

ALSO PRESENT:

COUNTEE GILLIAM, ABRA Investigator

WAYNE JOHNSON, Licensee Representative

CLARENCE LEE, ANC 5D

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WITNESS	DIRECT	CROSS	REDIR	RECROSS
Countee Gilliam	29	65		
Wayne Johnson	80	88	116	
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P-R-O-C-E-E-D-I-N-G-S

4:50 p.m.

CHAIRPERSON ANDERSON: We are back on the record. Our next case is a Protest Hearing on Case No. 18-PRO-00053, Kovaks Liquors, License No. 106551.

Would the parties, please, approach and identify themselves for the record, please?

MR. LEE: Clarence Lee, Chairman of ANC-5D.

CHAIRPERSON ANDERSON: Your last name, sir?

MR. LEE: Lee.

CHAIRPERSON ANDERSON: Lee? Good morning, good afternoon, Mr. Lee.

MR. LEE: Good afternoon.

MR. JOHNSON: Wayne E. Johnson representing --

CHAIRPERSON ANDERSON: Who are you, sir? Who are you, sir?

MR. JOHNSON: Wayne E. Johnson representing Kovaks Liquors.

1 CHAIRPERSON ANDERSON: Okay.

2 MEMBER SHORT: Can you put your name
3 in on the witness list, both of you.

4 MR. JOHNSON: Okay.

5 CHAIRPERSON ANDERSON: Mr. Johnson, I
6 see the PIF, although do you have a letter with
7 you saying that you are authorized to --

8 MR. JOHNSON: I submitted a form once
9 before.

10 CHAIRPERSON ANDERSON: Okay. All
11 right.

12 MR. JOHNSON: And if need be, I have
13 an executed Power of Attorney.

14 CHAIRPERSON ANDERSON: All right.

15 MR. JOHNSON: To speak for the
16 organization. To speak for them on their behalf.

17 CHAIRPERSON ANDERSON: All right. I
18 did see in the PIF that I see it had your name on
19 the PIF to say that you are the representative,
20 but is there some reason why the owner couldn't
21 be here today, sir?

22 MR. JOHNSON: Well, he relies on me to

1 handle all the business matters for the business
2 primarily. He is not comfortable. He doesn't
3 speak English that well and he doesn't understand
4 business matters that well. So I take care of
5 the business management business.

6 CHAIRPERSON ANDERSON: And as I said
7 before, I'm not questioning your representation,
8 sir, but this is a serious matter. And so this
9 is a serious matter and we have the community
10 protesting the license. I mean, it doesn't -- at
11 least it doesn't say a whole lot that the owner
12 cannot take the time. I understand well, that
13 English might not be -- sir, I'm just stating
14 what my position is.

15 I don't -- that's fine with me, sir,
16 but I'm just saying we have a Protest Hearing and
17 it's a serious matter. And I think he would --
18 it would be better if the owner showed up to say
19 yes, I take this serious. I am here. Rather
20 than the owner sending -- and I'm not saying that
21 -- and if you were an attorney representing the
22 owner, I would say the same thing, too.

1 I mean, I would say the same thing to
2 say here, we are at the Protest Hearing and to
3 show us that -- at least to show me is that you
4 take this matter seriously, that, yes, you, the
5 owner shows up. But I hear, sir. Yes, sir?

6 MR. JOHNSON: May I add something?

7 CHAIRPERSON ANDERSON: Yes, sir.

8 MR. JOHNSON: The owner takes --

9 MEMBER SILVERSTEIN: Please, speak a
10 little louder.

11 MR. JOHNSON: Okay.

12 MEMBER SILVERSTEIN: And into the
13 microphone.

14 CHAIRPERSON ANDERSON: I think he is
15 having some issues breathing, so I understand.
16 So if you need --

17 MR. JOHNSON: I'll speak up, that's
18 all right.

19 CHAIRPERSON ANDERSON: No, if you need
20 to take a couple of minutes to get yourself --

21 MR. JOHNSON: Oh, no, no, no.

22 CHAIRPERSON ANDERSON: -- together,

1 I'm all right then.

2 MR. JOHNSON: The owner takes the
3 matter very extremely seriously. And I do the
4 bulk of the leg work and everything else for this
5 matter. I met with the ANC people. I tried to
6 negotiate. I've been involved with this process
7 from the beginning. And it's just more
8 comfortable that I'm the one to speak for the
9 organization. I know what the boundaries that we
10 have set to negotiate, that I'm authorized to
11 deal with.

12 He trusts my judgment and I understand
13 what you say, but it is a very small business.
14 It doesn't have many employees. And in the
15 evening hours, he is one of the -- it takes two
16 people to manage the store and he is one of the
17 two people. And we don't have anybody else to be
18 in there.

19 CHAIRPERSON ANDERSON: All right. All
20 right. Sir, but that's -- I'm just giving you my
21 personal view.

22 MR. JOHNSON: Yeah, I appreciate your

1 perspective and your honesty about it. I just
2 want you to understand, we mean no disrespect to
3 the Board in any way, shape or form. We just
4 want to give the person who is most knowledgeable
5 about the process and what is going on, should be
6 here to speak for the organization.

7 CHAIRPERSON ANDERSON: All right. All
8 right. From what I see, there is only one issue
9 that is being protested. Is that -- am I
10 correct? And this is Sunday hours?

11 MR. LEE: Yes.

12 CHAIRPERSON ANDERSON: And they are
13 asking for hours from, I think, 11:00 to -- from
14 -- I'm sorry.

15 MR. LEE: 2:00 to 7:00.

16 CHAIRPERSON ANDERSON: 2:00 to 7:00.
17 All right. And I heard -- I'm sorry, yes, sir?

18 MR. JOHNSON: We originally asked for
19 11:00 to whatever.

20 CHAIRPERSON ANDERSON: Uh-huh.

21 MR. JOHNSON: IN the process of trying
22 to negotiate a settlement, we said we would

1 compromise and reduce the hours to 2:00 to 7:00.

2 CHAIRPERSON ANDERSON: Um-hum.

3 MR. JOHNSON: So that's where --
4 that's how we got there. Our original request
5 was for 11:00, but we reduced them to 2:00 to
6 7:00.

7 CHAIRPERSON ANDERSON: Is that
8 acceptable to you?

9 MR. LEE: 2:00 to 7:00?

10 CHAIRPERSON ANDERSON: Yeah.

11 MR. LEE: No.

12 CHAIRPERSON ANDERSON: So what is it
13 that you are saying, no Sunday hours?

14 MR. LEE: No Sunday hours.

15 CHAIRPERSON ANDERSON: All right. All
16 right. One of the reasons why I'm asking is
17 because I am in favor of folks settling, rather
18 than at a hearing, and if we could have had an
19 agreement, then we would memorialize that as a
20 Board Order and that would be the hours. So if
21 you had agreed to that, those hours, then we
22 could memorialize it as -- renew the license.

1 I'm sorry. Extend the hours as a
2 Board Order and this would be their hours, but
3 so --

4 MR. LEE: Right. We have been -- we
5 realize that, that's why we haven't did a
6 settlement agreement, because we have settled.
7 We waiting for this to be settled before going
8 into a settlement agreement, because this has
9 been the contention.

10 CHAIRPERSON ANDERSON: Well, no, but
11 I'm saying though what are -- because if you say
12 to me that these are some terms that we can agree
13 to, the Board can -- I can memorialize that in a
14 Board Order and this is a Board Order, which is
15 either -- which has even more support than a
16 settlement agreement.

17 And so this is the order that so we --
18 so if you have terms that both of you are agree
19 to -- are in agreement with other terms than to
20 say the hours and if you present that to us as a
21 consent, we can issue an order to say this is
22 moving forward and this will stay with the

1 license forever until it is changed.

2 MR. LEE: Because we are against -- we
3 want the original hours.

4 CHAIRPERSON ANDERSON: Well, so you
5 are saying that you are not in favor of them
6 having any hours on Sunday?

7 MR. LEE: No Sunday or extended to
8 11:00 p.m. or the 9:00 p.m. which they are
9 requesting.

10 CHAIRPERSON ANDERSON: So what are
11 their current hours?

12 MR. LEE: What are your current, 10:00
13 to 9:00?

14 MR. JOHNSON: Yes, it's in the report
15 that the Investigator --

16 CHAIRPERSON ANDERSON: All right. So
17 the current hours are from 9:00 a.m. to 9:00
18 p.m., Monday through Thursday, 9:00 a.m. to 9:00
19 p.m., Friday and Saturday from 9:00 a.m. to 10:00
20 p.m. and closed Sundays.

21 And so I guess the proposed hours that
22 are being asked are from Sunday from 11:00 to

1 7:00 and Monday from 9:00 to 11:00. And so you
2 are saying, sir, that as a compromise, you would
3 agree to what hours?

4 MR. JOHNSON: 2:00 to 7:00.

5 CHAIRPERSON ANDERSON: 2:00 to 7:00.

6 And you are not -- I know that you are saying
7 that you are not in favor of Sunday hours period.
8 Right? And so but they are also asking for
9 extended hours. They want to be open until 11:00
10 every day. And so you are against them opening
11 the extra one hour during Monday through Thursday
12 and the extra one hour on Friday and Saturday.
13 Is that correct?

14 MR. LEE: Two hours, Monday through
15 Thursday, because it's 9:00 Monday through
16 Thursday.

17 MR. JOHNSON: May --

18 CHAIRPERSON ANDERSON: Well, all
19 right. Monday through Thursday says 9:00 to
20 11:00. Now, I'm not asking you just to
21 negotiate. I'm just trying to go --

22 MR. JOHNSON: May I interject?

1 CHAIRPERSON ANDERSON: Yes, sir.

2 MR. JOHNSON: We listed the hours
3 because we don't want to come back and forth. So
4 we put down the hours because they are the hours
5 that we are permitted --

6 CHAIRPERSON ANDERSON: Right.

7 MR. JOHNSON: -- to be open.

8 CHAIRPERSON ANDERSON: Well, you have
9 -- they are longer. You have longer hours. I
10 mean, all liquor stores can be open in D.C. from
11 7:00 until midnight, seven days a week. Those
12 are the hours that the law says that every liquor
13 store in D.C. can be open those hours. So that's
14 what the law says.

15 MR. JOHNSON: We set the range --

16 CHAIRPERSON ANDERSON: Right.

17 MR. JOHNSON: -- and the upgrade at
18 11:00.

19 CHAIRPERSON ANDERSON: Right.

20 MR. JOHNSON: Not necessarily we plan
21 to be there, but if business was coming through
22 the door, we wanted permission to be open.

1 CHAIRPERSON ANDERSON: Until 11:00,
2 right. So that's right. So your hours -- the
3 hours that you are asking for are -- so moving
4 forward, the hours that you are asking for and I
5 just want to make sure I know the position of the
6 parties, so the hours that you are asking for is
7 -- are you asking for Sunday from 11:00 to 7:00
8 or are you asking for Sunday from 2:00 to 7:00?

9 I'm not asking you what you
10 compromised, because you compromise if there is
11 an agreement.

12 MR. JOHNSON: Okay.

13 CHAIRPERSON ANDERSON: But so what is
14 it that -- what hours are you asking the Board?
15 We are at a Protest Hearing, so what hours are
16 you asking the Board to approve for you?

17 MR. JOHNSON: That's sort of a hard
18 thing to say.

19 MEMBER SILVERSTEIN: Mr. Chairman?

20 CHAIRPERSON ANDERSON: Yes?

21 MEMBER SILVERSTEIN: Wasn't the
22 question what is on your application?

1 CHAIRPERSON ANDERSON: Yeah, no. His
2 application has longer hours, because --

3 MR. JOHNSON: It has 11:00 to 7:00.

4 CHAIRPERSON ANDERSON: Yeah, his
5 application has -- but one of the things that he
6 had said to me was that as a compromise he could
7 do 2:00 to 7:00. So I want to know moving
8 forward like the reason I'm asking when we do the
9 Protest Hearing and if we are going to make a
10 decision, say for example if the Board determines
11 to give you Sunday hours, and I don't know if we
12 are going to do that, what hours would we do?

13 So if you say on Sunday that I'm
14 asking for 11:00 to 7:00, then whenever the Board
15 makes its decision, then we will make a decision
16 from to say are we going to approve Sunday hours
17 and if it was, we will approve 11:00 to 7:00 or
18 we will approve 2:00 to 7:00 or we will not
19 approve any Sunday hours, based on the
20 presentation.

21 MR. JOHNSON: Okay.

22 CHAIRPERSON ANDERSON: I just want to

1 know so when I listen to the hearing, what is it
2 that we are going to make a decision on?

3 MR. JOHNSON: I'll put it this way.
4 Idealistically, 11:00 to 7:00. However, in the
5 spirit of compromise and having our end objective
6 to have some Sunday hours, we would live, we
7 think we could live comfortably, with a 2:00 to
8 7:00.

9 CHAIRPERSON ANDERSON: All right.
10 Okay.

11 MR. JOHNSON: I hope I phrased that
12 appropriately.

13 CHAIRPERSON ANDERSON: All right. You
14 are fine, sir. So at least I know where we are
15 going.

16 Now, just some preliminary issues. I
17 know that, Mr., I'm sorry, Lee?

18 MR. LEE: Lee.

19 CHAIRPERSON ANDERSON: Mr. Lee, you
20 didn't send a PIF, so you have no record that you
21 are relying on because you never did a PIF. Is
22 that correct?

1 MR. LEE: A PIF?

2 CHAIRPERSON ANDERSON: You didn't send
3 documents and witnesses to rely on for this
4 hearing?

5 MR. LEE: This was not submitted. The
6 protest report wasn't submitted to you.

7 CHAIRPERSON ANDERSON: What protest
8 report?

9 MR. JOHNSON: He is referring to the
10 examiner's report.

11 CHAIRPERSON ANDERSON: You are talking
12 about the report from our witness or did you --

13 MR. LEE: Oh, no, our ANC report
14 wasn't submitted by Commissioner Shropshire?

15 CHAIRPERSON ANDERSON: I have not --
16 no, sir. There is no -- there are no documents.
17 The Board did not receive. I was told -- did you
18 receive the document?

19 MR. JOHNSON: We received the notice
20 that the PIF Form, I guess PIF?

21 CHAIRPERSON ANDERSON: Yeah.

22 MR. JOHNSON: Plus the Exhibit

1 Schedule, listing of exhibits, had to be in the
2 office, I believe --

3 CHAIRPERSON ANDERSON: Seven days
4 prior to today.

5 MR. JOHNSON: -- that's the 25th.

6 CHAIRPERSON ANDERSON: Right.

7 MR. LEE: Right.

8 MR. JOHNSON: And so --

9 CHAIRPERSON ANDERSON: Did you receive
10 it?

11 MR. JOHNSON: Yeah, I received the
12 memo from --

13 CHAIRPERSON ANDERSON: No, no. Did
14 you receive the documents?

15 MR. JOHNSON: The forms?

16 CHAIRPERSON ANDERSON: No. Whatever--
17 what are the documents and witnesses you are
18 going to rely on today, sir?

19 MR. LEE: This report here that I
20 thought was submitted by Commissioner Shropshire.

21 MEMBER SHORT: Can you show that to
22 him and see if that is what he may have received?

1 MR. LEE: Did you get this?

2 MR. JOHNSON: I got --

3 CHAIRPERSON ANDERSON: Did you receive
4 that document, sir?

5 MR. JOHNSON: I received this document
6 of the report prepared by the Investigator.
7 Okay, the Investigative report I received, which
8 was --

9 CHAIRPERSON ANDERSON: What?

10 MR. JOHNSON: -- who is the witness.

11 CHAIRPERSON ANDERSON: Let me see what
12 document it is. He will -- give that to him,
13 sir. Let me get some clarification.

14 MR. JOHNSON: That's --

15 CHAIRPERSON ANDERSON: All right.

16 MR. LEE: And that came out after --

17 CHAIRPERSON ANDERSON: Well, let me
18 see. All right. Let me see. That's from us,
19 yeah. This is the document that was done by the
20 Board, so therefore, you did not disclose, so you
21 do not have any documents or witnesses to call.
22 I mean, so there are no documents that --

1 MR. LEE: Okay.

2 CHAIRPERSON ANDERSON: -- you rely on.

3 MR. LEE: Other than myself then?

4 CHAIRPERSON ANDERSON: Other than
5 yourself or you could -- the Board is going to
6 call its witness and our witness will testify on
7 the content of that report and so therefore you
8 can cross-examine our witness on the content of
9 that report, but you don't have any independent
10 document that you are going to rely on. Is that
11 correct?

12 MR. LEE: No, I do not. Just the
13 documents that the commissioner gave me, so --

14 CHAIRPERSON ANDERSON: But were you
15 aware that -- were you here for the Protest
16 Hearing (Status)? Who was here for the Protest
17 Hearing (Status)? Were you here when we had this
18 earlier?

19 MR. LEE: I think Commissioner
20 Shropshire was here.

21 CHAIRPERSON ANDERSON: So did she not
22 tell you that seven days before the hearing, you

1 were supposed to exchange documents and witnesses
2 for you to rely on today?

3 MR. LEE: No, she did not. She was
4 handling this all the way up until yesterday.

5 CHAIRPERSON ANDERSON: Well --

6 MR. LEE: And she didn't handle it,
7 that's what you are telling me.

8 CHAIRPERSON ANDERSON: Because even if
9 she was handling it up until yesterday, that
10 document was due seven days ago. And I -- so did
11 -- all right. So I just wanted to let you know
12 that. So you can cross-examine. And I guess
13 what I'm saying, I guess both people in front of
14 me, they are the only witnesses who are going to
15 testify on the cases.

16 And Mr. Taylor, right?

17 MR. JOHNSON: Mr. Johnson.

18 CHAIRPERSON ANDERSON: Mr. Johnson,
19 I'm sorry. Did you -- I saw a PIF, I assume.

20 MR. JOHNSON: I submitted both a PIF
21 Form.

22 CHAIRPERSON ANDERSON: Right.

1 MR. JOHNSON: And I submitted an
2 Exhibit Form with exhibits.

3 CHAIRPERSON ANDERSON: I am -- I do
4 have that. So I do have that. Okay. All right.
5 All right. Okay. All right. This is how this
6 matter will proceed then.

7 We will have -- I have already done
8 opening remarks. What we will have is that we
9 will have the applicant will do an opening
10 statement, if he so desires. Then if you want to
11 do an opening statement, sir, you can also do an
12 opening statement, at this juncture, or you can
13 reserve your right to do that.

14 Then the Board will call its
15 Investigator. The Investigator will go through
16 the report that was filed. After the
17 Investigator is done testifying, the Board will
18 ask questions of the Investigator.

19 Once the Board ask questions of the
20 Investigator, you will have an opportunity to
21 cross-examine the Investigator on the report.
22 Once you are done that, then the applicant will

1 also have an opportunity to cross-examine the
2 Investigator on his report.

3 Once that is done, then the applicant
4 will present his case. And I assume since he is
5 the only witness, I'll swear him in and he will
6 testify and bring whatever he wants to bring
7 forth. You will have an opportunity to cross-
8 examine him on his testimony. The Board then
9 will ask questions of him.

10 Once the Board asks questions of him,
11 then you will have an opportunity to ask him
12 questions based on the questions that the Board
13 asked. And once that is done, if he needs to
14 clarify anything for the record, then he will do
15 that.

16 Once he presents his case, then you
17 will have an opportunity to present your case.
18 Once you present your case, he will have an
19 opportunity to cross-examine you. Once he cross-
20 examines you, then the Board will ask questions
21 and once -- we will also give him an opportunity
22 to cross-examine, to ask you questions based on

1 the questions that the Board had asked for you --
2 of you. And then when that is done, if you need
3 to clarify the record or bring anything further,
4 then you can testify.

5 MR. LEE: Okay.

6 CHAIRPERSON ANDERSON: Thank we will
7 have -- I'll have you do closing arguments. He
8 will do closing arguments and the matter is over.

9 The way the process is supposed to
10 work is that each side should have an hour and a
11 half to present their case, but because since we
12 are only talking about one witness, my assumption
13 is that, and I shouldn't assume, it's 5:10 and
14 hopefully we can be out of here by 7:00. We will
15 see. I don't know, but it all depends how the
16 questions go.

17 So everyone understand where we are?
18 Okay. All right. All right. So we will start
19 the process. So do you wish, sir, to make an
20 opening statement?

21 Do you know what an opening statement
22 is?

1 MR. JOHNSON: Um-hum.

2 CHAIRPERSON ANDERSON: Okay. And you
3 are not an attorney and that's -- and I'm not
4 trying to be facetious, so I try to --

5 MR. JOHNSON: I appreciate your --

6 CHAIRPERSON ANDERSON: Okay.

7 MR. JOHNSON: -- questions.

8 CHAIRPERSON ANDERSON: All right, sir.

9 MR. JOHNSON: To make an opening
10 statement, Kovaks Liquors was -- is a new
11 organization. We took over an existing property
12 that had been closed for, approximately, 18
13 months. We made substantial renovations as the
14 pictures that the Investigator has included in
15 his report shows.

16 We entered into agreement, which
17 raised the cost substantially of the previous
18 owner that we incurred and we found, once we
19 opened, that the cost that we -- the overhead
20 that we were sustaining was more substantial and
21 harder to meet than with the hours we had.

22 And we looked at the other Class A

1 liquor stores in District 5 that -- and my
2 understanding is that there are seven. And
3 that's why we will have hours that are broader
4 than ours, so that we have asked to have our
5 hours extended, so that we could be on a
6 competitive situation with them and could meet
7 the needs of the customers in our area, because
8 they come in and they ask why do we have to
9 travel, even though it's not a long distance,
10 they would rather walk two blocks or three blocks
11 than to get in their car to drive some place
12 else.

13 And we realize that if we could have
14 Sunday hours, we could increase our revenue and
15 enhance our chance of being viable.

16 CHAIRPERSON ANDERSON: That's it? All
17 right. So do you wish to make an opening
18 statement? You can do that now or you can wait
19 until you present your case. It's up to you.

20 MR. LEE: Yes, I would just like to
21 say that Kovaks Liquors has been in the Trinidad
22 area. I have been there 30 years and from the

1 time it was closed. This is the new owner. It
2 had become -- 30 years ago, it was not a nuisance
3 property, but it has become over the past 30
4 years a nuisance establishment with the
5 loitering.

6 So we are not against the business.
7 We are not against Kovaks. But we would just
8 like them to operate in a manner, our goal is to
9 have them operate in a manner that is going to
10 draw -- since we are in a neighborhood of
11 transition, to draw better neighbors, to draw
12 better cliental. And I don't know how that
13 sounds, but I think you should -- if the
14 neighborhood is changing, you should try and
15 change with the neighborhood, not focus on the
16 past, but start focusing on the future.

17 And their establishment, they have
18 made some changes that the store is more
19 inviting, but right now, the Sunday hours and the
20 extended hours would just not cater to the type
21 of people, customers I would think they even want
22 in their store in those late hours.

1 CHAIRPERSON ANDERSON: All right. All
2 right. Okay. The Board will call its first
3 witness and the Board's first witness is Mr.
4 Countee Gilliam.

5 Can you raise your right hand, sir?
6 Whereupon,

7 INVESTIGATOR COUNTEE GILLIAM
8 was called as a witness by the ABRA Board, and
9 having been first duly sworn, assumed the witness
10 stand and was examined and testified as follows:

11 INVESTIGATOR GILLIAM: I affirm.

12 CHAIRPERSON ANDERSON: Okay. Have a
13 seat, please.

14 DIRECT EXAMINATION

15 CHAIRPERSON ANDERSON: Can you state
16 your name for the record, please?

17 THE WITNESS: Yes, my name is Countee,
18 that's spelled C-O-U-N-T-E-E, my last name is
19 spelled G-I-L-L-I-A-M, and that's pronounced
20 Gilliam. And I'm an ABRA Investigator.

21 CHAIRPERSON ANDERSON: And what does
22 it mean you are an ABRA Investigator, sir?

1 THE WITNESS: I conduct inspections
2 and investigations of ABC licensed establishments
3 throughout the District of Columbia.

4 CHAIRPERSON ANDERSON: And how long
5 have you been working for ABRA?

6 THE WITNESS: This is my fourth year
7 of service.

8 CHAIRPERSON ANDERSON: Are you
9 familiar with Kovaks Liquors, the establishment
10 that is here today for a protest?

11 THE WITNESS: Yes, sir.

12 CHAIRPERSON ANDERSON: And how are you
13 familiar with this establishment?

14 THE WITNESS: Because of a protest
15 that was assigned to me and just from doing
16 previous visits. Well, now, let me retract that.
17 Just because this protest that was assigned to
18 me.

19 CHAIRPERSON ANDERSON: All right. So
20 can you give us some -- what, as a result, did
21 you -- did there come a time that you wrote a
22 report regarding what you have seen regarding the

1 establishment?

2 THE WITNESS: On August the 26th, ABRA
3 received a complaint of the establishment
4 operating after hours and I actually visited and
5 they was operating after hours and actually
6 violated the establishment for operating after
7 hours and failure to comply with window signage
8 requirements. And that was sent before the Board
9 and I believe it has been adjudicated.

10 CHAIRPERSON ANDERSON: Now, so as a
11 result of this, now you see why I was asking,
12 case being assigned to you, were you able to do a
13 report regarding this establishment?

14 THE WITNESS: Oh, yes, sir.

15 CHAIRPERSON ANDERSON: And can you
16 tell us what it is that you were able to find out
17 as a result of this case being assigned to you?

18 THE WITNESS: Well, as it relates to
19 the issues, Commissioner Shropshire, she stated
20 on the times which I interviewed her, which was
21 by email, that their concern was the
22 establishment going against their religious and

1 societal norms of the neighborhood. They have
2 issues with loitering, issues with criminal
3 activities, with alcohol consumption.

4 And the -- at the establishment, at
5 the rear of the -- it's the alleyway where people
6 go to and from their homes, but that's not the
7 establishment's space, that is shared space, but
8 one of the concerns from the commissioner was
9 that, you know, there are so many people
10 loitering out there, that it is blocking people
11 to get to and from their residence.

12 When I talked to Mr. Johnson, every
13 time I talked to Mr. Johnson, which is the
14 licensee's representative, he has always advised
15 that he has always been trying to settle with the
16 commissioner, but to no avail.

17 During my protest investigation, the
18 establishment was monitored six times dealing
19 with just that first ABRA violation I told you
20 about, August the 26th, bringing up the hours.
21 And that was in the month -- that was from August
22 to September.

1 And from October the 22nd through the
2 24th, the establishment was monitored three times
3 and on the 23rd, let me make sure my date is
4 right. Give me one second, please. Yes, on the
5 23rd, Investigators was monitoring the
6 establishment and observed loitering, one on the
7 left side of the establishment. The way the --
8 and for the direction if you need to know, if you
9 look at Exhibit 15, and you see the two people,
10 one person is sitting on, I couldn't tell what it
11 was, but it was just there.

12 I observed they was there during the
13 time that I was visiting. If you look at Exhibit
14 16 and you see the two people sitting or really
15 three people sitting, that's at the rear of the
16 establishment. So to me, that's their property.
17 And you can't see it, but I observed it when I
18 was taking photos, that's a lady in that -- I
19 would say I would describe it as a baby blue
20 shirt. She was drinking an alcoholic beverage.
21 It was a can of Coors Light.

22 So I was trying to get documentation,

1 there was a crowd of people around and they
2 started to get a little rowdy, so I was just
3 trying to do what I had to do and I didn't want
4 to disturb and cause an incident.

5 If you -- I believe it is Exhibit 18,
6 I don't have it in front of me, but if you look
7 to the right, you actually see people sitting
8 against a back fence and they sitting with lawn
9 chairs. I mean, they were just sitting there
10 like they didn't have -- I guess the best way to
11 describe it, they were just spending time there.

12 And if you look forward to Exhibit 19,
13 people was parking against that rear fence, even
14 though it's not part of the establishment, I
15 think that's part of the concern that the
16 Commissioner Shropshire was talking about, but
17 that was something I observed when I was there on
18 the 23rd.

19 But as related to the people in the
20 back where I assume one of the ladies consumed an
21 alcoholic beverage, that was at the rear of the
22 establishment and that was their property.

1 Another thing that I think the Board
2 should be aware of, during -- I did the calls for
3 service for this address. And from the period of
4 September 2017 to September 2018, there was a
5 total of 36 calls for service, but 13 of those
6 calls occurred when the establishment wasn't
7 open. But then you had several incidents as it
8 was broken down, you had two accidental injuries,
9 11 disorderly conducts, 5 assaults, one --

10 CHAIRPERSON ANDERSON: Where is this
11 information? Is it an exhibit or is it in your
12 report?

13 THE WITNESS: I'm sorry. This is on
14 page 6 of the protest report.

15 CHAIRPERSON ANDERSON: Okay.

16 MEMBER SHORT: Page 6?

17 CHAIRPERSON ANDERSON: Yeah.

18 THE WITNESS: It should be at the top
19 of the page, Mr. Chairman.

20 CHAIRPERSON ANDERSON: Go ahead.

21 THE WITNESS: All right. So they had
22 one miscellaneous, one suicide threat and one --

1 actually multiple injuries and stolen tags and
2 property loss that also equals one. So based on
3 the address, it's -- none of those didn't yield
4 any investigation from ABRA, but that was some
5 concerns as relates to MPD.

6 CHAIRPERSON ANDERSON: Okay. Now, you
7 had, in your report, their investigative history.
8 Can you just tell us again what information, what
9 is in the investigative history?

10 THE WITNESS: It's just the violation
11 that I observed on August 26, 2018 and that was
12 for operating after hours and failure to comply
13 with window signage requirements.

14 CHAIRPERSON ANDERSON: What day of the
15 week was that?

16 THE WITNESS: That was a Sunday, that
17 was the day they were supposed to be closed.

18 CHAIRPERSON ANDERSON: And so what
19 time was this? Do you recall?

20 THE WITNESS: I believe that was 7:49
21 at night, 7:49 p.m.

22 CHAIRPERSON ANDERSON: Okay. So what

1 were you doing? Was this a call for service or
2 was this routine?

3 THE WITNESS: When I observed the
4 violation?

5 CHAIRPERSON ANDERSON: That Sunday
6 violation.

7 THE WITNESS: From my understanding,
8 I believe it was a hotline call made to
9 supervisory.

10 CHAIRPERSON ANDERSON: Okay.

11 THE WITNESS: But I was notified by my
12 supervisor that he received a complaint and he
13 sent me out to investigate.

14 CHAIRPERSON ANDERSON: All right. All
15 right. All right. So all right, tell us about
16 what other information about the area that --
17 what I want you to do is just go through your
18 report and just tell me what else you were able
19 to find out regarding this establishment.

20 THE WITNESS: Okay. So I was assigned
21 this protest for Pako, LLC, which is trading as
22 Kovaks Liquors. The protest issues for the

1 protest was adverse impact on real property
2 values, adverse impact on peace, order and quiet
3 and adverse impact on residential parking and
4 vehicular and pedestrian safety.

5 On August the 1st, I reached out to Mr.
6 Johnson, which is the licensee's representative,
7 and asked him what was his issue surrounding the
8 establishment being protested. Mr. Johnson
9 replied by email stating that there was a
10 previous agreement with the prior owners of the
11 establishment and the licensee wasn't aware of
12 that, so he was negotiating with the -- with
13 Commissioner Shropshire to try to come to a
14 settlement agreement.

15 On August the 8th, I emailed
16 Commissioner Shropshire and she replied on August
17 the 28th, and that's where I mentioned earlier she
18 was saying that they was opposed to the
19 establishment being granted hours, to expand
20 their hours because of crime, loitering, going
21 against religious and societal norms of the
22 establishment.

1 Kovaks Liquors is actually zoned in a
2 Mixed-Use-4 Zone and that zone is -- that zone
3 provides for mixed-use developments that prevent
4 a broad range of commercial, institutional and
5 multiple dwelling units -- excuse me, multiple
6 dwelling unit residential development at varying
7 densities.

8 The building is a one-story building.
9 It's a commercial building that is being used as
10 a Class A liquor store where they sell food --
11 they sell beer, wine and spirits with food/
12 snacks. The establishment has a parking lot
13 located to the right, which was in Exhibit 5 that
14 I described earlier.

15 One of the concerns that Commissioner
16 Shropshire addressed was that -- the parking
17 issues, but during all of the monitoring phases,
18 even on the -- October the 23rd when I actually
19 witnessed loitering, I didn't see any issues with
20 parking.

21 And there was no issues on the peace,
22 order and quiet.

1 As it relates to property values, ABRA
2 Investigators cannot obtain property values.

3 CHAIRPERSON ANDERSON: What other
4 establishments are close by?

5 THE WITNESS: You have two and that is
6 Northeast Supermarket and Compact Supermarket and
7 those are located within 1200 feet of the
8 establishment. And as it relates to -- and
9 within the 400 feet zone, there are no schools or
10 public libraries in the general area of Kovaks
11 Liquors.

12 CHAIRPERSON ANDERSON: Okay. Can you
13 tell me, identify the exhibits that you -- that
14 are a part of your report?

15 THE WITNESS: Okay. All right.
16 Exhibit 1 was the actual Protest Letter where the
17 ANC was advising the Board that they wanted to
18 protest the application for -- the substantial
19 change application.

20 Exhibit 2 is the GIS Information Map
21 of the local within -- it's the 12 -- it's within
22 1200 feet of the establishment of any current ABC

1 licenses. And as I mentioned, there is only
2 two.

3 Exhibit 3 is the GIS Information Map
4 with schools within 400 feet. And as I mentioned
5 earlier, there is no schools within 400 feet.

6 Exhibit 4 that was -- that is just a
7 picture of the establishment, the interior of the
8 establishment. I'm sorry, exterior.

9 Exhibit 5 was actually a photo of the
10 establishment parking lot, which is located on
11 the right side of the establishment.

12 Exhibit 6, 7, 8, 9 and 10, those are
13 all interior photos that display what the
14 establishment sells and the rear of the
15 establishment where they have the storage space
16 and an actual office. And that would be Exhibit
17 10 as relates to the back storage area and the
18 office.

19 Exhibit 11 is a copy of the regulatory
20 inspection I did and that occurred when I
21 witnessed the violation on August the 26th for
22 after hours.

1 Exhibit 12 was the calls for service
2 that I requested from September 2017 to September
3 2018.

4 Exhibit 13 is a copy of local Class A
5 stores that the licensees representative, Mr.
6 Johnson, emailed to me that he wanted to get on
7 the record for this hearing, as well as Exhibit
8 14.

9 (Whereupon, the above-
10 referred to documents were
11 marked as ABRA Exhibit No. 1
12 through 13 for
13 identification.)

14 CHAIRPERSON ANDERSON: Well, let me
15 ask you a question. Where are these
16 establishments? I mean, are they -- yeah, I
17 mean, there are five -- there are what, one, two,
18 three, four, five establishments. How close in
19 the vicinity? I mean, we can -- I guess what I'm
20 trying to find out is what relation does these
21 establishments have with Kovaks, if any?

22 THE WITNESS: And, Mr. Chairman, my

1 apologies, but I didn't check that out because
2 they didn't fall within the GIS Map. That was
3 just something that Mr. Johnson said to me, but
4 from that was -- based on my experience, they are
5 not close. I was just listing that's what he had
6 said was in the vicinity. But they are not close
7 to the actual -- actually close to the Kovaks
8 Liquors, in my -- based on my experience.

9 CHAIRPERSON ANDERSON: All right. And
10 so what's 14?

11 THE WITNESS: Exhibit 14 is another --
12 it's a signed petition that Mr. Johnson said to
13 me via email that he wanted to have included in
14 this process and that is in addition where he got
15 -- he has 112 signatures of people that he stated
16 that want to see the establishment open on
17 Sunday. So it's 112 signatures of customers that
18 are saying that they want to -- they would like
19 to see the establishment be approved to operate
20 on Sunday.

21 CHAIRPERSON ANDERSON: All right.

22 THE WITNESS: All right. Exhibit 15

1 we discussed earlier, that was two people
2 loitering on the left side of the establishment.

3 Exhibit 16 was what we talked about
4 earlier with three people sitting at the rear of
5 the establishment and I directly observed one of
6 them consuming alcoholic beverages.

7 And Exhibit 17, I don't believe I went
8 over, but that's the alleyway that is a shared
9 space where people try to go to and from where
10 they live at. If you look at Exhibit 17, you see
11 like it leads up to a driveway that looks like
12 it's for a personal residence.

13 Exhibit 18 that was when I was talking
14 -- excuse me one second, give me one second,
15 please. Exhibit 18 is where the three people
16 were observed at the rear of the establishment
17 and one was drinking. I believe I said that was
18 Exhibit 16 or 17, but that's actually Exhibit 18.

19 (Whereupon, the above-
20 referred to documents were
21 marked as ABRA Exhibit No.
22 14 through 18 for

1 identification.)

2 CHAIRPERSON ANDERSON: Okay. So you
3 are saying Exhibit 18 is the rear of the
4 establishment?

5 THE WITNESS: Yes. And because if you
6 look at Exhibit 17 you will see people sitting on
7 like a concrete, I would say that's like, step,
8 but that's actually part of the establishment's
9 property.

10 CHAIRPERSON ANDERSON: You mean,
11 Exhibit 16?

12 THE WITNESS: Oh, I'm sorry, yes.

13 CHAIRPERSON ANDERSON: All right.

14 THE WITNESS: Exhibit 17, excuse me.
15 Exhibit 17 is the photo of the alleyway.

16 CHAIRPERSON ANDERSON: All right.

17 THE WITNESS: That leads up to where--
18 it looks like it goes -- it leads up to a
19 neighborhood where people live at.

20 CHAIRPERSON ANDERSON: Okay. Now,
21 what -- on Exhibit 18 where the car is parked,
22 what is that area?

1 THE WITNESS: That -- all right. So
2 if you look at Exhibit 17, say if you look to the
3 right of that picture and you see that wooden
4 fence that is starting to run down --

5 CHAIRPERSON ANDERSON: All right.

6 THE WITNESS: -- it's that fence.
7 That fence runs all the way. It runs the width
8 of the back of Kovaks Liquors.

9 CHAIRPERSON ANDERSON: Yeah, but --

10 THE WITNESS: So where you see those
11 cars at, it changed from a wooden fence and it
12 goes to that black fence. So that's -- it's --
13 that fence separates, that's the fence that stops
14 the -- it separates the ending of that space.

15 CHAIRPERSON ANDERSON: All right.

16 THE WITNESS: If you understand.

17 CHAIRPERSON ANDERSON: Well --

18 THE WITNESS: If you need me to
19 clarify.

20 CHAIRPERSON ANDERSON: -- do you know
21 where you see the car parked, the car with the FJ
22 tag, is that -- do you know whether or not that

1 property -- that space belongs to Kovaks or does
2 that belong to someone else?

3 THE WITNESS: No, that's part of the
4 alley where that runs all the way down. That's
5 shared space. That's not Kovaks Liquors
6 property.

7 CHAIRPERSON ANDERSON: Okay. So where
8 the car with the FJ tag, that is -- you are
9 saying that is not Kovaks?

10 THE WITNESS: What exhibit are you
11 looking at?

12 CHAIRPERSON ANDERSON: 18.

13 MEMBER SHORT: The minivan.

14 CHAIRPERSON ANDERSON: That's a
15 minivan? Well, the vehicle. On Exhibit 18 there
16 is a vehicle with an FJ tag.

17 THE WITNESS: All right. I'm sorry,
18 I don't have Exhibit 18 in my packet. It didn't
19 print. I was going off memory.

20 CHAIRPERSON ANDERSON: So that's why
21 I was asking you --

22 THE WITNESS: Oh, okay.

1 CHAIRPERSON ANDERSON: -- right. Is
2 that where the van is parked -- you said where
3 the folks are sitting, that is the back, the
4 alley.

5 THE WITNESS: Okay.

6 CHAIRPERSON ANDERSON: Do you know
7 where that vehicle is parked? Does that property
8 belong to Kovaks or is that a public space?

9 THE WITNESS: Yeah, okay, because if
10 you look at Exhibit 16, you will see the backend
11 of that car.

12 CHAIRPERSON ANDERSON: No, no, not --

13 THE WITNESS: Are you talking about --

14 CHAIRPERSON ANDERSON: -- that.

15 THE WITNESS: I'm sorry. I'm sorry.

16 CHAIRPERSON ANDERSON: We're talking
17 about the car with the FJ tag.

18 THE WITNESS: With FJ.

19 CHAIRPERSON ANDERSON: Yes.

20 THE WITNESS: That's the -- I'm sorry,
21 that's the establishment's parking lot. They are
22 parked in the establishment's parking lot.

1 CHAIRPERSON ANDERSON: Okay. All
2 right. Okay.

3 THE WITNESS: Sorry about that.

4 CHAIRPERSON ANDERSON: What is 19,
5 Exhibit 19?

6 THE WITNESS: Yes, sir, that's part of
7 what I was describing earlier about the fence
8 line.

9 (Whereupon, the above-
10 referred to document was
11 marked as ABRA Exhibit No.
12 19 for identification.)

13 CHAIRPERSON ANDERSON: Okay.

14 THE WITNESS: That's not Kovaks
15 property. That's a shared space. That's part of
16 -- that's where the alleyway continues and people
17 park along the side of that fence.

18 CHAIRPERSON ANDERSON: All right. Do
19 you know -- these are just some random cars or do
20 you know whether or not these are Kovaks'
21 customers?

22 THE WITNESS: Now, when I -- the day

1 when I took these pictures on the 23rd of October,
2 people -- they had this -- their car stereos
3 playing. They were just -- they was there
4 loitering. But and I think that's the issue for
5 the -- for part of the Commissioner Shropshire,
6 but that -- when I observed right -- what I
7 observed in Exhibit 19, that's not part of Kovaks
8 Liquors property. That is part of that shared
9 space they parked right by the fence, directly
10 adjacent to the alleyway.

11 CHAIRPERSON ANDERSON: Yes, but the
12 question I was asking, do you know whether or not
13 these were customers, Kovaks' customers? Do you
14 know?

15 THE WITNESS: No.

16 CHAIRPERSON ANDERSON: That's what I
17 was asking.

18 THE WITNESS: No, I don't. I just
19 know they was consuming alcoholic beverages and
20 playing music from their stereos, but I didn't
21 witness any of the people that I took photos of,
22 I didn't witness any of them purchasing alcohol

1 from Kovaks during my visit on that day.

2 CHAIRPERSON ANDERSON: All right.

3 Okay. Do you have anything else you want to add?

4 THE WITNESS: Say it one more time?

5 CHAIRPERSON ANDERSON: Do you have
6 anything else you want to add?

7 THE WITNESS: No, that's it, Mr.
8 Chairman.

9 CHAIRPERSON ANDERSON: All right. Any
10 questions by any Board Members? Yes, Mr. Short?

11 MEMBER SHORT: Good afternoon still,
12 Investigator Gilliam. It looks like you did a
13 pretty thorough report. And I'm kind of familiar
14 with that area. And some of my concerns are so
15 even before this protest or during this protest,
16 although they are asking to operate on Sunday,
17 they were doing it anyway.

18 THE WITNESS: Well, on --

19 MEMBER SHORT: Illegally.

20 THE WITNESS: Yes. On August 26th,
21 yes, sir. When I observed the violation, yes,
22 they was.

1 MEMBER SHORT: And this was at 7?

2 THE WITNESS: This was at 7:49 p.m.

3 MEMBER SHORT: So 7:45?

4 THE WITNESS: Yes, sir. Yes, sir.

5 MEMBER SHORT: Okay. Did you question
6 them as to why they were doing it or --

7 THE WITNESS: Yes. When I questioned
8 them, if I can remember correctly from my earlier
9 report, I believe the ABC Manager told me, I'm
10 convinced the ABC Manager told me, that they
11 opened up -- they wasn't open. They came in
12 early to stock some alcoholic beverages that came
13 in, I guess, on a date prior. And he said once
14 they did that, people started knocking on the
15 door and then they decided to open up. That was
16 the reason he gave me on why he was open on
17 Sunday.

18 MEMBER SHORT: He knew that it was
19 illegal, but they did it anyway?

20 THE WITNESS: Yes, exactly. Yes, sir.

21 MEMBER SHORT: Okay. And they were
22 issued a citation for that?

1 THE WITNESS: That has been
2 adjudicated by the Board. I'm not sure what the
3 decision was made, but when -- according --

4 MEMBER SHORT: You wrote a violation
5 for that?

6 THE WITNESS: Well, yeah, I did a case
7 report generated violation to go before the
8 Board.

9 MEMBER SHORT: Okay. Great.
10 Loitering, what -- did you --

11 CHAIRPERSON ANDERSON: Turn your
12 microphone on.

13 MEMBER SHORT: Sorry. How much
14 loitering did you observe and how did it affect
15 peace, order and quiet, as far as that?

16 THE WITNESS: Well, at all the
17 previous times that ABRA Investigators -- October
18 23rd was the only incident and I was monitoring
19 that day where I have actually observed, I seen
20 people loitering on the establishment. Every
21 other time before that, it wasn't observed, so--

22 MEMBER SHORT: What day was that on?

1 THE WITNESS: That was October the
2 23rd.

3 MEMBER SHORT: What day, what day of
4 the week?

5 THE WITNESS: I believe it was
6 Tuesday, but let me verify. Yes, it was Tuesday.
7 And that was at 3:50 p.m. And that -- when I --
8 because when I actually pulled up in the parking
9 lot, I was kind of shocked, because I had
10 monitored -- I did the majority -- well, I'm not
11 going to say a majority.

12 But I -- during the protest, I
13 monitored the establishment probably about 40
14 percent of the monitoring time. So I was kind of
15 shocked to see them, but I usually work
16 nightshift and I was working dayshift that day.
17 I said well, let me go monitor and this was at
18 3:50 in the afternoon or 3:50 in the evening and
19 I observed that, but I also wanted to make sure
20 during the monitoring that I monitored two days.

21 On Monday, the previous Monday, which
22 was October the 22nd, I monitored from 12:15 p.m.

1 to 12:30 and then on Wednesday, October 24th, I
2 monitored from 7:20 to 7:35. I wanted to get
3 general -- cover the times they was open, so when
4 I actually went there like during the afternoon
5 on the 23rd, that's when I observed the behavior.

6 But on a previous visit, another
7 Investigator, he monitored from 2:20 to 2:35 on
8 September, Thursday, the 13th and there was no
9 ABRA violations observed or anything as relates
10 to peace, order and quiet.

11 Now, to get back to your question, Mr.
12 Short, as it relates to the peace, order and
13 quiet from October 23rd, I mean, from my
14 experience it shocked me, because I just seen
15 people openly consuming alcoholic beverages and
16 they playing music from their radios and people
17 sitting down with lawn chairs.

18 And even though I understand that it's
19 not part of their space, but it was just
20 something to see in the vicinity that close to
21 Kovaks Liquors.

22 MEMBER SHORT: Okay. Did you talk to

1 the management or the licensee about the
2 loitering and people drinking, public drinking?

3 THE WITNESS: I gave Mr. Johnson, the
4 licensee's representative, a call because he has
5 been -- I could never get in contact with the
6 licensee. He is always -- I have always been
7 directed to Mr. Johnson.

8 And I explained the situation to him.
9 He said he wasn't aware of it, but I mean he
10 understood and I told him, you know, I explained
11 the situation to him and it might be better --
12 and I specifically told him, if I remember
13 correctly, on the left side of the establishment
14 where you see the people sitting in the exhibit
15 and at the rear on the concrete, I'm like you
16 have control over that. You have to advise the
17 staff to go out there and tell the people to move
18 along.

19 And I think he took note of that and
20 he was cooperative and understanding the -- to
21 pass that along.

22 MEMBER SHORT: Okay. And that alley

1 is approximately what it looks like 16 to 20 feet
2 from the people's homes, the rear of the homes
3 there in that alley?

4 THE WITNESS: Yeah, I would say more
5 like 25 to 30.

6 MEMBER SHORT: Okay. But they were
7 playing music.

8 THE WITNESS: If I lived in that area,
9 I could hear it, it was so loud. I could hear it
10 if I was living in that neighborhood where you
11 see the alleyway, go up to the residential homes.

12 MEMBER SHORT: Again, so did you talk
13 to the licensee about the noise and the music and
14 the loitering?

15 THE WITNESS: Well, I explained all
16 that to Mr. Johnson. I explained to him what I
17 found, but I also told him -- I did tell him I
18 said well, the only thing that I can see during--
19 that I can notify you of is people on your
20 establishment, because that shared space -- I
21 explained to him fully what I observed, but I
22 mean, I drew -- I drove home the point where the

1 step that he is responsible for, the
2 establishment is responsible for as it relates to
3 their property.

4 MEMBER SHORT: So the licensee, you
5 have never actually talked with the licensee at
6 all?

7 THE WITNESS: Huh-uh. I tried to get
8 in contact with the licensee one time, then I was
9 advised by Mr. Johnson that Mr. Johnson -- that
10 the licensee couldn't speak that much English and
11 he was there to take care of as manager. So --

12 MEMBER SHORT: Let me ask you this.
13 Will you attempt to get in contact with the
14 licensee again and when you do, let him know this
15 Board is quite concerned that they don't seem to
16 have -- they won't show up today. They won't
17 talk to you. But they want us to give them extra
18 hours and give them extra days, but they don't
19 have time to come here.

20 Mr. Johnson is here. And you said you
21 have talked to him about the problems and he
22 can't give you any resolve, apparently.

1 THE WITNESS: Well --

2 MEMBER SHORT: Or can he or did he?

3 THE WITNESS: -- now I would say this,
4 because as it relates -- I would say as it
5 relates to the violation that was observed on
6 August the 26th with the operating after hours and
7 the window failed to comply with signage or
8 window signage, I explained to him and that the
9 next day he got the window signage in compliance.
10 So that would lead me to believe that he can make
11 a phone call and they will take care of it.

12 Now, as it relates to how he --

13 MEMBER SHORT: But still, my question
14 is he could call them, but they won't -- you
15 can't get in contact with him.

16 THE WITNESS: Oh, yes, sir. I'm
17 sorry. I misunderstood. That's correct.

18 MEMBER SHORT: That's what I am
19 asking.

20 THE WITNESS: That's correct. Yeah,
21 I can't get in contact with the licensee, but Mr.
22 Johnson can.

1 MEMBER SHORT: Are you aware that does
2 Mr. Johnson speak any foreign languages? And
3 I'll ask him that. Maybe you don't know, but
4 I'll ask him when I get a chance.

5 THE WITNESS: I'm not aware if --

6 MEMBER SHORT: Okay.

7 THE WITNESS: -- he can.

8 MEMBER SHORT: All right. Okay. All
9 right. Now, the parking lot itself, the pictures
10 that I'm looking at here, does it appear to be
11 paved?

12 CHAIRPERSON ANDERSON: What exhibit is
13 it? Did you tell --

14 MEMBER SHORT: Exhibit No. 15. And
15 better yet, Exhibit No. 18.

16 THE WITNESS: Okay.

17 MEMBER SHORT: Is the parking lot
18 paved or covered or is this gravel?

19 THE WITNESS: All right. Exhibit 18
20 is the one I don't have. Did I hand that back to
21 you? Okay. If you look at -- that's not paved.
22 But when you first -- if you look at Exhibit 5,

1 you can see where it breaks off at -- Exhibit 5,
2 I'm standing in the entryway to get into the
3 parking lot on -- at Kovaks Liquors.

4 And you can see it is paved up until
5 a certain point before my work vehicle, which is
6 located to the car on the left and then it goes
7 to gravel.

8 MEMBER SHORT: Well, are you aware of
9 whether or not the ANC or the community is
10 concerned about that at all? That used to be
11 illegal.

12 THE WITNESS: That was -- if I
13 remember correctly, that was one of --
14 Commissioner Shropshire, she had, I believe, told
15 me that that was one of the concerns. But during
16 -- when I tried to reach back with her to ask to
17 get a list of all her concerns, because this case
18 was continued twice and every time it was
19 continued, I would call back -- I would call both
20 Mr. Johnson and Commissioner Shropshire to try to
21 get updated -- the updated concerns, but I
22 remember her telling me that at one point, but I

1 never --

2 MEMBER SHORT: Can I ask you as a,
3 myself as a, Board Member to -- when you do get
4 in contact with the owners, and Mr. Rogers can do
5 it, too, but I would like for you to -- it looks
6 to me like that parking lot is illegally
7 maintained.

8 I can just tell you this, one of my
9 neighbors in the back yard where I live, on the
10 Branch Avenue, S.E., got a citation from the city
11 because they didn't pave their driveway where
12 they parked their car in the rear.

13 So I'm looking at this and this is --
14 and the alley is unpaved also, correct?

15 THE WITNESS: That's correct.

16 MEMBER SHORT: Wow. Okay. All right.
17 Well, lastly public drinking. How much public
18 drinking did you observe while you were doing
19 your inspections?

20 THE WITNESS: The only time I
21 witnessed public drinking was on October 23rd
22 where you see the pictures in Exhibit 16, Exhibit

1 19 and Exhibit 18, that was -- out of all my
2 visits or other ABRA Investigators, this was the
3 only incident where I have actually witnessed or
4 another Investigator witnessed public drinking.

5 MEMBER SHORT: And would that affect
6 peace, order and quiet?

7 THE WITNESS: Yes, sir, it would. In
8 my opinion, it would.

9 MEMBER SHORT: Negatively?

10 THE WITNESS: Yes, sir.

11 MEMBER SHORT: Okay. Thank you very
12 much for your excellent report, Investigator.

13 And that's all I have, Mr. Chair.

14 CHAIRPERSON ANDERSON: Thank you. Any
15 other questions by any other Board Members? All
16 right. We will go to Mr. -- I will go to Mr.
17 Lee. All right. Mr. Lee, do you have any
18 question --

19 MR. LEE: Yes.

20 CHAIRPERSON ANDERSON: -- of the
21 Investigator, based on his report?

22 CROSS-EXAMINATION

1 BY MR. LEE:

2 Q Mr. Gilliam, on your Exhibit 3 that
3 shows the 400 feet from Kovaks Liquors, is this
4 map is it derived from D.C. GIS Mapping?

5 A Yes, sir, that's correct.

6 Q So that's the property. And like the
7 Board Members that noticed that on Exhibit 3,
8 there is no alley. It looks like the property
9 line goes from the houses on Simms Place all the
10 way up to the liquor store based on if this is a
11 square lot. And then we do see the alley that
12 enters from Simms Place? Well, that's my
13 question. So since it came from GIS, I just want
14 to note that this alley -- there is no alley at
15 the rear. This is all the owner's property, this
16 square lot where the liquor store is.

17 MEMBER SHORT: That's a private road.

18 MR. LEE: Right. A private road.
19 It's not an alley behind. It's all private
20 property.

21 THE WITNESS: Okay. This is from the
22 D.C. Mapping GIS System, which shows square lots

1 in the District.

2 CHAIRPERSON ANDERSON: Are you asking
3 a question?

4 THE WITNESS: Well, the question was
5 did this map come from GIS?

6 CHAIRPERSON ANDERSON: Which exhibit
7 are you at?

8 THE WITNESS: Exhibit 3.

9 CHAIRPERSON ANDERSON: All right.
10 Okay.

11 BY MR. LEE:

12 Q And then secondly, my second question
13 on this same map, what is at the corner of
14 Trinidad Avenue and Mt. Olivet Road? What
15 building is that at the outer -- right inside the
16 400 foot line?

17 A You are on Exhibit 3?

18 Q On Exhibit 3.

19 A I'm not familiar with --

20 Q The actual area?

21 A -- the building. Yeah, because it's
22 not labeled, so I'm not familiar what exactly

1 comes in and comes out.

2 Q Okay. Do you know what is at the
3 building on the opposite end at Mt. Olivet and
4 West Virginia Avenue? That building that is
5 within the 400 --

6 CHAIRPERSON ANDERSON: Mr. --

7 MR. LEE: Lee.

8 CHAIRPERSON ANDERSON: -- Lee, the map
9 I'm looking at has 1237 Mt. Olivet Road, N.E.,
10 and has Simms Place, N.E. So unless you see
11 another map that has other street signs on it --

12 MR. LEE: Oh, no, I'm just familiar.
13 I just know the streets.

14 CHAIRPERSON ANDERSON: Well, but the
15 problem that --

16 MR. LEE: Okay.

17 CHAIRPERSON ANDERSON: -- if you are
18 familiar with the streets, then you need to tell
19 him where the streets are, because if he doesn't
20 live in the neighborhood, he is not going to know
21 the streets. Because I'm looking at it and I'm
22 trying -- I'm missing -- am I missing something?

1 MR. LEE: Okay.

2 BY MR. LEE:

3 Q All right. So the liquor store is on
4 Mt. Olivet Road and so if we go to the left on
5 Exhibit 3 to the next intersection within the 400
6 foot circle at the top left corner there within
7 the circle there is a large building there, do
8 you know what building that is?

9 A No.

10 Q Okay.

11 A No, sir, I don't.

12 Q Okay. All right.

13 MEMBER SHORT: You should also
14 identify that street at the end of --

15 MR. LEE: That's West Virginia Avenue
16 and Mt. Olivet Road.

17 CHAIRPERSON ANDERSON: Well, it's hard
18 to -- as I stated, it's not --

19 MR. LEE: It's not on the map.

20 CHAIRPERSON ANDERSON: -- on the map.
21 There is only two streets on the map, so --

22 MEMBER SHORT: I was trying to help

1 for the record.

2 CHAIRPERSON ANDERSON: All right.

3 MR. LEE: Okay. Well, this is at West
4 Virginia Avenue and Mt. Olivet Road, what I'm
5 talking about on the corner on Exhibit 3. Okay.

6 MEMBER SHORT: So if you go to the
7 right, which street is that?

8 MR. LEE: To the right? That is
9 Trinidad Avenue, outside the circle.

10 MEMBER SHORT: Thank you.

11 MR. LEE: So this is between Trinidad
12 Avenue and West Virginia Avenue where the liquor
13 store business is between Trinidad Avenue and
14 West Virginia Avenue on Mt. Olivet Road.

15 MEMBER SHORT: Mr. Lee, when they do
16 the transcript --

17 MEMBER SILVERSTEIN: Is the gentleman
18 testifying or asking questions?

19 CHAIRPERSON ANDERSON: Hold on. Hold
20 on, Mr. Silverstein. I think that Mr. Short is
21 asking Mr. Lee to identify the streets.

22 MEMBER SHORT: Because for the

1 transcript, Mr. Chair --

2 CHAIRPERSON ANDERSON: Okay.

3 MEMBER SHORT: -- for the transcript
4 when he is saying to the left or right, the
5 transcript is not going to help out any and --

6 CHAIRPERSON ANDERSON: I'm fine, Mr.
7 Short.

8 MEMBER SHORT: And this is part of the
9 record.

10 CHAIRPERSON ANDERSON: I'm fine, Mr.
11 Short. I was just letting Mr. Silverstein know
12 why we were having this colloquy is that Mr.
13 Short had asked Mr. Lee to identify the streets
14 that he was talking about, although they are not
15 on the map.

16 MR. LEE: Well, since -- I will be
17 allowed to testify?

18 CHAIRPERSON ANDERSON: Yes.

19 MR. LEE: I won't have any more
20 questions then.

21 CHAIRPERSON ANDERSON: When you --
22 yeah. So you have no more questions for him?

1 MR. LEE: For Mr. Gilliam, yes.

2 CHAIRPERSON ANDERSON: All right. All
3 right. Mr. Taylor, right?

4 MR. JOHNSON: Johnson.

5 CHAIRPERSON ANDERSON: I'm sorry. Why
6 am I calling you Mr. Taylor?

7 MR. JOHNSON: Think of John Wayne.

8 CHAIRPERSON ANDERSON: I'm going to --
9 it won't happen again. Mr. Johnson.

10 MR. JOHNSON: Well, think of the two
11 presidents that took office by assignation.

12 CHAIRPERSON ANDERSON: All right. All
13 right. Mr. Johnson.

14 MEMBER SHORT: And one was impeached.

15 MR. JOHNSON: Huh?

16 MEMBER SHORT: One was impeached.

17 MR. JOHNSON: Yes. Okay.

18 CHAIRPERSON ANDERSON: All right. Do
19 you have any questions for --

20 MR. JOHNSON: Do you mind if I stand?

21 CHAIRPERSON ANDERSON: Whatever makes
22 you comfortable. So make sure that when you

1 speak, you speak --

2 MR. JOHNSON: Okay.

3 CHAIRPERSON ANDERSON: -- at the
4 microphone, so --

5 MR. JOHNSON: Okay. Speak to this.

6 CHAIRPERSON ANDERSON: All right.

7 MR. JOHNSON: Am I speaking loud
8 enough?

9 COURT REPORTER: You are.

10 MR. JOHNSON: Okay. If I don't, just
11 signal me somehow and I will try to speak up, by
12 inclination, I tend to be soft-voiced.

13 BY MR. JOHNSON:

14 Q Okay. One of the things that you
15 identified is that there were other
16 establishments that sold alcoholic beverages in
17 the area, correct?

18 A Yes, that's correct.

19 Q Okay. Northeast Market being one and
20 another store right next to it and they are
21 within 1200 feet of Kovaks.

22 A That's correct.

1 Q Is there any space in that area with
2 somebody to sit down and indulge in alcoholic
3 beverages by those stores?

4 A Are you talking about those particular
5 stores just where --

6 Q Those two particular stores.

7 A -- yes, in my opinion, yes.

8 Q Hum?

9 A Yes, sir.

10 Q There are spaces there for them to
11 sit?

12 A Yes, sir.

13 Q Okay. Or is it more likely that they
14 might take their beverages over to where there is
15 a bigger parking lot on the side by Kovaks and
16 take their product there and drink their product
17 there as opposed to something that they purchased
18 at Kovaks?

19 A I mean, I can't really speak to what
20 another person would do. I can just answer the--

21 Q All I'm trying to determine is can we
22 tell whether the people that are there drinking

1 purchased the booze at Kovaks or did they
2 purchase it some place else and because it's
3 convenient, okay, we bear the brunt of them
4 drinking at our establishment?

5 A I can't answer that question.

6 Q Okay. Sure. I'm going to jump around
7 a little bit.

8 Mr. Short indicated that it was hard
9 to reach the owner. May I ask, was it any easier
10 to reach the commissioner, the ANC Commissioner,
11 other than through email?

12 A No, sir.

13 Q So equally difficult?

14 A Yes, sir.

15 Q And there wasn't a language problem
16 there?

17 A No, sir.

18 Q So I would hope that he would extend
19 the same, I don't know what the appropriate term
20 is to -- of the commissioner, that she needs to
21 be available. I have tried in the process of
22 negotiating with her. I have made several calls.

1 CHAIRPERSON ANDERSON: Sir?

2 MR. JOHNSON: Several emails.

3 CHAIRPERSON ANDERSON: Mr. Johnson?

4 If you want to present your case, you can do
5 that.

6 MR. JOHNSON: I'm just asking
7 questions.

8 CHAIRPERSON ANDERSON: But yes, so
9 make sure you just ask questions.

10 MR. JOHNSON: Okay. But then that's
11 why I asked the question.

12 BY MR. JOHNSON:

13 Q Okay. Availability. Now, the other
14 question, does anyone know, is the parking lot --
15 are there any rules in ABRA that require us,
16 under ABRA's Rules and Regulations, to maintain
17 the parking lot in a certain manner?

18 A As you said to any --

19 Q In the 236 pages of Rules and
20 Regulations of ABRA, is there anything in there,
21 because I could not find anything in there, which
22 covered the adjacent parking lot? It dealt with

1 the premise and the sale and consumption of
2 alcohol, but it did not address a parking lot
3 outside.

4 A Well, to answer your question, that
5 can be something like as well as the purpose of
6 this Protest Hearing and that's the settlement
7 agreement. If that is entered into a settlement
8 agreement, then that's enforced. That is
9 enforced by one of ABRA Rules and Regulations.

10 As a matter of fact, it's -- it could
11 be two different code violations.

12 Q If it is in the agreement?

13 A If it's part of a settlement
14 agreement, yes.

15 Q If it's part of a settlement
16 agreement. But that would be something that we
17 would be willing to negotiate in order to get our
18 end from your understanding?

19 A It would have to be in the settlement
20 agreement. Like I said, for us it would have to
21 be in the settlement agreement.

22 Q Well, in and of itself, it doesn't

1 have to be a requirement of ABRA?

2 A Are you asking me was there a
3 regulation or a code about it? It's not.

4 Q Okay.

5 A Just for parking, unless what I just
6 told you, if it's in a --

7 Q Yeah.

8 A -- settlement agreement.

9 Q If it's a negotiated item that we put
10 into an agreement, then we have to abide by it.

11 But other than that, what --

12 A It's not --

13 Q -- the parking lot is on us?

14 A Yes, sir.

15 Q And not a violation of ABRA?

16 A (No audible answer.)

17 Q Are you aware, and we talked several
18 questions about complaints about loitering and
19 whatever, of the number of calls that we have
20 made to the DC Police about several issues? We
21 maintain a log at the suggestion of the -- Ms.
22 Shropshire of the calls that we make, 911 calls

1 that we make, complaining about the level of
2 activity in that area and the side of the
3 building.

4 Are you aware of any of that activity
5 that we have done?

6 A No, sir.

7 Q Okay.

8 MR. JOHNSON: I would like to -- tend
9 to rest on that.

10 CHAIRPERSON ANDERSON: All right.

11 MR. JOHNSON: That will be it.

12 CHAIRPERSON ANDERSON: Thank you. Do
13 we have any questions of, by the Board, Mr.
14 Gilliam based on the questions that were asked by
15 either side? All right. Hearing none, Mr.
16 Gilliam, thank you for your testimony.

17 INVESTIGATOR GILLIAM: Thank you.

18 CHAIRPERSON ANDERSON: You can step
19 down.

20 (Whereupon, the witness was excused.)

21 CHAIRPERSON ANDERSON: All right. Mr.
22 Johnson, how do you plan to present your case?

1 You said you are the only witness that is going
2 to testify, so are you just going to testify?

3 MR. JOHNSON: Which would be the best
4 method?

5 CHAIRPERSON ANDERSON: You tell me.
6 It's your case, so I mean --

7 MR. JOHNSON: Well --

8 CHAIRPERSON ANDERSON: -- you are
9 asking --

10 MR. JOHNSON: -- I don't know the
11 Board -- how the Board works, so I'm asking for
12 insight just to give a statement or does it mean
13 more if I testify? I'm willing to do whatever
14 the Board sees --

15 CHAIRPERSON ANDERSON: Well,
16 normally --

17 MR. JOHNSON: -- as appropriate.

18 CHAIRPERSON ANDERSON: -- what --

19 MR. JOHNSON: Okay.

20 CHAIRPERSON ANDERSON: -- occurs is
21 that if there is somebody who asks questions, so
22 say for example the way the Board asked the

1 questions. So we had a witness, but since you
2 are not a witness, so you are the only one, so I
3 guess it's going to be a statement.

4 So what I'm going to do, can you
5 stand, please, sir? Can you raise your right
6 hand?

7 MR. JOHNSON: Do you want me to go
8 over there?

9 CHAIRPERSON ANDERSON: No, no. You
10 are fine right there.

11 Whereupon,

12 WAYNE JOHNSON
13 was called as a witness by the Applicant, and
14 having been first duly sworn, assumed the witness
15 stand and was examined and testified as follows:

16 MR. JOHNSON: Yes, I do.

17 CHAIRPERSON ANDERSON: Have a seat.
18 You can present your case the way you want to
19 present it. Why is it that you are -- I guess,
20 as presenting your case, you are letting the
21 Board know why is it that we should approve the
22 hours that you asked for.

1 MR. JOHNSON: Okay.

2 DIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Okay. As I indicated first, in my
5 opening statement, that we took over a property
6 that had been vacant for some time and I think
7 that a number of the issues that people have
8 raised in terms of loitering and so forth were
9 probably there if not -- probably there more
10 massive than they are now.

11 I think our presence and our
12 monitoring, we have cameras on three sides of the
13 building that we see inside to monitor. We
14 constantly are calling the local police to remove
15 people. I have been there on occasions and have
16 asked people that are loitering to move. It is
17 quite difficult sometimes to get them to move.
18 And even when the police arrive, it is difficult
19 to get them to move. And sometimes the police
20 pick them up and drive them a block away and let
21 them out and they are back again.

22 We do everything that we can to keep

1 that a respectable and positive environment
2 there. We want customers that -- we don't want
3 our customers to be disturbed, you know. We have
4 had one customer that came in and liked to
5 urinate in front of the establishment, in the
6 establishment. The police picked them up and she
7 was gone for 24 hours and back.

8 We can't do anything about that. I
9 mean, we are -- you know, we can't forcibly keep
10 those people away. We would like to. What we
11 can do is call as often as possible and make as
12 many complaints as possible to try to make it
13 better.

14 And I think the more that we -- they
15 know that we follow-up with the police, that they
16 have a sense that, you know, problems are going
17 to be there.

18 I know that other people in the area
19 have said to people that were inebriated, when
20 they say they are calling the police, they ain't
21 joking. Come on, get out of here. So they know
22 that we take a positive action about that. So

1 that's to the issue of the nuisance.

2 The other side is, as I pointed out
3 with the witness, I believe from my vantage point
4 where the other two establishments are, there
5 really -- their parking lot is pretty full and I
6 don't think, unless you are going to sit in the
7 car, there is really a place where local people
8 to look and sit down.

9 We can -- we make it as uncomfortable
10 as possible. As I say visit outside there as
11 often as possible as the cameras indicate to move
12 people along.

13 And we can't determine, I believe,
14 where the alcohol was purchased. We are
15 penalized because it's on our property, but it
16 very well may not be. Okay.

17 Somebody asked about the distance to
18 the other liquor stores. They are not far.
19 Well, it depends on what one considers far. In
20 my mind, they are not far, but for most people in
21 the city, it's not a convenient thing to have to
22 go to them. They have a liquor store right in

1 your neighborhood, they would like to be there.

2 We obtained signatures in support of
3 that. In one of my last conversations with Ms.
4 Shropshire, she said she was going to poll
5 people, residents and provide information to
6 substantiate, to reaffirm her point. And we have
7 not seen that at this time.

8 Okay. We also indicated that we are
9 at a competitive disadvantage. The former
10 owners, several things, they entered into a
11 negotiated agreement, but knowing that they were
12 going to leave the premises, did not endeavor to
13 make anything happen, okay, towards that.

14 What we found out and as we had been
15 negotiating, we have started implementing some
16 things that we have discussed:

17 One of the things was a chain across
18 the parking lot at night to limit people entering
19 the parking lot. We have put that in place.

20 They have asked for additional
21 cameras. We have installed additional cameras to
22 the rear of the building.

1 We have instituted the lock that was
2 suggested. Okay. All based on good faith.

3 We looked -- we talked about repaving
4 the parking lot, but that seems to be quite
5 expensive. And we suggested that maybe as a
6 compromise, maybe filling the potholes and maybe
7 striping, but I never got an answer back.

8 Every step of the way, we have tried
9 to compromise to meet our objectives. And the
10 sense I received is that no matter what we
11 compromise, the end goal or the end result was it
12 wasn't going to happen.

13 I take that from the last conversation
14 I have had up through today and I did submit as
15 an exhibit, I don't know if it's in this package,
16 a copy of the last email where I reached out to
17 Ms. Shropshire saying I would like to settle it,
18 you know, tell me what it is going to take.

19 You know, we are amenable trying to
20 get there. You know, we are not hard in stance
21 about anything. You know, as I said, we need
22 revenue and revenue comes by having some longer

1 hours or being open on Sunday to compete.

2 As to the violation, okay, that was
3 solely done by the manager without the owner's
4 consent or permission. The manager has heard us
5 talking about the difficulties dealing with
6 payments and he thought that well, he is in there
7 doing this and they are at the door, what's the
8 harm? He has been verbally reprimanded and been
9 notified that if it ever happened again, he would
10 be terminated.

11 So we do take action. And as to
12 whether I communicate with the owner, a lot of
13 times I may communicate directly with the manager
14 or the owner as to my ability to speak through a
15 foreign language. I have a hard enough time with
16 English, that's why I don't attest to speaking
17 any foreign language, except those words that I
18 learned in high school in New York City, which
19 were inappropriate for general conversation.

20 However, because I am part islander,
21 okay, my folks, my mother's side comes from
22 Barbados and Panama and Brooklyn used to be a

1 major stronghold for people from the islands, I
2 am fairly comfortable with accents from many
3 different countries. So I am able, maybe more so
4 than other people, to deal with people that speak
5 broken-English.

6 It's not that I can speak Arabic or
7 anything else, but I do have an affinity where if
8 it's a Beijing speaking or Jamaican speaking, I
9 can usually figure out what they are saying and
10 the same thing with the Pakistani. It's not that
11 I speak those languages. And I hope that
12 addressed your concerns, sir.

13 CHAIRPERSON ANDERSON: Thank you.

14 That's it?

15 MR. JOHNSON: I think that's -- unless
16 there is something else you would like to know.

17 CHAIRPERSON ANDERSON: No, this is
18 not --

19 MR. JOHNSON: I mean, the only other
20 thing I can say, and Mr. Countee could attest,
21 any time he has apprised me of a violation, I
22 take action right away. I don't wait. Okay.

1 When he tell -- calls and tells me something and
2 I usually return his phone calls fairly timely,
3 you know, when he said there was a problem with
4 the signs, I said -- he said well, you have got
5 to look at the sign. I'm sending it to you in
6 email.

7 And he talked to me around 7:00 and he
8 said I'll have it to you. I said I'll be home by
9 8:30. I got home at 8:30, he had been called out
10 and as soon as he got back in, he explained what
11 signs needed to be removed. And I called him and
12 said A, B and C got to come out the window and
13 the next day I sent him a picture of A, B and C
14 being gone from the window.

15 I get done what needs to be done,
16 that's part of my task.

17 CHAIRPERSON ANDERSON: That's it?

18 MR. JOHNSON: That's it, sir.

19 CHAIRPERSON ANDERSON: All right. Mr.
20 Lee, do you have any questions of Mr. Johnson,
21 based on --

22 MR. LEE: Yes.

1 CHAIRPERSON ANDERSON: -- the
2 presentation he just made?

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q Mr. Johnson, on the date that the
6 store was violated for being open on Sunday, were
7 you at the store?

8 A No, I was not.

9 Q So you cannot witness to say who sold
10 -- who was operating the store that day?

11 A I can say who was operating the store,
12 because after the violation was reported, I
13 received a call from the manager telling me that
14 there was a problem.

15 Q And what time was that?

16 A I don't remember the time, sir.

17 Q Okay. Mr. Gilliam said he cited, I
18 believe, at 8:00 or some time after.

19 A Whatever time it was --

20 Q Okay.

21 A -- he called.

22 Q And when you testified that there are

1 other -- well, number one, the two establishments
2 within 1200 feet, you testified that are selling,
3 what type of license do they have?

4 A They do not have a Class A License.

5 Q So they only sell?

6 A They sell beer and wine.

7 Q Okay. And your list that you
8 submitted it says these are competition, these
9 Class A liquor stores in the area, how close are
10 they to --

11 A I don't know the geographical
12 proximity. I do know that they are all in 5D. I
13 confirmed that with a Member of the ABRA staff
14 that there are seven Class A Licenses in 5D.
15 Five have permission to be open. We are one that
16 does not. And the other store that does not have
17 hours, they thought they had lost the ability for
18 violations of some sort of the past.

19 Q Okay.

20 MR. LEE: Now, just help me out, Board
21 Members. Well, I guess, that would be my
22 testimony to something different.

1 CHAIRPERSON ANDERSON: What's the
2 question you are asking?

3 MR. LEE: My question is on the --
4 where these liquor stores are, the proximity of
5 where they are in 5D. And what stores are open.

6 CHAIRPERSON ANDERSON: I don't know,
7 sir, I don't know. We can check our records to
8 see. They gave the -- I don't know where the
9 information came from.

10 MR. LEE: Okay.

11 CHAIRPERSON ANDERSON: Because I
12 thought that Investigator Gilliam --

13 MR. LEE: It came from Mr. Gilliam.

14 CHAIRPERSON ANDERSON: But he said
15 that it was given to him by Mr. Lee.

16 MR. LEE: Okay.

17 CHAIRPERSON ANDERSON: So I don't--

18 MR. LEE: From Mr. Gilliam.

19 CHAIRPERSON ANDERSON: -- Mr. Gilliam
20 said they were given to -- Mr. Gilliam stated
21 that Mr. Johnson gave him this list.

22 MR. LEE: Okay.

1 CHAIRPERSON ANDERSON: So I don't know
2 what it is and I can't independently verify it,
3 so there is nothing we can --

4 MR. LEE: Okay.

5 CHAIRPERSON ANDERSON: -- do with it.

6 THE WITNESS: I can say that, if I
7 may, I was directed -- I called Ms. Randall and
8 she directed me to a gentleman, I can't think of
9 his name and I don't have -- maybe I do have it
10 on this packet. Excuse me for one second, let me
11 check my little notepad. It's not the most
12 organized notepad, so --

13 CHAIRPERSON ANDERSON: And while you
14 are looking, 5D, you are talking about ANC-5D?

15 THE WITNESS: Yes.

16 MR. LEE: Yes.

17 CHAIRPERSON ANDERSON: Okay. Not Ward
18 5, ANC-5D.

19 MR. LEE: 5D.

20 CHAIRPERSON ANDERSON: Okay. And can
21 you tell us while he is waiting, what are the
22 boundaries of ANC -- do you know the boundaries

1 of ANC-5D?

2 MR. LEE: I'll say it's ANC-5D, so we
3 include Ivy City.

4 CHAIRPERSON ANDERSON: Okay.

5 MR. LEE: So when you -- you are
6 talking about from Ivy City from New York Avenue.
7 You come down New York Avenue to Brentwood Road,
8 which is Woods, Brentwood Road to --

9 MEMBER SHORT: By the post office?

10 MR. LEE: No. That's 5B.

11 MEMBER SHORT: Okay.

12 MR. LEE: So but Brentwood Road going
13 towards Union Market.

14 MEMBER SHORT: Okay.

15 CHAIRPERSON ANDERSON: Okay.

16 MR. LEE: So New York Avenue, Union
17 Market to inside the market, not -- we do not
18 cover the corner of New York Avenue and Florida
19 Avenue on the other side of the train tracks. We
20 are on the east side of the train tracks on
21 Florida Avenue, so we come all the way down
22 Florida Avenue to Benning Road, up Benning Road

1 to the Langston Golf Course.

2 And so we include the arboretum, so
3 the neighborhood, everything north of Florida
4 Avenue, north of Benning Road before you cross
5 the river, so the arboretum and the Langston Golf
6 Course are within 5 feet. So when you --

7 CHAIRPERSON ANDERSON: 5D you mean?

8 MR. LEE: Right. 5D, yes.

9 CHAIRPERSON ANDERSON: Okay.

10 MR. LEE: So when you move north, you
11 are going all the way to Mt. Olivet Road.

12 CHAIRPERSON ANDERSON: And let --

13 MR. LEE: Mt. Olivet Road, so the
14 arboretum is -- well actually, the arboretum
15 gate, Maryland Avenue as you go to Carver Terrace
16 going towards the golf course, so the arboretum
17 is not and Mt. Olivet Cemetery is not, but all of
18 Ivy City is within 5D and all of Union Market.
19 The active part of Union Market is at 5D.

20 MEMBER SHORT: That's Carver Terrace.

21 MR. LEE: Carver Terrace, Langston
22 Terrace, right.

1 CHAIRPERSON ANDERSON: Well, let me
2 ask you a question, okay, while he is reading.

3 There is at least one liquor store
4 that I am familiar with, so is Big Ben Liquor
5 Store in 5D?

6 MR. LEE: It's in Ward 5. That's that
7 little corner that is part of Ward 5 in
8 Northwest.

9 CHAIRPERSON ANDERSON: But is that --

10 MR. LEE: It's not in 5D, no.

11 MEMBER SHORT: New York Avenue, right?

12 MR. LEE: New York Avenue and North
13 Capitol Street.

14 MEMBER SHORT: Okay. That's not.

15 CHAIRPERSON ANDERSON: Because that's
16 one of the liquor --

17 THE WITNESS: Yeah, that's on the
18 list.

19 MR. LEE: But it's North Capitol
20 Street.

21 CHAIRPERSON ANDERSON: So I was just
22 asking -- all right. All right. Okay.

1 Did you find the answer, sir?

2 THE WITNESS: I'm looking here. I
3 couldn't find it in my notes. I'm trying to look
4 for the phone number that -- since I haven't
5 deleted any calls from an ANC person other than
6 Ms. Randall.

7 CHAIRPERSON ANDERSON: Well, if you
8 can't -- if you don't have an answer to that --

9 THE WITNESS: I can get it and --

10 CHAIRPERSON ANDERSON: It's not -- I
11 was trying to help.

12 MR. LEE: So you answered the
13 question. All right. Okay.

14 CHAIRPERSON ANDERSON: That's not --

15 BY MR. LEE:

16 Q I'll just testify to the list.

17 A The --

18 CHAIRPERSON ANDERSON: Huh?

19 MR. LEE: I'll just testify to the
20 list.

21 CHAIRPERSON ANDERSON: Well, you can,
22 but do you have any other questions for him?

1 BY MR. LEE:

2 Q The language barrier, you stated that
3 you was always able to get in contact and we had
4 -- we did meet. Oh, I'm sorry, that's testimony.

5 You -- well, so you testified the
6 Northwest Market, we don't know what the sales
7 are do you?

8 A No.

9 Q Oh, how do you witness the police
10 dropping people off after picking them up? Did
11 you witness that?

12 A We witnessed them picking them up,
13 okay, and approximately 15 minutes later, they
14 are back in the neighborhood. Okay. So if they
15 are back in 15 minutes and they put them in the
16 car, they obviously didn't take them to the
17 precinct and book them under anything, because
18 you don't get out that fast.

19 Okay. I mean, that's the world's
20 record for getting taken to a precinct and being
21 held or whatever and then getting back to the
22 neighborhood, that's -- I think it's a reasonable

1 assumption to say and the officers do say, have
2 said that we take them from -- in direct
3 conversation with some officers that I had, we do
4 take them away out of the area and then we do
5 drop them off.

6 It's meaningless to take them in,
7 because they are going to be out and whatever and
8 they have said that to me. I have a card at home
9 for a particular officer that gave me his card
10 that has stated that. So I have not seen it, but
11 based on a conversation as well as, what I call
12 intuitive logic, based upon the time that they
13 reappear, that they are dropped off.

14 Q Okay. You also testified that the
15 beverage that are being consumed on the parking
16 lot, how can you determine that it didn't come
17 from Kovaks Liquors if you are not in the store--

18 A Well, I'm not able.

19 Q -- making sales?

20 A The times I have been there, okay, and
21 I'm not -- I don't work in the store daily, but I
22 -- but what they seemed to be drinking is beer

1 and other items which could be -- it's not hard
2 liquor, so those items could be purchased at
3 Kovaks or the other two establishments. If it
4 was hard liquor, the other two stores aren't --
5 don't have the ability to sell hard liquor, so I
6 would have to say it was us. But since it's beer
7 or wine and both other establishments sell that,
8 I don't think anybody could point a specific --
9 with any specificity as to where it was
10 purchased.

11 Q Okay. And --

12 A I think it's a questionable point.

13 Q -- what is your weekly visits to the
14 store? How many days a week are you in the
15 store?

16 A It varies from time-to-time.

17 Q Well --

18 A I go -- there is no -- I don't have a
19 -- I'll put it this way, I don't relish driving
20 into DC, because I live in Manassas. I drive
21 when I feel there is a need, a question or
22 whatever, some weeks it may be a couple of times

1 and some weeks it may be not at all. It's as my
2 need arises.

3 Q So you would state that your visits to
4 the store is not consistent enough to really
5 establish --

6 A No, but --

7 Q -- where the --

8 A -- it probably is going to be come
9 consistent, because I think we are losing an
10 employee and I will probably start working there
11 on a date -- we are discussing me working there
12 on a day-to-day basis.

13 Q But up and to this point, you are not
14 there on a daily basis?

15 A No, I'm not.

16 Q And some weeks you are not there at
17 all?

18 A Some weeks I may not be there at all.

19 Q How about the weekends? How many
20 weekends are you there, since you have been
21 working with --

22 A Well, the weekends is Saturdays. The

1 only Saturdays I have been there, a few
2 Saturdays. Not a preponderance. I mean, I don't
3 make it a habit, but what I do do is on my
4 laptop, I have -- since we have cameras
5 throughout the store, I have the ability to
6 access the inside of the store as well as the
7 parking lot via my laptop at any time.

8 Q Okay. Now also, how -- is there -- do
9 you only -- does Kovaks only sell one brand of
10 beer?

11 A No.

12 Q Do they sell malt liquor?

13 A Yes.

14 Q Would you say they sell a wide variety
15 of malt liquor that the people that -- that your
16 customers like to consume?

17 A I think that depending upon the
18 customer a lot of people, one of the most popular
19 is Heineken, which is very popular. I can't
20 pronounce the other one, it is Stella whatever is
21 very popular. Those tend -- are what I see are
22 the most popular things that go out that I see.

1 Q Okay.

2 MR. LEE: I don't have any more
3 questions.

4 CHAIRPERSON ANDERSON: All right.
5 Thank you. Any questions by any Board Members?
6 Yes, Mr. Short?

7 MEMBER SHORT: Mr. Johnson?

8 THE WITNESS: Yeah, I knew you were
9 coming to me.

10 MEMBER SHORT: Well, let me say this.
11 You are quite articulate and thank you very much.
12 You have been quite, quite knowledgeable and your
13 answers show that you have a very great interest
14 in this business.

15 Are you familiar with the settlement
16 agreement that was passed on with the license to
17 this business?

18 THE WITNESS: The original agreement
19 that KYS was on?

20 MEMBER SHORT: The settlement
21 agreement they had when they purchased --

22 THE WITNESS: Then KYS, yes.

1 MEMBER SHORT: -- and was passed on.

2 THE WITNESS: The -- when KYS sold the
3 business to Kovaks or Pako, LLC, they made no
4 mention of that agreement.

5 MEMBER SHORT: But it was tied to the
6 license?

7 THE WITNESS: It was, but nobody -- we
8 didn't see it. Okay?

9 MEMBER SHORT: Okay. Well, we have a
10 copy of it here.

11 THE WITNESS: You may have.

12 MEMBER SHORT: Yes.

13 THE WITNESS: But one of the things
14 that I have reviewed is every document associated
15 with the purchase of the business, okay. I won't
16 editorialize.

17 MEMBER SHORT: Okay. Let me --
18 because our time is running short.

19 THE WITNESS: I can make it brief.

20 MEMBER SHORT: Okay.

21 THE WITNESS: I won't editorialize.

22 Neither did KYS, I think it is, make that known

1 nor the landlord make that known. We did not
2 become aware of it --

3 MEMBER SHORT: But it's still binding
4 regardless whether you knew about it or not,
5 isn't it?

6 THE WITNESS: Yes.

7 MEMBER SHORT: Okay. So what were the
8 hours that were on the --

9 THE WITNESS: There were no hours in
10 that agreement. It did not have any hours at
11 all.

12 MEMBER SHORT: What were the hours at
13 that store before you closed?

14 THE WITNESS: As I understand it, they
15 were 9:00 to 9:00, Monday through Friday --
16 Monday through Saturday.

17 MEMBER SHORT: And they were there for
18 how long?

19 THE WITNESS: The previous owners, I'm
20 not sure.

21 MEMBER SHORT: Okay.

22 THE WITNESS: I'm not sure how long

1 they owned this business.

2 MEMBER SHORT: Maybe you could tell me
3 this, and I have a lot of friends in Brooklyn,
4 but we won't go there. I'll just say this, you
5 remind me a lot of Brooklyn.

6 Exhibit No. 13 where they list the
7 five alcohol stores, Class As, are any of those
8 within walking distance of your establishment?

9 THE WITNESS: Not that I'm aware of.

10 MEMBER SHORT: Are there any A stores
11 that you are aware of --

12 THE WITNESS: That are in walking
13 distance?

14 MEMBER SHORT: -- yes.

15 THE WITNESS: Not that I'm aware of.
16 That they have --

17 MEMBER SHORT: So you are the only A
18 store within miles?

19 THE WITNESS: Well, I wouldn't say
20 miles. I would say -- what do you consider
21 walking distance? Can I say two things, okay?

22 MEMBER SHORT: Well, do you know any

1 A stores close by?

2 THE WITNESS: I know where some of
3 them are. I have seen them, but --

4 MEMBER SHORT: Do you have the
5 addresses or their names?

6 THE WITNESS: Yeah, the address is on
7 here.

8 MEMBER SHORT: These aren't in walking
9 distance, none of these. No, sir.

10 THE WITNESS: Could I go back one
11 statement?

12 MEMBER SHORT: Oh, yes.

13 THE WITNESS: Something before that,
14 what did you ask me before?

15 MEMBER SHORT: Yes, well, I asked you
16 were any of these stores on this list within
17 walking distance?

18 THE WITNESS: Before that. You had a
19 question before that or a comment just before
20 that. I wanted to address that, if I might.

21 MEMBER SHORT: Please, forgive me, Mr.
22 Johnson. I am not watching exactly what I'm

1 reading to you, but I know I was looking at this
2 list and I --

3 THE WITNESS: On the -- oh, you asked
4 me about the length of time that the prior owner
5 had the store. That's -- okay, that was the
6 piece I wanted to address.

7 I am not sure how long they had it,
8 but the economic conditions under which they
9 operated have substantially changed and that's
10 one of the reasons they walked away from the
11 business. They were paying something in the
12 neighborhood of \$3,000 --

13 MEMBER SHORT: That's way -- that's
14 not in the line of questioning and I --

15 THE WITNESS: I just wanted to --

16 MEMBER SHORT: Okay. I understand.

17 THE WITNESS: -- give you the full set
18 of facts, because I have said several times we
19 need the ability to compete.

20 And what I need you to understand is--

21 MEMBER SHORT: But, Mr. --

22 THE WITNESS: -- they were able to --

1 MEMBER SHORT: Mr. Johnson, without
2 being rude, what I was trying to say to you is
3 whatever was on that SA, that settlement
4 agreement, you can't --

5 THE WITNESS: We are obligated to --

6 MEMBER SHORT: -- and the people that
7 you work for can't come in here and say to us we
8 are a new store now. We don't recognize that.

9 THE WITNESS: Okay.

10 MEMBER SHORT: Here is what we want to
11 do, because this Board is bound and so are you by
12 that settlement agreement, it was a part of the
13 license.

14 THE WITNESS: I don't dispute that.

15 MEMBER SHORT: That was more
16 information actually from a Board Member than
17 you, but --

18 THE WITNESS: I don't dispute that.

19 MEMBER SHORT: -- you understand that?

20 THE WITNESS: I don't disagree with
21 what you are saying.

22 MEMBER SHORT: All right. Not a

1 problem. Okay. All right.

2 THE WITNESS: I just wanted to add is
3 that --

4 MEMBER SHORT: Okay.

5 THE WITNESS: Well --

6 MEMBER SHORT: My last --

7 THE WITNESS: -- I'll save that for my
8 closing.

9 MEMBER SHORT: Okay. My last question
10 for you is this. You had -- you did ask
11 Investigator Gilliam was there anything about the
12 parking lot within ABRA Laws. I can tell you
13 this having been a business owner myself and
14 having worked for the Government for 33 years
15 before I assumed this position, that that is
16 private property and yes, for your basic business
17 license to exist, that parking lot as to be
18 within workable or good condition. That is the
19 law.

20 The ANC, I don't know if they are
21 working on you, working with you on that or not,
22 but I do know that you can't have a parking lot

1 in most other parts of town. You can't. And the
2 community would not allow it. So I don't know
3 what is going on with that, but I'll just simply
4 say this to you.

5 Again, you have been quite articulate
6 and I think you need to, the next time you come
7 here, my advice would be make sure the owner
8 comes with you. Really.

9 THE WITNESS: Okay.

10 MEMBER SHORT: We would like to see
11 the owner and because he might say he didn't
12 understand what you said, although you are here
13 and you can bind him by the information you are
14 giving us. This Board needs to talk to the owner
15 and let him know that some of the concerns we
16 have heard, at least on my past as a Board
17 Member, are quite concerning.

18 And it looks like the store is well-
19 stocked and it looks like it has been -- and I'm
20 glad to hear you had the cameras. I'm glad to
21 hear some other things you have. But again,
22 that's all I have for you right now then. Thank

1 you very much for your compelling and good
2 testimony.

3 THE WITNESS: Thank you.

4 MEMBER SHORT: Thank you, Mr. Chair.

5 CHAIRPERSON ANDERSON: Any other
6 questions by any other Board Members?

7 MR. LEE: All right. I have a
8 question.

9 CHAIRPERSON ANDERSON: No? I have a
10 question for you, Mr. --

11 MEMBER SHORT: Johnson.

12 MR. LEE: Yeah, I wrote the name down.
13 Thank you.

14 CHAIRPERSON ANDERSON: -- Johnson.
15 Thank you, Mr. Johnson. So how many cameras do
16 you have?

17 THE WITNESS: I believe there is four
18 on the side, along side and three in the back and
19 there is two or three inside.

20 CHAIRPERSON ANDERSON: So how many
21 cameras? How many exterior cameras do you have
22 is what I'm trying to find out?

1 THE WITNESS: Approximately, nine
2 cameras, I think.

3 CHAIRPERSON ANDERSON: Nine exterior
4 cameras?

5 THE WITNESS: No. That includes the
6 two interior cameras.

7 CHAIRPERSON ANDERSON: So --

8 THE WITNESS: Seven exterior cameras.

9 CHAIRPERSON ANDERSON: So where are
10 the seven exterior cameras?

11 THE WITNESS: They are -- I don't
12 think you can see them in the pictures. They are
13 at the edge of the roof looking down.

14 CHAIRPERSON ANDERSON: And so why did
15 -- why do you guys have seven exterior cameras?

16 THE WITNESS: Well, there is four
17 along the long side and there is three in the
18 back.

19 CHAIRPERSON ANDERSON: The reason I'm
20 asking is because you had said that as the -- the
21 ANC had asked you to install cameras and you have
22 done that, so that's what I'm trying to find out.

1 THE WITNESS: We have -- they asked us
2 to do that. We did do that.

3 CHAIRPERSON ANDERSON: So the total
4 cameras that you had were cameras that you
5 already had plus additional cameras?

6 THE WITNESS: We didn't have cameras
7 before up there.

8 CHAIRPERSON ANDERSON: So all the
9 cameras that you have outside was because the ANC
10 asked you to?

11 THE WITNESS: Well, the cameras in --
12 we had cameras -- I'm sorry. We had cameras on
13 the side. The cameras that they -- we added were
14 the ones on the back.

15 CHAIRPERSON ANDERSON: So I want to be
16 specific. What cameras did the ANC ask you to
17 provide?

18 THE WITNESS: The three in the back
19 are the ones we added because of the ANC.

20 CHAIRPERSON ANDERSON: So what does
21 the three in the back cover?

22 THE WITNESS: Exactly the back,

1 because we can't project out too far, because we
2 would interfere with the homes behind.

3 CHAIRPERSON ANDERSON: So what is --
4 I'm trying to figure out what is it that these
5 cameras cover?

6 THE WITNESS: They cover to make sure
7 there is, hopefully, nobody there consuming
8 alcohol so that we can chase them away.

9 CHAIRPERSON ANDERSON: All right. And
10 the three cameras?

11 THE WITNESS: (No audible answer.)

12 CHAIRPERSON ANDERSON: All right.

13 THE WITNESS: Chasing people is not
14 easy.

15 CHAIRPERSON ANDERSON: I want you to
16 look at Exhibit 5 that is in the report by our
17 Investigator.

18 THE WITNESS: Okay. That's the
19 parking lot.

20 CHAIRPERSON ANDERSON: Hold on maybe
21 I'm on the wrong one. Hold on one minute. I
22 gave you the wrong number. I apologize. Hold

1 on. Exhibit 4.

2 THE WITNESS: Okay.

3 CHAIRPERSON ANDERSON: Now, is this an
4 accurate representation of the front of the store
5 as of today?

6 THE WITNESS: That is not.

7 CHAIRPERSON ANDERSON: So what --

8 THE WITNESS: This was -- if I may, I
9 have a picture that I gave Mr. Countee after he--

10 CHAIRPERSON ANDERSON: So I guess what
11 I'm saying for Exhibit 5, did --

12 THE WITNESS: I just wanted to -- just
13 give me one second and I can --

14 CHAIRPERSON ANDERSON: No. You don't
15 -- I don't want you to show me. I'm just trying
16 to find out --

17 THE WITNESS: You can see that the
18 items that were there, the Stella or whatever is
19 gone. The stuff on the side is gone. Okay. The
20 checks and balance is not really a sign that is
21 in compliance because that is not glass behind
22 that, that is plywood behind that and Mr. Countee

1 said that is appropriate. Okay?

2 CHAIRPERSON ANDERSON: So basically,
3 Mr. Countee, looked at this sign and told you
4 that there were some violations and --

5 THE WITNESS: He looked at the sign
6 and told me some violations. We addressed them.
7 And then I asked him in the text, I said I
8 forwarded, this is how the window looks now. I
9 asked him is it okay? And he said yes, sir.

10 CHAIRPERSON ANDERSON: All right. So
11 tell me about this. You also said you did call
12 the -- you maintain a log. Tell me about that.

13 THE WITNESS: We maintain a call log
14 that every time that we call the Metro PD, that
15 what we call about and the times and so forth, we
16 document the issue that was there. It's supposed
17 to be maintained. I mean, I think some people
18 may feel that they could make a life of
19 documenting, but we try our best to make sure
20 that it is maintained.

21 CHAIRPERSON ANDERSON: Okay. Any
22 other questions?

1 THE WITNESS: And available.

2 CHAIRPERSON ANDERSON: I'm sorry?

3 Huh?

4 THE WITNESS: And available.

5 CHAIRPERSON ANDERSON: Okay. All
6 right. Any other questions by any other Board
7 Members? All right.

8 All right. Mr. Lee, do you have any
9 questions of Mr. Johnson based on the questions
10 that were asked by the Board?

11 MR. LEE: No, I do not.

12 CHAIRPERSON ANDERSON: All right.
13 Thank you. Mr. Johnson, do you need to clarify?
14 Normally, if there was a witness, you could ask
15 the witness questions. But so when I come back
16 to you, it's a process that I'm following. So do
17 -- is there anything that you need to clarify
18 based on the questions that you gave to the
19 Board?

20 REDIRECT EXAMINATION

21 BY MR. JOHNSON:

22 I would like to clarify when I said

1 competitive advantage or disadvantage that we
2 find ourselves in, that if I can be very candid,
3 that our -- we looked at the numbers that the
4 previous owner had and we didn't realize, I
5 shouldn't say we, the owner didn't realize that
6 the drastic increase in his fixed cost, which
7 increased two times over the prior owner, was
8 going to have such a detrimental effect on
9 business. And he thought that he could deal with
10 that.

11 Now, I would add this piece. I am to
12 blame that we are here. And the reason I say
13 that we are -- I am to blame is that when the
14 license renewal process came up and he talked
15 about change of hours, I said well, let's go for
16 it. And I suggested what the new hours would be.

17 CHAIRPERSON ANDERSON: No.

18 THE WITNESS: So -- no, in other
19 words, if I had kept my mouth shut, okay, we
20 might not have been here, but I said, you know,
21 we need to maximize the operating hours to the
22 extent possible to induce people in. And so he

1 followed my lead and said okay, put the
2 application in that way and that's what I did.

3 Okay? Because in addition to being
4 the representative, I'm also the financial person
5 behind the business. And in looking at the
6 numbers, I said, you know, we need to increase
7 people slow and make it more easy for them to
8 come through -- come to and we need to be
9 competitive with other people in the area.

10 So I sold him on that and a ergo, he
11 made the request for substantial change.

12 CHAIRPERSON ANDERSON: That's fine.
13 All right. Do you have any -- do you rest your
14 case on the presentation?

15 MR. JOHNSON: I think I said enough
16 for tonight.

17 CHAIRPERSON ANDERSON: All right.
18 Thank you. All right. Mr. Lee?

19 MR. LEE: Well, I'm going to try and
20 be brief.

21 CHAIRPERSON ANDERSON: Hold on, hold
22 on.

1 MEMBER SILVERSTEIN: Take a two minute
2 break?

3 CHAIRPERSON ANDERSON: Sure. We will
4 take a --

5 MR. LEE: And I think you need to
6 swear me in, too.

7 CHAIRPERSON ANDERSON: Well, we are
8 taking a break.

9 MR. LEE: Okay.

10 CHAIRPERSON ANDERSON: So yeah. Well,
11 the reason I said so is because I'm going to --
12 yeah, so we will do that. So we are off the
13 record until -- it's 6:36 so we will be off the
14 record until 6:45.

15 (Whereupon, the above-entitled matter
16 went off the record at 6:35 p.m. and resumed at
17 6:38 p.m.)

18 CHAIRPERSON ANDERSON: All right. So
19 are you ready to present your case, sir?

20 MR. LEE: Yes.

21 CHAIRPERSON ANDERSON: All right. Can
22 you raise your right hand, please?

1 Whereupon,

2 CLARENCE LEE

3 was called as a witness by the Protestant, and
4 having been first duly sworn, assumed the witness
5 stand and was examined and testified as follows:

6 MR. LEE: Yes, I do.

7 CHAIRPERSON ANDERSON: All right.

8 DIRECT EXAMINATION

9 CHAIRPERSON ANDERSON: Tell me the way
10 you -- present your case the way you --

11 BY MR. LEE:

12 Okay. First, I want to address the
13 Sunday sales. On Sunday, August 18th, I received
14 a call from a citizen that Kovaks was operating.
15 So that complaint must have went in for Mr.
16 Gilliam to approach the store on August the 20 --
17 no, I'm sorry, Sunday, August the 19th. I
18 received a call at my home that the store was
19 open. I didn't go down there to look, but
20 somebody called and said they went in and bought
21 a soda.

22 The next Sunday, on August 26th, I went

1 into the store and purchased a pint of E & J
2 liquor. I purchased it from the owner, because I
3 had met the owner in the building. I used my
4 credit card, so I could establish that I was
5 there. I got a credit card receipt. I did have
6 th receipt. I scanned the receipt. I thought I
7 sent it to Commissioner Shropshire. I do have
8 the actual receipt that shows what I purchased
9 with a picture of the bottle.

10 So I purchased from the owner on
11 Sunday, August the 26th. So I'm having that as
12 testimony. So and that was at 12:30 in the
13 afternoon. It wasn't at 8:00. I went there at
14 12:30 and the reason why I know exactly what time
15 it was, I exited from church at 12:00. I go to
16 church on Florida Avenue. I got in my car and I
17 drove around, pulled up in the parking lot and I
18 went to the store and I purchased a pint of E &
19 J. So I'm giving that as testimony.

20 Secondly, there are other -- there are
21 no other stores in 5D that are open on Sunday.
22 We have Rose's Liquor on Bladensburg Road. We

1 have Stanton Liquor on Bladensburg Road. Rose's
2 is 800 Block of Stanton Road -- I mean, 800 Block
3 of Bladensburg Road and Stanton Liquors is in the
4 1000 Block of Bladensburg Road. Both of those
5 establishments aren't open on Sundays. They are
6 within walking distance to the Kovaks location or
7 in the Trinidad neighborhood.

8 So as you know, the Trinidad
9 neighborhood, like I said, is bound on Mt. Olivet
10 Road. Across the street from Kovaks Liquor store
11 is a cemetery and those residents don't buy
12 liquor. So from that side over --

13 CHAIRPERSON ANDERSON: So you think.

14 THE WITNESS: So I say, okay. The
15 opossums might. But so there is no other stores.
16 So if you are not -- if you don't have it on
17 Saturday night, you do have to hoof it to the
18 nearest one is Oasis on this list and Oasis is at
19 the corner of 3rd at M Street and that is outside
20 of the Gallaudet/New York Avenue Metro Station.
21 And within the Metro Station, that shows the
22 distance between my house and that, it's

1 approximately a mile, you know, due to circling
2 the Metro how far you are from the Metro. So
3 that's within a mile.

4 All the establishments and that's also
5 in Ward 6, it's not in Ward 5, you asked about
6 Big Ben, that is in ward -- that might be in Ward
7 5. I'm not sure. We have a little small corner
8 in the Northwest that is still in Ward 5.

9 The other establishments, one is at
10 Union Station, so that's approximately more than
11 a mile, so they are not close. So to say there
12 would be an undue advantage, I can't see that
13 being undue advantage with all the liquor stores
14 in the proximity to Kovaks are closed on Sunday.

15 There is one liquor store on -- and
16 these are all Class A establishments, a liquor
17 store on New York Avenue. Now, we do have liquor
18 sales at the restaurants on West Virginia Avenue,
19 in Ivy City, Union Market, those restaurants.
20 Restaurants can sell on Sundays. They are open
21 on Sundays for that opportunity.

22 Secondly, I am looking at the -- one

1 of the things I have questioned is that the --
2 also the Kovaks Liquor store is down the street
3 from the school. It's not within the 400 feet
4 limit, but the church at Trinidad Avenue and Mt.
5 Olivet Road is. That's a church there and then
6 also the Bethesda Baptist Church that's West
7 Virginia Avenue and Mt. Olivet Road are within
8 400 feet.

9 Now, the church at Mt. Olivet Road and
10 Trinidad Avenue, it was built after Kovaks. So
11 when they purchased that property, the liquor
12 store was there. So just to say, you know, but
13 it is there now. We have the elementary school.
14 The children walk past Kovaks Liquor store and
15 walk past those patrons that are drinking in that
16 parking lot on their way to school, on their way
17 home from school every day.

18 We, as the ANC -- when the liquor
19 store was closed, the time it was closed, the
20 traffic was less. Now, the Northeast Market,
21 which is next door, they have -- they sell seven
22 days a week, beer and wine, and people do loiter

1 there. I don't -- they do move back and forth,
2 but I guess it depends on what your establish --
3 what your beverage of choice is, what you
4 purchase.

5 But I personally have witnessed and I
6 have been on the lot and see people pull up, go
7 into the liquor store, come back, sit in their
8 car. Now, we weren't -- I was unaware that the
9 owners always said the parking lot didn't belong
10 to them, but it either belongs to the landlord or
11 the -- they don't own the building. That liquor
12 -- all that parking lot area is part of the
13 Kovaks' property, so it should be maintained by
14 Kovaks and it should -- like I said, they should
15 be chasing the drinkers away when they sit there.

16 But we just -- because as we -- the
17 store opened. Now, they have -- Mr. Johnson came
18 to us when they said that they were going to
19 wonder -- open the store on Sundays and we were
20 kind of appalled that they went on and did it,
21 because we told them -- you know, they knew the
22 process. The owner knew. I doubt anybody was

1 knocking on the door.

2 I didn't have to knock on the door to
3 get in at 12:30. I just went up to the store and
4 opened the door and the door was open. So to say
5 that someone was knocking on the door to get in
6 and Mr. Johnson wasn't there, I know I purchased
7 from the owner, because I met the owner at one of
8 our meetings, so he was aware that he was
9 selling.

10 CHAIRPERSON ANDERSON: Excuse me, Mr.
11 -- you will get an opportunity, Mr. Johnson.

12 THE WITNESS: So that's -- and that is
13 my testimony. We are not against them as far as
14 the economic feasibility open on Sundays, I would
15 say that, you know, be a good business person, do
16 your due diligence before you purchase the
17 establishment and you wouldn't have been in this
18 situation.

19 That's not a concern of ours as the
20 ANC, that you have an economic disadvantage, if
21 you feel you have an economic disadvantage. That
22 was a business decision, a poor business

1 decision, because you are in this situation right
2 now. But that's not our responsibility and I
3 don't think that should be a concern of the ABC
4 that someone made a poor economic decision and
5 didn't do their due diligence by looking at the
6 settlement agreement. That's it.

7 CHAIRPERSON ANDERSON: Okay.

8 THE WITNESS: Oh, yeah, and obviously
9 I want to list the others. So we have Rose's
10 Liquors, Stanton Liquor on Bladensburg Road. We
11 have Peacock Liquor on New York Avenue. We have
12 a Bodega on Florida Avenue and 1100 Block. And
13 we have Staples Liquor, who is closed. Their
14 license is under suspension, because they are
15 trying to decide to remodel.

16 And one of the things I have always
17 said in negotiation is that in these -- we would
18 like liquor stores, like you say, to -- let me
19 just say this. I have been in Trinidad for 30
20 years. My wife grew up in Trinidad. Her uncles
21 drank in that parking lot. So I'm aware. I'm
22 fully aware.

1 So and that we would like to see, it's
2 my time in the city, I have watched -- I saw them
3 grow on Capitol Hill. I've watched stores as
4 Capitol Hill transitioned from Stanton Park all
5 the way up to 9th and T where my grandmother
6 lived. The stores change as the client -- they
7 attract a better cliental.

8 What we are asking from them, we are
9 not -- you know, if they would just want to
10 decide to attract better cliental and, you know,
11 it's about the products that you serve, you sell.
12 And this is the question we have for everyone
13 when they come through, why are you selling the
14 type of items that is going to attract people to
15 sit in your parking lot?

16 And so you know, because we -- our
17 neighborhood has changed dramatically. And that
18 -- and our neighbors consume alcohol. But our
19 new neighbors aren't shopping in Kovaks. And you
20 know they are shopping at Costco, because they
21 want to feel safe. You -- it's a safety factor,
22 too, when you go into that parking lot.

1 A lot of things happen in that parking
2 lot. So they are not establishing a wholesome
3 liquor store, if you can say a liquor store could
4 be wholesome. But they are not establishing an
5 environment that would draw in better people, so
6 we can work together and that's why we -- because
7 we have to have some kind of change.

8 And you know, in any business, there
9 is going to be a time where you are not going to
10 make money. You have to establish yourself. You
11 have to build a rapport with the community. You
12 have to do those things that are positive to make
13 people want to come into your store.

14 And the communication factor, like I
15 said, that comparing themselves with the Compact
16 Market, which is a recent grocery store that
17 sells beer and wine, who now is requesting from
18 us a sidewalk cafe, because they want to step up
19 their game to meet the neighborhood. They want
20 to step up their game to meet the neighborhood.

21 But just to have another store and
22 like I said when it was closed, we didn't have a

1 problem. It was less people there when it was
2 closed. And the choices that the owner made,
3 it's their choices, I don't think it's our
4 responsibility to give them an advantage over
5 Rose's, Staples, Florida Avenue Market, Peacock
6 Liquor, by them being the only store on --
7 selling liquor on Sunday in the Trinidad
8 neighborhood.

9 That is all I have to say and we are
10 willing to work, but we are not willing to give
11 up -- we do not want Sunday sales at this
12 establishment until they really show us that they
13 can take care of Monday through Saturday as a
14 responsible citizen in our neighborhood.

15 CHAIRPERSON ANDERSON: All right.

16 Thank you, Mr. Lee.

17 Mr. Johnson, do you have any questions
18 of Mr. Lee?

19 MR. JOHNSON: One question.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q You said you met the owner at a

1 meeting. What meeting was that?

2 A An ANC meeting. You brought him with
3 you.

4 Q No. I have never -- the owner has
5 never been to a meeting. I have never brought
6 anybody.

7 A No, he came to a community meeting.
8 He is --

9 Q He has never been to a meeting of any
10 organization. Okay? I can attest to that.

11 A Okay.

12 Q That's okay. He has -- he does not do
13 appearances. I can attest to that 100 percent.

14 CHAIRPERSON ANDERSON: Any other
15 questions?

16 MR. JOHNSON: That's just one point.

17 BY MR. JOHNSON:

18 Q We -- now, the information I got was
19 from ABRA about the Class A License. And they
20 said that they gave me the number. And so the
21 number -- and the establishment. The question
22 is, okay, you mentioned restaurants and so forth

1 in your statement. A restaurant is allowed to
2 sell for consumption off-premise?

3 A No, they are not.

4 Q So they are really not competition and
5 we really shouldn't be including them in the
6 analysis, should we, since they can't sell off-
7 premise? And our sole way of selling is for off-
8 premise. So if somebody wants a six-pack to
9 watch the football game, they can't deal with a
10 restaurant.

11 A But they can deal with the Northeast
12 Market for a six-pack.

13 Q They can deal with Northeast, but if
14 our price is better than Northeast why allowing
15 us not -- and our prices are better than
16 Northeast, by -- I mean, Northeast is very happy,
17 okay, that we are not open, because our prices
18 are better and they know that since we are not
19 open on Sunday, they are the choice in town.

20 But if we were open, you know,
21 Northeast wouldn't be too happy. And our prices
22 are better. We are able to -- we are buying

1 larger quantities.

2 A Of course.

3 Q And utilizing the economies of scale
4 to set our prices.

5 CHAIRPERSON ANDERSON: Mr. --

6 BY MR. JOHNSON:

7 Q We talked about walking distance.

8 CHAIRPERSON ANDERSON: Okay. Remember
9 you are asking him a question.

10 MR. JOHNSON: I'm asking questions.

11 Okay.

12 BY MR. JOHNSON:

13 Q He questioned --

14 CHAIRPERSON ANDERSON: Based on his
15 testimony.

16 BY MR. JOHNSON:

17 Q -- why -- I guess if -- the question
18 I have is this basic question. If you were dead
19 set against our Sunday hours, why were we led to
20 believe that through a negotiation process, a
21 compromise settlement could be reached?

22 A Because if you knew that was one of

1 our key issues and you had stated that that is
2 not something that is negotiable, there probably
3 would have been no reason to even start a
4 negotiation process.

5 Q So I guess --

6 A The question --

7 Q -- that's -- I have a query as to why
8 were we led to believe that negotiation was
9 possible?

10 A I think that negotiation is still
11 possible, but just not on the Sunday hours. And
12 I have said that in many meetings. We do not
13 want Sunday hours.

14 Q But --

15 A Our constituents came to the meeting
16 and stated they do not want Sunday hours for this
17 establishment. Sunday hours has never been a
18 contention of compromise. They can put out
19 planners. They can pave the parking lot. That
20 still -- we are not going to give -- we are not
21 giving up on Sunday hours.

22 Q Okay. But if you --

1 A The only way that we can give up on
2 Sunday hours is if they can establish that they
3 can operate Monday through Saturday in a
4 respectful way to the neighborhood. If they
5 cannot establish that on Monday through Saturday,
6 we are not allowing another day for you to
7 operate and not be respectful of the
8 neighborhood. That's where we stand.

9 And I don't -- and compromise meant,
10 you know, on the signage. Compromise meant that
11 giving you time to get the parking lot paved,
12 because that question did come up, because it was
13 in the previous agreement that the parking lot
14 should be paved. And there was supposed to have
15 been a fence at the rear of the property to keep
16 the people from going to -- that was in the
17 original agreement. A rear fence was supposed to
18 have been installed.

19 Nothing was done in the original
20 settlement agreement. And so but the store
21 closed. But nothing was done in the original
22 agreement and that's one thing I can testify

1 about that. We asked for a rear fence. We asked
2 for additional security -- the security cameras
3 they put up the security cameras, because they
4 kept saying it was the owner's responsibility.
5 They own the -- they don't own the building. It's
6 the landlord's responsibility.

7 When we were dealing with the other
8 establishment, that was the play. It was the
9 landlord's responsibility to do the parking lot.
10 They have the liquor store. They don't own the
11 parking lot. And you see by the DC GIS system
12 that that whole lot between the two stores, which
13 gives me even more to go back for the Northeast
14 Market is their parking is not paved either.

15 So we will be addressing that at
16 Northeast Market next door. So we are not going
17 to disadvantage Kovaks and say they have to pay
18 and not have Northeast Market pay, so we will be
19 establishing that on the paved parking lot.

20 And they did put up the chain link,
21 but cars isn't the problem. There is people
22 walking around the chain link, because we asked

1 for the parking lot to be fenced in the other --
2 in the original agreement, we asked for the
3 parking lot to be completely fenced in, so it
4 could be closed in at night.

5 Q Are you aware that when we met with
6 Ms. Fletcher of ABRA that she pointed out that
7 several of the items that were in the previous
8 agreement were beyond the scope of ABRA and
9 indicated that they should not have been
10 included? She told that to myself and Ms.
11 Shropshire.

12 A But if we establish --

13 CHAIRPERSON ANDERSON: Well, let me --

14 THE WITNESS: Can I answer?

15 CHAIRPERSON ANDERSON: Hold on, hold
16 on, hold on. One thing that is not negotiable
17 here in the settlement agreement is the Board
18 Order. So there is a Board Order and there is a
19 settlement agreement.

20 MR. JOHNSON: Okay.

21 CHAIRPERSON ANDERSON: And whatever is
22 in the settlement agreement, it stays with the

1 license.

2 THE WITNESS: Thank you.

3 MR. JOHNSON: Okay.

4 CHAIRPERSON ANDERSON: And so whatever
5 is in --

6 THE WITNESS: So if it calls for a
7 fence before --

8 CHAIRPERSON ANDERSON: Whatever is in
9 the current settlement agreement, the current
10 licensee has to comply with it. And whatever
11 decision that this Board makes today, we are not
12 going to change because it's a Board Order that
13 says that we have a Board Order, so that's --

14 MR. JOHNSON: Okay.

15 CHAIRPERSON ANDERSON: -- still --
16 that's why I wanted to --

17 MR. JOHNSON: I hear what you are
18 saying.

19 CHAIRPERSON ANDERSON: I just want to
20 clear the record up. It doesn't matter what Ms.
21 Fletcher stated whether or not it was good policy
22 for it not to be, the unfortunate thing, there is

1 a settlement agreement that is a part of a Board
2 Order and so you are stuck with it for the rest
3 of your life or until --

4 MR. LEE: Unless we modify it.

5 CHAIRPERSON ANDERSON: Until -- huh?

6 MR. LEE: Until it is modified.

7 CHAIRPERSON ANDERSON: Until the Board
8 is convinced --

9 MR. LEE: To come up with an
10 agreement.

11 CHAIRPERSON ANDERSON: -- to change
12 the settlement agreement.

13 MR. LEE: So if we come up with a new
14 agreement that supersedes the previous one,
15 correct?

16 CHAIRPERSON ANDERSON: If the parties
17 agree that a new settlement agreement will
18 supersede or --

19 MR. LEE: The previous.

20 CHAIRPERSON ANDERSON: -- or ask the
21 Board and also because it's -- well, if the
22 parties agree in this settlement agreement that

1 this new settlement agreement supersedes the
2 previous settlement agreement.

3 MR. LEE: Yes.

4 CHAIRPERSON ANDERSON: But if that's
5 not there, then whatever the terms are in this
6 settlement agreement are still applicable along
7 with the new one.

8 MR. JOHNSON: As the person
9 negotiating, if I was aware in the beginning that
10 Sunday hours were not negotiable, that's why we
11 said we would go from the original to the 2:00 to
12 7:00. If I knew that it was totally off the
13 table, we could have precluded any further
14 discussions about negotiating and we could have
15 met some time ago.

16 We would not have had to delay the
17 hearing several times. I was under the
18 presumption, I guess erroneously, that several
19 things were up on the table and we were working
20 towards by making our concessions trying to
21 achieve our objective.

22 And I don't think it was really made

1 clear that that was not going to happen.

2 CHAIRPERSON ANDERSON: All right.

3 MR. JOHNSON: So I think that we were,
4 at least I was, misled. Okay?

5 CHAIRPERSON ANDERSON: Are you
6 answering a question or I needed to make sure.

7 MR. JOHNSON: I'm just making a
8 statement in response to what he said.

9 CHAIRPERSON ANDERSON: No. Well, no.
10 I was just clearing some clarification, not for
11 you to respond to me.

12 MR. JOHNSON: What --

13 CHAIRPERSON ANDERSON: So --

14 MR. JOHNSON: Okay. What do you
15 consider reasonable distance that people should
16 have to go for their purchase of --

17 CHAIRPERSON ANDERSON: Well, you can't
18 ask him a question, sir. He asked you a
19 question.

20 MR. JOHNSON: Okay. What's the
21 question you asked me, sir?

22 CHAIRPERSON ANDERSON: You --

1 MR. LEE: I didn't. No. You
2 responded to my questions.

3 MR. JOHNSON: Okay.

4 CHAIRPERSON ANDERSON: All right. So
5 do you have another question that you want to
6 ask?

7 MR. LEE: No. I just would like to
8 make it a part of fact, I have always been
9 against Sunday sales.

10 CHAIRPERSON ANDERSON: Well, but
11 that's -- all right. You can do that in your
12 closing.

13 MR. LEE: Okay.

14 CHAIRPERSON ANDERSON: But I'm just
15 saying this is the time you are asking him
16 questions.

17 MR. LEE: Well, you know, I just --
18 okay. I'll make the rest of my closing.

19 CHAIRPERSON ANDERSON: You don't have
20 any other questions to ask him?

21 MR. LEE: No, because I was
22 testifying. He finished his --

1 CHAIRPERSON ANDERSON: Oh, I'm sorry.
2 He -- I apologize.

3 MR. LEE: I was testifying.

4 CHAIRPERSON ANDERSON: So Mr. Johnson,
5 you were asking Mr. Lee questions. Do you have
6 any other questions that you want to ask Mr. Lee?

7 MR. JOHNSON: I asked him about the
8 restaurant. I asked him about meeting the owner.

9 BY MR. JOHNSON:

10 Q Are you sure that of the stores that
11 you mentioned that they are Class A? They have a
12 Class A License?

13 A Yes, I'm sure that Rose's, the liquor
14 stores, I mean, it's my neighborhood. Rose's,
15 Stanton, Staples, which is closed, Peacock
16 Liquors on New York Avenue and Ivy City, Rose's
17 on Bladensburg Road, 800 Block, Stanton and the
18 1000 Block Mt. Olivet Road. Peacock is on New
19 York Avenue.

20 Q I will --

21 A And then if we rolled down to the
22 Bodega at the 1100 Block of Florida Avenue, the

1 liquor store at Mt. Olivet Road and Florida
2 Avenue closed and is now turned into condos. The
3 liquor store at Western Avenue and Florida Avenue
4 is closed, that has turned into a yoga studio.

5 So I'm quite aware of all the liquor
6 stores.

7 Q How many liquor stores that you are
8 saying that are in class -- in 5D that have a
9 Class A License that are other than these on this
10 list that are not open on Sunday?

11 A None of them are open on Sunday.

12 Q But have a Class A License?

13 A They have a Class A License. They are
14 not open on Sunday.

15 Q And so how many Class A Licenses do
16 you say are in 5D?

17 A Peacock, Rose's, Stanton, the Bodega.

18 Q Bodega, Peacock, Rose's, Stanton,
19 that's four. Okay.

20 A Two on Bladensburg Road, one on New
21 York Avenue.

22 Q Okay.

1 A And one on -- I'm sorry, and one on
2 Florida Avenue, that's five. That's the Trinidad
3 proper. We are five. Commissioner Shropshire,
4 myself, Commissioner Lee, Commissioner Buzz, I am
5 calling the Trinidad neighborhood going from Mt.
6 Olivet Road to Florida Avenue.

7 Now, there is a liquor store on
8 Benning Road, Sylvia's Liquor store, which you
9 know has been in the newspaper for the fight, the
10 shootings and --

11 Q Could --

12 A -- the killings that have been going
13 on there.

14 Q Okay.

15 A That's the other liquor store in our
16 ANC.

17 Q Would you have a problem with me
18 supplying you with a list supplied by the Alcohol
19 Board as to the organizations that they have
20 listed in 5D and that do have permission to be
21 open on Sunday, whether they exercise that or
22 not?

1 A Well, you know, I'm going to tell you
2 about the Ward 5. There might be some on Arnold
3 Avenue that have permission to be open, but they
4 are not open, because those civic associations
5 and those parts of -- you know, Ward 5 goes all
6 the way to Riggs Road and South Florida Avenue,
7 those are well-established middle-class
8 neighborhoods and they don't stand for having
9 liquor stores open on Sunday. They might have
10 permission, but they won't open.

11 Q Okay.

12 A So if you could supply that, that will
13 not sway me any more, because then you are
14 talking about the other neighborhood which I grew
15 up in, so that's why I know that.

16 Q Okay.

17 A I have been in Ward 5 all my life.

18 Q You attested to the products that we
19 sell and reach a particular class. Are you aware
20 that we carry several, in fact, I'm amazed that
21 the range of product that we carry that expands
22 the whole spectrum.

1 A Yes, I was impressed. When I went
2 there and looked, I got confused when I was
3 trying to decide what I was going to purchase on
4 Sunday.

5 Q So --

6 A And my last remembrance of my hard
7 liquor days, it was E & J, so that let's you know
8 how long --

9 Q So --

10 A -- ago that was.

11 Q -- that -- your comment that we should
12 keep -- have items that appear to a broader range
13 is not as accurate as it may sound, since we
14 carry a wide range of scotches from blended to
15 single malts to all kinds of rum.

16 A Yes.

17 Q And gin and vodka, which I never heard
18 of and when I saw the prices of it, I wondered
19 who can pay these prices for booze. I'm still
20 amazed when I sell a bottle for \$249.

21 A Can I respond to that question?

22 CHAIRPERSON ANDERSON: Is there a

1 question, sir?

2 MR. JOHNSON: That was the question.

3 Was he aware -- he addressed that. I'm asking is
4 he aware --

5 CHAIRPERSON ANDERSON: If he asked a
6 question --

7 MR. JOHNSON: -- that we carry that
8 wide a range of product.

9 CHAIRPERSON ANDERSON: -- then you can
10 respond.

11 THE WITNESS: Yes. Because I -- it
12 sounded like testimony, but I don't think it's --
13 so if I could testify at --

14 CHAIRPERSON ANDERSON: I -- he said he
15 asked you a question, so if you have an answer to
16 it, I've been giving you guys some leeway, but
17 it's questions and answers, so --

18 THE WITNESS: Okay, yeah. I am --

19 MR. JOHNSON: The question was --

20 THE WITNESS: -- aware. Like say when
21 I went into the store, I was really impressed.
22 Number one, I was impressed with the openness of

1 the store, because I had been in there before.
2 It was open. They did -- it was well-lit and I
3 saw -- like I said, I saw behind me a wide
4 variety, but what is on the counter were the pint
5 bottles, the pocket bottles. And those expensive
6 liquors weren't right there on the counter. I
7 reached to the counter and picked up the E & J,
8 because it was right there by the credit card
9 machine.

10 So those are the things that set in
11 the front and then if I'm not giving testimony,
12 the question always happen and I never get an
13 answer as -- when we go through these liquor
14 stores, none of the liquor stores can come to me
15 and show me their sales, show me their inventory,
16 what is being purchased and what is being sold,
17 because if we can see what is being purchased and
18 how it is being restocked, we can know what they
19 are selling and we can know what they are selling
20 to.

21 So that has always been a crutch for
22 me, but they never come with their accountants.

1 They never come with their inventory. They just
2 come with we want to do this and we are good and
3 I'll walk by the neighborhood. I see when I walk
4 in the morning at 7:00, there are drunks waiting
5 for the store to open. They actually sleep
6 there. Well, they are there. If I'm walking at
7 7:00 in the morning, I am establishing that you
8 have been there before I was.

9 So this is my neighborhood. If I give
10 anything -- and he is not here every day. He
11 looks at the video cameras. If he is looking at
12 the video cameras, it's not his day-to-day job.
13 We are not against. If I hadn't of seen it work
14 in other stores when the neighborhood changed and
15 they went through the transition and started
16 tracking it, there is never a person there
17 offering a free sample of a nice wine when the
18 little lady has a little -- or the person has
19 the, you know --

20 CHAIRPERSON ANDERSON: Okay.

21 THE WITNESS: -- it's -- you know, and
22 that's all we want. I mean, that's the kind of

1 stuff that is negotiable.

2 CHAIRPERSON ANDERSON: All right. All
3 right.

4 MR. JOHNSON: A question?

5 CHAIRPERSON ANDERSON: Go ahead.

6 MR. JOHNSON: It's a question.

7 CHAIRPERSON ANDERSON: Go ahead.

8 BY MR. JOHNSON:

9 Q First, do you suggest that we put
10 premium product on the counter?

11 A Yes.

12 Q Premium product that -- since we have
13 probably people walking in --

14 CHAIRPERSON ANDERSON: Mr. Johnson?

15 MR. JOHNSON: -- and stealing stuff?

16 I'm just asking a question.

17 CHAIRPERSON ANDERSON: Ask a question.

18 BY MR. JOHNSON:

19 Q Would you think it would be a good
20 business way of operating to put a bottle of \$49
21 or \$50 booze on the table, on the counter where
22 somebody could --

1 A Well, Mr. Johnson, you have already
2 testified that you don't make good business
3 decisions, because you wasn't aware there was a
4 settlement agreement when you purchased the
5 liquor store.

6 Q Well, that -- but I'm talking about --

7 A So any other agreement that -- you
8 know, any other thing we would say, would not be
9 good business, but you know, oh, you did this --

10 Q I think I should -- sir, I just want
11 to say you are misquoting. I said I wasn't part
12 of the original negotiations.

13 A Well, you represented the owner.

14 Q Yes.

15 CHAIRPERSON ANDERSON: Gentlemen,
16 remember --

17 MEMBER SILVERSTEIN: Please.

18 CHAIRPERSON ANDERSON: All right.

19 MR. JOHNSON: Okay. I'm finished with
20 my questions.

21 CHAIRPERSON ANDERSON: No, he is
22 asking you questions, so remember --

1 THE WITNESS: So --

2 MR. JOHNSON: Yeah, okay.

3 BY MR. JOHNSON:

4 Q What I want -- I was asking did he
5 think it was a good business practice to put high
6 quality product on the counter?

7 Were you aware that we have had some
8 tastings for different types of things in the
9 store?

10 A It never came across the Next Door
11 Trinidad app that there was a tasting going on at
12 your liquor store.

13 Q Do we -- does the Trinidad -- did you
14 -- have we been made aware that there is an app
15 to put this on?

16 A That's another business decision in
17 marketing. That's not up to me.

18 Q But did you make us aware of that?

19 A It's not my position. I don't run the
20 store. I don't run the store. These are
21 management decisions. These aren't commissioner
22 decisions. My job is to protect the neighborhood

1 and if I see an establishment that is not
2 operating where I think is conducive to the
3 safety of my neighbors --

4 Q Okay.

5 A -- that's where I come in and that's
6 what I see.

7 Q All I'm saying is --

8 A How you run your business is not up to
9 me.

10 Q I'm not questioning that. All I'm
11 asking you is do you think it's good business or
12 a practice for the ANC to make us aware of the
13 services that you can provide us if we so desire?

14 A No.

15 Q Okay.

16 CHAIRPERSON ANDERSON: Any other
17 questions?

18 MR. JOHNSON: No.

19 CHAIRPERSON ANDERSON: All right. Any
20 questions by any Board Members? Yes, Mr.
21 Silverstein?

22 MEMBER SILVERSTEIN: I have several

1 questions, Mr. Lee. You state that none of the
2 other A's in the immediate area are open on
3 Sundays?

4 THE WITNESS: Yes.

5 MEMBER SILVERSTEIN: And if Council
6 has changed the law to permit liquor stores to be
7 open for additional Sunday hours in order to
8 provide liquor and to capture tax revenues, what
9 specific factors do you think we should take into
10 consideration in this case for not allowing this
11 licensee the same hours that we are routinely
12 giving to liquor stores in all eight wards,
13 because Council has given us the mandate to
14 change the law.

15 THE WITNESS: Because operating this
16 establishment has not established that it could
17 be operating in a reputable manner for the
18 neighborhood. That the -- by being open, it
19 would be more of a detriment than a plus. I
20 think when you -- when the city is talking about
21 operating on Sundays, you're right as far as
22 establishing revenue, because when we say even

1 when Mr. Countee -- Mr. Gilliam testified about
2 the calls for service, those are police calls for
3 service.

4 That's not ambulance calls for
5 services. That's not for people who -- true, the
6 reason why they are there, they -- you know, I
7 don't know of any alcohol poisoning, but whatever
8 -- but you know when you think about that, the
9 cost of the city when you have a person who is
10 inebriated, falls and gets hurt with no health
11 insurance or whatever, everybody is self-insured,
12 but that costs.

13 So when you think about the Sunday
14 revenue and the cost until we get a handle on the
15 people with addictions in the neighborhood, that
16 medical cost is higher than any revenue we would
17 get from selling on Sunday.

18 So I think the Council and the city
19 was a little premature in not thinking that thing
20 through by even allowing Sunday sales. We need a
21 break. We need a break. Everybody needs a break
22 and I saw -- and you know --

1 MEMBER SILVERSTEIN: That's not your
2 decision.

3 THE WITNESS: No, it's not my
4 decision.

5 MEMBER SILVERSTEIN: Nor is it ours.

6 THE WITNESS: I'm questioning Council
7 Member McDuffie about it. I question him all the
8 time. I asked for a moratorium in Ward 5 or even
9 limiting single sales. See, there is a lot of
10 things that are negotiable, but we haven't said
11 hardly anything about single sales, which would
12 alleviate some of these people walking out the
13 door, because they are buying one can of beer and
14 when you buy one can of beer, your intention is
15 to drink it on your walk.

16 When you buy a six-pack, his intention
17 is to take it home and put it in the
18 refrigerator, unless you are buying a six-pack
19 for six other friends. But when you buy one beer
20 or one pint of liquor, the reason why, from my
21 own experience, is to drink immediately, not to
22 save.

1 MEMBER SILVERSTEIN: Okay. Now, let's
2 assume and this is simply for the sake of
3 argument, I'm not predisposing where my decision
4 is going to be or anyone else's. This is
5 something we often ask. Assume that we grant the
6 hours, what would you need to be able to live
7 with this?

8 In other words, are there things in
9 the existing settlement agreement or are there
10 things that the licensee has to do or you would
11 want them to do to make this palatable to you?

12 THE WITNESS: The only -- well, if you
13 are assuming, then I would ask for a moratorium
14 with no single sales and a certain quantity on
15 not -- no airport bottles, no walk-away bottles.
16 So I guess it is -- I don't know what it used to
17 be, a fifth and above. Home-use bottles, let's
18 call them that. Not street-use bottles.

19 So we would -- you know, if they agree
20 to it, if that's the trade-off that you are not
21 going to sell what I call walk-away bottles and
22 to-go cups and single sales on beers and malt

1 liquor --

2 MEMBER SILVERSTEIN: Go cups are
3 illegal anyway.

4 THE WITNESS: -- well, they are not
5 legal, but I'm saying, but you know, whatever
6 they do over the counter as, you know, but just
7 put that in writing. That we have to have
8 something. If you was to allow it, we would go
9 hard. We would go hard for something, you know,
10 getting this parking lot paved, getting that
11 fence put up, Sunday sales no more 10:00 sales.
12 We would have to cut the hours, because if you
13 are open on Sunday, let's go 10:00 to 7:00, 10:00
14 to 8:00, Monday through Friday.

15 We can't -- we are just trying. We
16 are a little insulted by somebody new coming in
17 and catering to -- and I can say it because I
18 have been there 30 years, the worst in our
19 population. We want people to cater to the best.

20 I've waited years to have good
21 neighbors. Years. Well, you know, years waiting
22 for good neighbors to come to my neighborhood,

1 you know, to establish. I benefit from it
2 financially, but like I said, it was a struggle.
3 And I be happy to say I live on the best block on
4 Trinidad Avenue.

5 My neighbors was seniors when I moved
6 in, the best block, but everything around me --
7 so this is part of it. This is part of our
8 group. Be a part of our group. Don't be a part
9 of --

10 MEMBER SILVERSTEIN: Okay. I think
11 you have answered the question.

12 THE WITNESS: Okay.

13 MEMBER SILVERSTEIN: Thank you. No
14 further questions.

15 CHAIRPERSON ANDERSON: Any other
16 questions by any other Board Members?

17 And I don't know where I am going to
18 come down, but this is my thinking and I just
19 want to let you know, so I need to -- that's why
20 I'm going to ask you a question as Mr.
21 Silverstein so stated.

22 It is the law for the District of

1 Columbia that every liquor store can open seven
2 days a week from 7:00 a.m. in the morning until
3 12:00 a.m.

4 MR. JOHNSON: Yes.

5 CHAIRPERSON ANDERSON: That's the law.
6 And it is up to the owners' discretion if he
7 wants to utilize those hours. The law says and
8 that's not us. So why is it -- what reason are
9 you giving this Board to say that we should not
10 allow him to operate based on what the law is of
11 the District of Columbia?

12 THE WITNESS: Yes, because it is a
13 detriment to the peace and quiet of the
14 neighborhood.

15 CHAIRPERSON ANDERSON: All right. All
16 right. Let's see, all right.

17 THE WITNESS: Oh, and the fact that
18 you superseded your agreement by selling on
19 Sunday when you all were supposed to have been
20 closed. I mean, I think that's an insult to the
21 Board to say I'm going to come into your -- I'm
22 going to do what I am going to do, regardless of

1 what you think.

2 I think that alone deserves a
3 suspension or some type of punishment, just to
4 establish so nobody is taking you guys for
5 granted, because that's what I think. I feel
6 insulted when somebody comes into my city and
7 tells me what they are going to do regardless of
8 what I say you can do. And even not me as the
9 commissioner, but you are flaunting my laws.

10 You had an agreement. You weren't
11 supposed to be open on Sunday. You are going to
12 open up on Sunday anyway.

13 CHAIRPERSON ANDERSON: All right. All
14 right. I don't have any other questions. Mr. --
15 no, I'm thinking. Mr. Johnson, do you -- is
16 there any questions that you need to ask of Mr.
17 Lee based on the questions that the Board had
18 asked him?

19 RE-CROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q Were you aware that we have already
22 been cited for that violation and we are being

1 punished for that? Were you aware of that?

2 A I have not -- I am aware you were
3 cited, but as the Investigator said, I don't know
4 the results of that citation.

5 Q We have been cited and we have
6 received the citation and we are about to act on
7 that, so we haven't been slapped on the wrist.

8 Can I articulate a little bit on my
9 response to him or should I keep it short?

10 CHAIRPERSON ANDERSON: No. You --

11 MR. JOHNSON: I just wanted to --

12 CHAIRPERSON ANDERSON: No. You can't
13 articulate. You are asking him a question.

14 MR. JOHNSON: I asked him a question.
15 I asked him a question.

16 CHAIRPERSON ANDERSON: So you can't
17 articulate. So and so do you have another
18 question you need to ask him --

19 MR. JOHNSON: Yes.

20 CHAIRPERSON ANDERSON: -- based on the
21 questions that the Board asked?

22 BY MR. JOHNSON:

1 Q The last thing is you talk about serve
2 the public. Okay. Now, we have provided
3 documentation that there are a number of people
4 that would like us to be open, okay? You have
5 stated that you presume that people that buy a
6 single -- purchase it for immediate consumption,
7 okay. Is it fair to make those assumptions about
8 everybody?

9 CHAIRPERSON ANDERSON: All right. Mr.
10 -- all right.

11 MR. JOHNSON: I'm asking, that's a
12 question based on --

13 CHAIRPERSON ANDERSON: Mr. Johnson, I
14 think the question is that -- I think both myself
15 and Mr. Silverstein have asked about the hours.

16 MR. JOHNSON: Yes.

17 CHAIRPERSON ANDERSON: Those are the
18 questions we have. We asked about the law of the
19 District of Columbia --

20 MR. JOHNSON: Yes, I know you asked
21 that.

22 CHAIRPERSON ANDERSON: -- so if --

1 MR. JOHNSON: I'm good on that.

2 CHAIRPERSON ANDERSON: -- that's not
3 about the hours, so you can't ask any questions.
4 I mean, if it's about the hours, yes, but it
5 can't be about -- I don't recall --

6 MR. JOHNSON: No, I thought --

7 CHAIRPERSON ANDERSON: -- myself or
8 Mr. Silverstein --

9 MR. JOHNSON: -- no, I was phrasing it
10 the way he said, that I'm asking a question.

11 CHAIRPERSON ANDERSON: And no, this is
12 not --

13 MR. JOHNSON: Okay.

14 CHAIRPERSON ANDERSON: -- the question
15 you are asking --

16 MR. JOHNSON: I'll withdraw that
17 question.

18 CHAIRPERSON ANDERSON: -- questions
19 based on the questions.

20 MR. JOHNSON: I withdraw that
21 question.

22 CHAIRPERSON ANDERSON: All right.

1 Anything else?

2 MR. JOHNSON: (No audible answer.)

3 CHAIRPERSON ANDERSON: Mr. Lee, any
4 clarification that you need to provide based on
5 the answers that you gave to the questions that
6 the Board asked you, sir?

7 MR. LEE: No, I think I have been
8 clear.

9 CHAIRPERSON ANDERSON: All right.
10 Fine. Do you rest? Is this --

11 MR. LEE: Yes, I do.

12 CHAIRPERSON ANDERSON: All right.
13 We're only 18 minutes past the time that I
14 thought. I think I'm a good -- I try to manage
15 these.

16 All right. All right. Do you, Mr.
17 Johnson, wish to make a closing statement?
18 Basically a closing statement to wrap up the case
19 and tell me what it is that you are asking the
20 Board to do.

21 MR. JOHNSON: In summary, I'm asking
22 the Board to --

1 CHAIRPERSON ANDERSON: Speak up, sir.

2 You are --

3 MR. JOHNSON: In summary --

4 CHAIRPERSON ANDERSON: I think, you
5 know, you are better when you are standing up,
6 you know, because when you -- no, no. I'm not
7 saying you need to, but you know when you stood
8 up, you know, you articulated, but now you are
9 sitting back and getting at a comfort level.

10 MR. JOHNSON: I don't have a problem
11 standing.

12 CHAIRPERSON ANDERSON: And I can't
13 hear what you are saying.

14 MR. JOHNSON: Okay. I have no problem
15 standing.

16 CHAIRPERSON ANDERSON: It's up to you,
17 you don't have to, right?

18 MR. JOHNSON: In summary, we are
19 asking for our petition for a substantial change
20 in hours be approved. We would be happy to
21 modify this Sunday request to 2:00 to 7:00, so
22 that that -- let's say so that we can operate in

1 a competitive environment without going into
2 mishegoss about everything else and keep it plain
3 and simple.

4 Since as you pointed out, the Code and
5 the District permits it, I would hope that you
6 would honor our request to do that. We -- as I
7 said, we have started making some changes that
8 were there, that were required.

9 Ms. Shropshire had agreed previously
10 to rescind or remove from the negotiated
11 settlement, some of the things that were from the
12 previous one. You know, I just want to resolve
13 the matter. Hopefully somewhat favorably to both
14 parties.

15 I don't think both parties -- in
16 short, I have a basic formula. When you have a
17 decision and both parties are a little bit
18 miserable, you probably have made a fair
19 decision.

20 When one party walks out totally
21 smiling, somebody got taken.

22 So I don't expect us to see everything

1 we want, but, you know, we are willing to make
2 concessions. We have looked at the repaving the
3 parking lot, it's going to cost approximately
4 \$15,000, not cheap. A fence is not cheap either
5 to dig post holes and put a fence all the way
6 around, you know. And I don't know if that is
7 really the true nature of the characters that are
8 there.

9 So I hope you would consider that we
10 are willing to negotiate in good faith. We have
11 started to make adjustments. We are open to the
12 other things that the ANC has to say. But we
13 need to agree just to settle, some closure.

14 If we knew that the staff was going to
15 be this hard to pass, we might have -- we would
16 have asked for -- we would have had the Protest
17 Hearing a lot sooner. I thought that we were
18 coming to a meeting of the minds and that's why
19 we took until now. In fact, that's the last
20 communication with Ms. Randall.

21 As I said that -- I had the Agency get
22 an answer and so I think we need to keep the

1 hearing date.

2 CHAIRPERSON ANDERSON: Mr. Lee?

3 MR. LEE: Well, I would like to thank
4 you, the Board, for having me.

5 In closing, I also remind of -- well,
6 but just to establish that Ms. Shropshire, like
7 myself, this is not our 9:00 to 5:00, you know,
8 this community activity. And because of our
9 neighborhood not only liquor stores, we deal with
10 housing issues, the Board of Zoning, we are
11 constantly, constantly in hearings and we work
12 jobs. So that is one of the reasons why Ms.
13 Shropshire is not here today.

14 As far as we established that we did
15 not want to negotiate a settlement agreement
16 until this item was established. It could have
17 been included in the settlement agreement, yes,
18 but we wanted to -- when we first -- well, I
19 don't know where the no -- our no was never
20 heard, because you can tell what I'm testifying.
21 I'm adamant about no Sundays. So I know our "no"
22 wasn't heard.

1 But just that we are looking for
2 better change and right now we sort of plateaued
3 in the neighborhood with, to speak quite
4 honestly, some of the wild drinking and balance
5 that is happening after hours, of course, after
6 the liquor stores are closed, but I don't know if
7 the purchases were made before the liquor store
8 was closed.

9 Within that area, that Staples street,
10 it's like the last street in Trinidad, the Simms
11 Place behind the liquor store. It's about the
12 last street that is a vestige to the 80s. And we
13 are working on it. We like the businesses to be
14 a part of that change that is going on. The
15 neighbors on Simms Place where this flows back
16 to, during our meetings, complaining.

17 The names that he submitted, some of
18 them are here in the neighborhood. They are all
19 over the neighborhood, because I don't know if
20 you really -- you mentioned the post office, but
21 that's also a post office stop after work for the
22 postal employees.

1 So that's maybe why you would want to
2 be open on Sundays, but we would just like you to
3 consider to give us the opportunity to improve
4 the neighborhood. We think this is going to
5 improve the neighborhood, that -- by not having
6 this store open.

7 And that so and then, you know, as
8 things change, we are not against in the future,
9 once they prove to be a viable resident and
10 neighbor to us, all of us in Trinidad, we could
11 look back at this issue and reopen on Sundays.
12 But now is the time that we are trying to clamp
13 down on everything that is going on right there,
14 that little hot spot, and we are trying to make
15 it better in the neighborhood.

16 So I hope the Board -- even though it
17 is allowed, I hope the Board would look at that
18 in the greatest scope of what is going on in the
19 Trinidad neighborhood to give us a little
20 assistance and just remind you that it is within
21 a church, a school, so the church will be open on
22 Sunday. The school -- the other churches are

1 going to be open on Sunday.

2 And just think about the little kids
3 that have to walk by there every day. Yes, they
4 have to walk by. They walk down West Virginia
5 Avenue from the Charter School, that's the old
6 Webb Elementary School, which is a fabulous
7 school that has been in the neighborhood. We are
8 attracting -- my neighbors are having babies. We
9 are attracting young people who are establishing
10 the neighborhood as a family neighborhood.

11 We are getting back to that. We are
12 seeing things that we haven't seen. When I
13 raised my kids there, I had to take my kids away
14 from the neighborhood to go to a park that was
15 safe. Now, we have families coming in using the
16 parks, walking the streets, so we shouldn't have
17 a street that they should want to avoid.

18 And that's one of the reasons why we
19 just would like this establishment to see our
20 neighborhood as a growing neighborhood and a
21 positive thing. And like I say to cater to those
22 who are coming in, not those who are leaving.

1 Thank you.

2 CHAIRPERSON ANDERSON: Thank you. I
3 want to thank both parties for their
4 presentation. Mr. Johnson said something in his
5 closing that I always tell people that I prefer
6 you do settlement agreements and the reason why I
7 always tell people always and that's one of the
8 reasons I gave you the opportunity before,
9 because when you do a settlement agreement, you
10 decide, you jointly agree what is in your best
11 interest.

12 But when you don't do an agreement,
13 then you leave us, who don't live in the
14 neighborhood, to make a decision. And no matter
15 what decision we make, someone is going to leave
16 here unhappy. And that's -- and so when there is
17 a settlement agreement, there is a meeting of the
18 minds and some give some and some take some.

19 But when the Board makes a decision,
20 we are both -- both sides are going to be
21 unhappy. I just want to say that. Irrespective
22 of whatever decision we make, because it's not --

1 since you didn't jointly make the decision, we
2 are making a decision for you and for your
3 neighborhood.

4 And that's one of the reasons why I
5 have -- always tell folks that -- I even give
6 them an opportunity at the beginning of the
7 hearing to say if you want to settle it.

8 I'm not telling -- I'm just--

9 MR. LEE: And we --

10 CHAIRPERSON ANDERSON: Yeah.

11 MR. LEE: -- settle with a lot of--

12 CHAIRPERSON ANDERSON: Yeah.

13 MR. LEE: -- establishments.

14 CHAIRPERSON ANDERSON: Right.

15 MR. LEE: But this is -- is this --

16 and we are willing to settle with this one.

17 CHAIRPERSON ANDERSON: Yeah, no, I'm
18 just -- I'm not saying -- I'm just saying to you
19 that when that occurs and you make your own
20 decisions rather than leaving them to the Board.
21 And that's all. I wasn't saying we are going to
22 go one way or the other.

1 MR. LEE: Okay.

2 CHAIRPERSON ANDERSON: That's all.

3 MR. LEE: And just --

4 CHAIRPERSON ANDERSON: But anyway --

5 MR. LEE: -- and actually that's sort
6 of like what we are not understanding. We have
7 never gotten to this position before.

8 CHAIRPERSON ANDERSON: All right.

9 MR. LEE: So we thought that -- well,
10 Ms. Shropshire thought that the best course of
11 action was to settle this first with you guys,
12 then go into negotiation. So now that you are
13 telling me that, I don't think that was the best
14 course of action, that maybe we should have
15 included that in the negotiations.

16 CHAIRPERSON ANDERSON: And that's why
17 I try when I tell people during the Status
18 Hearing and that's why I tell people when they
19 come here to say even when you get here, you can
20 -- I don't have a problem, you can negotiate and
21 tell me what it is and I'll memorialize it,
22 rather than we make our decision.

1 So now we have to now listen to all of
2 this and then we are going to make a decision
3 based on the presentation that is made. That's
4 all I'm saying. All right. All right.

5 So do the parties wish to make -- to
6 do proposed findings of fact and conclusion so
7 law or make the -- the decision will rest on what
8 is presented? Meaning that wait for us to --
9 wait for the transcript, listen to the
10 transcript, and read a legal brief to say this is
11 what the law says, this is the facts and then we
12 will make a decision or the presentation that you
13 make today is that you tell the Board that we
14 have made our presentation today and we need you
15 to make your decision based on the presentation?

16 MR. LEE: I would like to look at the
17 transcript and get with Ms. Shropshire.

18 CHAIRPERSON ANDERSON: All right. All
19 right. So all right. So basically what that
20 says is that the transcript will be available
21 probably within the next 30 days, so the
22 transcript will be available and then you will

1 have -- I'm sorry, hold on a minute. Let me see.

2 So you will have 30 days from -- the
3 transcript probably will be available in about
4 two weeks. And then your proposed findings of
5 facts and conclusions of law will be due 30 days
6 after receipt of the transcript.

7 You can determine during that period
8 of time that you do not want to make -- you do
9 not want to do that, so you could -- if you don't
10 know what that is, you can pull our records to
11 see what proposed findings of fact and
12 conclusions of law are.

13 Basically, as I said before, you are
14 going to make -- you are not -- this is not new
15 information that you are putting in.

16 MR. LEE: Right.

17 CHAIRPERSON ANDERSON: You are just
18 saying that this is what the facts that came out
19 of the hearing and this is what the law is on
20 those issues and then you are going to write
21 basically a legal brief to say this is what our
22 position is from that perspective.

1 MR. LEE: And during that time, we
2 still can negotiate agreement? The --

3 CHAIRPERSON ANDERSON: Nothing is
4 final. Nothing is final until we issue a final
5 decision. So I mean, I think that there is a
6 current settlement agreement, so if by the time
7 the transcript comes out if you guys have a
8 settlement agreement that you want to present to
9 the Board to say that here is a settlement
10 agreement, we don't want you to make a final
11 decision, then I will consider that. Okay?

12 MR. LEE: Okay. So my dates are now
13 you said two weeks --

14 CHAIRPERSON ANDERSON: The transcript
15 will be emailed to you in approximately two to
16 three weeks.

17 MR. LEE: Okay.

18 CHAIRPERSON ANDERSON: You will get
19 the transcript. And then the proposed findings
20 of fact and conclusions of law, they are due to
21 the Board 30 days after receipt of the
22 transcript. And you will be informed -- when the

1 transcript is provided, you will be informed the
2 deadline that you have to respond back.

3 MR. LEE: Okay.

4 MR. JOHNSON: Okay.

5 CHAIRPERSON ANDERSON: Yes, sir?

6 MR. JOHNSON: Are we both going to get
7 copies of the transcript?

8 CHAIRPERSON ANDERSON: Yes, both of
9 you will. That will -- both of you will get the
10 transcript and then you will be informed the time
11 lines and what needs to be done and the time
12 lines to do that.

13 MR. LEE: And as you stated, the
14 transcript is not to change any testimony.

15 CHAIRPERSON ANDERSON: It's not to --

16 MR. LEE: It's just to review the
17 transcript and what -- and apply the law of the
18 ABC.

19 CHAIRPERSON ANDERSON: Right. And you
20 will write to say this is -- these are the facts
21 that came out during the hearing and the law and
22 why is -- why you believe the law -- the Board

1 should rule based on the facts presented.

2 So you are not putting -- there is
3 nothing -- you are not bringing in any new
4 testimony. Nothing new is coming.

5 MR. LEE: Okay.

6 CHAIRPERSON ANDERSON: It's everything
7 that was done today.

8 MR. LEE: All right.

9 CHAIRPERSON ANDERSON: That you will
10 have that. But as I said before, if you believe
11 that -- until that process is done and until the
12 Board issues a decision, if you have a change of
13 heart and say, you know, let's -- we can
14 negotiate and provide the Board a settlement
15 agreement -- there is a current settlement
16 agreement that -- and irrespective of what
17 decision that the Board issues, that settlement
18 agreement will still stand.

19 If there is a new settlement
20 agreement, then you would have to ask the Board
21 to say that this new settlement agreement that we
22 are now signing, we want you to consider -- to

1 supersede the old settlement agreement and the
2 Board will consider that and make a
3 determination.

4 MR. LEE: And a last question based on
5 this closing argument. So requesting the parking
6 lot, that's a DCRA issue? That's not an ABC
7 issue?

8 CHAIRPERSON ANDERSON: People --
9 parties can agree to --

10 MR. LEE: I know. I mean, but --

11 CHAIRPERSON ANDERSON: But I'm saying
12 parties can agree to whatever. When it comes to
13 us, it's whether or not we can enforce it. So is
14 it enforceable? I don't know. I can't answer
15 that. You can put all terms. Whatever terms you
16 want in a settlement agreement, it will come to
17 the Board, the Board will review it and then
18 Board will say no, this can't be there because
19 it's not -- we cannot -- it's not enforceable.

20 MR. LEE: Okay.

21 CHAIRPERSON ANDERSON: But that's a
22 decision that the Board will make. But we -- I'm

1 not going to sit here and tell you what you can
2 or can't put in a settlement agreement.

3 MR. LEE: Okay.

4 CHAIRPERSON ANDERSON: You can also,
5 both sides can, talk to Ms. Randall from our
6 legal staff. Our legal staff will help you. So
7 you are not closed to reaching out to our legal
8 staff to figure out what it is that needs to be
9 done.

10 MR. LEE: Okay.

11 CHAIRPERSON ANDERSON: All right. So
12 as Chairperson of the Alcoholic Beverage Control
13 Board for the District of Columbia and in
14 accordance with DC Official Code Section 2-574(b)
15 of the Open Meetings Act, I move that the ABC
16 Board hold a closed meeting for the purpose of
17 seeking legal advice from our counsel on Case No.
18 18-PRO-00053, Kovaks Liquors, pursuant to DC
19 Official Code Section 2-574(b)(4) of the Open
20 Meetings Act and deliberating upon Case No. 18-
21 PRO-00053, Kovaks Liquors, for the reasons cited
22 in DC Official Code Section 2-574(b)(13) of the

1 Open Meetings Act.

2 Is there a second?

3 MEMBER SHORT: Second.

4 CHAIRPERSON ANDERSON: Mr. Short has
5 seconded the motion. I will now take a roll call
6 vote on the motion before us now that it has been
7 seconded.

8 Ms. Wahabzadah?

9 MEMBER WAHABZADAH: I agree.

10 CHAIRPERSON ANDERSON: Mr.

11 Silverstein?

12 MEMBER SILVERSTEIN: I agree.

13 CHAIRPERSON ANDERSON: Mr. Short?

14 MEMBER SHORT: I agree.

15 CHAIRPERSON ANDERSON: Mr. Cato?

16 MEMBER CATO: I agree.

17 CHAIRPERSON ANDERSON: Mr. Anderson?

18 I agree.

19 As it appears that the motion has
20 passed, I hereby give notice that the ABC Board
21 will recess these proceedings to hold a closed
22 meeting in the ABC Board conference room pursuant

1 to Section 2-574(b) of the Open Meetings Act.

2 Thank you.

3 MR. LEE: Thank you.

4 CHAIRPERSON ANDERSON: As Chairperson
5 of the Alcoholic Beverage Control Board for the
6 District of Columbia and in accordance with DC
7 Official Code Section 2-574(b), closed meetings,
8 and 2-574, Notice of Meetings, of the Open
9 Meetings Act, I move that the ABC Board hold a
10 closed meeting on November 7, 2018 for the
11 purpose of seeking legal advice from our counsel
12 on the matters identified in the Board's
13 Investigative, Legal and Licensing Agenda for
14 November 7, 2018 as published in the DC Register
15 on November 2, 2018.

16 Is there a second?

17 MEMBER SHORT: Second.

18 CHAIRPERSON ANDERSON: Mr. Short has
19 seconded the motion. I will take a roll call
20 vote on the motion before us now that it has been
21 seconded.

22 Ms. Wahabzadah?

1 MEMBER WAHABZADAH: I agree.

2 CHAIRPERSON ANDERSON: Mr.

3 Silverstein?

4 MEMBER SILVERSTEIN: I agree.

5 CHAIRPERSON ANDERSON: Mr. Short?

6 MEMBER SHORT: I agree.

7 CHAIRPERSON ANDERSON: Mr. Cato?

8 MEMBER CATO: I agree.

9 CHAIRPERSON ANDERSON: Mr. Anderson?

10 I agree.

11 As it appears that the motion has
12 passed, I hereby give notice that the ABC Board
13 will hold this aforementioned closed meeting
14 pursuant to the Open Meetings Act. Notice will
15 also be posted on the ABC Board hearing room
16 bulletin board, placed on the electronic calendar
17 on ABRA's website and published in the DC
18 Register in as timely a manner as practicable.

19 It is 7:36 p.m. and we are adjourned
20 for the day. Thank you.

21 MEMBER SHORT: Out of here. Thank
22 you.

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MR. LEE: Thank you.

MR. JOHNSON: Thank you.

(Whereupon, the Protest Hearing was
concluded at 7:35 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Kovaks Liquors

Before: DCABRA

Date: 10-31-18

Place: Washington, DC

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Court Reporter

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