



1 CHAIRPERSON:

2 RUTHANNE MILLER, Presiding

3

4 BOARD MEMBERS:

5 DONALD BROOKS

6 NICK ALBERTI

7 HECTOR RODRIGUEZ

8 MICHAEL SILVERSTEIN

9 JAMES SHORT

10

11 ALSO PRESENT:

12 ANDREW J. KLINE, ESQ.,

13 on behalf of the Licensee

14 DOUG MELCHER, ESQ.

15 on behalf of Group of Five Protestants

16 ABIGAIL NICHOLS, ANC-2B

17 JOHN SUERO, ABRA Investigator

18 JOHN FIORITO

19 JOSEPH AGUILAR

20 KENDALL VALENTINE

21 JIM KING

22 CARL NELSON

23

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

2 [2:59 p.m.]

3 CHAIRPERSON MILLER: All right. With  
4 respect to Midtown, which is next, you're also on  
5 that case?

6 MR. KLINE: Yes, I am.

7 CHAIRPERSON MILLER: Okay. Are the  
8 parties here, do you know?

9 MR. KLINE: Yes.

10 CHAIRPERSON MILLER: Okay. So I'm going  
11 to just take a break for 5 minutes, and you can  
12 -- would you let the parties know?

13 MR. KLINE: Right. That would be great.  
14 Thank you. I appreciate that.

15 CHAIRPERSON MILLER: Is that 5 minutes  
16 enough for you, or do you need a 10-minute?

17 MR. KLINE: Ten would be better.

18 CHAIRPERSON MILLER: All right. We'll  
19 take a 10-minute break and come back at 3:10.

20 MR. KLINE: Thank you.

21 CHAIRPERSON MILLER: Okay.

22 [Whereupon, at 2:59 p.m., a recess was

1 taken and reconvened at 3:19 p.m.]

2 CHAIRPERSON MILLER: All right. I think  
3 we might as well start at least with  
4 introductions, starting on my right with the  
5 Applicant. Introductions.

6 MR. KLINE: Thank you. Andrew Kline on  
7 behalf of the Licensee, seated to my left is  
8 Diego Segera [ph]. He is the Director of  
9 Operations. Michael Romeo is the principal and  
10 regrets that he is unable to be here today. He,  
11 however, was subpoenaed for a judicial  
12 proceeding, and we did consider late last week  
13 continuing the hearing, but given the number of  
14 times that this hearing has been continued, we  
15 elected that we would just go forward and beg the  
16 Board's indulgence. He's not here, but in terms  
17 of our case, it's not going to affect our  
18 presentation.

19 CHAIRPERSON MILLER: Okay. Any chance he  
20 might come after his proceeding?

21 MR. KLINE: That depends when they get  
22 wrapped up over there.

1 CHAIRPERSON MILLER: Okay, so there's a  
2 slight chance he might. Okay.

3 All right. Protestants?

4 MR. MELCHER: Doug Melcher of the Group of  
5 Five or more Protestants. Would you like the  
6 names of the Protestants? That are identified --

7 CHAIRPERSON MILLER: That would be good,  
8 and who is here?

9 MR. MELCHER: The Protestants include  
10 Sarah Peck, who is not here, Jim King, who is  
11 here, Melissa Stanley, who is not here, Carl  
12 Nelson, seated to my right and who is here, Ken  
13 Valentine seated behind me, and Abigail Nichols  
14 also seated to my right.

15 CHAIRPERSON MILLER: Okay, great. And  
16 are you their attorney?

17 MR. MELCHER: Yes, I am.

18 CHAIRPERSON MILLER: Okay, good.

19 MR. MELCHER: With the law firm of Bode &  
20 Fierberg.

21 CHAIRPERSON MILLER: I'm sorry. I wasn't  
22 sure whether you said -- are you here on behalf

1 of ANC-2B as well or just the Party of Five?

2 MR. MELCHER: Just the Party of Five.

3 CHAIRPERSON MILLER: Okay.

4 MR. MELCHER: It's actually a Party of  
5 Six, but --

6 CHAIRPERSON MILLER: Okay.

7 I guess, Ms. Nichols, you're here on  
8 behalf of ANC-2B?

9 MS. NICHOLS: Yes. But we're willing to  
10 combine our case with the residents.

11 CHAIRPERSON MILLER: Good. Okay. So  
12 it's basically one --

13 MS. NICHOLS: Yes.

14 CHAIRPERSON MILLER: -- going case.  
15 Good.

16 MS. NICHOLS: Although he's not  
17 representing us, he will call on me.

18 CHAIRPERSON MILLER: Okay, good. All  
19 right.

20 Well, before I get into any preliminary  
21 issues, do you all have any preliminary issues  
22 you want to raise?

1 [No audible response.]

2 CHAIRPERSON MILLER: Okay. So, for  
3 instance, I know that every party has filed a  
4 PIF, which I have, and I just would like to know,  
5 starting with the Applicant witnesses, just so we  
6 get a feel for the afternoon, how many witnesses  
7 you're going to have or who you're going to have  
8 actually that's on your list.

9 MR. KLINE: No more than three.

10 CHAIRPERSON MILLER: No more than three.  
11 Okay. And they are three out of those who are on  
12 the list that you've put?

13 MR. KLINE: Yes.

14 CHAIRPERSON MILLER: Okay. And how about  
15 the Party of Five and the ANC?

16 MR. MELCHER: I have four live witnesses,  
17 and then I want to submit a declaration from a  
18 fifth witness. There's a stipulation submitted  
19 for the record previously, but I'll address that.

20 CHAIRPERSON MILLER: Okay.

21 MR. MELCHER: It should just take a few  
22 minutes, hopefully.

1 CHAIRPERSON MILLER: Yeah. That might be  
2 good as a preliminary matter, or do you want to  
3 do it in your case?

4 MR. MELCHER: I'd like to do it in the  
5 order of my case.

6 CHAIRPERSON MILLER: That's fine. Okay.

7 MR. KLINE: That's fine. We'll reserve  
8 on grounds of relevance in terms of that.

9 CHAIRPERSON MILLER: Okay. Let's wait  
10 for the case. Then we can see the context.

11 All right. Your name is Melcher?

12 MR. MELCHER: Yes.

13 CHAIRPERSON MILLER: Okay. Have you  
14 appeared before the Board before in a Protest?

15 MR. MELCHER: I have not.

16 CHAIRPERSON MILLER: You have not. Okay.

17 So, in general, I just -- I know a lot of  
18 the parties here have, maybe not everybody, but  
19 I'm just going to let you know what to expect  
20 generally.

21 The Applicant has the burden of proof in  
22 this case to prove appropriateness under the

1 statute. The parties get to do opening  
2 statements to start off the case. The Applicant  
3 goes first, and then the Protestants can make an  
4 opening statement.

5 Then we have a Board witness, which is  
6 our investigator who did the report, and they  
7 will testify under oath. And both parties and  
8 the Board will be able to ask questions of the  
9 investigator.

10 And then the Applicant will do its case,  
11 present its case, just like any other  
12 administrative proceedings, and then the  
13 Protestants, Applicant can do redirect if they so  
14 choose, and then basically closing.

15 The exhibits and the testimony are  
16 regarded by the Rules of Evidence, but we don't  
17 follow them that strictly. Relevance is really  
18 the biggest thing and then in prejudice,  
19 whatever. Then we close the record. That's  
20 basically it.

21 MR. MELCHER: Okay.

22 CHAIRPERSON MILLER: Okay. If you have

1 any questions along the way, feel free. You can  
2 object to exhibits or testimony based on the  
3 Rules of Evidence, but we're fairly lenient with  
4 them.

5 MR. MELCHER: Okay.

6 CHAIRPERSON MILLER: Okay. So the other  
7 thing I need to tell you is each side gets an  
8 hour and a half to present the case, their case.  
9 Opening statements, you get -- and closing get 5  
10 minutes. That doesn't go to your hour and a  
11 half. That's out of your hour and a half. What  
12 does go are your witnesses' testimony, your  
13 direct exam, and then your cross-exam of the  
14 other side. Okay.

15 Are you going to keep track of the time?

16 MR. SILVERSTEIN: I'll keep track of the  
17 time.

18 CHAIRPERSON MILLER: Okay. If there  
19 aren't any questions, then we can start with  
20 Applicant's opening statement.

21 MR. KLINE: Yes. Good afternoon, members  
22 of the Board. My name is Andrew Kline. I'm here

1 on behalf of the Applicant.

2 This is a proceeding to consider a  
3 renewal application for Hak, LLC, trading as  
4 Midtown, located at 1219 Connecticut Avenue  
5 Northwest.

6 The issues in this case, I believe are  
7 pretty straightforward. The Board has in recent  
8 months taken it upon itself to try to narrow  
9 issues in these Protest proceedings by requiring  
10 the submission of detailed Protest Information  
11 Forms, PIFs, and in this case, the parties have  
12 indeed submitted PIFs. And it appears that the  
13 Protestants are requesting two things from the  
14 Board, so it would seem that the area of  
15 consideration is pretty narrow in this case.

16 And, specifically, what the Protestants  
17 are requesting is, number one, that no recorded  
18 music be allowed to be played in the outdoor roof  
19 garden of the premises; and two, based upon one  
20 of the PIFs, that persons under 21 years of age  
21 not be admitted to the premises when alcohol is  
22 being sold.

1           So we believe the posture of the case at  
2 this point is for the Board to consider evidence  
3 related to those issues that have been  
4 identified, and that's what we intend to focus  
5 our case on, given the disclosures in the PIFs.

6           In reviewing the information that the  
7 Protestants intend to present to the Board as  
8 evidence, it appears that their primary desire  
9 here is to re-litigate a case concerning another  
10 Licensee known as Dirty Martini, which is located  
11 in the same block. During the course of the  
12 proceeding, we will, of course, be objecting to  
13 the relevance of such testimony in evidence  
14 because this relates to the renewal of the  
15 license for Midtown with the limited issues that  
16 I've described.

17           Our evidence will show that this  
18 establishment has been sensitive to the noise  
19 issues that have been raised, has taken steps to  
20 mitigate noise affecting anyone in the  
21 neighborhood from music from the rooftop area of  
22 the licensed premises. We will put on an expert.

1 He will testify about what steps have been taken  
2 and how those efforts have been successful in  
3 reducing and minimizing any disturbance that  
4 might be experienced by neighbors, and therefore,  
5 the establishment, we believe at the conclusion  
6 of the case, you will agree it does not present  
7 any adverse impact on peace, order, and quiet.

8 And, at that point, we will request that  
9 you renew the license without any further  
10 restrictions.

11 Thank you.

12 CHAIRPERSON MILLER: Okay, thank you.

13 MR. MELCHER: The Group of Five or more  
14 Protestants in this proceeding want peace, order,  
15 and quiet in their neighborhood, and the law says  
16 that they're entitled to that.

17 Residents have long suffered from noise  
18 coming from a high concentration of licensees in  
19 the neighborhood, and the concentration is so  
20 high that this area has become known as Club  
21 Central.

22 You already have an investigative report

1 showing the high concentration of licensees as  
2 well as increasing numbers of ABRA investigations  
3 and high volume of police-involved incidents  
4 involving Midtown, and all of that is relevant to  
5 this renewal proceeding. So contrary to Mr.  
6 Kline's assertion, this renewal proceeding is  
7 about a broader range of issues, and the Board  
8 has an obligation to consider everything in that  
9 investigative report, including issues regarding  
10 crime, et cetera.

11 Of course, our primary concern among the  
12 residents is about noise, and that much is  
13 correct, but the Board does need to consider all  
14 of these issues.

15 You also hear again today about a noise  
16 problem, which is principally caused by  
17 outdoor-amplified music, not just recorded music,  
18 on roof decks operated by Licensees, including  
19 two Licenses owned by Mr. Rehman, specifically  
20 Midtown and Dirty Martini, which is located just  
21 two storefronts away.

22 The noise problem is a major concern to

1 residents. The noise substantially interferes  
2 with their ability to enjoy their homes,  
3 including by depriving them of sleep and causing  
4 them mental distress. And if you can't sleep,  
5 it's stressful.

6           The evidence will show that Midtown's  
7 operations are in violation of noise regulations  
8 and Midtown's agreements, and that the situation  
9 has not and will not be voluntarily resolved by  
10 this Licensee. It also will not be resolved  
11 through ad hoc noise complaints submitted to  
12 ABRA, as demonstrated not only by the history of  
13 the Midtown, but also the history of Dirty  
14 Martini, located just two doors away and owned by  
15 the same Licensee, the same owner.

16           The ongoing problems with Midtown will be  
17 resolved only if the Board takes decisive action.  
18 At the very least, that means the Board should  
19 prohibit all outdoor-amplified music at Midtown.  
20 It also needs to seriously consider the  
21 possibility of not renewing this license.

22           Now, Mr. Kline mentioned that he has some

1 concerns about relevance with respect to the  
2 Dirty Martini, and I would propose that we  
3 address those issues right now rather than do it  
4 on an ad hoc basis as the hearing continues  
5 because all of my witnesses do have one or more  
6 things to say about the Dirty Martini. So, if  
7 Mr. Kline would like to explain why he thinks  
8 that it's not relevant or you would like me to  
9 explain why I believe it is, we can proceed  
10 either way.

11 CHAIRPERSON MILLER: Okay. So that  
12 concludes your closing statement, just so that  
13 we're clear --

14 MR. MELCHER: Yes.

15 CHAIRPERSON MILLER: -- on where we are.  
16 And you're requesting that at this time,  
17 you think it would be appropriate to address the  
18 issue of whether or not testimony related to  
19 Dirty Martini is admissible or relevant?

20 MR. MELCHER: That's my suggestion. If  
21 Mr. Kline intends to object to any questioning  
22 relating to that subject, then I think it would

1 probably be appropriate to address it up front.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: Madam Chair, this is a  
4 separate license. To the extent that there are  
5 adjudicated violations related to this other  
6 establishment, then they may be relevant, but I  
7 do not believe it's appropriate or relevant for  
8 this case to turn into an adjudication of  
9 complaints or issues related to Dirty Martini.  
10 That is a separate establishment. It's a  
11 separate license, and although the Board  
12 certainly should consider records of compliance,  
13 those records of compliance relate to adjudicated  
14 matters, not complaints or evidence that  
15 witnesses may have that have not been charged  
16 against the other Licensee and which haven't been  
17 adjudicated as violations by that other Licensee.

18 Otherwise, we end up with a side show  
19 that's not focused on the Applicant at hand but  
20 focused on another establishment.

21 MR. MELCHER: I actually anticipated that  
22 this would be an issue. I am prepared to submit

1 a written opposition to what I take to be a  
2 motion to preclude admission of evidence  
3 regarding this issue. If I can submit --

4 CHAIRPERSON MILLER: Is it long?

5 MR. MELCHER: -- the written -- it's a  
6 couple pages, but I'm happy to --

7 CHAIRPERSON MILLER: Okay.

8 MR. MELCHER: -- just describe it orally,  
9 if that's preferable.

10 CHAIRPERSON MILLER: Well, you can do  
11 both. I just wanted to -- do you want to give --  
12 Mr. Kline doesn't have a copy?

13 MR. KLINE: Never seen it and never heard  
14 that was going to be filed. I am quite surprised  
15 that we would have this -- we're past eleven; I  
16 think it's 11:30 -- 11:30th hour surprise.

17 CHAIRPERSON MILLER: I don't think it's a  
18 surprise. I think that he's just -- I mean, he  
19 can orally give it right now, but I think he's --  
20 he's new to these proceedings, and he has it in  
21 writing. So it would just be easier for all of  
22 us maybe to follow along. Is that right?

1 MR. MELCHER: Sure, if you'd like to.  
2 It's up to you.

3 CHAIRPERSON MILLER: Yes. I think that  
4 would just be easier, if you have it prepared.

5 MR. MELCHER: Yeah. Should I approach  
6 the dais?

7 CHAIRPERSON MILLER: Yes.

8 MR. MELCHER: Would you like more than  
9 one copy?

10 MR. KLINE: Actually, yeah. If you have  
11 an extra one, that would be great.

12 [Pause.]

13 CHAIRPERSON MILLER: Okay. So I think it  
14 would be appropriate if you addressed orally Mr.  
15 Kline's -- is that a motion, Mr. Kline? Motion  
16 to preclude testimony?

17 MR. KLINE: No. I just raised that we're  
18 not here to litigate Dirty Martini. I had  
19 presumed that each piece of evidence would be  
20 introduced, and to the extent that when we had  
21 objections, we would raise them at the time.

22 CHAIRPERSON MILLER: Okay.

1           MR. MELCHER: We can do it that way. I  
2 think all of the legal analysis is going to be  
3 the same.

4           The D.C. Court of Appeals has essentially  
5 ruled that this sort of evidence is relevant.  
6 The Panutat decision, which is cited in this  
7 little brief -- you'll call it an opposition or  
8 brief. It doesn't matter. In that case, the  
9 D.C. Court of Appeals was called upon to consider  
10 whether it was appropriate for this Board to  
11 evaluate not only the conduct of the Licensee who  
12 was before it, but also the conduct of a Licensee  
13 which was located very nearby, actually just on a  
14 different floor of the same establishment, which  
15 is practically what we have here.

16           Just in this case, the Licensee, the  
17 owner, has ownership at one location, which is  
18 two doors away. So I think it's relevant that  
19 the D.C. Court of Appeals essentially ruled that  
20 it was relevant, and so the Board can in fact  
21 consider it.

22           Now, the reason it's relevant, especially

1 in this case, is it goes to the question of what  
2 kinds of remedies are going to work in this  
3 particular proceeding. If you do the same thing  
4 that you did with respect to Dirty Martini, will  
5 that give you a good result? And to the extent  
6 that things haven't worked out with Dirty  
7 Martini, since it's the same owner, you can be  
8 virtually assured that it's not going to work out  
9 with the Midtown.

10 And it's also relevant with respect to  
11 considering what are you going to predict about  
12 the future?

13 Obviously, the Board made some kind of  
14 prediction about the future when it decided the  
15 Dirty Martini case, and that prediction, at least  
16 in the opinion of the citizens, didn't work out  
17 quite right because there's still noise problems.  
18 And so the question is, what would you predict a  
19 second time around? Well, don't get fooled  
20 twice. That's what we're saying, and we want to  
21 present some evidence showing that there are  
22 ongoing noise problems associated with both of

1 these establishments. They're both owned by the  
2 same owner, and for all those reasons, we believe  
3 this is relevant.

4 CHAIRPERSON MILLER: Okay. Great, okay.  
5 I'm aware of that Court of Appeals decision, and  
6 I think that's pretty right on point.

7 I don't know if you have anything else to  
8 add at this time, Mr. Kline? Or we'll wait till  
9 --

10 MR. KLINE: No, we'll wait until each  
11 piece is introduced.

12 CHAIRPERSON MILLER: Okay.

13 MR. KLINE: And we'll argue --

14 CHAIRPERSON MILLER: I would just say  
15 that it does seem to me that the same owner, just  
16 a few doors down dealing with a similar problem,  
17 is relevant to how that owner would deal with a  
18 similar problem, with this establishment in the  
19 future.

20 MR. ALBERTI: May I ask a question?

21 CHAIRPERSON MILLER: Yeah.

22 MR. ALBERTI: Just to be helpful to both

1 parties, because to me part of the relevance is  
2 going to rely on setting or establishing a  
3 similarity in the physical characteristics,  
4 because two very physically different  
5 establishments may have different noise problems.

6 So I don't know. I don't know what Dirty  
7 Martini looks like, and I'm not sure what Midtown  
8 looks like.

9 At some point, I don't know if Mr. Kline  
10 is going to object, but you need to establish  
11 that there is some similarity in physical  
12 attributes that would make those -- that would  
13 draw the link between the two.

14 MR. MELCHER: I can address that with  
15 just one sentence, or we can wait till the  
16 testimony. It's up to you.

17 CHAIRPERSON MILLER: It's up to you, Mr.  
18 Alberti. Do you want to wait till it's relevant?

19 MR. ALBERTI: No, let's hear it. It  
20 might be helpful.

21 MR. MELCHER: The similarity is that both  
22 establishments have rooftops, and the citizens'

1 noise complaints primarily concern rooftops in  
2 this particular area.

3 MR. ALBERTI: Yeah. But I would argue  
4 that -- you know, in my neighborhood, I've been  
5 to many establishments, and the rooftops are  
6 configured very differently. One actually has a  
7 8-foot walls surrounding it, which makes it a  
8 whole different story from the one who has no  
9 walls.

10 So, you know, unless you can draw a  
11 picture for me that says there are similar  
12 attributes, I would probably ignore the testimony  
13 on similarities.

14 CHAIRPERSON MILLER: We haven't heard the  
15 --

16 MR. ALBERTI: Just because I can't draw  
17 any conclusion unless I know that we actually  
18 have similar spaces.

19 MR. MELCHER: Okay.

20 MR. ALBERTI: Okay?

21 MR. MELCHER: It sounds to me like you're  
22 concerned about the weight of the evidence and --

1 MR. ALBERTI: Yeah, exactly.

2 MR. MELCHER: -- that sort of particular  
3 issue.

4 MR. ALBERTI: Yeah.

5 MR. MELCHER: I just wanted to address  
6 whether or not we can get it admitted.

7 MR. ALBERTI: Okay.

8 CHAIRPERSON MILLER: Okay.

9 MR. ALBERTI: We'll have to let you know.

10 CHAIRPERSON MILLER: Well, we're just  
11 kind of giving our reactions, and my reaction  
12 also would be, though, separate from Mr. Alberti  
13 in that how an owner reacted to complaints, for  
14 instance, in one circumstance might lead me to  
15 think it's relevant how we might anticipate him  
16 acting to complaints in the future, so that  
17 doesn't have anything to do with establishments.  
18 So I just wanted to distinguish that for Mr.  
19 Alberti's angle.

20 MR. ALBERTI: Thank you.

21 CHAIRPERSON MILLER: But, when we get to  
22 that point, if Mr. Kline is still going to

1 object, then we can address it specifically.

2 Okay. Anything else?

3 [No audible response.]

4 CHAIRPERSON MILLER: All right. Is our  
5 investigator here?

6 Yes. Hi. Mr. Suero, it is your time to  
7 come up and testify.

8 Good afternoon. Do you swear to tell the  
9 truth, the whole truth, and nothing but the  
10 truth?

11 MR. SUERO: I do.

12 CHAIRPERSON MILLER: So you conducted an  
13 investigation resulting in the Protest report  
14 that's in the record, correct, Mr. Suero?

15 MR. SUERO: That's correct.

16 CHAIRPERSON MILLER: All right. So would  
17 you like to address what you think are the  
18 highlights?

19 MR. SUERO: Of course.

20 CHAIRPERSON MILLER: Okay, thank you.

21 In March of 2014, I was assigned a  
22 Protest investigation of the renewal license for

1 Hak, LLC, trading as Midtown, located at 1219  
2 Connecticut Avenue Northwest.

3 A new application at that time was  
4 submitted by the owner and represented by Mr.  
5 Emanuel Mpras.

6 Also, on Monday, November the 25th of  
7 2013, Mr. Carl Nelson representing a Group of  
8 Five or more from the Palladium Condominium  
9 located at 1325 18th Street Northwest submitted a  
10 letter to ABRA formally protesting that renewal  
11 application based on peace, order, and quiet, and  
12 an adverse impact on the property values of the  
13 neighborhood.

14 Also, on November 25th, 2013, the Dupont  
15 Circle Advisory Neighborhood Commission ANC-2B,  
16 represented by Ms. Abigail Nichols, formally  
17 protested the renewal application for Midtown on  
18 the basis of peace, order, and quiet.

19 On Wednesday, April the 2nd, 2014, I  
20 spoke with Mr. Mpras, the representative from  
21 Midtown, who advised that the parties were  
22 speaking and had hopes that they would reach some

1 type of agreement in reference to this matter.

2 On Wednesday, April the 9th, 2014, Mr.  
3 Mpras advised that no settlement agreement had  
4 been reached between the parties and the owner of  
5 Midtown.

6 On Friday, April 24th, 2015, Mr. Nelson  
7 sent an e-mail detailing his concerns regarding  
8 the degree of noise emanating from Midtown and  
9 from similar businesses in the area.

10 According to the District of Columbia  
11 Geographic Information System, there are 49 ABC  
12 licensed establishments all within 1,200 feet of  
13 Midtown. Of those establishments, 25 hold a  
14 Class CR license restaurant, one is a Class B  
15 license, two hold a Class CX license and  
16 multipurpose, six hold a Class CH in their  
17 hotels. There are nine that hold a Class CT  
18 license that are taverns and one that holds a DR  
19 license, also a restaurant. Five hold a CN or  
20 nightclub license, including Camelot, Heist, the  
21 Huxley, Rumors, and Dirty Martini. Also, as you  
22 all are well aware, Midtown also is a nightclub

1 license.

2 Of the establishments that hold licenses,  
3 Sauf Haus, Rosebar, Public, and Dirty Martini  
4 also have rooftop decks as well as Midtown.

5 Midtown is a multilevel establishment.  
6 When you first come in, it's a very narrow space.  
7 Midtown doesn't actually use the first floor.  
8 They start using the second floor, and from  
9 there, each floor has at least one bar, has a  
10 dance floor. The top level is their rooftop  
11 deck.

12 During the Protest investigation, ABRA  
13 personnel monitored Midtown on evenings when the  
14 establishment was open for business on 28  
15 separate occasions from February 20th, 2014,  
16 through April the 6th, 2014; from May 1st, 2015,  
17 through May 16th, 2015; and from June the 11th,  
18 2015, through August 22nd, 2015.

19 If I might explain those breaks in those  
20 dates, this case, as you all might well be aware,  
21 was continued on several times. Each time the  
22 case was continued, we went back and continued to

1 do some more monitoring.

2           On Thursday, May the 14th of this year, I  
3 visited Midtown and met with the General Manager  
4 by the name of Ramon Ramirez, who gave me a tour  
5 of the rooftop deck where they had completed some  
6 renovations. What I was shown was an addition of  
7 Plexiglas and also a removal of what they  
8 considered -- the term that he would use --  
9 cabinet-size bass speakers. They're very large  
10 at the time, and as a result on this particular  
11 date, they had clearly been removed, and a very  
12 smaller version of speakers were -- had replaced  
13 them.

14           I also was shown the floor below, the  
15 penthouse floor where the rooftop deck is, where  
16 the Licensee had added some walls, all in an  
17 effort to mitigate sound.

18           While I was there with Mr. Ramirez, Mr.  
19 Michael Rehman, the owner, called on the phone  
20 and explained to me that he had spent  
21 approximately \$14,000 in an effort to mitigate  
22 sound in the best way that he was advised by some

1 sound engineers what to do and explained that he  
2 was at least trying to be a good neighbor, and he  
3 thought that this was a good way to accomplish  
4 that task.

5 MR. MELCHER: May I raise an objection to  
6 that particular testimony? It seems to me it's  
7 all hearsay. Mr. Rehman wants to say something  
8 --

9 CHAIRPERSON MILLER: Okay. So you can,  
10 since you're not familiar with these proceedings,  
11 but for the most part, hearsay is admissible in  
12 these proceedings.

13 MR. MELCHER: Okay. All right. Thank  
14 you.

15 CHAIRPERSON MILLER: You can address  
16 later why they might not be that reliable.

17 MR. MELCHER: Okay, thank you.

18 MR. SILVERSTEIN: Madam Chair, both sides  
19 will have the opportunity to cross-examine Mr.  
20 Suero.

21 MR. MELCHER: Understood. Thank you.

22 CHAIRPERSON MILLER: Okay.

1           MR. SUERO: As part of all Protest  
2 investigations, we conduct a record search in  
3 terms of any police calls to the particular  
4 location. I did so in this case, and I received  
5 information from the District of Columbia Office  
6 of Unified Communication that a total of 50  
7 police-involved calls at Midtown occurred between  
8 March 27th, 2013, and March 21st, 2014.

9           Six of those incidents included ABRA  
10 incidents during that time frame.

11           Again, because this case has been  
12 continued more than once, I did another search of  
13 police records that indicated that a total of 52  
14 calls for police service at Midtown occurred  
15 between April the 25th of 2014 and April the 18th  
16 of 2014 -- and '15. I'm sorry. Twenty of those  
17 cases were ABRA incidents, including a sale to  
18 minor and other various incidents.

19           On Tuesday, April the 1st, 2014, at  
20 approximately 11:30 p.m., ABRA Supervisor  
21 Investigator Craig Stewart, ABRA Investigator  
22 Dorshae Demby, and Shawn Townsend visited Midtown

1 and found two minors consuming alcoholic beverage  
2 inside of Midtown. Both of these individuals  
3 were utilizing fake identification.

4 On Saturday, May the 2nd, 2015, the Noise  
5 Task Force received two noise complaints  
6 regarding loud music from the area of 18th Street  
7 and Connecticut Avenue Northwest, which includes  
8 the area of Midtown.

9 On Saturday, June 6th, 2015, a citizen  
10 called to complain regarding noise at Midtown.  
11 That complaint, however, was unfounded.

12 That is a synopsis of my Protest  
13 investigation.

14 CHAIRPERSON MILLER: Thank you.

15 Okay. So we start off with Board  
16 questions. Board questions?

17 Yes, Mr. Alberti.

18 MR. ALBERTI: Can you describe just  
19 briefly for us again -- thank you for your  
20 report. I just want to make sure I understand  
21 what you saw on the roof in terms of recent  
22 alterations or changes.

1           MR. SUERO: I had been there before, and  
2 I hate noted the first couple times I was there  
3 that they had extremely large speakers, what they  
4 call cabinet size. They were huge.

5           On this particular date, when I went to  
6 look at the place and look it over, I noted that  
7 those large speakers were gone, and very small  
8 ones had replaced it.

9           He also showed me where they had added  
10 some Plexiglas.

11           And then we went to the floor below, and  
12 he showed me where they had added walls they had  
13 not had before.

14           MR. ALBERTI: Okay. So, on the rooftop,  
15 can you describe where that Plexiglas is and give  
16 me a picture of how much it surrounds, how tall  
17 it is, in a little bit more detail?

18           MR. SUERO: It's the same wall size  
19 they've had before. They just added like another  
20 layer. So, if you have a --

21           MR. ALBERTI: Oh.

22           MR. SUERO: Where that gentleman is, they

1 already had Plexiglas there. They just added  
2 another layer.

3 MR. ALBERTI: They just added another  
4 layer --

5 MR. SUERO: Added another layer.

6 MR. ALBERTI: -- of Plexiglas on top of  
7 --

8 MR. SUERO: Yeah, just to have some more  
9 -- my understanding, that was the reason for it.

10 MR. ALBERTI: And there's nothing between  
11 the Plexiglas and the wall?

12 MR. SUERO: This is just --

13 MR. ALBERTI: It's just put up against  
14 the wall.

15 Okay, thank you.

16 CHAIRPERSON MILLER: Others?

17 [No audible response.]

18 CHAIRPERSON MILLER: So, Mr. Suero, it  
19 seems like a large topic of this hearing is  
20 noise.

21 MR. SUERO: Yes.

22 CHAIRPERSON MILLER: Do you have any

1 testimony you want to give with respect to your  
2 knowledge of the noise that emanates from  
3 Midtown?

4 MR. SUERO: It would be difficult to  
5 single out just Midtown in terms of noise for  
6 that area. Eighteenth and Connecticut is  
7 virtually a cornucopia of sound, a lot of it.  
8 It's very loud. It's continual.

9 A lot of establishments produce a lot of  
10 sound in that area. Midtown is one of those. I  
11 don't know that they're any worse or better than  
12 any other, but they do have a considerable amount  
13 of sound coming from that --

14 CHAIRPERSON MILLER: So, when you talk  
15 about Midtown being one of them, who are you  
16 grouping Midtown with?

17 MR. SUERO: In that particular area,  
18 Rosebar, absolutely, Dirty Martini.

19 CHAIRPERSON MILLER: Okay.

20 MR. SUERO: On the other side of the  
21 street, Public, sometimes Sauf Haus. Around the  
22 corner. Ozio. There's just so many.

1 CHAIRPERSON MILLER: Okay. So a lot of  
2 these --

3 MR. SUERO: Yes, absolutely.

4 CHAIRPERSON MILLER: -- establishments  
5 are noisy.

6 But can you single out -- when you're  
7 trying to -- when you're trying to evaluate  
8 whether Midtown is noisy, are you looking at --  
9 are you listening to Midtown, Rosebar, and Dirty  
10 Martini, basically, or --

11 MR. SUERO: Because of the way it's  
12 situated and because they're relatively close to  
13 each other, I normally will go to the alley in  
14 the back to try and get a better sense of which  
15 establishment is actually the biggest violator, I  
16 guess is the best way I can put it.

17 Frankly, normally, that's actually  
18 Rosebar.

19 CHAIRPERSON MILLER: Okay. How has  
20 Midtown been?

21 MR. SUERO: Midtown has its days, but  
22 lately, it hasn't been as bad as it had.

1           CHAIRPERSON MILLER: So, when it has its  
2 days, what are they like?

3           MR. SUERO: Let me preface this by saying  
4 that I'm not an expert on sound. I don't have a  
5 meter. I'm not trained with one. They're all  
6 loud as far as I'm concerned, and some more than  
7 others. It seems that we had had the Noise Task  
8 Force, which includes a member of the Consumer  
9 and Regulatory Affairs, that has a meter, and  
10 they have not found anyone in violation there  
11 yet.

12           And they normally will do an ambient  
13 reading, and the ambient reading, unfortunately,  
14 is so high that to extrapolate from that a level  
15 that they can consider a violation is difficult,  
16 I imagine to obtain, because they haven't gotten  
17 one yet, at least they haven't notified us of  
18 that.

19           So, at this point, they're all loud. I  
20 would say relatively equally. It's just that on  
21 some occasions, some are more loud than others,  
22 but on that particular block where Rosebar is at

1 1215 Connecticut, Midtown is at 1219, and I  
2 believe Dirty Martini is at 1223, my experience  
3 has been that Rosebar is the biggest violator of  
4 the sound.

5 CHAIRPERSON MILLER: Okay. So we're  
6 focusing on Midtown for the most part.

7 MR. SUERO: Yes.

8 CHAIRPERSON MILLER: But I understand  
9 what you're saying. It's a part of this group.  
10 Has Midtown been -- have you or ABRA  
11 conveyed concerns to Midtown about the loudness  
12 and asked them to take action to mitigate that?

13 MR. SUERO: Absolutely, Madam Chairwoman.  
14 As a matter of fact, as part of our Noise Task  
15 Force efforts, often that whole block is on our  
16 list. So whenever investigators go to these  
17 establishments, we make a point. We tell them  
18 why we're there. We express to them the need to  
19 be good neighbors, to make whatever effort the  
20 management can to control their sound. If it's  
21 simply turning down the volume and turning on the  
22 bass, whatever you need to do to make it

1 reasonable, then that's what we'll ask you to do.

2 CHAIRPERSON MILLER: Okay. So how  
3 responsive have they been?

4 MR. SUERO: They have always been very  
5 responsive, actually. We have never gotten a  
6 "No, we won't do it." We always get "Of course,"  
7 and they do do it.

8 CHAIRPERSON MILLER: Okay. So they  
9 respond when you ask them?

10 MR. SUERO: Of course.

11 CHAIRPERSON MILLER: But do they then --  
12 there are all these other incidents, so that they  
13 create noise later, and that you have to go back  
14 and ask them to mitigate?

15 MR. SUERO: I have not personally had a  
16 situation where I've been asked to go back to  
17 Midtown because someone has called about they're  
18 not going -- unreasonable in their sound.

19 CHAIRPERSON MILLER: Have you had an  
20 opportunity to tell whether or not the measures  
21 that you mentioned, like the Plexiglas and the  
22 smaller speakers, have had an impact on

1 mitigating noise?

2 MR. SUERO: My personal opinion is that  
3 it has lessened the noise from that particular  
4 establishment.

5 CHAIRPERSON MILLER: Okay. So it's  
6 lessened the noise.

7 Are they still emanating noise that's not  
8 acceptable or inappropriate, or in your view,  
9 they're fine -- or in between?

10 MR. SUERO: That's difficult question to  
11 answer. All of the establishments on that block  
12 on either side produce so much sound, in my  
13 personal opinion there should be some way to  
14 mitigate that sound in a more reasonable way.

15 CHAIRPERSON MILLER: Okay.

16 MR. SUERO: So I would say that they can  
17 always do better.

18 CHAIRPERSON MILLER: They can do better.  
19 Okay.

20 And do you know -- I mean, I guess it's  
21 my understanding that Dirty Martini and Midtown  
22 are owned by the same owner.

1 MR. SUERO: That's my understanding.

2 CHAIRPERSON MILLER: But Rosebar is not;  
3 is that right?

4 MR. SUERO: Different ownership.

5 CHAIRPERSON MILLER: Okay. Do you know  
6 whether they're trying to work together?

7 MR. SUERO: I do not know that they have  
8 any contact or conversation to that regard. I do  
9 not.

10 CHAIRPERSON MILLER: Okay, thank you.

11 Yeah, Mr. Silverstein.

12 MR. SILVERSTEIN: Thank you, Mr. Suero,  
13 Investigator.

14 The problems at Midtown in terms of noise  
15 are mostly outside, or to what extent are they  
16 indoors as well?

17 MR. SUERO: I'm going to age myself, but  
18 my personal meter, when I go in a place, if I  
19 have to shout to hear myself or someone else  
20 speak, my view is it's too loud.

21 But, however, having said that, I think  
22 that my view would be if you maintain your sound

1 inside as loud as you want, that's okay as far as  
2 I'm concerned. The issue is what happens to that  
3 sound outside of your establishment.

4 MR. SILVERSTEIN: Okay. So the sound  
5 that tis on the rooftop deck is the major  
6 problem. Is that --

7 MR. SUERO: That's my understanding, what  
8 the concerns are for Midtown and most of those  
9 locations, yes.

10 MR. SILVERSTEIN: That is going to be the  
11 focus here.

12 Paint me a word picture of what it looks  
13 like up there in terms of the deck itself and  
14 what sound proofing there is, where it is, are  
15 there any baffles. What have they done so far?

16 MR. SUERO: The only thing that I can say  
17 that they've done so far is remove the  
18 cabinet-size speakers and replace them, much  
19 smaller ones, add Plexiglas, and at this point --

20 MR. SILVERSTEIN: Where did they add the  
21 Plexiglas?

22 MR. SUERO: It's on the walls, on the

1 sides, on the walls. Yeah.

2 MR. SILVERSTEIN: Is there anything that  
3 -- is it 360? Is it completely around the place?  
4 Is there anywhere where the noise is escaping  
5 straight out?

6 MR. SUERO: I can't answer that  
7 intelligently because I'm just not an expert on  
8 sound. I know sound goes where it goes.

9 I don't know that it's enough to mitigate  
10 all sound, but I would conclude by looking at it  
11 that it's at least making some impact on the  
12 amount of sound that's escaping from that  
13 location.

14 MR. SILVERSTEIN: Are there other things  
15 that could be done that other places have done  
16 that you have seen that might be employed here?

17 MR. SUERO: I noted that a place such as  
18 Jack Rose's has a -- I guess it's a retractable  
19 roof, and it seems to be very thick glass that  
20 they're using there. So we don't get any calls  
21 from there about sound at all, and it's a second  
22 floor or third floor. And it's open. You can

1 see around it. It's a very nice view. It gets a  
2 lot of people, but it seems to not be producing  
3 the kind of sound that we get in other places.

4 MR. SILVERSTEIN: Thank you. No further  
5 questions.

6 CHAIRPERSON MILLER: Okay. Yes, Mr.  
7 Alberti.

8 MR. ALBERTI: Mr. Suero, I'm sorry to  
9 throw these questions after the fact, but I sort  
10 of want to ask -- I want to ask some questions  
11 about Dirty Martini because that's going to be a  
12 subject here.

13 Is Dirty Martini one of the contributors  
14 to noise? I mean, I think you painted a picture  
15 that like all together, it's sometimes hard to  
16 distinguish who's the violator because they're  
17 all contributing to the noise. Is Dirty Martini  
18 sort of on par with the other establishments,  
19 Rosebar, Midtown, and the others in terms of  
20 contributing noise?

21 MR. SUERO: It is. And sometimes it's a  
22 little bit louder than the others, which I think

1 can be said for all of them.

2 MR. ALBERTI: Have you had any complaints  
3 about -- have you had any complaints -- do you  
4 know of any complaints about Dirty Martini?

5 MR. SUERO: I do not personally, on, of  
6 any. The Noise Task Force log is maintained by  
7 one of our supervisors, so I really couldn't tell  
8 you.

9 MR. ALBERTI: In your opinion, have you  
10 been in any of the residences around there to  
11 hear the noise, or would you have any idea what  
12 the residents would be hearing if they heard  
13 noise?

14 MR. SUERO: No. We had a call from a  
15 lady at one point, but she did not want us to  
16 enter her apartment. So, no, I couldn't tell  
17 you.

18 Being on, let's say, Jefferson Street or  
19 some of those streets off of 19th, off N Street,  
20 I can imagine that it would -- my estimation, it  
21 would be pretty loud.

22 MR. ALBERTI: Okay. So, if they heard

1 noise, would they be able to distinguish -- how  
2 well would they be able to distinguish which  
3 establishment it came from?

4 MR. SUERO: Personally, I would imagine  
5 that would be a very difficult thing to do, to  
6 determine which particular establishment is  
7 actually creating that particular noise on that  
8 particular time.

9 MR. ALBERTI: Thank you.

10 CHAIRPERSON MILLER: Mr. Rodriguez?

11 MR. RODRIGUEZ: Mr. Suero, thank you for  
12 an excellent report.

13 I want to refer you to Exhibit No. 10 on  
14 your report, which is the photo of the rooftop at  
15 Midtown.

16 MR. SUERO: If I may, before you ask that  
17 question, let me just say that these exhibits  
18 were turned in when this was originally -- these  
19 exhibits were turned in with the original report  
20 that was turned in sometime before.

21 MR. RODRIGUEZ: Yes.

22 MR. SUERO: Okay.

1           MR. RODRIGUEZ: I take note of the  
2 ceiling and the wall, and I see that they're  
3 shiny.

4           MR. SUERO: Right.

5           MR. RODRIGUEZ: Is that metal?

6           MR. SUERO: At that point, yeah, those  
7 are. They look like they are. Hold on one  
8 second. It's been a while now.

9           MR. RODRIGUEZ: And maybe Mr. --

10          MR. SUERO: It might actually be a  
11 curtain. This has been now some months ago.  
12 This has changed now.

13          MR. RODRIGUEZ: Okay. Because you  
14 indicated that management has been trying to  
15 mitigate noise.

16          MR. SUERO: Right.

17          MR. RODRIGUEZ: Had made some progress,  
18 but that there is still noise.

19          MR. SUERO: Absolutely. There still is.

20          MR. RODRIGUEZ: So I was looking at those  
21 metal -- the metal ceiling and the metal walls  
22 and thinking that that is not a way to mitigate

1 sound. Again, I'm not a sound expert, but I  
2 would like to pursue that later with management.  
3 But I just wanted to see if there is anything  
4 that you can add to this picture in terms of my  
5 question.

6 MR. SUERO: As I said, this photo was  
7 taken when I originally did the Protest  
8 investigation in 2014, so there have been some  
9 changes since.

10 MR. RODRIGUEZ: Has that been changed?

11 MR. SUERO: I actually think that might  
12 have been changed since then because it doesn't  
13 look familiar to what I saw in May.

14 MR. RODRIGUEZ: I'll pursue this later.

15 MR. SUERO: Okay.

16 MR. RODRIGUEZ: Okay. Thank you, sir. I  
17 appreciate your report.

18 MR. SUERO: Absolutely.

19 CHAIRPERSON MILLER: Others?

20 [No audible response.]

21 CHAIRPERSON MILLER: I just want to ask a  
22 couple more questions. Okay. So you testified

1 that the noise problem -- and correct me. I  
2 don't want to put words in your mouth, but it  
3 seems like it's often a result of the three  
4 establishments together that creates the noise  
5 that's loud, but that you have gone into the  
6 alley sometimes to try to identify where noise is  
7 coming from vis-à-vis which particular  
8 establishment?

9 MR. SUERO: Yes.

10 CHAIRPERSON MILLER: Okay. So this is  
11 about Midtown. So my question is, when you've  
12 done that, have there been occasions where loud  
13 noise has been emanating from Midtown that you've  
14 confirmed by standing in the alley and listening  
15 to the noise?

16 MR. SUERO: Yes.

17 CHAIRPERSON MILLER: Okay. About how  
18 many times have you done that?

19 MR. SUERO: Well, I've been in the alley  
20 numerous times, as most other investigators,  
21 because of just the way these locations are  
22 situated. And what -- and because I don't have a

1 meter --

2 CHAIRPERSON MILLER: Right.

3 MR. SUERO: -- I'm not -- I can't say  
4 that they were in violation. I can only say that  
5 it got my attention because of how loud it was,  
6 and so then I would go talk to the management and  
7 say, "Do what you need to do to bring that volume  
8 down."

9 CHAIRPERSON MILLER: So would you say  
10 that happened frequently or periodically or once  
11 in a while?

12 MR. SUERO: Periodically. Not  
13 frequently. Periodically.

14 CHAIRPERSON MILLER: Okay. Periodically  
15 over what period of time did you do this? These  
16 three different monitoring times or other times?

17 MR. SUERO: During these times that are  
18 in my report, and there's times when we just  
19 happened to be close by, so we drive around the  
20 back just to take a look and see what we can  
21 find.

22 CHAIRPERSON MILLER: I don't know if you

1 can recall this or not, but of the times that you  
2 monitored, do you know how many times you found  
3 that they were loud in the alley, not that they  
4 were, quote, in violation because you didn't have  
5 a meter or anything, but that you thought they  
6 were loud?

7 MR. SUERO: I would say at least three  
8 times.

9 CHAIRPERSON MILLER: Okay. And can you  
10 say what significance, if any, you would give to  
11 the police reports where there were like 50 in  
12 over a year of police calls? Is there a  
13 significance of that?

14 MR. SUERO: Well, I think we have to be  
15 cautious of this because what happens in this  
16 police department, like in most others, if a  
17 police officer is near a particular area, he'll  
18 use the address of a known location for the  
19 incident. It doesn't necessarily mean that  
20 something happened --

21 CHAIRPERSON MILLER: Right.

22 MR. SUERO: -- at Midtown. It just means

1 that's the address he gave the dispatcher, and  
2 the dispatcher creates a report number based on  
3 that address. Those two things are not always  
4 tied together.

5 CHAIRPERSON MILLER: Right. Okay, thank  
6 you.

7 MR. SUERO: You're welcome.

8 CHAIRPERSON MILLER: All right. Any  
9 other Board questions?

10 MR. SHORT: I have one.

11 CHAIRPERSON MILLER: Mr. Short.

12 MR. SHORT: Yes. Good afternoon,  
13 Investigator Suero.

14 MR. SUERO: Good afternoon, sir.

15 MR. SHORT: You work for a lot of  
16 managers and owners of these clubs in that area,  
17 correct?

18 MR. SUERO: I'm sorry, sir?

19 MR. SHORT: You work from a lot of the  
20 owners and the managers of these clubs in that  
21 area?

22 MR. SUERO: You said I work for?

1 MR. SHORT: You work with them?

2 MR. SUERO: Oh, yes.

3 MR. SHORT: You're interacting with them?

4 MR. SUERO: We do. Yes, sir.

5 MR. SHORT: And how good is the  
6 cooperation when you go there and you find noise  
7 in the alley or you see something that's an ABRA  
8 violation? How responsive and cooperative are  
9 the owners?

10 MR. SUERO: The level of cooperation is  
11 very high while we're there speaking to them, and  
12 for a time after that. Oftentimes you may return  
13 later on and the noise or the sound may have  
14 increased some from the last time you were there.

15 MR. SHORT: So while you're there, they  
16 cooperate.

17 MR. SUERO: Cooperation is good.

18 MR. SHORT: And when you're gone, you  
19 come back and find that the same problem exists.

20 MR. SUERO: Yes, sir, sometimes.

21 MR. SHORT: Which means they have not  
22 been cooperative.

1 MR. SUERO: That's correct.

2 MR. SHORT: Thank you, Madam Chair.

3 That's all I have. That's all I have, Madam  
4 Chair. Thank you.

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

7 [No audible response.]

8 CHAIRPERSON MILLER: Okay. So now we can  
9 start with the Applicant's questions.

10 MR. KLINE: Great, thank you.

11 CHAIRPERSON MILLER: Okay.

12 MR. KLINE: Good afternoon, Investigator.

13 MR. SUERO: Good afternoon, sir.

14 MR. KLINE: Investigator, you had  
15 indicated that you made a number of visits to the  
16 establishment over the summer of 2015; is that  
17 correct?

18 MR. SUERO: I made a number of visits  
19 beginning in 2014 through the summer of 2014.

20 MR. KLINE: Okay. Because in my report,  
21 it ends in May of 2015, so I just -- maybe I have  
22 an earlier --

1           MR. SUERO: The report that you should  
2 have -- the last visit should have been August  
3 22nd, 2015.

4           MR. KLINE: Okay. And you testified that  
5 you were there in a day in May when certain  
6 changes to the rooftop areas of the establishment  
7 --

8           MR. SUERO: I believe it was May 2nd when  
9 I met with Mr. Ramirez, yes.

10          MR. KLINE: All right. And those  
11 represented significant changes from the sound  
12 system that had been there before, correct?

13          MR. SUERO: They did.

14          MR. KLINE: All right. And you testified  
15 that sometimes you hear noise in the alley and  
16 that you said you thought maybe it was at least  
17 three times that it could have been attributable  
18 to Midtown?

19          MR. SUERO: That's correct.

20          MR. KLINE: None of those were subsequent  
21 to that May visit, were they?

22          MR. SUERO: They were prior to.

1 MR. KLINE: They were prior to.

2 And the alley that we're talking about,  
3 nobody lives on that alley, do they?

4 MR. SUERO: This alley runs -- you can  
5 get it off of N Street or -- is that Rhode Island  
6 that -- and it passes through behind the Rosebar,  
7 Dirty Martini, Midtown, and --

8 MR. KLINE: All right. And there's also  
9 --

10 MR. SUERO: And there are some residents.  
11 I'm sorry. To answer your question, there are  
12 some residents as you go on N Street.

13 MR. KLINE: Right. Across N Street,  
14 though, right?

15 MR. SUERO: Right.

16 MR. KLINE: Okay. So they wouldn't front  
17 this alley?

18 MR. SUERO: No. Exactly.

19 MR. KLINE: So, if noise were heard in  
20 this alley, it wouldn't necessarily be evidence  
21 that anyone was being disturbed in their  
22 residence, correct?

1           MR. SUERO: That's difficult to say. I  
2 would have to be able to conclude how far sound  
3 travels and who can hear from there. I can't  
4 say.

5           MR. KLINE: Right. But all I'm saying is  
6 just because you could hear it at that point in  
7 the alley doesn't necessarily mean anyone was  
8 hearing it in their residence because there  
9 aren't any residences fronting that alley; is  
10 that fair?

11           MR. SUERO: Yes.

12           MR. KLINE: Okay. Now, the area in which  
13 this is located, I think in your report, you  
14 indicated it's C-3 zoned, correct?

15           MR. SUERO: Yes.

16           MR. KLINE: Which is a pretty intensive  
17 commercial zone, isn't it?

18           MR. SUERO: It is.

19           MR. KLINE: And, in fact, there is quite  
20 a bit of noise in that neighborhood on the  
21 street, even without any bars and nightclubs,  
22 isn't there?

1           MR. SUERO:  There's a lot of sounds at  
2 that location.  Yes, sir, it's true.

3           MR. KLINE:  It's a busy intersection.  A  
4 number of streets come together there.

5           MR. SUERO:  Yes.

6           MR. KLINE:  Describe for the Board, if  
7 they don't have a mental image -- I know at least  
8 one of them lives in the neighborhood, but others  
9 may not be as familiar.  Tell them what converges  
10 there and what the intersections look like.

11          MR. SUERO:  Well, 18th Street parallels  
12 Connecticut at this point.  Jefferson is on your  
13 left.  Eighteenth Street considers -- continues  
14 at an angle.  Connecticut continues up north.  
15 It's a very busy area.  There's a lot of foot  
16 traffic.  There's a lot of businesses.  There is  
17 just a lot of everything at one confined space.  
18 It is a very -- for lack of a better term, it's a  
19 very loud area.  Put it that way.

20          MR. KLINE:  And in terms of loud, in  
21 terms of noise, that's not just attributable to  
22 bars and restaurants, is it?

1 MR. SUERO: This is true.

2 MR. KLINE: And, in fact, there are a  
3 number of businesses there that do not hold ABC  
4 licenses that are open into the evening, aren't  
5 there?

6 MR. SUERO: Yes. There are some eateries  
7 there that are open late.

8 MR. KLINE: And there are patrons that  
9 congregate around these eateries that are  
10 unlicensed sometimes?

11 MR. SUERO: Yes.

12 MR. KLINE: And sometimes these patrons  
13 make noise in the street?

14 MR. SUERO: Most of the time, the patrons  
15 make noise in the street.

16 MR. KLINE: And there are emergency  
17 vehicles that come and down the street there,  
18 correct?

19 MR. SUERO: That's true for Washington,  
20 D.C., sir. Yes, sir.

21 MR. KLINE: And particularly for this  
22 particular neighborhood, it's a busy urban

1 street, isn't it?

2 MR. SUERO: That's correct.

3 MR. KLINE: Now, you had indicated that  
4 in this area, there are a number of clubs.  
5 There's a lot of noise from the clubs, but the  
6 biggest violators, in your words, is Rosebar,  
7 correct?

8 MR. SUERO: In terms of sound for that  
9 particular block, in my experience, they can be  
10 very loud.

11 MR. KLINE: And the fact of the matter  
12 is, since May of 2015, when these improvements  
13 were made to the rooftop, you're not aware of any  
14 issues with noise from Midtown, are you?

15 MR. SUERO: I am not personally aware.

16 MR. KLINE: All right. Now, in your  
17 report, you indicated that the Noise Task Force  
18 received on May 2nd, 2015, two noise complaints  
19 regarding loud music from the area of 18th Street  
20 and Connecticut Avenue --

21 MR. SUERO: Right.

22 MR. KLINE: -- which includes Midtown?

1 MR. SUERO: Yes.

2 MR. KLINE: Those weren't specifically  
3 related to Midtown?

4 MR. SUERO: They were not, as I  
5 testified. Yes, sir.

6 MR. KLINE: Okay. And there wasn't any  
7 investigation that reflected that there was noise  
8 coming from Midtown?

9 MR. SUERO: In terms of those calls,  
10 that's correct.

11 MR. KLINE: In that evening. Okay.

12 And that's all I have at this time.  
13 Thank you.

14 CHAIRPERSON MILLER: Okay. Protestants?

15 MR. MELCHER: You indicated that there  
16 are a number of bars or clubs in the area  
17 producing excessive sound. I believe you  
18 mentioned Rosebar, Dirty Martini, Public, Sauf  
19 Haus, and Midtown. Do those establishments all  
20 have roof decks?

21 MR. SUERO: They all have either roof  
22 decks, or they have what we call a Summer Garden,

1 but they're at a high level, a high floor.

2 MR. MELCHER: Is it your understanding  
3 that the noise problem has anything to do with  
4 those roof decks or Summer Gardens?

5 MR. SUERO: My view is that it helps  
6 contribute to the noise.

7 MR. MELCHER: Okay. If those  
8 establishments did not have roof decks or Summer  
9 Gardens, would that substantially reduce the  
10 sound coming from these establishments?

11 MR. SUERO: Again, I'm not an expert on  
12 sound, but I would say that being at a lower  
13 floor and not at a higher floor, and open air  
14 would make a big difference, yes.

15 MR. MELCHER: You indicated that -- I'll  
16 just use your words. At one point, you had a  
17 call from a lady, and she did not want you to  
18 enter her apartment. I understand that to be in  
19 connection with the noise complaint. Is that the  
20 case?

21 MR. SUERO: Right. Yeah. What happened  
22 is our regulations, our particular procedure were

1 that if someone called about a -- hearing sound  
2 from their residence, we have to physically go to  
3 that location, be inside where we could actually  
4 make a determination that we also heard what they  
5 heard.

6 MR. MELCHER: Okay. So how was that  
7 noise complaint resolved? What was the  
8 determination by ABRA?

9 MR. SUERO: The only -- well, there  
10 wasn't a determination. The only thing, it was  
11 concluded that -- it didn't go, anyway,  
12 basically. In other words, it's un-conclusive,  
13 as we cannot make a determination, one way or the  
14 other.

15 MR. MELCHER: In your report, would you  
16 refer to it as inconclusive or no violation?

17 MR. SUERO: "Unfounded" probably be would  
18 be the word.

19 MR. MELCHER: Unfounded, okay.

20 Are you aware that there are condominiums  
21 being built adjacent to the alley behind Midtown?

22 MR. SUERO: That are being built. I

1 think I've seen some construction there.

2 MR. MELCHER: Okay. I assume you have a  
3 copy of your Protest report?

4 MR. SUERO: I do.

5 MR. MELCHER: Okay. If you could please  
6 refer to Part 2, which is titled "Characteristics  
7 of the Neighborhood" and in particular

8 MR. SUERO: Could you give me a page  
9 number? That would be helpful.

10 MR. MELCHER: Sure. Page 3.

11 MR. SUERO: Page 3?

12 MR. MELCHER: Yeah. It's a subsection,  
13 Nearby Establishments, and then you have a table.

14 MR. SUERO: I see it. Under Zoning?

15 MR. MELCHER: Well, there's page 3, 4, 5.  
16 You have a list of establishments.

17 MR. SUERO: What page would you like me  
18 to look at?

19 MR. MELCHER: Well, I want to ask you  
20 this. Your report doesn't list Empire, which is  
21 a licensed establishment on M Street within 1,200  
22 feet of Midtown.

1 MR. SUERO: Let me take a look.

2 MR. MELCHER: Is that correct?

3 MR. SUERO: Let me just take a look and  
4 see if Empire is on my list.

5 Empire is on 19th -- on M Street. Is  
6 that the one you're talking about? Empire on M  
7 Street?

8 MR. MELCHER: Yes.

9 MR. SUERO: I do not see that as one of  
10 them. It may be that -- it might have changed  
11 the name at some point, but it is there.

12 MR. MELCHER: In your report or on --

13 MR. SUERO: No. I'm saying Empire  
14 exists. I'm not saying in my --

15 MR. MELCHER: Okay. And your report  
16 doesn't list Ozio either on these -- in this  
17 table, correct?

18 MR. SUERO: That's possible, yes.

19 MR. MELCHER: Okay. Why the oversight?

20 MR. SUERO: I don't know. What happens  
21 is I get a map. When we do Protests, we get a --  
22 We ask for a GSI map, a Graphical Information

1 Systems Map, and the map gives us, in a circle,  
2 outlined a number of places that are included in  
3 that, in that distance, and so I just use what's  
4 where, and so if it's not in my -- it might have  
5 been either covered by the circle or it just  
6 didn't make it, for whatever reason, but it was  
7 not excluded for any nefarious reason. If it's  
8 not there, it may not have made that 1,200 exact  
9 number. I don't know.

10 MR. MELCHER: Okay. At the bottom, on  
11 page 6, you list only five establishments -- four  
12 establishments with rooftop decks or Summer  
13 Gardens. It doesn't list Ozio or Beacon Bar,  
14 both of which I understand have rooftop decks or  
15 Summer Gardens. Why the oversight there?

16 MR. SUERO: Like I said, if it didn't  
17 make that distance, it wouldn't be in my report.

18 MR. MELCHER: Okay. Are you saying the  
19 Ozio is not within 1,200 feet?

20 MR. SUERO: Sir, like I said, if it's not  
21 there, it didn't make the list, it wasn't on the  
22 map that I was given, then I didn't add it.

1 MR. MELCHER: Okay. Please refer to Part  
2 3.

3 MR. SUERO: Can you give me a page  
4 number?

5 MR. MELCHER: Okay. Page 7.

6 MR. SUERO: Thank you.

7 MR. MELCHER: Did an ABRA investigator go  
8 on Midtown's roof when the roof deck was actually  
9 in operation?

10 MR. SUERO: We have been at Midtown for a  
11 considerable number of calls, including the  
12 rooftop deck.

13 MR. MELCHER: So an investigator actually  
14 goes to the rooftop while it's in operation?

15 MR. SUERO: Of course.

16 MR. MELCHER: Okay. Part 5 begins on  
17 page 8. If you'd please refer to that.

18 MR. SUERO: Sure. Go ahead.

19 MR. MELCHER: Are you aware of residents  
20 making complaints about noise coming from clubs  
21 on Sunday afternoons?

22 MR. SUERO: Am I personally aware? No,

1 sir, I'm not.

2 MR. MELCHER: Okay. Were any of your --  
3 none of your visits in this table were on Sunday  
4 afternoons, correct?

5 MR. SUERO: No, sir. I don't work on  
6 Sunday afternoons.

7 MR. MELCHER: Does anyone at ABRA do  
8 investigations on Sunday afternoons?

9 MR. SUERO: We have recently begun a  
10 night shift that works starting on Sunday nights,  
11 yes.

12 MR. MELCHER: What about Sunday  
13 afternoons?

14 MR. SUERO: Sunday during day shift, no.

15 MR. MELCHER: All right. Would it be  
16 your understanding that licenses may be aware  
17 that ABRA doesn't do investigations on Sunday  
18 afternoons?

19 MR. SUERO: It would be my --

20 MR. KLINE: Objection. Calls for  
21 speculation.

22 CHAIRPERSON MILLER: You want to say,

1 well, what's -- I guess it calls for speculation.  
2 I think it's within his expertise, though.

3 MR. KLINE: How does he know what's in  
4 the Licensee's minds.

5 CHAIRPERSON MILLER: Well, it goes to,  
6 you know, the weight we've given it.

7 MR. KLINE: That's fine. I just wanted  
8 to let you know I'm awake.

9 MR. ALBERTI: It is speculation. He  
10 doesn't know what's in the minds --

11 CHAIRPERSON MILLER: Oh, my Board member  
12 is telling me I should sustain it. Okay. It's  
13 rhetorical probably, anyway. All right. Pass  
14 that question.

15 MR. MELCHER: All right. I'll just move  
16 on.

17 Your table lists four visits in February,  
18 correct? February 20, 22 -- two on the 22nd and  
19 one on the 23rd, correct?

20 MR. SUERO: Right.

21 MR. MELCHER: All right. And the table  
22 shows --

1 CHAIRPERSON MILLER: Where are you, Mr.  
2 Melcher?

3 MR. MELCHER: It's on page 8 at the  
4 investigative report. Just going through the  
5 table.

6 CHAIRPERSON MILLER: Okay.

7 MR. MELCHER: And then the table also  
8 shows that there were four visits in March 2014,  
9 over a 3-day period, correct, 7th, 8th, and 9th?

10 MR. SUERO: Right.

11 MR. MELCHER: And two of those visits  
12 were on the same day, correct?

13 MR. SUERO: Different times, same day,  
14 yes.

15 MR. MELCHER: And all of the visits in  
16 April occurred over a 6-day period, correct?

17 MR. SUERO: Yes.

18 MR. MELCHER: Okay. Is it fair to say  
19 that when ABRA visits a Licensee's premises, it  
20 generally does so on back-to-back dates over a  
21 span of a few days?

22 MR. SUERO: What's fair to say is that

1 depending on the schedule, the investigator who  
2 is assigned the Protest, the visits are dependent  
3 upon his or her hours.

4 MR. MELCHER: So it's just a coincidence  
5 that these investigations all occurred in closely  
6 grouped periods of time over each of these  
7 months?

8 MR. SUERO: Indicating the days that I  
9 was working.

10 MR. MELCHER: So you worked for a few  
11 days in February, and then you didn't work until  
12 the subsequent month for a few days?

13 MR. SUERO: No.

14 MR. MELCHER: I'm just trying to  
15 understand.

16 MR. SUERO: Yes.

17 MR. MELCHER: Why are these dates back to  
18 back and clustered together?

19 MR. SUERO: Because the way our shifts  
20 work, I'll work a week of day shift, where the  
21 establishment is closed, and I cannot visit with  
22 any intelligent reason why, and I have to wait

1 until I am back again on night shift to conduct  
2 those visits.

3 MR. MELCHER: Well, presumably, you  
4 worked multiple weeks in February 2014, correct,  
5 not just 1 week?

6 MR. SUERO: Right.

7 MR. MELCHER: So I'm asking, why were all  
8 the visits all within 1 week, all within a span  
9 of 3 days? You actually worked other days.

10 MR. SUERO: Actually, if I -- let me  
11 start again. I received this particular protest  
12 in March. I started -- I had already done some  
13 -- I go to these places irregardless of whether  
14 there's a protest or not. We do what's called  
15 general monitoring of all different  
16 establishments. So I include the dates when I've  
17 been at those places.

18 I would also explain to you that the ABRA  
19 investigators, including myself, are tasked with  
20 doing more than just conducting Protest  
21 investigations.

22 So if there is a homicide, let's say,

1 outside of a particular establishment that has an  
2 ABC license, investigators have responsibility  
3 with that as well. So there's more that's being  
4 done than the Protest investigation.

5 MR. MELCHER: Okay. So does this table  
6 reflect general monitoring or something in  
7 connection with this protest?

8 MR. SUERO: This table reflects  
9 monitoring specifically of the protest for this  
10 establishment. However, because I only got this  
11 early March I believe, I had included the dates  
12 that I happen to have been there in February.

13 MR. MELCHER: All right. Do other ABRA  
14 investigators follow similar procedure of going  
15 to establishments for monitoring on back-to-back  
16 dates?

17 MR. SUERO: Are you speaking about  
18 monitoring for the protest or separate to the  
19 protest?

20 MR. MELCHER: Well, whatever kind of  
21 monitoring is reflected in this table.

22 MR. SUERO: Reflected in this table is

1 monitoring specifically for this protest.

2 MR. MELCHER: Okay. Well, wouldn't it be  
3 fair to say that a Licensee might be able to  
4 figure out that if you're coming on back-to-back  
5 dates, that if you come on day one, that they  
6 ought to expect you on day two?

7 MR. SUERO: No, sir. I'm not making an  
8 announcement that I'll be in a establishment or  
9 that I'm there to check anything or that I'm  
10 staying in back or anything. I don't make that  
11 known to any particular --

12 MR. MELCHER: Please refer to page 10  
13 regarding record search.

14 MR. SUERO: Yes.

15 MR. MELCHER: The first paragraph refers  
16 to 50 police-involved incidents for March 27,  
17 2013, to March 21, 2014. The second paragraph  
18 refers to police-involved incidents from April  
19 25, 2014, to April 18, 2014 -- I'm sorry -- 2015.

20 MR. SUERO: Yes.

21 MR. MELCHER: Why didn't you include  
22 police-involved incidents from March 22, 2014,

1 through April 24? Why the gap?

2 MR. SUERO: The gap is theirs. I don't  
3 create that information. This is what they give  
4 me. So I ask for a -- I give them a date, this  
5 month to this year to this month of that year and  
6 give me whatever you have. So that's what I was  
7 given.

8 MR. MELCHER: But why didn't you ask for  
9 that particular period of time? Or maybe I could  
10 just say --

11 MR. SUERO: Excuse me?

12 MR. MELCHER: Did you ask for that  
13 particular period of time?

14 MR. SUERO: Please restate that. What  
15 period of time?

16 MR. MELCHER: Okay. Did you ask for --  
17 you see that there is a gap, correct, in a time  
18 period covered by the first paragraph and the  
19 second paragraph that's approximately 1 month?

20 MR. SUERO: Right.

21 MR. MELCHER: Okay. Why does that gap  
22 exist?

1           MR. SUERO: The gap exists because this  
2 case will be continued several times, and each  
3 time, there were a couple times during the  
4 continuance, I went back to get more information.

5           MR. MELCHER: Okay. Is it fair to say  
6 that there may have been additional  
7 police-involved incidents at this address during  
8 that period of time?

9           MR. SUERO: It's possible.

10          MR. MELCHER: And the period of time ends  
11 at April 18, 2015. In other words --

12          MR. SUERO: That particular time is  
13 between April 25th, 2014, and April 18, 2015,  
14 yes.

15          MR. MELCHER: Okay. But we don't have  
16 here in your report any information about what  
17 happened with respect to police-involved  
18 incidents after April 18, 2015, correct? It  
19 doesn't cover the last 6 months, correct?

20          MR. SUERO: That was my last information  
21 from them, yes. That's correct.

22          MR. MELCHER: Okay. Please refer to

1 pages 11, 12, and 13 regarding investigative  
2 history. I want to work backwards in time.

3 MR. SUERO: What page?

4 MR. MELCHER: I'm sorry. Work forward in  
5 time starting on page 13.

6 MR. SUERO: Page 13?

7 MR. MELCHER: Yeah. I see four cases  
8 here for 2012, item Nos. 35, 36, 37, and 38, is  
9 that correct, four cases in 2012?

10 MR. SUERO: Starting with sale to minor  
11 in 35?

12 MR. MELCHER: Yes.

13 MR. SUERO: Okay.

14 MR. MELCHER: Is that correct that there  
15 were four cases in 2012?

16 MR. SUERO: 2012, yes. It appears to be  
17 the case.

18 MR. MELCHER: Okay. Then working up,  
19 four cases in 2013; is that correct?

20 MR. SUERO: It appears to be the case.

21 MR. MELCHER: All right. Now, I count 18  
22 cases in 2014, is that correct, going all the way

1 from 13 to no. 30?

2 MR. SUERO: Okay.

3 MR. MELCHER: Is that correct?

4 MR. SUERO: Yes.

5 MR. MELCHER: Okay. And you've got  
6 another 12 cases for 2015, correct? It's items 1  
7 through 12?

8 MR. SUERO: They are.

9 MR. MELCHER: Okay. So is it fair to say  
10 that from 2012 and 2013, there was a very  
11 substantial increase in the number of cases going  
12 into 2014?

13 MR. KLINE: Objection as to the  
14 characterization of cases.

15 CHAIRPERSON MILLER: Okay. Yeah, Mr.  
16 Melcher, I just want to also caution you that  
17 you'd be surprised how your time will run.

18 MR. MELCHER: Okay.

19 CHAIRPERSON MILLER: And you'll get near  
20 the end of the case, and you won't be able to  
21 cross-examine some witnesses or whatever. And  
22 the investigative report is in the record.

1 MR. MELCHER: Okay.

2 CHAIRPERSON MILLER: But you can always  
3 -- he doesn't have to validate it.

4 MR. MELCHER: Okay.

5 CHAIRPERSON MILLER: You can always argue  
6 --

7 MR. MELCHER: All right. I am done with  
8 my questioning with him, anyway. Thank you.

9 CHAIRPERSON MILLER: Okay.

10 MR. SILVERSTEIN: Madam Chair, the  
11 Protestants have used up 20 of their 90 minutes,  
12 and the Licensee has used up 11 of their 90  
13 minutes.

14 MR. MELCHER: I'd like to address that.  
15 We've timed it. We're up to 14 minutes.

16 CHAIRPERSON MILLER: You're timing it?

17 MR. MELCHER: Yeah.

18 CHAIRPERSON MILLER: Okay.

19 MR. MELCHER: My understanding is that  
20 the introductory statement didn't count toward  
21 the time --

22 CHAIRPERSON MILLER: That's correct.

1 MR. MELCHER: -- and the discussion about  
2 the objection didn't counter either.

3 CHAIRPERSON MILLER: That's correct.

4 MR. MELCHER: So we started the time  
5 right at when I began questioning this witness  
6 regarding the investigative report.

7 MR. SILVERSTEIN: I take it back. You're  
8 17, and the others used 8.

9 MR. MELCHER: I'm still only seeing 14  
10 minutes.

11 CHAIRPERSON MILLER: You have 14?

12 MR. MELCHER: Fourteen minutes and 21  
13 seconds.

14 CHAIRPERSON MILLER: Okay. Let's see if  
15 that makes a difference later on. I'm sorry we  
16 don't have a professional timer.

17 Okay. so that does --

18 MR. ALBERTI: I'll just comment that Mr.  
19 Silverstein is using the same methodology for  
20 both, so if you believe that you're getting  
21 shorted, then the other party is getting shorted  
22 also. So you're both getting equal time, and I

1 just want to assure everyone of that. I think  
2 we're just going to waste a lot of time arguing  
3 about how much time you've taken up. I want to  
4 void that.

5 CHAIRPERSON MILLER: Okay. Hopefully,  
6 you won't even come near the 90 minutes, so it  
7 won't be an issue.

8 All right. Any other Board questions  
9 based on that questioning?

10 [No audible response.]

11 CHAIRPERSON MILLER: Okay. All right,  
12 Mr. Suero. Thank you very much.

13 MR. SUERO: Thank you.

14 MR. SILVERSTEIN: Does Mr. Kline ask for  
15 questions?

16 CHAIRPERSON MILLER: Let's not do  
17 redirect. No.

18 MR. KLINE: No, I don't.

19 CHAIRPERSON MILLER: No.

20 MR. KLINE: Thank you, though.

21 CHAIRPERSON MILLER: Okay. All right.

22 So then we're ready for the Applicant's case.

1 MR. KLINE: I'd call on the stand, Mr.  
2 John Fiorito.

3 CHAIRPERSON MILLER: Do you swear to tell  
4 the truth, the whole truth, and nothing but the  
5 truth?

6 MR. FIORITO: I do.

7 CHAIRPERSON MILLER: Okay, thank you.  
8 Have a seat.

9 MR. KLINE: State your name for the  
10 record, please.

11 MR. FIORITO: John Fiorito.

12 MR. KLINE: And you have a business of  
13 some kind; is that correct?

14 MR. FIORITO: I work part-time for Ohm  
15 Productions since 1992. They're a major audio  
16 and production company in the Washington  
17 Metropolitan Area.

18 MR. KLINE: Okay. And you do that  
19 part-time?

20 MR. FIORITO: Yes, I do.

21 MR. KLINE: And you also have a day job?

22 MR. FIORITO: Yes, I do.

1 MR. KLINE: And what is that?

2 MR. FIORITO: I've been a police officer  
3 since 1989. I retired from the D.C. Protective  
4 Service Police as a sergeant in 2012, and I  
5 currently work for the Naval District of  
6 Washington as a law enforcement officer.

7 CHAIRPERSON MILLER: I'm sorry. Can you  
8 speak a little louder?

9 MR. FIORITO: Yes, ma'am.

10 CHAIRPERSON MILLER: You work for whom  
11 now?

12 MR. FIORITO: The Naval District of  
13 Washington as a police officer.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: All right. But here today,  
16 you're here to talk about what you do in your  
17 part-time work; is that right?

18 MR. FIORITO: Correct, sir.

19 MR. KLINE: All right. So let's talk  
20 about your background in this industry. Tell the  
21 Board what your company does.

22 MR. FIORITO: We provide state-of-the-art

1 lighting and sound to hospitality venues,  
2 churches, bars, restaurants, clubs, home theater,  
3 installation, closed-circuit TV like in this  
4 room, any type of videoconferencing system,  
5 anything in the audio technical field.

6 MR. KLINE: And you said you've been  
7 doing -- you said you've had this company since  
8 1992, correct?

9 MR. FIORITO: I've owned part of the  
10 company since 1992.

11 MR. KLINE: Okay. And have you had any  
12 particular training with respect to sound and  
13 acoustics?

14 MR. FIORITO: Yes. Most of the training  
15 with sound and acoustics comes from on-the-job  
16 training, other than the courses I took from Full  
17 Sale, which is an Orlando-based audio school  
18 online, and it provides you general audio  
19 engineering instructions, design concepts.  
20 They're all theories in how to design audio, and  
21 you develop your own trade of sound engineering  
22 by how good your ears are. It's more of an

1 opinion.

2           So what Madam Chair might think sounds  
3 good and what you think sounds good could be two  
4 different opinions, and you could be listening to  
5 two different types of music that you might have  
6 a different taste to. So any type of sound is an  
7 opinion on how it sounds. So, based on my  
8 reputation, that people feel I have a good ear,  
9 the company has built a reputation on they like  
10 the rooms that I do, the way the sound is  
11 completed, and how the dance clubs are done.

12           MR. KLINE: Okay. Now, that's the  
13 aesthetic part of what you do, correct?

14           MR. FIORITO: Correct, sir.

15           MR. KLINE: There's also a technical part  
16 in terms of controlling sound and managing sound?

17           MR. FIORITO: Yes, there is.

18           MR. KLINE: All right. And what does  
19 that involve?

20           MR. FIORITO: That -- today, it involves  
21 -- there's no more analog processing. Everything  
22 is digitally controlled, and you'll use a PC or a

1 MAC computer. You'll load the software, and  
2 you'll be able to interact with the management  
3 system that controls the loud speaker system.

4 In that system, you can use filters to  
5 control EQ settings. You can control  
6 compression, limiting. You can control output  
7 gain, which controls actual volume, how loud the  
8 sound system can be. And you can actually block  
9 it out so that nobody can touch the system with a  
10 passcode protection, same as a computer.

11 MR. KLINE: Now, that goes to the  
12 hardware which produces the sound. Have you also  
13 had training in terms of techniques in  
14 construction and in building to mitigate the  
15 sound in rooms and from escaping from  
16 establishments?

17 MR. FIORITO: My training in construction  
18 comes from years of experience working with  
19 architects when they design a building that is  
20 going to be a hospitality venue. I will come  
21 into the role of designing the sound.

22 It will be up to the architect then to

1 meet the definition of what needs to be done for  
2 acoustical treatment or securing the sound inside  
3 that building, which has been coming more and  
4 more of a big deal that we do and spend time on.

5 MR. KLINE: Okay. So you work with the  
6 architects with respect to that, correct?

7 MR. FIORITO: Correct.

8 MR. KLINE: Now, in terms of your  
9 experience since 1992, you've worked with a  
10 number of venues; is that right?

11 MR. FIORITO: Yes.

12 MR. KLINE: And some local, some  
13 national?

14 MR. FIORITO: I would say we've done  
15 probably 80 percent of the hospitality venues in  
16 this city, and I can name them off to give them  
17 an idea, the Board and everybody in the room of  
18 what we've done.

19 MR. KLINE: Okay. And have you also done  
20 some projects for some large companies --

21 MR. FIORITO: Yes.

22 MR. KLINE: -- in other areas?

1           MR. FIORITO: Before Pleasure Island  
2 closed, my company did -- for Walt Disney World  
3 in Orlando, Florida, we did all the clubs on  
4 Pleasure Island, the maintenance for the sound  
5 and the installation.

6           MR. KLINE: And you were involved in that  
7 personally?

8           MR. FIORITO: Yes, I was.

9           MR. KLINE: Do you have training with  
10 respect to how to measure sound from a decibel  
11 standpoint and any other tests that might be used  
12 to measure sound?

13           MR. FIORITO: Yes, I do because, when we  
14 tune a room, we tune everything in a weight  
15 frequency. You have to be able to measure  
16 decibel and understand how it applies, so that  
17 you don't damage people's hearing.

18           MR. KLINE: Okay. Now, are you sometimes  
19 also called in -- although the architects design  
20 the physical structures, are you sometimes called  
21 in to assist when there may be complaints in  
22 neighborhoods about noise from establishments and

1 issues like that?

2 MR. FIORITO: Absolutely.

3 MR. KLINE: All right. And what is your  
4 role in that situation?

5 MR. FIORITO: We first identify the  
6 problem from the customer who calls us, the  
7 client, and we will listen to their needs, and we  
8 will also so much as take calls from community  
9 groups, which I have spoken in the past with  
10 Sarah Peck, who is not here today. She's  
11 actually called me and aired her complaints that  
12 she has had, and then I have gone down to try to  
13 meet with her.

14 I've met with the club owners, and we've  
15 tried to come up with a solution to the problem.

16 MR. KLINE: Did at some point -- were you  
17 engaged to address issues related to Midtown, the  
18 license that's before the Board today?

19 MR. FIORITO: Yes, I was.

20 MR. KLINE: And when was that?

21 MR. FIORITO: It's been a while. It's  
22 been a considerable amount of time, so I can't

1 give you an exact time, but it was brought to my  
2 attention on a phone call by Mr. Rehman, who is  
3 the owner, that we need to come down there and  
4 reduce the sound, and that we need to make  
5 drastic changes.

6 MR. KLINE: Okay.

7 MR. FIORITO: So I met with Jasper  
8 Braswell, who is their construction person who  
9 builds all their venues and is overall in charge  
10 of that, and we went together. We came up with  
11 solutions that we thought were going to aid in  
12 reducing the noise and keep everybody happy in  
13 the community.

14 MR. KLINE: And what were the changes  
15 that were made?

16 MR. FIORITO: The first big change was  
17 the sound system that we installed originally in  
18 Midtown was a very expensive, high-powered  
19 system. I think it total powers about 30,000  
20 watts. We immediately removed all the subcase.  
21 We then removed the double 15 top cabinets. We  
22 moved the center horn infrastructures, and we

1 brought in these very small 15 in a horn,  
2 500-watt boxes that have a 15-foot grow  
3 distribution and hung those boxes in place with  
4 no sub base. It's just a simple full-range  
5 system, and it has a total of 1,000 watts power.

6 MR. KLINE: 1,000 watts power?

7 MR. FIORITO: Right.

8 MR. KLINE: And that is for what area of  
9 Midtown?

10 MR. FIORITO: The rooftop, currently.

11 MR. KLINE: Okay. Is there a separate  
12 sound system for the interior?

13 MR. FIORITO: Yes. Each floor has its  
14 own individual sound system.

15 MR. KLINE: And the rooftop is a separate  
16 floor, correct?

17 MR. FIORITO: Correct, sir.

18 MR. KLINE: All right. And did you make  
19 any other changes to try to limit the sound or  
20 deal with complaints about noise at the  
21 locations?

22 MR. FIORITO: We set the system and

1 locked it out at 70 dB from the center of the  
2 room. So where the center point of the room and  
3 if you're standing in a perfect square, imagine  
4 just being in the dead center of the room, so  
5 that that was the loudest point of the room.

6 MR. KLINE: So you said at 70 dB --

7 MR. FIORITO: Correct.

8 MR. KLINE: -- in the center of the room.

9 MR. FIORITO: And then lock the  
10 processor. So if they turn the zone controller  
11 to maximum, that's as loud as it's going to go.  
12 Given and take 1 or 2 dB, as we all understand  
13 CDs and how these deejays download music, the  
14 production quality could be better or less on  
15 them, so there could be a slight variance based  
16 on the quality of the music.

17 MR. KLINE: Now, at 70 dBs in the center  
18 of -- you call it the room, but it's really the  
19 outdoor area, correct?

20 MR. FIORITO: Correct.

21 MR. KLINE: What would be the effect of  
22 that in terms of the noise level outside the

1 perimeter of the premises?

2 MR. FIORITO: Well, the only thing I can  
3 attest to is when we went outside with it cranked  
4 up, we were doing this in the afternoon. There  
5 was busy rush hour traffic, police car sirens  
6 coming by, a huge amount of people eating in  
7 front of Lucky Bar, which is another  
8 establishment that serves food. You could not  
9 hear it from the street level at that point.

10 MR. KLINE: Did you go back into the  
11 alley?

12 MR. FIORITO: Yes, I did.

13 MR. KLINE: Could you hear it in the  
14 alley at that point?

15 MR. FIORITO: Barely, if underneath, you  
16 could hear it in the back alley, in between  
17 Rosebar and closer in. You could hear it.

18 MR. KLINE: Now, you have done a number  
19 of venues on that block?

20 MR. FIORITO: Yes.

21 MR. KLINE: Which ones have you done?

22 MR. FIORITO: If we start further up

1 Connecticut, if you picture 18th Street coming up  
2 where the Palladian Condo is, if you were to look  
3 straight out the front door of the Palladian  
4 Condo directly on the other side of Connecticut  
5 Avenue, I've done Cabin Nightclub, which is right  
6 on the other side. Then I am currently doing  
7 Manor Nightclub. And let's see what else have I  
8 done over there. There's one other place I did a  
9 long time ago. I don't think it's the same  
10 owners. And I'm currently being requested to do  
11 other clubs. The Gripton [ph], I believe it's  
12 owned by one group over there.

13 So, if you start at the venues I've done  
14 there going down, those venues are actually  
15 louder than the ones at the end of the street,  
16 and if they were to open their back doors to put  
17 trash out, per se, those venues are even louder,  
18 and I believe there's some video that you have to  
19 go over.

20 MR. KLINE: Now, given the number of  
21 establishments that you've worked with the  
22 neighborhood -- in the neighborhood, you're

1 pretty familiar with what's there, correct?

2 MR. FIORITO: Yes.

3 MR. KLINE: So the alley that we talked  
4 about, does anybody live back there? The low  
5 level that you described, would anybody be  
6 disturbed by that?

7 MR. FIORITO: Directly behind the alley,  
8 you have the World Bank, which has a lot of glass  
9 windows, and across is a solid brick building.  
10 There's no residential there, and then as you  
11 exit the alley towards N Street, you have a  
12 parking garage that goes into the World Bank.

13 MR. KLINE: Now, when did you make these  
14 changes that you've described?

15 MR. FIORITO: It was made -- I would say  
16 it's been -- I think it was May.

17 MR. KLINE: Of what year?

18 MR. FIORITO: Of this year.

19 MR. KLINE: Okay. And what's the name of  
20 your company again?

21 MR. FIORITO: Ohm Productions, O-h-m.

22 MR. KLINE: And are you also -- do you

1 work with JRS Audio?

2 MR. FIORITO: Yeah. That was a sister  
3 parent company that did the dance clubs, which  
4 we're no longer using anymore. We're just  
5 operating under Ohm Productions.

6 MR. KLINE: All right. So sometime in  
7 May of 2015, these changes were made?

8 MR. FIORITO: I believe so. It's been a  
9 while now that it was done, so I just forgot the  
10 date. If you reflect the invoice or whatever I  
11 gave --

12 MR. KLINE: Approach the witness, please?

13 CHAIRPERSON MILLER: Okay. Show it to  
14 Mr. Melcher, whatever you're --

15 MR. KLINE: I've given him a stack of our  
16 exhibits.

17 CHAIRPERSON MILLER: Great. Thank you.  
18 Do we have your exhibits?

19 MR. KLINE: I'm going to hand them up  
20 right now.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: Directing your attention to

1 Exhibit 3, can you identify what that is?

2 MR. FIORITO: That's the invoice dated  
3 May 4th, 2015, that I sent to Hak, LLC, for the  
4 --

5 MR. KLINE: Okay. Now, was that all the  
6 work that was done?

7 MR. FIORITO: That was the removal. That  
8 was just for the audio, the removal and the  
9 replacement sound system.

10 MR. KLINE: Okay. And would this --  
11 would the work have been completed when you sent  
12 this invoice, or was it billed up front?

13 MR. FIORITO: No. The invoices are  
14 always sent over.

15 MR. KLINE: Okay.

16 MR. FIORITO: This particular plan,  
17 because they have a reputation of paying their  
18 bill.

19 MR. KLINE: Okay.

20 MR. FIORITO: So the company will --

21 CHAIRPERSON MILLER: I'm sorry. The  
22 reputation of what?

1 MR. FIORITO: Paying their bill on time.

2 CHAIRPERSON MILLER: Okay.

3 MR. FIORITO: They get -- they have  
4 credit with us.

5 MR. KLINE: Okay. So, by May 4th of  
6 2015, this work would have been completed?

7 MR. FIORITO: Yes. I can give you an  
8 exact date, if need be, to go back and check the  
9 airline tickets, because they flew me up for  
10 that.

11 MR. KLINE: And how long were -- you were  
12 living at Florida in that time?

13 MR. FIORITO: At that time, I was in  
14 Miami.

15 MR. KLINE: And you flew up to do this  
16 job?

17 MR. FIORITO: Correct.

18 MR. KLINE: And how many days did you  
19 spend up here doing this stuff?

20 MR. FIORITO: Probably 2 days.

21 MR. KLINE: Okay. Now, you said that  
22 this was part of the work that was done. Was

1 there other work that was done in an effort to  
2 mitigate noise from the rooftop?

3 MR. FIORITO: Yes. The other work that  
4 was done was done by the construction person,  
5 Jasper.

6 MR. KLINE: Okay.

7 MR. FIORITO: And he is the one that  
8 built their speaker boxes to contain the speakers  
9 and also provide less backflow from the speakers  
10 from music going -- reverbing in the rear, and  
11 also there was Plexiglas layered on -- Midtown  
12 has an interesting construction. It has like  
13 little squares where you can actually see through  
14 to go out when you're looking off the rooftop.  
15 So there's Plexiglas that was reinforced to try  
16 to keep the sound in the room as well.

17 There was also additional plywood added  
18 in the rear to keep the sound from going back out  
19 the alley because the alley is a problem for all  
20 businesses because of all the glass. It just  
21 reverbs and bounces all over everything in an  
22 alley.

1 MR. KLINE: Okay. And who suggested  
2 these construction changes that you've described?

3 MR. FIORITO: The initial suggestions  
4 were done by the owner, Mr. Rehman. He wanted to  
5 try to please the community, and he wanted no  
6 more further problems. So he said this needed to  
7 get done.

8 So we kept coming up with various  
9 solutions, and they might have even added more  
10 plywood and reinforcement after I left, but there  
11 was a substantial amount of Plexiglas. There was  
12 a substantial amount of plywood reinforcement.  
13 The door was sealed up in the rear, the emergency  
14 exit door, so I do not -- I think there was a  
15 very good effort on their part to reduce sound.

16 MR. KLINE: Just to be clear, when you  
17 said the emergency exit, the door was sealed up,  
18 let's be clear.

19 MR. FIORITO: It was a door you could see  
20 through. It was a steel door originally with a  
21 grill. Now it's a solid door.

22 MR. KLINE: Okay. But the door remains

1 open?

2 MR. FIORITO: With a panic bar.

3 MR. KLINE: I got to look, so I'm going  
4 to make sure we address that.

5 MR. SILVERSTEIN: Mr. Short thanks you.

6 [Laughter.]

7 MR. KLINE: And you were the one that  
8 recommended these changes?

9 MR. FIORITO: I recommended the changes,  
10 and then it was up to the construction crew to  
11 implement the changes.

12 MR. KLINE: Okay. And the changes that  
13 you recommended, what were they -- what were they  
14 based on? Why did you recommend certain things?

15 MR. FIORITO: Because I knew these -- the  
16 main part was the audio. I knew these speakers  
17 would not be capable of traveling farther and  
18 delivering that high level of sound pressure and  
19 creating a disturbance. I wanted to be under  
20 what I was metering at other venues next door to  
21 us and not be the culprit of the problem.

22 MR. KLINE: Okay. Now, turning to the

1 stack of exhibits that you have in front of you

2 --

3 MR. FIORITO: Mm-hmm.

4 MR. KLINE: -- Exhibit 2 is labeled

5 Photographs 1 through 11. Could you walk us

6 through those? Because I think they graphically

7 demonstrate some of the changes that you

8 discussed.

9 MR. FIORITO: Okay. The first photograph

10 shows the -- these were the enormous speaker

11 frames that were built for the larger speakers,

12 and as you go through, you'll be able to clearly

13 see the size of the speakers and the change, and

14 that they're also angled down.

15 And if you go up here, you'll see the

16 reinforced Plexiglas.

17 MR. KLINE: All right. So let me stop

18 you because we have a written record that we have

19 to make --

20 MR. FIORITO: Okay.

21 MR. KLINE: -- which makes things a

22 little more tedious. But, when you say these are

1 the boxes, are you referring to the box in the  
2 center of the photo that looks like it has a flap  
3 up? Is that what you're referring to?

4 MR. FIORITO: Yes, I am.

5 MR. KLINE: Okay. And what is that  
6 exactly?

7 MR. FIORITO: That encloses and houses  
8 the speaker.

9 MR. KLINE: All right. And that was  
10 built for a different size speaker initially?

11 MR. FIORITO: Correct.

12 MR. KLINE: Okay. And is there a speaker  
13 in there now that's shown in the photograph?

14 MR. FIORITO: Yes, there is.

15 MR. KLINE: And what is that?

16 MR. FIORITO: That is a smaller speaker  
17 that's leaving a huge amount of open space in  
18 there that you could use for larger speakers.

19 MR. KLINE: Okay. And that was what you

20 --

21 CHAIRPERSON MILLER: Can you speak a  
22 little bit louder? Thank you. We have a fan

1 going back here.

2 MR. FIORITO: I'm sorry.

3 CHAIRPERSON MILLER: No, I just want to  
4 make sure that we --

5 MR. FIORITO: Last time I was here, I  
6 spoke too loudly, they told me. So I was trying  
7 to be consistent.

8 CHAIRPERSON MILLER: Really? Okay.

9 MR. FIORITO: Go ahead. I'm sorry.

10 MR. KLINE: Okay. And that was one of  
11 the speakers that you recommended be installed?

12 MR. FIORITO: Yes, I did.

13 MR. KLINE: All right. And then you  
14 talked about Plexiglas. Using that as a  
15 reference point, where is the Plexiglas that  
16 you're referring to? To the right? To the left?  
17 Above? Below?

18 MR. FIORITO: Okay. If you look below --  
19 well, it's on the piece of wood that's right in  
20 line with the speaker frame --

21 MR. KLINE: Right.

22 MR. FIORITO: -- and then you can see the

1 dirtiness. You can see the sort of dullness to  
2 it, where you're not able to see out as clear,  
3 where there is no Plexiglas.

4 MR. KLINE: All right. So there's sort  
5 of a lattice work there in the photograph?

6 MR. FIORITO: Correct.

7 MR. KLINE: And you're saying there's  
8 Plexiglas over the lattice work?

9 MR. FIORITO: Yes, there is.

10 MR. KLINE: All right. And that was  
11 installed in an effort to restrict the sound from  
12 traveling in that direction?

13 MR. FIORITO: Yes, it was.

14 MR. KLINE: Okay. Anything else  
15 remarkable about this photograph that we should  
16 put on the record?

17 MR. FIORITO: Not that I can see.

18 MR. KLINE: All right. Turn your  
19 attention to the next photograph.

20 MR. FIORITO: Okay.

21 MR. KLINE: And what do we see there?

22 MR. FIORITO: You see a -- okay. You see

1 the same box with the flap that houses the  
2 speaker, and you can see the size difference and  
3 the speaker hanging.

4 MR. KLINE: This speaker originally  
5 completely filled that enclosure?

6 MR. FIORITO: Yeah. It actually went  
7 out. You can see the little pockets to the right  
8 where there's a lot. It actually stuck out  
9 through that.

10 MR. KLINE: Okay. And then the next  
11 photo?

12 MR. FIORITO: Can I go back to this  
13 photo?

14 MR. KLINE: Sure.

15 MR. FIORITO: This is also the --

16 MR. KLINE: When you say "this photo,"  
17 which one are we referring to?

18 MR. FIORITO: The one that we just were  
19 on.

20 MR. KLINE: The second one.

21 MR. FIORITO: The second one.

22 MR. KLINE: Okay.

1 MR. FIORITO: And you can see the panic  
2 bar solid door.

3 MR. KLINE: Okay. And there was a  
4 different type of door there at one point?

5 MR. FIORITO: There was a grill, just a  
6 metal frame. It was aesthetically pleasing. It  
7 blended with holes in it so air could travel  
8 through. Now it's a sealed door.

9 MR. KLINE: Okay. And that was another  
10 recommendation that you made?

11 MR. FIORITO: Correct.

12 MR. KLINE: All right. Next photo?

13 MR. FIORITO: The next photo is one more  
14 of the same speaker boxes with the front door  
15 flap housing another small speaker.

16 MR. KLINE: All right. And we're going  
17 to skip the next one because I think that's  
18 basically the same.

19 MR. FIORITO: That's correct.

20 MR. KLINE: And the photo after that?

21 MR. FIORITO: The photo after that would  
22 be approximately taken in the center of the

1 rooftop area, and that would be a measurement  
2 area where I would have stood to ensure what  
3 decibel level the room was set at, at full  
4 volume.

5 MR. KLINE: All right. The door at the  
6 back that's shown propped open, is that the door  
7 that -- the emergency door that was replaced?

8 MR. FIORITO: Yes, it was.

9 MR. KLINE: Okay. And is that during --  
10 you've been there during times of operation,  
11 correct?

12 MR. FIORITO: Yes.

13 MR. KLINE: And is the door -- that door  
14 closed when the premises is in operation?

15 MR. FIORITO: Yes.

16 MR. KLINE: Anything else remarkable in  
17 this photo in terms of --

18 MR. FIORITO: Yeah. The roof is sealed  
19 up, which originally it wasn't.

20 MR. KLINE: What was the roof initially?

21 MR. FIORITO: It was open.

22 MR. KLINE: Okay. So there was no

1 enclosure over that area at all?

2 MR. FIORITO: No.

3 MR. KLINE: Now, there was some comment  
4 about the corrugated metal roof or ceiling when  
5 the investigator was testifying. He was asked  
6 about these. So the corrugated metal ceiling,  
7 were you here for that testimony?

8 MR. FIORITO: Yes, I was, but I don't  
9 recall --

10 MR. KLINE: Okay.

11 MR. FIORITO: -- exactly what he was  
12 testifying to the corrugated metal.

13 MR. KLINE: Do you have any opinion on  
14 the materials that are used in this roof in terms  
15 of whether they mitigate sound escaping from the  
16 rooftop area?

17 MR. FIORITO: I could not offer an  
18 opinion, but I know the purpose of that type of  
19 roof. It's to weatherproof. It holds water.  
20 It's an actual approved roofing product so that  
21 you don't have rain coming into the bar area  
22 where their computer equipment would be located.

1           MR. KLINE:   Okay.   In terms of the new  
2 roof that you've testified about, what is it made  
3 of?

4           MR. FIORITO:   Oh, that's plywood.

5           MR. KLINE:   Okay.   And the purpose of  
6 that was to --

7           MR. FIORITO:   Plywood is a good tool to  
8 deaden sound, and it also helps retain it in.

9           MR. SILVERSTEIN:   It also helps to?

10          MR. FIORITO:   Retain it inside.   If you  
11 ever notice a church, there's a lot of wood in a  
12 church.   That's why they're so acoustically good  
13 sounding.

14          MR. KLINE:   Okay.   And the next  
15 photograph?

16          MR. FIORITO:   The next photograph, that  
17 looks like the penthouse floor, which is below  
18 the rooftop at Midtown, and that -- where Diego,  
19 the manager, is standing is the door that's  
20 closed that you would have to open to go up to  
21 the stairs to the rooftop.

22          MR. KLINE:   Okay.   And during your visits

1 to the establishment, does that door remain  
2 closed?

3 MR. FIORITO: Yes.

4 MR. KLINE: Okay. Next photograph?

5 MR. FIORITO: That would be the same  
6 floor, just with a different view, shining --  
7 going towards the front of the room.

8 MR. KLINE: All right. And what's  
9 hanging there?

10 MR. FIORITO: Speaker.

11 MR. KLINE: Okay. And is that typical of  
12 the size of the speaker that's in that area?

13 MR. FIORITO: Yeah. For that room,  
14 that's inside the club.

15 MR. KLINE: Okay. And skipping over for  
16 a moment, the photograph on the next page, I want  
17 to turn your attention to the photograph after  
18 that, which looks like a bunch of wiring and  
19 junction boxes, and ask you to describe what that  
20 represents.

21 MR. FIORITO: That is the amplifier room  
22 that controls the rooftop and the floor below,

1 which is called the penthouse. Those are zone  
2 controllers that were originally put in to  
3 control the volume, and it marks various settings  
4 on the speakers. Those settings are permanent  
5 Sharpie markers, so they won't come off. That's  
6 from the previous sound system markings.

7           They're currently set -- if you turn the  
8 volume all the way to the right, that's the  
9 maximum they're going to go, and they're set at  
10 70 dB, so that nobody can override the way we've  
11 set the system.

12           MR. KLINE: Okay. And the photograph  
13 before that looks like a door. Do you know what  
14 that is? Do you recognize that?

15           MR. FIORITO: I don't know what door that  
16 was.

17           MR. KLINE: Okay. That's fine. Then we  
18 won't move that one at this point.

19           And the photograph on the following page,  
20 does that represent the alley area that's been  
21 discussed?

22           MR. FIORITO: Yes, that does.

1 MR. KLINE: All right. Now, you said you  
2 were up here a couple days when you put this  
3 sound system in --

4 MR. FIORITO: Yes.

5 MR. KLINE: -- and you made the changes  
6 to the sound system.

7 During that time, I think at one point,  
8 you testified that you had contact with a Sarah  
9 Peck; is that right?

10 MR. FIORITO: Yeah. I had contact with  
11 Sarah Peck the same -- the last time I saw Sarah  
12 Peck was the last time I was here, when Emanuel  
13 Mpras was the attorney, and that evening, we had  
14 contact with Sarah Peck.

15 MR. KLINE: Okay. But that was on the  
16 Dirty Martini case, correct?

17 MR. FIORITO: Correct.

18 MR. KLINE: Okay. In terms of Midtown,  
19 did you have any dealings with her on Midtown?

20 MR. FIORITO: Well, that was kind of a  
21 combination when we met with her. It was to --  
22 we knew -- Mr. Rehman knew Midtown was one of his

1 establishments and was just as concerned in not  
2 having a problem with Ms. Peck and pleasing what  
3 she wanted, so we were discussing that, and we're  
4 actually in the back alley having a discussion  
5 with her.

6 MR. KLINE: Okay. And during that  
7 discussion, was there -- were you checking for  
8 noise being heard from the establishments?

9 MR. FIORITO: That's correct.

10 MR. KLINE: All right. So tell the Board  
11 what that process was about.

12 MR. FIORITO: What happened was --

13 MR. KLINE: Well, first of all, who else  
14 was there? Who was present for that meeting?

15 MR. FIORITO: Joe Aguilar was present --

16 MR. KLINE: Okay.

17 MR. FIORITO: -- who is the house  
18 technician. He works for several of the clubs  
19 and handles setup and minor repairs in my  
20 absence. And Mr. Rehman was there. Sarah was  
21 there, and two of the managers were there from  
22 Rosebar because they had also been working with

1 Ms. Peck in trying to come to an agreement.

2 MR. KLINE: Okay. And what was the  
3 purpose of congregating -- first of all, when --  
4 about when was this? Do you recall?

5 MR. FIORITO: This was a couple hours  
6 after the hearing ended last time, and we ended  
7 very late. It was probably 7 or 8 p.m.

8 MR. KLINE: Okay. So that was after the  
9 Dirty Martini hearing?

10 MR. FIORITO: Correct.

11 MR. KLINE: All right. And your purpose  
12 of gathering in the alley at that time?

13 MR. FIORITO: At that time -- the reason  
14 we gathered -- and can I kind of back up to what  
15 initiated us gathering? -- is that at the end of  
16 the hearing, Ms. Peck sort of got emotional, and  
17 Mr. Rehman felt compelled to call her to see how  
18 she was doing and said, "Listen, it didn't have  
19 to go this way. We want to work with you."

20 So he invited her down to -- since I was  
21 still in town, to take readings and try to show  
22 her how loud it was with music off and how the

1 sidewalks were and how the back alley was with  
2 his establishments not open.

3           So we brought her down, and we had a  
4 brand-new, just-purchased, certified calibration,  
5 sound meter, and it's very simple to use. It  
6 turns on; it turns off. You select the weight  
7 that you're going to measure the sound, and we  
8 started taking readings in the front of the  
9 building first.

10           And we took readings, and it was  
11 approximately 78 to 80 dB in front of the  
12 building with just buses, noise, pedestrian  
13 traffic, and all the other things going on in the  
14 street with the Metro right there, and she looked  
15 at it and acknowledged it.

16           And then we went to the rear alley and  
17 Rosebar sound was on, and that was the only audio  
18 system projecting at the time. So we took  
19 readings back there, and everybody was still over  
20 the 60 dB. With the noise of the air  
21 conditioning handlers going on, kicking on and  
22 off under the buildings there, other noise going

1 on from the kitchens being used, and other trucks  
2 passing through the alley, it was still between  
3 78 and 80 dB in the alley.

4 And no matter where we stood, we weren't  
5 able to get a change in the readings in the  
6 alley.

7 So I finally said to Sarah, I said,  
8 "Listen, why don't we go down to the Palladium  
9 Condominium and see if we can hear this," and she  
10 said, "No, that will be a waste of time. You  
11 won't hear that in there." I said, "Well, you  
12 just testified at the Board that you could hear  
13 the music in your apartment or inside the  
14 Palladium. Let's just go to the lobby."

15 So we sort of got into a difference of  
16 opinions, and she didn't want to proceed further.  
17 At that time, we ended the conversation where Mr.  
18 Rehman went inside with her, and they had a drink  
19 at the bar.

20 MR. KLINE: Okay. Now, at that point,  
21 there was music that was audible in the alley?

22 MR. FIORITO: Absolutely.

1 MR. KLINE: And that from Rosebar?

2 MR. FIORITO: Yes, it was.

3 MR. KLINE: And your effort was to  
4 ascertain whether this music could be heard  
5 within the Palladium, correct?

6 MR. FIORITO: That's correct. And it  
7 also was she was a stickler about the 60 dB, and  
8 I tried to explain to her that it's not 60 dB on  
9 the sidewalks in D.C. And that purpose of that  
10 number really was for medical purposes, and  
11 doctors had come up with that as a safe hearing,  
12 and that it really wasn't, I believe, an  
13 acceptable or reasonable number to have. And I  
14 said, "Let's not have the number affect the  
15 situation. Let's make sure the music is not  
16 being heard in your apartment, and that you're  
17 able to sleep or it's not disturbing you," and  
18 that was the concern. But we were not able to  
19 get to that part to really see if that was  
20 occurring.

21 MR. KLINE: Okay. Now, subsequent to  
22 that -- or I guess it was subsequent to that, you

1 arranged to have some readings done around the  
2 neighborhood where Midtown is located, didn't  
3 you?

4 MR. FIORITO: Yes, I did.

5 MR. KLINE: Okay. And who conducted  
6 those readings?

7 MR. FIORITO: Being that I was still in  
8 Miami and had not taken the transfer to come back  
9 to D.C. yet, I had Joe take those videos and take  
10 all those readings for me and just walk around  
11 the community doing that.

12 MR. KLINE: All right. And Joe is -- who  
13 is Joe?

14 MR. FIORITO: Joe is the house sound  
15 technician who has worked for -- not just me. He  
16 works for the club owners. He doesn't work for  
17 me.

18 MR. KLINE: Okay.

19 MR. FIORITO: And he is the local house  
20 sound person, and several clubs use him to do  
21 repairs and come over and handle things for big  
22 deejays and setups.

1 MR. KLINE: And you've worked with him a  
2 number of times?

3 MR. FIORITO: Since -- he's worked around  
4 me since 1996, since I --

5 MR. KLINE: Since 1996?

6 MR. FIORITO: Since I did The Bank  
7 nightclub at 915 F Street.

8 MR. KLINE: Okay. And what's your --  
9 explain to the Board how it is that you work  
10 together, what your respective roles are.

11 MR. FIORITO: Because I was -- because  
12 when I retired from D.C. in 2012 and I went down  
13 to a job in Miami, my role was with him that he  
14 would pick up some of the slack and save some of  
15 the owners' money from flying me up on my days  
16 off to do work. So Joe would pick up all the  
17 minor repairs and do all of the stuff that I  
18 wasn't able to do, that I was only going to be  
19 brought up for major installs and major work.

20 MR. KLINE: Okay. And just so we're  
21 clear, when you say retired from D.C., you're  
22 talking from the force, correct?

1 MR. FIORITO: Yes.

2 MR. KLINE: Okay. So not your part-time  
3 job. Your full-time --

4 MR. FIORITO: Correct.

5 MR. KLINE: All right. I just wanted to  
6 eliminate any confusion on that point.

7 And you use a sound meter to conduct  
8 readings, correct?

9 MR. FIORITO: Correct.

10 MR. KLINE: All right. And have you  
11 worked with Joe or instructed Joe no how to use  
12 the sound meter, or has he been trained in some  
13 way to do that?

14 MR. FIORITO: Yes.

15 MR. KLINE: Okay. And do you know how  
16 he's been trained?

17 MR. FIORITO: I have shown him how to use  
18 it, and it's not hard to do. A sound meter is  
19 available on apps today on phones.

20 MR. KLINE: Okay.

21 MR. FIORITO: They're not recognized, of  
22 course, I understand by the Board because only a

1 certified -- I understand the -- well, let's just  
2 say for the purpose of trying to resolve this and  
3 be a good neighbor, we used it to try to use it  
4 as a point.

5 MR. KLINE: Okay. And so you sent him  
6 out to do certain readings, correct?

7 MR. FIORITO: Correct.

8 MR. KLINE: All right. That is all the  
9 question is have of this witness at this time.

10 CHAIRPERSON MILLER: Okay. Cross?

11 MR. MELCHER: So the changes to the  
12 rooftop were completed by early May 2015,  
13 correct?

14 MR. FIORITO: Yes, sir.

15 MR. MELCHER: And you mentioned you had a  
16 meeting with --

17 MR. SILVERSTEIN: Madam Chair, before we  
18 --

19 CHAIRPERSON MILLER: Yes.

20 MR. SILVERSTEIN: That was 32 minutes.  
21 The Licensee has used up 40 minutes now, just to  
22 let you know.

1 MR. MELCHER: Okay. You mentioned that  
2 you had a meeting with Sarah Peck in taking some  
3 noise-level measurements. When did that meeting  
4 occur?

5 MR. FIORITO: The meeting occurred after  
6 the last hearing that I was subpoenaed for in  
7 reference to Dirty Martini.

8 MR. MELCHER: Do you know what the date  
9 was approximately?

10 MR. FIORITO: No. But I'm sure you can  
11 look it up.

12 MS. NICHOLS: It's April.

13 MR. FIORITO: Yeah. I mean, they were  
14 both here with Sarah. It was that night.

15 MR. MELCHER: Do you believe it was April  
16 2015?

17 MR. FIORITO: Whatever the day Ms.  
18 Abigail says is probably correct.

19 MS. NICHOLS: Fourteenth.

20 MR. MELCHER: So did that meeting occur  
21 after you had made the changes to the rooftop?

22 MR. FIORITO: No.

1 MR. MELCHER: It was before?

2 MR. FIORITO: No. That meeting with  
3 Dirty Martini was prior to what I did at the  
4 rooftop at Midtown, sir.

5 MR. MELCHER: Okay. In some places,  
6 there are -- strike that.

7 The rooftop is not fully enclosed,  
8 correct?

9 MR. FIORITO: Correct.

10 MR. KLINE: Okay. In some places, there  
11 are large gaps in the wood framing, correct?

12 MR. FIORITO: Right now, I haven't -- I  
13 haven't been to the Midtown rooftop since I have  
14 been back in D.C. since September 21st, so I  
15 can't tell you that.

16 MR. MELCHER: Okay. Based upon the  
17 pictures that you saw --

18 MR. FIORITO: Yes.

19 MR. MELCHER: -- there are gaps in the  
20 wood framing, correct?

21 MR. FIORITO: Yes, sir.

22 MR. MELCHER: Okay.

1 CHAIRPERSON MILLER: Sorry. Gaps in  
2 what?

3 MR. MELCHER: The wood framing.

4 CHAIRPERSON MILLER: Wood framing.

5 MR. MELCHER: For the wood top -- for the  
6 rooftop.

7 MR. FIORITO: On the other side.

8 MR. MELCHER: Okay.

9 MR. FIORITO: Going the opposite  
10 direction, going towards K Street, the buildings,  
11 so there are gaps going towards the other side.

12 MR. MELCHER: Okay. And that gap means  
13 there's not even Plexiglas there open to the air?

14 MR. FIORITO: I don't know. You can't  
15 say that because behind the bar is completely  
16 sealed. So let's say you have three seating  
17 areas -- and I know there's not pictures there,  
18 but if you come up the stairs where the bar was  
19 you were looking at, that one picture where he  
20 was questioning me about the metal roof, there's  
21 only about 20 feet that could possibly be open  
22 going towards downtown Washington, going towards

1 the White House, in that direction.

2 MR. MELCHER: Okay. What about facing  
3 Connecticut Avenue?

4 MR. FIORITO: Well, there's a door there  
5 that's sealed, and then I do not know -- we could  
6 refer back to these pictures to see if we can see  
7 it on the front.

8 MR. MELCHER: Okay. Please refer to the  
9 pictures.

10 MR. FIORITO: Let me see if one of those  
11 pictures identifies it.

12 MR. MELCHER: Starting with the first  
13 picture, looking at the ceiling, do you see the  
14 wood framing, cross-bars?

15 MR. FIORITO: Yeah. I see that's open  
16 there.

17 MR. MELCHER: It's open?

18 MR. FIORITO: Correct.

19 MR. MELCHER: Okay. And is it open  
20 directly adjacent to the speaker cabinet up top,  
21 up high?

22 MR. FIORITO: Yes, other than the baffle

1 of the door.

2 MR. MELCHER: Okay. Turning a couple  
3 more pages, do you see this one with the close-up  
4 of the speaker, more wood framing? There are big  
5 gaps, correct?

6 MR. FIORITO: Correct.

7 MR. MELCHER: No Plexiglas, correct?

8 MR. FIORITO: You're correct. At that  
9 point, there's none there.

10 MR. MELCHER: Okay. Is Plexiglas a good  
11 sound insulator?

12 MR. FIORITO: You're asking for an  
13 opinion.

14 MR. MELCHER: Yeah. I'm asking you your  
15 opinion: Is it a good sound insulator?

16 MR. FIORITO: Unfortunately, I have not  
17 researched the exact composites of how Plexiglas  
18 is built, so I'm going to not be able to give you  
19 a qualified answer on that.

20 MR. MELCHER: Okay. So you don't even  
21 know if sound will be blocked by Plexiglas?

22 MR. FIORITO: I would say any type of

1 barrier you put in front of anything creates some  
2 sort of restriction to something. If you put  
3 your --

4 MR. MELCHER: Well, isn't it true --  
5 isn't it true that a good sound insulator has  
6 pockets of air in it?

7 MR. FIORITO: There are pockets -- there  
8 are air pockets, but usually they're done with  
9 defractors. That allow to pull air out --  
10 usually, you have acoustical treatment that goes  
11 in walls.

12 MR. MELCHER: Does the acoustical  
13 treatment have air pockets?

14 MR. FIORITO: It depends what you use.  
15 If you pour sand or kitty litter in to use  
16 acoustical treatment or if you pour -- if you  
17 glue a phone to the walls, there's no air  
18 pockets. You're sealing those air pockets up.  
19 It depends how you build the construction.

20 MR. MELCHER: Well, are there air pockets  
21 designed into the rooftop framing to block sound?

22 MR. FIORITO: There are no -- there are

1 air pockets that are naturally there because you  
2 have open space.

3 MR. MELCHER: Okay. So, in your  
4 training, supposedly as a sound engineer, you  
5 don't know whether air pockets are a good sound  
6 insulator?

7 CHAIRPERSON MILLER: I'm sorry. Could  
8 you say that again?

9 MR. MELCHER: No, I'll just strike the  
10 question.

11 CHAIRPERSON MILLER: Okay.

12 MR. MELCHER: Do you have a college  
13 degree in sound engineering?

14 MR. FIORITO: No.

15 MR. MELCHER: Do you have a college  
16 degree?

17 MR. FIORITO: Yes, I do.

18 MR. MELCHER: What's your college degree?

19 MR. FIORITO: I have a master's in  
20 strategic leadership and management in criminal  
21 justice.

22 MR. MELCHER: Okay. And are you a

1 licensed engineer?

2 MR. FIORITO: For audio?

3 MR. MELCHER: Any kind of engineer.

4 MR. FIORITO: No.

5 MR. MELCHER: Okay. And do you have any  
6 professional certifications relating to sound  
7 engineering?

8 MR. FIORITO: Not from an accredited  
9 college.

10 MR. MELCHER: Okay. You said you took  
11 sound measurements. How many sound measurements  
12 did you take on the rooftop?

13 MR. FIORITO: The sound measurement was  
14 taken in the center of the room, just like I  
15 stated.

16 MR. MELCHER: How many measurements?

17 MR. FIORITO: One measurement.

18 MR. MELCHER: Just one?

19 MR. FIORITO: That's correct.

20 MR. MELCHER: Did you write it down?

21 MR. FIORITO: No. I looked at the meter,  
22 and that was sufficient.

1 MR. MELCHER: Okay. Did you use a  
2 sound-level meter and microphone meeting type 2  
3 specifications for ANSI?

4 MR. FIORITO: I'd have to get the meter  
5 and look exactly what the specifications are, but  
6 I used a sound meter that was certified, and it's  
7 measured in A-weight.

8 MR. MELCHER: Certified by whom?

9 MR. FIORITO: The store that sells it.

10 MR. MELCHER: So you don't know whether  
11 it meets those type 2 specifications?

12 MR. FIORITO: No.

13 MR. MELCHER: Okay. Did you use a  
14 sound-level meter with a windscreen?

15 MR. FIORITO: It does have a windscreen  
16 on it.

17 MR. MELCHER: Did you perform a battery  
18 check immediately before and after the sound  
19 measurements?

20 MR. FIORITO: The level of the battery?  
21 That's not --

22 MR. MELCHER: Did you perform a battery

1 check?

2 MR. FIORITO: That's not required on that  
3 particular tool. The battery light will low --  
4 light up low, and it will tell you to replace.

5 MR. MELCHER: Did you externally  
6 calibrate the sound-level meter immediately  
7 before taking measurements?

8 MR. FIORITO: No.

9 MR. MELCHER: And what direction was the  
10 microphone oriented when you took measurements?

11 MR. FIORITO: You do it in four different  
12 positions. You start, and you just work around  
13 the clock form 12 to 3 to 6 to 9 p.m.

14 MR. MELCHER: Okay. Did you use  
15 earphones at any time while you were using the  
16 sound-level meter?

17 MR. FIORITO: No.

18 MR. MELCHER: You stated that the sound  
19 system can be locked, correct?

20 MR. FIORITO: Yes.

21 MR. MELCHER: Okay. Who can unlock it?

22 MR. FIORITO: Anybody that has the

1 password.

2 MR. MELCHER: Okay. Do you know who has  
3 the password?

4 MR. FIORITO: As far as I know, I'm the  
5 only person.

6 MR. MELCHER: And where do you live?

7 MR. FIORITO: Currently?

8 MR. MELCHER: Yes.

9 MR. FIORITO: In the state of Maryland.

10 MR. MELCHER: So if someone wants to  
11 change the sound level at the rooftop, it's your  
12 understanding that they have to call you and have  
13 you come in to change the sound level?

14 MR. FIORITO: No. The sound level is  
15 controlled by the master volume out in the deejay  
16 mixer. These are the processor limitings that  
17 you can control, and they are locked out. So  
18 nobody could go into the processor and change it  
19 without having the ability to have that password.  
20 It would light up and says "Your password does  
21 not meet the security levels." It won't let you  
22 in. It just lights up locked.

1 MR. MELCHER: Not even the owner, Michael  
2 Rehman?

3 MR. FIORITO: No. Michael wouldn't know  
4 how -- Michael doesn't even know how to turn the  
5 sound on in his club.

6 MR. MELCHER: Okay. No further  
7 questions.

8 CHAIRPERSON MILLER: Okay. Board  
9 questions?

10 Mr. Rodriguez.

11 MR. RODRIGUEZ: Mr. Fiorito?

12 MR. FIORITO: Yes, Mr. Rodriguez.

13 MR. RODRIGUEZ: I want to refer you to  
14 Exhibit No. 10, which I mentioned earlier to our  
15 investigator. Midtown Photo -- photo of rooftop  
16 at Midtown, do you have that? Exhibit No. 10.

17 MR. KLINE: That's to the investigator  
18 report, correct?

19 MR. RODRIGUEZ: Yeah. Yes, sir.

20 MR. KLINE: Okay. I don't know that he  
21 has that, but we'll see that we get him one to  
22 look at.

1 CHAIRPERSON MILLER: Thank you.

2 MR. RODRIGUEZ: And while you're there,  
3 Exhibit No. 11 as well.

4 MR. FIORITO: Okay. What are you asking  
5 me, sir, on this picture?

6 MR. RODRIGUEZ: Yes. Exhibit No. 10?

7 MR. FIORITO: Mm-hmm.

8 MR. RODRIGUEZ: Okay. I'm referring to  
9 the corrugated metal on the ceiling and on the  
10 walls. Is that something that you have dealt  
11 with already?

12 MR. FIORITO: Yes. I mean, it's commonly  
13 used in construction.

14 MR. RODRIGUEZ: Right.

15 MR. FIORITO: But with this particular  
16 amount of sound that's in this venue, it's just  
17 not a system that can crank out and produce high  
18 levels of sound pressure. So it doesn't seem to  
19 act like a set of cymbals on it. You don't hear  
20 it causing rattles in it because there's no  
21 subbase up there.

22 MR. RODRIGUEZ: Well, you mentioned -- I

1 thought you mentioned that it keeps the water  
2 out. It's a water repellant kind of metal?

3 MR. FIORITO: Yeah. It's a roofing type  
4 of metal.

5 MR. RODRIGUEZ: Roofing. And so my  
6 question really is -- maybe is -- is that  
7 something that -- that could mitigate? Is there  
8 a way to mitigate sound with some materials on  
9 that? It's just a question.

10 MR. FIORITO: Yeah. You could absolutely  
11 -- they sell sound acoustical treatment foam, and  
12 you take a glue. It's called Liquid Nails. You  
13 can get it at Home Depot, and you just glue the  
14 panels up, and you then -- it adds an insulated  
15 wall.

16 MR. RODRIGUEZ: All right. So if you're  
17 trying to mitigate sound, why haven't you done  
18 that?

19 MR. FIORITO: Because I haven't been  
20 called back to add any more mitigation because I  
21 was under the impression it was fine.

22 MR. RODRIGUEZ: Okay. That's the

1 rooftop, right?

2 MR. FIORITO: Correct.

3 MR. RODRIGUEZ: And that's a very large  
4 area. The space in that area is enormous, and so  
5 that is a question that I will have for the owner  
6 as well. Thank you.

7 MR. FIORITO: There's also a spray that  
8 you can spray that onto.

9 MR. RODRIGUEZ: Okay.

10 CHAIRPERSON MILLER: Others?

11 MR. ALBERTI: I'll let Mike go, and then  
12 I'll go.

13 MR. SILVERSTEIN: Okay, thank you.

14 CHAIRPERSON MILLER: Mr. Silverstein.

15 MR. SILVERSTEIN: Thank you, Mr. Fiorito.  
16 You say that the changes that you ordered  
17 up were made in May?

18 MR. FIORITO: Yes, sir.

19 MR. SILVERSTEIN: How much difference do  
20 these changes make? How bad was it before, and  
21 how much better do you say it was afterwards?

22 MR. FIORITO: I would say it's a drastic

1 difference, and the reason I say it's a drastic  
2 difference is because every club owner wants to  
3 be better or every restaurant owner wants to be  
4 better than the next guy. So they're all  
5 competing with each other in the city, so they  
6 want to have the best look. They want to have  
7 the best sound. They want to have the nicest  
8 establishment.

9           They had a very expensive system up there  
10 that was capable of producing high-level sound  
11 pressure levels. He does not have that anymore.  
12 He's got -- basically, he went from a Ferrari to  
13 a Hyundai, if that kind of, you know, gives you  
14 an idea.

15           MR. SILVERSTEIN: My Hyundai Genesis is a  
16 pretty good-size car.

17           MR. FIORITO: Let's say an Accent, then.

18           [Laughter.]

19           MR. SILVERSTEIN: If it's so much better,  
20 then why are these people here?

21           MR. FIORITO: I don't know. I can't  
22 answer that.

1           MR. SILVERSTEIN: So let's assume that  
2 what was done was not the absolute total best  
3 thing that could ever be done. Let's also assume  
4 that cost is an issue, and you're not going to  
5 put the Fargo down over this thing for the  
6 winter. What would you suggest be done to  
7 mitigate the problem that they say is making  
8 their life so difficult and that -- there is a  
9 noise problem there. Everybody understands that.  
10 What more -- give us a menu right now of things  
11 that we can or can't do, and you mentioned a  
12 couple with Mr. Rodriguez, acoustical foam,  
13 Liquid Glue.

14           MR. FIORITO: Mm-hmm.

15           MR. SILVERSTEIN: What else?

16           MR. FIORITO: I understand what you're  
17 saying, but the problem that we have is you have  
18 an incredible amount of ABC establishments in the  
19 busiest, one of the busiest zoned areas in the  
20 city, and then you have residential. And the  
21 city is growing out of control.

22           Like, if you look out at 14th and U, this

1 is not the way it looked in 1989.

2 MR. SILVERSTEIN: No way.

3 MR. FIORITO: Okay. So no one would walk  
4 down this street back in 1989, and look at -- I'm  
5 blown away with the open kitchens and the open  
6 restaurants and what I see.

7 So the city is growing almost like  
8 Manhattan, New York City. So you have people  
9 that choose to live in that area. You have to  
10 have a balance between the community, but it's  
11 not just one person. You have so many  
12 establishments there. If Mr. Rehman were to go  
13 out and acoustically treat his place and seal it  
14 up, you would still have noise complaints because  
15 you have so many other establishments that are  
16 going to be there.

17 And as the ABC investigator came there,  
18 he said that there is not one that you can  
19 identify as the specific suspect in the  
20 situation, and I'm not putting blame on other  
21 bars or other restaurants. But he already stated  
22 that Rosebar has been the culprit more than the

1 other, and I was there when the ABC came out.  
2 And they came into Midtown, and they checked to  
3 us and said we're not the ones. They got a  
4 complaint, and then they went next door and said  
5 it was Rosebar.

6 MR. SILVERSTEIN: They chose to be there,  
7 I believe, in 1972, when I think that building  
8 was built --

9 MR. FIORITO: Right.

10 MR. SILVERSTEIN: -- which is certainly  
11 -- and the religious community at St. Matthews  
12 has been there for at least 80 years and probably  
13 more back against the alley where you're saying  
14 nobody lives.

15 MR. FIORITO: I never hear anything from  
16 them, though. Have you? I haven't heard --  
17 seeing the pastor --

18 MR. SILVERSTEIN: Maybe they enjoy the  
19 music.

20 MR. FIORITO: Yeah, I don't know. I  
21 mean, I haven't heard anybody from N Street  
22 either. I don't hear it from N Street. I hear

1 it only from the Palladium Condo.

2 But you also have to take into  
3 consideration, in all fairness, that right in  
4 front of the Palladium Condo is a huge amount of  
5 nightclubs producing incredible sound pressure  
6 blowing right back within 5- to 800 feet of the  
7 Palladium Condo.

8 MR. SILVERSTEIN: I don't think that  
9 you're the proper person to engage in a colloquy  
10 about whether a lot of places make noise and  
11 whether that means that nobody really has to step  
12 forward because everybody is making noise. I'm  
13 not sure how that argument will hold water.

14 So, basically, if you were to recommend  
15 something to fill in the cracks and make things a  
16 little better, are you saying that acoustical  
17 foam, things of that sort -- are there things  
18 that you can do with the rooftop without ruining  
19 the place that can make it better?

20 MR. FIORITO: Absolutely. I would start  
21 with Owens acoustical fiberglass insulation, and  
22 what I would do is remove -- I would remove the

1 Plexiglas and then just build wood frame around  
2 it and layer it with Owens acoustical fiberglass  
3 insulation, and then seal it up on both sides  
4 with layers of plywood.

5 MR. SILVERSTEIN: Mr. Alberti, go right  
6 ahead.

7 MR. ALBERTI: Mr. Short, go ahead.

8 CHAIRPERSON MILLER: Mr. Short.

9 MR. FIORITO: But keep in mind, it would  
10 be a trial-and-error. You start with one section  
11 to see how it works. If it doesn't work, then  
12 you continue on until you get it to the point  
13 where it's not affecting anybody.

14 MR. SHORT: Good afternoon again, sir.  
15 You just gave a partial solution. We're talking  
16 about people in the communities having to learn  
17 to live with one another. We're talking about  
18 the growth in the city, but we still need to talk  
19 about the quality of life for businesses and for  
20 the residents.

21 And now that you've given us this  
22 wonderful testimony, are you going to suggest

1 that maybe the club owner listen to you and work  
2 a little closer with you to get these things  
3 done?

4 MR. FIORITO: Sure, absolutely.

5 MR. SHORT: Thank you. That's all I  
6 have, Madam Chair.

7 CHAIRPERSON MILLER: Okay. Mr. Alberti?

8 MR. ALBERTI: Mr. -- "Fiorito," is it?

9 MR. FIORITO: Fiorito.

10 MR. ALBERTI: Fiorito.

11 So, in May, you took down the old  
12 equipment, big, huge speakers and --

13 MR. FIORITO: Yes.

14 MR. ALBERTI: -- subwoofers and -- I get  
15 it -- and put up the new smaller speakers. What  
16 happened to the old -- it took 2 days, right?

17 MR. FIORITO: I wasn't -- I wasn't there.  
18 I had it taken down and removed before I got  
19 there. They actually brought cranes. They  
20 hoisted the stuff off because it was too wide.

21 MR. ALBERTI: Okay. And it took you 2  
22 days to install the new --

1 MR. FIORITO: Correct.

2 MR. ALBERTI: Do you have any idea how  
3 long it -- in your discussions with the owner, do  
4 you know how long it took to take down the old  
5 stuff?

6 MR. FIORITO: It was about 2 days.

7 MR. ALBERTI: About 2 days, all right.

8 Do you know what happened to the old  
9 equipment?

10 MR. FIORITO: Yeah. It's going in  
11 another nightclub where it's enclosed.

12 MR. ALBERTI: That the owner owns or --

13 MR. FIORITO: No, no, no. Nothing to do  
14 with this owner.

15 MR. ALBERTI: Okay. So he's divested  
16 himself of this?

17 MR. FIORITO: Yes. Oh, no, it's in the  
18 state of Texas if you want to know exactly where  
19 it's in.

20 MR. ALBERTI: Well, I mean -- yeah.

21 [Laughter.]

22 MR. FIORITO: I know it is. All the --

1           MR. ALBERTI: Well, let me be honest with  
2 you. I mean, my questioning here is tomorrow,  
3 big speakers could reappear.

4           MR. FIORITO: No, because --

5           MR. ALBERTI: I just can't say everything  
6 is hunky-dory because, you know, tomorrow the  
7 owner could go ahead, "Okay. So I've got my  
8 license, and I'm putting in big speakers."  
9 Anyway, you don't need to know about that. I'm  
10 just telling you why I'm asking these questions,  
11 but it's good to know that they're not sitting in  
12 his garage behind the --

13           MR. FIORITO: No. And I'm not going to  
14 install them and have to be back in front of the  
15 Board and, you know, lost my credibility with the  
16 Board, that I put them somewhere else. That's  
17 not going to happen.

18           MR. ALBERTI: Well, I understand. It's  
19 not your credibility; it's the owner's  
20 credibility. But all right.

21           I'm looking. I'm just -- you know, I'm  
22 not accusing anyone of anything, but I always

1 have to think about, you know, can I just -- can  
2 I just ignore the fact that it can easily reverse  
3 itself, and I can't.

4 So, anyways, let's put that to rest. You  
5 said you measured these things with -- the sound  
6 measurements with a meter were A-weighted. Can  
7 you tell me what that means and what the  
8 alternatives are to that?

9 MR. FIORITO: A-weight is how you measure  
10 the dance electronic music audibles. That is how  
11 it's measured. I do not know the scientific  
12 terms on why it's done that way.

13 MR. ALBERTI: What do you mean? What  
14 way? It's done that way. It's called  
15 "A-weight," but what does that mean? You don't  
16 know what that means technically?

17 MR. FIORITO: No.

18 MR. ALBERTI: Okay. You said that the  
19 processor settings are all locked in place,  
20 correct?

21 MR. FIORITO: Yes.

22 MR. ALBERTI: But you also said that

1 there's like a -- I don't want to put words in  
2 your mouth. Correct me what you said, but you  
3 said something about a volume meter.

4 MR. FIORITO: Correct.

5 MR. ALBERTI: A knob that is regulated  
6 that is not locked in place.

7 MR. FIORITO: There's a zone control  
8 volume meter, the ones that are in the pictures,  
9 and if they turn it all the way up, I keep  
10 reducing the gain. So, as that inputs, the gain  
11 goes down, so it won't go any louder. I could  
12 simply turn the gain up internally on the  
13 processor, and it could go as loud as they want  
14 then.

15 MR. ALBERTI: Okay. So is there volume  
16 control? As far as you know, where is it set,  
17 that one that's not locked down? Where is it  
18 set?

19 MR. FIORITO: The maximum they can crank  
20 the volume up to is 70 dB.

21 MR. ALBERTI: Where is that knob set  
22 right now in terms of its range? Do you know?

1 MR. FIORITO: Oh, they have to turn it  
2 all the way. It won't go any further once it  
3 hits -- it's turn it all the way to the right.

4 MR. ALBERTI: I don't care about that.  
5 Is it set midway? Is it set at one quarter? Is  
6 it set three-quarters? Is it set full?

7 MR. FIORITO: It's set at full.

8 MR. ALBERTI: It's currently set at full?

9 MR. FIORITO: Right. The volume control.  
10 That way, they can't turn it up.

11 MR. ALBERTI: So they can only turn it  
12 down?

13 MR. FIORITO: Correct.

14 MR. ALBERTI: So, without unlocking the  
15 processor, they can only turn it down?

16 MR. FIORITO: The volume control goes  
17 from off, and then the music starts up low.

18 MR. ALBERTI: Yeah.

19 MR. FIORITO: It's the same as a volume  
20 in a stereo, but it will only go --

21 MR. ALBERTI: I understand that.

22 MR. FIORITO: -- so loud.

1 MR. ALBERTI: I understand that.

2 MR. FIORITO: Okay.

3 MR. ALBERTI: My question was, where is  
4 it set? I've got my stereo. It's got a volume  
5 switch, and it goes all the way around the clock,  
6 pretty much. Where is it set?

7 MR. FIORITO: These don't -- these don't  
8 work like that. They're not a volume where you  
9 can just keep turning it up. It stops. It  
10 actually rotates, and then it stops. So you  
11 can't turn it any more. It locks. That's it.  
12 It has --

13 MR. ALBERTI: It has -- the sound level,  
14 as you're turning -- as you're turning that knob,  
15 we'll say clockwise --

16 MR. FIORITO: Right.

17 MR. ALBERTI: It turns clockwise, right?

18 MR. FIORITO: Mm-hmm.

19 MR. ALBERTI: So, as you're turning that  
20 knob clockwise and you start at the lowest  
21 position, as you turn it clockwise, the volume  
22 increases, correct?

1 MR. FIORITO: Correct.

2 MR. ALBERTI: All right. So, at some  
3 point, it's a max, and at some point, it's at  
4 minimum ?

5 MR. FIORITO: Yes.

6 MR. ALBERTI: Where is it set?

7 MR. KLINE: It's set --

8 MR. ALBERTI: In that range?

9 MR. FIORITO: They can turn the volume to  
10 the maximum level, but internally in the  
11 processor is where the actual volume --

12 MR. ALBERTI: All right. I got that. I  
13 got that.

14 MR. FIORITO: I don't understand your  
15 question.

16 MR. ALBERTI: Where is it set? Don't  
17 worry about my understanding. Just answer my  
18 question. Where is that volume control set?

19 MR. FIORITO: All the way over to the  
20 maximum that you can turn it to the right, so  
21 that they can't go any louder.

22 MR. ALBERTI: So they can only turn that

1 volume down?

2 MR. FIORITO: Correct.

3 MR. ALBERTI: All right. And the only  
4 way to turn the volume that you experience would  
5 be to unlock the processor?

6 MR. FIORITO: Yes.

7 MR. ALBERTI: And alter the settings on  
8 the processor?

9 MR. FIORITO: Yes.

10 MR. ALBERTI: Okay, good. Thank you.

11 I have no further questions. Thank you.

12 CHAIRPERSON MILLER: Okay. Mr. Short?

13 MR. SHORT: Could you set that system for  
14 60 dBi's to 70?

15 MR. FIORITO: Yes, I can.

16 MR. SHORT: And how would that affect the  
17 club?

18 MR. FIORITO: Well, I can tell you when  
19 you have 200 people in a room -- if you've ever  
20 been at a loud party where people are just  
21 talking and congregating, it's more than 70 dB  
22 with the people in a large room.

1           MR. SHORT: I didn't talk about the  
2 people in the room.

3           You said when you did your testing, you  
4 tested it when people weren't in the room,  
5 correct?

6           MR. FIORITO: Correct. Nobody was there.

7           MR. SHORT: Okay. Now, if you stood in  
8 the middle of that room and tested it again right  
9 now and turned it from 70 to 60, how would that  
10 affect the club with 200 people in it?

11          MR. FIORITO: I think it might be a  
12 little bit too low. I think the voices might  
13 talk over the sound.

14          MR. SILVERSTEIN: May I ask both of you,  
15 are we talking about a room inside, or are we  
16 talking about the --

17          MR. SHORT: Rooftop. Rooftop. Forgive  
18 me.

19          MR. SILVERSTEIN: -- rooftop? Okay.

20          MR. SHORT: Forgive me. Thank you.  
21 Thank you very much.

22          The rooftop. You're saying 60 dBi on

1 that rooftop, and we see that it's not completely  
2 sealed off because we saw the holes on the side  
3 and some holes in the ceiling. So 60 would be  
4 not enough for that rooftop.

5 MR. FIORITO: I tried it at less volume,  
6 and 70 seemed to be a comfortable level.

7 MR. SHORT: Have you ever tried it with  
8 200 people in the room?

9 MR. FIORITO: With 200 people in the  
10 room, the sound is weak.

11 MR. SHORT: Have you ever tried it with  
12 200 people in the room? Have you ever tested it?

13 MR. FIORITO: Yeah. I've been there when  
14 the place is full.

15 MR. SHORT: And you've tested it at 60,  
16 70?

17 MR. FIORITO: No, at 70.

18 MR. SHORT: Only at 70.

19 MR. FIORITO: No, I have not tested it as  
20 60.

21 MR. SHORT: Well, that's the question I  
22 was asking.

1           Do you think testing it one time a 60 and  
2 then -- and then the next time you testify --  
3 hopefully, you'll never have to come back again,  
4 but if you testify again, you can say, "Well, for  
5 sure," when you were asked a question, 60  
6 couldn't do the same thing for 70 on that rooftop  
7 deck, with 200 -- with 100 people there.

8           MR. FIORITO: We could certainly try it.  
9 That would be the only way to put the proof in  
10 the pudding, absolutely.

11           MR. SHORT: I'll ask if John if he had  
12 tried that. We're trying to find a way so that  
13 the business can stay there and the citizens  
14 won't have to be down here every time he's trying  
15 to apply for a license application. We need to  
16 work together.

17           MR. FIORITO: I agree. I think there has  
18 been every effort made.

19           MR. SHORT: So for 60 and 70. You just  
20 admitted that. Okay. Thank you.

21           That's all I have, Madam Chair.

22           CHAIRPERSON MILLER: Okay. Others?

1 [No audible response.]

2 CHAIRPERSON MILLER: I just have a couple  
3 questions. I'm just not clear as to what exactly  
4 was your role with respect to the mitigation  
5 measures that we heard were done in May. So when  
6 was Plexiglas -- but that sounds like that was  
7 not your recommendation; is that right?

8 MR. FIORITO: It was the construction  
9 manager's recommendation, Jasper Braswell's.

10 CHAIRPERSON MILLER: Okay. The smaller  
11 speakers was yours?

12 MR. FIORITO: Yes.

13 CHAIRPERSON MILLER: Okay. And did you  
14 also say you lowered something from 30,000 to  
15 1,000?

16 MR. FIORITO: Yeah, the power. There  
17 were five amplifiers running that old system.  
18 There's only one small amplifier driving that.

19 CHAIRPERSON MILLER: Okay. So was that  
20 your recommendation?

21 MR. FIORITO: Yes.

22 CHAIRPERSON MILLER: Okay. And did you

1 also say that you had them add plywood, or was  
2 that Mr. --

3 MR. FIORITO: Yes. The plywood was a  
4 suggestion that I had made.

5 CHAIRPERSON MILLER: Okay. Did you do an  
6 overall evaluation of the problem there and  
7 improvements that needed to be made, or you  
8 didn't?

9 MR. FIORITO: I did, and as I was  
10 mentioning before, it's very hard to identify  
11 when all those venues are running who is the one  
12 --

13 CHAIRPERSON MILLER: No, I understand  
14 that.

15 MR. FIORITO: So -- but I evaluated it,  
16 and I can only evaluate it when there are certain  
17 times during the day when there's no other sound  
18 running, so that I can get the best reception.  
19 But when I did the evaluation, I knew the goal  
20 was to ensure that the sound wasn't heard  
21 elsewhere. If it's being heard down the alley, I  
22 don't know why it's coming from that particular

1 venue.

2 CHAIRPERSON MILLER: Okay. So I heard  
3 you make a recommendation in response to Mr.  
4 Silverstein's questioning in which you stated you  
5 recommend acoustical fiberglass insulation and  
6 wood and to seal up both sides or something like  
7 that.

8 MR. FIORITO: Yes, I did.

9 CHAIRPERSON MILLER: Okay. So why do you  
10 make that recommendation now versus before the  
11 mitigation measures were done?

12 MR. FIORITO: Because I was asked the  
13 question of additional methods that we could come  
14 up with, and two, I did not know, Madam Chair,  
15 that there was an existing, still problem going  
16 on with the sound at that location. I did not  
17 know because I have not heard.

18 I also get as much information, if  
19 there's ABC complaints or noise violations,  
20 citings being issues, and I haven't heard  
21 anything that there's been any problem with that.

22 CHAIRPERSON MILLER: Okay. So your

1 recommendations are somewhat responsive to the  
2 complaints that are being made?

3 MR. FIORITO: Complaints. And I have not  
4 heard from Sarah Peck. She has my e-mail. She  
5 knows how to find me, and she -- last time we  
6 left, we were fine. We were all having a drink  
7 together, and if she had a complaint, she could  
8 have fired off an e-mail to me and let me know.  
9 But I haven't heard from anybody up until this  
10 hearing was coming up, and I didn't know all the  
11 facts of what was going on until I got here.

12 CHAIRPERSON MILLER: Okay. Just to  
13 clarify, though, your recommendation before, you  
14 thought would solve the problem, and as far as  
15 you know, it may have solved the problem. But,  
16 if it didn't solve the problem, this would be the  
17 next step that you would recommend. Is that what  
18 how you characterize it?

19 MR. FIORITO: Absolutely. Absolutely.  
20 Well, we'll have to do something immediately.

21 CHAIRPERSON MILLER: Okay. Yep.  
22 Anything else?

1 [No audible response.]

2 CHAIRPERSON MILLER: Okay. Are there  
3 questions on Board questions on redirect?

4 Okay, Mr. Kline.

5 MR. KLINE: Yes.

6 Mr. Fiorito, after these changes were  
7 made to the sound system, you did do  
8 on-the-ground testing in terms of what could be  
9 heard from the establishment, didn't you?

10 MR. FIORITO: Yes, I did.

11 MR. KLINE: Okay. And so when you set it  
12 at 70 dB in the center of the room on the  
13 rooftop, you then went to the surrounding areas,  
14 correct?

15 MR. FIORITO: Yes, I did.

16 MR. KLINE: Okay. And what was the  
17 results of that observation?

18 MR. FIORITO: You could not hear the  
19 sound, as I said, in the front of the building  
20 previously, but in the back of the building, you  
21 could hear a little. But I was not past the 60  
22 dB rule at that time.

1           What was causing the decibel meter to go  
2 up and down was when the air conditioning units  
3 kept kicking in and off and all the noise that's  
4 back there as well. So it was very hard just the  
5 same as the other ABRA investigators were not  
6 able to take an accurate reading, but I couldn't  
7 hear it at the end of the alley when I had set  
8 the system.

9           So, at that point, being reasonable, as a  
10 reasonable person, this is not offending anybody.  
11 There's no way this could be heard down the  
12 street if I don't hear it now when I'm testing  
13 the system.

14           MR. KLINE: Okay. In your over 20 years  
15 of experience, has it been that experience that  
16 sound mitigation is a bit of trial and error?

17           MR. FIORITO: Absolutely.

18           MR. KLINE: Okay. So you try one thing.  
19 You see whether it helps, and if it doesn't solve  
20 the problem, then you move on to other solutions,  
21 correct?

22           MR. FIORITO: Yes.

1 MR. KLINE: All right. Is that exactly  
2 what's been contemplated here?

3 MR. FIORITO: That's been the process.

4 MR. KLINE: Okay. Now, you were asked by  
5 Mr. Silverstein what could be done to make this  
6 situation better, and I think he responded,  
7 "Well, there are a number of venues in the  
8 neighborhood," and Mr. Silverstein said  
9 something, "Well, if lots of places make lots of  
10 noise, no one has to step forward."

11 Let me ask you this in that context. If  
12 every nightclub in that neighborhood did exactly  
13 what you've done to the rooftop at Midtown, do  
14 you have any expectation as to what that might do  
15 to complaints about noise in the neighborhood?

16 MR. FIORITO: I think it would be a  
17 trial-and-error experience, and I think it would  
18 all help, but every time you fire up one sound  
19 system and then you have another sound system  
20 next to it, the decibel levels increase and  
21 increase. So, when you have how many places  
22 operating at one time, it's kind of hard to have

1 the levels where I identify one specific problem.

2 MR. KLINE: But a place like this that  
3 has taken these measures would be less of a  
4 contributor than places that have not. Is that  
5 fair?

6 MR. FIORITO: Absolutely.

7 MR. KLINE: Okay. So you're not willing  
8 to venture a guess as to what would happen if  
9 everyone did it?

10 MR. FIORITO: If everybody did it and  
11 complied with soundproofing, I think, of course,  
12 there would be a significant improvement.

13 MR. KLINE: Okay. And that is all I have  
14 of the witness.

15 CHAIRPERSON MILLER: Okay.

16 MR. MELCHER: Just a couple quick  
17 questions. You said you made some sound level  
18 measurements outside, correct?

19 MR. FIORITO: Yes.

20 MR. MELCHER: Did you use the same exact  
21 sound meter that you used up on the roof deck?

22 MR. FIORITO: Yes, I did.

1           MR. MELCHER: And did you follow the same  
2 procedures that we talked about before?

3           MR. FIORITO: I did exactly the same  
4 thing that I did before.

5           MR. MELCHER: Okay. No further  
6 questions.

7           CHAIRPERSON MILLER: Okay. I'm sorry.  
8 I'd like to ask a follow-up question.

9           MR. FIORITO: Yes, ma'am.

10          CHAIRPERSON MILLER: So, if you have  
11 three establishments and they all were doing what  
12 you're recommending, however, I understood you to  
13 say it still might be noisy because the sound  
14 increases due to the fact that they're all making  
15 sound at the same time. So would there be a  
16 recommendation to then go to a stronger type of  
17 soundproofing or a lower dB level? I'm just  
18 curious.

19          MR. FIORITO: I don't know. I mean, if  
20 you have -- if you're going to have rooftops in  
21 the city where you're going to have  
22 entertainment, there's got to be an expectation

1 of some noise. I think everybody can do the best  
2 possible to reduce the noise and take steps to  
3 work with each other, but you're going to have  
4 noise in that busy area, and it's not just --  
5 it's not just coming from the nightclubs.

6 Has anybody ever heard those new  
7 rumblers, sirens on the police cars? The whole  
8 floor of the street shakes when they come to an  
9 intersection. That's 120 dB. It's a major city.  
10 There's going to be noise.

11 CHAIRPERSON MILLER: Okay. Thank you.

12 All right. I don't know if you have a  
13 question based on my --

14 [No audible response.]

15 CHAIRPERSON MILLER: And are there any  
16 other questions of Board members?

17 [No audible response.]

18 CHAIRPERSON MILLER: Okay. Thank you.

19 MR. KLINE: Thank you.

20 CHAIRPERSON MILLER: Mr. Kline, how many  
21 witnesses do you have left?

22 MR. KLINE: One or two.

1 CHAIRPERSON MILLER: Okay. So it's been  
2 2-1/2 hours. I'm just wondering if we might  
3 finish your case before we break or whether  
4 there's people who want to break earlier.

5 MR. SILVERSTEIN: Let's keep going.

6 CHAIRPERSON MILLER: We're all right to  
7 continue?

8 MR. KLINE: Yeah. I mean, I have -- the  
9 next witness, we're going to review some video  
10 with.

11 CHAIRPERSON MILLER: Okay.

12 MR. KLINE: So I might need 3 or 4  
13 minutes to make sure that --

14 CHAIRPERSON MILLER: Oh, okay. To get it  
15 ready?

16 MR. KLINE: I mean, I think it's ready.  
17 I think I just have to --

18 CHAIRPERSON MILLER: You want to make  
19 sure it's --

20 MR. KLINE: -- function --

21 CHAIRPERSON MILLER: Okay. So we can  
22 take a --

1 MR. KLINE: Ah.

2 CHAIRPERSON MILLER: So it's ready?

3 MR. KLINE: I think we are.

4 CHAIRPERSON MILLER: Okay.

5 MR. ALBERTI: You amazed even yourself,  
6 didn't you?

7 MR. KLINE: I guess.

8 [Laughter.]

9 MR. KLINE: It's been a challenging day,  
10 Mr. Alberti.

11 I call to the stand Joseph Aguilar.

12 CHAIRPERSON MILLER: Okay. Do you swear  
13 to tell the truth, the whole truth, nothing but  
14 the truth?

15 MR. AGUILAR: I swear.

16 CHAIRPERSON MILLER: Okay. Thank you,  
17 sir. Have a seat.

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

20 MR. AGUILAR: Joseph Aguilar.

21 MR. SILVERSTEIN: I'm sorry?

22 MR. KLINE: And --

1 MR. SILVERSTEIN: I'm sorry? Your name  
2 again?

3 MR. AGUILAR: Joseph Aguilar.

4 MR. KLINE: That's A-g-u-i-l-a-r.  
5 Correct?

6 MR. AGUILAR: That's correct.

7 MR. KLINE: And what do you do?

8 MR. AGUILAR: I'm an in-house technician  
9 for pretty much most of the major nightclubs in  
10 the D.C. area.

11 MR. KLINE: Okay.

12 MR. AGUILAR: I handle small repairs,  
13 setting up of deejays, and that stuff.

14 MR. KLINE: So you work basically on a  
15 contract basis?

16 MR. AGUILAR: Yeah, contract basis,  
17 correct.

18 MR. KLINE: Okay. And how many clubs do  
19 you work for?

20 MR. AGUILAR: Approximately six in the  
21 area.

22 MR. KLINE: And how long have you been

1 doing this?

2 MR. AGUILAR: Since 1996.

3 MR. KLINE: And is this what you do  
4 full-time?

5 MR. AGUILAR: Yes, I do.

6 MR. KLINE: And you work with Mr.  
7 Fiorito?

8 MR. AGUILAR: Yes, I do.

9 MR. KLINE: And he testified earlier that  
10 he had you make some observations concerning  
11 noise --

12 MR. AGUILAR: Yeah.

13 MR. KLINE: -- in the neighborhood around  
14 Midtown; is that correct?

15 MR. AGUILAR: That's correct. He  
16 requested me to do that for him.

17 MR. KLINE: Okay. And you videoed those?

18 MR. AGUILAR: Yes, I did.

19 MR. KLINE: All right. With the Board's  
20 permission, we're going to see a series of  
21 videos, and Mr. Aguilar will -- to the extent  
22 it's not on the video, will tell us where he is

1 and what he's doing.

2 CHAIRPERSON MILLER: This is a -- what is  
3 this? A video?

4 MR. KLINE: Series of videos.

5 CHAIRPERSON MILLER: Series of videos.  
6 And we're just wondering whether you plan on  
7 putting them into evidence as an exhibit. I  
8 think you listed some videos.

9 MR. KLINE: Yeah, we listed them. Yeah.

10 CHAIRPERSON MILLER: Yeah, okay. So  
11 we'll watch them now, and then they'll be in the  
12 record.

13 MR. KLINE: Great.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: Can you see?

16 MR. AGUILAR: Yeah, I can see.

17 MR. KLINE: Okay.

18 CHAIRPERSON MILLER: Do we need it  
19 darker, or is this okay?

20 MR. SILVERSTEIN: Try the full screen on  
21 the video that you want.

22 MR. KLINE: Oh, there you go. Here we

1 go.

2 MR. SILVERSTEIN: That's it right there.

3 There you go.

4 CHAIRPERSON MILLER: Oh, okay. Good.

5 MR. KLINE: Okay. And then --

6 MR. SILVERSTEIN: You can go to the back.

7 There's a reverse button.

8 MR. KLINE: I will.

9 MR. SILVERSTEIN: There you go.

10 CHAIRPERSON MILLER: Oh, good. We have  
11 some technical guidance. Thank.

12 MR. SILVERSTEIN: No. I'm just following  
13 the airwaves.

14 CHAIRPERSON MILLER: Oh, okay.

15 [Laughter.]

16 MR. KLINE: All right. The issue may be  
17 volume, and we will -- it looks like --

18 [Video presentation begins.]

19 CHAIRPERSON MILLER: Sorry. Can you  
20 pause for a second? I'm sorry. What's the voice  
21 we're hearing?

22 MR. AGUILAR: That's my voice, ma'am.

1 CHAIRPERSON MILLER: That's your voice on  
2 the video?

3 MR. AGUILAR: That's correct.

4 CHAIRPERSON MILLER: Okay. Thank you.

5 [Video presentation stops.]

6 MR. ALBERTI: Can I ask what the purpose  
7 to the video is going to be? Because I'm a  
8 little -- I'll tell you, if this is the source,  
9 sound levels, it's not --

10 [Fire alarm sounds in hearing room.]

11 CHAIRPERSON MILLER: Is that emergency?

12 MR. ALBERTI: It's not going to carry  
13 great weight.

14 [Fire alarm sounds in hearing room.]

15 MR. ALBERTI: Great. So we can't leave.

16 [Laughter.]

17 MR. ALBERTI: So, as I was saying, Mr.  
18 Kline -- and I don't mean to be sort of, you  
19 know, strict here. I'm not sure I'm choosing my  
20 words correctly. But, you know, I hear something  
21 on this video, and I'm not sure what it means to  
22 me. I mean, if this is to illustrate sound

1 levels, I'm not sure that it's going to really  
2 resonate with me.

3 I mean, you can go ahead. I'm just  
4 telling you that we've been through this before  
5 with other -- with other cases. I mean, I hear  
6 something here, and it's -- what does it mean?  
7 You turn it up. You turn it down here. It's  
8 even hard to compare it to other noises here. I  
9 mean, these videos were not meant as recording  
10 devices.

11 MR. KLINE: No. And you'll see that Mr.  
12 Aguilar is doing measurements as he's walking,  
13 which we'll get to.

14 MR. ALBERTI: Okay. Fine, so go ahead.

15 MR. KLINE: We'll see sound levels.

16 MR. ALBERTI: I just want to make sure  
17 that we're not wasting time. Go ahead. I'm  
18 sorry to interrupt.

19 CHAIRPERSON MILLER: I would just like to  
20 know -- so now we know whose voice it is, and  
21 what's the date and time? Did I miss that?

22 MR. AGUILAR: It's Memorial Day weekend,

1 Saturday. I don't know the exact date.

2 CHAIRPERSON MILLER: This Memorial Day  
3 weekend?

4 MR. AGUILAR: Yeah, of this year. That's  
5 correct.

6 CHAIRPERSON MILLER: Okay.

7 MR. AGUILAR: This year.

8 MR. SILVERSTEIN: Before we even do that,  
9 Mr. Aguilar, do you have any background in audio  
10 and sound? In measuring sound, are you -- do you  
11 have any certification? Any qualifications?

12 MR. AGUILAR: I do not.

13 MR. SILVERSTEIN: Is the purpose of this  
14 to show what a decibel level is, or why --

15 MR. KLINE: Ask me.

16 MR. SILVERSTEIN: We're not concerned  
17 about --

18 MR. KLINE: I'm proffering it. Ask me.  
19 He's just the witness.

20 MR. ALBERTI: Let's just watch. Let's  
21 just watch the first video.

22 MR. SILVERSTEIN: Okay. We'll watch it.

1 I'm trying to figure that out.

2 CHAIRPERSON MILLER: I also want to know  
3 -- I just want to know what time it is. What are  
4 we seeing? What time of the day? Night? I  
5 mean, I don't even know.

6 MR. AGUILAR: Approximately midnight.

7 CHAIRPERSON MILLER: Approximately  
8 midnight. All right. Thank you very much.

9 MR. KLINE: And all of these have been  
10 taken around the same time, correct?

11 MR. AGUILAR: Correct.

12 MR. KLINE: You did these successively,  
13 the same evening, in various parts of the  
14 neighborhood; is that right?

15 MR. AGUILAR: That's correct.

16 MR. KLINE: And the purpose of it was to  
17 get ambient noise levels in the area surrounding  
18 Midtown, correct?

19 MR. AGUILAR: That is also correct.

20 MR. KLINE: Okay.

21 CHAIRPERSON MILLER: Okay. And he is  
22 also the videographer as well as the speaker; is

1 that right?

2 MR. AGUILAR: That is correct.

3 CHAIRPERSON MILLER: Okay.

4 MR. KLINE: One-man band on this one.

5 CHAIRPERSON MILLER: What?

6 MR. KLINE: One-man band on this one.

7 CHAIRPERSON MILLER: One-man band. Okay,  
8 thank you.

9 MR. KLINE: All right. Here we go.

10 MR. SILVERSTEIN: Time starting again.

11 [Video presentation begins.]

12 [Video presentation stops.]

13 MR. KLINE: Can you tell us again where  
14 that was? We couldn't hear it.

15 MR. AGUILAR: I was heading south on  
16 Connecticut Avenue heading towards East Jefferson  
17 and N Street.

18 MR. KLINE: So are you on the east side  
19 or the west side of the street?

20 MR. AGUILAR: I believe I was on the west  
21 side.

22 MR. KLINE: So the opposite side from

1 where Dirty Martini is located?

2 MR. AGUILAR: Yes.

3 MR. KLINE: Okay. And on that side, the  
4 west side, so that would be between N and M?

5 MR. AGUILAR: No, no, no. I think that  
6 with that video, I was between N and Dupont  
7 Circle. That's what it looks like.

8 MR. KLINE: Okay. So you're further  
9 north?

10 MR. AGUILAR: Yeah, further north.

11 MR. KLINE: All right. And on the west?

12 MR. AGUILAR: I was coming north, heading  
13 south.

14 MR. KLINE: Headed south.

15 MR. AGUILAR: Yeah.

16 MR. KLINE: And on the west side of the  
17 street, there aren't any night life  
18 establishments, are there?

19 MR. AGUILAR: There should be three or  
20 four. I'm trying to get my bearings straight.  
21 No. Sorry. The east side.

22 MR. KLINE: You're on the east side of

1 the street. Okay. So you are up near the bank,  
2 and you're going to head towards like where Café  
3 Citron is?

4 MR. AGUILAR: Yeah. Griffin, Cabin, and  
5 all those other ones.

6 MR. KLINE: Okay. So that's where you  
7 are, and hopefully everyone now knows where you  
8 are.

9 MR. AGUILAR: Yeah.

10 MR. KLINE: Okay.

11 [Video presentation begins.]

12 MR. SILVERSTEIN: And where are you  
13 there?

14 MR. AGUILAR: I am at the -- I don't know  
15 what to call it.

16 MR. SILVERSTEIN: Connecticut and N?

17 MR. AGUILAR: Connecticut and -- or  
18 actually Jefferson right now, heading towards the  
19 World Bank.

20 MR. SILVERSTEIN: Where?

21 MR. AGUILAR: Connecticut and East  
22 Jefferson, heading towards the World Bank.

1 [Video presentation stops.]

2 MR. KLINE: So that was -- which way was  
3 that walking? That was walking south or north?

4 MR. AGUILAR: Walking south.

5 MR. KLINE: Okay.

6 MR. ALBERTI: Mr. Kline, just out of  
7 curiosity, do you have a list of locations and  
8 readings that might be helpful, or are we just  
9 going to have to get that from the record?

10 MR. KLINE: We'll get this from the  
11 record. If you would like us to --

12 MR. ALBERTI: Okay, fine. Just so I know  
13 I'll have to go through --

14 CHAIRPERSON MILLER: No.

15 MR. KLINE: If you would like us to  
16 submit something --

17 MR. ALBERTI: I'll go through the  
18 transcript.

19 CHAIRPERSON MILLER: I think --

20 MR. KLINE: We'd be happy to submit  
21 something post-hearing giving that information to  
22 the Board.

1 CHAIRPERSON MILLER: Okay.

2 MR. KLINE: If that would be helpful.

3 CHAIRPERSON MILLER: Maybe we'll  
4 entertain that.

5 MR. ALBERTI: I'm just pointing out that  
6 it's really hard to follow. I mean --

7 MR. SHORT: That instrument you're using,  
8 has that been calibrated? Is that -

9 CHAIRPERSON MILLER: Well, you know, what  
10 --

11 MR. ALBERTI: Why don't we go to  
12 questions later?

13 CHAIRPERSON MILLER: -- this isn't time.  
14 Exactly. This isn't time for our questions at  
15 all.

16 MR. KLINE: Okay.

17 CHAIRPERSON MILLER: But save your  
18 questions because I know they're good questions.

19 MR. SHORT: I will.

20 CHAIRPERSON MILLER: Okay. You're still  
21 doing the direct, correct?

22 MR. SILVERSTEIN: Yeah.

1 MR. KLINE: Yes.

2 CHAIRPERSON MILLER: Yes, okay.

3 [Video presentation begins.]

4 CHAIRPERSON MILLER: I'm sorry. Did you  
5 say where?

6 MR. KLINE: 1300 block of Connecticut  
7 Avenue.

8 MR. SILVERSTEIN: Can you stop that?  
9 Where is that?

10 MR. KLINE: Café Citron is what was cited  
11 on the --

12 MR. SILVERSTEIN: Where?

13 MR. KLINE: Café Citron.

14 MR. SILVERSTEIN: Okay.

15 [Video presentation stops.]

16 MR. KLINE: Madam Chair, I'd move the two  
17 videos. There are three more. I'm not going to  
18 play them on the record. I don't think we need  
19 to take the Board's time. I think they're all  
20 pretty consistent in terms of what they show in  
21 terms of minimum ambient noise levels on the  
22 street, but we would move the five videos at this

1 time.

2 MR. MELCHER: I'm going to object. If he  
3 wants to have all the videos in the record, he  
4 needs to play the videos.

5 CHAIRPERSON MILLER: I think -- I don't  
6 -- I can see that they can be concern of sight  
7 unseen, but I don't know what's on these videos.

8 MR. KLINE: Fine. We'll play them all.

9 CHAIRPERSON MILLER: Have you seen the  
10 videos?

11 MR. KLINE: They've been made available  
12 since May.

13 MR. MELCHER: I've seen them, but I'd  
14 like to be able to see them again because I'm  
15 going to have some questions for this witness. I  
16 want to know about everything that's in those  
17 videos. I wasn't aware that they would be  
18 submitted in evidence without being shown.

19 CHAIRPERSON MILLER: Right, right.

20 MR. MELCHER: I'm not trying to waste the  
21 Board's time. Personally, I think these videos  
22 are a waste of time, and I intend to show that

1 through cross-examination, but I'd like to see  
2 all the videos.

3 CHAIRPERSON MILLER: Right. I have a  
4 problem with just, like, admitting into evidence  
5 something that we haven't seen.

6 MR. KLINE: It's the Board's pleasure.  
7 I've got plenty of time, so --

8 [Laughter.]

9 MR. SILVERSTEIN: Well, let's just run  
10 through them and do them.

11 MR. KLINE: All right, fine.

12 CHAIRPERSON MILLER: We've seen one. How  
13 many?

14 MR. KLINE: We've seen two, actually.

15 CHAIRPERSON MILLER: We've seen two.

16 MR. KLINE: Okay. Here we go.

17 [Video presentation begins.]

18 CHAIRPERSON MILLER: Where are we on your  
19 exhibit form? Oh, never mind.

20 MR. SILVERSTEIN: Where are we?

21 CHAIRPERSON MILLER: Video 3?

22 [Video presentation stops.]

1 MR. KLINE: All right. Ready? Here we  
2 go.

3 MR. SILVERSTEIN: Do you know where that  
4 is, Mr. Aguilar?

5 MR. AGUILAR: The last video that we just  
6 saw was inside the Midtown rooftop maxing out at  
7 --

8 MR. SILVERSTEIN: It was in front of  
9 Midtown?

10 MR. AGUILAR: -- 78. Huh?

11 MR. SILVERSTEIN: The last one was in  
12 front of Midtown?

13 MR. AGUILAR: Inside.

14 CHAIRPERSON MILLER: Inside Midtown.

15 MR. AGUILAR: Their top level, the  
16 rooftop.

17 CHAIRPERSON MILLER: On the rooftop.

18 MR. AGUILAR: Yeah.

19 MR. KLINE: Okay.

20 CHAIRPERSON MILLER: What did it show?

21 MR. KLINE: Well, I'll run that one  
22 again.

1 MR. SILVERSTEIN: 93.

2 MR. KLINE: That one is very short, so  
3 I'm going to have to run it again. All right.  
4 So let's walk through this one.

5 CHAIRPERSON MILLER: And this is number  
6 -- can you identify what numbers there are, so if  
7 I'm going to be admitting --

8 MR. KLINE: Yeah. This one is 2 minutes  
9 and 16 seconds.

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: It's labeled "Intersection  
12 Connecticut and N Streets Northwest."

13 CHAIRPERSON MILLER: And is this the  
14 third one you're showing?

15 MR. KLINE: This is the third one.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: We've seen "Walking North on  
18 Connecticut Avenue" --

19 CHAIRPERSON MILLER: Right.

20 MR. KLINE: -- and "Walking South on  
21 Connecticut Avenue."

22 CHAIRPERSON MILLER: So what was he

1 referring to with respect to the rooftop?

2 MR. KLINE: We saw the inside of the  
3 Midtown rooftop. That's a 19-second one, and  
4 I'll play that one again because that one --

5 CHAIRPERSON MILLER: You're going to play  
6 that next? Is that No. 3 or 4?

7 MR. AGUILAR: I will play that -- sure,  
8 I'll play that as No. 3. Here we go.

9 CHAIRPERSON MILLER: Okay.

10 [Video presentation begins.]

11 [Video presentation stops.]

12 MR. SILVERSTEIN: And we're calling that  
13 Video No. 3?

14 MR. KLINE: Yes.

15 MR. SILVERSTEIN: Okay.

16 MR. KLINE: And this is No. 4.

17 CHAIRPERSON MILLER: All right.

18 [Video presentation begins.]

19 MR. SILVERSTEIN: And what is this?  
20 Connecticut and N?

21 MR. KLINE: Correct.

22 I apologize. This is the first one that

1 we saw. My mistake.

2 [Video presentation stops.]

3 [Video presentation begins.]

4 CHAIRPERSON MILLER: Is this No. 5 now?

5 MR. KLINE: Yeah.

6 MR. SILVERSTEIN: Can you turn the sound  
7 up? I can't hear anything.

8 [Video presentation stops.]

9 MR. KLINE: All right. Now those are the  
10 five. I'll continue to question him on those,  
11 and then we'll, of course, make them available  
12 for cross.

13 Mr. Aguilar, you took all those videos,  
14 correct?

15 MR. AGUILAR: That's correct.

16 MR. KLINE: All right. And the device  
17 that you used to measure the sound, what was that  
18 device?

19 MR. AGUILAR: It was a decibel meter --

20 CHAIRPERSON MILLER: I'm sorry. I  
21 couldn't tell -- yeah, I was just going to say.  
22 You need to speak louder.

1 MR. AGUILAR: Sorry.

2 CHAIRPERSON MILLER: Okay. Use the mic.

3 MR. AGUILAR: It was a decibel meter.

4 CHAIRPERSON MILLER: Much better. Thank  
5 you.

6 MR. KLINE: And from where did you  
7 procure that decibel meter?

8 MR. AGUILAR: Washington Music Center, a  
9 professional audio store in Silver Spring,  
10 Maryland.

11 MR. KLINE: Okay. Do you know whether  
12 they took any steps before they sold it to you to  
13 ensure its accuracy?

14 MR. AGUILAR: Before they sold it to me,  
15 they made sure it was certified and accurate.

16 MR. KLINE: Okay. Have you used such a  
17 device before?

18 MR. AGUILAR: Previously, yes.

19 MR. KLINE: All right. On many  
20 occasions?

21 MR. AGUILAR: On multiple occasions.

22 MR. KLINE: All right. Now, during your

1 walk around the neighborhood there, that was  
2 about midnight on a Saturday night; is that  
3 correct?

4 MR. AGUILAR: That's correct, sir.

5 MR. KLINE: And you walked basically  
6 between M Street and Dupont Circle?

7 MR. AGUILAR: That's correct.

8 MR. KLINE: On both sides of Connecticut  
9 Avenue?

10 MR. AGUILAR: That's correct.

11 MR. KLINE: And in your travels on these  
12 videos, did you basically cover virtually every  
13 inch of those blocks?

14 MR. AGUILAR: Yes, I did.

15 MR. KLINE: And was there a minimum  
16 ambient noise level that you observed when you  
17 made these travels?

18 MR. AGUILAR: Through my whole recording  
19 reading and my measuring, it was at a minimum  
20 level, around 85.

21 CHAIRPERSON MILLER: Around what? Could  
22 you talk in the microphone? Yeah.

1 MR. AGUILAR: Sorry. Through my whole  
2 recording and walk around through the  
3 neighborhood, the ambient noise was pretty much  
4 average, around 85 decibels.

5 MR. KLINE: Okay. But there were times  
6 that it did dip below that, right?

7 MR. AGUILAR: It did dip below that and  
8 then exceeded more than that as well.

9 MR. KLINE: But it was always in the 70s,  
10 wasn't it?

11 MR. AGUILAR: Yeah. Yes, sir.

12 MR. KLINE: All right. I don't have any  
13 further questions of the witness at this time.

14 CHAIRPERSON MILLER: Okay. Protestants?

15 MR. MELCHER: Okay. You were walking  
16 while you made all of those sound measurements,  
17 correct?

18 MR. AGUILAR: Correct.

19 MR. MELCHER: Okay. And were any of  
20 those videos made on Midtown's roof deck?

21 MR. AGUILAR: One was.

22 MR. MELCHER: Was that Video No. 3?

1 MR. AGUILAR: I believe that was.

2 MR. MELCHER: Okay. Can we play Video  
3 No. 3 again, please?

4 I'm going to ask you what are the sound  
5 level readings in Video No. 3.

6 [Video presentation begins.]

7 [Video presentation stops.]

8 MR. MELCHER: Okay. So what were the  
9 sound-level measurements on the rooftop?

10 MR. AGUILAR: They peaked at 94, between  
11 92 and 94.

12 MR. SHORT: We can't hear. We didn't  
13 hear you.

14 MR. AGUILAR: Sorry. It peaked at 94  
15 decibels.

16 MR. SHORT: And this was on the rooftop?

17 MR. AGUILAR: That's correct.

18 MR. MELCHER: And was this video made  
19 before or after May 2015? Or you said it was  
20 made --

21 MR. AGUILAR: Memorial Day.

22 MR. MELCHER: Memorial Day 2015?

1 MR. AGUILAR: That's correct.

2 MR. MELCHER: Okay. So was that after  
3 the sound system had been modified?

4 MR. AGUILAR: Uh-huh, 2015. I'm sorry.  
5 2014. I'm stand corrected because the sound  
6 system was modified after.

7 MR. MELCHER: Well, when was it?

8 CHAIRPERSON MILLER: I'm sorry.

9 MR. MELCHER: 2014 or 2015?

10 MR. AGUILAR: I'm stand corrected. My  
11 date is wrong. I know it was Memorial Day. I  
12 just don't know exact year.

13 MR. MELCHER: So you don't know what year  
14 it was?

15 MR. AGUILAR: Yeah, I don't recall.

16 MR. MELCHER: Okay. So it was 90 dB on  
17 the dance floor where the sound engineer said  
18 that he had programmed things to be a maximum of  
19 70 dB, correct?

20 MR. AGUILAR: I guess so.

21 MR. MELCHER: You said yes?

22 MR. AGUILAR: Yes.

1 MR. MELCHER: Okay. No further questions  
2 -- oh, no. I'm sorry. If you'll indulge.

3 Did you use a sound-level meter meeting  
4 type 2 specifications for ANSI?

5 MR. AGUILAR: I'm not --

6 MR. MELCHER: Did you do a sound-level  
7 meter -- did you use a sound-level meter with a  
8 windscreen?

9 MR. AGUILAR: No.

10 MR. MELCHER: Okay. Did you perform a  
11 battery check immediately before and after each  
12 set of sound measurements?

13 MR. AGUILAR: It was not required.

14 MR. MELCHER: Did you externally --

15 CHAIRPERSON MILLER: I'm sorry. Could  
16 you repeat that?

17 MR. AGUILAR: It was not required.

18 CHAIRPERSON MILLER: What's not required?

19 MR. AGUILAR: Battery test.

20 CHAIRPERSON MILLER: Okay, thank you.

21 MR. MELCHER: Did you externally  
22 calibrate the sound-level meter immediately

1 before taking measurements?

2 MR. AGUILAR: No.

3 MR. MELCHER: Did you use earphones at  
4 any time while using sound-level meter?

5 MR. AGUILAR: No.

6 MR. MELCHER: Do you have a college  
7 degree in sound engineering?

8 MR. AGUILAR: No.

9 MR. MELCHER: Are you a licensed  
10 engineer?

11 MR. AGUILAR: No.

12 MR. MELCHER: Do you have any  
13 professional certifications related to sound  
14 engineering?

15 MR. AGUILAR: No.

16 MR. MELCHER: Okay. No further  
17 questions.

18 CHAIRPERSON MILLER: Board questions?

19 Okay.

20 MR. ALBERTI: Mr. Aguilar, just on that,  
21 so when was it? When was it last calibrated  
22 before you used it?

1 MR. AGUILAR: It was calibrated at the  
2 store before it was sold to me.

3 MR. ALBERTI: So you don't know how long  
4 before you acquired it that it was calibrated?

5 MR. AGUILAR: No, sir.

6 MR. ALBERTI: You don't know how it was  
7 treated in the store before you bought it?

8 MR. AGUILAR: No.

9 MR. ALBERTI: Did you take an average  
10 reading, or was that sound meter able to take an  
11 average reading over a period of time?

12 MR. AGUILAR: It was able to take an  
13 average reading over a period of time.

14 MR. ALBERTI: And did you?

15 MR. AGUILAR: At the time of the  
16 recording, no.

17 MR. ALBERTI: Okay. Do you know was it  
18 A-weighted?

19 MR. AGUILAR: It was set at A-weight.

20 MR. ALBERTI: Okay. Was it fast or slow?  
21 I don't know --

22 MR. AGUILAR: Fast.

1 MR. ALBERTI: -- exactly what that --  
2 what -- I'm not an expert there, but I know that  
3 there is differences between fast readings and  
4 slow readings, so what was it?

5 MR. AGUILAR: It was set at fast.

6 [Fire alarm sounds in hearing room.]

7 MR. ALBERTI: Anyone have a decibel  
8 reader on their phone?

9 [Laughter.]

10 [Fire alarm sounds in hearing room.]

11 MR. ALBERTI: Okay. I have one last  
12 question. I'm going to assume that that's over,  
13 except for the lights.

14 CHAIRPERSON MILLER: Yeah, right.

15 MR. ALBERTI: So where in Midtown were  
16 you standing when you took your readings?

17 MR. AGUILAR: Center of the dance floor.

18 MR. ALBERTI: Center of the dance floor.  
19 Okay.

20 And do you remember what the speakers  
21 looked like on that night you took the reading?

22 MR. AGUILAR: No, I don't recall.

1 MR. ALBERTI: Okay. And you don't  
2 remember whether that was this year or last year?

3 MR. AGUILAR: Right now, I'm -- I don't  
4 recall. Sorry.

5 MR. ALBERTI: Okay. Thank you. No  
6 further questions.

7 CHAIRPERSON MILLER: Mr. Short.

8 MR. SHORT: I thought for sure, the first  
9 time I asked you when was that, you said this  
10 year.

11 MR. AGUILAR: I believe it was this year,  
12 but I'm getting confused now, so --

13 CHAIRPERSON MILLER: And we do need to  
14 take a break.

15 MR. SHORT: No further questions. I  
16 don't --

17 CHAIRPERSON MILLER: Okay. Do you recall  
18 when you bought the decibel meter?

19 MR. AGUILAR: I bought that in February.

20 CHAIRPERSON MILLER: February of this  
21 year?

22 MR. AGUILAR: It has to be of this year,

1    yeah.

2                   CHAIRPERSON MILLER:   Okay.   So if you  
3   bought it in February --

4                   MR. AGUILAR:   Mm-hmm.

5                   CHAIRPERSON MILLER:   -- then is it likely  
6   that this video was done in May of this year?

7                   MR. AGUILAR:   Yes.

8                   CHAIRPERSON MILLER:   Okay.   When you said  
9   that it was certified --

10                   MR. AGUILAR:   Mm-hmm.

11                   CHAIRPERSON MILLER:   -- what does that  
12   mean?   Certified by whom?

13                   MR. AGUILAR:   Well, basically, when I  
14   requested a sound meter, I asked the sales person  
15   to give me a certified meter that meets the  
16   specifications, and the sales person said he'll  
17   get me one.

18                   CHAIRPERSON MILLER:   Who certifies it?

19                   MR. AGUILAR:   Whatever -- whoever the  
20   sales person got it from.   I didn't verify the  
21   certification.

22                   CHAIRPERSON MILLER:   Okay.   You just

1 understand that there's a type of meter that's  
2 certified --

3 MR. AGUILAR: Yes.

4 CHAIRPERSON MILLER: -- and that's what  
5 you wanted.

6 MR. AGUILAR: Correct.

7 CHAIRPERSON MILLER: Okay. Did you take  
8 recordings on any other day, or was this the only  
9 day?

10 MR. AGUILAR: For this one, this was the  
11 only day.

12 CHAIRPERSON MILLER: Okay. So I know  
13 you're not a sound engineer, but I'm certainly  
14 not. I'm going to ask you a question. You can  
15 tell me whether you can answer it or not, but  
16 when the previous witness talked about limiting  
17 the sound on the roof to 70 dBs --

18 MR. AGUILAR: Mm-hmm.

19 CHAIRPERSON MILLER: Okay. I thought he  
20 meant the sound from the music, and so my  
21 question is, when we hear your measurement of  
22 like 92 to 94, is that because you've added

1 patrons' voices to that?

2 MR. AGUILAR: That's correct.

3 CHAIRPERSON MILLER: That's your  
4 understanding. Okay.

5 All right. I don't have any other  
6 questions. Anybody else?

7 Mr. Silverstein, yeah.

8 MR. SILVERSTEIN: Mr. Aguilar -- and I  
9 think I also want Mr. Kline to hear this. I have  
10 real concerns about how these numbers are viewed.  
11 You have no certification. You have no college  
12 degree. You're not an audio technician, of an  
13 engineer of that type. But these figures to me  
14 appear to have some merit as far as relative is  
15 concerned.

16 If a fire engine is a certain number,  
17 then I'm able to compare that to something else,  
18 but you're not asking us to say, "Well, it's 92  
19 at such-and-such a place," are you, or that it's  
20 74 or that ambient -- you're trying to give us  
21 these figures and show us that they are comparing  
22 it in a relative manner, and that this is a -- as

1 the Protestants have said, a very noisy  
2 neighborhood, correct?

3 MR. AGUILAR: Yeah. If that's what  
4 you're implying, yes.

5 MR. SILVERSTEIN: And you're not --

6 MR. KLINE: If you're asking him why  
7 we've proffered it, which I think is better  
8 addressed by argument from me rather than asking  
9 the witness --

10 MR. ALBERTI: That was going to be my  
11 comment. I think it's best to address by Mr.  
12 Kline in his closing arguments.

13 MR. KLINE: Right, exactly.

14 MR. SILVERSTEIN: But I want it on the  
15 record that we're not sitting here and accepting  
16 as gospel that such-and-such a place is 92  
17 because we don't want people coming in here from  
18 everywhere with sound meters and saying you have  
19 to believe this because.

20 MR. KLINE: We're not asking you to do  
21 that.

22 MR. SILVERSTEIN: Okay. As long as we --

1           MR. KLINE: That's not the purpose for  
2 which is was proffered.

3           MR. SILVERSTEIN: -- all parties  
4 understand that, that we're --

5           MR. KLINE: We do.

6           MR. SILVERSTEIN: -- at this point using  
7 it --

8           Pardon?

9           MR. KLINE: I said we do.

10          MR. SILVERSTEIN: Okay.

11          [Laughter.]

12          MR. KLINE: Using the editorial "we" on  
13 this side of the table.

14          MR. SILVERSTEIN: Thank you, Mr. Kline.

15          MR. KLINE: Thank you.

16          MR. SILVERSTEIN: And, Mr. Melcher, I  
17 assume you have no problem with that  
18 understanding that we're --

19          MR. ALBERTI: Whoa, whoa. Let them  
20 address --

21          MR. SILVERSTEIN: -- that we're not  
22 accepting --

1 MR. ALBERTI: -- this on closing. Mike,  
2 let them address this on closing.

3 MR. SILVERSTEIN: Go ahead. Okay, fine.

4 MR. ALBERTI: Do not put words in their  
5 mouth, please.

6 MR. SILVERSTEIN: I'm good at that.

7 CHAIRPERSON MILLER: Okay. So --

8 MR. SILVERSTEIN: I have no further  
9 comments.

10 CHAIRPERSON MILLER: We've done Board  
11 questions. Are there questions on Board  
12 questions?

13 MR. KLINE: No. Madam Chair, between  
14 your follow-ups and Mr. Silverstein, that covered  
15 what I had.

16 CHAIRPERSON MILLER: Okay.

17 Mr. Melcher?

18 MR. MELCHER: I don't have any further  
19 questions.

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

22 Okay. So we're now into 3 hours. Do you

1 have any other witnesses?

2 MR. KLINE: May I have a time check,  
3 please, Mr. Silverstein?

4 CHAIRPERSON MILLER: Mike, he wants a  
5 time check.

6 MR. SILVERSTEIN: The time check is 58  
7 minutes for the Licensee, 28 minutes for the  
8 Protestants.

9 MR. KLINE: Okay. The Licensee will at  
10 this time rest, with the understanding -- because  
11 I know we get tired and cranky later -- that we  
12 are reserving the balance for rebuttal --

13 CHAIRPERSON MILLER: Okay.

14 MR. KLINE: -- which we may have.

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: So I don't want anyone to be  
17 surprised when we get to that point and we're  
18 looking at our watches and I know everybody is  
19 going to want to go home, but we are reserving it  
20 for rebuttal.

21 CHAIRPERSON MILLER: Right.

22 [Fire alarm sounds in hearing room.]

1           MR. MELCHER: I would have a request. I  
2 have a witness --

3           MR. ALBERTI: Wait. Let's get the  
4 Chair's attention before the question. One  
5 moment.

6           CHAIRPERSON MILLER: One second.

7           [Pause.]

8           CHAIRPERSON MILLER: Okay. So, Mr.  
9 Kline, you've rested your direct case, but you've  
10 reserved the right for redirect in rebuttal,  
11 correct?

12          MR. KLINE: Correct.

13          CHAIRPERSON MILLER: Okay. So I think  
14 this is a good time for a break in between the  
15 two --

16          MR. MELCHER: Madam Chair?

17          CHAIRPERSON MILLER: I would --

18          MR. SILVERSTEIN: They have an issue with  
19 the --

20          CHAIRPERSON MILLER: Okay. We haven't --  
21 okay. If you have an issue with the videotape --

22          MR. SILVERSTEIN: No. They have an issue

1 with a witness.

2 MR. KLINE: Oh.

3 MR. MELCHER: Yep.

4 CHAIRPERSON MILLER: Okay. We haven't  
5 moved -- you haven't moved in the videotapes yet  
6 either.

7 MR. KLINE: Right. And I need to  
8 actually move all my exhibits, don't I?

9 CHAIRPERSON MILLER: That's true in your  
10 direct case. Okay.

11 MR. KLINE: Yes. We would move Exhibit  
12 2, photos -- all the photos with the exception of  
13 a photo of a doorway, which has not been  
14 identified.

15 CHAIRPERSON MILLER: Moving -- I'm sorry.  
16 You are moving Exhibit 2, all photos.

17 MR. KLINE: Which is all the photos with  
18 the exception of -- there's a picture of a  
19 doorway, which was not identified, and we are not  
20 moving it because it was not identified.

21 CHAIRPERSON MILLER: Was that the brown  
22 door or something?

1 MR. KLINE: That's the brown door.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: We are moving the invoices  
4 for the sound consultant.

5 CHAIRPERSON MILLER: Mm-hmm.

6 MR. KLINE: And we are moving the videos.

7 CHAIRPERSON MILLER: Videos 1 through 5.

8 MR. KLINE: Yep.

9 CHAIRPERSON MILLER: Okay. So are there  
10 objections to any of the exhibits being moved  
11 into evidence?

12 MR. MELCHER: No.

13 CHAIRPERSON MILLER: No. Okay.

14 Then I'm going to admit all those  
15 exhibits. That's No. 2, except for the picture  
16 of the brown door; No. 3, all the invoices. I  
17 guess -- you said text 1 and 2. I don't know --

18 MR. KLINE: I haven't moved those yet.

19 CHAIRPERSON MILLER: Okay. So those  
20 aren't in. And then five videos, five videos.  
21 Okay. They're all in. Okay.

22 Not this Google -- it does say a Google

1 satellite photo. Not that as well?

2 MR. KLINE: No. I didn't identify it.  
3 I'm not moving it.

4 CHAIRPERSON MILLER: Okay. All right.

5 So you have a question about a witness?

6 MR. MELCHER: Yeah. I have a witness  
7 that needs to get out of here as soon as  
8 possible. He's actually my lead witness. I'm  
9 just wondering how long the break is going to be,  
10 if we can keep it short.

11 CHAIRPERSON MILLER: A break?

12 MR. MELCHER: Having a break is fine.

13 CHAIRPERSON MILLER: Yeah. We can keep  
14 it as short as you all want. Five minutes.

15 MR. MELCHER: Five minutes would be  
16 great.

17 MR. SHORT: Let the witness -- let the  
18 witness go.

19 CHAIRPERSON MILLER: I think we should do  
20 a 5-minute break.

21 MR. MELCHER: A 5-minute break isn't a  
22 problem for the witness.

1                   CHAIRPERSON MILLER: Okay. All right.  
2 Why don't we do that and not talk about it  
3 anymore, so --

4                   MR. MELCHER: Thank you.

5                   MR. KLINE: We're taking a 5-minute  
6 break?

7                   CHAIRPERSON MILLER: Yeah. It's been 3  
8 hours.

9                   [Whereupon, at 6:12 p.m., a recess was  
10 taken and reconvened at 6:26 p.m.]

11                  CHAIRPERSON MILLER: Okay. We're back on  
12 the record.

13                  I'm going to swear you in, sir. I'm  
14 going to swear you in.

15                  MR. VALENTINE: Yes.

16                  CHAIRPERSON MILLER: Do you swear to tell  
17 the truth, the whole truth, nothing but the  
18 truth?

19                  MR. VALENTINE: I do.

20                  CHAIRPERSON MILLER: Okay, thank you.

21                  MR. MELCHER: Please state your name and  
22 occupation.

1           MR. VALENTINE: My name is Kendall C.  
2 Valentine. I'm a Junior, and I'm currently  
3 retired.

4           MR. MELCHER: Okay. Where do you reside?

5           MR. VALENTINE: I reside at 1830  
6 Jefferson Place, Unit 23. It's between -- it's  
7 on Jefferson Place Northwest. It's between 18th  
8 and 19th Streets. My unit is on the sixth and  
9 seventh floors, and it faces east towards  
10 Connecticut Avenue.

11          MR. MELCHER: How long have you lived at  
12 Jefferson Row?

13          MR. VALENTINE: We've lived there -- we  
14 purchased in August of 2007, and we've lived  
15 there, resided there ever since.

16          MR. MELCHER: Okay. Describe how noisy  
17 --

18                   [Fire alarm sounds in hearing room.]

19          MR. SHORT: We apologize.

20          MR. MELCHER: A few weeks after we --  
21 hold on. Let me ask you a question. Describe  
22 how noise from nightclubs in your neighborhood

1 has affected you.

2 MR. VALENTINE: A few weeks after we  
3 moved in, we began to be disturbed by loud noise,  
4 music, a variety of Latin, rap, Caribbean-type  
5 music and other noise.

6 The noise was particularly noticeable  
7 Thursday through Sunday nights, beginning about  
8 10 p.m. and ending between 2:30 and 3:30 in the  
9 morning.

10 The noise became -- seemed to become  
11 louder after midnight, increase in volume. On  
12 occasions when I was awakened, I'd step out on  
13 our seventh floor terrace looking east, and I  
14 could see people dancing on the rooftop lounges,  
15 and music seemed to be coming from those -- from  
16 those rooftop lounges.

17 I wasn't -- I wasn't able to determine  
18 exactly which one. There are a number of clubs  
19 and bars in that area who -- which have rooftop  
20 lounges.

21 From 2007 until 2014, my wife and I would  
22 be periodically awakened in the middle of the

1 night and early morning, as I mentioned before,  
2 by this loud music. I'm particularly concerned  
3 because my wife has a condition that requires her  
4 to have full sleep for -- regular and undisturbed  
5 sleep.

6           Currently, loud booming noises, low-level  
7 rumbling occasionally awakens me. Generally,  
8 this happens Thursday through Sunday nights from  
9 about 10 p.m. till about 7 p.m. The noise so far  
10 has not awakened my wife, but I am on pins and  
11 needles for fear that it might awaken her, and if  
12 it does, we have to move.

13           MR. MELCHER: Okay. Have you tried to do  
14 anything to reduce the noise that you have been  
15 hearing?

16           MR. VALENTINE: Yeah. My neighbors and I  
17 contacted the ANC, the Metropolitan Police  
18 Department on a number of occasions, and we also  
19 met with club owners and managers. These efforts  
20 at times resulted in the reduction of noise, but  
21 it was only temporary.

22           So our condominium association, working

1 with other associations and private individuals,  
2 sought a better, more permanent solution. A  
3 voluntary agreement was obtained between the  
4 neighborhood and Ozio Restaurant and Lounge.

5 In 2014, the manager of 18th Street  
6 Lounge --

7 [Fire alarm sounds in hearing room.]

8 MR. VALENTINE: -- and a sound engineer  
9 came over to my terrace, my unit, and worked out  
10 -- we worked out modifications in the direction  
11 of his sound equipment that has resulted in a  
12 significant reductions in noise from the 18th  
13 Street Lounge.

14 Subsequently, the manager of Public Bar  
15 also came over, and he has made similar  
16 adjustments, like 18th Street, has reduced the  
17 noise.

18 After these fixes were implemented, I  
19 have not been disturbed by noise from these  
20 establishments.

21 MR. MELCHER: What does that tell you?  
22 Does that tell you anything?

1           MR. VALENTINE: The results demonstrate  
2 that with cooperation from club owners, a  
3 reasonable solution can be obtained.

4           MR. MELCHER: Have you had any experience  
5 with noise coming from Midtown?

6           MR. VALENTINE: In 2013, I began to  
7 notice low-frequency booming noises late at night  
8 and early in the morning, for example, between 10  
9 p.m. to 3 a.m. The thumping, booming noise came  
10 through our outside walls and soundproof windows  
11 that we've installed at our expense and awakened  
12 me.

13           On one occasion, I walked to the corner.  
14 I got up and walked to the corner of 18th and  
15 Jefferson on Connecticut Avenue in an attempt to  
16 determine the source of the noise, of this  
17 booming noise. The noise seemed to be coming  
18 from Midtown. I could see flashing light on the  
19 roof. However, I am not able to verify the exact  
20 source of this noise.

21           MR. MELCHER: Were there any other  
22 occasions when you attempted to trace the source

1 of noise?

2 MR. VALENTINE: Yes. On the afternoon of  
3 Memorial Day 2015, that would be Monday, May  
4 25th, 2015.

5 MR. MELCHER: And you traced the noise  
6 back to Midtown?

7 MR. VALENTINE: Yes. We actually  
8 documented it in a short video and was submitted  
9 as an exhibit.

10 MR. MELCHER: Okay. I'd like to play  
11 that video.

12 [Video presentation begins.]

13 [Video presentation stops.]

14 MR. MELCHER: Okay. You were on your  
15 terrace at that time?

16 MR. VALENTINE: Yes, I was.

17 MR. MELCHER: Okay. And that video, does  
18 it accurately show what you saw on the afternoon  
19 of Memorial Day 2015?

20 MR. VALENTINE: Yes, it does.

21 MR. MELCHER: Okay. And what does the  
22 video show?

1           MR. VALENTINE: Well, it shows the  
2 Midtown area, flashing lights, and very loud  
3 music.

4           MR. MELCHER: Okay. Did the  
5 low-frequency, booming noises that you mentioned  
6 still affect you?

7           MR. VALENTINE: Yes. Occasionally --  
8           [Fire alarm sounds in hearing room.]

9           MR. VALENTINE: The noise disturbs my  
10 sleep, but fortunately, so far it has not  
11 awakened my wife. Again, if it does, we'll have  
12 to move because of her condition.

13          MR. MELCHER: Okay. What do you think  
14 needs to be done, if anything, to stop the noise  
15 coming from Midtown?

16          MR. VALENTINE: Well, really, I believe  
17 that Midtown should maintain noise levels that  
18 are -- that comply with D.C. law; otherwise, that  
19 their license should not be renewed.

20          MR. MELCHER: That's the end of my  
21 direct.

22          MR. KLINE: Are we playing this video or

1 not?

2 MR. MELCHER: I already played it.

3 MR. KLINE: Oh, you did?

4 CHAIRPERSON MILLER: You did?

5 MR. MELCHER: It was a short video. Do  
6 you want to see it again?

7 CHAIRPERSON MILLER: Play it again.

8 MR. MELCHER: Okay. It's just a -- it's  
9 a very short video.

10 CHAIRPERSON MILLER: Okay.

11 [Video presentation begins.]

12 [Video presentation stops.]

13 MR. MELCHER: Yeah. I don't really have  
14 volume control.

15 CHAIRPERSON MILLER: What?

16 MR. MELCHER: But that's the video.

17 CHAIRPERSON MILLER: What is it supposed  
18 to -- I'm sorry. But, you know, we had Mr. Kline  
19 proffer what his videos were.

20 MR. MELCHER: Okay, yeah. The video as  
21 the witness has indicated was made from his  
22 rooftop terrace on Memorial Day, Monday, May 25,

1 2015. I believe that was in the afternoon, and  
2 the flashing light in the distance --

3 [Video presentation begins.]

4 MR. ALBERTI: Can you pause it?

5 MR. MELCHER: Yep.

6 MR. ALBERTI: All right. Thank you.

7 That would be great.

8 [Video presentation paused.]

9 MR. MELCHER: The flashing light in the  
10 distance is the rooftop.

11 MR. ALBERTI: Was the rooftop of --

12 MR. MELCHER: Midtown. Okay. So there's  
13 direct line of sight, and the witness has  
14 testified that he could hear the sound coming  
15 from that rooftop.

16 CHAIRPERSON MILLER: In the daytime.

17 MR. MELCHER: Yes.

18 MR. VALENTINE: Yes. This is Memorial  
19 Day.

20 MR. MELCHER: Sunday afternoon -- oh, I'm  
21 sorry. Monday.

22 MR. SHORT: During the day?

1 MR. MELCHER: During the day.

2 MR. SHORT: Do you know what time? Do  
3 you know what time you took this?

4 MR. VALENTINE: Sometime in the  
5 afternoon. I don't -- I don't recall exactly  
6 when it was, 2:30, 3:30, midafternoon.

7 CHAIRPERSON MILLER: Does that complete  
8 your --

9 MR. MELCHER: Yes.

10 CHAIRPERSON MILLER: Okay. Mr. Kline?

11 MR. KLINE: Good evening, Mr. Valentine.  
12 Where did you move from?

13 MR. VALENTINE: We lived in Upper  
14 Northwest on Upton Street for about 30 years, and  
15 previous to that, we lived in Illinois.

16 MR. KLINE: Okay. And your previous  
17 residence, that's most residential neighborhood?

18 MR. VALENTINE: Yes.

19 MR. KLINE: And you're aware that when  
20 you moved into your current location that you  
21 moved into a residence that's on the edge of a  
22 C-3 zone?

1           MR. VALENTINE: I was not aware that it  
2 was a C-3 zone, but I'm aware it's in Dupont  
3 Circle, and there's -- you know, we're in the  
4 middle of a city.

5           MR. KLINE: In the middle of a city, and  
6 --

7           MR. VALENTINE: And we were in -- we were  
8 on Upton Street.

9           MR. KLINE: And there are and have been  
10 since you moved in and before you moved in, a  
11 number of nightclubs and night spots operating in  
12 the neighborhood, correct?

13          MR. VALENTINE: Yes.

14          MR. KLINE: In fact, your building  
15 overlooks a number of nightclubs on M Street as  
16 well, doesn't it?

17          MR. VALENTINE: Yes. There are a couple  
18 on M Street. Ozio is on M, and --

19          MR. KLINE: Camelot?

20          MR. VALENTINE: Camelot. But I don't  
21 know that Camelot has a rooftop lounge.

22          MR. KLINE: Okay.

1 MR. VALENTINE: I don't believe so.

2 MR. KLINE: Okay. But you knew you were  
3 moving into a vibrant commercial corridor,  
4 correct?

5 MR. VALENTINE: Yes.

6 MR. KLINE: All right. Now, you also  
7 testified that you hear noise from 10 p.m. to 7  
8 a.m., correct?

9 MR. VALENTINE: Ten? I'm sorry. 10 p.m.  
10 to approximately 2:30 or 3:30 a.m., depending on  
11 -- and Thursday through Sunday. Monday, Tuesday,  
12 Wednesday, it seems to be --

13 [Fire alarm sounds in hearing room.]

14 MR. VALENTINE: -- quieter than that.

15 [Laughter.]

16 MR. KLINE: All right. Now, you --  
17 "quieter than that."

18 You also testified that when you've  
19 investigated, you couldn't come -- you couldn't  
20 tell where the noise was coming from.

21 MR. VALENTINE: Not with any certainty,  
22 no, but it seemed to be coming from Midtown, from

1 that direction, and that was standing right  
2 across the street, right across Connecticut  
3 Avenue.

4 MR. KLINE: Okay. But you can't be sure  
5 is what you're telling us?

6 MR. VALENTINE: No.

7 MR. KLINE: All right. And you indicated  
8 that you had met with the manager of 18th Street  
9 Lounge and the manager of Public Bar, and they  
10 worked with you to address these issues, correct?

11 MR. VALENTINE: Yes.

12 MR. KLINE: Did you -- have you ever  
13 approached Midtown about working these issues  
14 out?

15 MR. VALENTINE: No, I have not, nor has  
16 Midtown ever approached me. Public Bar  
17 approached me --

18 MR. KLINE: Okay.

19 MR. VALENTINE: -- of its own volition.

20 MR. KLINE: Would you expect that Midtown  
21 would know how to find you on the sixth and  
22 seventh floor of your building with an

1 expectation that you might be experiencing  
2 problems?

3 MR. VALENTINE: It's easy enough to find  
4 me. I'm in the phonebook.

5 MR. KLINE: Okay. Would you be willing  
6 to work with Midtown if they were willing to work  
7 with you --

8 MR. VALENTINE: Sure.

9 MR. KLINE: -- to address these issues?

10 MR. VALENTINE: Absolutely.

11 MR. KLINE: Okay. That's all I have.  
12 Thank you.

13 CHAIRPERSON MILLER: Board questions?  
14 Mr. Alberti.

15 MR. ALBERTI: Mr. Valentine, just real  
16 quick. On this May 25th date, you were where  
17 when you heard the noise? May 25th, 2015, you  
18 talked about experiencing noise, hearing noise  
19 then.

20 MR. VALENTINE: Yes.

21 MR. ALBERTI: Where were you? Where were  
22 you then?

1           MR. VALENTINE: I was on the -- well, I  
2 was on the terrace.

3           MR. ALBERTI: You were on your terrace?

4           MR. VALENTINE: On my terrace, right.  
5 That's correct. Outside.

6           MR. ALBERTI: Could you hear the noise  
7 inside your residence?

8           MR. VALENTINE: Not on that -- not on  
9 that date, but other times, I have heard the  
10 similar booming noise that seems to me to be  
11 quite unique.

12          MR. ALBERTI: Okay.

13          MR. VALENTINE: And, again, as I -- as I  
14 previously testified, when I went out at night, I  
15 could hear that same noise, low-frequency booming  
16 noise, that's very, very annoying, very jarring,  
17 unlike --

18          MR. ALBERTI: So you could hear it at  
19 night. That's all right. I don't need a  
20 description of the noise, but you stated that it  
21 was unique. So were you able to identify a  
22 possible -- a source that you --

1 MR. VALENTINE: It seemed to be coming --

2 MR. ALBERTI: -- were relatively --

3 [Fire alarm sounds in hearing room.]

4 MR. ALBERTI: I'll rephrase my question.

5 Were you able to identify a source of which you  
6 were reasonably confident?

7 MR. VALENTINE: No.

8 MR. ALBERTI: Okay.

9 MR. VALENTINE: No. But it seemed -- you  
10 know, reasonably confident? No.

11 MR. ALBERTI: That you knew that that's  
12 where it was coming from.

13 MR. VALENTINE: It seemed to be coming  
14 from Midtown.

15 MR. ALBERTI: Okay.

16 MR. VALENTINE: But, you know, reasonably  
17 confident, I wouldn't go that far.

18 MR. ALBERTI: Okay, okay. So, when you  
19 said the solution for them to comply with D.C.  
20 law, what's your understanding of the D.C. law?  
21 And I ask that because, you know, we have -- you  
22 are in a busy area, and there's this ambient

1 noise, and so what do you -- what's your  
2 interpretation of how the noise would have to  
3 appear relative to the ambient noise?

4 MR. VALENTINE: Well, for example, we're  
5 not -- you know, you wake up when a police car  
6 goes by, any police car.

7 MR. ALBERTI: Yeah.

8 MR. VALENTINE: But you go right back to  
9 sleep again.

10 MR. ALBERTI: Right.

11 MR. VALENTINE: This noise continues.  
12 It's boom, boom, boom, boom, and it will stop for  
13 2 or 3 seconds and then start up again, with no  
14 consistency. Even a wailing siren, like on an  
15 ambulance, is consistent, and it really does --  
16 okay, fine. You know, you're used to it. This  
17 is not. This is really jarring. I feel sorry  
18 for the people's ears that must have to put up  
19 with it, but that's their choice.

20 [Laughter.]

21 MR. ALBERTI: You're right. Thank you.

22 MR. VALENTINE: You're welcome.

1 CHAIRPERSON MILLER: Mr. Short.

2 MR. SHORT: Mr. Valentine, we appreciate  
3 your compelling testimony, and I did hear you say  
4 that you wanted to be talking with the business  
5 and see if you can't work out some kind of  
6 agreement where you can live in relatively in  
7 peace --

8 MR. VALENTINE: Yes.

9 MR. SHORT: -- quiet, and order. And so  
10 you're going to be -- hopefully, you could talk  
11 before you leave here today or get some  
12 information as to how you can start talking to  
13 work with them to -- if they're permitted to stay  
14 in business, that they can stay in business and  
15 be friends with you and all the other neighbors.

16 MR. VALENTINE: That would be fine.

17 MR. SHORT: So we thank you very much for  
18 coming out today and staying as long as you have.  
19 Thank you.

20 MR. VALENTINE: You're welcome.

21 CHAIRPERSON MILLER: Don't go away yet.

22 MR. MELCHER: One --

1 CHAIRPERSON MILLER: Wait. No, I have  
2 questions.

3 MR. MELCHER: Okay. I'm sorry.

4 CHAIRPERSON MILLER: So which building do  
5 you live in?

6 MR. VALENTINE: Okay. It's called  
7 Jefferson Row Condominiums.

8 CHAIRPERSON MILLER: Okay. I know where  
9 that is. I just wasn't sure. I know, like,  
10 Palladium is affected, and I just wanted to get  
11 the right --

12 MR. VALENTINE: Right.

13 CHAIRPERSON MILLER: -- building where  
14 you're coming from.

15 So it sounds what you're describing is  
16 problematic. Nobody wants to hear that kind of  
17 booming in the middle of the night. So we want  
18 to try to solve that problem, if you all haven't  
19 been able to or can't do without us.

20 But I want to know, how long have you  
21 been, you know, suffering with that noise  
22 situation? Since 2007?

1           MR. VALENTINE: It -- well, it varies,  
2 you know, from -- starting out in 2007, it was  
3 really obnoxious, and then it -- people  
4 complained. I complained. Other of my neighbors  
5 complained to MPD and to ABRA, and it would quiet  
6 down for a while.

7           And the mitigation efforts -- mitigation  
8 efforts that occurred last year in 2014 reduced  
9 the noise.

10           There seems --

11           CHAIRPERSON MILLER: Which? Which  
12 mitigation efforts? Whose?

13           MR. VALENTINE: For 18th Street Lounge  
14 and Public Bar.

15           CHAIRPERSON MILLER: Okay.

16           MR. VALENTINE: Also, I've noticed a  
17 change in the level and intensity of the noise  
18 and music that I believe is coming from Midtown.

19           CHAIRPERSON MILLER: Okay. When -- is  
20 that since the changes they said they made in  
21 May?

22           MR. VALENTINE: Yes.

1           CHAIRPERSON MILLER:  Have you noticed a  
2 difference?

3           MR. VALENTINE:  Yes.

4           CHAIRPERSON MILLER:  Okay.  So how much  
5 of a difference?  Does that solve the problem?  
6 Does it, you know -- I mean, I know there are  
7 other establishments, but as far as --

8           MR. VALENTINE:  Right.

9           CHAIRPERSON MILLER:  -- you know, you're  
10 saying you've noticed a difference?

11          MR. VALENTINE:  I've noticed a  
12 difference.  It has not solved the -- it has not  
13 solved the problem to the level that I believe it  
14 should be, and if it does, if the problem can be  
15 solved, then I'm a happy camper.

16          CHAIRPERSON MILLER:  Okay.  Can you  
17 articulate the difference, how it was and how  
18 much -- what's better now and then what still  
19 remains the problem?

20          MR. VALENTINE:  I'm not a sound engineer.  
21 I don't understand.

22          CHAIRPERSON MILLER:  No, you're not a

1 sound engineer. Just from your personal point of  
2 view, you said it's better.

3 MR. VALENTINE: Yes.

4 CHAIRPERSON MILLER: What's better?

5 MR. VALENTINE: It seems to be lower  
6 level noise.

7 CHAIRPERSON MILLER: Okay.

8 MR. VALENTINE: A lower intensity.

9 CHAIRPERSON MILLER: Okay.

10 MR. VALENTINE: And it seems to be a  
11 little bit less bass.

12 CHAIRPERSON MILLER: Right.

13 MR. VALENTINE: And that's the really  
14 annoying part of it.

15 CHAIRPERSON MILLER: Right. Do you think  
16 it's tweaking that's all that's left? The  
17 previous -- the witness for Midtown said that  
18 some of this is trial and error, so they may not  
19 have gotten it down to where it should be. So, I  
20 mean, can you say, "Okay. Do a little bit lower  
21 this or a little, you know, get rid of the bass  
22 or what?"

1 MR. VALENTINE: I'm sorry. I didn't mean  
2 to --

3 CHAIRPERSON MILLER: No, no. I don't  
4 know what the answer is. I just want you to --  
5 if you can articulate, then maybe you can get  
6 action on it, you know. If they don't know that  
7 it's bothering you -- say you weren't complaining  
8 anymore, except until now at this hearing, they  
9 might not know that it's still a problem. So  
10 this is your opportunity to say, "Okay. This is  
11 still a problem," you know, and how it is still a  
12 problem, and maybe they can address it.

13 MR. VALENTINE: Well, it took the manager  
14 of 18th Street Lounge and his sound engineer a  
15 couple of tries.

16 CHAIRPERSON MILLER: Right.

17 MR. VALENTINE: So it's -- you know, what  
18 Midtown's sound engineer has testified to,  
19 described as tweaking, and is -- you know, I  
20 would agree with that.

21 CHAIRPERSON MILLER: Okay.

22 MR. VALENTINE: I'm just saying that it's

1 better, but it is really not a solution yet.

2 CHAIRPERSON MILLER: Okay. And -- okay.  
3 To get there, I mean, do you think that it would  
4 involve them doing a little more of whatever  
5 they've done, and then you can see whether you're  
6 hearing the noise and the bass anymore?

7 MR. VALENTINE: Yes. And they can --  
8 they're welcome to come over, and I'll be glad to  
9 meet with them and show them what I've -- where  
10 my particular situation -- yes.

11 CHAIRPERSON MILLER: Right. They could  
12 come and --

13 MR. VALENTINE: What affects -- sorry.  
14 What affects me also affects about six other  
15 people, six other families in our condominium.

16 CHAIRPERSON MILLER: Okay.

17 MR. VALENTINE: So it's not just me.  
18 It's my neighbors on the fourth, fifth, and --  
19 fourth and fifth floors also --

20 CHAIRPERSON MILLER: Okay.

21 MR. VALENTINE: -- that face east.

22 CHAIRPERSON MILLER: I guess my last

1 question is, you know, how far have they come?  
2 Are they -- do you think that it's pretty close  
3 to being able to solve this problem? A big  
4 difference from the way it was before?

5 MR. VALENTINE: It's a significant  
6 difference.

7 CHAIRPERSON MILLER: Okay.

8 MR. VALENTINE: It's better.

9 CHAIRPERSON MILLER: Okay, thank you.  
10 Anything else from the Board?

11 [No audible response.]

12 CHAIRPERSON MILLER: Any questions on  
13 Board questions?

14 MR. MELCHER: Just two questions on  
15 redirect.

16 CHAIRPERSON MILLER: Wait a second. We  
17 go to the Applicant first and then -- no. It's  
18 your witness, right?

19 MR. MELCHER: Yeah.

20 CHAIRPERSON MILLER: Okay. You can go  
21 first.

22 MR. MELCHER: Just two questions on

1 redirect.

2 MR. SILVERSTEIN: Get to go last. I  
3 don't care.

4 CHAIRPERSON MILLER: Yeah.

5 MR. MELCHER: I don't care. We can  
6 switch it.

7 MR. SILVERSTEIN: Go ahead.

8 [Laughter.]

9 MR. MELCHER: Okay.

10 CHAIRPERSON MILLER: Okay.

11 MR. MELCHER: You said that you could not  
12 say with reasonable certainty that the sound that  
13 you've heard in your unit has been coming from  
14 the Midtown, correct?

15 MR. SILVERSTEIN: Can you speak up a  
16 little louder, Mr. Melcher?

17 MR. MELCHER: Sure. I'll repeat the  
18 question. You said that you could not say with  
19 reasonable certainty that the sound that you've  
20 been hearing in your unit has been coming from  
21 the Midtown; is that correct?

22 MR. KLINE: Objection. Asked and

1 answered twice. You may not like the answer, but  
2 it's been asked and answered.

3 CHAIRPERSON MILLER: Okay. And this is  
4 really -- I don't recall there was a Board -- was  
5 there a Board question related to that? Because  
6 that's what this --

7 MR. MELCHER: Well, there was a question  
8 about reasonable certainty.

9 All right. I'll just ask a different  
10 question.

11 Based upon your personal observations, do  
12 you believe it is more likely than not that the  
13 noise that you've been hearing in your residence  
14 has been coming from the Midtown?

15 MR. VALENTINE: Yes. That, I can say.

16 MR. MELCHER: Thank you.

17 MR. VALENTINE: Maybe I was overthinking  
18 the question from the Board.

19 MR. BROOKS: Okay, thank you.

20 CHAIRPERSON MILLER: Okay.

21 MR. MELCHER: Well, let me ask one  
22 question.

1 CHAIRPERSON MILLER: One more?

2 MR. MELCHER: Did you interpret the  
3 question from the Board that you had to have 90  
4 percent confidence to say reasonable certainty?

5 MR. VALENTINE: Yes.

6 MR. MELCHER: Okay, thank you.

7 MR. KLINE: Mr. Valentine, there are a  
8 number of nightclubs in your neighborhood,  
9 correct?

10 MR. VALENTINE: That's correct.

11 MR. KLINE: All right. And you mentioned  
12 the 18th Street Lounge, and you mentioned Public  
13 Bar, correct?

14 MR. VALENTINE: Yes.

15 MR. KLINE: There is also a rooftop beer  
16 garden directly above --

17 MR. VALENTINE: Sauf Haus.

18 MR. KLINE: What's it called?

19 MR. VALENTINE: Sauf, S-a-u-f, H-a-u-s, I  
20 believe.

21 MR. KLINE: Okay. And they have a large  
22 outdoor rooftop area, don't they?

1 MR. VALENTINE: Right. And --

2 MR. KLINE: And your apartment would  
3 almost overlook it, wouldn't it?

4 MR. VALENTINE: Right. It does.

5 MR. KLINE: And you hear noise from that  
6 establishment?

7 MR. VALENTINE: Yes, but not loud booming  
8 noises, and they have walls that surround it, and  
9 they also have windows. So it's not open. It's  
10 not -- their sound is not directed, you know,  
11 aimed at our -- aimed west.

12 MR. KLINE: Isn't it true that they have  
13 live bans on that rooftop?

14 MR. VALENTINE: I'm not sure.

15 MR. KLINE: You're not sure?

16 MR. VALENTINE: I'm not certain.

17 MR. KLINE: The fact of the matter is  
18 you're not really certain where the noise that  
19 disturbs you comes from, are you?

20 MR. VALENTINE: No. But when -- I'm not,  
21 and --

22 MR. KLINE: Okay. And my next question

1 --

2 MR. VALENTINE: -- it's hard --

3 MR. KLINE: -- is you said that you've  
4 seen a significant improvement since changes were  
5 made at Midtown, correct?

6 MR. VALENTINE: That is correct.

7 MR. KLINE: But it hasn't completely  
8 solved the problem, correct?

9 MR. VALENTINE: It has not brought it to  
10 an acceptable level.

11 MR. KLINE: Right. But you have not had  
12 any contact from Rosebar, have you?

13 MR. VALENTINE: No.

14 MR. KLINE: Okay. So you don't really  
15 know whether this continuing problem is from  
16 Rosebar or still from Midtown, do you?

17 MR. VALENTINE: I can't say with 90  
18 percent or more certainty, no.

19 MR. KLINE: You can't even say with a --  
20 that it's more likely or not that it comes from  
21 Midtown than Rosebar, can you?

22 MR. VALENTINE: It seems to me, in my --

1 I believe it's coming from Midtown.

2 MR. KLINE: And upon what do you base  
3 that?

4 MR. VALENTINE: My belief.

5 MR. KLINE: Your belief. You were here  
6 when the investigator testified, correct?

7 MR. VALENTINE: That's correct.

8 MR. KLINE: And you heard him testify  
9 that the biggest offender in the neighborhood  
10 seems to be Rosebar. Did you hear that  
11 testimony?

12 MR. VALENTINE: And he also went on and  
13 said that there --

14 MR. KLINE: I asked you if you heard that  
15 testimony. That was my question to you. Did you  
16 hear that testimony?

17 MR. VALENTINE: Yes, I did.

18 MR. KLINE: Okay. And you haven't said  
19 anything about Rosebar being a disturbance to you  
20 in your residence, have you?

21 MR. VALENTINE: No. This hearing is  
22 about --

1 MR. KLINE: I have no --

2 MR. VALENTINE: -- Midtown.

3 MR. KLINE: -- more questions. Thank  
4 you.

5 CHAIRPERSON MILLER: Okay.

6 MR. MELCHER: Can I ask one more  
7 question?

8 CHAIRPERSON MILLER: Well, based on his  
9 questions --

10 MR. MELCHER: The witness wanted to say  
11 --

12 CHAIRPERSON MILLER: -- redirect only on  
13 his questions.

14 MR. KLINE: Witnesses always want to make  
15 statements; however, they do so within the  
16 context of questions being asked.

17 MR. MELCHER: That's fine.

18 You wanted to say something about  
19 Rosebar. What did you want to say?

20 MR. KLINE: Objection.

21 CHAIRPERSON MILLER: Okay.

22 MR. VALENTINE: Nothing.

1 MR. MELCHER: Okay, fine. He doesn't  
2 have anything else to say.

3 CHAIRPERSON MILLER: Are there any other  
4 Board questions before we --

5 [No audible response.]

6 CHAIRPERSON MILLER: All right. Thank  
7 you.

8 MR. VALENTINE: Thank you.

9 CHAIRPERSON MILLER: Mr. Melcher, how  
10 many witnesses? Do you have three? Is that what  
11 you said, or more

12 MR. MELCHER: Four witnesses.

13 CHAIRPERSON MILLER: Four. Okay. I'm  
14 just checking.

15 MR. SILVERSTEIN: At this point, the  
16 Protestants have used up 38 minutes, the Licensee  
17 65.

18 CHAIRPERSON MILLER: I'm sorry. What did  
19 you say?

20 MR. SILVERSTEIN: Protestants have used  
21 up 38 minutes, the Licensee 65.

22 CHAIRPERSON MILLER: Okay. All right.

1 We have a witness here.

2 Do you swear to tell the truth, the whole  
3 truth, and nothing but the truth?

4 MR. KING: Yes, I do.

5 CHAIRPERSON MILLER: All right. Thank  
6 you. Have a seat.

7 MR. MELCHER: Please state your name and  
8 occupation.

9 MR. KING: My name is Jim King, and I'm  
10 self-employed in the hospitality industry and my

11 --

12 CHAIRPERSON MILLER: Okay. Could you  
13 speak into the microphone, please?

14 MR. SILVERSTEIN: We can't hear you at  
15 all.

16 CHAIRPERSON MILLER: We can't hear you  
17 very well.

18 MR. KING: And I was shouting.

19 CHAIRPERSON MILLER: That doesn't help.  
20 Is it on?

21 MR. KING: Is it on?

22 CHAIRPERSON MILLER: Oh, that's better.

1           MR. KING: Okay. My name is Jim King. I  
2 am self-employed in the hospitality industry and  
3 assist associations in site selection and  
4 contract negotiation.

5           MR. MELCHER: Where do you currently  
6 reside?

7           MR. KING: At the Palladium, 1325 18th  
8 Street.

9           MR. MELCHER: And which unit are you in?

10          MR. KING: No. 804, which faces west.

11          MR. MELCHER: How long have you lived at  
12 the Palladium?

13          MR. KING: Eleven years.

14          MR. MELCHER: And do you own?

15          MR. KING: Yes, I own, own and occupy.

16          MR. MELCHER: How has the neighborhood  
17 changed since you moved in, if at all?

18          MR. KING: Well, first of all, I only  
19 moved -- I lived at 1545 Dupont East in 2010 --  
20 I'm sorry. I also -- I have tremors, so I  
21 occasionally go blank.

22                 I resided --

1           MR. MELCHER: I'll repeat the question.  
2 The question was, how has the neighborhood  
3 changed since you first moved in?

4           MR. KING: Oh, okay. It was a normal  
5 neighborhood. Now, I say a normal downtown  
6 neighborhood because I've lived in downtown  
7 Dallas. I lived in downtown Philadelphia during  
8 the gas crisis, right in the middle of it all, so  
9 I got used to city noises.

10          MR. MELCHER: And was there any change in

11 --

12          MR. KING: Any clubs? Yes, there were.

13          MR. MELCHER: -- the clubs?

14          Okay. What sort of changes?

15          MR. KING: Well, there were -- Mad  
16 Hatter, that used to be a buffet, luncheon --  
17 breakfast and lunch, and the Jewish deli is. I  
18 don't recall what that was. All of those are  
19 changed and made a big difference.

20          Now, Mad Hatter has worked with us in the  
21 past to try and limit the number of parties that  
22 they had.

1           MR. MELCHER: Are you saying that there  
2 are more clubs in the neighborhood than when you  
3 first moved in?

4           MR. KING: Ten times more.

5           MR. MELCHER: Okay. And are there --  
6 were there roof decks when you first moved into  
7 the neighborhood?

8           MR. KING: No. No. Not that I -- well,  
9 I can't say definitively, but I would say I was  
10 not aware of them, nor did I hear noise.

11          MR. MELCHER: And did you become aware of  
12 roof decks being built out during the time period  
13 that you were living there?

14          MR. KING: Where? At 1345 or 13 --

15          MR. MELCHER: 1325 18th Street.

16          MR. KING: No. That's -- yeah.

17          MR. MELCHER: Okay. Well, did there come  
18 a time when roof decks did start being operated  
19 in your neighborhood?

20          MR. KING: We're talking about my current  
21 residence, correct?

22          MR. MELCHER: Yes, right.

1 MR. KING: Yes.

2 MR. MELCHER: Okay. And when did the  
3 rooftop decks start coming into your  
4 neighborhood?

5 MR. KING: I would say it was about 3 to  
6 4 years ago. I go to the D.C. Sports, which is  
7 in that neighborhood, in the middle of that  
8 neighborhood, and I was watching Midtown be  
9 developed and even spoke to a couple of people  
10 just to find -- because I was curious, and  
11 actually I thought I would support them.

12 Dirty Martini is something that my  
13 industry holds party at, so my initial feeling  
14 about them was positive.

15 But then I went on the night -- when the  
16 noise started, which I'm sure that's what we want  
17 to talk about.

18 CHAIRPERSON MILLER: Right.

19 MR. KING: I would hear the booming, the  
20 bass that the previous witness talked about, and  
21 I mean never have I heard it like this.

22 MR. MELCHER: At what time of night would

1 you hear the bass music?

2 MR. KING: It would start at about 10:30  
3 or eleven o'clock and continue until 2:30 or  
4 three.

5 MR. MELCHER: And how has that noise  
6 affected you?

7 MR. KING: Well, like for right now,  
8 anytime I'm under -- these tremors have started.  
9 As I get nervous or stressed, they get worse.  
10 Talking about them even makes it worse. I see a  
11 neurologist regularly, and this has been going  
12 on. It probably started before, but it's gotten  
13 much worse during this.

14 MR. MELCHER: Does it affect your sleep?

15 MR. KING: Absolutely. The tremors do  
16 not affect my sleep, but the noise does. I was  
17 using earplugs, and to the point where you had to  
18 push them in as far as they go. If there was any  
19 leakage at all, they would practically -- it  
20 would reduce the noise, but it would still wake  
21 me up and keep me awake.

22 MR. MELCHER: Have you done anything to

1 try and stop the noise besides using earplugs?

2 MR. KING: Yeah. I am also president of  
3 the condominium association, and I assure you I  
4 conduct my meetings a little more stable than I  
5 am talking right now.

6 MR. MELCHER: Can you explain what has  
7 happened with respect to your condominium?

8 MR. KING: Yes. I worked on the --  
9 Abigail approached me, and I -- because we were  
10 getting complaints, and they would call me on my  
11 phone, that the noise was becoming worse. And so  
12 I worked with the condo committee.

13 MR. MELCHER: And what, if anything, did  
14 that accomplish?

15 MR. KING: Well, we made some initial  
16 progress, I believe. Oh, and one of the things  
17 that we did was to do a midnight survey, and my  
18 other people that were with me didn't do it. But  
19 I went into Midway and --

20 MR. MELCHER: Are you referring to  
21 Midtown?

22 MR. KING: Midtown, yes. And I walked up

1 to the dance floor, and I saw where the music was  
2 coming from and the noise. And then I said, "How  
3 do you get to the roof deck?" Well, I had to  
4 walk down the steps and then go back up another  
5 flight of stairs. The deck was wide open, and  
6 the music was booming out there.

7 MR. MELCHER: Do you recall roughly when  
8 that was?

9 MR. KING: Yeah. That was around --  
10 well, in the year 2014.

11 MR. MELCHER: Okay. And what do you  
12 think needs to be done to solve noise problems in  
13 your neighborhood?

14 MR. KING: Get rid of rooftop bars  
15 completely.

16 MR. MELCHER: Okay. And do you have a  
17 belief as to which roof decks in particular are  
18 causing the most problem?

19 MR. KING: Well, Dirty Martini, Midtown.  
20 The bar in the alley that sits at the end of the  
21 alley, they've done some improvements to reduce  
22 their noise somewhat, but all these bars are

1 south of the Palladium, and the noise just seems  
2 to tunnel right up to the building. And the  
3 people on the south side, obviously, have the  
4 biggest problem.

5 MR. MELCHER: No further questions at  
6 this time.

7 CHAIRPERSON MILLER: Cross?

8 MR. KLINE: I have no questions of this  
9 witness.

10 CHAIRPERSON MILLER: Board members?

11 [No audible response.]

12 CHAIRPERSON MILLER: Okay. Thank you  
13 very much.

14 Good evening. Do you swear to tell the  
15 truth, the whole truth, nothing but the truth?

16 MS. NICHOLS: I do.

17 CHAIRPERSON MILLER: Okay. Thank you.

18 MR. MELCHER: Please state your name,  
19 occupation, and address.

20 MS. NICHOLS: I'm Abigail Nichols, a  
21 full-time volunteer. I live at 1325 18th Street  
22 Northwest, Palladium.

1 MR. MELCHER: Okay. And how long have  
2 you lived in the Palladium?

3 MS. NICHOLS: I've lived in the Palladium  
4 since 1987.

5 MR. MELCHER: How long have you lived in  
6 Dupont Circle?

7 MS. NICHOLS: Since 1979.

8 MR. MELCHER: Okay. Can you describe for  
9 me the Palladium?

10 MS. NICHOLS: It is a mixed-use building.  
11 The first two -- we have a commercial garage in  
12 the basement, two floors of offices and  
13 professionals -- dentists, psychiatrists, that  
14 sort of office, and a couple -- one lawyer -- and  
15 then eight floors of apartments.

16 MR. MELCHER: Do you know what kind of  
17 zone the Palladium is located in?

18 MS. NICHOLS: We're in an SP-1 zone.

19 MR. MELCHER: What is an SP-1 zone?

20 MS. NICHOLS: It's a type of zone that's  
21 considered residential, rather than commercial,  
22 per se, because of the -- but it is -- the idea

1 is a buffer between commercial zones and  
2 residential zones to have the offices, as I  
3 understand it.

4 MR. MELCHER: Okay. And where is the  
5 Palladium located in relation to Midtown?

6 MS. NICHOLS: It's north of Midtown,  
7 about half a block away, I guess.

8 MR. MELCHER: Okay. And do you have --  
9 have you ever looked at maps to figure out how  
10 far the Midtown is from the Palladium?

11 MS. NICHOLS: I think it's about 600  
12 feet.

13 MR. MELCHER: Okay.

14 MS. NICHOLS: From the front of the  
15 building, there's no direct line because of the  
16 way 18th goes this way, Connecticut Avenue goes  
17 that way, but the south side of -- I live on the  
18 west side of the building.

19 MR. MELCHER: This is --

20 MS. NICHOLS: Yes.

21 MR. MELCHER: It is attached to our PIF?

22 MS. NICHOLS: Yes.

1 MR. KLINE: Just for the record, I have  
2 two PIFs. So which one are we referring to?

3 MR. MELCHER: I'm referring to the  
4 Citizen Protest.

5 MR. KLINE: Okay.

6 MR. MELCHER: And I'm sorry. I only have  
7 four copies.

8 CHAIRPERSON MILLER: Well, we should have  
9 it. You filed it, right?

10 MR. MELCHER: Okay, great. Yeah.

11 CHAIRPERSON MILLER: Okay. So you're  
12 referring to the Party of Five PIF?

13 MR. MELCHER: Yes. Exhibit No. 8. It's  
14 a map, just one page.

15 CHAIRPERSON MILLER: Are the exhibits --  
16 you're referring to the exhibits, the exhibit  
17 form?

18 MR. MELCHER: Yes. Exhibit No. 8.

19 What is this? What is this exhibit?

20 MS. NICHOLS: This is sort of a schematic  
21 map of the bars with roof decks in relationship  
22 to the Palladium, Jefferson Place Condominiums,

1 and up at the right, just a little bit below  
2 Palladium Condominiums is a development that is  
3 underway. You may know that there were five  
4 large townhouses vacant for a long time. A  
5 project has been approved. Unfortunately, it's  
6 not moving very quickly right now, but more  
7 residents would be moving into our area.

8 MR. MELCHER: Okay. And does this --

9 CHAIRPERSON MILLER: Can I interrupt you  
10 for a second? I'm sorry.

11 MR. MELCHER: Yes.

12 CHAIRPERSON MILLER: Are you referring to  
13 some exhibit in your PIF form or not?

14 MR. MELCHER: I'm referring -- yeah.

15 CHAIRPERSON MILLER: What number?

16 MR. MELCHER: It's Exhibit No. 8 with  
17 respect to --

18 CHAIRPERSON MILLER: Oh, map of roof  
19 decks?

20 MR. MELCHER: Pardon?

21 CHAIRPERSON MILLER: Is that the map of  
22 roof decks?

1 MR. MELCHER: yes.

2 CHAIRPERSON MILLER: Okay. thank you.

3 Sorry.

4 MR. MELCHER: All right. Does this map  
5 appear to be true and correct depiction of the  
6 area where you live?

7 MS. NICHOLS: Yes.

8 MR. KLINE: Even though it leaves off my  
9 office, I'll stipulate to it.

10 [Laughter.]

11 MS. NICHOLS: Do you have a roof deck, a  
12 booming roof deck?

13 MR. MELCHER: Okay. Tell us how the  
14 character of your neighborhood has changed in  
15 recent years, if at all.

16 MS. NICHOLS: Well, I watched retail  
17 gradually change south of N Street over the  
18 years, and then in 2008, offices across from us  
19 were vacated. And, as Jim King mentioned, the  
20 sort of lunch carryout place changed. The  
21 vacancies concerned me because, at that point, we  
22 were getting so much noise from south of the

1 circle.

2 MR. MELCHER: Were there any roof decks  
3 when you --

4 MS. NICHOLS: I mean south of N Street.  
5 I'm sorry.

6 MR. MELCHER: Were there any roof decks  
7 when you first moved into the area?

8 MS. NICHOLS: I wasn't aware of them. I  
9 know that 18th Street Lounge opened 20 years ago  
10 because they're getting publicity right now, but  
11 I don't know when they got a roof deck.

12 MR. MELCHER: Okay. And do you have any  
13 concerns about roof decks?

14 MS. NICHOLS: Oh, yes.

15 MR. MELCHER: Okay. What are those  
16 concerns?

17 MS. NICHOLS: Well, our sleep is  
18 disturbed also. It's quite amazing how the sound  
19 carries, and there's been a lot of discussion  
20 about what you can hear on the street. Some of  
21 the ricocheting is amazing, but I guess your  
22 question is just -- yes. I have slept in my

1 closet because I'm being kept awake. I've slept  
2 in my kitchen, trying to find a quiet place.  
3 That doesn't, luckily, happen very often.

4 MR. MELCHER: And the sound that's been  
5 bothering you, is that music or some other kind  
6 of sound?

7 MS. NICHOLS: Well, the low beats are  
8 extremely disturbing, and they don't have to be  
9 very loud before you really have a hard time.  
10 You can't sleep with it. It just goes through  
11 everything.

12 MR. MELCHER: Okay. Now, you mentioned  
13 an occasion when you slept in your closet. Can  
14 you describe that occasion in a little bit more  
15 detail?

16 MS. NICHOLS: Well, the reason that -- it  
17 was 2002, and so that is kind of a marker I used  
18 to when the situation got really bad.

19 Midtown did not open till 2013, and as I  
20 recall the discussion in the ANC, the ANC was not  
21 expecting as big a roof deck as is located there,  
22 but I don't have any proof of the numbers that

1 were talked about because I was not on the ANC  
2 then.

3 MR. MELCHER: Okay.

4 MS. NICHOLS: I did hear the discussion.

5 MR. MELCHER: Okay. A moment ago, you  
6 said 2002. Did you mean 2012 or 2002?

7 MS. NICHOLS: '12. Thank you. Yeah.  
8 No. 2002. Not yet.

9 MR. MELCHER: Okay.

10 MS. NICHOLS: It was by 2008 that there  
11 was some level of noise that was disturbing, but  
12 I can't link it to anything like sleeping in a  
13 closet or --

14 MR. MELCHER: Did you make any  
15 alterations to your apartment to try to mitigate  
16 the sound?

17 MS. NICHOLS: Yes. First thing we did  
18 was consult top window makers, and I think their  
19 estimate was about \$65,000, not counting the  
20 derricks that would have to come over the roof of  
21 our building. So what we ended up doing was  
22 spending a little over \$4,000 to make a second

1 double set of windows for our bedroom, which is  
2 on a balcony, so we didn't have to come up over  
3 the top.

4 MR. MELCHER: And did the new windows  
5 solve the problem?

6 MS. NICHOLS: The boom-boom comes  
7 through.

8 MR. MELCHER: Okay.

9 MS. NICHOLS: They help with just the  
10 music. The bass notes, when I say boom-boom, I  
11 mean the bass notes.

12 CHAIRPERSON MILLER: Okay.

13 MR. MELCHER: Okay. Can you tell me  
14 anything about noise, what you believe is  
15 specifically coming from Midtown?

16 MS. NICHOLS: In February of -- let's  
17 see. I need to look at the dates because -- yes.  
18 February 1st, 2014, walked the neighborhood after  
19 midnight, and in that alley, we could clearly  
20 hear Rosebar and Midtown separately. Dirty  
21 Martini was quiet. We didn't hear anything from  
22 them. Whether they were open or not, I don't

1 know.

2 MR. MELCHER: Okay. But you could hear  
3 the Midtown? Is that what you're saying?

4 MS. NICHOLS: Yes.

5 MR. MELCHER: Okay. If the owner of the  
6 Midtown would agree to reduce the sound level at  
7 the Midtown, would that resolve any of your  
8 concerns?

9 MS. NICHOLS: Because of our history with  
10 the owner, that would be very difficult.

11 MR. SILVERSTEIN: That would be? Please  
12 say again.

13 MS. NICHOLS: He asked me if he agreed to  
14 lower the note, the music, would I go along with  
15 that. At this point, no.

16 MR. MELCHER: And why would you not agree  
17 to that?

18 MS. NICHOLS: That would be because we  
19 have been working with him. The Board and  
20 everybody has been asking about working with  
21 people. We've been working with Michael Rehman  
22 for -- ever since we realized the Protest.

1           He sent a representative to our first  
2 meeting in November of 2013. When we realized  
3 all the roof decks were coming up for renewal, it  
4 seemed like an opportunity to try to understand  
5 what was going on and see if we could get a  
6 handle on it.

7           I talked to Chip Coburn, and the ANC had  
8 an ABRA meeting there. And we called a meeting,  
9 just to start talking about the general concerns  
10 about --

11           MR. KLINE: Madam Chair, I'm going to  
12 dive in here because if we're going to get into  
13 the substance of settlement discussions, then  
14 they're opening the door, and I'm jumping right  
15 through it. So I'm just giving fair warning that  
16 if that's where we're going -- and that seems to  
17 be where we are at this point, have at it.

18           CHAIRPERSON MILLER: Okay.

19           MR. KLINE: But I don't want to hear the  
20 objection when I start addressing settlement  
21 discussions.

22           CHAIRPERSON MILLER: Okay. I would

1 caution you not to go into settlement.

2 I think where you're going is to say that  
3 because of your experience in trying to work with  
4 the owner since 2013 --

5 MS. NICHOLS: I can give more specifics.

6 MR. MELCHER: Well, I'm going to ask the  
7 witness --

8 MR. KLINE: I withdraw the objection.  
9 Go ahead.

10 MR. MELCHER: -- not to go into  
11 specifics.

12 CHAIRPERSON MILLER: What we don't want  
13 to hear are settlement negotiations.

14 MS. NICHOLS: Right.

15 CHAIRPERSON MILLER: Okay?

16 MS. NICHOLS: Right.

17 CHAIRPERSON MILLER: That's all. Okay.

18 MR. KLINE: But just so I'm clear, if  
19 we're talking about efforts to work together,  
20 that cuts both ways, and it would be extremely  
21 unfair if this witness was allowed to testify  
22 with respect to that and this Applicant was not

1 allowed to either cross or raise issues with  
2 respect to the failure of the parties to come  
3 together.

4 CHAIRPERSON MILLER: Why wouldn't you be  
5 able to cross?

6 MR. KLINE: I'm being vague purposely  
7 because I'm not sure we want to go there.

8 MR. MELCHER: Well, I don't have a  
9 follow-up question on that particular issue, so  
10 we don't necessarily need to go there.

11 CHAIRPERSON MILLER: Okay. That solves  
12 that.

13 MR. MELCHER: Are you aware of any  
14 settlement agreements that had been violated by  
15 Midtown?

16 MS. NICHOLS: Yes. I believe that the  
17 settlement agreements for both Midtown and Dirty  
18 Martini have been violated.

19 MR. KLINE: Objection. The question was  
20 about Midtown, appropriately, as it should be.

21 MR. MELCHER: Okay. What --

22 CHAIRPERSON MILLER: She's already

1 answered the question, so I'm not going to rule  
2 it out of order at this point. Okay.

3 MR. MELCHER: Okay.

4 CHAIRPERSON MILLER: Just try to answer  
5 the question that's asked.

6 MR. MELCHER: What violations do you  
7 believe Midtown has made of its settlement  
8 agreements?

9 MS. NICHOLS: There were -- I was not  
10 party to them, but Sarah Peck did work a lot with  
11 Mr. Rehman about the improvements that were to  
12 occur and were reported earlier.

13 MR. MELCHER: Okay. I'm not asking about  
14 that. I'm just asking -- I'm going to go back.  
15 Do you believe that Midtown violated -- has  
16 violated any of its settlement agreements?

17 MS. NICHOLS: Yes and no because the  
18 settlement agreements include these things about  
19 working together when somebody is out, and how  
20 many times do you have to say there's a problem,  
21 and it goes on and on.

22 MR. MELCHER: Okay. Did any of the

1 settlement agreements concern pub crawls?

2 MS. NICHOLS: Yes.

3 MR. MELCHER: Okay.

4 CHAIRPERSON MILLER: I'm sorry. Could  
5 you repeat that? I didn't hear it.

6 MR. MELCHER: Did any of the settlement  
7 agreements concern --

8 MS. NICHOLS: I was thinking just of the  
9 roof deck part of the settlement agreement, but  
10 --

11 MR. SILVERSTEIN: No, no, no. Let's back  
12 up. That wasn't the question.

13 CHAIRPERSON MILLER: What was the  
14 question?

15 MR. SILVERSTEIN: Repeat your question.

16 MR. MELCHER: Okay.

17 CHAIRPERSON MILLER: Yeah.

18 MR. MELCHER: I'm asking, do any of the  
19 settlement agreements concern pub crawls?

20 MS. NICHOLS: Yes. The Midtown  
21 settlement agreement prohibits participation in  
22 pub crawls.

1 MR. SILVERSTEIN: Please speak into the  
2 mic, so that we can see you, so that I can read  
3 your lips.

4 MS. NICHOLS: Right. The Midtown  
5 settlement agreement prohibits pub crawls, and in  
6 spring of 2014, I became aware that Midtown was  
7 advertising participation in a pub crawl. There  
8 is currently an advertising for a pub crawl which  
9 uses the Midtown address as the pub crawl  
10 headquarters and does not list who participates.

11 When I called ABRA to find out who was  
12 participating in the pub crawl, I was told there  
13 is no license for this pub crawl at all, so I  
14 can't tell you who's participating.

15 MR. MELCHER: Are you aware of any other  
16 violations of law by Midtown?

17 MR. KLINE: Objection to the  
18 characterization of "other violations of law." I  
19 don't think we've established any violations of  
20 law at this point.

21 CHAIRPERSON MILLER: If any?

22 MR. MELCHER: Midtown is bound by its

1 settlement agreement.

2 [Fire alarms sounds in hearing room.]

3 MR. MELCHER: A violation to settlement  
4 agreement is a violation to its license. Midtown  
5 is bound by its settlement agreement. A  
6 violation to settlement agreement is a violation  
7 --

8 CHAIRPERSON MILLER: Do you mean  
9 violation like the Board has found that they  
10 violated, or do you mean --

11 MR. MELCHER: No. I'm asking about her  
12 opinion, so -- I'm not saying it's adjudicated.

13 MR. KLINE: I'll withdraw it. I'll  
14 withdraw it.

15 CHAIRPERSON MILLER: Okay.

16 MS. NICHOLS: Well, we heard one of the  
17 sound engineers talking about 200 people on the  
18 roof deck. The Midtown, as far as I know, is  
19 licensed for 250 total occupancy, and yet they  
20 advertise occupancy of 760, without counting the  
21 roof deck. This could -- the fire department or  
22 whoever lets this building occupancy does say

1 800, but the difference for ABRA is they would be  
2 paying you \$3,500 in fees rather than \$2,500 in  
3 fees.

4 MR. MELCHER: Okay. In addition to  
5 testifying in your individual capacity, are you  
6 also here in your capacity as an ANC  
7 Commissioner?

8 MS. NICHOLS: Yes. It was a joint -- it  
9 was a joint protest. The ANC protested at the  
10 request of residents in November of 2013, but  
11 there are two parts of what I'd like to say to  
12 the Board. One part --

13 CHAIRPERSON MILLER: Wait. I don't --

14 MR. MELCHER: Yeah.

15 CHAIRPERSON MILLER: You need to respond  
16 to his questions, so --

17 MR. MELCHER: Okay. Yep.

18 MS. NICHOLS: Yes. I am representing the  
19 ANC.

20 MR. MELCHER: Okay. Is there ag that you  
21 would like to say on behalf of the ANC here  
22 tonight?

1           MR. KLINE:  Objection.  ANCs speak as a  
2 body through resolutions.  They are authorized to  
3 do so in writing to the ABC Board under the ABC  
4 statute.

5           This witness cannot make representations  
6 on behalf of the Advisory Neighborhood Commission  
7 because she would in effect by binding the ANC to  
8 a position, and she cannot do so under the law.  
9 She's a single-member district commissioner, and  
10 by law, what she can do is participate in ANC  
11 meetings, which will then vet on resolutions that  
12 are made.

13           MR. MELCHER:  Okay.  Let me just --

14           CHAIRPERSON MILLER:  What is the  
15 question?

16           MR. MELCHER:  Let me strike the question  
17 and try it differently.

18           Has or will the ANC submit written  
19 comments in this proceeding?

20           MS. NICHOLS:  Yes.  And I handed a copy  
21 of the resolution that the ANC passed last  
22 Wednesday night to Mr. Kline when he appeared at

1 the meeting for a different reason. It always  
2 takes some time for a resolution of the ANC to be  
3 finalized and sent. So the version that you have  
4 in your packet is what was passed, but it is not  
5 on stationery. I'm not sure what exhibit number.  
6 It's in the ANC PIF and exhibit list. Let's see.  
7 I can tell you.

8 [Fire alarm sounded in hearing room.]

9 MS. NICHOLS: It's like -- it's either 6  
10 -- what is it?

11 MR. MELCHER: I believe it's Exhibit No.  
12 8 for --

13 MS. NICHOLS: Yes.

14 MR. MELCHER: -- the ANC's PIF.

15 MS. NICHOLS: Yes, 8. And I agree  
16 completely with what Mr. Kline said, but I am not  
17 doing that in this -- with respect to this  
18 letter.

19 CHAIRPERSON MILLER: Exhibit 8.

20 MR. MELCHER: Okay. So it's your  
21 understanding that the letter has or will be  
22 signed and will soon be submitted to the Board,

1 correct?

2 MS. NICHOLS: It has been passed, so it  
3 must -- it has to be signed.

4 MR. MELCHER: So it's just in process?

5 MS. NICHOLS: Yes.

6 MR. MELCHER: Okay.

7 MS. NICHOLS: And --

8 MR. MELCHER: Well, what is the general  
9 nature of the concerns stated in that letter?

10 MR. KLINE: Objection. The letter, if it  
11 has not been filed, is untimely because under  
12 D.C. Code 25-605, I believe it needed to be  
13 submitted at least 7 days in advance of the  
14 hearing.

15 And, in addition, if the Board does not  
16 rule it out of order on that basis, I will have  
17 voir dire of this witness in terms of how that  
18 letter came to be created and what notice may or  
19 may not have been given to the Applicant.

20 CHAIRPERSON MILLER: Well, first of all,  
21 I want to know what letter we're talking about  
22 because I have a letter in the exhibit that is

1 entitled --

2 MR. KLINE: 609.

3 CHAIRPERSON MILLER: -- that is entitled  
4 "Draft Letter."

5 MS. NICHOLS: yes.

6 CHAIRPERSON MILLER: Is that it?

7 MS. NICHOLS: Yes. At the time I sent it  
8 to you -- because the PIF and exhibits were due  
9 before the meeting. Well -- and I suppose it  
10 still said draft, but it has been edited. What  
11 you have -- unless you've got yours -- I mean,  
12 there was --

13 CHAIRPERSON MILLER: First of all, I just  
14 want to make sure we're looking at the same  
15 document.

16 MS. NICHOLS: Yeah.

17 CHAIRPERSON MILLER: So we have a draft  
18 letter to be considered, an October 14th, 2015,  
19 ANC-2B's regular monthly meeting.

20 MS. NICHOLS: Yes.

21 CHAIRPERSON MILLER: And is there a --  
22 that's what I was wondering. Is there an

1 official resolution that --

2 MS. NICHOLS: The resolution -- I mean,  
3 the meeting occurred. The vote was taken. They  
4 supported a resolution to send that to you. It  
5 was passed readily. I don't remember if anybody  
6 abstained or voted against it, but it was pretty  
7 much strongly supported.

8 CHAIRPERSON MILLER: Okay. I don't know  
9 that it's in this record. Are you saying it was  
10 submitted to the agency? But you didn't submit  
11 it as an exhibit.

12 MS. NICHOLS: I did.

13 CHAIRPERSON MILLER: The real solution?

14 MS. NICHOLS: No. I haven't been able to  
15 because it hasn't come out in final.

16 CHAIRPERSON MILLER: You don't have a  
17 resolution.

18 MS. NICHOLS: I don't have the final.

19 CHAIRPERSON MILLER: Okay. So there is  
20 no ANC final resolution in the record; is that  
21 right?

22 MS. NICHOLS: I guess if you're saying it

1 has to be in paper, I can't tell you that that's  
2 what happened. Yes. We did vote. It did pass.

3 CHAIRPERSON MILLER: I have a question.  
4 I was going to wait for our turn, but since we're  
5 on this issue, attached to the investigator's  
6 report is -- I just want to ask about your  
7 procedures -- a letter, November 25th -- oh, this  
8 is 2013, addressed to the Chair. But it says  
9 there was a vote of 3-zero to 3?

10 MS. NICHOLS: That was the protest  
11 probably.

12 CHAIRPERSON MILLER: Yeah.

13 MS. NICHOLS: In the investigator's --

14 CHAIRPERSON MILLER: It goes way back  
15 then.

16 MS. NICHOLS: Yeah.

17 CHAIRPERSON MILLER: Oh, my goodness.

18 MS. NICHOLS: This has been going --

19 CHAIRPERSON MILLER: It goes way back to  
20 November. So, okay, but this was my question  
21 about the protest, even though it was accepted  
22 and everything. It says there are nine

1 commissioners. How is it that three can be  
2 sufficient for a protest? A third of the -- I'm  
3 just curious.

4 MS. NICHOLS: Mr. Silverstein could  
5 probably more quickly tell you what our quorum is  
6 than I can. I don't know.

7 CHAIRPERSON MILLER: Okay. We're not  
8 going to do -- we can't go -- we can't cross that  
9 way.

10 So if you're saying if it's a majority of  
11 the quorum that's present at that night.

12 MS. NICHOLS: Yes.

13 CHAIRPERSON MILLER: Okay. I think --

14 MR. ALBERTI: As long as they have a  
15 quorum and the majority of the people present are  
16 voting --

17 CHAIRPERSON MILLER: That's the rule?  
18 Okay.

19 MR. ALBERTI: Yeah. Yeah.

20 CHAIRPERSON MILLER: Okay. So, next. So  
21 the only issue here is -- okay. So not to get  
22 too bogged down, we don't have a final

1 resolution. Okay.

2 So I don't -- Mr. Kline, I think there's  
3 a difference between --

4 MR. KLINE: Madam Chair, if I may --

5 CHAIRPERSON MILLER: -- giving great  
6 weight --

7 [Fire alarm sounds in hearing room.]

8 MR. KLINE: If I may? If I may? You're  
9 absolutely correct, and I missed this. If the  
10 ANC voted 3 to zero to 3, their resolution did  
11 not pass. And I, at this point, would move that  
12 they be dismissed as a Protestant.

13 CHAIRPERSON MILLER: I think we'd have to  
14 look into that issue because it may depend on the  
15 bylaws. I thought it was a little strange  
16 myself.

17 MR. ALBERTI: It doesn't. The bylaws --  
18 I mean, it's Robert's Rules of Order. If it's a  
19 tie vote, the resolution doesn't pass.

20 CHAIRPERSON MILLER: It wasn't a tie  
21 vote.

22 MR. ALBERTI: It was --

1           CHAIRPERSON MILLER: It was three, three  
2 out of nine.

3           MR. KLINE: It was 3 to zero to 3.

4           MR. ALBERTI: Oh, no, no. Three  
5 abstaining.

6           MR. KLINE: Three abstentions. You could  
7 those --

8           MR. ALBERTI: No. You count the people  
9 who were voting. It's 3 to zero.

10          MR. KLINE: Under Robert's Rules, you do  
11 not. I beg to differ with you because I've had  
12 that issue.

13          MR. ALBERTI: All right. Well, we'll  
14 have to look into that.

15          CHAIRPERSON MILLER: We'll have to look  
16 into that. In any event, this is a joint  
17 protest, and we're hearing your testimony as a  
18 witness, in any event, related to the Part of  
19 Five.

20                 But I think there's also a question,  
21 before we end this. I don't know if Mr. Kline or  
22 anybody else wants to address it, whether or not

1 -- because there's not a resolution before us  
2 whether -- we don't need to give great weight to  
3 the witness, as far as I understand. We give  
4 great weight to the resolution, and we don't  
5 really have that before us right now.

6 MR. KLINE: Right. And there's no letter  
7 under -- there's no timely letter under 25-609.

8 CHAIRPERSON MILLER: All right. So the  
9 Board will take that issue under advisement.

10 MR. MELCHER: Okay. I would just ask  
11 that the Board consider that Mr. Kline has had  
12 notice of the content of the letter because the  
13 basic content of the letter was identified in  
14 exhibit to the PIF, which was distributed to  
15 everyone a week ago.

16 CHAIRPERSON MILLER: Yeah, but you get  
17 that a week ahead of time. I don't know that he  
18 would have had to file an objection at this  
19 point.

20 MR. KLINE: Madam Chair --

21 CHAIRPERSON MILLER: But I would also --

22 MR. MELCHER: I'm not saying he needed to

1 file an objection. I'm just saying he knows  
2 what's in the letter. If there's something in it  
3 that he wants to respond to, he's had the chance  
4 to put on whatever witnesses he wanted to, so --

5 MR. KLINE: But, Madam Chair, the point  
6 is we're now addressing this exhibit, which is  
7 the first time I've addressed it, and under  
8 25-609, it's not timely, and that's that. I  
9 mean, the fact that I know about it, Mr. Melcher  
10 could know about a lawsuit that was filed --

11 CHAIRPERSON MILLER: Right.

12 MR. KLINE: -- and if it's not timely  
13 filed under the statute of limitations, it's  
14 time-barred. And this is jurisdictional. This  
15 goes to their obligations to timely submit a  
16 letter at least 7 days before the hearing.

17 MR. MELCHER: I'll defer to the Board's  
18 analysis, that legal question.

19 MS. NICHOLS: And part of it is this has  
20 nothing to do with the Protest Hearing on noise.  
21 This is -- this was meant to be encouragement to  
22 you all as you do your full review. We are not

1 saying anything about the investigative history  
2 in this letter or even in the letter that the  
3 Dupont Circle Citizens Association submitted.  
4 It's just -- it's to tell you, as you go about  
5 your total review, that people are really  
6 interested in this establishment.

7 CHAIRPERSON MILLER: Okay.

8 MR. KLINE: Madam Chair, it can't be  
9 back-doored. It's either a timely letter --

10 CHAIRPERSON MILLER: Okay. So I really  
11 think that this is -- I hear you. I agree that  
12 it may be untimely, and then the Board will just  
13 deal with that after the hearing when we're  
14 considering the record.

15 You're going to move that it be stricken  
16 or whatever? I don't know, but we'll --

17 MR. KLINE: Well, yeah. We'll be -- we  
18 move that it be stricken.

19 CHAIRPERSON MILLER: When we get to that  
20 point.

21 MR. KLINE: I mean, there's not even a  
22 signed letter in the record at this point.

1 There's a draft with X's and no signature.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: I don't know how we deal with  
4 the fact, well, there might be a letter coming  
5 from the ANC. I'm not really sure how the  
6 Applicant is supposed to respond to that.

7 MS. NICHOLS: It shouldn't make any  
8 difference. If it never came, the Board still  
9 has the responsibility to do the review.

10 CHAIRPERSON MILLER: Okay. Well, when we  
11 get to the exhibits, we'll address that  
12 specifically, so --

13 MR. MELCHER: I'm not going to move for  
14 that draft letter to be moved into evidence.

15 CHAIRPERSON MILLER: Okay. So where are  
16 we in this testimony? Anything else? Any other  
17 questions?

18 MR. MELCHER: Ms. Nichols, is there  
19 anything else you wanted to say about the  
20 Midtown?

21 MS. NICHOLS: I mentioned the occupancy,  
22 the pub crawls, and --

1 MR. MELCHER: Okay.

2 MS. NICHOLS: Oh, you're done?

3 MR. MELCHER: That's it. We're done.

4 MS. NICHOLS: Okay.

5 CHAIRPERSON MILLER: Okay. Excuse me.  
6 We're not done with questions.

7 MR. MELCHER: Oh, I'm sorry.

8 CHAIRPERSON MILLER: We haven't had  
9 cross.

10 MR. MELCHER: I apologize. Get things  
11 out of order. I apologize. It's getting late.

12 MR. KLINE: I don't have any questions  
13 for the witness.

14 CHAIRPERSON MILLER: Okay. Board  
15 questions?

16 Yeah, Mr. Alberti.

17 MR. ALBERTI: Ms. Nichols -- and I'm sure  
18 this is going to be objected to. Ms. Nichols,  
19 you said -- you testified that recently the ANC  
20 passed a resolution, correct?

21 MS. NICHOLS: Week ago tonight.

22 MR. ALBERTI: So I would assume that any

1 concerns expressed in that resolution would have  
2 been held by the majority of the ANC; is that  
3 correct?

4 MR. KLINE: I'll object. I will object  
5 for the record as this is completely improper.  
6 The statute provides how the ANC communicates its  
7 position to the ANC Board, and an effort to get  
8 around that is just objectionable.

9 CHAIRPERSON MILLER: I think so too.

10 MR. ALBERTI: We're asking a  
11 representative who was at the meeting to tell us  
12 what she understands are the ANC's concerns.  
13 That's all I'm asking.

14 MR. KLINE: And I will object on the  
15 grounds of relevance because the only way that is  
16 relevant is if it's communicated to the ABC Board  
17 in accordance with the statute.

18 MR. ALBERTI: Okay. I'll ask it  
19 differently.

20 Ms. Nichols, as an SMD representative,  
21 what are your concerns of late of this  
22 establishment?

1           MR. KLINE:  Objection.  Ms. Nichols' role  
2 as an ANC single-member-district commissioner is  
3 to show up at meetings and vote in matters that  
4 are before the Commission.  She has no --

5           MR. ALBERTI:  She --

6           MR. KLINE:  She has no separate authority  
7 as a single-member-district commissioner.

8           MR. ALBERTI:  I cannot give her great  
9 weight as an ANC opinion in what she says, but I  
10 can take her testimony as a community member.

11          MR. KLINE:  As an individual, not as a --

12          MR. ALBERTI:  As an individual, I  
13 understand.  I will take it as an individual, but  
14 not as a representative of the ANC.

15          So, Ms. Nichols --

16          MS. NICHOLS:  As a --

17          MR. ALBERTI:  -- what -- as of late, what  
18 have been your concerns then?

19          MR. KLINE:  I will renew my objection to  
20 this effort to get around the statute, and it's  
21 objectionable.

22          MR. ALBERTI:  It's a matter of how I

1 treat the -- it's a matter of how I treat it.  
2 So, if in the order, it's not treated in an  
3 objectionable way, then it's fine, and I will  
4 treat it as her opinion, noting that she is a  
5 commissioner of the ANC, which enters into, I  
6 think, the weight I give of her knowledge of the  
7 community.

8 But, as an individual, I can ask her  
9 opinion.

10 MR. KLINE: Mr. Alberti, are you  
11 submitting that someone that wins an ANC election  
12 necessarily has superior knowledge of the  
13 community, with all due respect to commissioners  
14 who have faithfully served?

15 CHAIRPERSON MILLER: Okay. So -- all  
16 right. Let me just step in here and say I  
17 understood.

18 MR. ALBERTI: Yes. I think that's a  
19 reasonable -- I think that that's a reasonable  
20 assumption that the ANC commissioner has  
21 knowledge of the community.

22 MR. KLINE: I would ask for a ruling from

1 the chair.

2 MR. SILVERSTEIN: Gentlemen, I would ask  
3 that you allow the Chair to run the meeting, both  
4 of you.

5 CHAIRPERSON MILLER: Thank you.

6 MR. KLINE: Thank you.

7 CHAIRPERSON MILLER: All right. Let's  
8 just say that we have recognized that Ms. Nichols  
9 is a single-member-district commissioner, and I  
10 think you don't need to go any further with  
11 respect to what her knowledge of the community is  
12 or what. That's what she is. If you want to ask  
13 her a question, ask her a question.

14 MR. ALBERTI: So what is your opinion of  
15 --

16 MS. NICHOLS: The information on which I  
17 base my opinion is the investigative history,  
18 newspaper stories, the police record that -- and  
19 the investigator brought it up. It came up  
20 early, that there are some operational problems  
21 at this business, and I'm not trying them now  
22 because -- I'm not trying them on those concerns.

1           You all do this week in and week out with  
2 fact-finding hearings, not about this, but in  
3 general. But then when you come to the review at  
4 renewal, you look again at what is the record of  
5 this business as part of renewal, and the ANC did  
6 not make any -- didn't make any recommendations,  
7 but just -- and the earlier letter from the  
8 Dupont Circle Citizens Association in March is  
9 based on that same public record.

10           MR. ALBERTI: Are there any specific  
11 concerns that you have?

12           MS. NICHOLS: Underage drinking,  
13 violence, sexual assault, policemen being  
14 injured, which I --

15           MR. ALBERTI: Is it your sense -- is it  
16 your sense that that is shared by other  
17 commissioners?

18           MR. KLINE: Objection.

19           Mr. Alberti, with all due respect, I  
20 would ask for a ruling from the chair.

21           MR. ALBERTI: That's hearsay.

22           CHAIRPERSON MILLER: You know, the way we

1 hear from other commissioners is through either  
2 they're coming down to testify themselves or  
3 their ANC resolutions, so --

4 MS. NICHOLS: I can tell some things that  
5 have happened in the ANC.

6 MR. KLINE: There's an objection pending,  
7 Madam Chair.

8 CHAIRPERSON MILLER: I know. I agree  
9 with you. I think that we should stop pursuing  
10 this ANC stuff because we don't have a valid  
11 resolution before us.

12 MR. SHORT: I just have one question,  
13 Madam Chair.

14 CHAIRPERSON MILLER: Yes.

15 MR. SHORT: It doesn't pertain to the  
16 ANC.

17 CHAIRPERSON MILLER: Ms. Nichols -- okay.  
18 She lives in the community. She can testify  
19 about her knowledge.

20 MR. SHORT: I just want to know, there is  
21 the settlement agreement between the ANC and this  
22 establishment, correct?

1 MS. NICHOLS: Yes.

2 MR. SHORT: And that agreement does not  
3 allow to participate in pub crawls; is that  
4 correct?

5 MS. NICHOLS: Yes. Yes.

6 MR. SHORT: Have they violated that?

7 MS. NICHOLS: As best I know, they have.

8 MR. SHORT: Best you know. We need  
9 facts.

10 MS. NICHOLS: Well --

11 MR. SHORT: Have they or haven't they?

12 MS. NICHOLS: In April, he was  
13 advertising a pub crawl. He told me he was going  
14 to pull it. I see right now a pub crawl  
15 advertised. I don't track pub crawls all the  
16 time. I mean --

17 MR. SHORT: I understand. Well, I will  
18 --

19 MS. NICHOLS: I mean, it's the sort of  
20 thing that you can find out more about.

21 MR. SHORT: I will --

22 MS. NICHOLS: But I can't.

1 MR. ALBERTI: May I ask additional  
2 questions?

3 CHAIRPERSON MILLER: You can ask her  
4 questions.

5 MR. ALBERTI: Thank you. Okay. I  
6 thought I could.

7 CHAIRPERSON MILLER: But just not about  
8 the ANC.

9 MR. ALBERTI: Thank you. I thought I  
10 could, but thank you.

11 CHAIRPERSON MILLER: Yeah.

12 MR. ALBERTI: Okay. Ms. Nichols, in the  
13 opening statement -- I'm sorry. I forgot your  
14 name, sir.

15 MR. MELCHER: Melcher.

16 MR. ALBERTI: Mr. Melcher mentioned that  
17 it was the position of the Group of Five that the  
18 conditions that the Board has placed on Dirty  
19 Martini aren't working. Do you share that?

20 MS. NICHOLS: Yes.

21 MR. ALBERTI: Okay. So what do you think  
22 the resolution -- what do you think should be --

1 given that knowledge, what do you suggest is the  
2 solution here?

3 MS. NICHOLS: I think the solution with  
4 this operator is no roof deck.

5 CHAIRPERSON MILLER: Could you speak  
6 louder? What did you say?

7 MS. NICHOLS: I believe the solution with  
8 this operator is no amplified music at all on a  
9 roof deck because it appears that it's very  
10 difficult for him to manage his agreements.

11 The Dirty Martini is blasting out, and I  
12 assume that your Board order intended a better  
13 outcome.

14 CHAIRPERSON MILLER: Okay.

15 MR. ALBERTI: So I just want to delve  
16 into that a little bit. Do I understand that  
17 your objection is that like midday, that is  
18 unacceptable? It's unacceptable at any time of  
19 the day to -- your perceived disturbance from  
20 Midtown?

21 MS. NICHOLS: Well, I don't have to  
22 think. There is a Saturday afternoon problem

1 that's developed in the last few years when I  
2 think people might want to take a nap, but it's  
3 not a problem other days of the week, so I don't  
4 have -- I frankly haven't thought about it. I  
5 would not want boom-boom during the day. I have  
6 businesses that have called me about restaurants  
7 making noise. Does that answer your question?

8 MR. ALBERTI: If you had to compromise,  
9 would there be a time after which you would not  
10 want -- I mean, if you couldn't have this, no  
11 rooftop, no entertainment, no noise on the  
12 rooftop at all, is there a compromise position  
13 after some hour that would be acceptable to you?

14 MS. NICHOLS: Well, the ANC has a public  
15 space policy which you could apply here which  
16 would --

17 MR. KLINE: Objection to the ANC.

18 MR. ALBERTI: Okay. So what is your --

19 MR. KLINE: Eleven -- eleven o'clock on  
20 weekdays, midnight on weekends.

21 CHAIRPERSON MILLER: All right. I'm  
22 going to override that objection. We've had that

1 document in the record in other cases, and I  
2 think she can speak to a public document.

3 MR. KLINE: Well, let me put my objection  
4 on the record, please.

5 CHAIRPERSON MILLER: All right.

6 MR. KLINE: ANCs are not legislative  
7 bodies.

8 CHAIRPERSON MILLER: Right.

9 MR. KLINE: They are advisory bodies.  
10 They do not have authority to make policy. They  
11 have authority to make recommendations, with a  
12 couple of exceptions, one of the exceptions being  
13 waivers of the single-sale band. Other than  
14 that, they make recommendations on specific  
15 cases. They do not make policy that's binding on  
16 citizens.

17 MR. ALBERTI: No, but they have opinions.  
18 So, Ms. Nichols --

19 CHAIRPERSON MILLER: Okay.

20 MR. ALBERTI: -- we are well aware of  
21 that, but what's your opinion?

22 CHAIRPERSON MILLER: What's her opinion

1 of what?

2 MS. NICHOLS: My experience working with  
3 this person makes me leery to compromise.

4 MR. ALBERTI: But if you had to?

5 MS. NICHOLS: Well, if I had to, yes. It  
6 would be eleven o'clock on weekdays, midnight on  
7 weekends.

8 MR. ALBERTI: Okay, thank you.

9 MR. KLINE: Both bars, no music, no  
10 amplified music on the third floor of Dirty  
11 Martini and on the roof deck of Midtown.

12 MR. ALBERTI: Thank you.

13 CHAIRPERSON MILLER: Okay. Others?

14 [No audible response.]

15 CHAIRPERSON MILLER: Oh, Ms. Nichols, I'd  
16 like to ask you a few questions. Okay.

17 So you've sat through this hearing, and  
18 you've heard Applicants -- witnesses testify that  
19 they took mitigation measures in May, and so my  
20 question is, did you notice a difference, number  
21 one, between before May and after May, and the  
22 boom-boom sound or any other sounds from Midtown?

1 MS. NICHOLS: No. But I wouldn't  
2 necessarily be sensitive to that.

3 CHAIRPERSON MILLER: Okay. Why not?

4 MS. NICHOLS: Because when the -- unless  
5 I'm going out -- and this was when I was  
6 immobile. I wasn't able to go out.

7 [Fire alarm sounding in hearing room.]

8 MS. NICHOLS: We do a lot of leaving the  
9 building when we hear noise and go find out  
10 what's going on, and I was pretty much immobile  
11 from January to end of July with a hip  
12 replacement, so --

13 CHAIRPERSON MILLER: Okay. Okay, but --

14 MS. NICHOLS: And you can't really tell  
15 in our -- in our apartment where noise is coming  
16 from.

17 CHAIRPERSON MILLER: Well, are you  
18 disturbed by the noise from --

19 MS. NICHOLS: Yes.

20 CHAIRPERSON MILLER: -- Midtown? Were  
21 you disturbed by the noise from Midtown this  
22 year? Since 2014, were you disturbed by the

1 noise from Midtown in your apartment?

2 MS. NICHOLS: I've been disturbed by  
3 noise from that alley. It's hard to tell --

4 CHAIRPERSON MILLER: Who it is.

5 MS. NICHOLS: -- what we're hearing, but  
6 I have -- I mean, I've gone to the alley. Hear  
7 noise, go to the alley.

8 CHAIRPERSON MILLER: Okay. Forget going  
9 to the alley because a lot of times the Board  
10 looks at, you know, you should be able to have  
11 quiet in your residence.

12 Okay. So, in your residence, have you  
13 been disturbed by Midtown?

14 MS. NICHOLS: I can't say that, no. I  
15 have been disturbed. I don't know by whom.

16 CHAIRPERSON MILLER: You've been  
17 disturbed by the noise from bass or amplified  
18 music?

19 MS. NICHOLS: Bass. Bass, particularly.

20 CHAIRPERSON MILLER: Okay. And --

21 MS. NICHOLS: And music at times.

22 CHAIRPERSON MILLER: But you don't know

1 where it came from exactly?

2 MS. NICHOLS: No.

3 CHAIRPERSON MILLER: No.

4 MS. NICHOLS: I can tell that it comes  
5 from that block, but not which bars. I don't  
6 even know who's open.

7 CHAIRPERSON MILLER: Okay. And, in the  
8 past year, have you complained to Midtown about  
9 your concern that the noise may be coming from  
10 their establishment?

11 MS. NICHOLS: I have been on the street  
12 talking to -- complaining to the operators of  
13 Dirty Martini.

14 CHAIRPERSON MILLER: Dirty Martini?

15 MS. NICHOLS: Yes. And others have  
16 worked with Midtown, as he mentioned, working  
17 with Sarah Peck after the Dirty Martini hearing,  
18 and I think Mr. Nelson was --

19 CHAIRPERSON MILLER: Okay. My question  
20 -- what my concern is -- and I didn't really ask  
21 it of the Applicant's witnesses, but they took  
22 these mitigation measures, supposedly. I mean,

1 they did. They took these mitigation measures.  
2 So did they work -- was it a result of working  
3 with you all, you or anybody else you know in  
4 your community that was concerned about noise?

5 MS. NICHOLS: Yes.

6 CHAIRPERSON MILLER: Or they just did it?

7 MS. NICHOLS: Yes. No, no. After --  
8 after the Midtown, after the Dirty Martini  
9 hearing in April, work was done with them, but I  
10 think there's testimony yet to come that can  
11 pinpoint those -- well, we saw the movie that  
12 showed high-levels of decibels after the  
13 mitigation, and someone else is going to testify  
14 of loud noise. I can't testify to that.

15 In other words, that the mitigation  
16 didn't go far enough that the sound noises on  
17 that --

18 CHAIRPERSON MILLER: Okay. So --

19 MS. NICHOLS: -- roof deck are still too  
20 high.

21 CHAIRPERSON MILLER: Okay. So, in your  
22 view, the mitigation measures didn't go far

1 enough, and my last question on that is that --  
2 did you tell them that? Were they willing to  
3 tweak it at that point to make it better, or were  
4 you like, "I'm not going to work with you at all  
5 because I can't trust you," based on what you  
6 were saying, your bad experience?

7 MS. NICHOLS: Well, I was working on a  
8 different problem with the same owner and not  
9 getting very far with that, so, yes, I gave up.

10 CHAIRPERSON MILLER: You gave up, okay.

11 MS. NICHOLS: And contact -- and  
12 complaining to ABRA.

13 CHAIRPERSON MILLER: And also -- I mean,  
14 my understanding -- my impression here is that  
15 the biggest problem is noise, and so when you  
16 throw in things like violence and pub crawls and  
17 sexual assaults and sale to minors, I'm  
18 surprised. I mean, how big a concern is that,  
19 and what do you want the Board to do?

20 MS. NICHOLS: The Board -- the  
21 investigator history, that's the Board's  
22 responsibility. I might have ideas, but that's

1 your responsibility.

2 CHAIRPERSON MILLER: Okay.

3 MS. NICHOLS: The way these other things  
4 go, they form a pattern of disregard. I -- in my  
5 judgment, disregard for the law. There's more I  
6 could tell you if you would allow me, but --

7 CHAIRPERSON MILLER: Well, it's a quarter  
8 of eight, so -- I mean, it's not like we want to  
9 cut you off. I just want to remain, try to get  
10 this as focused as possible as we wind down to  
11 know really what's the problem, what, if anything  
12 --

13 MS. NICHOLS: Some of it is definitely  
14 Dirty Martini coloring what we expect of the same  
15 person in trying to work on Midtown.

16 CHAIRPERSON MILLER: Okay, okay. Thank  
17 you.

18 Okay. Others? Any questions on Board  
19 questions?

20 [No audible response.]

21 CHAIRPERSON MILLER: Okay. Mr. Kline,  
22 why don't we start with you this time. Okay.

1           MR. KLINE: Ms. Nichols, isn't it a fact  
2 that Sarah Peck at one point was working with  
3 Midtown to try to address these issues related to  
4 noise from the roof deck?

5           MS. NICHOLS: Yes.

6           MR. KLINE: And isn't it a fact that she  
7 --

8           CHAIRPERSON MILLER: Did she say "yes" on  
9 the record?

10          MR. KLINE: She said "yes."

11          MS. NICHOLS: Yes. Sorry.

12          CHAIRPERSON MILLER: Thank you.

13          MR. KLINE: Isn't it a fact that she  
14 abruptly --

15          [Fire alarm sounds in hearing room.]

16          MR. KLINE: -- abruptly withdrew from  
17 pursuing those discussions further?

18          MS. NICHOLS: I don't know when you're  
19 talking about.

20          MR. KLINE: Well, did she withdraw from  
21 pursuing discussions further?

22          MS. NICHOLS: There were two different

1 periods when we were -- I thought we weren't  
2 supposed to talk about the negotiation.

3 CHAIRPERSON MILLER: Okay, so --

4 MR. KLINE: I just asked a simple  
5 question. Didn't she withdraw?

6 CHAIRPERSON MILLER: I don't -- we don't  
7 want to know who offered what, when, and rejected  
8 what, when. There is a fine line. If you're  
9 talking about working together to solve a  
10 problem, you --

11 MR. KLINE: That's all I'm talking about.

12 CHAIRPERSON MILLER: Okay. All right.

13 MS. NICHOLS: We were working together,  
14 and when we saw no results, we withdraw.

15 MR. KLINE: You saw no results from  
16 Midtown. Is that your testimony?

17 MS. NICHOLS: No. I'm sorry. No. No.  
18 what happened, I mean, I think that the  
19 description earlier for the period after the --  
20 between April 24th and into May, we were engaged  
21 --

22 MR. SILVERSTEIN: Which year?

1 MS. NICHOLS: 2014 -- '15. Let's see.  
2 This mitigation is 2015.

3 MR. SILVERSTEIN: This year.

4 MS. NICHOLS: Yeah.

5 But it was after we were told that  
6 everything was in place that we then would hear  
7 the same noise levels, not me personally because,  
8 as I said, I wasn't able to monitor things then.

9 MR. KLINE: And you don't dispute that  
10 the changes that were described by Mr. Fiorito  
11 were made, do you?

12 MS. NICHOLS: Oh, no. Although --

13 MR. KLINE: You don't dispute that?

14 MS. NICHOLS: I mean, when I -- I need to  
15 go back and look again because when he described  
16 how much it was surrounded -- you know, I see the  
17 roof deck from Connecticut Avenue when I come up,  
18 and sometimes I'm on a higher floor.

19 MR. KLINE: Ms. Nichols, do you dispute  
20 it or not? That's the question.

21 MS. NICHOLS: I don't -- no, I can't  
22 dispute it.

1 MR. KLINE: Okay.

2 MS. NICHOLS: But that doesn't mean I see  
3 it exactly the same way. It was kind of puzzling  
4 as to how much covered, surrounded is that roof  
5 December with noise-capturing materials. That's  
6 part --

7 MR. KLINE: And you don't have any basis  
8 to dispute that the changes that were made were  
9 effective and have mitigated the noise in the  
10 summer of 2015, do you?

11 MS. NICHOLS: Not of my own knowledge.

12 MR. KLINE: Okay, thank you.

13 MS. NICHOLS: There will be --

14 MR. KLINE: That's my questions.

15 MS. NICHOLS: -- other testimony.

16 MR. KLINE: Thank you. Nothing further.

17 CHAIRPERSON MILLER: All right. Mr.  
18 Melcher?

19 MR. MELCHER: Nothing further.

20 CHAIRPERSON MILLER: Okay. All right.  
21 Thank you, Ms. Nichols.

22 Is this your last witness?

1 MR. MELCHER: Yes.

2 CHAIRPERSON MILLER: Okay. Good evening,  
3 sir. I'm going to swear you in.

4 MR. NELSON: Oh.

5 CHAIRPERSON MILLER: Do you swear to tell  
6 the truth, the whole truth, and nothing but the  
7 truth?

8 MR. NELSON: I do.

9 CHAIRPERSON MILLER: All right, thank  
10 you.

11 MR. MELCHER: Please state your name,  
12 occupation, and address for the record.

13 MR. NELSON: I'm Carl Nelson. I'm a  
14 retired government scientist. I live in the  
15 Palladium Condominium at 1325 18th Street  
16 Northwest.

17 MR. MELCHER: Okay. And that's at Dupont  
18 Circle, correct?

19 MR. NELSON: Yes, it is.

20 MR. MELCHER: How long have you lived at  
21 the Palladium?

22 MR. NELSON: Since 1987.

1           MR. MELCHER: Okay. Describe in general  
2 your concerns about noise coming from clubs in  
3 your neighborhood.

4           MR. NELSON: Well, for the last couple  
5 years or more, I've been regularly disturbed in  
6 my bedroom and apartment by loud, low-frequency  
7 music, usually on Friday, Saturday, and Sunday  
8 nights, coming out of the seven clubs with the  
9 outdoor structures in what's known as Club  
10 Central. Two of those are Midtown and Dirty  
11 Martini, operated by Michael Rehman.

12           We residents have presented a map and  
13 description of this noise, which has already been  
14 admitted.

15           MR. KLINE: Madam Chair, if I may, is the  
16 witness testifying from notes?

17           CHAIRPERSON MILLER: I don't know. I  
18 can't see. But if you have an objection to that  
19 --

20           MR. KLINE: I query that. I mean, we're  
21 here to testify, not read scripts.

22           CHAIRPERSON MILLER: That's right. That

1 often happens when someone is not represented by  
2 counsel, but usually, when someone is represented  
3 by counsel, you do direct questioning.

4 MR. MELCHER: Okay. I am doing direct  
5 questioning. I haven't done one of these before.  
6 I consulted with my clients --

7 CHAIRPERSON MILLER: Okay.

8 MR. MELCHER: -- and they informed me  
9 that it was okay to have some notes while they  
10 were in the witness box because they had done it  
11 every time before.

12 MR. KLINE: Gee, I didn't know that part.  
13 I'll start sending my clients up there with  
14 notes.

15 CHAIRPERSON MILLER: Right. Exactly.

16 MR. MELCHER: I'd also like to point out  
17 that all of my witnesses are relatively elderly,  
18 so --

19 CHAIRPERSON MILLER: Well, what we  
20 usually do is you question, and then if they need  
21 to have their recollection refreshed or --

22 MR. MELCHER: Oh, that's fine. Sure.

1 CHAIRPERSON MILLER: They can look then.  
2 So I think that would be better. Yeah.

3 MR. MELCHER: Okay.

4 MR. ALBERTI: We've allowed people to  
5 read statements into the record, though, at many  
6 hearings.

7 CHAIRPERSON MILLER: We have when they're  
8 not represented by counsel.

9 MR. ALBERTI: But even when they're  
10 represented --

11 MR. MELCHER: What is the legal  
12 representation between being represented by  
13 counsel?

14 CHAIRPERSON MILLER: So you're not going  
15 to ask questions, then. Is this going to be  
16 instead of you're asking questions? Because we  
17 have not done both.

18 MR. SILVERSTEIN: We've done it in the  
19 past. We've never banned.

20 CHAIRPERSON MILLER: Both?

21 MR. SILVERSTEIN: We've never banned it.

22 CHAIRPERSON MILLER: Both? I've never

1 seen both.

2 MR. ALBERTI: I don't see how this biases  
3 the establishment. I mean, it's still testimony,  
4 and it still can be cross-examined.

5 MR. MELCHER: Everything is in  
6 question-and-answer form.

7 CHAIRPERSON MILLER: Okay. I would say  
8 we would --

9 MR. KLINE: We'll script our next case,  
10 Mr. Alberti. It's fine. I know how to write  
11 scripts.

12 MR. ALBERTI: Fine. You might be much  
13 quicker, Mr. Kline.

14 CHAIRPERSON MILLER: I don't think -- do  
15 you have a problem asking the questions?

16 MR. MELCHER: Well, I am asking  
17 questions.

18 CHAIRPERSON MILLER: Okay. Oh, you are  
19 asking the questions.

20 MR. MELCHER: Yeah. I think he misheard  
21 them.

22 CHAIRPERSON MILLER: He should not be

1 reading the answers. No, he should not.

2 MR. MELCHER: Okay.

3 CHAIRPERSON MILLER: Because everybody  
4 else could then -- when somebody like on their  
5 side doesn't remember a date, if they had it all  
6 in front of them, it would be -- you know, there  
7 just would be a program right there.

8 MR. MELCHER: Yeah.

9 CHAIRPERSON MILLER: I don't think that's  
10 -- no. I think he can refresh his recollection  
11 if he needs to.

12 MR. MELCHER: Okay.

13 CHAIRPERSON MILLER: Okay?

14 MR. NELSON: I'm sorry. What are we --

15 MR. MELCHER: I think the witness doesn't  
16 quite understand. Maybe you could just explain  
17 it to the witness.

18 MR. NELSON: Do you want me to make my  
19 statement without counsel?

20 [Fire alarm sounds in the hearing room.]

21 CHAIRPERSON MILLER: Okay. But like  
22 every other witness that was here, you have

1 counsel who will ask you questions relating to  
2 your notes, but we would prefer you answer  
3 spontaneously and not read your notes. But if  
4 you have a problem remembering something, then  
5 we'll put on the record that you're refreshing  
6 your memory by looking at the notes.

7 MR. ALBERTI: So I have a question. Is  
8 Mr. Melcher a lawyer?

9 MR. MELCHER: Yes, I am.

10 MR. ALBERTI: Okay. I just want to make  
11 sure. We keep referring to "his counsel," and  
12 are you counsel to them officially --

13 MR. MELCHER: Yes.

14 MR. ALBERTI: -- or are you just a  
15 representative?

16 CHAIRPERSON MILLER: He is counsel.

17 MR. MELCHER: I am a member of the Bar  
18 and here representing --

19 MR. ALBERTI: Okay, very good. I just  
20 want to make sure that we have this for the  
21 record and make sure it's all straight.

22 CHAIRPERSON MILLER: Mr. Nelson --

1 MR. NELSON: These are my notes. I wrote  
2 them.

3 CHAIRPERSON MILLER: Right, exactly. We  
4 want to see if you can just answer his questions.  
5 If you have a problem with that, let me know. If  
6 there's some kind of -- if you're saying because  
7 of your age or something that you can't answer  
8 the questions directly, let me know if that's a  
9 problem.

10 MR. MELCHER: Okay. So I'm going to ask  
11 the question.

12 CHAIRPERSON MILLER: How old? Mr.  
13 Nelson, how old are you? Well, they're making  
14 age an issue. I need to put it on the record.

15 MR. NELSON: Seventy-seven and  
16 three-quarters.

17 CHAIRPERSON MILLER: Oh, you look  
18 fantastic. Okay.

19 So let's -- can we try the normal way and  
20 see if that works?

21 MR. MELCHER: Okay. So I'm going to ask  
22 you questions and then just try to answer them

1 without looking at your notes. If you need to  
2 refresh your recollection, you can advise us, and  
3 then we can discuss how to proceed. Would that  
4 be okay?

5 MR. NELSON: We'll try.

6 MR. MELCHER: Okay. Did you modify your  
7 apartment in any way to try and prevent noise  
8 coming into your apartment?

9 MR. NELSON: Yes. As Ms. Nichols  
10 explained, we put extra set of windows, laminated  
11 glass in the bedroom for something over \$4,000.

12 MR. MELCHER: Okay. And did those  
13 changes entirely stop the noise?

14 MR. NELSON: No.

15 MR. MELCHER: And what do you still hear  
16 in your apartment?

17 MR. NELSON: The main -- the main problem  
18 with all of what I hear in the apartment is  
19 low-frequency noise in the early hours of the  
20 morning.

21 Now, I noted that one of his witnesses  
22 talked about the high level of traffic noise out

1 there as a background. That does not disturb us.  
2 That's just part of living in the city. We hear  
3 it. This noise comes over top of that and goes  
4 right through it, this low-frequency beat into my  
5 bedroom.

6 MR. MELCHER: Have you ever observed  
7 sound coming from Midtown's roof deck into your  
8 apartment?

9 MR. NELSON: Once.

10 MR. MELCHER: Okay. Could you --

11 MR. NELSON: Only once could I definitely  
12 say that it was from Midtown. On the Memorial  
13 Day, May 25th, I heard this -- my recollection is  
14 it was around 5:30 in the afternoon. I know it  
15 was daylight. I heard the noise. I went out to  
16 find out where it was coming from. I've done  
17 that frequently, investigating where is all this  
18 noise coming from. We're trying to get this  
19 noise stopped, and one of the things we have to  
20 do is find out who's doing it, if we can.

21 On that afternoon, there was only one  
22 business operating. Its music was filling the

1 entire neighborhood with this low-frequency  
2 music, and the only one that was open of the six  
3 that are immediately facing into that block was  
4 Midtown, the only one. And I could hear it well  
5 in the alley. I could hear it well across,  
6 across Connecticut Avenue. I could hear it all  
7 over the neighborhood, and only Midtown was open.

8 I went and examined all the other doors.  
9 They were all locked.

10 MR. MELCHER: Okay. And did this occur  
11 after you had already installed the new changes  
12 to your windows?

13 MR. NELSON: Yes, yes.

14 MR. MELCHER: Okay.

15 MR. NELSON: That's the only one for  
16 Midtown directly.

17 MR. MELCHER: Okay. So you walked around  
18 your neighborhood to determine it was coming from  
19 Midtown, or how did you --

20 MR. NELSON: Well, I could hear the beat.  
21 I had to walk around the neighborhood to find out  
22 where it was.

1 MR. MELCHER: Okay. And --

2 MR. NELSON: And that's a general problem  
3 with these six clubs.

4 MR. MELCHER: Are there any other  
5 occasions when you were able to race the noise  
6 coming into your apartment to the Midtown?

7 MR. NELSON: No.

8 MR. MELCHER: Okay. Why not?

9 MR. NELSON: Because anytime I would go  
10 to investigate and I'd go to where I would be  
11 able to hear Midtown in that alley, it was  
12 dominated by music coming out of Dirty Martini,  
13 loud music over and over, and I've done that  
14 several times. I've done it eight times, I  
15 think. I went over there, and six times, it was  
16 Dirty Martini. This is over a period of several  
17 months, and it was always Dirty Martini, and it  
18 was very loud.

19 Now, sometimes there was Rosebar playing  
20 also, which is just south of Dirty Martini and  
21 Midtown, and yes, that can be loud also. But  
22 there was no mistaking that at least a good

1 portion of what I was hearing in my bedroom was  
2 coming from Dirty Martini.

3 MR. MELCHER: Okay. And on how many  
4 occasions were you able to trace the noise back  
5 to Dirty Martini?

6 MR. NELSON: Six or eight.

7 MR. MELCHER: Okay.

8 MR. NELSON: I think six out of eight  
9 where I made -- since six out of eight, I made  
10 complaint to ABRA through their e-mail system.

11 My records -- my investigations before  
12 that, without complaining about it, just in the  
13 stage when we were still mapping and trying to  
14 find out where it was coming from, at least I  
15 made about 10 times visiting over a period of  
16 about a year in that alley and heard Dirty  
17 Martini playing very loud music.

18 MR. MELCHER: Okay. And did anything  
19 come from our complaints?

20 MR. KLINE: I'm going to -- I've let this  
21 go. I'm going to object to this line of  
22 questioning. We're not here to try Dirty Martini

1 case. This is about Midtown. That's what this  
2 case is about. It's not about Dirty Martini. I  
3 think there's already been a Protest Hearing  
4 about Dirty Martini. So I object to the line of  
5 question. I let it go on for a while, but I  
6 think it's enough at this point.

7 CHAIRPERSON MILLER: Mr. Melcher, do you  
8 want to address it?

9 MR. MELCHER: Yeah. The point is this.  
10 It's clear that residents in this area are having  
11 difficulty determining exactly where the noise is  
12 coming from, but we've heard lots of testimony  
13 indicating that there's a lot of noise coming  
14 from these roof decks, and that's what ABRA's own  
15 investigation testified to.

16 And then the question is, why can't  
17 people trace it to the Midtown? And this witness  
18 is helping us understand that. The Midtown is  
19 located just south of Dirty Martini, and to the  
20 north of that is the Palladium. So this witness'  
21 testimony helps explain why it is that when they  
22 go to trace the sound, they hear the Dirty

1 Martini before everything else.

2 CHAIRPERSON MILLER: Okay. But we're  
3 beyond that. Now you went to what has anything  
4 come of the complaints about -- to ABRA about  
5 Dirty Martini. I think that was the question  
6 that was on table.

7 MR. MELCHER: Okay. And as I indicated  
8 at the very beginning of the hearing, we want to  
9 address what happens with respect to Dirty  
10 Martini when their complaints -- when there are  
11 concerns raised because it's the same Licensee,  
12 and if the Licensee doesn't care about complaints  
13 made with respect to Dirty Martini, then it's the  
14 same owner. What are they going to do with  
15 respect to Midtown? It's relevant for that  
16 reason. It helps us show what is this owner  
17 really going to do. Is this owner really  
18 complying with the law? Is this owner really  
19 going to ensure that there aren't future noise  
20 violations?

21 CHAIRPERSON MILLER: Okay. I don't think  
22 your question really goes to the owner at this

1 point. It goes to what happened to the  
2 complaints, but I don't see a problem with him  
3 just answering that. I'm not sure how much  
4 further you have to go.

5 MR. MELCHER: Okay. What happened with  
6 respect to the complaints?

7 MR. NELSON: The complaints -- I received  
8 an automated response from their system that I  
9 filed the complaints, and recently I noticed that  
10 ABRA had -- I asked ABRA for a list of the  
11 complaints that had been coming from our  
12 building, 1325 18th Street, and I wanted to know  
13 what the determination was on them because, as  
14 far as we're concerned, ABRA is completely  
15 opaque. We know nothing about the internal  
16 operation, how they decide who's violating and  
17 not.

18 So I asked them for a report. I got a  
19 report back. This is Exhibit 7. I think we want  
20 to admit this as Exhibit 7?

21 MR. MELCHER: Okay. I refer the Board's  
22 attention to Exhibit No. 7 to the PIF. It's

1 titled "Alcohol Beverage Regulation  
2 Administration."

3 CHAIRPERSON MILLER: Okay. Which Exhibit  
4 7?

5 MS. NICHOLS: In the ANC -- I mean in the  
6 residents.

7 MR. MELCHER: The residents, yes.

8 CHAIRPERSON MILLER: The Party of Five?

9 MR. MELCHER: Yes.

10 CHAIRPERSON MILLER: Okay. So that's the  
11 --

12 MR. KLINE: I have no objection.

13 CHAIRPERSON MILLER: That's the answer to  
14 what happened to the --

15 MR. MELCHER: Okay.

16 CHAIRPERSON MILLER: Is that right?

17 MR. MELCHER: Pardon?

18 CHAIRPERSON MILLER: This was a result of  
19 the complaints.

20 MR. MELCHER: Yeah. This is the document  
21 that the witness just said that he received from  
22 ABRA.

1 CHAIRPERSON MILLER: Okay.

2 MR. MELCHER: Okay.

3 MR. NELSON: I direct your attention to  
4 the far right column on this form. All 31 were  
5 recorded as no violation.

6 I know that some of these were done on  
7 Sunday nights when there is nobody at ABRA  
8 investigation altogether, and I doubt -- and I  
9 suspect -- I only suspect -- from knowing  
10 something about ABRA's deployment of its  
11 investigation that some of these cases were never  
12 examined.

13 What we have here is a definitive  
14 determination of no violation when in fact  
15 several of these should have been marked  
16 unexamined.

17 So my problem is with ABRA's  
18 investigation. We can't tell from where we are  
19 whether ABRA is investigating or not and why they  
20 have the results they do. We notice that no one  
21 is getting punished for noise violations, in  
22 spite of all the violations that I found

1 specifically on Dirty Martini. No one is getting  
2 punished. That, we think is a breakdown in  
3 ABRA's investigation, which means that we have to  
4 do something to stop, stop that, either get  
5 enforcement, or if in a situation where there's  
6 no enforcement, there should not be an activity  
7 allowed, which would be harmful.

8 So, if they can't get their act together  
9 in enforcement, I think the Board should close  
10 down the operations of the roof decks.

11 MR. MELCHER: Okay. As a citizen, do you  
12 have confidence that if, say, tonight, there is  
13 lots and lots of noise coming from Midtown that  
14 filing a complaint with ABRA will help resolve  
15 that?

16 MR. KLINE: Objection on the grounds of  
17 relevance. We're way off in enforcement. I  
18 don't know what this has to do with  
19 appropriateness.

20 MR. MELCHER: Well, here's what it has to  
21 do.

22 MR. KLINE: Excuse me. May I finish,

1 please?

2 MR. MELCHER: Okay. Sure.

3 MR. KLINE: The appropriateness of the  
4 renewal of this license.

5 MR. MELCHER: The issue is this. In the  
6 opinion of the Group of Five, the only way to  
7 solve this problem is to have a black-letter -- a  
8 clear line that says you're just not going to  
9 have amplified sound on the roof deck. Just  
10 saying that the Licensee needs to tone it down a  
11 little, fix things, or whatever gives them an  
12 opportunity for the next several years to do  
13 basically whatever they want, because if these  
14 citizens pick up the phone and complain, nothing  
15 happens.

16 CHAIRPERSON MILLER: Okay. So that point  
17 has been made. That point has been made.  
18 They've made complaints. They don't feel they've  
19 gotten an adequate response from ABRA.

20 MR. MELCHER: Okay. If that's understood  
21 --

22 CHAIRPERSON MILLER: Okay, we hear that.

1           MR. MELCHER:  -- for the entire Board,  
2 then the point is given.

3           CHAIRPERSON MILLER:  I think everybody  
4 heard that.  I heard that.  Okay.

5           MR. SHORT:  I'm not accepting it, but I  
6 heard it.

7           [Pause.]

8           MR. MELCHER:  Okay, that's it.

9           CHAIRPERSON MILLER:  All right.  Cross?

10          MR. KLINE:  Yes.

11          Mr. Nelson, turning to Exhibit 7, your  
12 big problem, I think, is that investigators a lot  
13 of times don't work on Sundays, right?

14          MR. NELSON:  No, that's not my problem.  
15 My problem is they're lying on what they're  
16 doing.

17          MR. KLINE:  Okay.  But you said a lot of  
18 times, they're not -- the complaints aren't  
19 investigated because investigators are off on  
20 Sundays, correct?

21          MR. NELSON:  Yes.  That's part of the  
22 problem, yes.

1           MR. KLINE:   Okay, all right.  So I direct  
2 your attention to Exhibit 7.  How many complaints  
3 were made about Midtown that are listed on  
4 Exhibit 7?  Look at Exhibit 7.

5           MR. NELSON:   None.  I didn't -- I never  
6 complained about Midtown directly except --

7           MR. KLINE:   No, I'm asking you to look at  
8 --

9           MR. NELSON:   -- on Memorial Day.

10          MR. KLINE:   -- Exhibit 7.  Do you have  
11 Exhibit 7 in front of you?

12          MR. NELSON:   Yes.

13          MR. KLINE:   Okay.  On Exhibit 7, how many  
14 -- isn't there only one complaint about Midtown?  
15 It's the very last one that's listed on this page  
16 and a half of complaints.

17          MR. NELSON:   Yes, but I don't know -- I  
18 don't know how ABRA put in -- what grounds they  
19 use for deciding where the problem is coming from  
20 because often the complaint is there's a lot of  
21 noise.

22          MR. KLINE:   Well, don't a lot of these,

1 say, identify some establishment that I've never  
2 heard of called Club Central?

3 MR. NELSON: Yes.

4 MR. KLINE: Okay. So --

5 MR. NELSON: Four.

6 MR. KLINE: -- is it fair to say that  
7 whoever called up probably called up about a  
8 specific place, be it Dirty Martini or Public  
9 Bar, and if they weren't sure, they just said  
10 Club Central, right?

11 MR. NELSON: Possibly.

12 MR. KLINE: Okay. And, in fact, the only  
13 complaint that's listed on this page and a half  
14 about Midtown is on June 6th of 2015, correct?

15 MR. NELSON: That's not my -- I didn't  
16 write this form.

17 MR. KLINE: I know. But you've  
18 introduced it. Okay.

19 MR. NELSON: Yes. I can read the same  
20 way you can.

21 MR. KLINE: Okay. And the Board can  
22 certainly take judicial notice that that's a

1 Saturday.

2 Nothing further.

3 CHAIRPERSON MILLER: Okay. Board  
4 questions?

5 MR. ALBERTI: Yeah.

6 CHAIRPERSON MILLER: Okay.

7 MR. ALBERTI: So, Mr. Nelson, I'm just  
8 going to -- just FYI because I feel I have to  
9 make you aware of this. You may be aware of it  
10 that ABRA now has --

11 MR. NELSON: I'm sorry. Could you speak  
12 up some?

13 MR. ALBERTI: Just for your information,  
14 ABRA now has investigators working Sunday nights.

15 MR. NELSON: Yes.

16 MR. ALBERTI: Are you aware of that?

17 MR. NELSON: We've had several  
18 discussions with Mr. Moosally about that, and  
19 yes.

20 MR. ALBERTI: Okay. So I just wanted to  
21 make sure --

22 MR. NELSON: He says that -- I'm not

1 aware of it personally, but I'll take his word  
2 for it.

3 MR. ALBERTI: It is happening now.  
4 That's a new change. We hired new investigators,  
5 and so I just want to put that out there. All  
6 right.

7 So let me get back to the topic at hand.  
8 So, Mr. Nelson, I'm just going to ask you the  
9 same question I asked Ms. Nichols. If -- you're  
10 saying you don't want any amplified sound at all  
11 on --

12 MR. NELSON: I don't want any amplified  
13 sound in my bedroom.

14 MR. ALBERTI: Right, right. But you  
15 think the solution is just to ban amplified sound  
16 on these rooftop decks?

17 MR. NELSON: That's one way.

18 MR. ALBERTI: All right. Well, you said  
19 it. That was your testimony.

20 If you had to compromise on that and  
21 someone said to you, "Okay. We will" -- someone  
22 said, "Well, the compromise could be after a

1 certain hour, you would not have -- there would  
2 be no amplified sound," what would those hours  
3 be?

4 MR. NELSON: Ten p.m. Ten p.m.

5 MR. ALBERTI: Ten p.m., every day of the  
6 week?

7 MR. NELSON: Eight days a week.

8 MR. ALBERTI: Seven days a week? Okay.

9 Thank you.

10 I have no further questions. Thank you.

11 CHAIRPERSON MILLER: Anybody else?

12 [No audible response.]

13 CHAIRPERSON MILLER: Okay. Mr. Nelson, I  
14 just want to say you did a great job on answering  
15 the questions, first of all. You didn't need  
16 your notes. You did a great job.

17 My question is, how many times have you  
18 been disturbed by Midtown in the last year?

19 MR. NELSON: I'm sorry. Would you --

20 CHAIRPERSON MILLER: Have you been  
21 disturbed by Midtown in the last year?

22 MR. NELSON: I don't -- once.

1 CHAIRPERSON MILLER: Once. Memorial Day.

2 MR. NELSON: That's the one on --  
3 otherwise, I've been disturbed --

4 CHAIRPERSON MILLER: Right.

5 MR. NELSON: -- in times, but I don't  
6 know who's doing it.

7 CHAIRPERSON MILLER: Right.

8 MR. NELSON: But I have never fingered  
9 Midtown in my investigation, but there's an  
10 uncertainty there because Dirty Martini plays as  
11 a mask for whatever music is coming from Dirty  
12 Martini down -- I mean from Midtown down there.  
13 So I can't -- the answer is I don't know.

14 CHAIRPERSON MILLER: Okay.

15 MR. NELSON: I can't tell.

16 CHAIRPERSON MILLER: One time for sure.

17 MR. NELSON: I'm sorry. What?

18 CHAIRPERSON MILLER: One time for sure?  
19 One time for sure? One time?

20 MR. NELSON: One time for sure, yes.

21 CHAIRPERSON MILLER: Okay. My other  
22 question is, I can appreciate that you would --

1 your expression of discouragement when you get  
2 this report from ABRA that has no violations for  
3 every single establishment that a complaint was  
4 made for. My question is, though, did you follow  
5 up with Mr. Moosally or anybody else about how  
6 that could be, why they call came out --

7 MR. NELSON: Yes. I brought that up with  
8 -- when I asked for this report, I brought that  
9 up as one of the things I was worried about. I  
10 wanted to know what's going on, and we've had a  
11 lot of meetings with Mr. Moosally about this  
12 problem.

13 CHAIRPERSON MILLER: Right.

14 MR. NELSON: Unfortunately, we're not  
15 getting any improvement in enforcement yet.

16 CHAIRPERSON MILLER: Enforcement.

17 MR. NELSON: Now, maybe his new people  
18 will create magic. I'm waiting to see that.

19 In the meantime, operators that are  
20 continually making noise, I want them not to be  
21 in charge of other places which he might do the  
22 same thing, like Midtown.

1 CHAIRPERSON MILLER: Okay, thank you.  
2 Anybody else?

3 Mr. Short.

4 MR. SHORT: Mr. Nichols, thank you for  
5 hanging in there with us. It's eight o'clock.  
6 Been here all day.

7 Mr. Nelson. Forgive me.

8 And I can say to you, yes, as testimony  
9 has gone, we do have new employees now that are  
10 working on Sundays along with some of the  
11 veterans, and you've had a talk with Mr.  
12 Moosally. I will have -- I don't know about the  
13 other Board members, but I'm going to ask the  
14 same questions that haven't been answered  
15 appropriately today, as far as I'm concerned.

16 And I did appreciate you giving the  
17 answer that you could work with this  
18 establishment if we could do something with the  
19 hours that they have music on that day.

20 MR. NELSON: I'm sorry. Would you repeat  
21 the last part of that?

22 MR. SHORT: Is it your testimony that you

1 could work with this business if we could do  
2 something with the hours the music is played on  
3 that rooftop?

4 MR. NELSON: No, I didn't say that. I  
5 said if I had to compromise on the rules, I would  
6 accept ten o'clock.

7 MR. SHORT: Okay. That's -- okay.

8 MR. NELSON: I didn't say anything about  
9 whether I want to compromise.

10 MR. SHORT: I understand. Well, here's  
11 the bottom line about a compromise. They have a  
12 business. You have a right to live in peace and  
13 quiet in your home, so we have to find a way to  
14 bridge that. I think hearing from you and other  
15 community members throughout the city, maybe it's  
16 time that we rethink these rooftops and the hours  
17 that they play their music, unless they can bring  
18 their own selves in. Sometimes to save their  
19 business, they'll bring it down, but if they  
20 can't, then it's up to this Board to help them  
21 get along a little better.

22 MR. NELSON: Thank you.

1           The good news is that there are some  
2 moves afoot right now to change the law, and we  
3 have to change -- and Mr. Moosally tells me that  
4 you all are a part of that discussion.

5           CHAIRPERSON MILLER: All right. But  
6 we're --

7           MR. NELSON: Change the law. Make it  
8 easier --

9           MR. SILVERSTEIN: This is -- it's time --  
10 thank you, sir.

11          MR. NELSON: -- so the music will stop  
12 because ABRA will have a better chance to stop  
13 it.

14          MR. SILVERSTEIN: I think we're off track  
15 a little bit.

16          CHAIRPERSON MILLER: Okay, okay.

17          MR. SHORT: Thank you very much for your  
18 testimony, and thank you for hanging with us all  
19 day.

20                 Thank you, Madam Chair.

21          CHAIRPERSON MILLER: Okay.

22          MR. SHORT: That's all I have.

1           CHAIRPERSON MILLER: Any other Board  
2 questions?

3           MR. RODRIGUEZ: yeah.

4           CHAIRPERSON MILLER: Mr. Rodriguez.

5           MR. RODRIGUEZ: Mr. Nelson, thank you  
6 again for your testimony.

7           Earlier, I picked up an indication that  
8 this establishment has un-interest -- has  
9 interest in mitigating the sound. Now, maybe  
10 they have not done everything they could, and  
11 this is where I think we can pick up, because  
12 they have shown some interest in mitigating the  
13 sound, and it's not satisfactory to you from your  
14 testimony, of course. But, you know, we have an  
15 impasse here, and it's something we need to work  
16 on.

17          MR. NELSON: If you -- if the Board can  
18 find a way to get them to stop the music, I'm for  
19 it.

20          CHAIRPERSON MILLER: Okay. That wasn't  
21 --

22          MR. SILVERSTEIN: I think we're getting

1 off track.

2 CHAIRPERSON MILLER: That wasn't a  
3 question, was it, for him?

4 MR. RODRIGUEZ: I'm done.

5 CHAIRPERSON MILLER: You're done? Okay.  
6 Any other questions?

7 [No audible response.]

8 CHAIRPERSON MILLER: Any questions on  
9 Board question?

10 MR. RODRIGUEZ: Well, my question, Madam  
11 Chair -- correction. I apologize.

12 CHAIRPERSON MILLER: Oh, sorry. You have  
13 a question, okay.

14 MR. RODRIGUEZ: -- is are you continuing  
15 -- would you be willing to continue to work with  
16 the establishment to solve this problem?

17 CHAIRPERSON MILLER: I have a problem  
18 working with this particular operator. I've had  
19 2, 3 years of experience of him getting in my  
20 bedroom.

21 CHAIRPERSON MILLER: Okay.

22 MR. RODRIGUEZ: Okay. That's -- no more

1 questions.

2 [Laughter.]

3 CHAIRPERSON MILLER: Any questions on  
4 Board questions?

5 [No audible response.]

6 CHAIRPERSON MILLER: Thank you very much,  
7 sir. You can be excused.

8 Any other witnesses?

9 MR. MELCHER: There was one witness who  
10 wasn't able to be present. We had submitted a  
11 stipulation with opposing counsel regarding that.  
12 Her name is Sarah Peck, and we have a  
13 declaration, which is attached as Exhibit 12 to  
14 the Group of Five PIF.

15 MR. SILVERSTEIN: Please speak a little  
16 louder, Mr. Melcher.

17 MR. MELCHER: Yes. So, again, I am  
18 referring to Exhibit 12 to the Group of Five's  
19 PIF. It's a declaration by Sarah Peck, who was  
20 unable to be here today to testify due to her  
21 assignments with the U.S. Department of State.  
22 So I'd like to submit that for the record.

1 CHAIRPERSON MILLER: Okay. So it is  
2 time. If you want to submit exhibits, to start  
3 that process.

4 So you want to -- the first one, you want  
5 to submit then is Exhibit 12, Sarah Peck's  
6 declaration, correct?

7 MR. MELCHER: Yes.

8 MR. KLINE: And we have objections to  
9 parts of it.

10 MR. SILVERSTEIN: May I ask you a  
11 question, Mr. Kline?

12 MR. KLINE: I beg your pardon?

13 MR. SILVERSTEIN: May I ask a question?

14 MR. KLINE: Yes, sir.

15 MR. SILVERSTEIN: You do not have an  
16 objection to Ms. Peck's declaration being  
17 submitted, being that she is a federal employee  
18 and has been assigned to Iraq and is unable to be  
19 here, correct?

20 MR. KLINE: Oh, no, sir. We've worked  
21 all that out.

22 MR. SILVERSTEIN: Okay.

1 MR. KLINE: We worked that out before  
2 this hearing.

3 MR. SILVERSTEIN: That is understood.

4 MR. KLINE: But I reserve my objections  
5 with respect to relevance. I had no objection to  
6 her testifying in that manner but reserve with  
7 respect to relevance --

8 MR. SILVERSTEIN: Very well.

9 MR. KLINE: -- because if it's not  
10 relevant, it shouldn't come in.

11 MR. SILVERSTEIN: Thank you. Of course.

12 MR. KLINE: Yes.

13 So we have no objections to paragraphs 1,  
14 2, and 3. We have an objection to paragraph 4 in  
15 that it all relates to Dirty Martini, which is  
16 not this case, and we have objections to requests  
17 for relief about Dirty Martini because Dirty  
18 Martini, to my knowledge, is not before the Board  
19 in this hearing.

20 CHAIRPERSON MILLER: Mm-hmm.

21 MR. ALBERTI: So where is that?

22 MR. KLINE: That's in paragraph 5.

1 CHAIRPERSON MILLER: Paragraph 5.

2 CHAIRPERSON MILLER: Okay. So I would  
3 say -- we started to address the issue of the  
4 relevance of Dirty Martini early on in this  
5 hearing, I think at the very beginning, and I  
6 think what I said -- and I don't feel differently  
7 at this point -- that the relevance of Dirty  
8 Martini is that it has -- it shares the same  
9 owner, and that the behavior of the owner in that  
10 case can be relevant to how the owner may act in  
11 this case with respect to if we were to place  
12 conditions or something that would require the  
13 owner to do something. We might not -- who might  
14 be influenced in confidence in that person  
15 carrying it out by what they did in a similar  
16 establishment. So -- and I think that's what the  
17 argument that has been a large part of the  
18 Protestant's case, so --

19 MR. KLINE: Madam Chair, if I may.  
20 Because we never addressed it. I mean, there was  
21 a memo. I believe it was submitted.

22 CHAIRPERSON MILLER: Okay.

1           MR. KLINE: And we never responded to it,  
2 and for the record, I would just like to have an  
3 opportunity to respond to it.

4           The case that's being relied on is  
5 Panutat, and that involves Shadow Room and  
6 Sanctuary 21. Sanctuary 21 was a new Applicant.  
7 That's not what we're dealing with here. It was  
8 at the same address, in the same building. This  
9 is two separate establishments with two separate  
10 histories.

11           And, in the other case, they were simply  
12 going to double the occupancy at the same  
13 address. We have none of that here. I mean,  
14 that's not what's going on in this case. That  
15 case is completely distinguishable from what  
16 we're talking about here. We're talking about a  
17 renewal, not a new application, and I understand  
18 the Board's concerns in that case, which the  
19 Court of Appeals recognized were legitimate in  
20 terms of looking at the current operation at the  
21 same location by the same operator for a  
22 brand-new license was appropriate, but we would

1 submit that that's not what we have in this case.

2 CHAIRPERSON MILLER: Okay. I don't know  
3 if others want to disagree with me on the Board,  
4 but still, I mean, when in doubt, I think that  
5 there's enough of a nexus, and the rest of --  
6 that there was a lot of testimony on that  
7 subject, anyway. So I would not want to exclude  
8 Sarah Peck's testimony on it.

9 And for whatever it's worth -- I mean, it  
10 may be the weight we give that argument, but I  
11 think that it's relevant how the same owner dealt  
12 with a similar situation.

13 Any other comments?

14 MR. SILVERSTEIN: I would agree with the  
15 Chair.

16 I would agree with Mr. Kline that the two  
17 circumstances are not identical, but that there  
18 are great similarities, and in this case, these  
19 places are approximate. And the question is  
20 dealing with the operations themselves, and do we  
21 learn something from one regarding the other?

22 This is a license renewal. It involves

1 whether it should be renewed based on the record  
2 and starting fresh, and as such, we should  
3 consider this testimony, even though the two  
4 cases are not identical. It's close enough to  
5 Panutat that we should probably err on the side  
6 of caution and allow it in.

7 MR. ALBERTI: I'll just mention --

8 CHAIRPERSON MILLER: Mr. Alberti?

9 MR. ALBERTI: -- I probably should keep  
10 my mouth shut here, but I will just mention the  
11 other point that the Protestants made is that the  
12 remedies for Dirty Martini -- their claim, their  
13 claim is that the remedies for Dirty Martini were  
14 not sufficient.

15 So I think the learning about their  
16 experience with Dirty Martini after our remedy is  
17 helpful to the Board's deliberations.

18 CHAIRPERSON MILLER: Okay. So we're not  
19 going to strike that.

20 And I would also say I don't really think  
21 it's necessary to strike No. 5. I think that  
22 that's just what Sarah Peck is arguing, but it's

1 up to the Board to make a determination that  
2 Dirty Martini is not before us or whatever. But  
3 I don't see that we need to parse out and strike  
4 her testimony here.

5 MR. SHORT: I concur with Madam Chair  
6 because to strike out any part -- that means  
7 nothing if you strike out any part of this  
8 letter. So if we're going to accept it, we have  
9 to accept it in the whole.

10 CHAIRPERSON MILLER: Right. It really  
11 goes to the weight we give it.

12 So No. 12 is admitted. Okay.

13 Other exhibits you want to put in?

14 MR. MELCHER: Okay. Then there was the  
15 video, Exhibit No. 19. That was a short clip  
16 showing Memorial Day 2015.

17 MR. KLINE: No objection.

18 CHAIRPERSON MILLER: Okay, no objection.  
19 Then it's admitted. Okay.

20 MR. MELCHER: Okay. And then there was  
21 Exhibit 8, which is the map.

22 MR. KLINE: No objection.

1                   CHAIRPERSON MILLER: Exhibit 8, map of  
2 roof decks, okay. Admitted.

3                   MR. ALBERTI: And then there was ABRA's  
4 report; is that correct?

5                   CHAIRPERSON MILLER: Well, they may not  
6 want to put everything in.

7                   MR. ALBERTI: I'm just mentioning ABRA's  
8 report.

9                   CHAIRPERSON MILLER: You're coaching them  
10 what exhibit?

11                   MR. ALBERTI: No. I'm just saying these  
12 are the ones that he showed us, and he can tell  
13 us whether he wants it entered or not. I'm not  
14 mentioning things that he hasn't already shown  
15 us.

16                   MR. MELCHER: Yes. Since we used No. 7,  
17 I guess we'll have that admitted as well.

18                   CHAIRPERSON MILLER: Okay. Any  
19 objection?

20                   MR. KLINE: No.

21                   CHAIRPERSON MILLER: Okay, admitted.  
22 That's No. 7.

1 MR. MELCHER: I think that's it. I think  
2 that's all I went over.

3 CHAIRPERSON MILLER: Oh, okay. I see two  
4 -- if I'm looking at the right now. Okay. There  
5 are two video clips reference. One is Exhibit 2,  
6 and one is Exhibit 19.

7 MR. MELCHER: We didn't show No. 2.

8 CHAIRPERSON MILLER: Okay. So it was 19.

9 MR. MELCHER: Yes.

10 CHAIRPERSON MILLER: Okay, all right.

11 Good.

12 Okay. That's it?

13 MR. KLINE: So there's only one clip,  
14 right? We only showed one clip?

15 MR. MELCHER: That's correct.

16 CHAIRPERSON MILLER: Any redirect? I  
17 mean any --

18 MR. KLINE: Rebuttal?

19 CHAIRPERSON MILLER: Sorry. Rebuttal?  
20 Excuse me.

21 MR. KLINE: No. We're going to rest.

22 CHAIRPERSON MILLER: Okay. So everybody

1 has got their exhibits in.

2 Closing then?

3 MR. KLINE: Yes. It's late, so I'll be  
4 very brief.

5 CHAIRPERSON MILLER: Okay.

6 MR. KLINE: Madam Chair, members of the  
7 Board, this obviously is an application for  
8 renewal, and as I stated at the outset, I think  
9 the issues are pretty narrow, and I don't think  
10 that the course of this hearing in any way  
11 broaden those, even though we would claim that it  
12 would be improper to do that, in any event. But  
13 it seems to me the issue is really pretty narrow,  
14 and it relates to noise from -- reputed noise,  
15 alleged noise from the roof deck of this  
16 establishment, Midtown.

17 Now, there's very little in the way of  
18 evidence that there's been a constant disturbance  
19 from Midtown. We understand, respect, and  
20 appreciate the concerns that these residents have  
21 concerning noise in this neighborhood. It's an  
22 issue that, as has been alluded to during the

1 hearing, is being looked at and being addressed  
2 in perhaps a different context, which is probably  
3 a more appropriate context than a renewal  
4 proceeding because, in this case, the only thing  
5 we can do is look at this license application and  
6 this Licensee and the history concerning the  
7 relevant issue with respect to this Licensee.

8           And, in terms of what the Protestants  
9 have put on, there's little evidence that this is  
10 a continuing problem. Mr. Valentine testified  
11 that he wants Midtown to simply comply with the  
12 law. There isn't any evidence that they've been  
13 in violation of the law.

14           There's been much made of Dirty Martini  
15 and the fact that there's common owners, but --  
16 and that's being used as "Well, that's why we  
17 can't pinpoint that there's noise coming from  
18 Midtown." Well, it's equally as likely as there  
19 isn't any noise from Midtown that specifically is  
20 disturbing anybody.

21           Now, we don't -- we don't undermine the  
22 collective noise that might come from all of the

1 establishments there, but we would submit to you  
2 that it's unfair to single out this establishment  
3 simply because the Protestants elected in this  
4 case to go to hearing rather than resolve the  
5 cases they did with the other Applicants and  
6 without evidence that there has been a continuing  
7 problem.

8           To the contrary, there's uncontroverted  
9 evidence that this establishment, even without an  
10 agreement, that this hearing would not proceed,  
11 took steps to mitigate the noise. There was  
12 testimony that they spent as much as \$14,000, and  
13 you have documents of at least \$7,000 that they  
14 spent to address this issue.

15           Mr. Fiorito, who we confess is not a  
16 certified licensed engineer, has years of  
17 experience dealing with noise and sound, has  
18 worked in nightclubs all over Washington, has  
19 also worked in Walt Disney World, with the  
20 nightclubs that they operated down there, dealing  
21 with and managing noise. And he testified that  
22 he went in and looked at the situation and did

1 what he thought was appropriate in terms of  
2 managing the noise, reduced the sound system from  
3 a 30,000-watt sound system to a thousand-watt  
4 sound system. Now, I'm not noise engineer, and  
5 I'm not electrician and no electrical engineer,  
6 but the magnitude of that change is stunning to  
7 me, even without that knowledge, from 30,000 to  
8 1,000.

9           The other thing that he testified to is  
10 that the ability to deliver large amperage of  
11 bass has been removed from Midtown, and indeed,  
12 even some of the Protestant's witnesses have  
13 testified that they've seen an improvement from  
14 what's gone on at Midtown. Even though they  
15 elected to go to hearing -- and here we are --  
16 they concede that there's an improvement.

17           Mr. Valentine testified that a couple of  
18 other bar owners somehow -- and I, for the life  
19 of me, can't really figure out how -- figured out  
20 that he was on the sixth or seventh floor of his  
21 building and knew he was having issues and  
22 approached him. I frankly don't understand how

1 that happened, but I suspect had Mr. Rehman and  
2 his ownership group known that there were issues  
3 there, they would have attempted to work with  
4 him, just as the other establishments did. But  
5 they were never given that opportunity.

6 Mr. Valentine somehow thinks that  
7 operators are going to find him. I guess a  
8 couple did. As I said, I don't really understand  
9 how, but certainly had he reached out, we have  
10 every reason to believe that this establishment  
11 would have been proactive and attempted to  
12 address his issues, just as they did at the  
13 beginning of the summer in May when they made the  
14 changes, even though there was no agreement, even  
15 though they were going to have to go through this  
16 hearing.

17 So we would submit that the Licensee has  
18 met its burden of proving that this premises is  
19 appropriate for continuation of licensure, that  
20 the license should be renewed. Additional  
21 conditions should not be placed. We would argue  
22 that, with a footnote, which is this issue of

1 noise has to be continued to be looked at.

2           It seems to me that what we're hearing  
3 from the main proponents of the Protestants is  
4 "Well, ABRA is not doing their job, so therefore  
5 we have to layer on additional conditions." ow,  
6 I don't believe that's true, but that's what's  
7 being argued, and I suspect maybe we need a  
8 different approach. And I don't think that  
9 Licensees individually should be punished with  
10 conditions simply because citizenry doesn't have  
11 confidence in the enforcement techniques of the  
12 agency.

13           I don't share those concerns. I'm here  
14 every Wednesday. I think your investigators do a  
15 terrific job in terms of enforcement.

16           But, you know, when there are concerns, I  
17 think we need to look at those, and there is, as  
18 we know -- the noise issue is being looked at,  
19 and it's being looked at in an appropriate forum.

20           The only thing that I would add -- and  
21 this is way beyond the scope of this case, but I  
22 feel compelled to add it -- is I think that we

1 all have done a poor job in terms of looking at  
2 this issue proactively rather than from an  
3 enforcement standpoint. The association that I  
4 represent has argued this until we are blue in  
5 the fac. Working proactively with establishments  
6 to address noise issues rather than in the  
7 context of enforcement and in the context of  
8 Protest proceedings, we believe is a much more  
9 fruitful way to go.

10 And I will leave you with that, and we  
11 would ask that you renew the license, without  
12 condition. Thank you.

13 CHAIRPERSON MILLER: Okay. Thank you  
14 very much.

15 MR. MELCHER: Well, I think the argument  
16 that you just heard points out the problem. The  
17 Licensee does not want any conditions whatsoever,  
18 and yet, they put all this testimony saying,  
19 "Hey, we can fix the problem." And they're  
20 basically saying to this Board, "Go ahead, give  
21 us another whatever number of years to proceed  
22 with our operations, and you can just trust us to

1 go ahead and fix it. That has not been an  
2 adequate solution with respect to the Midtown,  
3 and there's evidence in the record on that. Just  
4 saying no conditions whatsoever won't solve the  
5 problem.

6 Now, there's a very, very important issue  
7 of evidence here, which may be getting lost in  
8 the shuffle, and that's this. There's lots of  
9 evidence that these rooftops are making a huge  
10 amount of noise. ABRA's investigator sat here  
11 and told us that. There's no question about it.  
12 All of the witnesses have said that they can hear  
13 noise coming from these rooftops, particularly  
14 low bass music, in their residences.

15 The only question has to do with tracing  
16 that noise back to the Midtown, okay? That  
17 actually occurred on a day when no other rooftops  
18 were operating, and the Board has to ask itself  
19 how often does that happen. How often do you  
20 have sort of the perfect storm where there is  
21 just one rooftop that's operating, so that  
22 everyone can pinpoint the sound and say it's

1 coming from that rooftop?

2 Well, that's what happened in this case.

3 It was an extraordinary event. It gave the  
4 citizens an opportunity to figure out exactly  
5 what was going on. They've been hearing the  
6 noise in their residences. They've been putting  
7 up with this for a long, long time, and then on  
8 Memorial Day, after -- after all of these changes  
9 were made to the sound system -- the residents  
10 were able to trace it to the Midtown. There is  
11 no question about that. The record is clear.

12 The fact that they couldn't do it on lots  
13 of other nights just has to do with the fact that  
14 the Dirty Martini is a very, very loud club, and  
15 it's owned by the exact same owner as the  
16 Midtown. So what's the Board going to do?  
17 Reward owners for having multiple clubs in the  
18 same zone, so that you can't trace the sound to a  
19 particular club and say that's the source of the  
20 problem? That's not appropriate.

21 Each of these licenses has a  
22 responsibility to keep the sound down, and

1 they're not doing that.

2           Now, it's actually comical that opposing  
3 counsel put on a video showing the dance floor  
4 with a sound meter held in hand of one of the  
5 agents for the Licensee showing a 90 decibel-plus  
6 reading on the sound floor when their own sound  
7 engineer, or whatever you want to call him,  
8 earlier in his testimony said that they had set  
9 up the entire sound system, so that the maximum  
10 level you would ever hear at the center of the  
11 dance floor would be 70 decibels. Okay. So  
12 their own evidence shows they're way over that,  
13 and they expect you to believe that this whole  
14 system is under a special lock and key so that  
15 they can't ever crank up the volume. Well, if  
16 that's true, what happened on Memorial Day? If  
17 that's true, why was it so loud in that video?  
18 That was not 60 decibels. That was very, very  
19 loud.

20           Now, I can't say exactly how much it was.  
21 We don't know exactly how reliable that sound  
22 meter reading is, but it's there. Opposing

1 counsel put it in the record, and it completely  
2 undermines everything that their so-called sound  
3 expert had to say.

4           That sound expert admitted that the roof  
5 is not enclosed. You can't enclose -- you can't  
6 keep the sound from going out. There are big  
7 gaps in the wooden framing. The sound goes out  
8 onto the street. It can't be contained, okay?  
9 The soundproofing that they've used is Plexiglas,  
10 okay? This so-called sound engineer, or whatever  
11 he was, he couldn't even tell you whether or not  
12 Plexiglas is good at preventing sound from  
13 escaping from an area, and yet that's their  
14 supposed solution. That's what they did.

15           What does he know? He talked about  
16 soundproofing involving piles of sand. He talked  
17 about soundproofing with spraying on foam and  
18 stuff like that. The only things that matter are  
19 the solutions that are actually implemented, and  
20 the solutions that have been implemented, as  
21 shown by what happened on Memorial Day, haven't  
22 solved the problem.

1           Now, the Board members have through their  
2 own individual comments made a lot of very, very  
3 important observations, and I'm not going to just  
4 repeat those observations that have been made.  
5 But I think, to some extent, the Board does  
6 understand that there's a problem here, and  
7 something needs to be done, okay?

8           The preferred solution for the citizens  
9 is to have a complete stop to this rooftop noise.  
10 We shouldn't have to be here later when there's  
11 another renewal proceeding and go over this again  
12 and again and again. Citizens should not be  
13 required to protest every single renewal,  
14 licensee by licensee, going through all of these  
15 rooftops. There's a problem with rooftops. This  
16 is obvious. You can tap on as much Plexiglas as  
17 you want; it's not going to solve the problem.  
18 The problem is rooftops.

19           Now, what consequence would there be if the  
20 Board were to say, "You're not going to have  
21 amplified music on the rooftop"? Would it be so  
22 draconian? The Midtown advertises itself as a

1 party-plex. It has multiple floors. It doesn't  
2 put them out of business. They have other floors  
3 for their business. All of these rooftop  
4 establishments are associated with other aspects  
5 of their business. If they didn't, what would  
6 they do in wintertime? Okay? What would they do  
7 when it gets cold? They're still operating.  
8 They just operate indoors, and when they're  
9 operating indoors, you don't have that sound  
10 escaping in the same way.

11           So they can continue to have their  
12 businesses, and you can go ahead and clamp down  
13 on the sound, and these residents can go ahead  
14 and can continue, get their sleep, not have this  
15 mental distress, and get on with their lives.

16           These people don't want to have to be  
17 here. These people don't enjoy coming to these  
18 proceedings. They don't enjoy putting up this  
19 fight. They just want their peace and quiet, and  
20 they're very concerned, as you've heard, about  
21 needing to come here and take all this time to  
22 try and be heard. And so far, they haven't had

1 enough success, okay? The way to get that  
2 success is to have a simple, clear-cut rule that  
3 says no amplified music on roof decks.

4 CHAIRPERSON MILLER: Okay. Thank you.  
5 You're finished here, Mr. Kline, right?

6 MR. KLINE: I beg your pardon?

7 CHAIRPERSON MILLER: You didn't save time  
8 for --

9 MR. KLINE: No, I don't think I did.

10 CHAIRPERSON MILLER: Okay, all right  
11 At this point, then I'm going to close  
12 the record. Thank you very much, everyone, and  
13 ask you -- Mr. Melcher, you're probably not  
14 familiar with this question -- do the parties  
15 wish to file proposed findings of fact and  
16 conclusions of law?

17 MR. MELCHER: Yes.

18 CHAIRPERSON MILLER: You do?

19 MR. MELCHER: Yes.

20 CHAIRPERSON MILLER: Wait a second. Let  
21 me finish. -- or waive their right to do so.  
22 You do?

1 MR. MELCHER: We will submit.

2 CHAIRPERSON MILLER: Okay. I do want to  
3 tell you that it is less -- it's not that common  
4 that people do that in these cases, so it's not  
5 an expectation. It is a right, though, if you  
6 want to do it.

7 MR. MELCHER: Yes, we want to do it.

8 CHAIRPERSON MILLER: Okay, fine.

9 MR. KLINE: Then we will exercise our  
10 right as well.

11 [Laughter.]

12 CHAIRPERSON MILLER: Okay. So the  
13 transcript, I believe, will be e-mailed out to  
14 you all when it's available in the next few  
15 weeks, and then you will have 30 days from that,  
16 the date that it's mailed out to you, to e-mail  
17 it out to you, to submit proposed findings of  
18 facts and conclusions of law. And that would be  
19 based on this record of the transcript and the  
20 exhibits that are in this record.

21 Most of our orders, if you want to take  
22 -- you probably looked at them, but they read

1 like that, that there are findings of facts, and  
2 then at the end, there are conclusions of law.  
3 If you have any questions, you can also ask our  
4 legal counsel.

5 MR. MELCHER: Okay, thank you.

6 CHAIRPERSON MILLER: And so we will wait  
7 for those.

8 If you all decide in the meantime that,  
9 on, you really don't want to do it, then the  
10 Board will just -- the Board looks at the record  
11 and does its own deliberation and then sets forth  
12 the findings of facts and conclusions of law.

13 If you decide that you've changed your  
14 mind, you should tell the opposing counsel  
15 because then the opposing counsel most likely  
16 will not do it either, and then the Board will  
17 deliberate sooner.

18 MR. MELCHER: Okay.

19 CHAIRPERSON MILLER: All right. Any  
20 questions on that?

21 MR. MELCHER: No.

22 MR. KLINE: No.

1           CHAIRPERSON MILLER: Okay. Then the only  
2 thing that's left to do is for the Board to take  
3 a vote on deliberating on this case in executive  
4 session.

5           MR. KLINE: And before you do that, I  
6 want to again thank you for staying with me late  
7 on a Wednesday night, as we have gone so many  
8 times before.

9           MR. ALBERTI: It's always a pleasure, Mr.  
10 Kline.

11           [Laughter.]

12           MR. RODRIGUEZ: Forgive our disturbances  
13 on the sound system.

14           MR. SILVERSTEIN: I would like to thank  
15 both parties for moving on very quickly and being  
16 efficient. Many of these hearings go much  
17 longer, and I thought this one was held -- very  
18 focused and very efficient, and I appreciate  
19 that. Thank you.

20           CHAIRPERSON MILLER: Okay. As the  
21 Chairperson of the Alcoholic Beverage Control  
22 Board for the District of Columbia in accordance

1 with D.C. Official Code Section 2-574(b) of the  
2 Open Meetings Act, I move that the ABC Board hold  
3 a closed meeting for the purpose of seeking legal  
4 advice from our counsel on Case No. 13-PRO-00176,  
5 Midtown, pursuant to Section 2-574(b)4 of the  
6 Open Meetings Act, and deliberating upon this  
7 case for the reasons cited in Section 2-574(b)13  
8 of the Open Meetings Act.

9 Is there a second?

10 MR. SHORT: Second.

11 CHAIRPERSON MILLER: Mr. Short has  
12 seconded the motion.

13 I will now take a roll call vote on the  
14 motion before us now that it's been seconded.

15 Mr. Brooks?

16 Is he still here?

17 MR. SILVERSTEIN: He is not here.

18 CHAIRPERSON MILLER: Okay. All right.  
19 Mr. Brooks had to leave.

20 Mr. Alberti?

21 MR. ALBERTI: I agree.

22 CHAIRPERSON MILLER: Mr. Rodriguez?

1 MR. RODRIGUEZ: I agree.

2 CHAIRPERSON MILLER: Ms. Miller agrees.

3 Mr. Silverstein?

4 MR. SILVERSTEIN: I agree.

5 CHAIRPERSON MILLER: Mr. Short?

6 MR. SHORT: I agree.

7 CHAIRPERSON MILLER: Okay. It appears  
8 that the motion has passed by 5-zero-zero vote.  
9 I hereby give notice that the ABC Board will hold  
10 this closed meeting pursuant to Section 2-574(b)  
11 of the Open Meetings Act.

12 And we will then issue a decision within  
13 90 days from the date of the findings of facts  
14 and conclusions of law are filed with the Board.

15 CHAIRPERSON MILLER: Okay.

16 MR. MELCHER: Thank you.

17 MR. KLINE: Thank you.

18 CHAIRPERSON MILLER: You can all go home  
19 now. Thank you very much.

20 MR. KLINE: Thanks.

21 MR. MELCHER: Thank you.

22 MR. SHORT: Thank you very much.

1                   [Whereupon, at 8:40 p.m., the  
2 above-entitled matter concluded.]

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