18 to metal receptacles.

19 MEMBER ALBERTI: So I'm a little stuck
20 on this. You know, we knew we had the newer
21 receptacles.

22 MR. KOLL: Um-hum.

1 MEMBER ALBERTI: So is that the only
2 way you have identified them? Your receptacle?

3 MR. KOLL: (No audible answer.)

4 MEMBER ALBERTI: So the one in Exhibit
5 2, again and maybe I asked this, you believe that
6 that was your receptacle?

7 CHAIRPERSON MILLER: Which exhibit?

8 MEMBER ALBERTI: Government's Exhibit
9 2.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER ALBERTI: Do you believe that
12 that was your receptacle?

13 MR. KOLL: I did believe it may have
14 been, because the --

15 MEMBER ALBERTI: Because what?

16 MS. BABIN: Order.

17 MR. KOLL: Because of the order that
18 we typically kept the receptacles in. But at the
19 time, as I mentioned, we did not have them
20 labeled, so it was not as clear as it was
21 afterwards.

22 MEMBER ALBERTI: So in any of these

1 other pictures, do any of the pictures that you--
2 that the applicant has shown, are any of those
3 receptacles for your establishment?

4 MR. KOLL: Only the ones that are
5 labeled Partisan.

6 MEMBER ALBERTI: Oh, okay. So Exhibit
7 No. 1, is Partisan trash?

8 MR. KOLL: Yes. And that was our
9 receptacle with not our trash in it.

10 MEMBER ALBERTI: You didn't put any
11 trash in there?

12 MR. KOLL: None of the trash at the
13 time of that picture was ours.

14 MEMBER ALBERTI: Do you know what time
15 this was taken?

16 MR. KOLL: I don't. I have a
17 timestamp on the picture on my phone.

18 MEMBER ALBERTI: Do you know if it
19 would have been expected that you would have put
20 some trash in there given the time of day?

21 MR. KOLL: If it was later in the
22 evening, we probably -- we may have had a bag or

1 two in there, but everything that is shown in
2 that picture is not ours.

3 MEMBER ALBERTI: How often do you
4 empty trash? When is the first time during the
5 day that you empty trash from your establishment
6 into these receptacles?

7 MR. KOLL: When we receive -- the
8 first time that trash will go -- trash or
9 recycling?

10 MEMBER ALBERTI: Trash.

11 MR. KOLL: Trash. As soon as they are
12 built, which on a slow day can be later in the
13 afternoon or evening. If it's on a busy day, it
14 could be after brunch or lunch.

15 MEMBER ALBERTI: All right. But we
16 don't know what time of day this is, the picture?

17 MR. KOLL: Correct. It was taken at
18 night, but I don't have the actual time.

19 MEMBER ALBERTI: How do you know it
20 was taken at night?

21 MR. KOLL: I remember taking it, but
22 it's -- but we were not open at that time of the

1 day. In the morning, it would still be light.

2 MEMBER ALBERTI: Are you telling me
3 you believe it is night, only because the
4 background is dark?

5 MR. KOLL: It's an open air outlet, so
6 light would be present if it was during the
7 morning.

8 MEMBER ALBERTI: Yes, well, I'm not a
9 very good photographer. I often get pictures
10 like that myself where I can't tell whether it is
11 light or dark.

12 MS. BABIN: I'm going to object to the
13 question, because I --

14 MEMBER ALBERTI: I'll withdraw my
15 remarks.

16 MS. BABIN: Okay. He did not say --

17 MEMBER ALBERTI: But --

18 MS. BABIN: -- that was the only
19 reason he thought it was nighttime.

20 MEMBER ALBERTI: So we have an
21 objection to my question.

22 CHAIRPERSON MILLER: Oh, are you

1 asking for a ruling on that?

2 MEMBER ALBERTI: I don't know.

3 CHAIRPERSON MILLER: I thought you
4 just moved on.

5 MEMBER ALBERTI: Well, you can respond
6 to it or not.

7 CHAIRPERSON MILLER: Like I said --

8 MEMBER ALBERTI: I didn't move on.

9 CHAIRPERSON MILLER: All right.

10 MEMBER ALBERTI: I did not move on.
11 I did not ask another question.

12 CHAIRPERSON MILLER: I understand that
13 she objected because she thought you
14 mischaracterized his answer and his answer was
15 fair for the record and I heard him as well say
16 that the -- he gave two reasons for remembering
17 one was the way the picture looks, so it's dark.
18 And that he recalled taking the picture in the
19 nighttime, though he doesn't recall what day it
20 was.

21 MEMBER ALBERTI: Okay.

22 CHAIRPERSON MILLER: Is that correct?

1 MR. KOLL: Yes, ma'am.

2 CHAIRPERSON MILLER: Okay. And the
3 attorney was concerned about --

4 MEMBER ALBERTI: All right.

5 CHAIRPERSON MILLER: --
6 mischaracterization.

7 MEMBER ALBERTI: All right.

8 CHAIRPERSON MILLER: Okay. Is that
9 all right for the record?

10 MEMBER ALBERTI: Yes.

11 CHAIRPERSON MILLER: All right.

12 MEMBER ALBERTI: Okay.

13 CHAIRPERSON MILLER: Okay. Moving on.

14 MEMBER ALBERTI: I have no further
15 questions right now.

16 CHAIRPERSON MILLER: Any other Board
17 Members? Mr. Silverstein?

18 MEMBER SILVERSTEIN: I have a couple
19 of questions, Mr. Koll.

20 MR. KOLL: Yes, sir.

21 MEMBER SILVERSTEIN: The photo here,
22 I guess it's Exhibit 1, Partisan trash only.

1 MR. KOLL: Yes, sir.

2 MEMBER SILVERSTEIN: How do you know
3 that this trash in here is not yours?

4 MR. KOLL: The items that were inside
5 so there are --

6 MEMBER SILVERSTEIN: Look at the
7 picture and tell me what items and why.

8 MR. KOLL: Yes, sir. The Blue Bell
9 Ice Cream receptacle on the far right of the
10 dumpster in the trash bag, that is not a product
11 that we have ever carried. The broken down beer
12 case of Pabst Blue Ribbon is another item that we
13 have never carried. There are numerous paper
14 items and the other clear trash bags on top also
15 do not belong to anything at our restaurant.

16 MEMBER SILVERSTEIN: The clear trash
17 bags? You do not use clear trash bags?

18 MR. KOLL: We use them for recycling
19 only, not for trash.

20 MEMBER SILVERSTEIN: Is it possible
21 then that some stuff at the bottom of this could
22 have been yours that is not visible?

1 MR. KOLL: Yes.

2 MEMBER SILVERSTEIN: But you are
3 saying that the --

4 MR. KOLL: It's possible.

5 MEMBER SILVERSTEIN: -- things that
6 are visible on the top, it is your sworn
7 testimony that this does not -- this is not your
8 stuff?

9 MR. KOLL: All of the visible trash is
10 not ours.

11 MEMBER SILVERSTEIN: Now, in
12 Government Exhibit 2, which is the trash
13 dumpsters in the alleyway --

14 MR. KOLL: Yes, sir.

15 MEMBER SILVERSTEIN: -- the one in the
16 back --

17 MR. KOLL: Yes, sir.

18 MEMBER SILVERSTEIN: -- is that yours?

19 MR. KOLL: No, sir.

20 MEMBER SILVERSTEIN: Can you describe
21 what is in it? Did you see it? Did you know
22 what was there at the time?

1 MR. KOLL: I remember walking through
2 the alley with Mr. Jones and pointing out all of
3 the trash that was from the other establishments
4 that was overflowing while I was trying to
5 explain to him the situation that we were in
6 where we were -- where the other establishment
7 was continuously using all of the dumpsters.

8 MEMBER SILVERSTEIN: So it is your
9 testimony that everything that -- there is no
10 room in the top of that one for anything.

11 MR. KOLL: Correct.

12 MEMBER SILVERSTEIN: So if they had
13 any more trash, where would it -- where might it
14 have gone?

15 MR. KOLL: All right. I presume that
16 it would have ended up in the additional
17 dumpsters that are also in that alley or
18 eventually spill out all over the alley.

19 MEMBER SILVERSTEIN: No further
20 questions.

21 CHAIRPERSON MILLER: Others? Mr.
22 Jones?

1 MEMBER JONES: Thank you, Madam Chair.
2 I just want to make sure I'm understanding the
3 questions. The exhibits that were submitted by
4 your representative are Defendant's Exhibits 1, 2
5 and 3, the photographs of Partisan trash cans,
6 etcetera. You took these pictures?

7 MR. KOLL: Yes, sir.

8 MEMBER JONES: You did. Do you have
9 any information, and please excuse me if this has
10 been covered already, but do you have any
11 information of exactly when these pictures were
12 taken?

13 MR. KOLL: I can get exact time
14 stamps. I can pull the photo up on my phone
15 and --

16 MEMBER JONES: How far after, roughly,
17 October 22nd, how many days, weeks, months after
18 that were they taken?

19 MR. KOLL: I believe I started taking
20 the pictures a week after is first visit on the
21 22nd.

22 MEMBER JONES: Then --

1 MR. KOLL: And I continued to take
2 pictures documenting the situation through March
3 of 2015. This one with the plastic dumpster had
4 been within that first month before we were able
5 to switch over to the metal dumpsters.

6 MEMBER JONES: So when you say this
7 one with the plastic dumpster, Exhibit 1, 2 or 3?

8 MR. KOLL: Exhibit 2.

9 MEMBER JONES: Exhibit 2?

10 MR. KOLL: Exhibit 2 with the plastic
11 dumpsters labeled Partisan Trash Only. It would
12 have been in that first month, month and a half
13 before we were able to switch entirely over to
14 metal trash cans.

15 MEMBER JONES: Okay. So within a
16 month of October 22nd?

17 MR. KOLL: I believe so.

18 MEMBER JONES: Okay. And do you
19 happen to have Exhibit 1 from the Government?
20 Excuse me, Exhibit 2?

21 MR. KOLL: Yes, sir.

22 MEMBER JONES: So if I remember

1 hearing your testimony correctly, you are saying
2 that you identified -- well, excuse me. Did you
3 identify any dumpster as being a dumpster that
4 you used as noted in the picture in Exhibit 2?

5 MR. KOLL: I explained to him --

6 MEMBER JONES: No, no, no. Did you
7 identify -- not in your conversations with him.
8 Had you identified today any dumpster in this
9 photograph, Exhibit 2, that you used on that
10 evening, on October 22nd?

11 MR. KOLL: We may have used one in
12 that picture, but I -- as I said, there was no
13 organization of those dumpsters at the time. And
14 we did our best to --

15 MEMBER JONES: So how did you
16 identify? Did you dump any trash on October 22nd
17 at any point during that day?

18 MR. KOLL: Yes, sir.

19 MEMBER JONES: Okay. You have no idea
20 by looking at this photograph what dumpster you
21 dumped trash into?

22 MR. KOLL: I don't personally dump

1 trash. We do our best to use the same ones when
2 they are available and not overflowing.

3 MEMBER JONES: Okay. So you have no
4 firsthand knowledge of what goes on in the back
5 alley where the trash receptacles are outside of
6 the few photographs that you have taken, because
7 that's not your duty?

8 MR. KOLL: I work closely with the
9 kitchen to make sure that we are trying to
10 establish systems so that we were controlling the
11 situation. We also --

12 MEMBER JONES: Well, what did that
13 entail? So you are not personally supervising
14 trash dumping, correct?

15 MR. KOLL: Correct.

16 MEMBER JONES: So you are not
17 personally supervising and ensuring that the
18 dumpsters are not overflowing, that the dumpsters
19 are secure, that the dumpsters are closed. And
20 if you are, how does that process work?

21 MS. BABIN: I'm going to object
22 because I don't think that's --

1 CHAIRPERSON MILLER: Okay. Okay.
2 It's okay to like raise concern, but I have to
3 say you are probably objecting to Board Member's
4 questions maybe too much. We have to be a
5 little --

6 MS. BABIN: Okay.

7 CHAIRPERSON MILLER: -- you know, but
8 what is --

9 MEMBER JONES: What's the basis of
10 your objection?

11 MS. BABIN: I believe that you are
12 misconstruing what he is saying. He has not
13 testified that he has no interaction with trash.
14 He also has -- he was not shown the dumpster on
15 the night of this. This is a picture he was
16 shown. So I think his lack of clarity about this
17 dumpster is in relation to the fact that it was a
18 photograph and that he did not walk through the
19 dumpsters with Mr. Jones personally on October
20 22nd.

21 MEMBER ALBERTI: He just stated --

22 MS. BABIN: As Mr. Jones testified.

1 MEMBER ALBERTI: -- that --

2 MS. BABIN: Mr. Jones said that he
3 didn't -- I believe the testimony on the record
4 is that they did not walk in the alley when he
5 came out to do the advisement. The picture is
6 from the advisement, not from the first visit.
7 Is that -- that's correct? I believe if you
8 check the record that is correct.

9 MEMBER JONES: That's fine. I don't
10 understand why that is a basis for objecting to
11 the question that I asked for clarity of whether
12 or not he dumped or your establishment dumped any
13 trash on that evening and into what dumpster they
14 dumped trash.

15 MS. BABIN: My only objection is I
16 don't think that you can ascertain the answer to
17 your question based on the photographic evidence
18 and that's what he is referring to when you are
19 stating that question.

20 MEMBER JONES: I disagree with that.

21 MS. BABIN: Okay.

22 MEMBER JONES: But I'll leave it to

1 the Chair to make an assessment.

2 CHAIRPERSON MILLER: That's fine.

3 MEMBER JONES: If you can look at this
4 photograph and tell me that you have no idea what
5 your trash receptacles are?

6 MS. BABIN: I didn't say he had no
7 idea. I said that he had -- because he -- this
8 was a photograph and not an -- he was not
9 actually present when --

10 CHAIRPERSON MILLER: Okay.

11 MS. BABIN: -- the photograph was
12 taken.

13 CHAIRPERSON MILLER: All right. Why
14 don't we let the witness clear this up, because I
15 think that as far as I can tell even from this
16 colloquy, there is confusion about this picture
17 and whether or not you actually -- I hope this
18 what you referenced, Mr. Koll, whether or not you
19 actually went out that night with Mr. Jones to
20 look at the trash cans and identify your trash
21 cans or whether you only looked at Exhibit 2 on a
22 different day.

1 MR. KOLL: The evening that he showed
2 me the picture?

3 CHAIRPERSON MILLER: The evening he
4 showed you the picture, okay.

5 MR. KOLL: Was when we walked through
6 the alley to --

7 MEMBER JONES: When you walked through
8 the alley?

9 CHAIRPERSON MILLER: Okay.

10 MR. KOLL: The evening that he showed
11 me the picture.

12 CHAIRPERSON MILLER: Was that --

13 MEMBER JONES: You walked through the
14 alley? I just want to make sure I'm hearing you
15 correctly.

16 MR. KOLL: Yes, sir.

17 MEMBER JONES: Okay. So --

18 MEMBER SILVERSTEIN: Mr. Jones? The
19 evening he showed you the picture which may not
20 have been the evening that he took the picture?

21 MR. KOLL: That's right.

22 CHAIRPERSON MILLER: Right.

1 MEMBER JONES: Ah.

2 MEMBER SILVERSTEIN: I'm sorry, Mr.

3 Jones.

4 CHAIRPERSON MILLER: But that's --

5 MEMBER JONES: That's fine.

6 MEMBER SILVERSTEIN: Go ahead.

7 MEMBER JONES: I'll wait for the

8 Chair.

9 CHAIRPERSON MILLER: That's fine. Go
10 ahead. I think that point was clarified then
11 that he did walk through with Mr. Jones the night
12 that he gave you his advisement.

13 MR. KOLL: Yes, ma'am.

14 CHAIRPERSON MILLER: But not the night
15 that he took the picture.

16 MR. KOLL: Yes, ma'am.

17 CHAIRPERSON MILLER: Okay. Go ahead,
18 Mr. Jones.

19 MEMBER JONES: Okay. When you walked
20 through the alley --

21 MR. KOLL: Yes, sir.

22 MEMBER JONES: -- with Mr. Jones, did

1 you identify a receptacle that you had been using
2 to house your waste on that day?

3 MR. KOLL: Yes, sir.

4 MEMBER JONES: Okay. Is that
5 receptacle physically shown in this picture from
6 Exhibit 2?

7 MR. KOLL: It may be.

8 MEMBER JONES: It may be?

9 MR. KOLL: As --

10 MEMBER JONES: How would you identify
11 it to make a more definitive answer?

12 MR. KOLL: The two receptacles that
13 were newer with --

14 MEMBER JONES: How do you identify
15 something as being newer?

16 MR. KOLL: They showed less wear and
17 tear.

18 MEMBER JONES: Less wear and tear?

19 MR. KOLL: Yes, sir.

20 MEMBER JONES: Okay. Can you discern
21 from this photo in Exhibit 2 whether or not there
22 is a familiar looking receptacle?

1 MR. KOLL: No, I cannot.

2 MEMBER JONES: You cannot. Okay. How
3 is your staff, the individuals that are
4 responsible for the disposing of the trash, how
5 are they definitively know -- how do they have
6 definitive knowledge that they are disposing them
7 in the right trash cans?

8 MR. KOLL: We showed them which
9 receptacles were ours and then we do periodic
10 follow-ups to make sure that the alley is
11 relatively clean.

12 MEMBER JONES: What's a periodic
13 follow-up look like?

14 MR. KOLL: It's sporadic. I attempt
15 to do it on a couple of days a week just to check
16 through to make sure that our trash receptacles
17 are always clean around them.

18 MEMBER JONES: So there could be a
19 period of two to three days before you lay eyes
20 on whether or not you are in compliance?

21 MR. KOLL: It is possible.

22 MEMBER JONES: Okay. So the picture

1 that you were shown that was taken on October 22nd
2 by Investigator Jones, is this typical of what
3 you would have expected to see during any one of
4 your periodic inspections of the alley?

5 MR. KOLL: At the time, yes.

6 MEMBER JONES: Okay. The picture that
7 you took on Exhibit 2, I believe, of the
8 defendant's exhibits, you are saying -- is this
9 your receptacle, the plastic receptacle? Exhibit
10 2, defendant.

11 MR. KOLL: This one here?

12 MEMBER JONES: I'm sorry. This
13 Exhibit 2.

14 MR. KOLL: I'm sorry. So the plastic
15 ones in the back of the picture, in the back of
16 the other?

17 MEMBER JONES: So I'm looking at
18 Exhibit 2.

19 MR. KOLL: Yes, sir.

20 MEMBER JONES: And can you tell me
21 which receptacles are yours?

22 MR. KOLL: Yes. The one that is -- so

1 the one in the center of the picture.

2 MEMBER JONES: What color is it?

3 MR. KOLL: Green.

4 MEMBER JONES: Green. Are the lids up
5 or down?

6 MR. KOLL: The lids are up.

7 MEMBER JONES: The lids are up?

8 MR. KOLL: Yes, sir.

9 MEMBER JONES: Okay. And --

10 MR. KOLL: In front of that container,
11 there is a label with the name of another
12 establishment.

13 CHAIRPERSON MILLER: Which exhibit are
14 you looking at?

15 MR. KOLL: This one here.

16 CHAIRPERSON MILLER: Oh, you are
17 looking at your Exhibit 2.

18 MS. BABIN: May I approach him and
19 clarify?

20 MEMBER JONES: No.

21 CHAIRPERSON MILLER: Well, you can't
22 coach him, but if there -- no, you can't --

1 MEMBER JONES: No.

2 CHAIRPERSON MILLER: She can't coach
3 him, but if you need --

4 MS. BABIN: No, I said can I clarify
5 the picture?

6 CHAIRPERSON MILLER: -- to go over
7 there, it's fine.

8 MEMBER JONES: I'm asking questions.
9 What do you need to clarify about the questions
10 that I'm asking?

11 MS. BABIN: I think he is
12 misunderstanding which dumpster you are referring
13 to.

14 MEMBER JONES: I'm asking -- this is
15 Exhibit, from the defendant, 2, is it not?

16 MS. BABIN: I can't keep track. Yes,
17 it's our exhibit. I would like to be able to
18 look at it a little more closely. I don't have
19 it.

20 MEMBER JONES: You don't have copies
21 of your exhibit? I'm sorry.

22 MS. BABIN: No, I --

1 MEMBER JONES: Dee Dee, would you mind
2 providing her copies of her exhibits?

3 MS. BABIN: Thank you.

4 MEMBER JONES: Defendant Exhibit 2.

5 MR. KOLL: Yes.

6 MEMBER JONES: The dumpster that you
7 identified as being yours is a green dumpster?

8 MR. KOLL: No, sir.

9 MEMBER JONES: With the lids open?

10 MR. KOLL: No, sir.

11 MEMBER JONES: Okay. Which dumpster
12 is yours?

13 MR. KOLL: The orange one located next
14 to it.

15 MEMBER JONES: The orange one located
16 next to it?

17 MR. KOLL: Yes, sir.

18 MEMBER JONES: Okay. And that's the
19 one where the lid is closed?

20 MR. KOLL: Yes, sir.

21 MEMBER JONES: Okay. And the intent
22 of you taking this picture of someone else's

1 dumpster is to highlight what specifically?

2 MR. KOLL: To show that after we
3 labeled and took the steps that Mr. Jones asked
4 us to take, there were continued issues that were
5 resembling of the issues that he saw, that were
6 not related to our establishment.

7 MEMBER JONES: So, okay. I'm a little
8 confused or maybe it's just me. So this picture,
9 Exhibit 2 of you from a defendant's standpoint,
10 this is representative of the corrected action
11 that you took after meeting with Mr. Jones?

12 MR. KOLL: Sir, we took steps with our
13 receptacles and after that, there were continued
14 issues similar to ones that he saw that were
15 related to a different establishment.

16 MEMBER JONES: Are you --

17 MR. KOLL: So I --

18 MEMBER JONES: -- indicating that you
19 are saying that the Exhibit 2 from October 22nd,
20 from the Government's standpoint, that Mr. Jones
21 confused what were your receptacles and that you
22 are pointing out in your exhibit that this is --

1 MR. KOLL: I'm saying --

2 MEMBER JONES: -- really your -- you
3 are a good actor because you are representing
4 here that this is someone's trash that was
5 overflowing with the lids up?

6 MR. KOLL: I'm saying that when there
7 was less organization and clarity to which
8 dumpster was which, that it was easily confused.
9 And that once we were able to label and identify
10 our dumpsters more clearly and take the
11 precautions that he recommended we take, that
12 there was still continued incidents closely
13 relating to the ones that he saw that were not
14 due to our establishment.

15 MEMBER JONES: So the Exhibit 2, on
16 October 22nd --

17 MEMBER SILVERSTEIN: Wait.

18 MEMBER JONES: Yes.

19 MEMBER SILVERSTEIN: Would you answer
20 that again? I'm -- my eyes are crossed.

21 MR. KOLL: Correct. He told us to
22 take certain precautions to keep the confusion --

1 to prevent any confusion with the receptacles,
2 which we took those precautions. There were
3 continued issues with overflowing trash, trash on
4 the ground in the alley, receptacles that have
5 lids open that were not related to our
6 establishment.

7 MEMBER SILVERSTEIN: Thank you. I'm
8 sorry, Mr. Jones.

9 MR. KOLL: That's --

10 MEMBER JONES: That's fine.

11 MEMBER SILVERSTEIN: Go ahead.

12 MEMBER JONES: I can go? All right.
13 So on the Exhibit 2 from the Government, do you
14 have that in front of you?

15 MR. KOLL: Yes, sir.

16 MEMBER JONES: So there is a trash
17 receptacle with a chain around it, which you have
18 identified as not belonging to your
19 establishment. You are very clear that that is
20 not yours?

21 MR. KOLL: Correct.

22 MEMBER JONES: Okay. But you are very

1 unclear as to whether or not any -- which of
2 these other receptacles to the right or further
3 back in the alley you are actually using or
4 belong to you?

5 MR. KOLL: Correct.

6 MEMBER JONES: You are very unclear on
7 that. So you have no idea as to whether or not
8 your employees --

9 MS. BABIN: Objection.

10 CHAIRPERSON MILLER: This is his
11 testimony.

12 MR. KOLL: I think I made it clear
13 that --

14 MEMBER JONES: Well, are you clear
15 that your employees were using the right
16 receptacle?

17 MR. KOLL: We took the best steps
18 possible.

19 MEMBER JONES: What does that mean?

20 MR. KOLL: We indicated which
21 dumpsters belonged to our establishment to our
22 staff and we took steps to make sure that they

1 were using those receptacles.

2 MR. KOLL: But you don't -- you can't
3 see those receptacles in this photograph?

4 MR. KOLL: At the time of the --

5 MEMBER JONES: No, no. Can you see
6 them in this photograph?

7 MR. KOLL: I don't know which one is
8 ours.

9 MEMBER JONES: You have no idea.
10 Okay. Is it possible that your receptacle is not
11 visible in this photograph?

12 MR. KOLL: It's possible.

13 MEMBER JONES: Okay. So it could be
14 in the far vista end of the alley, in the dark
15 part of the alley that you can't see underneath
16 the outside compressor unit that is hanging
17 above?

18 MR. KOLL: It is possible.

19 MEMBER JONES: It's very possible?

20 MR. KOLL: It is possible.

21 MEMBER JONES: Okay. Did you think to
22 express that detail to the Investigator when you

1 walked through the alley?

2 MR. KOLL: At the time of speaking
3 with Mr. Jones, it -- we walked through and it
4 seemed like a very quite honestly casual
5 conversation about the situation that was in the
6 alley and the steps that we needed to take to
7 correct it.

8 MEMBER JONES: Okay. Did you clearly
9 identify on the time that you walked through the
10 alley which receptacles were yours?

11 MR. KOLL: Yes.

12 MEMBER JONES: You did when you walked
13 there?

14 MR. KOLL: Yes, sir.

15 MEMBER JONES: Okay. Did you review
16 the photo that he took on October 22nd when you
17 walked through the alley?

18 MR. KOLL: Previously when we were in
19 the restaurant at the same time.

20 MEMBER JONES: At the same time.

21 MR. KOLL: Yes.

22 MEMBER JONES: That same day?

1 MR. KOLL: Yes, sir.

2 MEMBER JONES: Okay. Did you point
3 out to Investigator Jones who indicated clearly
4 what he was there for that the receptacles that
5 are showing up in this photograph weren't the
6 ones that you identified when you walked through
7 the alley?

8 MS. BABIN: Objection. I believe this
9 question has been asked and answered several
10 times now.

11 MR. KOLL: I told him --

12 CHAIRPERSON MILLER: Okay. Wait a
13 second.

14 MR. KOLL: Okay.

15 CHAIRPERSON MILLER: There is an
16 objection.

17 MS. BABIN: I believe the witness has
18 -- the question has been asked several times and
19 answered.

20 MEMBER JONES: What was the answer?

21 MS. BABIN: The answer was that while
22 he is aware of which dumpsters are ours when they

1 are present looking at the dumpsters, he cannot
2 with any amount of certainty say whether or not
3 this dumpster on this night was ours.

4 However, because of the order in which
5 the dumpsters were in, he thought that it was
6 possible it was ours.

7 MEMBER JONES: That's not the question
8 that I asked. I asked him if he clearly --

9 MS. BABIN: I believe you asked him if
10 he was certain --

11 MEMBER JONES: I asked him if he
12 clearly identified --

13 MS. GEPHARDT: Objection. She is
14 testifying. This is not the way it is supposed
15 to go. Sorry.

16 CHAIRPERSON MILLER: She was
17 clarifying that -- she was characterizing what
18 she thought her witness said.

19 MS. GEPHARDT: And I was just hearing
20 her answering a question.

21 CHAIRPERSON MILLER: I didn't hear any
22 new testimony. But is there some new point,

1 because I think we are kind of going over the
2 same ground. Is there a new point that hasn't
3 been answered?

4 MEMBER JONES: Did the witness answer
5 the question I just asked?

6 CHAIRPERSON MILLER: Why don't you
7 rephrase it and I'll --

8 MEMBER JONES: I'll just restate it.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER JONES: Did you clearly
11 identify to Investigator Jones when you walked
12 through the alley that the receptacles that he
13 showed you of the picture that he took on October
14 22nd were not visible or pictured in the picture
15 that he showed you on October 22nd when you walked
16 through the alley?

17 MR. KOLL: When we walked through the
18 alley, I pointed out, I physically pointed out
19 which dumpsters were ours, which were, at the
20 time, in the location of the one that was in
21 question in his photograph.

22 MEMBER JONES: What does that mean?

1 So the one that was in question? Which is the
2 one that was in question in the photograph?

3 MR. KOLL: In Exhibit 2 --

4 MEMBER JONES: Yes.

5 MR. KOLL: -- there is the one he said
6 claimed is -- belongs to Red Apron.

7 MEMBER JONES: Okay. Which one is
8 that?

9 MR. KOLL: That is the green dumpster
10 with the lid open.

11 MEMBER JONES: Okay. And that's in
12 Exhibit 2, Government's Exhibit 2?

13 MR. KOLL: Yes, sir.

14 MEMBER JONES: Is that the one that is
15 directly to the right of the one that is chained?

16 MR. KOLL: Yes, sir.

17 MEMBER JONES: Okay.

18 MR. KOLL: And when we walked through,
19 I explained to him that typically we try to keep
20 the dumpsters that belong to us in those
21 locations. However, there was not an
22 organization to the dumpsters and they often were

1 either switched around or used by other
2 establishments.

3 MEMBER JONES: So you say typically
4 that's where your dumpster would be? Did you
5 have any reason to believe that that wasn't your
6 dumpster because that's typically where it is?

7 MR. KOLL: Other than not seeing it
8 that night, no.

9 MEMBER JONES: And you didn't see it
10 that night? That night being on October 22nd?

11 MR. KOLL: Not there.

12 MEMBER JONES: Because that's not one
13 of the nights that you did your periodic
14 inspection?

15 MR. KOLL: No, it was not.

16 MEMBER JONES: Okay. And if you could
17 help me understand Exhibit 3? Is this -- this is
18 Defendant Exhibit 3.

19 MR. KOLL: Yes, sir.

20 MEMBER JONES: I think I'm just now
21 understanding the sequence. So are you saying in
22 this photograph, did you take a picture -- well,

1 what are you taking -- what is this picture
2 representative of?

3 MR. KOLL: Again, I was establishing
4 that the reason he was citing the dumpster was
5 the trash on the ground, the open receptacles was
6 not associated with our establishment. And that
7 while there was less clearly defined systems with
8 the receptacles at the time of the original
9 picture, that when -- once we were able to
10 clearly identify then and switch over to the
11 metal receptacles as he suggested, that there was
12 a more clear issue with the existing -- I mean,
13 with the dumpsters that were still in that alley.

14 MEMBER JONES: In Exhibit 3 though,
15 the dumpster labeled Partisan Trash, is that your
16 receptacle?

17 MR. KOLL: Yes, sir.

18 MEMBER JONES: The one that is
19 immediately to the left of it in Exhibit 3, is
20 that your receptacle?

21 MR. KOLL: No, sir.

22 MEMBER JONES: Okay. Is there any

1 correlation between Exhibit 2 and Exhibit 3?

2 MR. KOLL: One is simply showing the
3 recycling receptacle, that is not ours. And then
4 one is --

5 MEMBER JONES: So which one is showing
6 the recycling receptacle?

7 MR. KOLL: The green one. Exhibit 2
8 is showing trash overflowing from a green
9 recycling receptacle that is labeled with a
10 different establishment.

11 MEMBER JONES: Okay. So that green
12 recycling receptacle is not yours?

13 MR. KOLL: Correct.

14 MEMBER JONES: In Exhibit 2
15 immediately to the right of the green recycling
16 receptacle, is that receptacle, is that trash can
17 yours, the orange one?

18 MR. KOLL: Yes, sir.

19 MEMBER JONES: It is?

20 MR. KOLL: Yes, sir.

21 MEMBER JONES: Is that the same orange
22 receptacle that is on Exhibit 3 labeled Partisan

1 Trash?

2 MR. KOLL: Yes, sir.

3 MEMBER JONES: Okay. Help me
4 understand why it is that in Exhibit 3
5 immediately to the left of the orange trash
6 receptacle there is another orange receptacle
7 with black lids, but in Exhibit 2 your trash
8 receptacle immediately to the left of that is the
9 green recycling from another establishment. Do
10 you have multiple trash cans?

11 MR. KOLL: I don't understand the
12 question, sir.

13 MEMBER JONES: How many trash
14 receptacles do you have?

15 MR. KOLL: One orange trash
16 receptacle, one green recycling receptacle.

17 MEMBER JONES: Okay. You have one
18 green recycling receptacle and one trash that is
19 orange, correct?

20 MR. KOLL: Yes, sir.

21 MEMBER JONES: Okay. So in Exhibit 3,
22 you have already testified that that orange trash

1 container that has Partisan Trash on it is yours.

2 MR. KOLL: Yes.

3 MEMBER JONES: And you only have one,
4 based on your testimony. So this is the only
5 one?

6 MR. KOLL: Yes, sir.

7 MEMBER JONES: Okay. Immediately to
8 the left of that trash receptacle, what do you
9 see?

10 MR. KOLL: Another orange trash
11 receptacle.

12 MEMBER JONES: Okay. In Exhibit 2,
13 you indicated and testified that the orange trash
14 receptacle that is immediately to the right of
15 the green recycling bin is your trash receptacle.

16 MR. KOLL: Yes.

17 MEMBER JONES: What do you see
18 immediately to the left of your orange trash
19 receptacle?

20 MR. KOLL: A green recycling --

21 MS. BABIN: Objection. I don't think
22 this is relevant.

1 MR. KOLL: -- receptacle.

2 MS. BABIN: Mr. Koll is not stating
3 these pictures were taken on the same day.

4 MEMBER JONES: I clearly understand.
5 So I'm trying to understand.

6 MS. BABIN: I'm objecting because I
7 don't understand the relevance of your question.
8 The green trash dumpster is not the one that is
9 alleged to have been taken in this case.

10 MEMBER SILVERSTEIN: Well --

11 CHAIRPERSON MILLER: Okay. Could you
12 clarify? I understand, you know, that there may
13 be a lot of interruption here, Mr. Jones, but
14 this has gone on a long time. And so --

15 MEMBER JONES: Well, I'll tell you
16 what, I'll tell you what --

17 CHAIRPERSON MILLER: -- if this --

18 MEMBER JONES: -- I've gotten enough
19 feedback to understand what my vote is, so I'm
20 fine. Thank you.

21 MEMBER SHORT: Madam Chair, I have one
22 last question.

1 CHAIRPERSON MILLER: Mr. Short?

2 MEMBER SHORT: Sir, you testified
3 earlier that you get your trash picked up once
4 every day?

5 MR. KOLL: It's either five or six
6 days a week, but, yes.

7 MEMBER SHORT: You said -- you
8 testified earlier when I asked you, I said how
9 often do you get the trash picked up --

10 MR. KOLL: I apologize, I misspoke.

11 MEMBER SHORT: -- and your answer was?

12 MR. KOLL: It's daily. I cannot
13 honestly remember off the top of my head there
14 are some days in which it --

15 MEMBER SHORT: Okay.

16 MR. KOLL: I believe it is, but I --

17 MEMBER SHORT: Now, you said also
18 since this inspection you had that is causing us
19 to be here today --

20 MR. KOLL: Yes, sir.

21 MEMBER SHORT: -- you haven't had any
22 more problems because you corrected it, correct?

1 MR. KOLL: We have taken steps to
2 correct it and it has alleviated most of the
3 situation.

4 MEMBER SHORT: Okay. And you also
5 testified that before Mr. Jones came, you saw
6 people putting trash into your receptacles and
7 you didn't call the police. You didn't make any
8 complaints. Is that correct?

9 MR. KOLL: We complained with the
10 other establishment. We didn't feel that it was
11 necessary to bring in -- make it a legal matter.

12 MEMBER SHORT: Although you knew that
13 that trash was causing rats, vermin and those
14 other things in the alley, you did not call
15 anybody to complain?

16 MR. KOLL: Those were existing before
17 our establishment opened.

18 MEMBER SHORT: So they were acceptable
19 to you?

20 MR. KOLL: No, sir.

21 MS. BABIN: Objection.

22 MEMBER SHORT: I just asked a

1 question. I think he should really answer it,
2 Madam Chair.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER SILVERSTEIN: Excuse me, Madam
5 Chair?

6 CHAIRPERSON MILLER: Yes?

7 MEMBER SILVERSTEIN: The Board has a
8 right to ask the questions it wishes to ask.

9 MS. BABIN: I'm objecting. I
10 understand that.

11 MEMBER SILVERSTEIN: It is not -- you
12 may object much more freely to what --

13 MS. BABIN: Okay.

14 MEMBER SILVERSTEIN: -- the Government
15 asks. We are here to determine. We are not here
16 to prosecute.

17 MS. BABIN: I was under the
18 understanding that the questions had to be of a
19 certain form, but I apologize.

20 MEMBER SHORT: No problem. And
21 lastly, do you have records of what your trash
22 collections are? Do you keep a record? I know

1 you pay your bills. It should say on your
2 contract you have your trash picked up. So if
3 someone were to go to your business right now or
4 tomorrow, you could provide that on, forgive me,
5 October 22, 2014, you could provide a contract
6 showing that you were -- that you had regular
7 trash pickups?

8 MR. KOLL: Yes, sir.

9 MEMBER SHORT: Okay. Thank you, Madam
10 Chair. That's all I have.

11 CHAIRPERSON MILLER: Others? Mr.
12 Rodriguez?

13 MEMBER RODRIGUEZ: Yes, sir. You said
14 you talked to your neighbors about the problem?

15 MR. KOLL: Yes, sir.

16 MEMBER RODRIGUEZ: What was their
17 reaction?

18 MR. KOLL: It was dismissive.

19 MEMBER RODRIGUEZ: What was it?

20 MR. KOLL: Dismissive.

21 MEMBER RODRIGUEZ: Dismissive. And
22 you mean they blew you off, right?

1 MR. KOLL: Yes, sir.

2 MEMBER RODRIGUEZ: All right. Okay.
3 They didn't pay attention to you, right?

4 MR. KOLL: No, sir.

5 MEMBER RODRIGUEZ: So then what did
6 you do?

7 MR. KOLL: We continued to try to
8 raise the concerns with higher ups in the
9 establishment, including contacting their
10 director of operations. And then, at that point,
11 I believe -- I don't recall who it was from
12 Government, but there was someone who came by and
13 collected all of the businesses in that area that
14 had a national community meeting about that
15 outlet.

16 MEMBER RODRIGUEZ: And after that,
17 what happened?

18 MR. KOLL: They made recommendations
19 for all businesses to follow the same steps that
20 we had already made, the recommendations from Mr.
21 Jones.

22 MEMBER RODRIGUEZ: Did they -- did the

1 situation improve?

2 MR. KOLL: It has improved. All of
3 the dumpsters in that alley are now metal
4 receptacles.

5 MEMBER RODRIGUEZ: Okay. Glad to hear
6 that. That's all I have, Madam Chair.

7 CHAIRPERSON MILLER: Okay. Others?
8 Okay. Just to clarify a few things, okay. You
9 talked about the trash can in question in Exhibit
10 2, which has trash showing, exposed to the
11 environment. Okay. And I just want to make sure
12 I understand your testimony. So I'm going to try
13 to characterize it and you can tell me if I'm
14 mistaken.

15 My understanding is that from this
16 photo you say that you can't be sure it's your
17 dumpster, because there are several that look the
18 same way. Some are green, some are orange. They
19 are hard to differentiate, except you
20 differentiated based on the fact that yours
21 looked newer, but you can't tell that from this
22 photo. Is that correct?

1 MR. KOLL: Correct. Yes, ma'am.

2 CHAIRPERSON MILLER: And that the
3 night of the -- that this photo was taken by Mr.
4 Jones, he didn't have any interaction with you?
5 He didn't come tell you that there is a problem
6 in your alley and take you to look at it?

7 MR. KOLL: I can't recall which day --
8 if he came in on the same day that he took the
9 picture, so I believe he testified that he came
10 in three days later on the 25th to show us.

11 CHAIRPERSON MILLER: Okay. When you
12 first opened your restaurant and got trash
13 receptacles, did you get them from DCRA? Where
14 did you get them from?

15 MR. KOLL: I don't recall. I wasn't
16 in charge of the original setup of the trash
17 pickup.

18 CHAIRPERSON MILLER: Okay. I only ask
19 that question because Mr. Jones advised you to
20 get metal ones, which are better.

21 MR. KOLL: Um-hum.

22 CHAIRPERSON MILLER: And I am just

1 wondering whether anyone had advised you
2 originally to get that type of --

3 MR. KOLL: I did not set up the
4 original contract, so I'm not sure if there was
5 any original advisement.

6 CHAIRPERSON MILLER: And why are the
7 metal ones better?

8 MR. KOLL: The -- from what we were
9 told, rodents can still lift the plastic lids if
10 there is any crack or gap in the lids, whereas
11 the metal ones can seal completely shut and are
12 heavy enough that they can prevent any rodents
13 from getting in.

14 CHAIRPERSON MILLER: So how about the
15 problem with other establishments putting trash
16 in your receptacle? How does that -- does that
17 address that problem?

18 MR. KOLL: I can only speak
19 anecdotally, but that they are difficult to lift
20 and thus it creates more of a conscious effort to
21 open one and once they are labeled, it becomes a
22 little bit clearer as to which one is which.

1 CHAIRPERSON MILLER: Okay. And does
2 your alley have a problem with respect to only
3 limiting a certain number of trash receptacles?
4 I mean, if there were more might there not be
5 this problem?

6 MR. KOLL: There is limited space.
7 Whether it is one more could fit in there, I'm
8 not -- I mean, maybe. I mean, there is certainly
9 limited space. It is quite full, if not totally
10 full.

11 CHAIRPERSON MILLER: So on the one
12 hand I heard you say that things are a lot
13 better.

14 MR. KOLL: Yes, ma'am.

15 CHAIRPERSON MILLER: If this kind of
16 trash situation -- if this is the trash situation
17 is the result of overflow, too much trash for
18 number of containers or track how did that get in
19 the container? Do you know?

20 MR. KOLL: I do not.

21 CHAIRPERSON MILLER: Okay. Did you
22 have complaints about your trash before Mr. Jones

1 visited you?

2 MR. KOLL: Not that we were aware of.

3 CHAIRPERSON MILLER: So I believe the
4 statute talks about taking reasonable efforts,
5 but what kind of reasonable efforts do you think
6 that you took before this incident or, you know,
7 up to -- I know you have taken -- there has been
8 a lot of testimony about reasonable efforts that
9 you have taken afterwards. Getting the metal
10 receptacles for one. What do you think is a
11 reasonable effort before to contain the trash?

12 MR. KOLL: In as much as trash
13 disposal, which I think anyone can do. You know,
14 he pointed it out to our staff to make sure they
15 were using the receptacles that were ours. Made
16 sure that everyone was diligent about keeping
17 trash solely in the orange one and recycling only
18 in the green one.

19 Making sure that they understood all
20 boxes had to be broken down and flattened.
21 Making sure that all trash made it into the
22 receptacles, that it was not left, you know, on

1 the ground or outside the door to the restaurant.
2 Making sure that everything was closed and the
3 dumpsters were pushed up against the wall.

4 CHAIRPERSON MILLER: If you have a
5 situation where it was overflowing like this,
6 could you call the trash earlier for pickup?

7 MR. KOLL: I don't know. Those again
8 have -- all of the trash buildup occurs at night.

9 CHAIRPERSON MILLER: Yes.

10 MR. KOLL: I typically will see it at
11 this point after 10:00, 11:00, 12:00 at night.
12 So an earlier trash pickup may --

13 CHAIRPERSON MILLER: What time does
14 the trash get picked up?

15 MR. KOLL: Between 7:00 and 10:00 in
16 the morning.

17 CHAIRPERSON MILLER: Okay. Okay. Any
18 other questions?

19 All right. So and I know that this is
20 your first time before this Board and stuff, so I
21 wanted to tell you now that you do have a chance
22 to ask questions related to Board questions. So

1 if there are any questions that you want to ask
2 that, you know, might clear up certain concerns
3 you had about, you know, questions from --

4 MS. BABIN: Are we procedurally first
5 or after the Government?

6 MS. GEPHARDT: I'm sorry?

7 CHAIRPERSON MILLER: Do they go first
8 or afterwards. I think that --

9 MS. BABIN: I just have -- I can ask
10 questions.

11 CHAIRPERSON MILLER: She will wrap it
12 up. You can go next. And it's your witness,
13 yes.

14 REDIRECT

15 MS. BABIN: Did we -- Mr. Koll, did
16 you --

17 CHAIRPERSON MILLER: Just related to
18 the Board questions.

19 MS. BABIN: Okay.

20 CHAIRPERSON MILLER: Like redirect.

21 MS. BABIN: I believe it's related.

22 CHAIRPERSON MILLER: Okay.

1 MS. BABIN: Do you believe or can you
2 state whether or not our employees, you believe
3 our employees put trash in our dumpsters only or
4 any adjacent dumpsters that do not belong to us?

5 MR. KOLL: They are instructed to only
6 use the dumpsters that we said are ours.

7 MS. BABIN: In the picture -- I just
8 want clear up, I'm seeking to clarify exhibit --
9 Defense Exhibit No. 1. After you took the
10 picture, did you leave the trash can in this
11 state?

12 MR. KOLL: No. I closed the lids and
13 tried to clean up the area.

14 MS. BABIN: Okay. And one final
15 question. What color was our trash dumpster?

16 MR. KOLL: Trash has always been
17 orange. Recycling has always been green.

18 MS. BABIN: No further questions.

19 CHAIRPERSON MILLER: Okay.

20 MS. GEPHARDT: No, no further
21 questions.

22 CHAIRPERSON MILLER: Okay. Thank you

1 very much. You actually can sit down now over
2 there.

3 MR. KOLL: Okay.

4 CHAIRPERSON MILLER: Thank you very
5 much. All right. I think that takes us to
6 closing.

7 MS. GEPHARDT: Okay. Ladies and
8 gentlemen of the Board, we have gotten wildly off
9 course here today this afternoon. This is just a
10 very narrow case. Let's just go back to the
11 charging document.

12 The charging document says on one
13 particular date, October the 22nd at,
14 approximately, 1:30 a.m. the Investigator was
15 monitoring D Street. He was walking towards your
16 establishment to the garbage area. He observed
17 several rodents running from the area and out of
18 the alleyway.

19 Once arriving at the garbage
20 collection area, the Investigator observed that
21 your establishment housed an open trash
22 receptacle that contained an overflow of trash

1 that spilled out onto the ground. A closer look
2 revealed that several rodents were observed
3 exiting the trash container.

4 That's it. October 22nd. We are not
5 talking about what they did afterwards. We are
6 not talking about remedial measures or, you know,
7 the things that they have done to rectify the
8 matter. And you know, I commend for whatever I
9 have heard here today, I do commend the fact that
10 they have taken steps and taken action, but just,
11 please, remember we are -- all we are talking
12 about here is this charge on this date.

13 The Government has proved by a
14 preponderance of the evidence that this is, in
15 fact, true. You heard the testimony of Earl
16 Jones that he took the photograph of the alley on
17 that night of October the 22nd and at some point
18 he went in with his iPad and showed Mr. Koll the
19 picture. And he said, please, identify for me
20 which is your dumpster. And Mr. Koll positively
21 identified that first open dumpster with garbage
22 overflowing coming out the top with the lid open.

1 You heard Mr. Koll as the hearing went
2 on and I urge you to, please, go back and read
3 the transcript, he changed his story. He then
4 said well, I'm not really sure if it was our
5 dumpster. It could have been. You know, maybe.
6 But when I was asking him questions and when I
7 asked Mr. Jones questions, it was very clear that
8 he identified that dumpster. And that dumpster
9 had garbage on top, overflowing, the lid was open
10 and it was not in the state that it was supposed
11 to be.

12 As I said, the photos submitted by the
13 defense, they are just not relevant. They are
14 just not. They are not dated. I mean, anything
15 but October 22nd it doesn't matter. It doesn't
16 matter. That's not -- we only have to prove that
17 this happened on October the 22nd.

18 So again, like I said, the fact that
19 they have taken these remedial measures, I
20 commend them. And hopefully, you know, they
21 won't have to be here again in the future.

22 And then the final thought I would

1 like to convey to the Board today is that even if
2 that trash on top was the establishment down the
3 street or the establishment next door, it is
4 still your responsibility to take care of your
5 receptacle.

6 So if that means taking that garbage
7 and throwing it back in their garbage can, you
8 are doing your job. You are taking care to keep
9 your -- what is it to keep your environment of
10 your establishment clean, free of litter. So
11 just because somebody, you know, throws their
12 garbage on top of your dumpster, you can't sit
13 there and say oh, well, that wasn't my garbage,
14 so it's not my fault. It's not the way it works
15 in life.

16 So anyway, as I said, the Government
17 has proven by a preponderance of the evidence
18 that the licensee in this case has committed
19 Charge 1, which is failing to take reasonable
20 measures on October the 22nd to keep their
21 alleyway and trash receptacle free of litter.

22 And I urge you to find the licensee

1 guilty in this case. Thank you.

2 CHAIRPERSON MILLER: Okay. Thank you.

3 MS. BABIN: Thank you, ladies and
4 gentlemen of the Board. I want to thank you for
5 your patience with our lack of procedural
6 knowledge for the Board hearing.

7 First, I would like to say that we do
8 not believe that the only issue for the evening
9 is whether or not on that moment that
10 Investigator Jones came out that dumpster was
11 overflowing. We think there are more issues
12 here.

13 But to answer that point, I do not
14 believe that the prosecution has proven beyond
15 the standard for the purposes of this hearing
16 that that was our dumpster. We -- Mr. Koll
17 testified that our dumpster was orange. The
18 dumpster that is overflowing is green. Mr. Koll
19 did not go outside and -- on the night that these
20 pictures were taken and identify the dumpster.

21 At that point in time, the dumpsters
22 were not marked so that an outsider would know

1 which dumpster was ours. However, Mr. Koll did
2 testify that we did know which dumpsters were
3 ours, based on a distinction that you can see
4 clearly in the photos between the older beat-up
5 dumpsters and the newer dumpster that we had
6 having been a business open for a very short
7 period of time at this moment.

8 Although I do not believe that
9 anything that has been presented can show
10 anything other than that Mr. Koll was honest in
11 his assessment to say I'm not going to say it
12 wasn't our dumpster, it could have been our
13 dumpster, but he never said unequivocally that
14 that dumpster was ours, because he was not
15 present when this picture was taken and the
16 picture is not that clear.

17 The second point that I think is
18 really important to understand is whether or not
19 we took reasonable care to make sure that our
20 dumpsters were clean. And I think that it is
21 clear that Red Apron had protocols, had standards
22 and that we routinely stuck to those standards

1 and that many times, as Mr. Koll has testified,
2 after we had ceased and desisted for the night,
3 that our neighbors would go into our trash, put
4 their trash in there and leave it as is. And
5 that -- those dumpings occurred after we were
6 closed. And that we took a lot of steps to
7 prevent them from doing that, but that it is not
8 really reasonable to expect us to have to be out
9 there at, you know, wee hours of the morning when
10 the other businesses are still open and police
11 their trash policies.

12 However, we did to a lot of -- make a
13 lot of efforts at that point, which I think
14 really speaks to the heart of the case here and
15 that is why this is important to us as licensees
16 is that it matters tremendously to us that the
17 alleys are clean.

18 MEMBER SILVERSTEIN: Say again,
19 please?

20 MS. BABIN: Pardon?

21 MEMBER SILVERSTEIN: Say again?

22 MS. BABIN: I said it matters

1 tremendously to us that this alley is clean. And
2 while we did not notify the police, possibly
3 because we didn't really think -- know -- were
4 not aware it was a police matter, Mr. Koll took
5 a lot of steps to attempt to have the situation
6 resolved that were ignored by the managers and
7 their own negligence.

8 And, you know, I think it's
9 unreasonable to expect us to have to station
10 somebody by the dumpsters after hours to make
11 sure that they are not continuing to do what is
12 an illegal activity, which is to dump into
13 somebody else's dumpster.

14 Now, I -- you know, we -- in
15 retrospect, the thing we did not do prior to the
16 hearing, prior to meeting Mr. Jones was contact
17 the police. And that's really the only thing
18 that you can say that we are culpable of, at this
19 point.

20 We went to a lot of effort and I think
21 Mr. Koll has demonstrated that even though we
22 have really continued to take care of our

1 dumpsters, they are continuing to act badly. And
2 under the standard you are proposing, we could
3 theoretically continue to be liable for their
4 trash and that's something that is not attainable
5 as a business owner to hear that we will continue
6 to be responsible for the bad actions of our
7 neighbors.

8 So I would say that Red Apron has been
9 -- Mr. Koll testified that we rarely ever fill
10 the dumpster more than two-thirds of the way
11 full. This was not our trash. We took efforts
12 to remediate their bad actions. And finally that
13 I don't think it is abundantly clear that the
14 trash receptacle on the night of was necessarily
15 ours.

16 I don't think that that has been
17 proven. We don't like to dodge responsibility,
18 so Mr. Koll has been pretty clear that he is not
19 going to tell you it was ours or theirs, because
20 we did respond regardless of whose dumpster that
21 was in the night.

22 So we would appreciate your

1 considering those factors. It is very important
2 to us and our record with the ABRA that we be
3 recognized for the actions that we take as
4 licensees and we are very clean and responsible
5 licensees as is evidenced by the abundance of
6 steps we have taken before and after the visit
7 from Mr. Jones, Inspector Jones. So thank you
8 very much.

9 CHAIRPERSON MILLER: Okay. Thank you.
10 So that concludes this case. I'm going to close
11 the record.

12 Okay. We also ask if the parties want
13 to file proposed findings of facts and
14 conclusions of law or waive their right to do so?
15 It's a rarity that that happens, but that's a
16 right.

17 MS. GEPHARDT: We waive our right.

18 MS. BABIN: We waive our right as
19 well.

20 CHAIRPERSON MILLER: Okay. Then the
21 Board is going to deliberate in closed session on
22 this and issue an order within 90 days. The

1 transcript will be out probably within 30.

2 MS. BABIN: Okay.

3 CHAIRPERSON MILLER: So thank you.

4 Okay. So I'm going to take a vote by Board
5 Members with respect to holding a closed meeting
6 to deliberate.

7 As Chairperson of the Alcoholic
8 Beverage Control Board for the District of
9 Columbia and in accordance with DC Official Code
10 Section 2-574(b) of the Open Meetings Act, I move
11 that the ABC Board hold a closed meeting for the
12 purpose of deliberating and consulting with
13 counsel on Red Apron Butchery case, Case No. 14-
14 CMP-00706.

15 Is there a second?

16 MEMBER SHORT: Second.

17 CHAIRPERSON MILLER: Mr. Short has
18 seconded the motion. I'll now take a roll call
19 vote on the motion before us now that it has been
20 seconded.

21 Mr. Brooks?

22 MEMBER BROOKS: I agree.

1 CHAIRPERSON MILLER: Mr. Alberti?

2 MEMBER ALBERTI: I agree.

3 CHAIRPERSON MILLER: Mr. Rodriguez?

4 MEMBER RODRIGUEZ: I agree.

5 CHAIRPERSON MILLER: Ms. Miller

6 agrees.

7 Mr. Silverstein?

8 MEMBER SILVERSTEIN: I agree.

9 CHAIRPERSON MILLER: Mr. Short?

10 MEMBER SHORT: I agree.

11 CHAIRPERSON MILLER: And Mr. Jones?

12 MEMBER JONES: I agree.

13 CHAIRPERSON MILLER: Okay. So the
14 motion passes by a vote of 7-0-0. So the Board
15 will hold that closed meeting in the ABC Board
16 pursuant to Section 2-574(b) of the Open Meetings
17 Act and issue a decision within 90 days.

18 Wait a minute. I have to close this
19 case. However, I do have on my calendar, if I'm
20 not mistaken, another case dealing with the same
21 issue.

22 MS. BABIN: I thought we had agreed to

1 hear them together.

2 MEMBER ALBERTI: No. I mean, we only
3 saw evidence for one case.

4 CHAIRPERSON MILLER: So what I'm going
5 to do, unless you can tell me something right
6 now, I note it has been a long case, I think we
7 will take a 10 minute break and you can confirm
8 with each other and see how you want to proceed,
9 but, you know, maybe some evidence can be moved
10 into this case or whatever, but they are two
11 separate cases.

12 All right. So we will let you all
13 talk about that and the Board will recess and
14 come back at 3:50. We have one other case for
15 this afternoon also. I have a feeling that may
16 be a little delayed, The Stadium, is after yours.

17 Okay. Thank you.

18 (Whereupon, the Show Cause Hearing in
19 the above-entitled matter was concluded at 3:41
20 p.m.)

21

22

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