

BOARD MEMBERS PRESENT

NICK ALBERTI, BOARD MEMBER

JAMES SHORT, BOARD MEMBER

MIKE SILVERSTEIN, BOARD MEMBER

RUTHANNE MILLER, BOARD MEMBER

ALSO PRESENT:

ANDREW KLINE

ZACHARY SHAPIRO

RAJ MULTANI

FELICIA DANTZLER

P R O C E E D I N G S

CHAIRPERSON ANDERSON: We're back on the record. Our next case is Case #16-CMP-00039, Policy/Colada Shop, License #76804. Will the parties appear and identify themselves for the record, please?

MR. SHAPIRO: Yes, Zachary Shapiro, Assistant Attorney General on behalf of the District of Columbia.

CHAIRPERSON ANDERSON: Good afternoon, Mr. Shapiro.

MR. KLINE: Good afternoon, Andrew Kline on behalf of the licensee.

CHAIRPERSON ANDERSON: Good afternoon, Mr. Kline.

MR. MULTANI: Raj Multani, the licensee.

CHAIRPERSON ANDERSON: Good afternoon, Mr. --

MR. MULTANI: Multani.

CHAIRPERSON ANDERSON: Wiltani?

MR. MULTANI: MUL. M-U-L-T-A-N-I.

CHAIRPERSON ANDERSON: Multani. All right.

Are there any preliminary matters in this case?

MR. SHAPIRO: No, Mr. Chairman.

MR. KLINE: No, there are not.

CHAIRPERSON ANDERSON: Does the government wish to make an opening statement?

MR. SHAPIRO: Yes, briefly. The evidence that you are going to be presented with today is going to show that the licensee in this case, Policy, made a substantial change in their operation by providing a dance floor where there wasn't previously one. You're going to be presented with both documentary and testimonial evidence today that will show that the licensee has committed a substantial change. You're going to hear what the district is going to argue are admissions that they've made a substantial change without approval of the board and all of that evidence will lead you to one conclusion, that Policy has committed a substantial change in the operation of their establishment. Thank you.

CHAIRPERSON ANDERSON: Mr. Kline, do you wish to make an opening statement?

MR. KLINE: We'll defer to the opening of our case.

CHAIRPERSON ANDERSON: All right. Does the government wish to call its first witness?

MR. SHAPIRO: Yes, Mr. Chairman, Investigator Felicia Dantzler.

CHAIRPERSON ANDERSON: Ms. Dantzler can you raise your right hand. Do you swear or affirm to tell the truth and nothing but the truth?

MS. DANTZLER: I affirm.

CHAIRPERSON ANDERSON: All right, thanks. That microphone doesn't work, but there's another microphone over there --

MS. DANTZLER: Yes, sir.

CHAIRPERSON ANDERSON: So please utilize that one when you speak, please, okay? Your witness, Mr. Shapiro.

MR. SHAPIRO: Thank you, Mr. Chairman. Can you please say and spell your name for the record?

MS. DANTZLER: Felicia Dantzler. F like Frank, E-L-C-I-A, Dantzler, D like David, A-N-Z

like zebra, L-E-R.

MR. SHAPIRO: Thank you. And with whom are you employed?

MS. DANTZLER: With the Alcoholic Beverage Regulation Administration.

MR. SHAPIRO: And what's your position with ABRA?

MS. DANTZLER: I'm an investigator.

MR. SHAPIRO: How long have you been employed as an investigator?

MS. DANTZLER: Since February 2007.

MR. SHAPIRO: Okay, so a little less than ten years?

MS. DANTZLER: Yes.

MR. SHAPIRO: And what the duties of an investigator for ABRA?

MS. DANTZLER: I investigate complaints and enforce the alcohol regulations for Washington D.C.

MR. SHAPIRO: Okay, does that include going into the field and performing investigations?

MS. DANTZLER: It does.

MR. SHAPIRO: And do you have to write reports?

MS. DANTZLER: I do.

MR. SHAPIRO: Okay. Have you had any training on, I guess, investigation or writing reports?

MS. DANTZLER: To come into the --

MR. SHAPIRO: With ABRA.

MS. DANTZLER: -- with ABRA?

MR. SHAPIRO: Mm hmm.

MS. DANTZLER: I'm sorry, I'm --

MR. SHAPIRO: I'll withdraw the question.

Let's talk about the issue why we're here today. How were you first referred to Policy?

MS. DANTZLER: My supervisor provided me with an e-mail with a complaint, someone complained to our director that Policy was --

CHAIRPERSON ANDERSON: Ms. Dantzler, since you're not using the microphone I can't really hear you so -- yeah. The microphone is for her, so you have to --

MS. DANTZLER: Okay, yes sir, yes ma'am.

MR. SHAPIRO: So, how were you referred to Policy?

MS. DANTZLER: Our agency received an e-mail stating that Policy was permitting dancing and they did not have a dancing endorsement.

MR. SHAPIRO: Okay. Did you visit the establishment?

MS. DANTZLER: Yes sir, I did.

MR. SHAPIRO: Okay, and, Mr. Chair may I approach?

CHAIRPERSON ANDERSON: Sure.

MR. SHAPIRO: I'm approaching with a copy of the case report. I'm going to give Ms. Dantzler a copy -- or investigator Dantzler. Do you remember when you first went to Policy?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: And when was that?

MS. DANTZLER: That was on Saturday, December the 5th, 2015.

MR. SHAPIRO: Okay, and what happened when you went to the establishment on that date?

MS. DANTZLER: On that date, I went to visit

the establishment to see if they were actually permitting dancing.

MR. SHAPIRO: Okay. Did you speak with anyone at Policy?

MS. DANTZLER: I did.

MR. SHAPIRO: And do you recall their name?

MS. DANTZLER: Asa W_____. He identified himself as one of the owners.

MR. SHAPIRO: Okay, and what were your conversations with Mr. or Ms. Walea.

MS. DANTZLER: Mr. W_____. I told him who I was and I told him the reason why I was there and I asked Mr. W_____ to provide me with their copy of their ABC license so that I could see whether or not they had a dancing endorsement.

MR. SHAPIRO: And did they have a dancing endorsement?

MS. DANTZLER: No, sir.

MR. SHAPIRO: Okay. And you actually looked at their license?

MS. DANTZLER: I did.

MR. SHAPIRO: Mr. Chair, may I approach?

CHAIRPERSON ANDERSON: Sure.

MR. SHAPIRO: I'm handing investigator Dantzler a reported copy of the establishment's license. Ms. Dantzler, or investigator Dantzler, is this license that I handed you, is this similar to the one that you looked at on that first night in December of 2015?

MS. DANTZLER: Yes, sir, it is.

MR. KLINE: Let's stipulate that they don't have a dancing endorsement if that helps.

MR. SHAPIRO: Okay. So, when you spoke to Mr. W_____, you said that he identified himself as an owner of the establishment?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Did you ever confirm that?

MS. DANTZLER: No, sir.

MR. SHAPIRO: Okay. And, can you repeat what the conversation you had with him was.

MS. DANTZLER: I told Mr. W_____ that we received -- our agency received a complaint about them permitting dancing. Mr. W_____ admitted that the establishment has had dancing since

their inception.

MR. SHAPIRO: Okay. Did you actually observe any dancing that day?

MS. DANTZLER: No, sir.

MR. SHAPIRO: Okay, and why is that?

MS. DANTZLER: Because Mr. W_____ admitted that there were individuals dancing.

MR. SHAPIRO: Okay, and just to clarify for the board -- sorry for interrupting you -- was it your impression -- actually, strike that. Can you just briefly describe how the establishment is laid out? Is there a first floor, a second floor? Is there a basement?

MS. DANTZLER: I know that there's a first floor which I also from time to time interchanged the word with street level --

MR. SHAPIRO: Okay.

MS. DANTZLER: -- so I entered the establishment on the street level. There, once I entered, there's tables and chairs, once I entered and to the right there was a bar. There was a bartender and then there was a back area

leading to the kitchen area.

MR. SHAPIRO: Okay. So, when you spoke to Mr. W_____ was that on the first floor? The street level? The second level?

MS. DANTZLER: It was on the street level.

MR. SHAPIRO: Okay. And was there any -- you said that you didn't see any dancing that day.

MS. DANTZLER: Not -- I saw no dancing that day on the street level.

MR. SHAPIRO: So, when Mr. W_____ told you that there is dancing it had to have been somewhere else in the establishment?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay, and where would that have been?

MS. DANTZLER: The second level.

MR. SHAPIRO: Okay. And, again, you didn't actually go up there that day, right?

MS. DANTZLER: That's correct, I did not.

MR. SHAPIRO: Okay. And was there a second time that you went to the establishment?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay, when was that?

MS. DANTZLER: On December the -- I believe it was December the 19th, that was the second time that I went.

MR. SHAPIRO: Okay, and that was about two weeks after the first time that you went?

MS. DANTZLER: Correct.

MR. SHAPIRO: Okay. And did you speak with anyone at the establishment on that date?

MS. DANTZLER: Yes, I met again with Mr. W_____ and advised him that I was still monitoring the establishment for the dancing violation and told him that I was going to go to the second level to see if dancing was being performed up there, if folks were actually dancing. He admitted that there was dancing.

MR. SHAPIRO: On the second floor?

MS. DANTZLER: On the second floor, yes.

MR. SHAPIRO: But again, there was no dancing on the street level, the first floor?

MS. DANTZLER: There were some individual dancing at the bar but they were like dancing in

place. A couple of ladies were at the bar and they were just dancing while their friends were sitting at the bar.

MR. SHAPIRO: Okay, but there wasn't like a cordoned off dance area or dance floor at that point?

MS. DANTZLER: Oh, no.

MR. SHAPIRO: On the street levels?

MS. DANTZLER: Oh, no.

MR. SHAPIRO: Okay, but again you didn't actually go up to the second floor.

MS. DANTZLER: Correct.

MR. SHAPIRO: And why was that?

MS. DANTZLER: Because Mr. W_____ admitted that they were dancing up on the second level.

MR. SHAPIRO: Okay. In going back to that first time that you went, on December 5th of 2015, did you advise Mr. W_____ that they could dance or they couldn't dance?

MS. DANTZLER: I told him they couldn't have dancing until they got approval from the board.

MR. SHAPIRO: Okay, and when you went on

December 19th of 2015, did you have any similar discussions with Mr. W_____?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay, and what were the discussions?

MS. DANTZLER: The same as I had told him two weeks prior that they can't have the dancing until it's approved.

MR. SHAPIRO: Okay. So, was there a third time that you went to this establishment?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay, when was that?

MS. DANTZLER: That was in January, I believe January the 5th, 2016. But I would have to look at my report to get the exact day.

MR. SHAPIRO: Okay. You have a copy of the report in front of you, correct?

MS. DANTZLER: Oh, yes I do.

MR. SHAPIRO: Okay. Turn towards the second page of that investigative report --

MS. DANTZLER: Yes.

MR. SHAPIRO: Does that jog your memory as to

when it was that you went for a third time to this establishment?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay, and when was that?

MS. DANTZLER: It was actually January the 15th of 2016.

MR. SHAPIRO: Okay and did you have any conversations with anyone at the establishment at that time?

MS. DANTZLER: Yes, I met with Jessica Sifuentes, who identified herself as the ABC manager.

MR. SHAPIRO: Okay, and what conversations -- what was the context or the -- what was the discussion you had with Ms. Sifuentes.

MS. DANTZLER: I told Ms. Sifuentes that I was an ABRA investigator and I was there investigating whether or not if they were having dancing at the establishment.

MR. SHAPIRO: Okay. Did you notice anything -- was it your impression that the establishment had changed their policy on dancing during that

time period? It seems like there was a time period between December 19th of 2015 and January 15th of 2016, so about a month --

MS. DANTZLER: Yes.

MR. SHAPIRO: -- did you notice anything about the establishment when you went back on January 15th.

MS. DANTZLER: Yeah, I noticed on the front door they had light green placards posted on the door.

MR. SHAPIRO: Okay and do you know what the placards were for?

MS. DANTZLER: I actually did not read what the placards were for. My experience is that the green placards indicate that the establishment is asking for a substantial change in their operation.

MR. SHAPIRO: Okay. And when you say placards, those are something that are provided by ABRA?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And it's I guess normal

ABRA operating procedure that when you want to have a substantial change you put up a green placard?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. So, you said you spoke to Ms. Sifuentes, correct?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay. And on this incident -- on this date, January 15th, 2016, did you actually go up to the second floor?

MS. DANTZLER: Well, yeah, I did. When I told Ms. Sifuentes the reason why I was there, she's like, she said, 'yeah, we have the placards posted.' And when I told her I was there for the dancing, to see if they were dancing, she said, 'yes, we have the placards posted.' And I told her that well, you can't have the dancing until you get approved, so I told her I was just going to go upstairs and see for myself what was going on.

MR. SHAPIRO: So, just to back up really quickly, it was your impression from your

conversations -- is this a fair assessment? It was your assessment from your conversation with Ms. Sifuentes and the placards that were posted that the placards were relating to adding dancing to their license?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: So, then you said you actually went up to the second floor?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: And what did you observe?

MS. DANTZLER: Once I got up there, there was a security guard at the entrance. I had my badge and he -- and I yelled to him -- because it was kind of loud in there -- and told him why I was there. And so, when I first walked, just steps into the room, I saw to my left individuals dancing. In front of me, the floor was a little more elevated and there were individuals dancing there, and then I perched myself in the corner to the right so that I could have a full view of the dance floor and at that time is when I noticed that over my shoulder was tables and chairs

stacked.

MR. SHAPIRO: Okay. So, just to provide a description to the board: You say that there was a dance floor, right?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: And how big was it in relation to the size of this hearing room that we're in right now? To the best of your knowledge.

MS. DANTZLER: It was about the width of this room and it's probably as far as the second -- the middle set of elevators -- to the middle set of the elevators.

MR. SHAPIRO: Okay. So it's about, I don't know, approximately 20 feet wide and 50 feet long approximately?

MS. DANTZLER: Approximately.

MR. SHAPIRO: I don't have a tape measure. And did you -- you said you actually observed people dancing?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Was there any kind of music playing?

MS. DANTZLER: Yes, sir. There was music playing.

MR. SHAPIRO: Okay. Was it a DJ, live music, live? I guess -- what type of music was it?

MS. DANTZLER: It wasn't a live performance, like a band, but there was a gentleman who sat -- stood a little higher than the floor --

MR. SHAPIRO: Okay.

MS. DANTZLER: Though I didn't hear him say anything, a DJ that was saying any words, I could see him moving in the area because I can see the -- like -- it looked like a laptop computer and it was lit and you could see some movement over there.

MR. SHAPIRO: Okay. Turning to exhibit 1 of your investigative report --

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Was this a photograph that you took on January 15th of 2016?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And can you describe to the members of the board what it is that this

picture is, I guess, depicting?

MS. DANTZLER: Yes. Behind the gentleman in the background, behind the gentleman in the blue shirt, those were patrons who were dancing to the music. You can see their arms in the air.

MR. SHAPIRO: And that is -- if you're coming up the stairs, I guess, where is this picture taken in relation to I guess coming up the stairs of this establishment?

MS. DANTZLER: Coming up to that second stairs, you cannot see it, but where -- just to give you an idea where I entered -- where the gentleman in the blue shirt is, I actually came from that direction, from that, the left, the right side of him coming into the door, so he would be on my left.

MR. SHAPIRO: Okay. And, again, this is a picture that you took on January 15th of 2016?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: And turning to exhibit 2 from your investigative report, this is another picture that you took on that same date?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And can you describe to the members of the board what it is that this picture depicts?

MS. DANTZLER: This picture is showing patrons standing and you can't see -- I was unable to catch all of the movement, but there were a group of -- where the young lady, the arm is up, there were ladies right there who were dancing.

MR. SHAPIRO: Okay. And you're saying the arm is up, that looks like it's in like the center of the picture slightly to the right?

MS. DANTZLER: Yes, with the gentleman with the blue. You can see a guy with a blue coat --

MR. SHAPIRO: Okay.

MS. DANTZLER: -- her arm is right behind his back.

MR. SHAPIRO: Okay. And, again, you actually saw people dancing?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And turning to exhibit 3

of your investigative report, is this another picture that you took on January 15th of 2016?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And can you describe to members of the board what it is that this picture displays?

MS. DANTZLER: Yes, I was actually standing in front of this display and I was able to take a picture of the tables and the chairs stacked.

MR. SHAPIRO: Okay. So, was it your impression that they had moved the tables from the area of the second floor and stacked them in the corner of the establishment?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And this is in some corner of that second floor, correct?

MS. DANTZLER: Right. This was -- once I came upstairs, once I entered into -- entered through that first door on the second level, to the left is where you saw the individuals dancing. To the right was a corner, is where I stood and I just happened to look over my shoulder and saw this,

the display of the tables and chairs stacked.

MR. SHAPIRO: Okay. How long were you in the establishment for that third visit on January 15th of 2016?

MS. DANTZLER: Probably five, five to six minutes.

MR. SHAPIRO: Okay. Did you talk to Ms. Sifuentes on the way out of the establishment? While on your way out of the establishment?

MS. DANTZLER: Only to say goodbye.

MR. SHAPIRO: Okay. Did you ever advise her that day that they're not allowed to have second -- dancing on the -- any floor of the establishment?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And then, was there a fourth time when you went to that establishment?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. When was that?

MS. DANTZLER: I returned to the establishment on January the 17th, the actual next night, it was a Saturday night for Sunday

morning.

MR. SHAPIRO: Okay. And did you speak with anyone at the establishment at that time?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay. And who was that?

MS. DANTZLER: Ms. Sifuentes again.

MR. SHAPIRO: Okay. So, the same person that you spoke to the night prior?

MS. DANTZLER: Yes.

MR. SHAPIRO: And what were the conversations that you had with her at that point?

MS. DANTZLER: Just reminding her the reason I was there and she just welcomed me to go to the second floor.

MR. SHAPIRO: Okay. And did you notice if those placards that you mentioned earlier were still posted?

MS. DANTZLER: Yes, sir, they were.

MR. SHAPIRO: Okay. And then you -- did you actually go up to the second floor?

MS. DANTZLER: Yes, I went to the second floor and saw more individuals dancing and also

noticed the tables and chairs were also still stacked.

MR. SHAPIRO: Okay. And turning to exhibit 4 of your investigative report, is that a photograph that you took on January 17, 2016?

MS. DANTZLER: Yes.

MR. SHAPIRO: And, can you describe to the members of the board what it is that this picture is depicting?

MS. DANTZLER: Individuals dancing.

MR. SHAPIRO: Okay. And, again, you actually noticed individuals dancing that day?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Do you remember approximately how many?

MS. DANTZLER: I want to say approximately 22 or better.

MR. SHAPIRO: Okay. And was the area set up in a similar manner?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: With the raised areas and then, I guess, that turns to exhibit 5, can you

describe to the members of the board what exhibit 5 depicts?

MS. DANTZLER: Exhibit 5 depicts the same area where I saw tables and chairs sat -- I mean stacked the night before -- it was the same display with tables and chairs stacked.

MR. SHAPIRO: And is that a picture that you took on January 17, 2016?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: And was there music being played on that Saturday, Saturday evening - Sunday morning, January 17?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: And was it similar to what it was the night prior?

MS. DANTZLER: Yes. I just want to add, though, just to clarify my statement, with the 22 people on the floor dancing, there wasn't all 22 dancing, there was just a few of those individuals dancing --

MR. SHAPIRO: Okay.

MS. DANTZLER: -- probably about 12 of those

folks were dancing.

MR. SHAPIRO: But there was an actual space for them to dance, correct?

MS. DANTZLER: Yes, sir.

MR. KLINE: Leading. Objection. Leading the witness.

MR. SHAPIRO: Okay. Was there a space available for them to dance?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And was it set up in a similar manner that you noticed the night prior?

MS. DANTZLER: Yes, sir.

MR. SHAPIRO: Okay. And, again, can you describe to the board how it is that it was set up?

MS. DANTZLER: Well, there were no tables and chairs set up on the second level, like I see it on the street level.

MR. SHAPIRO: Okay. And, did you notice anyone dining or was there space for dining on the second floor on either of your visits?

MS. DANTZLER: Space for -- well, no, the

floor was occupied by the patrons standing and dancing so there was no space there where the tables were or chairs.

MR. SHAPIRO: Okay. Did you notice anyone eating?

MS. DANTZLER: No, sir.

MR. SHAPIRO: And, just generally speaking, what's your impression, or what's your understanding of what a licensee, or an establishment, needs to have a dance floor and allow dancing.

MS. DANTZLER: They would have to fill out an addendum application requesting a substantial change and asking the board for dancing or whatever the change they would like to have.

MR. SHAPIRO: Okay. Nothing further.

CHAIRPERSON ANDERSON: Your witness, Mr. Kline.

MR. KLINE: Investigator Dantzler, it's your position that if a licensee allows someone to dance and they don't have a dancing endorsement, or that hasn't been listed in their application,

that they're in violation? Is that what your position is?

MS. DANTZLER: Could -- could you clarify the question?

MR. KLINE: I'll withdraw it and try to make it a little simpler. So, you went in and on one of your visits you saw two people dancing on the first floor, correct?

MS. DANTZLER: Yes.

MR. KLINE: Is it your position that the establishment allowing these two people to dance is a violation?

MS. DANTZLER: No.

MR. KLINE: So, that's not a violation.

MS. DANTZLER: No.

MR. KLINE: Okay, so when you went to the second floor and you saw, I think you said approximately 12 people dancing.

MS. DANTZLER: Yes.

MR. KLINE: It's your -- is it your position that that's a violation?

MS. DANTZLER: Yes, sir.

MR. KLINE: Okay. And it's your position that that's a violation because the establishment permitted them to dance, correct?

MS. DANTZLER: That they created the environment for them to dance.

MR. KLINE: And that would be by playing music.

MS. DANTZLER: No, what they did on the second floor was not how the operation was on the street level. The street level was set up for dining with the tables and the chairs, the second level wasn't set up in the same manner.

MR. KLINE: Isn't it a fact that the second level has banquettes that are permanent and are there at all times?

MS. DANTZLER: That I don't know.

MR. KLINE: You were in the space and you observed it, correct?

MS. DANTZLER: I didn't say I observed that. I observed the floor, the dance floor where the patrons were dancing were void of chairs and tables.

MR. KLINE: But you said there was no space for dining. That was your testimony wasn't it?

MS. DANTZLER: Yes, because the patrons were standing in the space.

MR. KLINE: Okay, and so if you say there were patrons standing in all the space, it's your testimony that there were no banquettes, there was no other place to sit, is that your testimony?

MS. DANTZLER: Yes.

MR. KLINE: Okay. Now, you state you saw, I think at most approximately 12 people dancing, correct?

MS. DANTZLER: On the second visit.

MR. KLINE: All right. What was the most people you saw dancing on any of your visits?

MS. DANTZLER: It was probably about -- about 20.

MR. KLINE: About 20.

MS. DANTZLER: Yes, sir.

MR. KLINE: And you testified that the space is 20 x 50, correct?

MS. DANTZLER: Yes.

MR. SHAPIRO: Objection, that's -- was my characterization.

MR. KLINE: You agreed with the characterization of Mr. Shapiro, correct?

MS. DANTZLER: That's correct.

MR. KLINE: All right. And that's 1000 square feet if we do simple math and we do the multiplication, correct?

MS. DANTZLER: I'll agree.

MR. KLINE: All right. And you can fit, in standing spaces about 200 people in such a space, correct?

MR. SHAPIRO: Objection. She's not the fire marshal. She can't testify to that.

MR. KLINE: I didn't ask her what the law is, I asked her if she knew if that many people could fit in there.

CHAIRPERSON ANDERSON: If you know the answer, Ms. Dantzler. If you don't know, you don't know.

MS. DANTZLER: I don't know.

MR. KLINE: Okay. How many people do you think could fit in 1000 square feet, do you have any idea?

MS. DANTZLER: No, sir.

MR. KLINE: Okay. Now, looking at exhibit 4, do you have that in front of you?

MS. DANTZLER: With indulgence -- I have it.

MR. KLINE: The woman in the red dress, she's not -- is it your characterization that she's dancing?

MS. DANTZLER: No, she's not.

MR. KLINE: All right. Now turning back to exhibit 2, you testified specifically about an arm raised in the air --

MS. DANTZLER: Yes.

MR. KLINE: -- and it's your position that that person was dancing, correct?

MS. DANTZLER: Yes, sir.

MR. KLINE: There are two women -- one in black with her back to us, and one in a shoulderless blue shirt with their arms to their sides, correct?

MS. DANTZLER: The shoulder-less female's arms are not to her side.

MR. KLINE: May I approach the witness?

CHAIRPERSON ANDERSON: Sure.

MR. KLINE: I'm referring to this woman right here.

MS. DANTZLER: Oh, with shoulders, oh okay.

MR. KLINE: Shoulder-less, no covering of the shoulders.

MS. DANTZLER: There's a woman behind her with a brighter blue dress and a dark bag, I'm not talking about her --

MS. DANTZLER: The shoulder-less.

MR. KLINE: -- I'm talking about the woman that's to her right and to the front of her.

MS. DANTZLER: Yes and she --

MR. KLINE: All right, you see those two women?

MS. DANTZLER: Yes.

MR. KLINE: You didn't observe them dancing, did you?

MS. DANTZLER: I -- I observed this area of

individuals dancing.

MR. KLINE: That wasn't my question to you. I'm talking -- I'm focused on these two people. These two people appear to be engaged in conversation, don't they?

MS. DANTZLER: Yes.

MR. KLINE: And it's fair to say that in this space there is an intermixing of people dancing, some people talking, some people sharing cocktails. Isn't that a fair characterization of what was going on in this space?

MS. DANTZLER: No.

MR. KLINE: No?

MS. DANTZLER: No.

MR. KLINE: So, what's your description of what was going on? People were just dancing?

MS. DANTZLER: There were, you know, people dancing. My camera isn't capturing every, you know, synchronized movement.

MR. KLINE: I'm not asking about your camera, I'm asking about what you observed, the activity that you observed in the premises when you

visited the premises.

MS. DANTZLER: I observed individuals dancing and I observed some individuals not dancing.

MR. KLINE: And the people who were not dancing, what were they doing?

MS. DANTZLER: Talking.

MR. KLINE: And some of them were consuming cocktails presumably?

MS. DANTZLER: Probably.

MR. KLINE: You don't remember if they were?

MS. DANTZLER: I didn't concentrate on the drinking, I was concentrating on the dancing.

MR. KLINE: You testified that this initiated as a result of an e-mail complaint that was provided to you by your supervisor, correct?

MS. DANTZLER: Yes, sir.

MR. KLINE: Do you have a copy of that complaint?

MS. DANTZLER: I don't have it. I can get a copy if you --

MR. KLINE: And the complaint was that the establishment was permitting dancing, correct?

MS. DANTZLER: Without an endorsement.

MR. KLINE: Okay. They were permitting dancing without an endorsement.

MS. DANTZLER: Yes, sir.

MR. KLINE: All right, and throughout the testimony you were asked and you testified several times, and I wrote it down, I couldn't help not, that the complaint was that they "have dancing" and there was complaints about them having dancing. What does "having dancing" mean? What does that mean?

MS. DANTZLER: Well, this is the complainant's words that they were having dancing without an endorsement.

MR. KLINE: Okay. But those were your words, actually, what you said about the complainant was that the establishment was permitting dancing without an endorsement. The having dancing I believe those were your words. That they were having dancing. You testified that way several times. What does that mean?

MS. DANTZLER: I think it's the same. Have -

- if you have it, you're permitting.

MR. KLINE: Okay.

MS. DANTZLER: If I have it I'm permitting to have it.

MR. KLINE: All right, so turning to my original question, it's your position that if you permit dancing without an endorsement you're in violation.

MS. DANTZLER: By law, yes.

MR. KLINE: Okay. Now, you said that you went in and you saw chairs and tables stacked in the corner, correct?

MS. DANTZLER: Correct.

MR. KLINE: Were you -- have you only been in the establishment the times that are referenced in this report or have you been into this establishment other times?

MS. DANTZLER: I've been there other times.

MR. KLINE: All right. Have you walked -- have you seen these tables in use on the second floor at times?

MS. DANTZLER: I was going to say, let me

finish. I've been there, not on the second floor, but the street level, and for the monitoring for the outdoor café when they wanted to have that.

MR. KLINE: Okay. So your only times on the second floor of this establishment were when you visited the four or five times that you were there in connection with this report?

MS. DANTZLER: To the best of my knowledge, yes.

MR. KLINE: Okay. So you don't know whether or not they used those tables for dining at times or not?

MS. DANTZLER: That's correct.

MR. KLINE: Okay. You were also asked about the music that was playing. You talked about them having a DJ. They, in fact, have an entertainment endorsement, don't they?

MS. DANTZLER: Yes.

MR. KLINE: So the DJ would be permitted.

MS. DANTZLER: Yes.

MR. KLINE: I beg the board's indulgence.

That's all I have at this time, thank you.

CHAIRPERSON ANDERSON: Do we have any questions by any board members? Mr. Alberti.

MR. ALBERTI: Investigator Dantzler, thank you for your report. Did you happen to investigate the placards that you saw?

MS. DANTZLER: No, sir.

MR. ALBERTI: Did you on your visit on January 15th did you happen to observe what was occurring on the first floor?

MS. DANTZLER: Yes. Yes, there was -- you said on January the 15th?

MR. ALBERTI: Yeah, the first -- right, the first of the two nights in January of 2016.

MS. DANTZLER: Yeah, it was pretty much empty. There were a few folks there dining. It was -- I mean I could see clear across the floor.

MR. ALBERTI: Okay. And on the 17th?

MS. DANTZLER: For the first floor?

MR. ALBERTI: Yeah.

MS. DANTZLER: The same. I could look clear across the floor.

MR. ALBERTI: On the 15th, you said that approximately 20 some people were dancing, I think was your testimony?

MS. DANTZLER: No, it was approximately 12 --

MR. ALBERTI: 12 on January 15th.

MS. DANTZLER: Yes.

MR. ALBERTI: How many people were there?

MS. DANTZLER: On the 15th?

MR. ALBERTI: Yeah.

MS. DANTZLER: It could have been probably 20-something people, maybe 30.

MR. ALBERTI: Oh, so it wasn't very crowded then.

MS. DANTZLER: No, it was early.

MR. ALBERTI: 10:15 p.m.?

MS. DANTZLER: Yeah, that's pretty early.

MR. ALBERTI: Were all those people sort of in one area?

MS. DANTZLER: Yes, the second floor.

MR. ALBERTI: In one area of the second floor?

MS. DANTZLER: Yes.

MR. ALBERTI: How many people do you think could fit in that -- comfortably in that area on the second floor? In the open area that was there.

MS. DANTZLER: Maybe 60 people.

MR. ALBERTI: Okay. And on the 17th, you saw how many some people dancing?

MS. DANTZLER: Now, Mr. Kline asked me the number --

MR. ALBERTI: On the 15th, you said you saw about 12 people dancing, right?

MS. DANTZLER: Yes.

MR. ALBERTI: On the 17th, how many people did you see dancing?

MS. DANTZLER: Probably eight.

MR. ALBERTI: That's -- when you testified you saw 20-some people dancing, what date was that?

MS. DANTZLER: No, there wasn't 20 people dancing. I saw about 22 people there and only about 12 dancing, and then Mr. Kline asked me how many total for those two nights and I said it was

about 20 total.

MR. ALBERTI: Okay. So, on the 17th you saw about 20 people there?

MS. DANTZLER: About 22.

MR. ALBERTI: About 22? And how many people were dancing?

MS. DANTZLER: Twelve. About 12 of them.

MR. ALBERTI: The DJ was playing both nights?

MS. DANTZLER: Yes.

MR. ALBERTI: How would you characterize the type of music that the DJ was playing?

MS. DANTZLER: I guess regular house music. It was loud.

MR. ALBERTI: What [inaudible 4:22:35] people would refer to as house music?

MS. DANTZLER: I think so.

MR. ALBERTI: Okay. Well, generally, I think that house music is -- how do I say this? It's music that people would dance to as opposed to music you can't imagine people really wanting to dance to.

MS. DANTZLER: It definitely wasn't classical

music, it was --

MR. ALBERTI: Right, right.

MR. KLINE: We'll stipulate that.

MR. ALBERTI: Okay, I have no further questions at this time.

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

MS. MILLER: I have a couple.

CHAIRPERSON ANDERSON: Yes, Ms. Miller?

MS. MILLER: Just to be clear, is it your contention that: Number one they are dancing without board approval, is that correct?

MS. DANTZLER: Yes. Yes.

MS. MILLER: Okay, and then when you were describing how large the area was in which they were dancing on one day or something, as being bigger than this hearing room, is that correct?

MS. DANTZLER: About as wide as the hearing room, yes.

MS. MILLER: Was that on one day or not one day?

MS. DANTZLER: The floor --

MS. MILLER: No, that you observed dancing in that large space?

MS. DANTZLER: It was two nights.

MS. MILLER: Two visits?

MS. DANTZLER: Yes.

MS. MILLER: Okay. And was the area marked off in any way for dancing?

MS. DANTZLER: I couldn't tell. It was dark there so I couldn't see if there was like roping or anything like that, no, I couldn't see that.

MS. MILLER: You just saw this large area and there were people dancing in it?

MS. DANTZLER: Yes.

MS. MILLER: Is that it?

MS. DANTZLER: Yes.

MS. MILLER: Okay. And was that different from on another visit?

MS. DANTZLER: No, it was the same the following night.

MS. MILLER: Okay.

MS. DANTZLER: It was the same setup.

MS. MILLER: Okay. That's all, thank you.

MS. DANTZLER: You're welcome.

CHAIRPERSON ANDERSON: Are there any other questions by any other board members? Mr. Silverstein?

MR. SILVERSTEIN: On the first floor you said there were two people dancing and you did not consider that to be a violation because two people can get up and dance and you can't necessarily stop it. Is that basically the -- you know -- people hear music and they get up and sway. Explain the difference between that and what accommodation if or what you saw with the two?

MS. DANTZLER: Well, the two people I saw at the bar, I viewed them as there were two other people sitting down and then there were two young ladies standing there and they were like, would go like this with their friends and talking, you know, and just like having fun right there, right where they stood. So, it was different than when I went to the --

MR. SILVERSTEIN: And the difference on the

second time was quantitative.

MS. DANTZLER: Right, there were more people, there were -- the area was where the dining area would be actually set up --

MR. SILVERSTEIN: The area had been cleared out.

MS. DANTZLER: Yeah, I saw all the tables and chairs right in that area there, where people were standing.

MR. SILVERSTEIN: Very well, no more questions.

CHAIRPERSON ANDERSON: Anybody else? Mr. Kline, do you have any questions based on what the board asked?

MR. KLINE: No.

CHAIRPERSON ANDERSON: Mr. Shapiro, do you have any questions?

MR. SHAPIRO: Yes, a couple. This is based on the question that Mr. Kline said. But when you went and you actually went to the second floor on the visits January 15th and January 17th, those are the [inaudible 4:26:53]?

MS. DANTZLER: Yes.

MR. SHAPIRO: And would you describe the second floor as well lit or dim? I guess, what is the general lighting in there?

MS. DANTZLER: The first floor, the street level, was well lit, and the lights were -- they were on, I could actually see. But the second floor, it was far beyond mood lighting, it was really dark, it was lit by the strobes of lighting.

MR. SHAPIRO: So, if there were banquettes or other type of tables around the corner, that could possible -- that lighting could possibly impact your ability to see anything that would be on the periphery of that room, would that be a fair statement?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay. And just to clarify some questions that the board asked earlier. You went a total of four times, is that correct?

MS. DANTZLER: Yes.

MR. SHAPIRO: For this incident.

MS. DANTZLER: Yes.

MR. SHAPIRO: Or for this, why we're saying incident. The first two times did you go upstairs and actually observe dancing?

MS. DANTZLER: No.

MR. SHAPIRO: Okay. And why did not you not actually do that?

MS. DANTZLER: Mr. W_____ admitted and said 'yes, we have dancing.'

MR. SHAPIRO: Okay.

MS. DANTZLER: [inaudible 4:28:06].

MR. SHAPIRO: Okay, and then you went upstairs, the two second -- the last two times that you went?

MS. DANTZLER: Yes.

MR. SHAPIRO: And you actually did see people dancing?

MS. DANTZLER: Yes.

MR. SHAPIRO: Okay. And from your understanding of the ABRA regulations is there a minimum amount of people that are needed to be dancing to have a dancing endorsement?

MS. DANTZLER: No, sir.

MR. SHAPIRO: Okay. What's your understanding of when a dance -- a dancing endorsement is necessary?

MS. DANTZLER: That you're --

MR. KLINE: Objection. This case isn't about a dancing endorsement, it's about a substantial change, that's what has been charged.

MR. SHAPIRO: About a substantial change by allowing a dance -- a dancing endorsement.

MR. KLINE: There's one charge, it's making a substantial change without board approval. That's the sole charge and this is then to show cause.

CHAIRPERSON ANDERSON: Overruled.

MR. SHAPIRO: What is your understanding of what is needed for a dancing endorsement? What type of behavior by an establishment requires a dancing endorsement?

MS. DANTZLER: The licensee has to fill out an application to receive approval of the board for the type of change that they wish to have.

MR. SHAPIRO: That's all I have.

CHAIRPERSON ANDERSON: Ms. Dantzler, thank you for your testimony. You may step down. Thank you, investigator Dantzler.

MS. DANTZLER: Okay.

CHAIRPERSON ANDERSON: Do you have any other witnesses?

MR. SHAPIRO: No, but I would like to submit some records into evidence.

CHAIRPERSON ANDERSON: What documents?

MR. SHAPIRO: Several documents: Number one would be investigator Dantzler's investigative report. I have copies of it with colored pictures with the photographs if that would help the board.

MR. KLINE: No objection.

CHAIRPERSON ANDERSON: So moved.

MR. SHAPIRO: I'd also like the board to take judicial notice of a couple records relating to this establishment that are ABRA records, and I would ask that ABRA take judicial notice of its own records, the first of which is an application

filled out by the establishment, the licensee did it I guess March 30th of 2007, and I have copies of that if the board would like to review them.

CHAIRPERSON ANDERSON: Mr. Kline?

MR. KLINE: No objection.

CHAIRPERSON ANDERSON: So moved. At some point I need to mark them and then we'll get them.

MR. SHAPIRO: There's two other records that I'd like to introduce to -- I'm sorry?

CHAIRPERSON ANDERSON: You can just give them to me at one time to identify the documents.

MR. SHAPIRO: Okay, so, first is the 2007 application, the second would be an order on settlement agreement to withdraw a protest order of the board which is dated November 20th of 2013, and that's a board order with a settlement agreement attached relating to the same establishment.

CHAIRPERSON ANDERSON: Mr. Kline.

MR. KLINE: Objection on the grounds of relevance.

CHAIRPERSON ANDERSON: I'm sorry, what was the document again?

MR. SHAPIRO: It was an order on a settlement agreement and withdrawal of protest. It was an ABRA, an ABC border order, and I can point out as to why it would be relevant.

CHAIRPERSON ANDERSON: Go ahead, Mr. Shapiro.

MR. SHAPIRO: On page -- it's on the settlement agreement that is attached, it's page 2 of that settlement agreement, number 4, entertainment endorsement, it says "live entertainment is limited to a live DJ on the second floor only as well as live music that does not impact surrounding residents and, in addition, live entertainment except that of the DJ, cannot be connected to amplifiers or the sound system of the establishment.

This provision is intended to protect the peace and quiet of the neighborhood. So, it would be our contention that any -- going back to the application, the first page of that, dated 2007, you'll see there's an entertainment

endorsement, it's checked off entertainment, dancing is not checked off, cover charge isn't checked off, so when you read this order in tandem with this application and there's a section that says entertainment endorsement -- the application says entertainment endorsement, there's nothing in this settlement agreement that says dancing is part of the entertainment endorsement.

CHAIRPERSON ANDERSON: And, I'm not following you -- I'm not following you -- I mean, it's -- I'm not following you in the sense that -- but it is part of ABRA's records so I'll admit it because it's a part of ABRA's records, but I'll take it for what it's worth, but I'm not following your intent or thought, but I'm just saying it's part of our record, so.

MR. KLINE: Yeah, I'm just saying it's not relevant, I don't have any objection to it, it's part of your records, but I don't think it's relevant.

CHAIRPERSON ANDERSON: Yeah.

MR. SHAPIRO: I guess I didn't phrase it eloquently.

CHAIRPERSON ANDERSON: Maybe it's just that I'm not following.

MR. SHAPIRO: But, I guess the District's contention is that there's a category --

MR. KLINE: I withdrew the objection. Why are we still talking about it?

CHAIRPERSON ANDERSON: Right, so it's admitted. The document is admitted.

MR. SHAPIRO: So, number three would be the entertainment endorsement application which is dated December 11, 2015, and this again is an ABRA record.

CHAIRPERSON ANDERSON: All right is that the extent of it or do you have more?

MR. SHAPIRO: Correct, that's it.

CHAIRPERSON ANDERSON: So how many documents, I'm sorry, were there?

MR. SHAPIRO: There's three. Number one was the application from 2007, number two was the order of the board from 2013, and number three

was the entertainment endorsement application.

CHAIRPERSON ANDERSON: All right, so admitted. Is that it? Ms. Randall, Mr. Shapiro is trying to get your attention. Is that it, Mr. Shapiro? The government rests?

MR. SHAPIRO: That's the government's case.

CHAIRPERSON ANDERSON: All right, thank you Mr. Shapiro. Mr. Kline, do you wish to make an opening statement?

MR. KLINE: First, I would like to move to dismiss the charge. There is one single charge in this case, and the charge is a violation of 25 -- D.C. Code Section 25-752, which says that 'before a licensee may make a change in the exterior or interior or a change in format of the licensed establishment which would substantially change the nature of the operation of the licensed establishment as set forth in the initial application for the license, the licensee shall obtain approval of the board.' And then, it goes on to say 'in determining whether the proposed changes are substantial, the board shall

consider whether they are potentially of concern to the residents of the area surrounding the establishment including changes which would,' and then we go to number six, which is the one that's at issue here: 'Provide permanent space for dancing by patrons where none existed previously.' Now, there is no testimony and no evidence that there's permanent space for dancing. The only testimony we have is that there's some chairs and tables stacked up in the corner, there isn't any indication that there's a permanent dance floor, and that's all we have. We don't have anything concerning providing permanent space for dancing. That's number one. Number two, it says if none existed previously. Now, the government introduced in the government's exhibit, so I think we have to presume that it's true, the application for an endorsement for dancing, and if you read section 10, which is the statement that is signed and notarized by the applicant and introduced by the government, it says 'need to include dancing to

existing entertainment endorsement.' We have a DJ. People will dance. We have operated like this for seven years, need to include dancing. So, there's no change here. I mean this is what's going on. And there isn't any testimony concerning a dance floor. It's hard in this argument not to get caught up in an old Kevin Bacon movie about allowing people to dance, but that seems to be what we're talking about here. We have a space that, according to the investigator's testimony, is 1000 square feet. That's what we were told. Now, we can go to the code book or, fortunately, we have Mr. Short here and he knows that in a standing environment five square feet per person is the appropriate rule. That's 200 people space. And we're saying eight people were dancing one night, 12 people were dancing another night. This is not a dance party. This is people congregating, you can see this for yourself that some people were talking, some people were on their cell phone, some people are consuming cocktails, and, yes, some people

are dancing. Are we suggesting that ABC licensed establishments are supposed to go over to people, tap them on the shoulder and say, 'oh, no, no, sir. Oh no, no, madam, you're shaking your hips too much. We can't have that in here. That's dancing. And we're not allowed to permit that.' Nowhere in the statute that's been cited do I see anything about permitting dancing. What I see, again, though I'll restate it just so we're crystal clear, what this case is about, what the applicant is charged with, is providing permanent space for dancing by patrons where none existed previously. That's it. And there isn't any testimony as to what existed previously. Instead, we're talking about an application -- whether there was an application for a dancing endorsement. Now, there also was no testimony that there was any advertising of dancing, any promoting of dancing, anything that one might expect from a nightclub style establishment which clearly this section of the code is defined to get at. It's not defined to get at a restaurant

that, according to the testimony of the investigator, has people dining on the first floor and where there is space on the second floor where chairs and tables might be moved to accommodate the people that are there with regard to that. So, we would ask, given that there's been a failure to prove the only charge that's been charged in this case, that this charge be dismissed. Thank you.

CHAIRPERSON ANDERSON: What I'm going to say at this juncture, Mr. Kline, is that I'm -- the board will take your motion under advisement. I'm not going to entertain for us to vote on this motion here. I would prefer for you to present your case but we will, prior to voting on the merits, that we will consider your motion.

MR. KLINE: Thank you, sir.

MR. SHAPIRO: Can I have an opportunity to respond, or can the district have an opportunity to respond?

CHAIRPERSON ANDERSON: Yes.

MR. SHAPIRO: Thank you.

CHAIRPERSON ANDERSON: I've not told you what I'm going to do but go ahead.

MR. SHAPIRO: I understand, but I'd just like to get my points in there while the record is open. Turning to the 2007 application that was just submitted into evidence, if you turn to page three of that you'll note, it says -- I'll read the entire question, it's question number 15. "Answer the following if you are applying for a hotel, tavern, restaurant, nightclub, club, multipurpose facility, boat or train license. Describe the nature of operation including the type of food served, the type of entertainment, including nude performances, any goods or services to be provided. If dancing is provided, please indicate the dimension of the dance floor and the locations." Then their answer -- this is the establishment's answer, says, "French American fusion brasserie will serve in the basement and first floor, Asian cuisine will be served on the second floor. No nude performances will take place. DJ and CD music. No designated

dance floor." Another piece of evidence, again the district could argue that this is an admission by the licensee, is the entertainment endorsement application that was filed in December of 2015. Answer to number 10: "Need to include dancing." They put -- dancing is their own words there. This isn't a term that I am defining for them, this is their own words. It says, "need to include dancing to existing establishment entertainment endorsement. We have a DJ, people will dance. We have" -- I think that word says "operated -- like this for seven years, need to include dance." So, these are words that they are using. These are not words that I'm creating in saying that this is dancing. These are words they are saying. What you also heard from investigator Dantlzer was she went there three times. The first time was in December. Their owner said 'we have dancing on the second floor'. She goes upstairs and that's two times. There are tables and chairs moved to the corners. Now, I don't know what permanent is

but she went there twice and that's the only thing she saw. So, it's definitely not a one-time incident here which is why it was brought under a substantial change. With regards to the inference that Mr. Kline made that this is -- there's only one charge and that's for substantial change -- it's because substantial change in violation of the entertainment endorsement, or not having dancing, are similar offenses and they would be merged by the board because we'd be proving the same thing.

Again, there have been admissions via documents submitted to ABRA, there have been admissions by owners of the establishment that there is dancing. There's photographs of a dance floor. Now, I understand there might be -- I believe the definition was five square feet per person. What investigator Dantzler said was there's about -- I forget the exact numbers -- she said there was about let's say between 20 and 30 and she saw about 10 of them dancing. So, yeah, if there wasn't 300 people dancing there

it's because there's only 20 people there. We can get lost in how many people and what the occupancy is, but that's not what the facts are here. To understand what the argument they're trying to make is 'dancing is a term that they use, they don't have a dancing endorsement, they have multiple occasions where the floor was seen in this way' and it's -- I can't believe that I'm even acknowledging this argument. Thank you.

MR. KLINE: If I may just briefly. I know you're going to rule but I just want to make one point.

CHAIRPERSON ANDERSON: Yes, Mr. Kline.

MR. KLINE: There's lots of talk about dancing. There's no mention of providing permanent space for dancing in the argument we made for the government. That's it. It isn't about that people are dancing. We can see people are dancing. That's not the issue. That's not what this case is about. This case is about, as charged -- and we didn't charge -- providing permanent space for dancing. That's what this is

about. And the fact that people are or are not dancing is really irrelevant to that discussion. It's a question of whether there was space, permanent space, provided. Permanent space means a dance floor. That's what it means. We've all seen them. We all know what they look like. We know what a dance floor looks like. There wasn't any testimony that there was a dance floor here. There was testimony that there was some furniture there. We call our first witness, Raj Multani.

CHAIRPERSON ANDERSON: Can you raise your right hand? Do you swear or affirm to tell the truth and nothing but the truth?

MR. MULTANI: I do.

CHAIRPERSON ANDERSON: All right. There's a microphone, please do use the microphone. You can, but also for her to hear, but when you speak, speak loud. You have to use your outside voice so -- I know that microphone does work. Your witness, Mr. Kline.

MR. KLINE: Do you want to swear?

CHAIRPERSON ANDERSON: I did.

MR. KLINE: Oh, I didn't know. Mr. Multani, what is your connection to the licensee?

MR. MULTANI: I'm the managing partner and owner, I guess of the license.

MR. KLINE: All right. In fact you're representing the holding company, correct?

MR. MULTANI: That's right.

MR. KLINE: So, you're a manager and one of the managing members?

MR. MULTANI: I am.

MR. KLINE: And you, in fact, have been such since the initial application, correct?

MR. MULTANI: Oh, yeah.

MR. KLINE: And you've been involved in this business from its development, from its inception?

MR. MULTANI: I have.

MR. KLINE: Okay. And you're listed on the initial application.

MR. MULTANI: I'm not sure about the initial application but I am on the liquor license, the ABRA license.

MR. KLINE: Okay. These records will corroborate that you are. Now, the initial application was submitted back in 2007. It was some time after that when the establishment opened, correct?

MR. MULTANI: Almost two years after.

MR. KLINE: So it wasn't until sometime in 2009?

MR. MULTANI: 2009, May of 2009.

MR. KLINE: And why was that? Why the long delay?

MR. MULTANI: Underpinning license instruction -- you know, we had an antique store right next door that said anytime we shook their walls that things fell off their shelves. It took a long time to do construction.

MR. KLINE: Tell the board about this business. What is it that you do there, what are the different facets of this business?

***MR. MULTANI: Sure. Policy has been around since [inaudible 4:48:24] discussions since 2007. It started off as kind of a

French/American cuisine. Now we've moved to a Colombian style cuisine, but we operate Tuesday through Sunday with Saturday/Sunday brunches. We do everything from a happy hour to dinner, to late night service as well, which is open to 1:00 a.m. on the weekends. Upstairs is our kind of our flex space where we do dinner, where we do events. We've got local events for the -- Center there and any one of our signatories, as well as, you know, back to where our DJ sits. So, you know, we work on major silos there from happy hour to dinner to late night service and then just on the weekends to the

MR. KLINE: All right, so let's talk about the second floor.

MR. MULTANI: Sure.

MR. KLINE: The second floor -- do you know approximately how many square feet it is?

MR. MULTANI: So, if you take the summer garden out and you -- so each floor is we're looking at 333 and then upstairs is about 25 -- 2200 square feet I would think.

MR. KLINE: And are there other service areas?

MR. MULTANI: There are. A bar, service areas, there's a summer garden which is an outside portion, two massive stairwells that kind of take up a large amount of square footage as well.

MR. KLINE: All right, so the 1000 square feet that we heard from the investigator in terms of usable square feet might not be that far off?

MR. MULTANI: Usable square feet if you compile everything together, all the knicks and bends and sways, potentially yeah.

MR. KLINE: And in terms of seating, how is it configured? Is it configured one way? Does it change? Tell the board how it's configured.

MR. MULTANI: The top floor is permanent. It's fixed banquettes with elevation, there's three steps up and there's banquette seatings with tables which is on two levels. In the back there's the same thing, there's one, two, three, four, six tables that are fixed, I guess, on the

floor, right in front of the bar, so you can't do anything with the banquettes or the elevated seating. Those are fixed as they are. But the few tables -- three tables that we have, they can become long banquet tables for lunches for other type of celebrations for -- you know, I'll give you another example -- is whenever there is -- the DCCA and Shaw comes in and they want to do an annual meeting there because they know we have something we can fix, there's banquet -- there's banquet chairs -- you see those traditional hotel banquet chairs. We can fix those up on the floor and then set up a podium and a mic and they can have a meeting.

MR. KLINE: So you make it into a meeting configuration.

MR. MULTANI: Yeah, you can do a meeting configuration, you can do a banquet configuration, we have carving stations, we have chaffing dishes, it's every -- it's what it's meant to be is, you know, a very flexible area.

MR. KLINE: Okay, and you've used it that way

during the seven or so years that you've been open?

MR. MULTANI: For the seven years that we've been open, we've been operating exactly the same way, without deviating anything except when we got approval through our settlement agreement to increase our hours of operation. Other than that, we, you know, meet all of our CR requirements. We are in good standing, so, yeah we've --

MR. KLINE: All right, so let's turn to the issue of dancing. So, on the second floor you've testified that you have a variety of uses for that are, correct?

MR. MULTANI: Correct.

MR. KLINE: And sometimes you have a DJ, is that right?

MR. MULTANI: Yes.

MR. KLINE: All right. Tell the board when that is, how that's promoted, what is it?

MR. MULTANI: So, we've had the same resident DJs on Friday and Saturday nights or New Years.

They are our resident guys. We don't really throw out very much about it. We never promoted -- it's a restaurant. You know, we have this philosophy that a nightclub can destroy a restaurant. A restaurant can't do anything to a nightclub. So, if we're a CR trying to maintain that integrity, that's the way that we always try to pride ourselves, but with 14 C and everything that's happening, and the competitive nature, you have to do what you have to do, but that's about it. We have the same guys.

MR. KLINE: Okay, so you have the DJ. Do you promote dancing in any way?

MR. MULTANI: We don't. We don't promote dancing, you know --

MR. KLINE: But the fact of the matter is people do dance, don't they?

MR. MULTANI: Yeah. People do. People dance, like you heard, like you know in our dining room, you know, standing by their friends. It's a vibrant place, it's a hip stop.

MR. KLINE: Now, this was called to your

attention when Investigator Dantzler came in, wasn't it?

MR. MULTANI: Yes, it was.

MR. KLINE: And what was your reaction to that?

MR. MULTANI: First, I thought she was at the wrong place. I was like 'you know, are you sure you're at Policy, like you know this is very funny,' and she said if you are in violation, and I was actually, you know I was there for the whole conversation, my partner has seen Malia and Jessica as well, but very nice, and then she explained everything to us but we were just, you know, we said but this is the way that we've always operated and through the multiple ad hoc inspections that we've had nobody's ever once stated to us that we have been, and those have been anywhere from 8:00 a.m. to 2:30 a.m. with the fire marshal, with ABRA, with sound, with you know noise task force, everybody. This was the first time that it came to our attention so it was just a little -- a little shocking to us.

MR. KLINE: All right, and it was her position that you were in violation because you were allowing people to dance?

MR. MULTANI: Right, and she actually said 'you're in violation' and she pointed out the two individuals, we said that 'we cannot, it would be very awkward for us to say please stop dancing.'

MR. KLINE: Now these -- are these the two individuals that the investigator referred to that were found on the first floor of the establishment?

MR. MULTANI: That's correct.

MR. KLINE: And you were present for that?

MR. MULTANI: Yeah, I was there.

MR. KLINE: Tell us more about that exchange.

MR. MULTANI: Yeah, we were downstairs in the back of the kitchen. We were reviewing all of our licenses, and we were told that we were in violation and Jessica, Sue and I looked at each other and she kind of said, 'you know, you can't have people dancing, you don't have a dancing

endorsement,' and we were like, "well, this is how we operate.' And we were very forthright. We said that.

MR. KLINE: And the reference was to the two women?

MR. MULTANI: It was. That's when we were going into the discussion she said, 'you know, even those two people shouldn't be dancing.' That's how it went. She said, 'because I've got to put you in violation.' And she repeated it, said, 'you're in violation because of that.' And that's when I got kind of -- I got pretty confused.

MR. KLINE: So, were you concerned that the investigator --

MR. MULTANI: Yes.

MR. KLINE: Let me finish my question before you answer because this nice gentleman over here has to take down all of the testimony. So, were you concerned when you were told that you were in violation?

MR. MULTANI: I was.

MR. KLINE: And what did you do in response to that?

MR. MULTANI: So, the first thing we did was we contacted our Noah Smith, ANC 2B chair and said this is what's happened, is this correct? We thought that that was the first step that we needed to take. And then I actually went to an ANC 2B meeting and after I discussed it, I said 'I don't want to be in violation, we don't want to -- 'cause we're in good standing. If we need to get this, then let's just get this, you know.' And actually when I did go to the 2B meeting, it was a little comical I guess, because basically they weren't sure what they -- so they could have legal standing in a meeting like this they needed a protest under some regard.

MR. KLINE: Now, at that point you had already -- had you submitted an application?

MR. MULTANI: Yes. I was going to submit -- I was going to submit right after that. I wanted to get approval like, you know, get some buy-in that this was a step I needed to take or -- or

actually thinking that it might have been a mistake, you know, the multiple times you explain -- that somebody else could talk. Somebody else could talk to her.

MR. KLINE: All right. So, but also knowing, and we've seen it's been introduced by the government as an exhibit --

MR. MULTANI: Yes.

MR. KLINE: -- you ultimately applied for an entertainment endorsement.

MR. MULTANI: I did that.

MR. KLINE: All right. Now, in pursuing that entertainment endorsement you said you spoke to ANC 2B.

MR. MULTANI: Yeah, I --

MR. KLINE: And did you -- let me finish.

MR. MULTANI: Sorry.

MR. KLINE: And did you talk with other people in the neighborhood concerning this request for an entertainment endorsement?

MR. MULTANI: I did. I spoke with all of our signatories, DCCA, Shaw Dupont Citizens Alliance,

ANC and the group of five and a representative from the group of five.

MR. KLINE: All right, when you say all of the signatories, you're talking about all of the signatories to a previous settlement agreement?

MR. MULTANI: That's correct.

MR. KLINE: Okay. And, so you spoke with all them. What kind of reaction did you get?

MR. MULTANI: About the same. They didn't understand why I would need that.

MR. SHAPIRO: Objection. Relevance.

MR. KLINE: We think it's quite relevant. In fact, the government hasn't put on any evidence as to whether this is -- excuse me -- whether this is a substantial change which was -- requires a finding that this is potentially of concern to those residing in the neighborhood, so we think the three -- the ANC, the two citizens' groups and the group of five that previously protested this application is certainly relevant to whether this was a substantial change. That's what the board has to find.

CHAIRPERSON ANDERSON: Okay. Continue.

MR. MULTANI: Right, so we had a couple of face-to-faces to discuss it and didn't quite feel we had to go through the whole process so we'd need to withdraw it. Sure, I think yeah, so speaking with them they also felt that if a CR got a dancing endorsement it really would be bad. That way they'd kind of sway the way a restaurant would be able to actually do business. Meaning, if we have a DJ, we have a dance floor, so what would stop us from becoming a nightclub? Right? Just raising that. And I understood that.

We worked with them, I'd say 'you know I get that and I believe that there's an e-mail trail with people here' and I kind of followed that through this whole process, I'll withdraw it based upon we wanted to kind of have this meeting to understand if it was actually truly necessary. They said 'find out if you really need it, instead of getting it, because then their fear was as citizens in these areas that they would be getting dancing endorsements for CRs.

MR. KLINE: Now, in terms of your operation, based on your conversations with them at these various meetings, did you make them aware, or did they seem to be aware based on what they said, that this is the way that you've operated for the past seven years in terms of the music on the second floor and some people dancing?

MR. MULTANI: Yes, in our summary of it has all the information for them signing it knowing that there's a DJ, knowing that they're going to assess noise levels. We even passed the sound test.

MR. KLINE: What about the dancing part of it? Let's talk about that. That's why we came here today. Were they aware that some people dance when your DJ plays the music?

MR. MULTANI: Yes, we discussed it at length. We discussed that at length and that's where the Footloose analogy came from. We were just like how can we stop somebody from moving if it comes on? If music comes on?

MR. KLINE: Now, DCCA you referenced, which

is the Dupont Circle Citizens' Association --

MR. MULTANI: Yes.

MR. KLINE: -- the Shaw Dupont neighborhood Alliance, ANC 2B which is the Dupont Circle advisory neighborhood commission that has jurisdiction over your area, correct?

MR. MULTANI: Correct.

MR. KLINE: And the signatories to your settlement agreement, the group of five.

MR. MULTANI: Correct.

MR. KLINE: You spoke with all of them.

MR. MULTANI: A party affiliated with each one of them.

MR. KLINE: Okay. Did any of them express concern when -- if it was coming to light for the first time that some people danced on the second floor? Did any of them express concern about that?

MR. MULTANI: Nope.

MR. KLINE: Their concern was what?

MR. MULTANI: That if a CR is able to get an entertainment endorsement with a DJ and an

entertainment endorsement for dancing, they could pretty much be anything that they want and maneuver themselves around, you know, making things more difficult for lack of a better term.

MR. KLINE: So, is it fair to say it was more about process than substance?

MR. MULTANI: I think so, yes.

MR. KLINE: Okay. All right, so just to be clear. You haven't made any change in the nature of your operation since you opened, is that correct?

MR. MULTANI: That is correct.

MR. KLINE: All right. And, since you've opened, you've had a DJ on the second floor.

MR. MULTANI: Correct.

MR. KLINE: And sometimes people dance.

MR. MULTANI: Correct.

MR. KLINE: And the space is flex space, you said, and sometimes there's an area where people might dance, sometimes it's set up for a meeting, sometimes it's dining space. It depends on the particular time and the particular night,

correct?

MR. MULTANI: That's correct.

MR. KLINE: All right. That's all I have at this time, thank you.

CHAIRPERSON ANDERSON: Mr. Shapiro, do you have any questions?

MR. SHAPIRO: Yes, thank you. Going over the last thing that Mr. Kline said, I believe you said, or you testified, that the second floor has a lot of purposes. I heard chaffing dishes, carving stations, meetings, is that accurate?

MR. MULTANI: Yes.

MR. SHAPIRO: How many times do you have chaffing tables, meetings and carving stations at 11:50 p.m. on a Saturday?

MR. MULTANI: Not at 11:50 p.m. on a Saturday.

MR. SHAPIRO: Okay. What about at 12:30 a.m. on a Sunday morning?

MR. MULTANI: Not then as well.

MR. SHAPIRO: Okay. And you said you have had the same DJ for the entire time you've been

there.

MR. MULTANI: Yes, unless he goes on vacation or gets married.

MR. SHAPIRO: Okay. You said that you don't promote dancing, right?

MR. MULTANI: We don't promote dancing.

MR. SHAPIRO: But you also said you don't print out anything, correct?

MR. MULTANI: Well, not -- we promote happy hour, we promote our new menu.

MR. SHAPIRO: Okay. I thought I misheard that. And then you said you went through quite a lengthy process of, I guess, speaking with the ANC and the various other groups.

MR. MULTANI: Yes.

MR. SHAPIRO: Is it your understanding that the groups define what a dance floor is or is it your impression that ABRA does that?

MR. MULTANI: It's ABRA defines it.

MR. SHAPIRO: Okay. And a dancing license, your understanding is done -- a dancing endorsement is provided by ABRA and not those

other groups that we were just talking about?

MR. MULTANI: I do know that, yes.

MR. SHAPIRO: Then, backing up, speaking about the actual space.

MR. MULTANI: Sure.

MR. SHAPIRO: To address that issue. You said that you've had that same DJ for seven years since you've been in existence?

MR. MULTANI: Yeah. Give or take, about like, probably about five years and we've been there seven years, so our resident DJ has been there the longest.

MR. KLINE: Okay. Are they there -- how many nights a week are they there?

MR. MULTANI: He's there Fridays and he's on Saturdays unless he's off.

MR. SHAPIRO: Okay. And what type of music do you have on Fridays and Saturdays.

MR. MULTANI: So, it starts off you know, that [inaudible 5:05:44] and then it kind of just like moves up to top 40.

MR. SHAPIRO: Okay. And when you're playing

that music -- are you playing music, I guess, at different levels after a certain time in the evening on the weekends?

MR. MULTANI: Yeah, yeah.

MR. SHAPIRO: Okay. And then when do you make that shift? May I approach?

CHAIRPERSON ANDERSON: Yes.

MR. SHAPIRO: I'm approaching with the investigative of investigator Dantzler. Turning to picture 3, would you [inaudible 5:06:22]?

MR. MULTANI: Yes.

MR. KLINE: Okay. And a similar picture, exhibit 5.

MR. MULTANI: Yes.

MR. SHAPIRO: Okay. Is that how you set up the chairs and tables on a typical, I guess, weekend, evening? When there's music playing after a certain time?

MR. MULTANI: No, sir. That's probably been like that for three months.

MR. SHAPIRO: Okay.

MR. MULTANI: Those chairs have been stacked

like that. If -- so, again, those are hotel banquet chairs. They're not our permanent chairs. For the banquettes, the tables that we have, taking three more steps forward to see everything else.

MR. SHAPIRO: Okay.

MR. MULTANI: Those are what we would use, for example, if there was a reception, but we'd have to put tables throughout the whole floor.

MR. SHAPIRO: Okay.

MR. MULTANI: We'd need to put 50 more seats.

MR. SHAPIRO: Okay.

MR. MULTANI: That's what we would use for, you know, a sip-and-sell brunch that we do with the chaffing dishes and the carving stations. So, we have the permanent fixtures. That allows us to have more seats up to accommodate different types of events, but those -- that is the storage we have, that's all to the left and that's generally only used on special occasions.

MR. SHAPIRO: Okay. You said something about three months? I was confused about the timeline

of that.

MR. MULTANI: Yeah, sure. So, those chairs, the pictures that she took. You can actually take a look at the two different days and they might look very, very similar.

MR. SHAPIRO: Mm hmm.

MR. MULTANI: Those stay. Those are for when we need to do something extra. Right? So, we have our chairs, our dinner, everything that we do, hors d'oeuvres, cocktail party, you know, everything that's going on there, that's what we use to be more flexible. So, whether she came at -- when we were closed, or if we were at dinner, that is added chairs. You can see that it's just chairs and it's actually two small leave-able tables which is what you would use for presents for like a baby shower.

MR. SHAPIRO: Okay. So, just backing up here. You heard investigator Dantzler testify.

MR. MULTANI: I did.

MR. SHAPIRO: And you said -- she testified something to the like that there was a raised

area where the DJ was and then there's an open space below that?

MR. MULTANI: Yes, so if you walk through the front door --

MR. SHAPIRO: Right.

MR. MULTANI: -- the door where she is, and she took a picture off to the left, right in front of you is fixed in steel and concrete elevated tables. This is where you would -- it would be used as another lounging cocktail area which is served by a waiter for fruited cocktails and then you go up three more steps and there's one off to the back with [inaudible 5:09:18]. To the back left there's the same thing -- fixed in metal, raised up with fixed banquettes, one runs the whole along the wall. There's a bunch of fixed stuff. And then there's the bar. The DJ is in the back left corner by the elevator who's up two levels, he takes two steps up so he can kind of, you know, see what's going on, on the floor. And that's also where they can see everything.

MR. SHAPIRO: And, again, you heard investigator Dantzler testify that, I guess you said it was your business partner? I guess --

MR. MULTANI: [inaudible 5:10:00].

MR. SHAPIRO: I guess, he said on two occasions that there was dancing upstairs. Were you there for those conversations?

MR. MULTANI: I was.

MR. SHAPIRO: Okay, and that's what he said?

MR. MULTANI: That's what he said.

MR. SHAPIRO: You don't dispute that?

MR. MULTANI: I do not.

MR. SHAPIRO: Okay, and then the second two occasions when she went upstairs, that space you were talking about below the DJ, is that where -- let me back up again. When you have a DJ, do people dance? Just in general.

MR. MULTANI: I would hope so or he'd be a terrible DJ.

MR. SHAPIRO: It sounds like my [inaudible]. And then the people, do they generally dance in that same area that's that open space right

there?

MR. MULTANI: So, no, because the barrier that you're talking about is a bar.

MR. SHAPIRO: Okay.

MR. MULTANI: So, I don't know how to describe it any more than saying that it -- you walk in, you socialize, if you feel like moving you can move, if you feel like talking you can talk, if you feel like sitting you can sit, if you feel like talking on your phone you can do the same thing. It might be difficult but you can do that.

MR. SHAPIRO: Okay.

MR. MULTANI: So. That's all I can really say. Where the DJ is, there's an elevator, that's the access for my employees. That's handicapped accessibility so, no, to answer your question, that's nowhere where actually people would want to stand as well.

MR. SHAPIRO: I think I'm just misunderstanding the spatial.

MR. MULTANI: I think someone just needs to

go see it and then we'd be okay.

MR. SHAPIRO: But you did see the pictures that investigator Dantzler -- the other photos that she included. You don't dispute that people are dancing in those?

MR. MULTANI: I don't dispute that there are people moving and dancing in those.

MR. SHAPIRO: Okay. And it looks like, I guess, this first picture, it's going to be exhibit 1, and the second picture, exhibit 2, those are from that first night that she was on the first level, I think that was the first visit. And, again, you can see someone's hand in the air. You don't dispute that people are dancing, right?

MR. MULTANI: I don't --

MR. KLINE: That's been asked and answered maybe four times.

MR. MULTANI: I don't object that people have danced up there. They've danced up there.

MR. SHAPIRO: Turning to exhibit 4, which is a picture that investigator Dantzler took on a

separate night, I believe it was the following night. Is this the same space that was in the other picture that I just showed you?

MR. MULTANI: It looks like it. She was at the same vantage point.

MR. SHAPIRO: Okay, so it looks like people are dancing in the same area?

MR. MULTANI: It looks like she took the picture from the same exact area that she did the other one.

MR. SHAPIRO: Okay, that's all I have.

CHAIRPERSON ANDERSON: Thank you, Mr. Shapiro. Yes, Mr. Short?

MR. SHORT: Good afternoon. Your name again?

MR. MULTANI: It's Raj Multani.

MR. SHORT: Mr. Multani, okay. Mr. Multani, you've been a CR, which is a restaurant, for how many years?

MR. MULTANI: Seven, since 2009 about.

MR. SHORT: Okay. You said when you got a notice from ABRA which came from investigator Dantzler that you were in violation of the law

you didn't come to ABRA, you went to the citizens. Why did you do that?

MR. MULTANI: I actually make -- to take a couple of steps back, I contacted other --

MR. SHORT: I mean to say the impression I got from you was that you immediately went to Dupont Circle and Shaw. Let me ask you a question. What is the difference between a restaurant and a nightclub when they both have DJs, they both have dancing? So, what's the difference between a nightclub and a CR?

MR. MULTANI: There's a large difference. You have to have a minimum seat environment. You have to serve food until 1:00 a.m. in the morning.

MR. SHORT: Okay. That's for restaurants, not a nightclub.

MR. MULTANI: You have to have --

MR. SHORT: Okay, go ahead.

MR. MULTANI: How do you say, the difference between a nightclub and a restaurant is one charges cover, one opens up at 10:00 p.m. and not

at-- for brunch, at 5:00 p.m. I mean --

MR. SHORT: That sounds good too. Now, what did the citizens say to you again when you asked them to back you up on that dancing? What did the citizen's group say to you? From here it sounds like they were making complaints, what did they say to you?

MR. MULTANI: Their concern was that if a CR had an entertainment -- an existing entertainment license -- an entertainment license for live entertainment --

MR. SHORT: Which would allow dancing.

MR. MULTANI: Which would allow music or a DJ.

MR. SHORT: And dancing. The entertainment endorsement, they get a lot of that.

MR. MULTANI: Well, I have an endorsement to have a DJ but I'm not allowed to have dancing?

MR. SHORT: Excuse me, please say that again. You're not allowed to have what?

MR. MULTANI: I'm not allowed to have dancing.

MR. SHORT: But you did have dancing.

MR. MULTANI: I -- yes --

MR. SHORT: You were in violation of the law and you just admitted it.

MR. MULTANI: That's what I was told.

MR. SHORT: No, no, no, no, I'll ask you again.

MR. MULTANI: Okay.

MR. SHORT: You said you have a restaurant license.

MR. MULTANI: I do, I have a CR.

MR. SHORT: And restaurants don't have dancing in restaurants.

MR. KLINE: Objection. That's not a fair characterization of the law or a fair character -

MR. SHORT: Well, excuse me. Will somebody - tell me what you think the law is between a restaurant and a nightclub. Tell me that.

MR. KLINE: That calls for a legal conclusion. That's not --

MR. SHORT: He's a business owner who runs a restaurant. If he doesn't know, then you ought

to know because you're representing him. I'm asking him as a licensed owner -- as a licensed owner as a restaurant -- if you don't mind, Mr. Kline, he's the owner who runs an establishment that's doing well in town. And we want him to keep doing well, but we want him to be legal.

MR. KLINE: We didn't --

MR. SHORT: I don't want -- I just don't want to think that an investigator investigating is just asking him a crazy question, and the investigator has said that someone's come to them because it's bothering them because people dance when they shouldn't be. So, I'm not questioning you just -- if you don't mind --

MR. KLINE: Your honor.

CHAIRPERSON ANDERSON: Hold on -- hold on, Mr. Short. What's the objection?

MR. KLINE: With all due respect, Mr. Short, the question of whether or not people were dancing when they weren't supposed to, is the very focus of this hearing, and there seems to be some confusion on that point, which Mr. Multani

has described in his testimony, and it will be up to the board to determine what the law is, but the fact of the matter is the establishment is not charged with allowing dancing, it's charged with having a designated dance floor, a permanent dance floor is the word in the statute, where none existed before. That's the charge.

MR. SHORT: Thank you. Okay, can we get back to my question now?

MR. KLINE: That's up to the chair, that's not my decision.

CHAIRPERSON ANDERSON: Okay.

MR. SHORT: Now, you've had dancing for seven years, correct?

MR. MULTANI: We've had people dance in there for seven years.

MR. SHORT: Seven years. So, every time those people dance, they dance at different locations? You say they dance all the time so I'm asking how many times have they changed locations? Because if you have a place where they're dancing pretty much all the time, the

same place, you're in violation of the law. So, where do the people dance most of the time? Different places or where do they dance?

MR. MULTANI: Well, different places, sir. I'll give you -- I'll give you a few examples.

MR. SHORT: Okay, I'm going to -[inaudible cross talking 5:17:49]

MR. MULTANI: Yeah, you're welcome to. So, downstairs, I'll give you an example is during brunch we like Frank Sinatra, and an elderly person got up like two months ago and they started slow dancing because it was their 50th anniversary. They're in violation, I'm breaking the law. No, no --

MR. SHORT: Is this an admission?

MR. MULTANI: I'm telling you -- I've operated like this for seven years. ABRA has walked through the door multiple times, inspected the property multiple times. Every time and no one has ever said anything to us.

CHAIRPERSON ANDERSON: I would like for us to move on. Answer the question that Mr. Short

asked you, which I think I need you to answer, is that his question to you is where were these people dancing? So, are they dancing in the same location or are they just -- I know you're saying that, you know, you can't have folks not dance if they want to --

MR. MULTANI: Yeah.

CHAIRPERSON ANDERSON: So, if someone is in a breakfast line, I'm sorry, brunch line, and someone gets up on the table and dances that's fine. But answer the question Mr. Short is asking. What he's asking is that are they dancing in the same location or just folks just spontaneously get up and dance and just dance wherever they are? I think that's the question he's asking you.

MR. MULTANI: Okay, and that -- it's on the second floor.

MR. SHORT: Okay, where do they dance on the second floor most of the time?

MR. MULTANI: Most of the time at the banquettes on the main floor in front of the bar.

If there's a typical place.

MR. SHORT: So, if I would go there for the last seven years they would have been dancing in that same place?

MR. MULTANI: That same place, yes.

MR. SHORT: Okay. Thank you, Mr. Multani, thank you Mr. Chair.

CHAIRPERSON ANDERSON: Are there any other questions by any other board members? Yes, Ms. Miller?

MS. MILLER: I think I asked this of the investigator but I want to ask you as well. Did you carve out or designate a certain area to your establishment to be used for dancing?

MR. MULTANI: No.

MS. MILLER: Okay. And maybe we already asked you this question, I'm not sure. I understand Mr. Kline's point about paragraph 6 and the substantial change regulations which talk about providing a permanent space for dancing, okay. I want to ask you -- looking at your application in 2007, when you got an

entertainment endorsement, underneath it, it says 'dancing and cover charge' and you didn't get those? Okay. So, my question is when you said dancing there, does that in your mind mean having a permanent dance floor or does it mean anybody getting up and dancing in your restaurant?

MR. MULTANI: To me, it meant like it meant permanent dancing.

MS. MILLER: Okay. That's it, thank you.

CHAIRPERSON ANDERSON: Mr. Alberti.

MR. ALBERTI: Yeah, I have some really boring questions, so -- how many fixed seats -- you talk about fixed seats on your second floor. How many fixed seats are there in total? Maybe you can expand on that -- because you talked about there's two [inaudible 5:21:20].

MR. MULTANI: About 75.

MR. ALBERTI: 75? Okay. And so --

MR. MULTANI: [Counting].

MR. ALBERTI: So, besides the banquettes or whatever they are -- I guess they go down the

length of the room on one side, is that correct? Tell me where they are. You tell me where they are.

MR. MULTANI: Okay, so, when you first walk in there's two elevated banquettes, large kind of like spheres, going through the entire length of the floor, there's one more banquette that goes to another floor, there's bathrooms, there's a larger elevated, another seating area there, then there's two more in front of that by the permanent fixture tables and then where you first go out right in front of the two elevated areas there's another I'll say banquette there with a fixed table.

MR. ALBERTI: Okay. You said about 75?

MR. MULTANI: I would say so, yes, sir.

MR. ALBERTI: Okay. How much seating do you have downstairs? An exact count isn't necessary.

MR. KLINE: About 84. 80 -- 84? I don't know the correct number because there's some outside seating as well.

MR. ALBERTI: So, I'm getting the impression

that you've got nine banquettes on one side, and there's a bar and some service area on the other side, it's a long room, and then you've got your long open space?

MR. MULTANI: Correct.

MR. ALBERTI: Is that sort of generally what I'm seeing?

MR. MULTANI: That's correct.

MR. ALBERTI: All right. No further questions.

CHAIRPERSON ANDERSON: Mr. Shapiro do you have any questions based on questions asked by the board?

MR. SHAPIRO: No.

CHAIRPERSON ANDERSON: Mr. Kline?

MR. KLINE: Mr. Multani, just so we're clear, in looking at exhibit 3 to the investigator's report which I think you still have in front of you.

MR. MULTANI: No, I don't have one.

MR. KLINE: Okay. Put the chairs back up. These aren't the dining chairs that you use in

that area are they?

MR. MULTANI: No, those aren't the chairs.

MR. KLINE: So you have other chairs that you use in that -- in that area?

MR. MULTANI: Right, they're fixed, they're L -- they're like U-shaped and they're fitted in there.

MR. KLINE: Okay, those are the fixed tables?

MR. MULTANI: Yes.

MR. KLINE: But aren't there other tables that they -- that you use in that area?

MR. MULTANI: Right. There's three on the side of the dance floor, so table wise there's six tables stacked on the banquette right in front.

MR. KLINE: Okay, and those get moved around depending on what you're doing in the space?

MR. MULTANI: No, not at night. But depending on what we're doing for events they will -- but on Friday and Saturday nights all of those are there.

MR. KLINE: Okay, all right. But those are

not showing in the photographs.

MR. MULTANI: No. They're not.

MR. KLINE: And those are moved in and out on a regular basis?

MR. MULTANI: Right, depending on the event that's going on. When these were taken there were tables on the other side of the banquette. There was three, there was almost five tables that were in that space through the length of the sides.

MR. KLINE: All right, now you asked this -- I want to make sure that we're clear. You said people dance 'on the second floor.' Is there a specific area or is it wherever they happen to find themselves?

MR. MULTANI: Where they stand.

MR. KLINE: Okay. In fact, sometimes the banquettes -- there are some banquettes on raised platforms -- sometimes people stand and dance there, correct?

MR. MULTANI: Correct.

MR. KLINE: Okay. Just when the mood strikes

them.

MR. MULTANI: If the mood strikes them.

MR. KLINE: All right. So, there is not any specific area on the second floor. In response to, I think board member Short's question, you said, 'yeah on the second floor' but I think the question is but is there any specific area on the second floor and I think what I'm hearing from you is there's not, is that right?

MR. MULTANI: We have not designated a dance floor. It is people up there on second floor, wherever they're standing.

MR. KLINE: Okay, and they stand, they hang, they talk, they talk on their cell phones, some of them dance --

MR. MULTANI: Yeah.

MR. KLINE: -- they socialize. They will do what people do.

MR. MULTANI: That's correct.

MR. KLINE: Thank you. That's all I have.

CHAIRPERSON ANDERSON: All right. Thank you Mr. Multani. Yes, you can resume your seat. Do

you have any other witnesses, Mr. Kline?

MR. KLINE: I do not.

CHAIRPERSON ANDERSON: Do you have any documents that you'd like to introduce into the record?

MR. KLINE: I do not.

CHAIRPERSON ANDERSON: Do you rest?

MR. KLINE: I rest. Thank you.

CHAIRPERSON ANDERSON: Does the government wish to make a closing statement?

MR. SHAPIRO: Yes, thank you. Mr. Chair and members of the board, just briefly, the evidence that you've been presented with today, both testimonial and documentary, show that there is dancing in this establishment. Now, I think what this issue turns on is, you know, whether or not there is a permanent dance floor and can you [inaudible 5:27:31] here, but if it walks like a duck and talks like a duck, then chances are that it's a duck. What we heard from investigator Dantzler was that she went two times and she said that -- she went two times in December and an

owner of the establishment said there's dancing upstairs. She didn't go upstairs because an owner told her there was dancing upstairs. She went back a third time. She took pictures. That's her exhibit #1 and #2, where she took pictures of people dancing, you heard the owner testify that 'I don't dispute that people dance up there.'

Now, what the owner also testified to was that when she went back the following night, she took pictures of the same place and people were dancing at the same place. Now, what we also heard testimony of was that they've had a DJ in the same place for seven years, there's a big open space, and I understand what he's specifying that maybe some people dance elsewhere, maybe they don't dance in some places, maybe they do dance in others, but there's an open space. Investigator Dantzler went not once, not twice, not three times, but went four times and there was dancing on the second floor. We have pictures of dancing on the second floor. There's

a big open adjacent or near the DJ where people are dancing. Again, if it walks like a duck, talks like a duck it's a duck. What you have here is people dancing in the same space. They might not be -- I don't know what defines a dance floor. I mean, in my head I'm thinking the 70s disco, you know, strobe light coming up from the floor -- that's not what a dance floor -- that's not the definition of a dance floor. I would imagine a dance floor is a space where people dance.

All the evidence here that we've heard today is that people dance on the second floor. We have pictures of people dancing in the same place on the second floor. The owner testified that there is dancing on the second floor in a big open space. We have admissions through the ABRA license saying that there is dancing going on for the past seven years. We have an application that doesn't have a dance floor endorsement, or a dancing endorsement. You know, it's kind of -- everything's coming back to the same conclusion,

that everything -- that there is a dance floor that has been there for the past seven years, whether or not intentionally or unintentionally devised to be so, where people are dancing on the second floor. I actually think Mr. Multani -- I hope I'm pronouncing that correctly -- testified credibly, but what he -- I think what the flaw in his case was opposed to going to ABRA or to the board to ask for a dancing endorsement he went to everyone else.

The other groups, the citizen groups, do not define what a dance floor is. They don't control what a dance floor and issue an endorsement for that. That's an issue for the board and for ABRA. And everything that points to there is that people are dancing in this open space on the second floor. They have been doing this there, there's admissions as such, so it is the district's position that there has been a substantial change for a dance floor that's been provided at this establishment. Thank you.

CHAIRPERSON ANDERSON: What are you asking us

to do as far as a penalty?

MR. SHAPIRO: I believe it is a first primary tier violation, so I would ask for a fine within that range at the board's discretion.

CHAIRPERSON ANDERSON: Mr. Kline:

MR. KLINE: I think I have the curse of being a lawyer and that causes me to read language carefully and precisely and expect that when people are charged with violations that they know beforehand what will be a violation and what won't be a violation, and we won't have a circumstance where a prosecuting Assistant Attorney General is saying 'you already knows what it is. It's a duck. Walks like a duck, quacks like a duck.' As a lawyer and as someone who expects that administrative agencies will follow the law, that just isn't good enough. I mean it seems to me that licensees are entitled to be on notice as to what's prohibited and what's not prohibited. We've had a lot of talk about having dancing. They have dancing. Investigator Dantzler said in her report, and

then kind of backed off on it in her testimony is they were in violation because they permitted dancing. That's how this case started. Let's not forget that. That is how the case started, that it's a violation of law if one permits dancing.

Now, I see some first amendment concerns with that interpretation, and I don't think that that's the interpretation that the board will take, but that shows the confusion around this issue. Now, what's been charged here is making a substantial change without prior approval. Well, first we have to look at what's a substantial change. What is it? And the statute tells us what it is. It says 'a change in the' -- I'll use what's relevant and skip the rest just to keep it clean, 'a change in format of any licensed establishment which would substantially change the nature of the operation.' Well, there's been no change that substantially changes the nature of the operation. And in determining that the board is to consider whether the change,

and in this case we dispute that there's a change, but if there is one whether it's potentially of concern to the residents of the area surrounding the establishment.

That is why we asked all those questions about people living in the area. What did they think? What did the Dupont Circle Civic Association, the Shaw-Dupont Neighborhood Alliance -- I mean, this court has seen many, many times is not particularly tolerant to licensed establishments -- what did they think? And the unrebutted testimony from Mr. Multani was "well they don't have any problem with what we're doing right now," so if what they are doing right now and what they would like to continue doing is not of concern to the people residing in the neighborhood, then we don't think it's potentially of concern and we don't see how the board could define that as a substantial change under the statute. I know I'm parsing words very carefully, but we think that's what's required in these cases. So, that's the first. We don't

have a substantial change.

Now, the second issue is in running through the classifications of the specific changes which might -- might -- because again you have to go back is it substantially of concern to those residing in the neighborhood -- of what this is charged here is 'providing permanent space for dancing by patrons where none existed previously.' The unrebutted testimony is there's been no change. This place has operated like this from day one, so we can't say it didn't exist previously, it's existed from the day the place opened. Second is providing permanent space for dancing by patrons. Now, I'm going to have to respectfully disagree with Mr. Shapiro. I know what a dance floor looks like and I think the board does too. A dance floor is an area that's segregated in some way. Usually it's wood and maybe the rest of the area is carpet. If you go to an event, you go to a wedding, I know one of the board members recently had a wedding -- I think people know where they're supposed to

dance. We know what a dance floor looks like. It doesn't look like a duck. It looks like a dance floor and we all know that.

So, this notion that 'gee there were people dancing, therefore it must be a dance floor,' that defies logic. I mean, that's not what we're talking about here. What we're talking about is having a permanent dance floor.

Now this is buttressed by another section of the regulations which relates to taverns. This is not a tavern, it doesn't apply to this establishment. But we know when you're licensing dance floors -- or when you're licensing taverns, forgive me, that they cannot have dance floors larger than 140 square feet. Well, how do we measure that? We go in and figure out where people are dancing and that's the size of the dance floor? No. What the board has traditionally done is they go in and the place has a dance floor and if it's -- we know what it is because it's demarcated in some way, as I said usually wood and the rest of its carpet or some

other markings to reflect a designated dance floor and they measure it. The investigators measure it. And if the tavern has a dance floor that's larger than approximately 10 x 14 which is 140 square feet, then they're in violation.

If the board does not construct the statute that way it's mush. How are you going to enforce anything? You're going to go in and say 'well, there's one person dancing over there, we're going to measure around him.' I mean we have to have some idea of what these regulations mean so that we can have people comply with them. This gentleman just wants to comply with the law. I think that's very clear from his testimony that when this came to light, 'oh my god, what do we do? This is the way we've operated. We want to be in compliance.' He did what the board always encourages licenses to do which is, yes come to the board but also talk to the people in your neighborhood, how do they feel about this, is it an issue? The board has said many times 'work it out among yourselves, we're very happy,' so he

went to them. They didn't have any concerns except one. The concern was, 'gee if you oget a full blown dancing endorsement then who knows what you're going to become? We have no problem with what you are now but we're just concerned about expanding your permission.'

So, we would submit that: Number one, the government has not made out a violation in this case -- we would ask that you dismiss it. However, if you disagree, which is obviously your prerogative, then looking at penalty, 762-B6 is one of those provisions for which a written warning is allowable. So, we're looking to you for guidance. That's what this is really all about. You heard Mr. Multani say 'I went to the community and they said go see what the board says.' So here we are. We're going to see what you say. But we are asking you if you disagree with this notion in terms of the way we interpret the statute, don't punish this poor business. Give them the warning, we'll resubmit the entertainment endorsement, we'll probably be back

before you for a protest hearing or a settlement agreement or whatever it is and we'll get it worked out. But in the first instance, we don't see a violation, we don't see a substantial change, we don't see a permanent dance floor and we would ask that you find for the licensee.

Thank you.

CHAIRPERSON ANDERSON: All right.

MR. SHAPIRO: Do I get the last word?

CHAIRPERSON ANDERSON: Al go ahead, make it very brief.

MR. SHAPIRO: I promise. Just a couple of points that I'd like to address is that from what I understand that their argument is, is that if the community isn't upset then there shouldn't be a substantial change violation. Well, obviously that brings about some type of marshal law inference and we don't need to go further on that. Number two is what you heard Mr. Multani testify to is that they've had the DJ in the same space for seven years. The investigator went four times, saw people dancing twice in the same

location, you know I think that is a permanent dance floor. If they've had a DJ in the same place for seven years and people are dancing on the second floor, that is a permanent space for dancing. That's all I have, thank you.

CHAIRPERSON ANDERSON: Thank you. As chairperson of the Alcoholic Beverage Control Board for the District of Columbia and in accordance with D.C. section 405 of the Open Meetings Amendment Act of 2010, I move that the ABC Board hold a closed meeting for the purpose of seeking legal advice from our counsel on Case #16-CMP-00039, Colada Shop, per section 405 B4 of the Open Meetings Amendment Act of 2010 and deliberating upon case #16-CMP-00039, Colada Shop Market, for the reasons cited in section 405 B13 of the Open Meetings Amendment Act of 2010. Is there a second?

MR. SILVERSTEIN: Second.

CHAIRPERSON ANDERSON: Mr. Silverstein has seconded the motion. I will now take a roll call vote on the motion before us now that it has been

seconded: Ms. Miller?

MS. MILLER: I agree.

CHAIRPERSON ANDERSON: Mr. Alberti?

MR. ALBERTI: I agree.

CHAIRPERSON ANDERSON: Mr. Short?

MR. SHORT: I agree.

CHAIRPERSON ANDERSON: Mr. Silverstein?

MR. SILVERSTEIN: I agree.

CHAIRPERSON ANDERSON: Mr. Anderson? I agree. As it appears that the motion has passed I hereby give notice that the ABC Board will hold a closed meeting in the ABC Board Conference Room today pursuant to the Open Meetings Amendment Act of 2010 and issue an order within 90 days. Thank you very much for your presentation.

(Whereupon, the above-entitled matter was concluded.)