

MADAM'S ORGAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ALCOHOLIC BEVERAGE CONTROL BOARD

- - - - -X

IN THE MATTER OF: :

2461 Corporation

t/a Madam's Organ Case Number 15-251-00157

2461 18th Street NW

License Number 25273

Retailer CT

ANC 1C

SHOW CAUSE HEARING

- - - - -X

Wednesday, July 20, 2016

Whereupon, the above referenced matter came on for hearing at the Alcoholic Beverage Control Board, Reeves Center, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

1

2 CHAIRPERSON:

3 DONOVAN W. ANDERSON, Presiding

4

5 OTHER PERSONS PRESENT:

6

7 RUTHANNE MILLER, BOARD MEMBER

8 JAMES SHORT, BOARD MEMBER

9 MIKE SILVERSTEIN, BOARD MEMBER

10 NICK ALBERTI, BOARD MEMBER

11

12

13

14

15

16

17

18

19

20

21

22

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

2 CHAIRPERSON ANDERSON: All right. We're
3 back on the record. I now call Case Number
4 15-251-00157, Madam's Organ, License Number 25273. Will
5 the parties please appear and identify themselves for the
6 record please.

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

9 CHAIRPERSON ANDERSON: Good afternoon,
10 Mr. Rivero.

11 MR. BIANCO: Good afternoon, Members of the
12 Board. Richard Bianco on behalf of 2461 Corporation.

13 CHAIRPERSON ANDERSON: Good afternoon,
14 Mr. Bianco.

15 MR. DUGGAN: Bill Duggan, president of the
16 2461 Corporation.

17 CHAIRPERSON ANDERSON: Good afternoon,
18 Mr. Duggan.

19 MR. MASSUMI: Ronald Massumi, attorney for
20 the corporation.

21 CHAIRPERSON ANDERSON: I'm sorry. You're
22 who, sir?

1 MR. MASSUMI: My name is Ronald Massumi
2 M-A-S-S-U-M-I, attorney for the corporation entering
3 appearance today.

4 MR. SLATE: Gregory A. Slate, agent for the
5 corporation entering appearance today.

6 CHAIRPERSON ANDERSON: I -- I just want to
7 get some clarification. Mr. -- I'm sorry. The
8 attorney. I'm sorry. No. No. No. No. Not
9 Mr. Bianco. All right. Well, I'll ask the question.
10 I'm sorry. Your name again, sir? You're --

11 MR. MASSUMI: Ronald Massumi, M-A-S-S-U-M-I.

12 CHAIRPERSON ANDERSON: Okay. All right.
13 Mr. Bianco, what role, if any, would Mr. -- will
14 Mr. Massumi be playing today?

15 MR. BIANCO: Assistant and advisor. I don't
16 expect that he'll be examining any witnesses or
17 presenting --

18 CHAIRPERSON ANDERSON: You said he -- you --

19 MR. SILVERSTEIN: I'm sorry. Mr. Bianco, I
20 didn't hear a word you said.

21 MR. BIANCO: I apologize for that. I was
22 getting my file out as I was speaking. I should have

1 focused on one thing at a time. Assistant and advisor
2 on legal matters. I don't expect that he will be
3 examining any witnesses, presenting any evidence.

4 CHAIRPERSON ANDERSON: Okay.

5 MR. BIANCO: Certainly not testifying in any
6 manner whatsoever. And -- and the same is true of
7 Mr. Slate. They're both submitting entries of
8 appearance just out of an abundance of caution. I do
9 not expect either of them to have an active role in
10 these proceedings other than perhaps passing me a
11 message or tugging on my sleeve and telling me
12 something.

13 CHAIRPERSON ANDERSON: All right. All
14 right. This is a continuation -- continuation I think
15 of this case from March if I remember correctly. And I
16 think where we are is Mr. Bianco would be presenting --
17 calling some additional witnesses. Are there any
18 preliminary matters prior to resuming this hearing?

19 MR. RIVERO: Not from the Government.

20 CHAIRPERSON ANDERSON: Thank you,
21 Mr. Rivero.

22 MR. BIANCO: I have one preliminary

1 matter -- matter related to what I have been advised is
2 an unavailable agency witness. I don't know if we
3 should have that argument now or after we present my
4 live witnesses that are here. There are circumstances
5 that I think warrant some discussion with regard to the
6 identity of the -- of the agency witness to proffer as
7 to testimony, a proffer as to relevance, and I
8 anticipate an objection, and we can move forward from
9 there. I'm happy to have that argument now, but it
10 might be best to hold it until the presentation of the
11 live witnesses that we have here today.

12 CHAIRPERSON ANDERSON: Well, Mr. Bianco, I
13 have no idea what you're talking about.

14 MR. BIANCO: I understand.

15 CHAIRPERSON ANDERSON: I am not a part of --
16 I have not been -- I have not had any ex parte
17 communication with anyone so I have no idea. And I
18 think if we -- if there are preliminary issues prior to
19 resuming this hearing -- we have been in -- this case
20 has been truncated in a sense that it started months
21 ago. So I think that now is the appropriate time for us
22 to address all preliminary issues so we can determine

1 where is it that we're going to move forward.

2 MR. BIANCO: Very well, Mr. Chair. And I
3 appreciate -- I appreciate that and am happy to proceed
4 in that regard. Specifically the identity of the
5 witness that I am seeking to call is ABRA Investigator
6 Felicia Dantzler also known as Felicia Martin. And I
7 became aware that Ms. Dantzler had information that was
8 potentially relevant to these proceedings mid to late
9 last week when I received a fax which was a copy of a
10 complaint filed in Federal District Court. I honestly
11 don't know who the fax was from. I provided it to the
12 Government upon their request later.

13 But after receiving it and speaking with my
14 client about it I had to perform some due diligence with
15 regard to what happened in the federal case. And upon
16 reviewing the docket and the many hundreds of documents
17 within the federal case I learned that Investigator
18 Dantzler made certain allegations involving Investigator
19 Stewart that bear on his credibility. And it is for
20 that purpose -- the purpose of impeaching the
21 credibility of Investigator Stewart that I would be
22 seeking to call Investigator Dantzler.

1 After reviewing the documents that have been
2 filed in the federal case I contacted The Board attorney
3 at the same time as Mr. Rivero by e-mail, explained the
4 situation with regard to the facts I received and the
5 due diligence I performed thereafter. Mr. Rivero then
6 in my estimation reasonably requested to view the
7 document that I received. So I forwarded it to him via
8 e-mail, explained that I would very much like to call
9 Investigator Dantzler as a witness -- an impeachment
10 witness as to Investigator Stewart.

11 Mr. Rivero perhaps predictably informed me
12 that he would -- that he objected and thereafter
13 informed me that Investigator Dantzler was unavailable
14 today for testimony. The specific issue that I would be
15 putting before The Board is that in the absence of
16 Investigator Dantzler's presence and live testimony
17 which I would strongly, strongly prefer because she
18 could go far beyond anything that exists in writing. In
19 the absence -- as a result of the unavailability of the
20 witness I will be seeking to submit for the purpose of
21 impeachment Investigator Dantzler's sworn affidavit
22 submitted in the context of the federal case in which

1 she sets forth specific allegations against Investigator
2 Stewart with regard to -- that bear -- I'm sorry -- the
3 allegations which bear directly on his credibility as a
4 witness.

5 I realize it's not ideal and I realize that
6 my request came late in the game. However, my notice
7 that this person had some relevant information to this
8 case likewise came very late. So I'm doing the best I
9 can with the information that I get when I receive it.
10 And that's why we're having -- that's why I'm making
11 this request at this point.

12 If Mr. Rivero wishes to cross examine the
13 witness, I certainly understand that. I prefer live
14 testimony as well to an affidavit and would be happy to
15 make any accommodations that are necessary to get her up
16 and to get her testimony on this issue so that The Board
17 can give it the consideration that it warrants.

18 CHAIRPERSON ANDERSON: Okay. So you're
19 asking -- again, this is -- clarification what you're
20 asking.

21 MR. BIANCO: So what I'm asking for is in
22 light of the unavailability of the agency witness I am

1 asking to present a certified copy by the Federal
2 District Court of her sworn affidavit that reiterates
3 the allegations she made against Mr. Stewart that bear
4 on his credibility as a witness in this case.

5 CHAIRPERSON ANDERSON: Mr. Rivero.

6 MR. RIVERO: Thank you. Just to clarify
7 there was a reference to an affidavit that I have not
8 seen. I did see the complaint that Mr. Bianco initially
9 mentioned. Also just to clarify what my preference is,
10 it's not for cross examination but to have none of this
11 intrude into this hearing at all.

12 This last minute request to offer evidence
13 should not be granted as the evidence as has no place in
14 this hearing. The Board's regulation which adopts the
15 evidence standard in the District of Columbia
16 Administrative Procedures Act, D.C. Code 2-509B controls
17 The Board's acceptance of evidence. The Board is to
18 accept all evidence except that evidence which is
19 irrelevant, immaterial, or unduly repetitious. Under
20 that basic standard the complaint proffered or the
21 affidavit as -- as the case may be by the licensee is
22 irrelevant because it has -- it has absolutely nothing

1 to do with this case. It is also immaterial because the
2 proffered complaint or affidavit is merely a string of
3 eight year old allegations, and as such they fail to
4 prove anything about the truthfulness of any witness.
5 That should end the matter.

6 But attorneys before this board sometimes
7 argue from the rules of evidence which are not
8 applicable in these proceedings but -- but which
9 sometimes provide guidance. The federal rules of
10 evidence were not adopted in the District of Columbia by
11 the District of Columbia Court of Appeals all at once.
12 See Smith versus United States 26 Atlantic 3rd 248 2011.

13 Rather the rules are adopted on a case by
14 case basis. See Jenkins versus United States 80
15 Atlantic 3rd 978 2013. The relevant rule here is Rule
16 608 which was discussed in a Court of Appeals decision
17 Sherer versus United States 470 Atlantic 2nd 732, 1983.
18 In that case the Court of Appeals ruled that a witness
19 could not be questioned on cross examination on prior
20 so-called bad acts -- or rather the court ruled that
21 that could happen only -- only where the examiner has a
22 factual predicate and, quote, the bad act bears directly

1 on the veracity of the witness in respect of the issues
2 involved. The court affirmed the lower court's denial
3 of the impeachment effort in that case because the
4 impeaching counsel had no factual knowledge of the
5 underlying bad act. This ruling comports with the text
6 of Rule 608 which both recognizes the need to explore
7 the veracity of a witness and also the need to control
8 against the great potential for abuse in this area.

9 Accordingly Rule 608 B allows b impeachment
10 of a witness through specific instances of conduct only
11 where the instance inquired of is probative of
12 truthfulness or its opposite and is not remote in time.
13 Moreover judges, by extension of the board here, have
14 complete discretion not to allow this type of inquiry as
15 distracting, confusing, and irrelevant. Here mere
16 allegations are not probative of anything.

17 In fact, the complaint does not bear on the
18 veracity of the witness in respect to the issues
19 involved in this case because a complaint is an
20 employment matter, and this is a enforcement matter.

21 Even worse the span of eight years renders
22 this subject matter too remote in time to have any

1 meaningful application to this case. And for these
2 reasons The Board should deny this attempt to introduce
3 this inappropriate evidence at the last moment which
4 strikes me as fantastic, desperate overreach. Thank
5 you.

6 MR. BIANCO: If I might reply.

7 CHAIRPERSON ANDERSON: Sure, Mr. Bianco.

8 MR. BIANCO: Okay. As Mr. Rivero correctly
9 noted Rule 608 doesn't apply here. It doesn't apply.
10 It does not apply. It is not persuasive. It is not
11 directly applicable. It is not to be considered.
12 Mr. Rivero correctly read the evidentiary standard in
13 this case, whether or not -- whether or not the
14 information that we seek to admit is relevant and
15 whether or not it is material.

16 The Government's entire case is not based on
17 the extrinsic evidence of video which was readily
18 available. It was not based on a good investigation;
19 meaning, speaking to outside witnesses. The
20 Government's case is based exactly on the credibility of
21 Investigator Stewart and his cohorts. What could
22 possibly be more relevant than another investigator in

1 the same agency making allegations of Mr. Stewart that
2 bear directly on his credibility such as that he
3 fabricated complaints against her and against others?
4 It is wholly material.

5 Furthermore, I find the Government's
6 argument that The Board may not consider the prior acts
7 to bear on the credibility of the witness -- I'm sorry
8 -- the credibility of a witness when as part of the
9 Government's own case and as part of all of the
10 Government's cases they attach to their investigator's
11 report a list of investigative history which talks about
12 prior bad acts.

13 In this case it is our contention that we
14 should not be prohibited from probing the credibility of
15 a particular witness in several material respects
16 outside of the prior bad acts issue as Mr. Rivero was
17 reading from Rule 608.

18 It would be wholly admissible even under the
19 evidentiary standard of Rule 608 for Investigator
20 Dantzler to testify as to her opinion about
21 Mr. Stewart's truth and veracity as well as
22 Mr. Stewart's reputation for truth and veracity. She's

1 not here to testify about that.

2 However, all we have is a sworn affidavit.
3 The sworn affidavit does not address the issues of the
4 opinion or of reputation. And without her here I can't
5 even inquire about it. But it does address the
6 underlying issues that Mr. Stewart had with regard to
7 dishonesty.

8 The position that the establishment is
9 taking in this case as to the admissibility of this type
10 of evidence -- and when I say this type of evidence I am
11 speaking specifically about extrinsic evidence of prior
12 bad acts -- in an administrative context has -- our
13 position has support. The law in the district -- the
14 Administrative Procedures Act in the -- in the District
15 of Columbia is identical to the federal law on the same
16 point and in several federal cases including but not
17 limited to multimedia, convalescent, and nursing center
18 of Townsend versus the National Labor Relations Board,
19 560 F 2nd 974: Such evidence -- such extrinsic evidence
20 of prior bad acts of a witness were deemed to be
21 admissible under the evidentiary standard of materiality
22 and relevance. Materiality and relevance is the

1 evidentiary standard that we have here. And the logic
2 of the court in that case is -- was that it was
3 admissible specifically because this was an
4 administrative -- because it was an administrative
5 tribunal with expertise in a particular area of the law.
6 It was not a jury trial. As such there was no danger of
7 a jury being tainted because the professional staff --
8 or the professional members of the board were able to
9 separate in their minds the wheat from the chaff as it
10 were, what is important and what is not important. But
11 that goes to weight not admissibility, which I think is
12 the point in multimedia convalescent. So it should come
13 in, it should be considered, and each board member can
14 decide what weight they would like to afford it in
15 making a determination as to whether or not Mr. Stewart
16 is telling the truth in this particular case.

17 CHAIRPERSON ANDERSON: Well, Mr. Bianco, I
18 mean if -- the charge in this case is interfering with
19 the -- interfering with an investigation, right? Am --
20 am -- that's -- is that -- I'm sorry.

21 MR. RIVERO: No. It's -- it's delaying the
22 entry. It's not --

1 CHAIRPERSON ANDERSON: Interfering -- I'm --
2 I'm -- I'm looking at the --

3 MR. RIVERO: I know. But in -- in our first
4 hearing I made a motion to -- oral -- I made an oral
5 motion in the first hearing, folks, remember, to strike
6 the language in the charging document --

7 CHAIRPERSON ANDERSON: Okay.

8 MR. RIVERO: -- that referred to interfering
9 in an investigation and to only leave the last part that
10 talked about delay.

11 CHAIRPERSON ANDERSON: Delay. All right.

12 MR. RIVERO: Yeah. So that's the current --

13 CHAIRPERSON ANDERSON: So delaying -- I'm
14 sorry. Clarify it again for me please.

15 MR. RIVERO: Certainly. There's the -- the
16 original charging document had language about
17 interference in an investigation. I made an oral motion
18 at the beginning of the first hearing -- the first
19 hearing day to strike that language. And only what is
20 left is the failed to allow an ABRA investigator to
21 enter the premises without delay.

22 CHAIRPERSON ANDERSON: Okay. All right.

1 Okay. I stand corrected.

2 MR. RIVERO: That's the operative language
3 that charge -- for the charge currently before us today.

4 CHAIRPERSON ANDERSON: Now, I'm not sure how
5 then have -- having an -- and this is an affidavit from,
6 what, eight years ago or is this a current affidavit?

7 MR. BIANCO: It's an affidavit from 2014
8 that was filed in the -- publicly filed in the federal
9 case.

10 MR. RIVERO: I haven't seen it so I don't
11 know what he's talking about. But in any event it
12 doesn't make any difference to me. The position remains
13 the same because this type of information is precisely
14 the kind of abuse that the rules of evidence are very
15 sensitive about. And no matter what standard you use
16 courts are clear that you all have the discretion not to
17 permit this kind of distraction.

18 CHAIRPERSON ANDERSON: All right. Yes, Mr.
19 Alberti.

20 MR. ALBERTI: So -- so Mr. Bianco, so as I
21 understand you have an affidavit with some
22 allegations --

1 MR. BIANCO: Yes.

2 MR. ALBERTI: -- that you tell us speak to
3 Mr. Stewart's general overall credibility and veracity;
4 is that correct?

5 MR. BIANCO: That's correct.

6 MR. ALBERTI: All right. But these are only
7 allegations, right?

8 MR. BIANCO: That's correct.

9 MR. ALBERTI: All right. Has Ms. -- do you
10 have anything to present that shows that any court or
11 any other judicial body has ruled that Mr. Stewart
12 actually was dishonest.

13 MR. BIANCO: I do.

14 MR. ALBERTI: Okay.

15 MR. BIANCO: Not in this case. In a
16 separate case that I was not going to present. But I am
17 happy to present --

18 MR. ALBERTI: Well, I'm talking about this
19 evidence.

20 MR. BIANCO: Okay.

21 MR. ALBERTI: All right. So --

22 MR. BIANCO: But -- but given your question

1 I want to go further beyond this evidence to make sure
2 you're -- I answer you completely.

3 MR. ALBERTI: Okay.

4 MR. BIANCO: Okay. With -- specifically
5 with regard to this particular affidavit the court did
6 not make a -- as far as I know no court made a ruling
7 that Investigator Dantzler's allegations in this
8 particular case were true or were not true.

9 MR. ALBERTI: Okay.

10 MR. BIANCO: The case was -- the case was
11 ultimately settled. With regard to your -- with regard
12 to the -- your question to fully answer it the sort of
13 broad view of it is that among the documents also filed
14 in the federal case is an official reprimand from the
15 agency of Mr. Stewart with regard to his conduct that
16 also bears directly on his truth or veracity. So if the
17 evidentiary standard that The Board wants to impose here
18 is whether or not there was an actual finding, I am
19 happy to likewise present the disciplinary action
20 against Mr. Stewart by the agency which directly bears
21 on his truth and veracity. That was not my original
22 intention in seeking to admit the affidavit.

1 Notwithstanding, if that's the -- the basis that The
2 Board intends to use for its admissibility, I'm happy to
3 provide -- I have a certified copy from the Federal
4 District Court of that document as well. That is -- and
5 that is from May 22nd of 2007.

6 MR. ALBERTI: Well, I -- I'll just say that
7 that's another -- I mean that's another request on your
8 part. I mean we're not dealing with that request right
9 now. We're dealing with your original request. So I'm
10 not going to address that request right now, and I don't
11 know if Mr. Rivero wants to or he just wants to stay
12 with the original request.

13 MR. RIVERO: I'm happy to address -- all of
14 these documents are all of a kind and none of them speak
15 to the actual issues here. And whether there was a
16 reprimand because he treated someone -- the particular
17 witness here treated someone the way that should not
18 have been done in violation of some internal procedures
19 isn't a finding that relates to the veracity of the
20 witness. So we're not really changing our mind here one
21 way or the other. Not only that but obviously -- I mean
22 this goes without saying but I guess I'll say it --

1 Investigator Stewart's story was corroborated by another
2 witness. So this is a futile exercise when you think
3 about it. And secondly, if -- obviously the -- The
4 Board can determine how credible Investigator Stewart
5 should be in this case or how credible any of the
6 witnesses should be in this case. So it is part of the
7 course of this Board's own process that naturally you
8 all assign to each witness's testimony a certain amount
9 of credibility. So this Board is free to assign any
10 credibility or not to Investigator Stewart's testimony
11 just like any other witness as well without having this
12 distraction in place.

13 CHAIRPERSON ANDERSON: Do we have any other
14 questions by any other board members?

15 MS. MILLER: I'd like to know --

16 CHAIRPERSON ANDERSON: Yes, Ms. Miller.

17 MS. MILLER: Thank you. Mr. Bianco,
18 Mr. Rivero has said that you didn't share this affidavit
19 in question with him. Why is that?

20 MR. BIANCO: Well, I didn't share the
21 affidavit in question because I got it from the Federal
22 District Court, it's a public record. And I did my own

1 investigation and I expected that he did the same. It's
2 simply a matter of logging on to Pacer which is the
3 federal district court database that maintains such
4 documents and downloading it. Number two, the rules of
5 evidence in -- in board proceedings as we discussed last
6 time don't require me to turn over any evidence that I
7 intend to use in a hearing. I did turn over the
8 document, the complaint that put me on notice that these
9 allegations were out there and that caused me to simply
10 go to my computer and look up the case and say hey, what
11 else is in here at which point I came across as filed in
12 the federal case this particular affidavit as well as
13 the disciplinary action as well as a number of reports
14 from the -- the Inspector General as well as a lot of
15 other documents that I am not seeking to put into
16 evidence at this point. But in my view it's a question
17 of due diligence. It was readily ascertainable, readily
18 findable. And -- and had he wanted to see the
19 affidavit, he could have looked it up and read it. I
20 spent several hours on my computer going through all of
21 the documents in the case to determine whether or not
22 there was something that --

1 MS. MILLER: So you -- you basically
2 notified him of the case, that was it?

3 MR. BIANCO: I notified him of the case and
4 of the specific allegations by sending him a copy of the
5 44 page complaint --

6 MS. MILLER: Okay.

7 MR. BIANCO: -- that I had received via
8 facsimile. I would note that the affidavit that I have,
9 the representations in that affidavit as they relate to
10 Mr. Stewart are consistent with the allegations in the
11 complaint. I'm not seeking to admit the complaint
12 because it's not a verified complaint and it's not a
13 sworn statement by Investigator Dantzler. The reason
14 why I'm going with the affidavit as opposed to complaint
15 is because it's sworn.

16 MS. MILLER: My other question is I was
17 under the impression that this case was continued so
18 that you could present one more witness who was
19 unavailable last time; is that correct?

20 MR. BIANCO: No. The case was --

21 MS. MILLER: I don't mean is that correct.
22 I would ask the chair if that's correct. But is that

1 your understanding?

2 MR. BIANCO: That is not my understanding.

3 MS. MILLER: No.

4 MR. BIANCO: And let me tell you
5 specifically what my understanding is from my review of
6 the transcript in this matter. At the initial hearing
7 at the outset that I had a witness that was not
8 available. So we talked about at the outset that we
9 were going to set it over for another day so that that
10 particular witness could be available. As the hearing
11 progressed -- I'm sorry. Also at the outset of the
12 hearing I represented that on that particular day I had
13 five witnesses to testify, and I did not identify those
14 witnesses. Because of time constraints I actually only
15 called three. Okay. So to respond to your question as
16 to the reason why we set it over for a second day I
17 would say two things; one, yes, originally it was for
18 the purpose of calling an unavailable witness. But
19 later on in the day there became a dual purpose which
20 was also to call other witnesses that we were not able
21 to reach due to time constraints and The Board had other
22 things scheduled in the afternoon that it wanted to get

1 to and it made sense for all the parties at the time.
2 The other thing that I would say is this information
3 about Investigator Dantzler was not something that I was
4 out there looking for, it's something that was provided
5 to me. And it was provided to me -- it was faxed at
6 some point on Wednesday in the late afternoon and it was
7 left at my desk. When I arrived Thursday morning and I
8 said what the heck is this, started reading it, starting
9 doing my due diligence, made my request of The Board's
10 counsel on Monday, copied Mr. Rivero on that request.
11 And his response was I've never seen this complaint as
12 documented, I don't know anything about it. At that
13 point upon his request I forwarded it. And at that
14 point I had slightly more information than him because I
15 had had the opportunity to go into the electronic filing
16 system for the Federal District Court and start to look
17 at documents. I had not at that point discovered the
18 affidavit as the affidavit was attached to a motion for
19 summary judgment which was filed -- it was document
20 Number 128 filed in the case several years after the
21 case was initiated. So it took me a while to work my
22 way down the -- the docket and get to all of the

1 documents. But I -- I would -- just for the purpose of
2 demonstrating the scope of the due diligence that I had
3 to do there were 74 attachments to that particular
4 motion for summary judgment. So it was not a small
5 undertaking to go through each and everything filed in
6 the case to find -- to mine out the information that
7 bears on Investigator Stewart's credibility.

8 MS. MILLER: Okay. And I -- and I don't
9 want to ask for a long answer to this one though.
10 The -- the -- the law that you're relying on is Rule
11 608, Federal Rules of Evidence 608 you said?

12 MR. BIANCO: I am not relying on Rule 608.

13 MS. MILLER: Okay. I think Mr. Rivero
14 mentioned that.

15 MR. BIANCO: Mr. Rivero is relying on Rule
16 608. I am taking the position that 608 is no way
17 applicable.

18 MS. MILLER: Okay. What rule are you
19 relying on?

20 MR. BIANCO: I -- I'm relying on the
21 evidentiary standard as set forth in the Administrative
22 Procedures Act that Mr. Rivero read off in his initial

1 comments, and that specifically is --

2 MS. MILLER: Is that 2-509B?

3 MR. BIANCO: That is correct.

4 MS. MILLER: Okay.

5 MR. BIANCO: That was 2-509B, the agency
6 shall exclude irrelevant, immaterial, and unduly
7 repetitious evidence. And it's I suppose Mr. Rivero's
8 argument -- I don't want to put words in his mouth --
9 that that's what this is. And it's my argument that
10 this has direct bearing on credibility which is a
11 central issue in this case.

12 MS. MILLER: Okay. Thank you.

13 CHAIRPERSON ANDERSON: Yes, Mr. Rivero.

14 MR. RIVERO: I want to clarify a couple
15 points particularly the representations that have been
16 made about my positions. I'm relying on both DC APA and
17 Rule 608. I'm relying on both.

18 MS. MILLER: Okay.

19 MR. RIVERO: So not just one.

20 MS. MILLER: Thank you.

21 CHAIRPERSON ANDERSON: Okay. I'm sorry.

22 MR. RIVERO: Secondly, the understanding of

1 today's hearing was fairly clear the last time we were
2 here, and it's to hear testimony from two witnesses.
3 One was the licensee who was going to talk about his
4 video system to lay some sort of foundation. The video
5 was entered into evidence without a problem because of
6 the representation that there will be some discussion
7 about the video today, and number two, that there was
8 going to be testimony about a witness who couldn't be
9 there that day. And that person, I believe his name is
10 Kamani.

11 MS. MILLER: Uh-huh.

12 MR. RIVERO: And so there was a proffer
13 made -- there were two proffers; the proffer as to the
14 licensee, that was going to talk about the video system
15 and how it worked and the proffer as to Kamani was that
16 he was going to describe what he saw when he was posted
17 inside of the establishment and that's it. That's what
18 we were supposed to do. With respect to any other
19 arguments about whatever type of information I should or
20 should not have discovered on my own due diligence. I'm
21 obviously not going to tell Mr. Bianco how to spend his
22 time, but I'm not going to spend my time on what I think

1 is an irrelevant chase. Mr. Bianco is correct because
2 he's sticking to the very letter of your rule that says
3 when -- before something is introduced it must be
4 provided to the other side. Your rule never says when.
5 Your rule never talks about intent and there's no
6 deadline whatsoever. So he can bring a pile of
7 documents today and go one by one to try to introduce
8 them and not show them to me until the moment he's about
9 to hand them to you, then he gives me a copy. That's
10 what your rule says. So let's just be rather clear
11 about that. So he is correct in sticking to the letter
12 of your rule. And I want to explicitly let you all
13 understand how that rule works in the real world for
14 people who want to interpret it that way literally.
15 That's all. Thank you.

16 MR. ALBERTI: I have a question.

17 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

18 MR. ALBERTI: Mr. Bianco, I want to go back
19 to something you said right up front. You talked about
20 the fact that this is coming to us late, you're bringing
21 it to us -- this is very late. I mean this is --
22 this -- you know, we had to -- we had to go to a second

1 day and that kept getting delayed I guess because of
2 scheduling issues between the two attorneys. I don't
3 know why, but its been a long time, a very long time
4 since -- since the first hearing. And you talked to us
5 about the late -- the lateness of this because, you
6 know, you didn't get this fax from somebody -- don't
7 know who -- until very late. But then you say then you
8 say to Mr. Rivero look, you had access to all these
9 documents, the documents that I'm bringing today, you
10 had access to all of these, they're -- you know, they're
11 on federal website database, you could have just gone
12 and looked them up. Well, the same applies to you. You
13 could have before the initial hearing done your homework
14 and discovered that there was some damning evidence --
15 allegedly -- alleged damning evidence against Mr. --
16 Mr. Stewart but you didn't do that. And now you use --
17 you use some excuse for bringing it to us at a very late
18 date. Maybe you want to talk about that.

19 MR. BIANCO: I'm happy to address it, and
20 I'm happy to tell you the reason why is that because
21 it's not my general practice in such matters to review
22 federal court dockets with regard to cases pending

1 against investigators for the purpose of show cause
2 hearings. It is my practice to make such a review of
3 superior court filings as that's where I typically
4 practice. So it was outside of the scope of what I
5 normally review in preparation for show cause hearings
6 before the ABC Board. And that's the only reason why I
7 guess I didn't catch it because that's not something
8 that I typically do.

9 MR. ALBERTI: Well, you know, the burden is
10 on you to represent your client --

11 MR. BIANCO: Well, the burden is actually --

12 MR. ALBERTI: -- the best way possible. And
13 so, you know, if you don't normally do something but
14 it's necessary to represent your client and defend them,
15 then you should be -- I expect you to do it. I mean I
16 don't expect you to -- what I'm having a problem with is
17 asking for our indulgence for something that was really
18 your responsibility from the beginning, and that's where
19 I'm at. You don't need to respond. I'm done.

20 MR. BIANCO: I -- I -- didn't know -- I
21 didn't think there was a question pending there.

22 MR. ALBERTI: There isn't. There isn't,

1 sir. No, I'm just -- there isn't a question pending.

2 CHAIRPERSON ANDERSON: Do we have any other
3 questions by anyone else before I make a ruling?

4 MR. RIVERO: Before you make a ruling, Mr.
5 Chair, in response to one of Mr. Alberti's questions I
6 brought up disciplinary action against Mr. Craig Stewart
7 that I had not initially sought the admissibility of.
8 To make sure the record is clear on this particular
9 point I would now like to make it -- to clarify that my
10 request is for the admission of both the affidavit as
11 well as the disciplinary action that we've now had some
12 discussion of based on Mr. Alberti's representation
13 about somebody having to make findings with regard to
14 specific allegations referred to for it to have some
15 bearing in his mind on credibility. So I'm seeking
16 admission of two documents based on Investigator
17 Dantzler -- based on Investigator Dantzler's
18 unavailability. The last thing that I would like to say
19 is that regarding the purpose of today's hearing I
20 wholeheartedly disagree with what Mr. Rivero represents
21 is the purpose of today's hearing. I'm happy to have
22 further discussion on that. I don't think it goes

1 directly to the evidentiary hearing of -- or the
2 evidentiary matter that you're considering right now
3 which is Investigator Dantzler's affidavit of the
4 disciplinary action.

5 CHAIRPERSON ANDERSON: Well, I think -- I
6 think you two need to have a time to have some
7 clarification about the purpose of this hearing because
8 one of the things I've been doing I've been reviewing
9 the -- I've been sitting here reviewing the transcript.
10 So I think you two need to sit and agree what it is
11 because it appears that your representation from
12 Mr. Rivero's are completely separate and apart. And I
13 need agreement for both of you about -- irrespective of
14 the issue -- how I rule on this issue, where is it that
15 we're going to go, how many witnesses are going to be
16 called, and what the witnesses are.

17 MR. BIANCO: With regard to the issue of
18 where we're going from here I'm happy to have a
19 discussion with Mr. Rivero. I have no problem doing
20 that. I'm also happy to put on the record and pinpoint
21 for you the exact place in the transcript --

22 CHAIRPERSON ANDERSON: I think you can also

1 do that where I have it in front of me too.

2 MR. BIANCO: -- where -- where we discuss
3 the matter. And I also have copies of the transcript.
4 So --

5 CHAIRPERSON ANDERSON: I have the transcript
6 in front of me. So --

7 MR. BIANCO: Great.

8 CHAIRPERSON ANDERSON: -- so I would -- so
9 what I want you to also do is to pinpoint where is it
10 that you think that provides us clarification where
11 we're moving forward.

12 MR. BIANCO: Page 20, Line 4.

13 CHAIRPERSON ANDERSON: Page what?

14 MR. BIANCO: Page 20, Line 4, I'm going to
15 call five witnesses today is what I said.

16 CHAIRPERSON ANDERSON: And that was -- and
17 how many witnesses did you call?

18 MR. BIANCO: I called three because we ran
19 out of time.

20 CHAIRPERSON ANDERSON: Three. All right.
21 So you have two more witnesses to call?

22 MR. BIANCO: I -- I had two more witnesses

1 on that -- on that day. And then prior to Page 20, Line
2 4 we talked about the necessity for me to call another
3 witness on another day who was not available. So six
4 total. Now, to avoid further fighting about this I only
5 have two witnesses to call today. So I don't want to
6 fight -- I don't want to fight for no reason. I have
7 two witnesses. I'm going to call two witnesses, and
8 then we are going to rest.

9 CHAIRPERSON ANDERSON: All right. All
10 right. Yes.

11 MR. RIVERO: Through the Chair who are those
12 two witnesses? Because three plus two is five, and
13 that's what I understood on day one, that there were
14 going to be five witnesses.

15 CHAIRPERSON ANDERSON: Right. And I
16 think --

17 MR. RIVERO: And I -- and I understood that
18 one witness was the licensee and the other one was the
19 person called Kamani.

20 CHAIRPERSON ANDERSON: The person who was
21 unavailable because his mom had a heart --

22 MR. RIVERO: But I don't actually see a

1 difference here.

2 CHAIRPERSON ANDERSON: Okay. I know -- all
3 right.

4 MR. BIANCO: The only difference is that we
5 are not going to call Kamani. He was here. I have
6 released him. We're going to call Bill Duggan, and
7 we're going to call Darian Gray, the other door man at
8 the establishment who was working on that night and
9 appears on the video.

10 CHAIRPERSON ANDERSON: All right. Well,
11 let's -- moving back to the -- the -- the document.
12 I'm -- I -- this hearing was started March the 9th,
13 2016, and I -- I -- part of what occurred at that
14 meeting -- I'm sorry -- that hearing was that we had a
15 video that -- it was very controversial in a sense that
16 counsel had not seen it, counsel -- there was some chain
17 of custody type of issue that we discussed. And I
18 allowed -- we had a break for counsel to review the --
19 the document for us to review the -- the video. I do
20 not agree that this affidavit is relevant to this
21 proceeding. And in -- specifically you would have --
22 you have had plenty of opportunities to -- to cross

1 examine Investigator Stewart. On -- at no point during
2 these proceedings did anyone bring -- bring the point
3 that investigator's credibility was an issue. And
4 that's -- that's -- credibility was not an issue. I
5 think we -- we had testimony, we had a video where The
6 Board has to review the video or looking at the video
7 and make its interpretation exactly what was going on.
8 So I don't -- I don't believe that having an affidavit
9 or even having testimony from Mr. -- from Ms. Dantzler
10 on -- on Investigator Stewart's credibility is relevant
11 in these proceedings because that is not an issue. That
12 has never been an issue. I -- I -- to me that's a -- a
13 new issue, and you have had an opportunity to -- we went
14 through extensive cross examination of Investigator
15 Stewart, and none of that became -- was discussed during
16 our last hearing. So I do not believe that it is
17 relevant. So I will not allow the affidavit. And if
18 there was some other court case regarding Investigator
19 Stewart, that's not relevant to these proceedings today.
20 So that's -- that's -- that's my ruling, that I'm not
21 going to allow that to occur.

22 Now, we can move forward. And who are the

1 two witnesses that you plan to call?

2 MR. BIANCO: My first witness is going to be
3 Darian Gray. He goes by Baba. He's the other doorman
4 that was working in the front of Madam's Organ that
5 night with Dan Carr.

6 CHAIRPERSON ANDERSON: All right.

7 MR. BIANCO: And my second witness is going
8 to be the owner of the establishment, Bill Duggan. And
9 at that point I anticipate resting.

10 CHAIRPERSON ANDERSON: Or -- sure do. All
11 right.

12 MR. ALBERTI: May I beg your indulgence for
13 a second. Sorry.

14 CHAIRPERSON ANDERSON: All right. Then call
15 your first witness then, sir.

16 MR. BIANCO: Very well. We call Darian
17 Gray. He's not in the room right now. I'm going to
18 have my client go out and get him while I set up the --
19 do the video setup. I will assure The Board that I did
20 a dry run yesterday with regard to the new technology
21 that exists here, and everything worked perfectly with
22 my laptop. So the screen should be usable.

1 CHAIRPERSON ANDERSON: So is this -- is this
2 the same video that we saw the first time or is there a
3 difference?

4 MR. BIANCO: The same thing.

5 CHAIRPERSON ANDERSON: Okay.

6 MR. BIANCO: There's no new video.

7 CHAIRPERSON ANDERSON: So we have -- have
8 you had a -- Mr. Rivero, have you had a preview of this
9 video?

10 MR. RIVERO: Yes. I have my own copy of the
11 video.

12 CHAIRPERSON ANDERSON: Okay.

13 MR. RIVERO: But I -- I do just want to
14 point out at this time that before the hearing ends
15 today I intend to retain my copy of this. We should
16 make sure that -- that there's an independent separate
17 copy for The Board.

18 MR. BIANCO: Yeah. I don't have a problem
19 with that. I have actually a couple of ideas on how we
20 can do that. I have disks available for The Board. I
21 realize that these days DVD and CD-ROM is not
22 necessarily the best way to view things. So I have the

1 digital copy as well on a thumb drive. And before I
2 left my office I uploaded the videos to a Dropbox, and
3 that could simply be e-mailed to The Board through its
4 attorney and the board members can access it as their
5 leisure, whatever works best.

6 CHAIRPERSON ANDERSON: Well, I'll ask -- I
7 think the Dropbox is a good option that -- to e-mail to
8 The Board's attorney.

9 MR. ALBERTI: Can we ask that he do that
10 sort of promptly so that we have it immediately after
11 this -- this hearing ends because we will try to have
12 deliberations.

13 MS. MILLER: Right now we can watch it. He
14 has a computer.

15 MR. ALBERTI: I just don't -- I want to
16 watch -- I only want to watch what he's showing.

17 MS. MILLER: That's the same thing.

18 CHAIRPERSON ANDERSON: Hold on a minute.
19 The only video that The Board is going to have is the
20 same video that we're seeing here?

21 MR. BIANCO: Correct.

22 CHAIRPERSON ANDERSON: So that's the only

1 video. So whatever -- whatever is going to come through
2 Dropbox we're going to view this today. So it's just --
3 just -- this is just our copy. So --

4 MR. BIANCO: Yeah. It will be your copy.

5 CHAIRPERSON ANDERSON: So we are -- we're
6 seeing the -- we're seeing the video right now. So all
7 right.

8 MR. ALBERTI: But that's what I'm suggesting
9 is that we make sure that we have it promptly, that it's
10 e-mailed expeditiously so that we have it promptly after
11 this hearing ends because we're going to go into
12 deliberations I think. That's -- but that's my only
13 point.

14 MR. BIANCO: I can see that it happens today
15 before I go home.

16 CHAIRPERSON ANDERSON: Thank you.

17 MS. MILLER: I -- are they going to -- is
18 the video going to show up on our individual screens or
19 just on those two screens?

20 MR. BIANCO: Yes. I -- I don't know.

21 Frankly I know it shows up here and it shows up -- and
22 it show up there.

1 MR. SILVERSTEIN: Does that say no signal at
2 this time?

3 MR. BIANCO: It does not say no signal at
4 this time.

5 MR. SILVERSTEIN: And it just went black.

6 MR. BIANCO: That it's on and it's all
7 black.

8 MR. SILVERSTEIN: Okay.

9 MS. MILLER: Mr. Bianco -- just, Mr. Bianco.

10 MR. BIANCO: Yes.

11 MS. MILLER: I just wanted to ask you if
12 you -- if you put into Dropbox like right now, the video
13 you're going to show -- I don't know if you can -- I
14 have a computer in front of me. Could it be watching it
15 on my computer at the same time?

16 MR. BIANCO: I can actually just give you
17 the digital copy of it.

18 CHAIRPERSON ANDERSON: I think -- no. I
19 don't think that's appropriate.

20 MS. MILLER: I didn't know if it was the
21 same video coming over in different ways.

22 CHAIRPERSON ANDERSON: But no -- no. But we

1 need to -- we all need to be looking at -- at one
2 centralized video where everyone is seeing and everyone
3 is being pointed out at the same time. I don't -- I
4 don't think it's -- I don't think it's appropriate for
5 us to be looking at different -- so we need to -- so --
6 because we have to have our attention to what is it that
7 we're supposed to be looking at. So I'm hoping that --

8 MS. MILLER: Okay.

9 CHAIRPERSON ANDERSON: -- the screen --
10 whatever screen it will be shown at, that we'll be able
11 to see the same screen. So --

12 MR. ALBERTI: So, Mr. Chairman, I -- and I
13 don't want to complicate things, but I anticipate
14 that -- that at least I might want to review the video
15 while -- during deliberations. And to make things
16 perfectly transparent I would like Mr. Rivero to review
17 the video that is sent to us prior to our deliberations
18 so that we get confirmation from him that what we are
19 seeing -- we are sent is exactly what -- what -- what he
20 has. So I'm just putting that out there.

21 MR. BIANCO: Yeah. I'm happy to copy
22 Mr. Rivero on any communication.

1 MR. ALBERTI: Okay.

2 MR. BIANCO: I would typically as a matter
3 of course.

4 MR. ALBERTI: All right. Very good. Thank
5 you.

6 CHAIRPERSON ANDERSON: We're off the record
7 for a minute.

8 (Off the record discussion.)

9 CHAIRPERSON ANDERSON: All right. We're
10 back on the record. All right. I think we need --
11 Mr. Bianco, can you give Mr. -- Mr. Gray your
12 microphone. Mr. -- Mr. Rivero, can you give Mr. Bianco
13 your microphone and then remember to -- to switch back
14 over because he needs a microphone.

15 MR. BIANCO: I'm going to slide over.

16 CHAIRPERSON ANDERSON: All right.

17 MR. RIVERO: And in the event I object I
18 will lean over.

19 CHAIRPERSON ANDERSON: Yes. All right.
20 Thank you. All right. All right. Mr. Gray, can you
21 stand and raise your right hand please. Do you swear or
22 affirm to tell the truth and nothing but the truth.

1 MR. GRAY: Yes, sir.

2 CHAIRPERSON ANDERSON: All right. Have a
3 seat please. Your -- excuse me. Your witness,
4 Mr. Bianco.

5 MR. BIANCO: Could you state your name for
6 the record and spell your last name please.

7 MR. GRAY: Darian Gray, G-R-A-Y.

8 MR. BIANCO: Do you go by Baba?

9 MR. GRAY: Yes, sir.

10 MR. BIANCO: Okay. That's -- and is that a
11 nickname?

12 MR. GRAY: Yes, sir.

13 MR. BIANCO: Where do you work, Baba?

14 MR. GRAY: At Madam's Organ.

15 MR. BIANCO: How long have you worked at
16 Madam's Organ?

17 MR. GRAY: Four years.

18 MR. BIANCO: Four years. Okay. And what's
19 your job there?

20 MR. GRAY: Door -- work the door, door
21 greeter.

22 MR. BIANCO: And what are your duties as a

1 door greeter at Madam's Organ?

2 MR. GRAY: Check IDs, collect money, make
3 the guests comfortable.

4 MR. BIANCO: Okay.

5 CHAIRPERSON ANDERSON: Mr. Gray, can you
6 just raise your voice up please when you speak.

7 MR. GRAY: Sure.

8 CHAIRPERSON ANDERSON: All right. Thank
9 you, sir.

10 MR. BIANCO: Do you have a usual shift that
11 you work at Madam's Organ?

12 MR. GRAY: From open until close.

13 MR. BIANCO: And are there certain days of
14 the week that you work?

15 MR. GRAY: Monday, Tuesday, Friday, and
16 Saturday.

17 MR. BIANCO: So you work four days a week
18 open to close?

19 MR. GRAY: Yes.

20 MR. BIANCO: Do you know Dan Carr?

21 MR. GRAY: Yes.

22 MR. BIANCO: How do you know Dan Carr?

1 MR. GRAY: From Madam's Organ.

2 MR. BIANCO: And what does he do at Madam's
3 Organ?

4 MR. GRAY: Works the door too.

5 MR. BIANCO: Okay. Do you work at separate
6 times or do you have two doormen?

7 MR. GRAY: On Friday and Saturday two door
8 people.

9 MR. BIANCO: And the two door people have
10 different jobs?

11 MR. GRAY: One checks IDs and one collects
12 money.

13 MR. BIANCO: Okay. How do you determine who
14 is going to do which job?

15 MR. GRAY: Just ask.

16 MR. BIANCO: What does that mean, just ask?

17 MR. GRAY: What you want to do, do you want
18 to do the IDs or do you want to do the money?

19 MR. BIANCO: So do you -- you just decide
20 among yourselves?

21 MR. GRAY: Yeah.

22 MR. BIANCO: Okay. Have you ever switched

1 during a shift?

2 MR. GRAY: Yes.

3 MR. BIANCO: How often does that happen?

4 MR. GRAY: You got to go to the bathroom, a
5 cigarette break, a lunch break.

6 MR. BIANCO: So frequently?

7 MR. GRAY: Yeah.

8 MR. BIANCO: The two doormen that are
9 working on the weekends, do you have different stations
10 that you stand at?

11 MR. GRAY: Yes.

12 MR. BIANCO: And could you describe for The
13 Board what the different stations are for the two
14 doormen.

15 MR. GRAY: The first one stands closest to
16 the curb, and the second one stands closest to the door.

17 MR. BIANCO: Okay. And the man who's
18 standing closest to the curb, is that position on the
19 front porch?

20 MR. GRAY: Yes.

21 MR. BIANCO: And what is that person's job?

22 MR. GRAY: To check IDs.

1 MR. BIANCO: And the person standing closest
2 to the door, what's that person's job?

3 MR. GRAY: To collect the money.

4 MR. BIANCO: Is there somewhere to sit?

5 MR. GRAY: Yes.

6 MR. BIANCO: For both people?

7 MR. GRAY: Just for the -- the -- the second
8 person.

9 MR. BIANCO: Okay. And by the second person
10 do you mean the person closest to the door?

11 MR. GRAY: Yes.

12 MR. BIANCO: And what is there to sit on
13 there?

14 MR. GRAY: A stool.

15 MR. BIANCO: Okay. The guy who's standing
16 just closer to the street, he's just out luck, he has to
17 stand?

18 MR. GRAY: Out of luck.

19 MR. BIANCO: Okay. And were you working on
20 Friday, September the 4th of 2015 into Saturday morning
21 September the 5th of 2015?

22 MR. GRAY: Yes.

1 MR. BIANCO: Okay. Do you recall anything
2 unusual happening at approximately 1:40 a.m. on
3 September the 5th of 2015?

4 MR. GRAY: Yes.

5 CHAIRPERSON ANDERSON: Are you aware that
6 there are video cameras at the entrance to the
7 establishment?

8 MR. GRAY: Yes.

9 MR. BIANCO: Do you know where they're
10 positioned?

11 MR. GRAY: Yes.

12 MR. BIANCO: Could you describe that very
13 briefly.

14 MR. GRAY: Over the front door and if you're
15 coming out the front door to your left.

16 MR. BIANCO: Have you ever seen the video
17 from the cameras from the early morning of September the
18 5th?

19 MR. GRAY: Yes.

20 MR. BIANCO: When did you see that?

21 MR. GRAY: When they was looking -- looking
22 through the videos in the office.

1 MR. BIANCO: And when was that in relation
2 to September the 5th?

3 MR. GRAY: Like the next day.

4 MR. BIANCO: Okay. Was Dan working on that
5 day?

6 MR. GRAY: Yes.

7 MR. BIANCO: I'm sorry. I want to clarify
8 that. Was Dan working on Friday, September the 4th into
9 Saturday, September the 5th?

10 MR. GRAY: Yes.

11 MR. BIANCO: Okay. And do you remember what
12 position each of you were working on that -- on that
13 day?

14 MR. GRAY: Dan was collecting the money.

15 MR. BIANCO: So he was standing closest to
16 the door?

17 MR. GRAY: Yes.

18 MR. BIANCO: Now, I'm going to show you the
19 video from the camera over the door which you can see is
20 already up on the screen frozen. Okay. I'm going to
21 now advance the video and I may stop it and ask you some
22 questions about what's going on at any given moment.

1 Sorry. I missed my cue. There we go right there. All
2 right. I am using the pointer on my computer here which
3 also shows up on the video monitor that you're looking
4 at. And I am pointing at what appears to be an African
5 American gentleman wearing a T-shirt. Do you recognize
6 that person?

7 MR. GRAY: I sure do.

8 MR. BIANCO: Who is that?

9 MR. GRAY: The one and only, me.

10 MR. BIANCO: That's you. Okay. Now, I'm
11 going to stop it again and I'm going to again use my
12 pointer and also describe on the right-hand side of the
13 screen there is a rectangular object. Do you know what
14 that is?

15 MR. GRAY: It's the front door.

16 MR. BIANCO: That's the front door. And
17 what position is the door in? Is it open or closed at
18 that point?

19 MR. GRAY: About halfway open.

20 MR. BIANCO: Okay. So it's either in the
21 process of opening or closing at that point?

22 MR. GRAY: Yes.

1 MR. BIANCO: Okay. And do you have a
2 practice and a procedure at Madam's Organ with regard to
3 whether the door is kept open or not?

4 MR. GRAY: Yes.

5 MR. BIANCO: And what is that?

6 MR. GRAY: After 10:00 the door stays
7 closed.

8 MR. BIANCO: And is there a reason why after
9 10:00 the door stays closed?

10 MR. GRAY: For the noise.

11 MR. BIANCO: Okay. So after 10:00 patrons
12 exiting and entering have to open the door?

13 MR. GRAY: Yes.

14 MR. BIANCO: Okay. And I'm going to stop
15 the video again and again I'm going to use the pointer
16 and point to somebody on the right-hand side of the
17 screen which I'm going to identify as somebody wearing a
18 hat who has a beard. Do you recognize that person?

19 MR. GRAY: Yes.

20 MR. BIANCO: And who is that?

21 MR. GRAY: Dan.

22 MR. BIANCO: Okay. And do you recognize

1 that to be the position that the door person takes while
2 working the front?

3 MR. GRAY: Yes.

4 MR. BIANCO: Okay. And does it appear at
5 that point that he's seated or standing?

6 MR. GRAY: He's sitting down.

7 MR. BIANCO: Okay. So that is -- is that
8 the location of the stool?

9 MR. GRAY: Yep.

10 MR. BIANCO: I'm sorry. I missed my cue yet
11 again. I'm going to roll back. Right there. Okay.
12 I've stopped the video again, and I am going to point
13 out another person using the pointer on my computer.
14 I'm going to describe this person as a bald gentleman
15 with a button-down shirt that appears to be open. On
16 the evening of September the 5th of -- I'm sorry -- on
17 the early morning of September the 5th of 2015 do you
18 know who this individual is?

19 MR. GRAY: No.

20 MR. BIANCO: Okay. Do you now know who it
21 is?

22 MR. GRAY: Now I do.

1 MR. BIANCO: Who is it?

2 MR. GRAY: He works for ABRA.

3 MR. BIANCO: Okay. And where he is standing
4 right now, is that beyond the position where you were
5 working?

6 MR. GRAY: Yeah.

7 MR. BIANCO: Okay. How did he get past you?

8 MR. GRAY: There was a crowd outside, and he
9 just came right behind the crowd, like walked right
10 behind them.

11 MR. BIANCO: Okay. Did you stop him?

12 MR. GRAY: No. I thought Dan knew him.

13 MR. BIANCO: Okay. Why did you think Dan
14 knew him?

15 MR. GRAY: Because he kept coming, he kept
16 walking.

17 MR. BIANCO: Okay. What does that mean?

18 MR. GRAY: He didn't stop -- didn't want to
19 give ID or nothing.

20 MR. SILVERSTEIN: Please speak up a little
21 louder, sir.

22 MR. GRAY: He didn't want to stop. He

1 didn't give ID so I thought he knew Dan.

2 MR. BIANCO: Did you ask him for ID?

3 MR. GRAY: Yeah. And he kept moving.

4 MR. BIANCO: Did he answer you?

5 MR. GRAY: No.

6 MR. BIANCO: Did you notice that he was
7 wearing a badge.

8 MR. GRAY: No.

9 MR. BIANCO: Okay. Looking at the video,
10 does it -- do you see that he was wearing a badge in the
11 video?

12 MR. GRAY: No.

13 MR. BIANCO: And I'm going to advance the
14 video again, and at this point in the video I'm going to
15 use the pointer to put it on the -- who you told us all
16 is you. What are you doing at that point in the video?

17 MR. GRAY: Checking ID.

18 MR. BIANCO: Okay. So you went back to
19 doing your job after this guy went past you and you
20 asked him for ID?

21 MR. GRAY: Yeah.

22 MR. BIANCO: Okay. Were you able to hear

1 any of the interaction between Dan Carr and this
2 particular individual?

3 MR. GRAY: And Dan asked him for his ID.

4 MR. BIANCO: Okay. And was there a
5 response?

6 MR. GRAY: No, he kept moving.

7 MR. BIANCO: Now, at this point in the video
8 -- sorry. Strike that.

9 After this individual walked past you and
10 he -- you asked him for ID and he just kept walking was
11 there anybody immediately behind him?

12 MR. GRAY: The customers that's in the frame
13 now.

14 MR. BIANCO: Okay. Were there any
15 individuals that walked up with him?

16 MR. GRAY: No.

17 MR. BIANCO: Now I'm going to stop the video
18 there and again use the pointer to point out an
19 individual who I'm going to describe as a man wearing
20 glasses and a button-down shirt. On September the 5th
21 of 2015 did you know who that person was?

22 MR. GRAY: No.

1 MR. BIANCO: Okay. Do you now know who he
2 is?

3 MR. GRAY: Yep.

4 MR. BIANCO: Who is he?

5 MR. GRAY: He works for ABRA.

6 MS. MILLER: I'm sorry. What did you say?

7 MR. GRAY: He works for ABRA.

8 MR. BIANCO: And it looks like here in the
9 video you are in the process of checking an ID. Is
10 that --

11 MR. GRAY: Yes.

12 MR. BIANCO: Is that the ID of the
13 gentleman --

14 MR. GRAY: No.

15 MR. BIANCO: -- whom you identified as
16 working for ABRA?

17 MR. GRAY: No.

18 MR. BIANCO: Okay. How do you know?

19 MR. GRAY: How do I know what?

20 MR. BIANCO: That that is not the ID of the
21 gentleman --

22 MR. GRAY: Because it was a lady's ID.

1 MR. BIANCO: Okay. Thank you. Did the
2 investigator from ABRA show you an ID?

3 MR. GRAY: No.

4 MR. BIANCO: Did you ask him to show you an
5 ID?

6 MR. GRAY: Yes.

7 MR. BIANCO: Okay. And what was his
8 response to you when you asked him to show you an ID?

9 MR. GRAY: Mute, nothing.

10 MR. BIANCO: I'm sorry. Did you say mute?

11 MR. GRAY: Yeah. He didn't say anything.

12 MR. BIANCO: So he ignored you?

13 MR. GRAY: Yeah.

14 MR. BIANCO: Okay. Now, does that video
15 show that that particular investigator has a badge
16 hanging around his neck?

17 MR. GRAY: No.

18 MR. BIANCO: Did you attempt to stop that
19 individual as he walked past you and didn't show ID?

20 MR. GRAY: No. Because I -- I was doing
21 something else and I -- I know Dan was behind him --
22 behind me, and I know Dan would catch it.

1 MR. BIANCO: Okay. I've advanced the video
2 another frame, and now behind the gentleman you
3 previously identified I'm going to point out a woman who
4 appears to have a ponytail and is also wearing a
5 button-down shirt. On September the 5th did you know
6 who that person was?

7 MR. GRAY: No.

8 MR. BIANCO: Do you know now know who it is?

9 MR. GRAY: Yep.

10 MR. BIANCO: Who is it?

11 MR. GRAY: She works for ABRA.

12 MR. BIANCO: Okay. And did she stop and
13 show you ID?

14 MR. GRAY: I tried to stop her.

15 MR. BIANCO: Okay. And could you describe
16 what's going on in that paused frame right there.

17 MR. GRAY: She kept moving.

18 MR. BIANCO: Okay. And what are you doing
19 specifically?

20 MR. GRAY: Trying to hold her arm, tapping
21 on her.

22 MR. BIANCO: What was the purpose of you

1 trying to tap her on the arm?

2 MR. GRAY: Telling her I need her ID.

3 MR. BIANCO: Did you know she worked for
4 ABRA at that point?

5 MR. GRAY: No.

6 CHAIRPERSON ANDERSON: Did she respond to
7 you at that point?

8 MR. GRAY: No.

9 MR. BIANCO: Is she wearing a badge?

10 MR. GRAY: No.

11 MR. BIANCO: Okay. All right. I've stopped
12 the video again and I'm using my pointer. I am going to
13 point you out. And at that point it looks like you have
14 moved from your position; is that correct?

15 MR. GRAY: Yes.

16 MR. BIANCO: And what are you doing at that
17 point?

18 MR. GRAY: Seeing what's going on in the
19 hallway.

20 MR. BIANCO: Okay. And is that your vantage
21 point right there? Can you see directly into the
22 hallway?

1 MR. GRAY: Yes.

2 MR. BIANCO: And what was going on in the
3 hallway?

4 MR. GRAY: People coming out, Dan in the
5 hallway talking to the first guy that came in.

6 MR. BIANCO: And how was Dan positioned when
7 he was standing there?

8 MR. GRAY: To the side.

9 MR. BIANCO: What does that mean to the
10 side?

11 MR. GRAY: When you walk in he's standing
12 with his back against the wall.

13 MR. BIANCO: His back was against the wall?

14 MR. GRAY: Yes.

15 MR. BIANCO: Okay. Was he blocking the
16 doorway?

17 MR. GRAY: No.

18 MR. BIANCO: Was he making physical contact
19 with the first person?

20 MR. GRAY: No.

21 MR. BIANCO: Did you see him step to his
22 left, your right to try and impede the person from

1 entering?

2 MR. GRAY: No.

3 MR. BIANCO: Were you able to hear what was
4 going on in the interaction between the first person
5 that walked in and Dan?

6 MR. GRAY: No. I heard -- I -- I just heard
7 on the radio that call Keisha for the manager.

8 MR. BIANCO: Now, at that point in the video
9 where I have just stopped it what are you doing now?

10 MR. GRAY: Went back to checking IDs.

11 MR. BIANCO: Why did you go back to checking
12 IDs?

13 MR. GRAY: Because there wasn't nothing
14 going on in the hallway. It was just Dan, the first
15 guy, and the manager.

16 MR. BIANCO: Now, at that point in the video
17 what are you doing?

18 MR. GRAY: Walking up towards the front
19 door.

20 MR. BIANCO: All right. Now, I've stopped
21 the video again there. And could you describe where
22 you're positioned there?

1 MR. GRAY: Behind the barrel.

2 MR. BIANCO: Okay. And is that where -- is
3 that the position that Dan Carr was formerly at?

4 MR. GRAY: Yes.

5 MR. BIANCO: And what were you doing in that
6 position?

7 MR. GRAY: Taking the money and checking IDs
8 at the same time.

9 MR. BIANCO: Now, I've stopped the video
10 again at that point, and I'm going to point out the bald
11 gentleman in the button-down shirt that you identified
12 as an ABRA employee. And it appears in the video that
13 you're looking at him at that point. Is he wearing a
14 badge now?

15 MR. GRAY: Yes.

16 MR. BIANCO: Now, at this point in the video
17 could you identify the two people that the ABRA
18 investigator is speaking with. So he's the bald
19 gentleman with the button-down shirt and now the badge.
20 And I am going to move the pointer left across the video
21 screen to a woman. Do you recognize that particular
22 person?

1 MR. GRAY: Yeah. That's the manager on
2 duty.

3 MR. BIANCO: And what's her name?

4 MR. GRAY: Keisha.

5 MR. BIANCO: Okay. And moving again back
6 right pointing the bearded gentleman with the hat. Is
7 that Dan Carr?

8 MR. GRAY: Yes.

9 MR. BIANCO: And the lower right of the
10 screen, is that you working the door?

11 MR. GRAY: Yes.

12 MR. BIANCO: Okay. Now, were you able to
13 hear any aspect of the conversation going on between
14 those three individuals?

15 MR. GRAY: Yeah. He was telling Dan that --
16 he told Keisha that he wanted to have Dan arrested for
17 impeding -- blocking the door and stopping him from
18 coming in.

19 MR. BIANCO: Do you know if Dan was
20 arrested?

21 MR. GRAY: No.

22 MR. BIANCO: You don't know or he was not

1 arrested?

2 MR. GRAY: He was not.

3 MR. BIANCO: He was not arrested. Now, at
4 that point in the video you have moved from your
5 position and you're standing what looks like to be in
6 front of the gentleman that you identified as working
7 for ABRA. Were you able to hear him tell you or Keisha
8 anything at that point?

9 MR. GRAY: That they was going to cite the
10 bar for over occupancy and shut them down.

11 MR. BIANCO: He said that he was going to
12 shut them down?

13 MR. GRAY: Yes.

14 MR. BIANCO: Okay. Did he say to pass that
15 message along to anyone in particular?

16 MR. GRAY: Mr. -- Mr. Bill Duggan.

17 MR. BIANCO: Bill Duggan. How did he say
18 that?

19 MR. GRAY: Tell Mr. Duggan we're going to
20 shut him down and cite him for over -- over occupancy.

21 MR. BIANCO: Now, I want to show you the
22 other video that we looked at very briefly for one

1 particular purpose. It's going to take me just a few
2 seconds to switch.

3 MS. MILLER: While you're switching can I
4 just ask who said that? Who -- who said tell Mr. Duggan
5 we're going to shut them down?

6 MR. GRAY: The bald guy.

7 MS. MILLER: Okay. Okay.

8 MR. SHORT: For the record what's his name?

9 MR. GRAY: I don't know his name.

10 MR. BIANCO: Is that Investigator Stewart?

11 MR. GRAY: Yeah.

12 MR. SHORT: Thank you.

13 MR. ALBERTI: While we have a pause can I
14 ask is there a date and time stamp on these?

15 MR. BIANCO: There is at the -- at the top
16 portion of the -- the top portion of the video has a
17 date and time stamp. It's -- it's second by second.
18 The time -- the time shown on the stamp is not accurate
19 as to the time of day, but it is accurate as to the run
20 time.

21 MR. ALBERTI: Okay. Thank you.

22 MR. BIANCO: I didn't want to testify on

1 that, but we talked about that last time. I know its
2 been a few months.

3 MR. ALBERTI: Okay. I just wanted to --

4 MR. BIANCO: Yeah.

5 MR. ALBERTI: I think we asked about that.

6 Thank you.

7 MR. BIANCO: Now, Mr. Gray, looking up at
8 the screen do you recognize that to be the angle of the
9 second exterior camera at Madam's Organ?

10 MR. GRAY: Yes, sir.

11 MR. BIANCO: Okay. And this is Dan Carr
12 with the beard and the hat seated in the stool at the
13 front door?

14 MR. GRAY: Yeah.

15 MR. BIANCO: Okay. And where are you
16 located in this portion of the video?

17 MR. GRAY: Right in front of the pole.

18 MR. BIANCO: But -- so where you're standing
19 is obscured by this post here --

20 MR. GRAY: Uh-huh.

21 MR. BIANCO: -- in the middle of the screen?

22 Now, I've stopped the video again and I'm going to point

1 to a Caucasian gentleman with glasses and a button-down
2 shirt whom you previously identified as working for
3 ABRA. Do you know that -- do you know that person's
4 name?

5 MR. GRAY: No.

6 MR. BIANCO: Would you recognize it as Mark
7 Brashears if I said it?

8 MR. GRAY: Yeah.

9 MR. BIANCO: And is a badge visible at that
10 point in the video?

11 MR. GRAY: No.

12 MR. BIANCO: Did you at any point in the
13 course of that evening's events see that gentleman put
14 on a badge?

15 MR. GRAY: When he came out the building.

16 MR. BIANCO: I'm going to advance the video.

17 MR. ALBERTI: Could you --

18 MR. BIANCO: Okay.

19 MR. GRAY: When they came out of the
20 building.

21 MR. BIANCO: Hang on. Hold on one second.
22 Could you please repeat your last answer.

1 MR. GRAY: When they came out the building.

2 MR. BIANCO: Okay. For some reason --

3 MR. ALBERTI: It's on that one over there?

4 MR. BIANCO: It's on that one over there,

5 but for some reason we're having -- you want me to --

6 yeah, take --

7 MR. ALBERTI: I'll jiggle the wires. I

8 don't want you to -- us to be responsible for -- they

9 can reprimand me.

10 MR. RIVERO: There. That's it.

11 MR. BIANCO: That's it.

12 MR. ALBERTI: It's this wire right here.

13 All right. Okay. See how it works.

14 MR. DUGGAN: Right. The picture is better

15 too.

16 MR. BIANCO: The picture quality is better.

17 MR. ALBERTI: All right.

18 MR. BIANCO: I'm having some trouble getting

19 it cued up to the right spot here. Oh, come on. Brief

20 indulgence, I'm trying to figure out what's going on

21 here technologically. I'm trying to avoid having to

22 just let it play, but it seems that every time I try to

1 jump the video it kicks off. It's only two minutes.

2 Okay.

3 Now, at that point in the video do you --
4 can you identify where you were standing?

5 MR. GRAY: In front of the barrel.

6 MR. BIANCO: Okay. And this individual here
7 is Mr. Carr, correct?

8 MR. GRAY: Yes, sir.

9 MR. BIANCO: And is where I'm pointing now
10 in front of Mr. Carr, is that the barrel that you just
11 referred to?

12 MR. GRAY: Yes.

13 MR. BIANCO: And could you describe what
14 that is.

15 MR. GRAY: A Jack Daniel's barrel.

16 MR. BIANCO: Okay. It's decorative?

17 MR. GRAY: No.

18 MR. BIANCO: I appreciate the honesty.
19 Thanks. What purpose does it serve?

20 MR. GRAY: To put -- we put bottles of water
21 and glasses there.

22 MR. BIANCO: Okay. Empties?

1 MR. GRAY: Yeah, empties.

2 MR. BIANCO: Okay. And you -- by saying
3 you're in front of it, meaning you're obscured by the
4 post at this point?

5 MR. GRAY: Yes.

6 MR. BIANCO: And the individual that I'm
7 pointing to now wearing the black on black, do you
8 recognize who that is?

9 MR. GRAY: Yes.

10 MR. BIANCO: Who?

11 MR. GRAY: The ABRA officer.

12 MR. BIANCO: Okay. And are you able to
13 see -- do you recall what he was doing at that point?

14 MR. GRAY: Putting his badge on.

15 MR. BIANCO: Okay. And does the video
16 depict that individual putting his badge on?

17 MR. GRAY: Yes.

18 MR. BIANCO: And at this point in the video
19 is he now wearing his badge?

20 MR. GRAY: Yes.

21 MR. BIANCO: Thank you. I don't have any
22 other questions for you right now. Mr. Rivero is going

1 to have some, and then The Board will likely have some.
2 He can go back to the stand unless you want to use the
3 video which is totally up to you.

4 MR. RIVERO: No desire to use the video.

5 MR. BIANCO: Okay.

6 MR. RIVERO: None. So yeah, you can --

7 CHAIRPERSON ANDERSON: All right. Mr. Gray,
8 you can go on the stand please.

9 MR. BIANCO: Slide that back over and use
10 the mics.

11 CHAIRPERSON ANDERSON: Please speak into the
12 microphone.

13 MR. RIVERO: Right. Mr. Gray, good
14 afternoon. I'd like to ask you with how many people did
15 you discuss your testimony today?

16 MR. GRAY: None.

17 MR. RIVERO: You discussed your testimony
18 with nobody?

19 MR. GRAY: No. No.

20 MR. RIVERO: Okay. Now, you said that there
21 were two positions; one was the curb and one was the
22 door.

1 MR. GRAY: Yeah.

2 MR. RIVERO: Okay. Were they next to each
3 other?

4 MR. GRAY: The Jack Daniels barrel separates
5 the two.

6 MR. RIVERO: Okay. So what's that, five
7 feet?

8 MR. GRAY: About a foot.

9 MR. RIVERO: A foot?

10 MR. GRAY: I mean an arm -- arm distance.

11 MR. RIVERO: So the barrel is a foot wide?

12 MR. GRAY: I mean about -- about from here
13 to here.

14 MR. RIVERO: Do you think that's a foot or
15 more than a foot?

16 MR. GRAY: From here to here -- man, I don't
17 know what a -- I don't know. I ain't measured it. I
18 never measured it.

19 MR. RIVERO: Okay. Well, then I think the
20 record needs to show what you're showing. So I need you
21 to hold your arm up --

22 MR. GRAY: From here to here.

1 MR. RIVERO: -- and show the board members.

2 MR. GRAY: From here to here, my fingertips
3 to my elbow.

4 MR. RIVERO: And that's the width of the
5 barrel?

6 MR. GRAY: The width of the barrel, yes,
7 sir.

8 MR. RIVERO: Okay. And when you say that
9 you are on the curb, does that mean you're on the other
10 side of the barrel?

11 MR. GRAY: On the other side, the front side
12 of the barrel.

13 MR. RIVERO: The front side of the barrel?

14 MR. GRAY: Yes.

15 MR. RIVERO: Okay. And you -- there's --
16 you don't sit, do you?

17 MR. GRAY: No.

18 MR. RIVERO: The whole time you stand?

19 MR. GRAY: Yes.

20 MR. RIVERO: Okay. But you said there was a
21 stool as well?

22 MR. GRAY: Yes.

1 MR. RIVERO: And is that on the other side
2 of the barrel?

3 MR. GRAY: On the back side of the barrel.

4 MR. RIVERO: On the back side of the barrel?

5 MR. GRAY: Yes.

6 MR. RIVERO: Okay. And it's on the back
7 side of the barrel. How far away from you is the stool?

8 MR. GRAY: So another half a foot.

9 MR. RIVERO: Another six inches?

10 MR. GRAY: Yes.

11 MR. RIVERO: You indicated that when you
12 were standing in the curb position you were checking
13 IDs.

14 MR. GRAY: Yes.

15 MR. RIVERO: And you indicated that you were
16 checking an ID and that you overheard a conversation
17 between someone you didn't know and Dan Carr and that
18 that person, Carr was asking the person you didn't know
19 for ID. You said you overheard that; is that correct?

20 MR. GRAY: Yes.

21 MR. RIVERO: Okay. Did you hear the entire
22 conversation?

1 MR. GRAY: No. I just heard him ask for the
2 ID.

3 MR. RIVERO: Okay. You didn't hear anything
4 that happened -- that may have been said before what you
5 just stated?

6 MR. GRAY: No, I didn't.

7 MR. RIVERO: Okay. And you didn't hear
8 anything that may have been heard after what you just
9 stated?

10 MR. GRAY: You mean after they came out?

11 MR. RIVERO: No. No. You just said you
12 heard the man ask -- you heard Dan Carr ask this man for
13 ID.

14 MR. GRAY: Yes.

15 MR. RIVERO: That's what you stated. And
16 you also said that you didn't hear anything that may
17 have been said between the two of them before that. And
18 now my question is simply whether you heard anything
19 that may have been said between the two of them after
20 that statement that you heard?

21 MR. GRAY: I don't understand the statement,
22 but --

1 MR. RIVERO: Okay. I'll rephrase the
2 question. No problem.

3 MR. GRAY: Yeah. Rephrase it.

4 MR. RIVERO: Okay. So you heard Mr. Carr
5 ask the gentleman for his ID?

6 MR. GRAY: Yes.

7 MR. RIVERO: You heard that from your
8 position?

9 MR. GRAY: Yes.

10 MR. RIVERO: That's your testimony?

11 MR. GRAY: Yes.

12 MR. RIVERO: You also just now said that you
13 didn't hear anything that happened between them before
14 you heard that statement, you know.

15 MR. GRAY: He asked him for his ID.

16 MR. RIVERO: Right. But my question is
17 before that you didn't hear anything and you said yes, I
18 didn't hear anything, I just heard Mr. Carr ask the
19 gentleman for the ID?

20 MR. GRAY: Yeah.

21 MR. RIVERO: That's your testimony?

22 MR. GRAY: Yeah.

1 MR. RIVERO: And so my question simply is
2 after Carr asked the gentleman for his ID did you hear
3 what was said after that?

4 MR. GRAY: No, I didn't.

5 MR. RIVERO: Okay. And that's the answer?

6 MR. GRAY: Yeah.

7 MR. RIVERO: Now, you also indicated that at
8 one point you got up and you went to look down into the
9 front door area, right?

10 MR. GRAY: Yes.

11 MR. RIVERO: At least that was what you
12 testified. And you testified that there were people
13 coming in and out.

14 MR. GRAY: Yes.

15 MR. RIVERO: Do you remember whether they
16 were patrons or employees of the establishment that was
17 coming?

18 MR. GRAY: Patrons and employees.

19 MR. RIVERO: Both patrons and employees
20 coming in and out?

21 MR. GRAY: Yes.

22 MR. RIVERO: Okay. So which employee came

1 out?

2 MR. GRAY: Kamani.

3 MR. RIVERO: Kamani came out?

4 MR. GRAY: Yes.

5 MR. RIVERO: Okay. All right. But you also
6 mentioned that you saw Mr. Carr and that other gentleman
7 in the hallway.

8 MR. GRAY: Yes.

9 MR. RIVERO: That was your testimony?

10 MR. GRAY: Yes.

11 MR. RIVERO: Okay. And you testified that
12 you saw Mr. Carr -- I think you said standing sideways,
13 is that right? Is that what you said?

14 MR. GRAY: With his back towards the door.

15 MR. RIVERO: With his back towards the door.
16 Okay.

17 MR. GRAY: And back towards the wall as you
18 go in.

19 MR. RIVERO: Okay. And then what did you
20 see after that? Because Mr. Carr didn't stay there the
21 whole time with his back towards the door, right?

22 MR. GRAY: He -- by this time the manager

1 came down to the front door, to the bottom of the steps
2 and they started talking.

3 MR. RIVERO: Okay. So the manager came down
4 to the bottom of the steps and they started talking?

5 MR. GRAY: And I don't know where she came
6 from, but they was at the bottom of the steps.

7 MR. RIVERO: They were at the bottom of the
8 steps. Okay. Okay. So when you say they were at the
9 bottom of the steps, just to be clear who do you mean by
10 they?

11 MR. GRAY: The ABRA officer --

12 MR. RIVERO: Yeah.

13 MR. GRAY: -- Daniel, and Keisha --

14 MR. RIVERO: Okay.

15 MR. GRAY: -- the manager on duty.

16 MR. RIVERO: Okay. So you saw them there.

17 Could you hear what they were saying?

18 MR. GRAY: He was telling Dan -- he -- he
19 was telling Keisha that -- the ABRA officer was telling
20 Keisha that Dan tried to block him from coming in.

21 MR. RIVERO: Okay. So you heard that?

22 MR. GRAY: Yes.

1 MR. RIVERO: What's the distance between the
2 bottom of the steps and where you were standing
3 listening to that conversation?

4 MR. GRAY: About five feet.

5 MR. RIVERO: About five feet.

6 MR. GRAY: By this time I'm at the door.

7 MR. RIVERO: By this time you're at the door
8 you say?

9 MR. GRAY: Yes.

10 MR. RIVERO: So you're saying as where you
11 were at the door to where they were was about five feet.
12 Now, after you heard that statement, that it was blocked
13 or whatever, what else do you hear and see?

14 MR. GRAY: They started talking, then they
15 came back outside.

16 MR. RIVERO: They came back outside. Okay.
17 And when you say they started talking, what did they
18 say?

19 MR. GRAY: I didn't -- I -- by that time I
20 stopped listening to them because I was concentrating
21 on --

22 MR. RIVERO: You stopped listening.

1 MR. GRAY: -- the patrons coming in -- in
2 and out.

3 MR. RIVERO: Okay. You went back to your
4 original post at one point you said?

5 MR. GRAY: No.

6 MR. RIVERO: You never went back to your
7 original post?

8 MR. GRAY: I went to the second post behind
9 the barrel.

10 MR. RIVERO: Right. So is that the door
11 post?

12 MR. GRAY: Yes.

13 MR. RIVERO: Okay.

14 MR. GRAY: Both of them the door post.

15 MR. RIVERO: They're both door posts?

16 MR. GRAY: Yeah. But I was behind the
17 barrel.

18 MR. RIVERO: Yeah. But you called one post
19 the curb post. Isn't that what you said?

20 MR. GRAY: But both of them considered the
21 door post.

22 MR. RIVERO: They're both considered door

1 posts?

2 MR. GRAY: Because you're still both --
3 you're both working the door.

4 MR. RIVERO: Okay.

5 MR. GRAY: But at this time I'm behind the
6 barrel by the stool.

7 MR. RIVERO: Okay. And would that be where
8 Mr. Carr was originally?

9 MR. GRAY: Yes.

10 MR. RIVERO: Okay. And so who would be in
11 your original position?

12 MR. GRAY: Nobody was there.

13 MR. RIVERO: Nobody was there. Okay.
14 Because you testified you were doing both things,
15 checking ID --

16 MR. GRAY: And -- and taking the money.
17 That's when I moved to the second position behind the
18 barrel at the stool.

19 MR. RIVERO: And you stayed there for the
20 rest of the evening?

21 MR. GRAY: Until everything was over.

22 MR. RIVERO: Until everything was over.

1 MR. GRAY: Yes, after everything was over.

2 MR. RIVERO: What does that -- what does
3 that mean? Tell me.

4 MR. GRAY: Once the ABRA officers left and
5 Dan came back to his original position, then I went back
6 to my original position.

7 MR. RIVERO: Okay.

8 MR. GRAY: That's what I mean.

9 MR. RIVERO: All right. And that was the
10 curb position --

11 MR. GRAY: Yes.

12 MR. RIVERO: -- on the --

13 MR. GRAY: The front side of the --

14 MR. RIVERO: -- front side of the barrel?

15 MR. GRAY: Yes.

16 MR. RIVERO: Okay. No further questions.

17 MR. SHORT: I had a question.

18 CHAIRPERSON ANDERSON: Yes, Mr. Short.

19 MR. SHORT: Good afternoon.

20 MR. GRAY: Good afternoon, sir.

21 MR. SHORT: Okay. You say there are two
22 doormen at the door?

1 MR. GRAY: Yes.

2 MR. SHORT: What are their responsibilities?

3 MR. GRAY: Check IDs and collect the money.

4 MR. SHORT: One checks IDs, the other one
5 collects money?

6 MR. GRAY: Yes. And if -- if one goes to
7 the bathroom, one does both jobs.

8 MR. SHORT: Excuse me?

9 MR. GRAY: If one goes to the bathroom,
10 restroom, latrine, they both do -- the other person does
11 both jobs.

12 MR. SHORT: Okay. Who's job is to -- is it
13 to count people in or count people out?

14 MR. GRAY: Either one. We got a counter.

15 MR. SHORT: So who had the counter on this
16 particular night, September the 5th?

17 MR. GRAY: It was on the -- it was on the
18 bench and the -- the barrel, and Daniel had the counter.

19 MR. SHORT: So he had the counter?

20 MR. GRAY: Yes.

21 MR. SHORT: What was the -- do you know the
22 number that was on the counter that night?

1 MR. GRAY: I sure do now.

2 MR. SHORT: Okay. How many years have you
3 been employed there?

4 MR. GRAY: Four.

5 MR. SHORT: And in the four years you've
6 been there how many times have you seen ABRA personnel
7 come out to -- to do inspections?

8 MR. GRAY: A lot.

9 MR. SHORT: A lot?

10 MR. GRAY: Yeah.

11 MR. SHORT: How many times in September did
12 you -- had you seen those investigators come out?

13 MR. GRAY: It was like three times in one
14 week. Three or four times in one week.

15 MR. SHORT: Was it always the same person or
16 always different people?

17 MR. GRAY: Different people.

18 MR. SHORT: Did you recognize any of those
19 ABRA persons that night?

20 MR. GRAY: No, sir.

21 MR. SHORT: Not a one of them?

22 MR. GRAY: Not a one.

1 MR. SHORT: And it's your testimony that
2 somebody just walked off the street right past you and
3 you never said anything to them?

4 MR. BIANCO: I'm going to object as to the
5 characterization.

6 MR. SHORT: I'll -- I'll rephrase it. I'll
7 rephrase that. Is it your testimony that someone in the
8 video we just saw walked past you to the second doorman?

9 MR. GRAY: Yes, sir.

10 MR. SHORT: So is that normally what you do
11 when you see someone coming with no ID, no --

12 MR. GRAY: I stop them and -- if I didn't
13 stop them, Dan stops them and I'll say Dan, check that
14 ID, and Dan check the ID. He didn't show no ID, kept
15 moving, kept advancing forward.

16 MR. SHORT: So that means he went on in --
17 into the -- to your club then?

18 MR. GRAY: And Dan went behind him. He
19 said -- he probably told him -- I don't know. I don't
20 know what him and Dan was talking about, but he kept
21 moving.

22 MR. SHORT: So how long was it before the

1 manager came down to the door, the ABC manager?

2 MR. GRAY: I don't know. I didn't -- not
3 that long.

4 MR. SHORT: So he just kept right walking,
5 and she just happened to come down to the door while he
6 was walking?

7 MR. GRAY: Dan called her on the radio
8 because he might have said -- I don't know. Dan called
9 her on the radio.

10 MR. SHORT: Dan called her on the radio?

11 MR. GRAY: Yeah.

12 MR. SHORT: So how long was it between the
13 time that the person walked past you, got to Dan, and
14 the manager came downstairs?

15 MR. GRAY: 30, 40 seconds.

16 MR. SHORT: 30 or 40 seconds. Are you sure
17 of that?

18 MR. GRAY: I'm not -- I'm not sure because I
19 don't have a stopwatch and I wasn't timing the -- the
20 response time.

21 MR. SHORT: All right. I understand your --
22 thank you for your honesty. I'm -- and -- and then

1 the -- so I guess the doormen are -- have total control
2 of entry and people leaving. Is that the only door for
3 the club coming and going?

4 MR. GRAY: Yes.

5 MR. SHORT: Okay. That's all that I have.
6 Thank you very much, Mr. Chair.

7 CHAIRPERSON ANDERSON: Yes, Ms. Miller.

8 MS. MILLER: I just have a follow up on
9 that. So are you acting as security as well as checking
10 IDs?

11 MR. GRAY: You could say that.

12 MS. MILLER: So I guess I'm getting to the
13 question is if you didn't recognize the investigators
14 from ABRA as ABRA investigators, would it -- would it be
15 part of your responsibility to stop somebody from just
16 walking in?

17 MR. GRAY: We do stop them. If they -- we
18 not put -- get in a physical altercation with them. If
19 that's the case, we get the police.

20 MS. MILLER: Okay. But it didn't come to
21 that because --

22 MR. GRAY: No.

1 MS. MILLER: -- Dan was the next stop; is
2 that right?

3 MR. GRAY: Yes. Yes.

4 MS. MILLER: Okay. Thank you.

5 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

6 MR. ALBERTI: Mr. Gray, let's go to the
7 basics here. So I think you indicated that -- I'm
8 guessing from what you said, you know, when you showed
9 your arm and then the distance beyond that -- that --
10 beyond the -- the barrel that Mr. Carr was standing at
11 it would -- it would be approximately an arm's-length,
12 one of your arm's-length? You were -- is that about --
13 about the distance that you were from Mr. -- Mr. Carr?

14 MR. GRAY: From --

15 MR. ALBERTI: From where you were at your
16 post --

17 MR. GRAY: Uh-huh.

18 MR. ALBERTI: -- to where Mr. Carr was --

19 MR. GRAY: Yeah, about an arm distance.

20 MR. ALBERTI: About -- about your -- one of
21 your arm lengths?

22 MR. GRAY: Yep.

1 MR. ALBERTI: Okay. How tall are you?

2 MR. GRAY: Six one.

3 MR. ALBERTI: Okay. Great. So it gives us
4 some idea of the distance. Great. Thank you. So can
5 you normally hear what Mr. Carr is saying?

6 MR. GRAY: Yeah. If it's not in -- if it's
7 loud, yeah, we can hear each other. We talk -- we talk
8 amongst each other all night.

9 MR. ALBERTI: Okay. Does the front door
10 open in or out?

11 MR. GRAY: Out. Commercial swings out,
12 residence swings in.

13 MR. ALBERTI: Always?

14 MR. GRAY: Always.

15 MR. ALBERTI: Okay. Well, I don't know if
16 it's [inaudible 1:48:37] or not, but I'm confused by the
17 video. Can we go to the first video to the beginning.

18 MR. BIANCO: I will do my best I promise.

19 MR. ALBERTI: And can you take me to the
20 point where you showed the door open. So -- but
21 let's -- let's back up a second here. Back up just a
22 bit where that guy was coming out. Okay. Sure. All

1 right. Right there. So would the door -- I -- would
2 the door be open or closed there or don't you know?
3 Maybe if you could have a seat up out here.

4 MR. GRAY: The door is closed right there.

5 MR. ALBERTI: The door is closed. You're
6 pretty sure?

7 MR. GRAY: Yeah.

8 MR. ALBERTI: Okay. Let's go where the door
9 is open. Okay. Let's stop. Based on what you know
10 about the layout of things, would the door be fully
11 open, partially open there?

12 MR. GRAY: About halfway open.

13 MR. ALBERTI: About halfway open. So any
14 time the door was halfway open we should be able to see
15 it in the video?

16 MR. GRAY: Yeah.

17 MR. ALBERTI: Okay. Great. Thank you. Can
18 we go a little bit farther just -- I'm not sure. Just
19 keep going a little bit farther past this. I think
20 where -- to the point where you showed Mr. Stewart --
21 just before Mr. Stewart was coming up.

22 MR. BIANCO: This is right before he comes

1 up.

2 MR. ALBERTI: Okay.

3 MR. BIANCO: Should I continue?

4 MR. ALBERTI: You could just let it run.

5 Okay. Stop it there. What is Mr. Carr doing?

6 MR. GRAY: He's holding a radio.

7 MR. ALBERTI: Okay. Just go a little bit

8 farther. Wait. Stop it there. Who's that person

9 behind Mr. Carr?

10 MR. GRAY: Kamani.

11 MR. ALBERTI: Who?

12 MR. GRAY: Kamani.

13 MR. ALBERTI: Kumari (ph). So Kumari was

14 out there while Mr. Carr was talking on the radio; is

15 that correct?

16 MR. GRAY: Yes.

17 MR. ALBERTI: All right. I don't know what

18 the time -- I'd have to -- I'll have to look at the time

19 between those. Continue. Right there. All right. So

20 is Kamari in the -- in the picture there?

21 MR. GRAY: Yes.

22 MR. ALBERTI: Who is -- where is he?

1 MR. GRAY: About to open the door up.

2 MR. ALBERTI: He's about to open the door?

3 MR. GRAY: Yep.

4 MR. ALBERTI: He's at the bottom of the
5 frame there?

6 MR. GRAY: Yeah. Right here.

7 MR. ALBERTI: So in the middle of the frame
8 is Mr. Carr, above his left shoulder is Mr. Stewart, and
9 behind Mr. Carr's back is Kumari; is that right?

10 MR. GRAY: Yep.

11 MR. ALBERTI: All right. And it looks like
12 Mr. -- does Mr. Carr still have the radio in his hand?

13 MR. GRAY: The money and the radio in his
14 hand.

15 MR. ALBERTI: Pardon?

16 MR. GRAY: Money and the radio.

17 MR. ALBERTI: All right. So what -- what
18 was Mr. Carr's conversation on the radio at that point?

19 MR. GRAY: Probably somebody said something
20 upstairs, and he was responding back to what they asked
21 him.

22 MR. ALBERTI: Well, but what did he say?

1 What was he saying?

2 MR. GRAY: That was almost a year ago. Am I
3 supposed to keep up with every radio traffic
4 conversation on that radio?

5 MR. ALBERTI: Okay. You can just tell me
6 you don't know.

7 MR. GRAY: I don't know.

8 MR. ALBERTI: Thank you. Is this door solid
9 or does it got glass in it?

10 MR. GRAY: It's wood with a -- with a piece
11 of plastic in the middle.

12 MR. ALBERTI: So can we go to the portion of
13 the video where Mr. Gray was testifying that he was
14 watching what was going on -- he was standing there and
15 watching what was going on in the vestibule.

16 MR. BIANCO: Sure. Yeah. I'm just going to
17 let it play.

18 MR. ALBERTI: It's probably much later in
19 this.

20 MR. BIANCO: It's only a total of 40 seconds
21 so it's not much farther along. Is that -- is that what
22 you're referring to, Mr. Alberti?

1 MR. ALBERTI: No. I think Mr. Carr was
2 standing --

3 MR. BIANCO: Mr. Gray?

4 MR. ALBERTI: Mr. Gray rather. Mr. Gray was
5 standing there and you asked him about what -- what --
6 if he -- what -- what was going on.

7 MR. RIVERO: That was the frame.

8 MR. BIANCO: I think that was -- it was this
9 here or shortly thereafter.

10 MR. ALBERTI: Okay. That was the -- that
11 was the portion?

12 MR. BIANCO: Yeah.

13 MR. ALBERTI: Okay. So that's -- that's --
14 is that -- is that you, Mr. Gray, standing there looking
15 at the door?

16 MR. GRAY: Yes, sir.

17 MR. ALBERTI: Are you facing the door?

18 MR. GRAY: Yes, sir.

19 MR. ALBERTI: Okay. And you testified at
20 this point you could see what was going on in the
21 hallway, right?

22 MR. GRAY: Yes, sir.

1 MR. ALBERTI: Was the door open or closed?

2 MR. GRAY: Open.

3 MR. ALBERTI: I don't see it in this video.

4 MR. GRAY: Because he's holding the door
5 right here. It's all the way against the wall.

6 MR. ALBERTI: So let's go back a little.

7 Just -- just go back ten seconds. Go back ten seconds,
8 that's all I want you to do, and run the video. Run the
9 video. Why don't I see the door opening?

10 MR. GRAY: Because people was coming out.
11 He was holding the door open. The door was already
12 open.

13 MR. ALBERTI: No. No. No. Before that.
14 So the door was open -- the door never shut? I mean all
15 right. I'll take a look at the video when we have it
16 into evidence. Thank you. I have no further questions.

17 CHAIRPERSON ANDERSON: Any other questions
18 by any other board members? Mr. Rivero, any questions
19 for him based on the questions that were asked by The
20 Board?

21 MR. RIVERO: Yes.

22 CHAIRPERSON ANDERSON: Go ahead, sir.

1 MR. RIVERO: Mr. Gray, you testified again
2 as you told me shortly that you were standing looking in
3 through the front door. There was a short hallway, and
4 then at the bottom of the stairs there was this
5 conversation happening. Did you know that that -- that
6 that short hallway ends in a pair of double doors?

7 MR. GRAY: Uh-huh.

8 MR. RIVERO: Were they -- were the doors
9 closed or open?

10 MR. GRAY: Open.

11 MR. RIVERO: They were open. Were people
12 holding them open, or were they held open in some other
13 way?

14 MR. GRAY: Held open in some other way.

15 MR. RIVERO: And what is that other way?

16 MR. GRAY: Hooks. Door hooks.

17 MR. RIVERO: Door hooks. Okay. Thank you.
18 No further questions.

19 CHAIRPERSON ANDERSON: Mr. -- no?

20 MR. BIANCO: No. Nothing further.

21 CHAIRPERSON ANDERSON: All right. Thank
22 you. Mr. Gray, you are free to go. Please step down.

1 Please do not discuss the nature of your testimony with
2 anyone until this case is over, sir. Okay?

3 MR. GRAY: Okay.

4 CHAIRPERSON ANDERSON: Do you have another
5 witnesses, Mr. --

6 MR. BIANCO: Our last witness, yes.

7 CHAIRPERSON ANDERSON: And who is that?

8 MR. BIANCO: Duggan.

9 CHAIRPERSON ANDERSON: Mr. Duggan, can you
10 please raise your right hand. Do you swear or affirm to
11 tell the truth and nothing but the truth?

12 MR. DUGGAN: Yes.

13 CHAIRPERSON ANDERSON: All right. Thank
14 you. Have a seat, sir.

15 MR. BIANCO: Could you state your name and
16 spell your last name for the record please.

17 MR. DUGGAN: Bill Duggan, D-U-G-G-A-N --
18 William Duggan.

19 MR. BIANCO: What's your job, Mr. Duggan?

20 MR. DUGGAN: I'm the president of 2460 --
21 with regards to this I'm president of 2461 Corporation.
22 I also do real estate development.

1 MR. BIANCO: And you've been here for all
2 the testimony in this case, correct?

3 MR. DUGGAN: Correct.

4 MR. BIANCO: Okay. And as part of your
5 participation in these proceedings you've seen and heard
6 the testimony about the videos that we were just talking
7 about?

8 MR. DUGGAN: Absolutely.

9 MR. BIANCO: Okay. Now, I want to focus
10 those videos for a moment. Could you tell me how the
11 videos in this -- that were used as evidence in this
12 case were generated?

13 MR. DUGGAN: Well, they're -- we have a
14 video recording system that we had installed quite some
15 time ago. I don't -- I don't know when, but a couple of
16 years prior to this. And then that night I was not
17 working. I was at home. I got a call. They told me
18 about the incident --

19 MR. RIVERO: I'm going to object. I'm
20 sorry, but --

21 MR. DUGGAN: Okay.

22 MR. RIVERO: I don't want to be -- if he's

1 testifying about what actually happened or if he's
2 testifying about how the system generates an image,
3 those are two different things.

4 CHAIRPERSON ANDERSON: I'm -- I don't -- I'm
5 not following you.

6 MR. RIVERO: The question was how does the
7 system generate or work images.

8 CHAIRPERSON ANDERSON: All right.

9 MR. RIVERO: The witness is talking about
10 what happened that night with respect to him getting a
11 phone call. It doesn't sound like it's responsive to
12 the question.

13 CHAIRPERSON ANDERSON: All right.

14 MR. DUGGAN: Well, I certainly can't answer
15 that question. I have no idea how video systems work or
16 -- whatsoever. I know that I had somebody come out and
17 install them and --

18 CHAIRPERSON ANDERSON: All right.

19 MR. DUGGAN: -- I looked at results.

20 MR. RIVERO: We'll give him leeway.

21 CHAIRPERSON ANDERSON: Thank you. Go ahead,
22 Mr. Bianco.

1 MR. BIANCO: So if you can go back and
2 describe how the video exhibits in this case were
3 generated to your knowledge.

4 MR. DUGGAN: All right. To my knowledge I
5 got a call very -- well, early in the morning of
6 September 5th, told about the -- the incident that had
7 happened, that the investigators tried to have Dan
8 arrested for what they said at the time was assaulting
9 him and not letting him into the building. They told me
10 that MPD had refused to arrest him and sort of
11 distractedly said go ahead and take a report to one of
12 their people and was sort of dismissive. And Keisha, my
13 manager told me that she felt like, you know, that was
14 it. And I was like no, save that video, this is going
15 to come back to bite us in the behind. And I said plus
16 ABRA should be requesting this video within a day or so
17 if this incident goes. And so she said that, you know,
18 they went down -- I got a call back. They said that
19 they had looked at it, that there was video evidence.
20 They had it from the two different camera angles at the
21 front. And basically they said to me that, you know,
22 the -- the videos will show that nothing of the sort

1 ever happened and that these guys never showed badges.
2 Again, I said I'll be in in the morning. So in the
3 morning myself, Carlos Wilcox -- I'm blanking on the guy
4 who is our technical person. We hire somebody outside,
5 a contractor who works with the video. We all met in
6 there, and they, you know, pulled that video off and we
7 sealed it and, you know, kept it at the bar. Soon after
8 that literally I called Fred Moosally, the director to
9 tell him -- because I -- again, I was pretty upset that
10 the accusations were made against Mr. Carr. I called
11 Mr. Moosally to tell him that we had video that I
12 thought would find -- he'd find very disturbing. And we
13 said -- and then there was something going on at city
14 counsel that you all were testifying. I was testifying
15 at that as well. I met Fred at the hearing, showed him
16 the DVD that we had had at that time, and he said can I
17 have that one. I said Fred, that's the original, no,
18 but you can get a copy of this any time. But I said,
19 you know, I have a relatively good rapport with
20 Mr. Moosally, and I said it's going to blow your mind,
21 it's creepy. That was the last I heard from Fred. I
22 never got a call about getting a copy of it. I never

1 heard anything further until about later on that month,
2 and I can't remember when these charges were made. But
3 with got a notice of infraction for over capacity and
4 the whatever, the impeding -- obstructing the ABC
5 individual. Again, when I got that I again called Fred,
6 and I'm like this is -- you know, this is crazy, this is
7 not going to -- you know, it's not going to look good
8 for anybody with this video. Mr. Moosally told me that
9 he had informed Mr. Rivero of the video and that he
10 would take it from there. Again, that's in terms of
11 the -- so I saved the video. And I -- then we sent
12 it -- I paid a company called Henninger -- a
13 professional video reproduction company in Arlington,
14 Virginia took possession of it to make copies because we
15 had it on DVD. We wanted it on a copyable DVD as well
16 as thumb drives. And I -- again, I'm just not very
17 technical to know, but I paid about 900 and some dollars
18 just to have that video copied and preserved and have
19 the -- the bills from Henninger Company from doing that.
20 And, you know, then I got it with Mr. Bianco, sent it
21 down to him. Once we had -- you know, I was -- I did
22 not want to have it go out of my possession until we had

1 copies. And so once we had copies made I sent one down
2 to Rich. Again I called Fred again just to tell him
3 that they were available now that I had copies. Because
4 when I first spoke with him I only had the original.
5 And, you know, we went through it again. By then we had
6 been charged. We -- we got a charge from the -- the
7 officers. And again, it went through the -- the
8 capacity issue. And I felt like -- you know, throughout
9 this period when we were having these inspections, two,
10 three, four times a week I actually called Mr. Moosally,
11 and Fred assured me -- he said he -- he called me back
12 after a bit, we talked. He called me back and said
13 you're not on any kind of watch list, we have no -- he
14 said you should not see an investigator more than once a
15 month at the maximum with the caseload these people
16 have.

17 MR. BIANCO: Mr. Duggan, I'm going to stop
18 you there and I'm going to ask you another question.
19 Okay?

20 MR. DUGGAN: Oh, shucks. Go ahead.

21 MR. BIANCO: I'm sorry. I had my hand in
22 front of my mouth. When I said was -- just to make sure

1 that the record is clear is I said I'm going to stop you
2 there and I'm going to ask you another question.

3 MR. DUGGAN: Go ahead.

4 MR. BIANCO: Okay. So when you learned that
5 there was an incident did you review the video the
6 morning that you learned about it?

7 MR. DUGGAN: Later on that morning, yes.

8 MR. BIANCO: Later on that morning. So --

9 MR. DUGGAN: Correct. That would be --

10 MR. BIANCO: -- to view the video did you
11 have to go to Madam's Organ?

12 MR. DUGGAN: Yes, sir.

13 MR. BIANCO: And where are the video
14 monitors at Madam's Organ that you used to view the
15 video?

16 MR. DUGGAN: In the downstairs office.

17 MR. BIANCO: Okay.

18 MR. DUGGAN: In the basement.

19 MR. BIANCO: And please correct me if I'm
20 wrong, the two camera angles that we're using are known
21 as Camera 9 and Camera 10; is that correct?

22 MR. DUGGAN: I'll say yes. I -- I

1 truthfully don't know.

2 MR. BIANCO: That's fine if you don't know.

3 Did you review -- how much video did you review that
4 morning?

5 MR. DUGGAN: Well, I think we -- well, we --
6 we reviewed a bunch before and a bunch afterwards. But
7 the total I think that -- that we saved was about a
8 total of about seven minutes, and I think that's the
9 extent of it.

10 MR. BIANCO: And the seven minutes that you
11 saved, is that represented by the video that you viewed
12 today for the purpose of the testimony in this case?

13 MR. DUGGAN: Yes, sir. We made no --

14 MR. BIANCO: Did you -- did you have -- did
15 you alter the video in any way between the time that the
16 video was taken and the hearing in this case?

17 MR. DUGGAN: No. And I wouldn't know how
18 to.

19 MR. BIANCO: Did you ask anyone else to?

20 MR. DUGGAN: No, sir.

21 MR. BIANCO: Now, does your video system
22 simply show a live feed to the office, or is there some

1 type of recording device attached?

2 MR. DUGGAN: There's a great -- well, at the
3 time -- actually we've replaced it since. But at the
4 time -- at the time I had a video system, the DVR that
5 was in there at that time was like 64 gig whatever. It
6 was some Army Navy thing that they gave me, but it was
7 like military grade. You could store the -- store the
8 images for up to two months.

9 MR. BIANCO: And how long do you store the
10 images for now?

11 MR. DUGGAN: I just found this out two weeks
12 ago because we had -- they had a problem. They replaced
13 the system that -- it only saves it for -- it starts
14 recording over it after 72 hours. I'll change that
15 within the next two weeks. You know, I like the longer
16 time period.

17 MR. BIANCO: Okay. And did you on the
18 morning of September the 5th review any of the video --
19 take a step back. Do you have any interior cameras at
20 the location?

21 MR. DUGGAN: Yes. We have --

22 MR. BIANCO: And did you review any of the

1 video on the morning of September the 5th of the
2 interior cameras?

3 MR. DUGGAN: Yes.

4 CHAIRPERSON ANDERSON: And could you
5 describe whether or not -- could you describe what you
6 saw on the interior camera.

7 MR. DUGGAN: Basically saw nothing. The --
8 there's one camera that's at the front of the stage, and
9 unfortunately the angle on it for whatever reason -- and
10 I have no idea. And it's a very -- it wasn't a good
11 low-light camera, but it's on the bar, you know, not on
12 the stage. We have a -- we have a separate camera
13 that's on the stage for performers. But it literally
14 goes over the top of everything else and locks in on the
15 performers and it goes on the video screens at the back.

16 MR. BIANCO: In response to my first
17 question among many other things you testified that
18 you -- you expected ABRA to be requesting video of what
19 occurred the night before. And did they request a video
20 from what occurred that night?

21 MR. RIVERO: I'm going to object because
22 that goes beyond the scope of what was proffered. The

1 witness is here to testify to lay a foundation for the
2 video that is at issue here and questions about whether
3 it was requested or not go beyond that. The whole
4 purpose of this is to understand that, you know, yes,
5 what we're seeing is what we -- what he originally
6 looked at and generated and that is the purpose of the
7 testimony.

8 CHAIRPERSON ANDERSON: Mr. Bianco.

9 MR. BIANCO: Absolutely not. Absolutely
10 not. There is a 300-page transcript every word of which
11 I read. And at no point did I ever say the only thing
12 that Bill Duggan is going to do is authenticate the
13 video. Did I say he was also going to authenticate the
14 video? Absolutely. I never suggested, stated,
15 intimated, or in any way indicated that the only thing
16 Bill Duggan was going to do was authenticate a video.
17 And as all of the board members have been here for Bill
18 Duggan's testimony in the past I don't think there is
19 any way that I would ever have agreed to limit him to
20 that narrow issue. There are a lot of things that we
21 need to cover here with regard to Mr. Duggan including
22 whether or not the video was requested, whether video

1 was requested in the past, and whether or not Mr. Duggan
2 has a policy in place at the restaurant with regard to
3 how to handle ABRA investigators when they present
4 themselves at the restaurant.

5 MR. RIVERO: And that may be fine, but none
6 of that was proffered on day one when the question was
7 what was the purpose of the witness's testimony.

8 CHAIRPERSON ANDERSON: I don't -- I don't
9 recall that Mr. Duggan -- that was proffered
10 specifically for Mr. Duggan's testimony. So I'm going
11 to -- I'm going to overrule the objection. I -- I think
12 that he's the owner of one of the establishments and I
13 think that it's -- it's expected that he would testify
14 more than just the video.

15 MR. DUGGAN: Now I forgot the question.

16 CHAIRPERSON ANDERSON: Do you remember the
17 question? Mr. --

18 MR. BIANCO: You testified that you expected
19 ABRA to request the video shortly after the incident
20 occurred. Did they ever request the video?

21 MR. DUGGAN: They did not. And I -- you
22 know, I expected it. I mean in October it will be 25

1 years I've been in business, you know, and so I've been
2 dealing with ABRA and -- and the city bureaucracy for a
3 long time. And again, I -- we had an incident that was
4 not us and luckily we had video for that back in
5 December of -- of an individual that was -- was injured
6 next door, and ABRA was there within hours and they
7 usually are. If there's information that they want to
8 see, believe me, they will be there.

9 MR. BIANCO: And had -- that was my next
10 question. Had they requested video from you before?

11 MR. DUGGAN: Enumerable times. I mean I get
12 calls whether the incidents are ours or even if
13 there's -- so they've asked for our assistance if
14 there's an incident in the street because you can see
15 from the cameras that a couple of them catch -- capture
16 incidents that could be in the street as well. So we've
17 provided them for ABRA, we've provided them for MPD, and
18 we actually provided them for private investigators as
19 well.

20 MR. BIANCO: You also testified in response
21 to my first question that you had numerous conversations
22 with Fred Moosally. What was the purpose of you calling

1 the director of the agency?

2 MR. DUGGAN: Well, very honestly I -- you
3 know, as opposed to what Mr. Rivero's associate
4 introduced herself today as the enemy, I don't consider,
5 you know, the -- the AG's Office or anybody here as the
6 enemy. I -- I feel like, you know, we're -- we're part
7 of this city, part of the fabric. And since when Fred
8 was the -- the counsel to the -- to The Board I've had
9 what I think is a pretty good relationship with Fred and
10 been able to have very frank from honest discussions
11 about just enumerable issues. And we're talking about
12 again over a -- a great number of years. So, you know,
13 I have Fred's number -- you know, his direct number in
14 my -- in my phone, and, you know, I literally have had
15 conversations with Fred over -- over, you know, the
16 issue. Over -- over this particular issue he called me
17 when I was in Ireland on vacation. So I mean I've --
18 I've -- I have conversations with Mr. Moosally, you
19 know, about ABRA issues whether -- and again, whether
20 it's my particular issues or issues that I feel that
21 should be brought do his attention on a regular --
22 fairly regular basis. I would say we speak at least

1 every other month about something if there's some issue
2 that comes up.

3 MR. BIANCO: But what -- in this instance
4 what was the specific purpose? Why did you call him?

5 MR. DUGGAN: I called him because over the
6 summer of last year my restaurant -- bar was visited by
7 ABRA once, twice, three, and four times a week. And
8 every time they would come in and say they were doing a
9 regulatory inspection. They would ask for our wholesale
10 receipts, our licenses, our voluntary agreement, you
11 know, acting like we were some new business that was
12 running some kind of, you know, a pirate operation. And
13 so you go through that, it ties up -- I only have a
14 manager, slash, bartender. It's not a big operation
15 during the week. That takes that person away from their
16 position for about an hour -- 45 minutes to an hour each
17 time. So I called Fred to say what is going on
18 essentially? And as I -- as I explained, Fred got back
19 to me and he said nothing should be going on because
20 you're not on any watch list, we've had no complaints.
21 And as I said, he said that you shouldn't be getting any
22 visits from these people more than once a month, their

1 caseload is too heavy to be coming into any place that
2 often.

3 MR. BIANCO: And are you -- how frequently
4 are you present at the establishment?

5 MR. DUGGAN: Actually if I'm in town, I --
6 I'm there. I usually -- you know, I'm in -- in the
7 office during the day. I go home and take a nap, and I
8 come in later on. I mean I come into hear the music.
9 So I'd say when I'm in town I'm in there every -- every
10 night. And I'd say -- except for during the summer
11 when I -- I, you know, live -- stay at the beach I'd say
12 I'm in there at least five nights a week.

13 MR. BIANCO: Okay. How about -- how about
14 during the summer of '15 when you testified that there
15 were -- there were inspections one to two times a week?

16 MR. DUGGAN: I wasn't there as --

17 MR. RIVERO: I'm going to have to object.
18 Again, this is not about what happened that evening.
19 Inspections that happen over the summer is just -- this
20 is just one more attempt to try to link all his
21 testimony to the whole occupancy issue that I have been
22 saying since the first day is not part of this case.

1 And this Chair has already ruled that testimony remotely
2 related to the occupation issue is not part of this
3 hearing. We'll here about impeding someone at the door.
4 So I am objecting on that ground.

5 CHAIRPERSON ANDERSON: I agree. And,
6 Mr. Bianco, could you please move on to ask questions
7 that are -- go ahead, sir.

8 MR. BIANCO: If I could just make a record
9 on a response and then I'm --

10 CHAIRPERSON ANDERSON: Yes, sir.

11 MR. BIANCO: -- I'm happy to move on. I
12 understand The Board's ruling, but I just want to make
13 sure the record is clear. It's our proffer that the
14 information with regard to how frequently the agency
15 visited this particular establishment in the summer of
16 2015 is relevant to several issues. But I think chief
17 among them is the fact that there were by testimony from
18 Mr. Duggan and other witnesses one to two times a week
19 over the course of the summer. So 20 or more
20 investigations, none of which resulted in any issues of
21 impeding or -- or blocking or stopping an investigator
22 from coming in and it wasn't until Craig Stewart

1 inserted him in the situation that there was a problem.

2 CHAIRPERSON ANDERSON: Well, I -- I hear,
3 Mr. Bianco, and -- and -- and as I said, I've been
4 looking at the investigative history of -- of -- of this
5 establishment while you're talking. And I only see that
6 for 2015 there are not many incidents. So it's just an
7 allegation that -- I don't know if -- I don't know if
8 it's correct or not whether or not the ABRA
9 investigators have been there for 20 times. But I'll
10 say this, if -- if you're saying that ABRA investigators
11 have been there 20 -- 20 times for the year or almost
12 once a month and there are -- there are no violations,
13 then I think that maybe your guys are doing a good job.
14 But just -- that's not -- that's not -- in that's not
15 the purpose of this hearing. So let's move on from
16 there please.

17 MR. BIANCO: Now, do you have any policies
18 at Madam's Organ with regard to how door people should
19 deal with ABRA investigators when they arrive at the
20 restaurant for the purpose of a investigation?

21 MR. DUGGAN: Sure.

22 MR. BIANCO: And what are those policies?

1 MR. DUGGAN: I mean it -- it's, you know,
2 not -- not rocket science. They say that, you know,
3 there's -- to check them -- to, you know, check their
4 ID. If they're -- if they're ABRA or if they know them,
5 let them in or whatever but to call the manager.
6 Usually if ABRA's there they need the manager.
7 Obviously that's probably one of the number one
8 violations that I -- that I see at least when I get The
9 Board's thing it's no manager on duty. So obviously the
10 first thing they do is usually ask to see a manager
11 or -- or the owner and someone calls. If I'm there, I
12 get a call. I don't keep a radio so somebody finds me
13 or -- but I always have a manager on duty. I am never
14 the manager on duty. There's always a second person.

15 MR. BIANCO: How about any policy with
16 regard to instructing the ABRA investigator to wait, do
17 you have a policy about that?

18 MR. DUGGAN: Well, instruct them to wait,
19 no. I mean of course they're going to ask them -- as --
20 as the -- the investigator testified -- I mean the --
21 you know, the good news is there's a lot of people in
22 there on any given night. You know, our capacity is

1 409. You know, so, you know, there's a good number of
2 people in there. So it's easier to have them if they're
3 there to see a manager. It's like do you want to wait
4 for a manager? I mean if somebody's trying to come
5 up -- you know, obviously if they were coming in after
6 hours thinking that there's activity going on after
7 hours, then I could understand why they don't want to
8 wait to see a manager. They're going to want to get in
9 and catch any illegal activity if they think something
10 like that is going on. But, you know, again, we're
11 talking about a lot of years, and I -- I just have never
12 had an issue with -- with regards to -- and, you know,
13 that I can feel of antagonism or confrontation with --
14 with ABRA agents. I will say over last summer I
15 certainly did get really POed when I just literally was
16 like Groundhog Day, capacity -- capacity, capacity. And
17 then especially when I knew that it was Mr. Stewart who
18 was with the agency during the 2008 Court of Appeals
19 decision that verified our increased capacity, and he
20 knew that. He worked with Mr. Jackson with regards to
21 it. And he was just pushing the envelope on a weekly
22 basis. By his own testimony he said that I had showed

1 him the Court of Appeals decision quote, unquote dozens
2 of times. And I'm sure I expressed my displeasure.

3 MR. BIANCO: How do you communicate to your
4 door staff how they are supposed to deal with ABRA
5 investigators?

6 MR. DUGGAN: Well, again, I mean, you know,
7 we -- we don't have a lot of people at door staff. The
8 people that work at the door are very trusted. I mean
9 we have a total of four people. You know, they're --
10 they're dealing with money, they're dealing with IDs,
11 the two things that can -- one can sink the business and
12 the other one can put us out of business, you know, if
13 it's done improperly. So the people that are at the
14 door are extremely trusted and -- and, you know, we --
15 we work with them very, very diligently. You know, the
16 last thing -- as I said whether it's, you know, an ABRA
17 investigator, MPD, you know, we work with these people
18 on a daily basis and have for the most part I think a
19 pretty darn good reputation with them. You know, I --
20 I -- you know, as I said, my comment I don't feel that,
21 you know, the AG's Office is the enemy I really feel
22 that. I feel like this city is -- you know, we're part

1 of it, we're part of the -- the fabric. So my -- my
2 people are taught to deal with them with respect. As I
3 said, if they come to the door and we ask for them to
4 wait for the manager and they insist on going in,
5 they're going in. You know, they've never -- they've
6 done it in the past, people have walked in. You know,
7 again, I've -- I've dealt with agents for -- for many,
8 many years and some are more aggressive than others in
9 terms of walking in and walking through. But I've --
10 I -- even the ones that were aggressive in terms of
11 wanting to walk in I don't have a problem with it. We
12 just always -- if somebody wants to walk through I put a
13 manager to walk through with them and probably
14 another -- another -- if it's a weekend, I'll have a
15 security person walk through with them because I don't
16 want there to ever be any kind of like what could have
17 happened in this situation if we didn't have the video,
18 a he said, she said situation because I feel vulnerable
19 there. That's why in this situation I felt extremely
20 lucky that we saved the video that contradicted these
21 men's statements.

22 MR. BIANCO: Do you have any policy with

1 regard to how the radios are supposed to function when
2 ABRA arrives?

3 MR. DUGGAN: Truthfully I'm not involved in
4 the radio business. I -- you know, I -- my biggest
5 interaction on the radios is to complain about them
6 spending too much money on them.

7 MR. BIANCO: There was some testimony by Mr.
8 Gray with regard to a set of double doors at the end of
9 the hallway entering the establishment. I want to ask
10 you a couple of questions about that. Okay? First of
11 all, how long is that hallway?

12 MR. DUGGAN: The hallway is five feet, three
13 inches.

14 MR. BIANCO: And how do you know that?

15 MR. DUGGAN: Because I measured it when I
16 heard the statement about the ten foot -- the ten foot
17 long hallway.

18 MR. BIANCO: Okay.

19 MR. DUGGAN: We took a tape measure to it.
20 It's five feet, three inches.

21 MR. BIANCO: Approximately how wide is it?

22 MR. DUGGAN: A little bit over four feet. A

1 little bit over four feet.

2 MR. BIANCO: And --

3 MR. DUGGAN: But it's got two columns at
4 either end that come in about another foot. So at that
5 point they're just over three feet. So where the
6 doorways are -- and again, I wouldn't even call those
7 doors, the swinging doors. I put Plexiglass doors there
8 to try to hold in the heat and the air conditioning.
9 They swing.

10 MR. BIANCO: Well, that -- that's what I was
11 going to ask you about. The doors are Plexiglass.
12 Can -- is your view obstructed by anything?

13 MR. DUGGAN: No. They're full framed.
14 They're -- there's two, and they're literally whatever,
15 one-by-threes on the top, one-by-fours on the side. So
16 the rest of it is glass. So I would say they're
17 probably 90 percent glass -- Plexiglass.

18 MR. BIANCO: Your brief indulgence. I'm
19 just making sure I don't have anything more for this
20 witness. That's all I have. Thank you.

21 CHAIRPERSON ANDERSON: Thank you. Your
22 witness, sir. Do you have any questions?

1 MR. RIVERO: I do, one. Mr. Duggan, you
2 testified to something I'm -- I was a little unclear
3 about that. Did you say that you had an old system that
4 recorded for two months and a new system that records
5 for 72 hours; is that right?

6 MR. DUGGAN: Correct. The old system, we
7 had some problems with it. The one that was -- was in
8 place when this incident happened, that was the old
9 system, that was the military system.

10 MR. RIVERO: That recorded for two months?

11 MR. DUGGAN: Correct. Unbeknownst to me we
12 had an issue. My manager Carlos I -- I think probably
13 in -- in his defense tried to save me some money. When
14 they had to replace the DVR they replaced it with a
15 lesser model. I had MPD call me about a week ago to ask
16 me if -- if we had video out in the street -- somebody
17 was assaulted out in the street -- to see if my front
18 camera would have caught it. I called in and I called
19 in this fellow Jason that does our -- our tech stuff,
20 and he told me -- and it was June 26th they were asking
21 about. So it was about July 6th or something that they
22 gave me the call.

1 MR. RIVERO: Of what year?

2 MR. DUGGAN: This is this year. No. This
3 is just about a week ago.

4 MR. RIVERO: Okay.

5 MR. DUGGAN: And it was only then that I
6 found out that oh, no, they replaced the DVR and it's
7 just not as good of a DVR.

8 MR. RIVERO: Okay.

9 MR. DUGGAN: And I said I will replace it
10 with -- I happen to have three of the other ones in my
11 basement.

12 MR. RIVERO: Okay. So this DVR replacement
13 is what you say resulted in your system recording 72
14 hours?

15 MR. DUGGAN: No. That's the system that was
16 there during this incident. The system that we had for
17 two years prior to that. And I --

18 MR. RIVERO: Prior to what?

19 MR. DUGGAN: Prior to the incident,
20 September 5th of 2015.

21 MR. RIVERO: So prior to September 5 of last
22 year you had some system?

1 MR. DUGGAN: We had a great system.

2 MR. RIVERO: And how long did that system
3 record for?

4 MR. DUGGAN: Two months.

5 MR. RIVERO: Two months. Okay. Right.

6 MR. DUGGAN: There you go. Thank you.

7 MR. RIVERO: And so the system on September
8 5th was the one that recorded for two months?

9 MR. DUGGAN: Yes.

10 MR. RIVERO: Okay. So then there's a new
11 system that you found out recently records for 72 hours?

12 MR. DUGGAN: To tell you the truth I don't
13 know exactly. I know it was -- I'm -- I'm extremely
14 disappointed at the shortness of the -- before it starts
15 rerecording.

16 MR. RIVERO: So my only question is when did
17 the switch take place? When was your video switched
18 from something that records two months to something
19 that's 72 hours? When did that happen?

20 MR. DUGGAN: I don't know.

21 MR. RIVERO: Okay. Fine.

22 MR. DUGGAN: I know between March of this

1 year and when I found out about whenever last week.

2 So --

3 MR. RIVERO: Okay.

4 MR. DUGGAN: -- at some point -- and again,

5 I assume I've been traveling a lot. I've been out of

6 the country, you know --

7 MR. RIVERO: Okay.

8 MR. DUGGAN: -- a long time. And so I

9 assumed they had a problem, they replaced it. They did
10 not replace it with what I would have wanted.

11 MR. RIVERO: All right.

12 MR. DUGGAN: Now that I found out I will
13 replace them with a better system.

14 MR. RIVERO: Great.

15 MR. DUGGAN: The cameras are the same.

16 MR. RIVERO: Okay. No further questions.

17 CHAIRPERSON ANDERSON: Thank you. Any
18 questions by any board members? Yes, Ms. Miller.

19 MS. MILLER: I think it's still afternoon.

20 Yeah. Good afternoon, Mr. Duggan.

21 MR. DUGGAN: I hope it's not morning yet.

22 MS. MILLER: Simply characterizing this case

1 I mean it looks to me that your defense is basically you
2 all didn't do anything wrong but ABRA investigators did
3 get -- for instance, they didn't wear their badges that
4 night.

5 MR. DUGGAN: I think the video showed
6 there's no badges and they filed a false police report
7 by trying to have my doorman arrested for assault and
8 for impeding them. If they were successful, this guy
9 would have gone to jail, he'd never be able to work in
10 this industry again, and I think -- I'm outraged. I
11 mean again, I'm the only one in here who's paying.
12 Everybody else here is being paid to be here. I'm here
13 because of this incident. And when -- to me when Mr.
14 Rivero saw that video and saw that his investigators
15 lied under oath it should have dropped. We wouldn't
16 even -- shouldn't even be here today.

17 MS. MILLER: Okay. My question is with
18 respect to the pattern of harassment that you all were
19 mentioning is it your assertion that this incident was
20 related to that or -- or that that -- that it's not
21 relevant because this is an isolated --

22 MR. DUGGAN: No, I think it's definitely

1 related. They were there the night before. The same
2 investigators apparently were there the night before
3 for -- not for this -- for the capacity. And again, the
4 same investigator who knew that that capacity was --
5 issue was resolved by a 2008 Court of Appeals decision.

6 MS. MILLER: Okay.

7 MR. DUGGAN: And his quote to me was we
8 don't take our orders from the Court of Appeals.

9 MS. MILLER: Who said that?

10 MR. DUGGAN: Craig Stewart.

11 MS. MILLER: Okay. So Mr. Stewart was there
12 the night before?

13 MR. DUGGAN: No. No. That -- he had said
14 that to me prior --

15 MS. MILLER: Oh, okay.

16 MR. DUGGAN: -- as I said on one of by his
17 estimation dozens of times I went through the Court of
18 Appeals decision with him.

19 MS. MILLER: So Mr. Brashears and Ms. Fox
20 were there the night before?

21 MR. DUGGAN: Correct.

22 MS. MILLER: Okay. And you said that

1 investigators were coming three to four times a week?

2 MR. DUGGAN: I --

3 MS. MILLER: No?

4 MR. DUGGAN: One time for -- no. Two -- two
5 to three times a week, and as far as I know it was only
6 one time that it was four times in one week.

7 MS. MILLER: How long did that go on?

8 MR. DUGGAN: They -- when we released that
9 it was going on -- it started like May of 2015. So
10 last -- you know, last year in May and culminating in
11 that night.

12 MS. MILLER: Okay. Until September?

13 MR. DUGGAN: Correct.

14 MS. MILLER: So was -- were they the same
15 investigators?

16 MR. DUGGAN: You know what, again, I -- I
17 get a call when they're in there. Obviously I spoke
18 with Mr. Stewart by his testimony a number of times
19 because I would be so frustrated. I was like what --
20 what are we going through this for again? And so, you
21 know, what -- what would happen is I -- if I'm at the
22 beach I get a call at the beach. If I'm in Costa Rica,

1 I get a text ABC again, the same issue. And as I said
2 and that's why I called Mr. Moosally because, you know,
3 these are people that work underneath him directly.

4 MS. MILLER: So basically --

5 MR. DUGGAN: Mr. Moosally claimed that he
6 had no idea why they were in there.

7 MS. MILLER: So I have two questions. One
8 is were three the same investigators or not necessarily?
9 You don't know?

10 MR. DUGGAN: Again, because I wasn't there
11 all the time.

12 MS. MILLER: And then after you talked to
13 Mr. Moosally did things change?

14 MR. DUGGAN: No. Actually they changed
15 after September. After this incident I feel like -- I
16 feel like I'm halfway normal. You know, we saw an
17 investigator that came in I believe it was in May. And
18 I even called Fred about that because the guy came in on
19 a Thursday night and told us that he was going to come
20 on Sunday for a regulatory inspection. I was what is
21 this the new kinder face? And Fred was like yeah, we're
22 trying to be customer friendly. What I did find out was

1 that the guy came in saying he was under orders from the
2 AG's Office with a high-tech camera to take pictures of
3 the doorway --

4 MS. MILLER: Okay.

5 MR. DUGGAN: -- under the -- you know, under
6 the pretense of coming for in for a regulatory
7 inspection.

8 MS. MILLER: I guess one of my questions
9 basically is -- I mean I don't think ABRA has that many
10 investigators assigned to Adam's Morgan or whatever. So
11 if the same investigators were coming all the time, do
12 your door people know them so they don't have to show
13 their ID?

14 MR. DUGGAN: No. And I don't think there's
15 ever a time that a police officer or -- or somebody
16 who's -- who's in that position should not be showing a
17 badge. And by their testimony they had their badges on.
18 The video shows they didn't. By Mr. Brashears'
19 testimony he said that Stewart held it up in his face to
20 say he was ABRA. We can see that that didn't happen.
21 They also testified that they came in together. The
22 video shows they came in 12 seconds after he had already

1 gone through the door. Every bit of their testimony is
2 a lie, you know, and these people get away with the
3 perjury because there's nobody -- we found out that ABRA
4 has no record of consumer complaints against agents,
5 that there's no oversight that -- that Bill Hagar when
6 he was here, he informed us that there's no oversight
7 and that if the agency has a complaint it's considered
8 personnel and we have no access to it, the public. I
9 mean I -- I think it's just out of control. And I think
10 because they -- these people just act with impunity,
11 they can run like bullies because there's no -- there's
12 no backup. And as I said, if we did not have this video
13 my doorman would have been in jail and I'd probably be
14 out of business, and I'm outraged.

15 MS. MILLER: All right. One more question
16 for you I think. So you gave us seven minutes. How do
17 we know we're not seeing something that would vindicate
18 the investigators like a minute later --

19 MR. DUGGAN: By their own --

20 MS. MILLER: -- or a minute earlier or --

21 MR. DUGGAN: Interesting enough they --
22 we've -- you know, I will say that when I believe it was

1 Mr. Donovan or Mr. Alberti was asking we had ample
2 opportunity to cross examine them. No. Very honestly
3 we wanted them to just run and just perjure themselves
4 and then show the video. We didn't want to cross
5 examine them until we showed the video because the video
6 speaks for itself. And they didn't say they were -- I
7 mean we're looking at a total -- we held the police
8 report. They went out and they said they did an
9 inspection. No. They went out and got the police, got
10 through all that, tried to have him arrested. He --
11 they refused to arrest him. Then they went in and did
12 their inspection. They didn't do anything inside
13 beforehand. As I said, these guys, when they got up
14 there testifying their -- their testimony was so well
15 choreographed they could have been on Dancing With the
16 Stars. It was ridiculous. And as I said, if we didn't
17 have the video, I'd be out of business, my doorman would
18 be out of -- would be in jail. And we know that there's
19 other incidents with this guy kicking in doors et
20 cetera. But again, you can't bring in, you know,
21 misconduct from any other incident. Something is very
22 wrong. As I said, if I was some bandit business I'd

1 understood it. That I might act like an ass and -- and
2 speak my mind is -- is one thing, but we shouldn't be
3 punished for it. We hire a lot of people in the city.
4 We pay a lot of taxes, and this system is out of
5 control. And I hope -- as I said, I -- I give The Board
6 the benefit of the doubt. During the first hearing that
7 screen was so horrible that I can understand if you
8 didn't quite see how badly that there are no badges,
9 there's no -- you know, there's no impeding the guy.
10 You know, you can see it now with the video. I can
11 understand that you couldn't see it as well the last
12 time. But as I said, once we showed it I -- I'm very
13 surprised that I'm here again because I think that you
14 and -- and the AG's Office would have realized that
15 they're not going to stand up and allow somebody to come
16 in and testify under oath in that straightforward
17 straight-faced, you know, lying before your board.

18 MS. MILLER: Okay. Thank you. And I do
19 think it is a good thing for all establishments to have
20 the video cameras. Okay. Thank you.

21 CHAIRPERSON ANDERSON: Mr. Short.

22 MR. SHORT: Good afternoon, Mr. Duggan.

1 MR. DUGGAN: Good afternoon.

2 MR. SHORT: Mr. Duggan, can we -- can we
3 please see the video one more time because I -- I
4 want --

5 MR. DUGGAN: I love watching it.

6 MR. SHORT: I want to make -- I want to make
7 sure that I saw someone holding a radio standing right
8 in front of Mr. Stewart. If I'm -- if it's -- if it's
9 not --

10 MR. DUGGAN: They're on the radio all the
11 time.

12 MR. SHORT: Can we please -- can I please
13 see the video again?

14 MR. DUGGAN: They banter on the radio. They
15 tell dirty jokes on the radio.

16 MR. SHORT: I understand. I got you. I got
17 you. I got you.

18 MR. DUGGAN: And let's -- let's try to find
19 one thing on that thing that we could possibly try to
20 impune somebody.

21 MR. SHORT: I want to look at the same
22 thing.

1 MR. DUGGAN: Jesus Christ.

2 MR. SHORT: And I want you to tell me what
3 you see and I'm going to tell you what I see.

4 MR. DUGGAN: I'll tell you exactly what I
5 see.

6 MR. SHORT: Okay. Good. Okay. All right.

7 MR. DUGGAN: Just so we know it's costing me
8 about \$500 an hour to tell you.

9 MR. BIANCO: Now, Mr. Short, you want me to
10 show this video shooting from above the --

11 MR. SHORT: Okay. Now where you were.

12 MR. BIANCO: Okay. There you go.

13 MR. SHORT: Keep it going.

14 MR. DUGGAN: Can I get up so I can see it?

15 MR. SHORT: Please do.

16 MR. BIANCO: Just tell me when you'd like me
17 to stop it.

18 MR. SHORT: I -- I can't see anything to
19 stop.

20 MR. ALBERTI: Mr. Duggan, would you return
21 to your seat so you're -- we can hear it.

22 MR. SHORT: Okay. I just want to see when

1 Mr. Stewart walks up. That's what I want to see, when
2 he first -- when you first see his -- Investigator
3 Stewart when he first walks up. And I want to see all
4 the interaction between the gentleman who had the beard
5 and the radio in his hand.

6 MR. ALBERTI: So it's about --

7 MR. BIANCO: For some reason again it's not
8 playing on the front screen but it is playing on the
9 back screen and my laptop.

10 MR. SHORT: You want to --

11 MR. ALBERTI: Tell everybody I have magic
12 fingers.

13 MR. SHORT: And -- and while we're waiting
14 on that it was -- it was your testimony too I heard you
15 say sometimes the investigators come so -- so many times
16 that the people know them.

17 MR. DUGGAN: I do not say anything of the
18 sort.

19 MR. SHORT: You did not? You did not just
20 testify to that?

21 MR. DUGGAN: I said I might know them. I
22 said with police every -- I said -- as an opinion I said

1 every law enforcement officer should show a badge.

2 MR. SHORT: Okay. Please --

3 MR. DUGGAN: Not to depend on people seeing
4 it.

5 MR. SHORT: Please let me say this to you.
6 Now, you've been in the business in Washington D.C. how
7 many years?

8 MR. DUGGAN: A long -- I've been in a few
9 businesses. In this particular business I've been in
10 for -- it will be 25 years in October.

11 MR. SHORT: Can you ever remember any deaths
12 in nightclubs in Washington D.C.?

13 MR. DUGGAN: Can I remember any deaths?

14 MR. SHORT: Yeah. I'm just asking you --
15 you -- you've been in business.

16 MR. DUGGAN: Of course, I -- can I remember
17 deaths in nightclubs?

18 MR. SHORT: Now, wait a minute. Wait a
19 minute. Okay.

20 MR. DUGGAN: Go ahead. Yes. Let's -- let's
21 follow this here. Go ahead. Yes.

22 MR. SHORT: All right. And most of them

1 were overcrowded, aren't they?

2 MR. BIANCO: It's in the '70s with rabbit
3 ears.

4 MR. DUGGAN: I love you keep talking about
5 overcrowding. My capacity is 409. They said they were
6 160 people in my building.

7 MR. SHORT: I didn't -- I didn't -- I didn't
8 ask you that.

9 MR. DUGGAN: That's why I say I'm being
10 harassed.

11 MR. BIANCO: Mr. Chair, could we -- could we
12 take a step back here. Mr. Short asked to see the
13 video.

14 MR. DUGGAN: I don't know where this guy
15 gets the overcapacity.

16 MR. BIANCO: Mr. Short.

17 MR. DUGGAN: My capacity is 409.

18 MR. SHORT: I didn't ask you any --

19 MR. RIVERO: There needs to be some order,
20 Mr. Chair.

21 MR. BIANCO: Mr. Short has requested a
22 video. We have worked out the technical issue that --

1 MR. SHORT: Just keep it -- keep it moving.
2 Just keep it moving. Just let it run.

3 MR. BIANCO: I'm letting it run, sir.

4 MR. SHORT: Thank you.

5 MR. BIANCO: Tell me when you'd like me to
6 stop it.

7 MR. SHORT: Stop right there. Now, that's
8 the second doorman. He's -- he was in the second -- the
9 second doorman, correct?

10 MR. DUGGAN: He's the one right at the door.
11 Correct.

12 MR. SHORT: All right. Now, so Mr. Stewart
13 hadn't even got on the scene yet, has he?

14 MR. DUGGAN: Yeah. So we can't see him.
15 And he's on the radio.

16 MR. SHORT: Okay. Okay. I got it. Okay.
17 Let -- keep it coming. Keep it coming.

18 MR. DUGGAN: But he's already on the radio
19 remember. So what did he -- what did he see?

20 MR. SHORT: No. Just keep it coming. Just
21 stop right there. Stop right there. Now, we notice the
22 door is directly behind that gentleman with the radio in

1 his hand, correct?

2 MR. DUGGAN: I -- you know what, let me go
3 close.

4 MR. SHORT: Please. Yeah, please take a
5 look at. Please do. Please do. Please do. Thank you.

6 MR. DUGGAN: I saw it in the last shot.

7 MR. SHORT: Okay.

8 MR. DUGGAN: So I'm assuming it's there.

9 MR. SHORT: Is his back with the --

10 MR. DUGGAN: So this is -- the black thing
11 is his radio. Okay. Go ahead.

12 MR. SHORT: Well, no, no, no. Stop. I'm
13 asking you a question. He has the radio in his hand?

14 MR. DUGGAN: Yeah.

15 MR. SHORT: He's -- Mr. Stewart can't get by
16 him or Investigator Stewart can't. And the door is to
17 his back, correct? The door is to his back?

18 MR. DUGGAN: Hold on. The door is open and
19 to his back. The door is open, and that is his back
20 against it. This is his back against the door also.

21 MR. SHORT: So -- so wait a minute. So you
22 have two employees side by side, correct?

1 MR. DUGGAN: This guys going in. This guy
2 just collected glasses and empty bottles, that's his
3 job.

4 MR. SHORT: I understand that. Wait a
5 minute.

6 MR. DUGGAN: And he walked back inside.

7 MR. SHORT: Okay. Please, I'm just looking
8 at a picture, sir.

9 MR. DUGGAN: I am also, but we're seeing two
10 different things.

11 MR. SHORT: No. But I'm just asking you a
12 question. Please.

13 CHAIRPERSON ANDERSON: I'll -- Mr. Duggan,
14 let's --

15 MR. RIVERO: Can I object? I'm not sure
16 what Mr. Duggan's interpretation of the video has to do
17 with the hearing because it's -- one thing, it's
18 relevant for a witness who was there to identify people
19 who were there. Mr. Duggan has indicated he was not
20 present that night.

21 MR. SHORT: And it's Duggan.

22 MR. RIVERO: Mr. Duggan, D-U-G-G-A-N --

1 MR. SHORT: 25 years.

2 MR. RIVERO: -- has represented that he was
3 not present that night. So his interpretation of the
4 video does not advance the case at all and it's really
5 not relevant. It would be like anybody looking at the
6 video.

7 MR. SHORT: Well, I just have one -- one --
8 one more question. The gentleman in the beard, how many
9 years has he worked for you?

10 MR. DUGGAN: He just told me seven.

11 MR. SHORT: Seven years.

12 MR. DUGGAN: Seven years.

13 MR. SHORT: He's never seen -- he's never
14 seen Mr. Stewart before?

15 MR. DUGGAN: You know what, I wouldn't
16 recognize Mr. Stewart. I just saw him in the hallway
17 and didn't recognize him.

18 MR. SHORT: That's all I have. That's all I
19 have.

20 MR. DUGGAN: Thank you very much.

21 MR. SHORT: That's all I have. Thank you.

22 CHAIRPERSON ANDERSON: Thank you. Mr.

1 Alberti.

2 MR. ALBERTI: Yeah. So I have no
3 objections. I don't care where he testifies from.

4 CHAIRPERSON ANDERSON: Go ahead.

5 MR. DUGGAN: I'm sorry.

6 MR. ALBERTI: Okay. I hope this --

7 MR. DUGGAN: As long as we don't go back to
8 capacity.

9 MR. ALBERTI: I hope this next question
10 doesn't upset you, Mr. Duggan, but I'm going to ask you.
11 So I think you told us that you were in your words POed
12 at the -- at this point in time in March of --

13 MR. DUGGAN: From May until September,
14 correct.

15 MR. ALBERTI: Right. So at the time --
16 right.

17 MR. DUGGAN: I wouldn't say all the time. I
18 don't beat my children.

19 MR. ALBERTI: But -- but you were -- but you
20 were frustrated by -- before this incident you were
21 frustrated by the -- by the amount of times --

22 MR. DUGGAN: Absolutely.

1 MR. ALBERTI: -- that you were visited?

2 MR. DUGGAN: Absolutely.

3 MR. ALBERTI: Okay. Great. Was staff aware
4 that you were frustrated?

5 MR. DUGGAN: No. No.

6 MR. ALBERTI: Okay.

7 MR. DUGGAN: And staff certainly --
8 certainly would never take anything like that in their
9 own hands. That guy wouldn't have a job for me or
10 anyone else in the city if he impeded an ABC officer.

11 MR. ALBERTI: Okay. Okay. Thank you. Now,
12 I'm confused because did you say something about the
13 quality of the video the first time we were here?

14 MR. DUGGAN: We were on the 1970s civics
15 class screen. It was horrible. I couldn't see it.

16 MR. ALBERTI: Oh, that. Okay. Now I
17 remember.

18 MR. DUGGAN: Yeah. It was horrible. As I
19 said I --

20 MR. ALBERTI: So that's why I was confused.
21 I forgot about that.

22 MR. DUGGAN: And benefit of the doubt that I

1 assumed that you all didn't see how clearly it was.

2 MR. ALBERTI: Got you. Got you. All right.

3 All right. So my other bit of confusion here is it is

4 your testimony -- I mean you weren't there that night.

5 But you just made statements about how they did their

6 inspection after they talked to the police officers.

7 MR. DUGGAN: The testimony -- if you go to

8 the transcript, the testimony from Keisha Brown -- I

9 mean Keisha -- Keisha Brown performs for me. Keisha

10 Hamilton as well as the video will show that from the

11 time Mr. Stewart came to the front door to the time he

12 went through the front door and from the time he spoke

13 with the manager -- spoke with the manager and came back

14 outside is a total of about 40 seconds.

15 MR. ALBERTI: Okay.

16 MR. DUGGAN: They testified that in that 40

17 seconds -- because again if you look at the video --

18 MR. ALBERTI: No. No. I -- no. No.

19 That's fine. That's fine.

20 MR. DUGGAN: -- the other two people weren't

21 even inside. They were outside.

22 MR. ALBERTI: All right. You answered --

1 you answered my question, Mr. Duggan.

2 MR. DUGGAN: Okay.

3 MR. ALBERTI: So -- but you don't dispute
4 that they did an inspection?

5 MR. DUGGAN: Yeah. And they found 160
6 people in a building that had capacity of 409.

7 MR. ALBERTI: Okay. Great. So when -- when
8 do you believe --

9 MR. DUGGAN: And they wrote up a violation.

10 MR. ALBERTI: Mr. Duggan -- Mr. Duggan, what
11 -- I got it.

12 CHAIRPERSON ANDERSON: All right. All
13 right.

14 MR. ALBERTI: When do you believe -- I'm
15 trying to --

16 MR. DUGGAN: I don't believe a lot.

17 CHAIRPERSON ANDERSON: Hold on. Hold on.
18 Hold on.

19 MR. RIVERO: These questions are also not
20 relevant.

21 MR. ALBERTI: Well, I will get to the
22 relevancy.

1 CHAIRPERSON ANDERSON: Well --

2 MR. ALBERTI: I will get to the relevancy.

3 Please.

4 CHAIRPERSON ANDERSON: All right.

5 MR. ALBERTI: And, Mr. Duggan, I -- I'm

6 sorry --

7 CHAIRPERSON ANDERSON: Hold on, Mr. Alberti.

8 Okay. Mr. Alberti, please ask the question.

9 Mr. Duggan, please answer the question directly.

10 MR. DUGGAN: Absolutely. I'm sorry.

11 CHAIRPERSON ANDERSON: And only one person

12 speak.

13 MR. ALBERTI: So, Mr. Duggan, I -- I

14 understand your passion and I'm -- I'm sorry to

15 interrupt you but I'm trying not to be here at 8:00. So

16 -- so once you've answered my question I'm going to sort

17 of cut you off.

18 MR. DUGGAN: Praise the Lord.

19 MR. ALBERTI: All right. So when -- when do

20 you believe the inspection was done?

21 MR. DUGGAN: The inspection -- we know the

22 inspection was done after they went out, finished with

1 the police trying to have Mr. Carr arrested. When they
2 finished with that they then went in. Fox and Brashears
3 went up to the upstairs and --

4 MR. ALBERTI: Okay.

5 MR. DUGGAN: -- the other fellow, Stewart
6 walked through the first floor with Keisha Hamilton.

7 MR. ALBERTI: So -- and that was after this
8 video that we see?

9 MR. DUGGAN: It's -- it's right at the end
10 of it. And then they go -- yeah. We -- we stopped it
11 at the end of the police thing, you know. But they went
12 back in and did their inspection then.

13 MR. ALBERTI: So why -- why did you stop it?
14 Why didn't you provide the other video?

15 MR. DUGGAN: Because -- because the only
16 issue if you hear, you know, whatever his name is here
17 going off is about the incident at the door. So we
18 didn't go on about the other things because we didn't
19 get a violation about capacity until December of 2015.
20 We never knew anything. All we knew was that we had a
21 threat that they tried to have my doorman arrested for
22 assault.

1 MR. ALBERTI: Okay. Thank you. No further
2 questions.

3 MR. DUGGAN: Thank you.

4 CHAIRPERSON ANDERSON: Do you have any,
5 Mr. Silverstein?

6 MR. SILVERSTEIN: No, I do not, Mr.
7 Chairman.

8 CHAIRPERSON ANDERSON: Do you have any
9 questions, Mr. Rivero, based on the questions that were
10 asked of The Board?

11 MR. RIVERO: No.

12 CHAIRPERSON ANDERSON: Thank you very much.
13 Mr. Bianco, do you have any questions based on the
14 questions that were asked of The Board?

15 MR. BIANCO: Just one question. Actually if
16 you could look at -- up at the video screen which is now
17 off again. This individual right here with the glasses,
18 do you recognize him?

19 CHAIRPERSON ANDERSON: He's on the other
20 screen now there. So maybe if you could look at the --

21 MR. BIANCO: Right there.

22 MR. DUGGAN: That's Kamani. That's the

1 other security guy come on.

2 MR. BIANCO: Does he work for you?

3 MR. DUGGAN: Yes.

4 MR. BIANCO: What's his job?

5 MR. DUGGAN: He does inside -- well,
6 basically they -- they're doormen security. He goes
7 around, buses -- you know, while they're standing at
8 their station they're supposed to bus, get bottles,
9 empty glasses, et cetera.

10 MR. BIANCO: Does he have a reason to be
11 outside during the course of a shift?

12 MR. DUGGAN: Yeah. He goes out and clears
13 out the -- the whatever, the patio area. We have a
14 front porch. People sit there on the porch on the patio
15 and they drink. They'll leave their bottle. He goes
16 out and collects those.

17 MR. BIANCO: That's all.

18 CHAIRPERSON ANDERSON: Thank you. Thank
19 you, sir, for your testimony. Again, you're -- you
20 are -- please do not discuss this case, the nature of
21 your testimony with anyone else until this case is over.
22 Mr. Bianco, do you have any other witnesses?

1 MR. BIANCO: Brief indulgence. I'm just
2 going to confirm something with my client. My
3 inclination is no, but I would like to confirm
4 something. I have no more witnesses.

5 CHAIRPERSON ANDERSON: Thank you. Do you
6 rest, sir? Do you rest?

7 MR. BIANCO: Yes, sir.

8 CHAIRPERSON ANDERSON: Does -- does anyone
9 wish to call any rebuttal witness?

10 MR. RIVERO: No.

11 CHAIRPERSON ANDERSON: All right. The
12 Government -- does the Government wish to do a closing?

13 MR. RIVERO: Yes.

14 CHAIRPERSON ANDERSON: Go ahead.

15 MR. RIVERO: Today the Government has proven
16 by a preponderance of the evidence evidence that is
17 relevant, material, and not unduly duplicative that on
18 September 5, 2015 an employee of the licensee failed to
19 allow an ABRA investigator to enter the licensed
20 premises without delay in violation of D.C. Code 25-823,
21 Parenthetical 50. The Board can arrive at the same
22 conclusion by analyzing the large and often chaotic body

1 of evidence the same way the Government assessed it
2 first. We understand the human memory can become hazy
3 over time. Virtually all of the witnesses who have
4 testified at some point said they could not recall a
5 particular detail. But this does not mean that what
6 witnesses have been able to recall is automatically
7 unreliable. Indeed our assessment never turns on
8 whether a witness cannot recall an immaterial detail.
9 That said, the witnesses largely tell the same story
10 here though it is not immediately apparent. All the
11 parties involved for instance said that a count of
12 patrons took place that night though the order of events
13 differed. What matters then is that everyone accurately
14 recalled that a count took place. But happily we begin
15 our process of elimination here by noting that testimony
16 about the count, though accurate perhaps, was not
17 relevant for the Government's charge has nothing to do
18 with a count or the associated occupancy issue any
19 attempts by the licensee to inject that issue into this
20 case notwithstanding.

21 You will also note that much of the
22 testimony was governed by the fast pace of events that

1 night. You heard testimony of events taking place in a
2 matter of seconds or less than two minutes at one point.
3 It is not surprising then in this fast paced environment
4 that witnesses would focus on what is immediately before
5 them and not notice things that happen in the periphery.

6 So for instance neither the manager Hamilton
7 nor the doorman Carr notice Investigators Fox and
8 Brashears enter since the establishment's own video
9 recording shows their entry and exit. Eliminating what
10 everyone largely agrees happened gets us to the real
11 relevant story. And the story diverges in the hallway
12 or the vestibule or the corridor or whatever it may be
13 called between the front door and the main room of the
14 establishment. It is in this space completely
15 unrecorded by video that The Board must decide whether
16 the Government met its burden to prove that witness
17 Stewart's testimony is more likely to tell the actual
18 story than witness Carr's testimony. None of the
19 licensee's witnesses corroborate Carr's story by direct
20 observation, for none of them saw what happened in that
21 space, and today's witness does not change that
22 assessment as I will explain in a moment.

1 But Stewart's testimony is corroborated by
2 Investigator Brashears' direct observation. The
3 discrepancy between Brashears' stated arrival and his
4 appearance in the video is an immaterial detail as I
5 will explain in a moment.

6 Before we delve on all the support that
7 exists for Stewart's testimony you must dispense with a
8 threshold question of whether Stewart identified himself
9 to Carr by showing his ID badge. Stewart testified that
10 he did, and Carr claims that he didn't. No one
11 testified to support Carr's story perhaps because the
12 video itself purports to show that Stewart entered
13 without showing his ID. But this is not what the video
14 shows actually.

15 The licensee's video system for some
16 inexplicable reason, not made clear by today's
17 illuminating foundation on the video's genesis, does not
18 record continuously. If you view the video carefully
19 and you will -- which it's hard to do in a hearing but I
20 was able to do it in my office -- you will notice a few
21 interesting things. First the video skips a second. It
22 records every other second, and the pattern is random.

1 So sometimes it records every other even second and then
2 it records an odd second and continues to record every
3 other odd second.

4 What you may ask yourselves is happening
5 during the seconds that the video system is not
6 recording. The people shown are not frozen in time.
7 They continue to move. You were asked to focus on the
8 camera above the front door's video frame at 6:28 and 13
9 seconds which seems to show Stewart with nothing around
10 his neck. But two seconds earlier at 6:28 and 11
11 seconds the video clearly shows the cord and dark
12 material of his badge hanging from his neck which is
13 exactly where it remained as confirmed by both Hamilton
14 and Carr later. It is in the intervening unrecorded
15 second that Stewart pulled his badge in a simple quick
16 motion and let it drop back down. The explanation for
17 why Stewart's badge would be visible one second and not
18 two seconds later is one of simple body mechanics. When
19 we go up a step we have the natural tendency to bend
20 down. Carr noted in his testimony that he stood on a
21 step. And when Stewart went up on that step he bent
22 down thus causing his badge to sink in his shirt and out

1 of view of the camera.

2 As I stated witness Brashears observed
3 Stewart show his badge which may seem odd given that the
4 video shows Brashears reach the front door after
5 Stewart. But as the old saying goes objects in the
6 mirror are closer than they appear. Carr himself
7 testified that just stepping away ten feet gets you out
8 of recording range. It's entirely reasonable that at a
9 distance of ten feet Brashears, though not recorded,
10 could see Stewart's by now familiar motion.

11 So having dispensed with the threshold
12 question that is indeed more likely than not that
13 Stewart showed his badge we move to the main event. It
14 is indeed more likely that Carr delayed Stewart by
15 physically blocking him. Brashears' direct observation
16 supports Stewart's story. But there is support that
17 comes from a -- from surprising sources frankly. And
18 those sources are the video itself and witness
19 Hamilton's testimony.

20 The video of the camera above the door shows
21 Carr physically blocking Stewart at 6:28 and 15 seconds.
22 It is a brief moment which Carr readily admitted. But

1 this is not main the blocking and delaying incident
2 which forms the Government's case. That delaying
3 incident as Stewart recounted and Brashears corroborated
4 took place in the unrecorded space of the vestibule as
5 it has been called. After Stewart and Carr disappeared
6 into the vestibule off camera you will note that a
7 number of persons suddenly begin to stare down that hall
8 space for a prolonged period of time.

9 At 6:28 and 26 seconds the video shows the
10 employee then identified as Baba leaving his post and
11 joining Investigators Fox and Brashears and staring out
12 at that hall space. All the while a random patron
13 behind them is also staring at that hall space. From
14 6:28 and 20 seconds to 6:28 and 39 seconds everyone is
15 watching something that is happening beyond recorded
16 range. Their reactions cannot be explained by Carr's
17 uneventful account of accompanying Stewart down that
18 space to the main room. Rather their reaction makes
19 more sense if they are in fact watching Carr interpose
20 himself before Stewart in the manner that Stewart and
21 Brashears described.

22 This episode judging by the spectator's

1 reactions took place anywhere from 16 to 19 seconds.

2 This aligns closely with Stewart's own estimate of ten
3 to 15 seconds.

4 Now, today Mr. Gray or Baba as he was
5 previously identified testified, and his testimony
6 really in my view changes nothing. Mr. Gray testified
7 that he didn't speak to anyone prior to today about his
8 testimony which is admirable, but still his memory
9 appears to be a confused jumble of events. But first he
10 indicates that the distance between his position, the
11 curb and the post of Mr. Carr was something like 2.5
12 feet, which is not credible because the distance in the
13 video where he claims to have touched Investigator Fox
14 as you will see is much greater than that. And at that
15 distance I don't believe that he could have overheard
16 any part of the conversation particularly where the
17 video shows him focused on an ID. So if you're doing
18 your job I don't know how you can parse out particular
19 sentences of a conversation not only because you're
20 focusing but because there's ambient noise. The video
21 shows there's people moving all over the place. It's
22 not a quiet night. There were ten to 15 people in line

1 according to the -- the testimony of Mr. Carr.

2 And so we come to Mr. Gray's explanation
3 that he witnessed across that hallway a conversation
4 between parties at the bottom of the stairs. Remember
5 what I told you about everybody more or less telling the
6 same story. Here you have one witness whose testimony
7 is completely different from anybody else's because
8 Carr, Hamilton, and Stewart all testified that their
9 conversation took place in the main room which testimony
10 shows took place off of that hallway. I don't know what
11 Mr. Gray was looking at, but it could not have been
12 those three individuals in a direct line of sight
13 according to testimony. And frankly for the same reason
14 you can't hear at two and a half feet because of the
15 ambient noise, you certainly couldn't be hearing at five
16 feet because of the ambient noise and Mr. Gray's own
17 admission of people coming and going one of whom was by
18 the way Kamani. But the video shows him coming and
19 going before Mr. Stewart even shows up. So he could not
20 have seen Kamani coming and going because he's not
21 recorded coming and going.

22 So interestingly Mr. Gray testified that the

1 Plexiglass doors were held open by hooks. You may make
2 of that what you will, but it seems to contradict
3 Hamilton's testimony that Carr was holding open that
4 door. But that's neither here nor there since what's
5 really what not believable is that they were all in the
6 hallway having a conversation when they all claimed they
7 were not in the hallway having that conversation.

8 Now, the video of the porch angled camera is
9 claimed to support Carr's testimony that he opened the
10 door for Stewart and then was behind him though Carr
11 also testified the opposite that Stewart opened the
12 door, but never mind that.

13 Again, there is the same lack of continuous
14 video recording with the video skipping a random second.
15 But the video actually shows something else, that Carr
16 was holding the door with his own body prior to
17 Stewart's entrance. It is Stewart who disappears last
18 into the hall space. And the last thing we see him is
19 his arm, not Carr's. And contrary to Carr's testimony
20 that he continued to hold the door open it appears that
21 another unidentified person is holding the door. The
22 relevant footage is found at 6 minutes -- 6:28 rather

1 and 12 seconds to 6:28 and 23 seconds. This is in line
2 with Stewart's own testimony in which he recalls that
3 the front door was open but he did not -- he did not
4 recall opening it. Carr's testimony that he somehow
5 initially held the door open with his own body is not
6 inconsistent with Stewart's account of what happened in
7 the hall space given that Stewart is the last person
8 seen which would place Carr in a position to interpose
9 himself in front of Stewart.

10 Beyond the video we have what seems to me
11 the unremarkable testimony of witness Hamilton. She
12 recalls Stewart telling her that he had been impeded.
13 She recalls that Stewart was angry. Hamilton's
14 description of Stewart's reaction then is logical if
15 Stewart's story of being delayed is more likely and
16 illogical if his story is not likely.

17 Given this assessment the Government has met
18 its burden by a preponderance of the evidence that
19 Stewart was delayed in entering the premises within the
20 meaning of D.C. Code 25-823, Parenthetical 5. And
21 nothing that witness Duggan provided by way of testimony
22 changes that either. The licensee's testimony is 99

1 percent irrelevant because this is not an occupancy
2 case.

3 And for the record, although it's in the
4 record, there was never any notice of infraction of
5 overcapacity because the notice to show cause very
6 clearly focused on the delay, and there was no charge
7 concerning overcrowding. And I ask that you discount
8 and ignore any testimony made about conversations with
9 ABRA staff whatsoever. They're not relevant, they're
10 not corroborated. In fact, the wild claim that someone
11 was trying to get one of their employees arrested is not
12 borne out by the evidence. Even the police officers
13 themselves said we're just here to take a report about
14 something that somebody was being impeded. So you'd
15 think if there was going to be some attempt to arrest,
16 that a police officer would testify about that.

17 Nothing, crickets.

18 So the delay here was real. In case you
19 should hear a protest that a delay of mere seconds is
20 not an actual delay, the statute has no de minimis
21 exception. It states in pertinent part that a licensee
22 violates a statute if quote, it fails or refuses to

1 allow an ABRA investigator to enter or inspect without
2 delay the licensed premises, end quote. If the delay
3 was as long as 15, 16, or 19 seconds, a lot can happen
4 at that time as the witnesses have testified.

5 The perception of time is relative. I will
6 now demonstrate by timing 15 seconds. It felt longer
7 than 15 seconds, didn't it?

8 So in conclusion the Government would
9 recommend a fine of \$1,000 in this case. Though this is
10 a first primary tier offense and the range is 1,000 to
11 \$2,000, the -- the Government is not recommending a fine
12 of \$2,000. Why? Because the Government will credit the
13 apology of the licensee's staff as the investigators
14 testified even though the licensee's own witnesses
15 interpreted that apology differently. Regardless, in
16 the Government's view the gesture of an apology was a
17 sign of the acceptance of responsibility. Thank you
18 very much, Board Members.

19 CHAIRPERSON ANDERSON: Thank you,
20 Mr. Rivero. Prior to -- are there any documents that
21 you -- and -- and I'm not sure if I had asked you before
22 if there are any documents that you would like to

1 be moved into the record?

2 MR. RIVERO: I -- I think I moved the
3 investigator's report the last time we were here.

4 CHAIRPERSON ANDERSON: I -- I just want to
5 make sure.

6 MR. RIVERO: Yeah. I handed that in.

7 CHAIRPERSON ANDERSON: Okay. That's fine.
8 I just want to make sure. I don't want it to be that
9 you didn't. So I'm going to do the same thing --

10 MR. RIVERO: No.

11 CHAIRPERSON ANDERSON: -- for Mr. Bianco as
12 well.

13 MR. RIVERO: Of course. Thank you.

14 CHAIRPERSON ANDERSON: All right. Go ahead,
15 sir.

16 MR. BIANCO: A spirited argument on both
17 sides. I'm going to try to refrain from table pounding
18 myself. I think there's been enough of that here today.
19 Something that -- something that I want The Board to
20 bear in mind as it considers this case is 40 seconds,
21 four, zero, 40 seconds. According to Investigator
22 Stewart in that period of time he walked up to the

1 establishment, had an interaction with Mr. Carr, entered
2 the establishment, had an interaction with Ms. Hamilton,
3 then directed and participated in a head count of the
4 establishment, then exited and had additional
5 interactions outside. That didn't happen. There's no
6 way that you can count four floors of patrons, have
7 those interactions, be impeded all within the course of
8 40 seconds. It didn't happen.

9 There's two questions that The Board's
10 called on to answer in this particular case. Did the
11 district prove that my client violated the law? And if
12 so, what should the penalty be? You don't have to reach
13 the second question because the district did not prove
14 its case.

15 I want The Board to bear in mind the burden
16 of proof here -- even though we're the ones on trial and
17 the finger's pointed at the establishment, we don't have
18 to prove that we didn't do it. They have to prove that
19 we did, and they failed miserably I might add. Nobody
20 at Madam's failed or refused to allow an ABRA
21 investigator to enter without delay. The Government
22 simply did not meet its burden.

1 Let's consider the evidence that's been put
2 on before you. The Government rests its entire case on
3 the testimony of Craig Stewart and Investigator
4 Brashears. Right off the bat this is a problem. The
5 supposed investigation consisted of nothing except the
6 investigator's own personal observations. Why? What
7 kind of investigation is that? It's an accusation.
8 It's not an investigation. They know Madam's Organ has
9 a video system and they know that because the agency has
10 requested video from them and it has been provided
11 countless times. If they really believed that they were
12 impeded, why not ask for the video of the front door
13 that would clearly show it? The reason is because they
14 know they weren't impeded. The video would be and is in
15 fact exculpatory, it doesn't prove their case. There
16 were dozens of witnesses. There were patrons. There
17 were police officers. There were employees.
18 Investigators didn't talk to anyone of them, didn't take
19 any statements to get their view of the events. Why
20 not? Because they had no interest in doing an actual
21 investigation. They had no interest in finding out what
22 happened. Their interest here was in getting Duggan.

1 ABRA investigators visited the premises on a
2 weekly or bi-weekly basis between the months of May and
3 September of 2015. This is a fact that the Government
4 has tried desperately to hide from, but is a fact of
5 life. It's important for several reasons. Number one,
6 Craig Stewart, the supervisory investigator and the
7 complaining witness wasn't involved in these particular
8 investigations. Dan Carr was present. Keisha Hamilton
9 was present, not Craig Stewart. Brashears testified
10 that Dan Carr never touched him, never blocked him,
11 never stopped him from going in. He testified that Carr
12 would ask him to wait for a manager to come out but that
13 Brashears didn't like that answer and entered anyway.
14 Perhaps more importantly when questioned on that
15 particular issue on cross examination Brashears stated
16 that he did not consider asking him to wait to be a
17 violation or to be impeding or delaying his entry.

18 So why is it that on -- on September the 5th
19 after 20 or more visits in the previous couple of months
20 that Dan Carr whose previous interactions had been
21 appropriate all of the sudden decided to get physical?
22 The district can't explain it. I can. The difference

1 is Craig Stewart, that's the difference. The second
2 reason why the -- the 20-plus visits in the three-month
3 period leading up to the citation is important it shows
4 that the agency has some motivation here other than
5 enforcement of the law. It's the agency's job to
6 enforce the law. What they did here was not enforcement
7 of the law.

8 Its been the Government's mantra throughout
9 the case that this case is not about occupancy, it's not
10 about occupancy, why are we talking about occupancy? I
11 agree wholeheartedly, it's not about occupancy. But the
12 fact that it's not about occupancy is not due to lack of
13 effort by the agency. Looking at their sole exhibit.
14 Occupancy is all over that thing, it's all about
15 occupancy. If this case is not about occupancy why is
16 their exhibit talking about occupancy? Why is the
17 certificate of occupancy attached to their exhibit? And
18 they sit here and they say this is not about occupancy.
19 Not true. Not true.

20 The comments of Craig Stewart as he is
21 leaving again, tell Duggan I am shutting him down for
22 occupancy. But the Government sits there with a

1 straight face and say this is not about occupancy. I
2 disagree. I think the Government has tried desperately
3 to make this about occupancy. And simply because the
4 prosecutor exercised his discretion in not bringing that
5 aspect of the case that there's no chance he could win
6 because of a Court of Appeals decision on point does not
7 make it any less relevant in this particular proceeding.

8 Now, let's talk about the facts of the
9 evening in question. The consistent testimony by the
10 Government's two witnesses, perhaps so consistent that
11 it's suspicious, is that Stewart had his badge displayed
12 around his neck while he approached the establishment.
13 That's directly contradicted by the video. The
14 Government can say whatever it wants about bending over
15 and walking down up steps or whatever, he did a back
16 flip or a hand stand. I don't know what. But his chest
17 is visible when he walks up and it doesn't have a badge
18 on it. If it takes you five minutes to explain what
19 happened, guess what, your explanation is wrong. He
20 didn't have a badge, did not have one. His testimony is
21 patently false.

22 Stewart approached the establishment with

1 Fox and Brashears. The video doesn't show that. The
2 video shows him walking up alone, no badge. The video
3 elapses 12 seconds before Fox and Brashears show up, 12
4 seconds. Now, Mr. Rivero tried to demonstrate how long
5 15 seconds is. Well, 12 seconds, almost so long. I
6 could get up from this table, count 12 seconds, and walk
7 towards the back of the room, I'd be halfway to the
8 elevators. It's a great distance. And based on the
9 testimony they could not have seen what they said they
10 saw. They could not have seen Craig Stewart approach
11 with a badge around his neck if they were 12 seconds
12 behind him. It's not possible. First of all, they're
13 behind him. Second of all, they're 12 seconds behind
14 him. It can't happen, it didn't happen. They made it
15 up.

16 Point number three, Stewart testifies I was
17 at Madam's that night responding to a verbal noise
18 complaint from MPD. No, he wasn't. He testified that
19 he did not monitor the exterior of the establishment.
20 How the heck you there for a noise complaint and you
21 don't monitor the noise? I'll tell you how, you're
22 lying. He's not there for noise. He didn't monitor the

1 establishment. On cross examination he talked about
2 what he normally does on a noise complaint. And in
3 response he says I go to the complainant's house and
4 measure the noise within the house because that's what
5 we're supposed to do. Well, here was a complaint on the
6 street from MPD. He testified that he walked right up
7 to the establishment without monitoring the noise. He
8 wasn't there for noise. It just doesn't make any sense.
9 He was there to get Duggan as he said on his way out the
10 door.

11 Next, Stewart testifies twice I stepped to
12 my right to try and get around Dan Carr. Dan took a
13 corresponding step to the left and blocked me. That was
14 his testimony. He then testified I took another step to
15 my right to try and get around Dan Carr, and Dan Carr
16 took another corresponding step to his left to block me.
17 That didn't happen. That couldn't happen. The physical
18 layout of a four-foot opening and somebody taking two
19 steps to their left, how on Earth would you get past
20 them at that point? The video contradicts this
21 completely. You don't see Dan Carr stepping to his left
22 at any point. You don't see him stepping to his left

1 once. You don't -- you certainly don't see it twice.

2 What you do see is Dan Carr giving way not with his back
3 to the camera, with his back to the wall.

4 The investigative report -- the language of
5 the investigative report is particularly interesting.

6 It says at its outset the investigative report is based
7 on an MPD 251, and this MPD 251 is attached as Exhibit 1
8 to the report. Well, as we know from Investigator
9 Brashears' testimony that's not true at all. The report
10 wasn't -- wasn't based on the 251. The 251 was based on
11 Brashears walking up to the officer and telling him what
12 happened. It's the exact opposite of what Brashears
13 testified to. But it sure does sound more damning to my
14 client if they point the finger at him and say look,
15 look, it's not just us, MPD said they were doing
16 something wrong and we were just acting based on the MPD
17 251. That didn't happen. That did not happen. It was
18 an attempt to lend credibility to a report that
19 otherwise has none.

20 The actions of Brashears and Fox were not
21 the actions of investigators who were observing their
22 supervisor engaged in a physical confrontation with a

1 doorman. They were standing there. When they allege
2 that something was happening they were standing there
3 doing what I would politely describe as absolutely
4 nothing. They did not yell out. They didn't say hey,
5 stop, get away from him, get off of him. They didn't
6 act to intervene in any way, shape, or form. They
7 didn't call the police. They didn't look for police.
8 One of them didn't run off and grab a police officer
9 notwithstanding the fact that they allege that moments
10 before they were dispatched by MPD to go there. They
11 knew there were police officers around, yet they expect
12 us to believe that as their boss is in there getting
13 manhandled by Dan Carr they're standing there and taking
14 no action. If it seems unbelievable, that's because it
15 is.

16 Finally, there were a lot of questions from
17 The Board, and there were -- and the Government has made
18 something of the fact of an apology by Dan Carr, an
19 apology by Keisha Hamilton. We all know that there's
20 different kinds of apologies, and not all of them are
21 admissions of guilt. Keisha and Dan explained the logic
22 behind their apology. They apologized with a

1 misunderstanding. They apologized that an incident took
2 place.

3 MR. SILVERSTEIN: Please speak up, sir.

4 MR. BIANCO: Sure. They apologized for a
5 misunderstanding or they apologized that an incident
6 took place, but that's different than an admission of
7 guilt. I've apologized for incidents that have taken
8 place. I've said, you know, I'm sorry you're a jerk.
9 That's not an apology that's an admission of guilt.

10 The point is in this particular instance a
11 fact of life is that this establishment is going to have
12 to deal with this agency on a going forward basis, and
13 the people that work there know that. Who -- who hasn't
14 apologized to buy future peace? That's not an
15 admission, it's a practicality. And in my house it's
16 something I do to my wife on a daily basis. I've
17 apologized to buy future peace. I think that's the
18 situation we have here. Keisha explained it, Dan
19 explained it. They weren't admitting wrongdoing. They
20 were trying to smooth things over in a negative
21 situation.

22 At the end of the day I'm not saying that

1 the Government -- the Government can never make its case
2 based only on what an investigator has to say. That's
3 not true. Some cases are he said, she said, that's just
4 the way they are. But in cases where you have available
5 extrinsic evidence in the form of many eyewitnesses,
6 many employees, and video footage and you just don't
7 bother to look at it they shouldn't be able to make
8 their case on he said, she said. They should have to do
9 an actual investigation. They failed to do that in this
10 case.

11 The video is exculpatory. Dan Carr did not
12 impede anybody. The investigator was provided access.
13 He evidently got the information he wanted to write up
14 Duggan for occupancy, and the prosecutor wisely decided
15 not to pursue it. So here we are talking about this
16 impeding issue. It's not the purpose of the statute,
17 it's just not. He got in, we let him get in. There was
18 no delay. If Stewart had a badge on, maybe Dan Carr
19 doesn't say -- say boo to him. He asked him who he was.
20 Who wouldn't do the same thing? And even when Stewart
21 refused to identify himself Carr still gave way. He
22 still gave way. Physical altercations in the bar

1 business are not a way to operate, Madam's Organ knows
2 that. They're good guys. Dan Carr has been doing this
3 for seven years. He knows it's not what happened here.
4 And we think now that you have all the facts in front of
5 you The Board will make the correct decision. Thank
6 you.

7 CHAIRPERSON ANDERSON: Thank you,
8 Mr. Bianco. Are -- did you introduce whatever documents
9 that you need to be part of the record?

10 MR. BIANCO: I had a -- an Exhibit 1 that I
11 believe was a photograph that I moved in the last time
12 we were here. To the extent I have not moved in the two
13 videos, I think I did. But if I didn't, I would -- I
14 would ask that they be received as evidence as well.
15 And that's all we have.

16 MR. RIVERO: They were moved the first time
17 and received the first time.

18 CHAIRPERSON ANDERSON: All right.

19 MR. RIVERO: But I don't know that a
20 physical object was handed to The Board.

21 CHAIRPERSON ANDERSON: All right. So --

22 MR. BIANCO: Yeah. I would -- I would offer

1 to do two things. I have physical copies of disks here,
2 and then I think as we discussed at the outset I could
3 see to it that before I leave the office for the day a
4 Dropbox link is sent simultaneously to The Board's
5 counsel and to Mr. Rivero. And if there's any issues
6 with the -- the two videos that we send, we can just
7 deal with it administratively.

8 CHAIRPERSON ANDERSON: All right. So
9 I'll -- so I'll ask that the -- the physical evidence
10 be -- be --

11 MR. RIVERO: They're labeled 9 and 10?

12 MR. BIANCO: 9 and 10, yes, sir.

13 MR. RIVERO: Right. Because you -- these
14 are my copies you gave me?

15 MR. BIANCO: Right.

16 MR. RIVERO: Okay.

17 MR. ALBERTI: Do we have -- do we have a
18 little stick with the video on it?

19 MR. BIANCO: I do. But there's other things
20 on it. I would hesitate to give that to you.

21 MR. ALBERTI: Well, I -- the reason I ask
22 the -- Mr. Chair, is that I don't know that any of us

1 have -- which is becoming archaic is these disks, the
2 availability. And -- and I will certainly want to look
3 at the video before I deliberate.

4 CHAIRPERSON ANDERSON: Well -- well, I think
5 part of it is we need something as a part of the
6 official record. The rest of it we'll figure out.

7 MR. ALBERTI: Okay.

8 CHAIRPERSON ANDERSON: But this is a -- this
9 is the official record. So the rest of it will be --

10 MR. BIANCO: We can make this part of the
11 official record. And if you want might to deliver it, I
12 will.

13 MR. ALBERTI: And that's fine. But -- but
14 Mr. Bianco was talking about not getting this to us for
15 I don't know how long.

16 CHAIRPERSON ANDERSON: Well, there's --
17 there's -- there's no --

18 MR. ALBERTI: I know, but we're going to --
19 I don't want to be here until midnight.

20 MS. MILLER: Today.

21 MR. RIVERO: Are you saying that you will
22 e-mail it?

1 MR. BIANCO: Yes, e-mail. Yeah. Yeah.

2 MR. ALBERTI: But he's going back to his
3 office and --

4 MR. BIANCO: Yeah. If I send the files via
5 Dropbox, you'll have them via -- you'll have them via
6 e-mail.

7 MR. RIVERO: Because there's a --

8 MR. ALBERTI: Okay. I know. I
9 understand -- I understand that technology.

10 MR. RIVERO: Mr. Chair.

11 CHAIRPERSON ANDERSON: Yeah. Hold on one
12 minute, Mr. Alberti. Yes, Mr. --

13 MR. RIVERO: Because there have been
14 physical copies of the video tendered already as
15 exhibits, I believe it's appropriate for the record to
16 close. It's already on the record that he's going to
17 send an e-mail so that there will be more access. But
18 for purposes of the record it's already in your
19 possession.

20 MR. ALBERTI: And I'm okay with that. I'm
21 just wondering about the timing of getting something we
22 can look at.

1 MR. BIANCO: Co-counsel suggests that with
2 an Internet connection I could send it right here from
3 the desk.

4 MS. MILLER: Right.

5 MR. ALBERTI: That would be fine. That
6 would be great.

7 MR. BIANCO: So -- so if you want to adjourn
8 while I work out the technology, I think that will be
9 fine.

10 MR. ALBERTI: So after -- after we finish
11 this case you can do that. That would be great.

12 MR. BIANCO: Okay. Yeah. I'll just sit
13 here. You'll have it before I even walk out the door.

14 MR. RIVERO: Right. So I'm just saying we
15 could adjourn --

16 MR. ALBERTI: That's -- that's all I'm
17 asking.

18 MR. RIVERO: -- without him having completed
19 this.

20 CHAIRPERSON ANDERSON: I'm not --

21 MR. ALBERTI: [Inaudible 1:06:28].

22 CHAIRPERSON ANDERSON: The physical

1 documents that were handed to us are -- is all I need
2 for the record to close the record.

3 MR. RIVERO: Great.

4 CHAIRPERSON ANDERSON: So I'm going to close
5 the record now with that -- with that said. The rest of
6 it is courtesy. It's -- it's a courtesy copy that
7 Mr. Bianco said that he would provide to us. All right.

8 MS. MILLER: Mr. Chairman, can I just ask
9 what's Exhibit 1 just to make sure we do have that?

10 MR. BIANCO: It's a photograph of the front
11 of the establishment I believe. I did not use it at all
12 today. With brief indulgence, I'm sure I could find it.

13 MS. MILLER: Okay.

14 CHAIRPERSON ANDERSON: Okay. All right.

15 MS. MILLER: Good.

16 CHAIRPERSON ANDERSON: Do the parties wish
17 to file proposed findings of fact and conclusions of law
18 or waive their right to do so?

19 MR. RIVERO: The Government waives.

20 MR. BIANCO: The respondent wants to file.

21 CHAIRPERSON ANDERSON: I'm sorry?

22 MR. BIANCO: I'm sorry. Did I jump in

1 first? Go ahead.

2 MR. RIVERO: Answer.

3 MR. BIANCO: I would like to file proposed
4 findings of fact and conclusions of law.

5 CHAIRPERSON ANDERSON: All right. If the
6 parties choose to file proposed findings of fact and
7 conclusions of law, then 90 days from when The Board
8 receives proposed findings of fact and conclusions of
9 law due to The Board -- due to the board 30 days after
10 receipt of the transcript. The transcript will be
11 e-mailed to the parties in approximately three weeks.
12 If you change your mind about filing, you should inform
13 the opposing party and The Board. All right. As
14 chairperson --

15 MR. RIVERO: One --

16 CHAIRPERSON ANDERSON: Yes.

17 MR. RIVERO: One last note. I -- I
18 understand and we all know that a version of the
19 transcript from last hearing was available -- is
20 available. I noted errors in that transcript, and I
21 thought it might be instructive, you know, to tell The
22 Board or send an e-mail saying look, it looks -- it

1 looks like this is not correct. I've -- I've never seen
2 a transcript that had this many errors frankly, and I
3 was surprised by that. So The Board should take that
4 into account, figure out how to maybe have us look at
5 the transcript. We can point out well, obviously the
6 person who said that was not Mr. Bianco, it was
7 Mr. Rivero, or it was the Chair or this word was never
8 said by anybody. Like the word intravenous --

9 MS. MILLER: Right.

10 MR. RIVERO: -- for instance that's -- that
11 jumped out at me. I said nobody said the word
12 intravenous that day. So things like that hopefully
13 should be cured before The Board has before it a
14 transcript that it will use for deliberation and the
15 parties will use for finding -- for filing findings of
16 fact and conclusions of law proposals.

17 CHAIRPERSON ANDERSON: So noted.

18 MR. RIVERO: I thought The Board should know
19 that.

20 MR. BIANCO: It was a little rough. Yeah.

21 CHAIRPERSON ANDERSON: So noted. All right.

22 All right. As chairperson of the Alcoholic Beverage

1 Control Board for the District of Columbia in accordance
2 with Section 405 of the Open Meetings Amendment Act of
3 2010 I move that the ABC Board hold a closed meeting for
4 the purpose of seeking legal advice from our counsel on
5 Case Number 15-251-00157, Madam's Organ per Section
6 405B4 of the Open Meetings Amendment Act of 2010 and
7 deliberating upon Case Number 15-251-00157, Madam's
8 Organ for the reasons cited in Section 405B13 of the
9 Open Meetings Amendment Act of 2010. Is there a second?

10 MR. SILVERSTEIN: Second.

11 CHAIRPERSON ANDERSON: Mr. Silverstein has
12 seconded the motion. I will now take a roll call vote
13 on the motion before us now that it has been seconded.
14 Ms. Miller.

15 MS. MILLER: Agree.

16 CHAIRPERSON ANDERSON: Mr. Alberti.

17 MR. ALBERTI: I agree.

18 CHAIRPERSON ANDERSON: Mr. Short.

19 MR. SHORT: I agree.

20 CHAIRPERSON ANDERSON: Mr. Silverstein.

21 MR. SILVERSTEIN: I agree.

22 CHAIRPERSON ANDERSON: Mr. Anderson, I

1 agree. As it appears that the motion has passed, I
2 hereby give notice that the ABC Board will hold a closed
3 meeting in the ABC Board conference room pursuant to the
4 Open Meetings Amendment Act of 2010 and issue an order
5 within 90 days.

6 All right. As Chairperson of the Alcoholic
7 Beverage Control Board for the District of Columbia in
8 accordance with D.C. Official Code Section 2574B, closed
9 meetings and Section 2574, notice of meetings of the
10 Open Meetings Act I move that the ABC hold a closed
11 meeting on -- on July 27th, 2016 for the purpose of
12 discussing and hearing reports concerning ongoing or
13 planned investigations of alleged criminal or civil
14 misconduct or violations of law or regulations and
15 seeking legal advice from our counsel on the board's
16 investigative legal and licensing agenda for July 27th,
17 2016 as published in the D.C. Register on July 22nd,
18 2016. Is there a -- is there a second?

19 MR. SHORT: Second.

20 CHAIRPERSON ANDERSON: Mr. Short has
21 seconded the motion. I will now take a roll call vote
22 on the motion before us now it has been seconded.

1 Ms. Miller.

2 MS. MILLER: Agree.

3 CHAIRPERSON ANDERSON: Mr. Alberti.

4 MR. ALBERTI: I agree.

5 CHAIRPERSON ANDERSON: Mr. Short.

6 MR. SHORT: I agree.

7 CHAIRPERSON ANDERSON: Mr. Silverstein.

8 MR. SILVERSTEIN: I agree.

9 CHAIRPERSON ANDERSON: Mr. Anderson, I -- I
10 agree. As it appears that the motion has passed, I
11 hereby give notice that the ABC Board will hold this
12 aforementioned closed meeting pursuant to the Open
13 Meetings Act. Notice will also be posted on the ABC
14 Board hearing room bulletin board, placed on the
15 electronic calendar on ABRA's website, and published in
16 the D.C. Register in as timely a manner as possible.

17 It is 5:08, and we are adjourned for the
18 day. Thank you.

19 (Whereupon the above-entitled matter was
20 concluded.)

21

22