

TOUCHE

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

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ALCOHOLIC BEVERAGE CONTROL BOARD

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IN THE MATTER OF: :

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Naomi's Ladder, LLC,

9

t/a Touche

Case Number 15-PRO-00023

10

1123 H Street NE

11

License Number 96779

12

Retailer CT

13

ANC 6A

14

PROTEST HEARING

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Wednesday, April 6, 2016

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Whereupon, the above referenced matter came on for

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hearing at the Alcoholic Beverage Control Board, Reeves

19

Center, 2000 14th Street, N.W., Suite 400S, Washington,

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D.C. 20009.

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TOUCHE

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3 CHAIRPERSON:

4 DONOVAN W. ANDERSON, Presiding

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6 OTHER PERSONS PRESENT:

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8 NICK ALBERTI, BOARD MEMBER

9 RUTHANNE MILLER, BOARD MEMBER

10 JAMES SHORT, BOARD MEMBER

11 MIKE SILVERSTEIN, BOARD MEMBER

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

2 CHAIRPERSON ANDERSON: We're back on the
3 record. The next case on our -- our calender is a
4 protest hearing for Case Number 15-PRO-00023, Touche,
5 License Number 96779. Will the parties please approach,
6 and there's a sign-in sheet. I would like you to sign
7 your name and identify yourself for the record please.

8 MS. PRICE: I've signed in. Good evening.
9 My name is Jayne LaMondue-Price, and I'm appearing on
10 behalf of Naomi's Ladder, LLC, Touche.

11 CHAIRPERSON ANDERSON: You are an attorney
12 or what are you, ma'am? Are you a -- the
13 representative?

14 MS. PRICE: I am the representative. I am
15 the -- I am a managing member and -- and general
16 manager.

17 CHAIRPERSON ANDERSON: Okay.

18 MR. WILLIAMS: Good afternoon. Jay Williams
19 here on behalf of ANC 6A.

20 CHAIRPERSON ANDERSON: All right. We have a
21 protest hearing, and basically the purpose of this
22 hearing is to establish whether or not this

1 establishment is appropriate for the neighborhood that
2 it's in. I -- I need us to streamline this hearing in a
3 sense -- I know there's a lot of witnesses, and I don't
4 want us to talk about extra events that are not
5 pertinent to this matter. We're not talking about the
6 old application or the old -- the old applicant. It's a
7 new applicant. It's my understanding -- or I'm not sure
8 with a -- a clean slate. So we can't talk about what
9 the other person used to do. It's what is it -- what is
10 it that this -- this person has done. I don't -- I
11 would hope we don't -- we're not here all evening.
12 We're -- we'll be here as long as it take. But I think
13 that what I'm asking that both parties do is to
14 concisely talk about what the issue is, call it -- your
15 witnesses on the issues that are pertinent and let's
16 have a hearing that addresses the issue and that are
17 focused on the issues so at least The Board will know
18 what it is that -- that -- that you're asking us to do
19 at the end of the hearing. Okay. So hold on one minute
20 please. All right. The -- the process is that we'll
21 ask -- I'll ask whether or not there is any opening
22 statements. I mean there are preliminary matters, I'll

1 ask for that. Then the applicant, they make an opening
2 statement. After the applicant has made an opening
3 statement, the protestant will make an opening
4 statement. The Board will call its investigator, and
5 that investigator will testify. The Board will ask
6 questions of the investigator. Once The Board asks
7 questions of the investigator the applicant has an
8 opportunity to ask questions of the investigator. And
9 so -- and then the protestant will have an opportunity
10 to ask questions of the investigator. Once The Board
11 has called its -- its witnesses, then the applicant will
12 now call its first witness. And so the applicant will
13 have direct examination, then the protestant will have
14 an opportunity to -- to cross questions -- to -- to ask
15 questions of the -- the witness based on the questions
16 that were asked by the applicant. The Board will then
17 have an opportunity to ask questions. Once The Board
18 asks questions, then we'll go back to the applicant to
19 ask questions. And then the protestant can ask
20 questions. And then we'll move on to -- we'll move on
21 from there. Once the applicant has presented his case
22 in chief then the protestant will start their case. And

1 we'll go back through the same process in a sense of
2 cross -- direct, and cross examination of witnesses.
3 And so all right. Preliminary -- are there preliminary
4 issues that we need to discuss?

5 MR. WILLIAMS: I think just -- just in terms
6 of scheduling since we're starting an hour and a half
7 early, which I definitely appreciate, we may -- I may
8 have witnesses I might need to shuffle around. I think
9 before when we were told we would be moving it, they
10 said the possibility of having witnesses come
11 technically out of order. I don't know if that will be
12 the case, but I'm trying to -- you know, I want to make
13 sure that I have witnesses, you know, here when they
14 can.

15 CHAIRPERSON ANDERSON: I'm -- I'm not
16 following you. So --

17 MR. WILLIAMS: Okay. So it's -- I might
18 have witnesses showing up later than -- because they
19 were planning on being here for a hearing that started
20 at 4:30 which --

21 CHAIRPERSON ANDERSON: So what time you
22 believe that they'll -- they would be here?

1 MR. WILLIAMS: I mean they're -- they're
2 coming in now. So I imagine I'll be okay since we
3 don't --

4 CHAIRPERSON ANDERSON: Yeah. But I'm just
5 saying what time do you -- did you think that they would
6 be coming in?

7 MR. WILLIAMS: Oh, they were going to be
8 coming in by -- by 4:30 [inaudible 5:21].

9 CHAIRPERSON ANDERSON: So if the hearing had
10 started -- well, it's -- it's 3:10, sir.

11 MR. WILLIAMS: Yeah.

12 CHAIRPERSON ANDERSON: Unless this is very
13 fast, I don't see you presenting your case before 4:30.

14 MR. WILLIAMS: That was my assumption as
15 well.

16 CHAIRPERSON ANDERSON: But -- but -- but
17 please surprise me.

18 MR. WILLIAMS: Understood. I will do my
19 best to surprise you.

20 CHAIRPERSON ANDERSON: And please surprise
21 me. And then trust me, you'll get a lot leeway from me
22 because that says that I can leave here at 6:00.

1 MR. WILLIAMS: So are you suggesting my
2 opening statement should be cut down from the 20 pages I
3 currently --

4 CHAIRPERSON ANDERSON: Well, but this is
5 what I will say to you, you want to make sure that you
6 have our attention. And so if it's going to be 20
7 pages, maybe after 10 pages you might have -- you might
8 lose me and I'm sitting here rolling my eyes and --

9 MR. WILLIAMS: Understood.

10 CHAIRPERSON ANDERSON: -- I'm going to
11 get -- there is no more water back there for me to get
12 so -- I won't have an excuse to get up to leave. But
13 you get the joke. All right. Now, yes, ma'am.

14 MS. PRICE: I did have a question. And this
15 is just -- I'm not, you know, an attorney or anything.
16 But I did -- and it's my first time coming before --
17 before The Board. I know that we do have a -- I just
18 want to know is -- Chairman Alberti, are you still on
19 the ANC --

20 CHAIRPERSON ANDERSON: No. I'm -- it's me,
21 and he's a board member. He is Board Member Alberti,
22 and it's Chairman Donovan Anderson.

1 MS. PRICE: Chairman, I was wondering if
2 there are any board members that are currently a part of
3 ANC 6.

4 CHAIRPERSON ANDERSON: There are only two
5 board -- there are only two board members who are active
6 ANC commissioners, and that's myself. I'm in ANC 7BL6,
7 and Mr. Silverstein is in ANC 2 -- 2B -- 2B or 2D.

8 MR. SILVERSTEIN: Yeah.

9 MS. PRICE: Thanks for the clarification.

10 CHAIRPERSON ANDERSON: All right. But
11 Mr. Alberti it's my understanding lives in Ward 6. I'm
12 not quite sure where he lives, but he lives in Ward 6.
13 All right. Now, how many witnesses do you have, ma'am?

14 MS. PRICE: Well, we -- we submitted for
15 three, four, five, six, seven witnesses. But we can
16 definitely --

17 CHAIRPERSON ANDERSON: No. I'm -- I'm
18 just --

19 MS. PRICE: -- bring that down. Currently I
20 -- I have to say I see two here.

21 CHAIRPERSON ANDERSON: But you have seven
22 witnesses and --

1 MS. PRICE: Yes, sir.

2 CHAIRPERSON ANDERSON: And you're -- you're
3 -- you think that all seven people will testify today?

4 MS. PRICE: I -- I don't believe all seven
5 will be here to testify. Some did indicate as late as
6 last evening that they were having issues with their
7 schedule based on the 4:30.

8 CHAIRPERSON ANDERSON: All right.

9 MS. PRICE: Their -- their work schedules
10 and getting off and being here in time. So --

11 CHAIRPERSON ANDERSON: And how many
12 witnesses do you have, sir?

13 MR. WILLIAMS: I currently expect to put on
14 six witnesses. That could be cut down depending on how
15 testimony goes up to the ANC's case.

16 CHAIRPERSON ANDERSON: All right. You have
17 an option of witnesses. We can have -- you can -- both
18 sides can decide that if a witness is going to testify,
19 that they need to be outside, they don't need to be here
20 to listen to -- to the testimony. So what's your
21 pleasure, either side? If -- you let me know whether or
22 not you want the witnesses to stay here or you want them

1 not to listen to the testimony of each side.

2 MR. WILLIAMS: So what he's saying is
3 basically ask all our witnesses to leave unless they're
4 coming to testify. I'm fine with them being here.

5 MS. PRICE: I don't [inaudible 8:41].

6 MR. WILLIAMS: Okay. I -- I think we're --
7 we're okay with not requiring -- we're okay with the
8 witnesses being in the -- in the room for the -- for
9 other's testimony.

10 CHAIRPERSON ANDERSON: All right. Fine.
11 Any other -- there are no other issues, preliminary
12 issues?

13 MS. PRICE: No, sir.

14 MR. WILLIAMS: I don't think so.

15 CHAIRPERSON ANDERSON: All right. So then
16 the applicant can -- if the applicants so desire, can
17 make an opening statement. And what I want in your
18 opening statement to do is to tell me about your case,
19 what you -- what you're going to prove and what is it
20 that we should look for in the -- in the presentation of
21 each witness. And the same -- the same I'm asking for
22 the protestants. So you're opening statement is just to

1 give us a road map of where we're going. And if you
2 want to say this person's going to testify, what -- what
3 I need to look for. So you're just providing a road map
4 of your case of how -- what you're going to present.
5 Okay?

6 MS. PRICE: Okay.

7 CHAIRPERSON ANDERSON: So yes.

8 MS. PRICE: Okay. All right. Thank you.
9 Well, again I'm -- I'm here on behalf of my
10 establishment Touche Supper Club which is located at
11 1123 H Street NE in the H Street Corridor, the Atlas
12 District. And we are proud to have been in business for
13 the last year and a half thanks to the granting of our
14 license for -- for this establishment. What I'd like
15 to -- what -- what we're here to talk about today is
16 our -- we've been being protested for the renewal of our
17 license. We initially -- when we purchased the -- the
18 new establishment and the license we were under the
19 impression that -- at the time that it was
20 all-encompassing and that we were granted the two-year
21 license and we would come up for renewal at the normal
22 process. However, over 180 days following that we were

1 placarded for the issuance for the renewal period. We
2 did contact ABRA and questioned that -- the process,
3 trying to get an understanding of it, and were told this
4 is -- you know, the -- the previous owners did not
5 renew. They -- they did not -- due to whatever reasons
6 they were not able to renew. So we would be, you know,
7 following the normal process. So since that time its
8 been put in place we have met with the ANC and in an
9 effort to negotiate and to discuss through mediation the
10 settlement agreement so that that would be in place
11 coming upon our appearance for renewal and not having to
12 take the step I understand to the protest hearing.
13 However, today we have not been able to come to a
14 signing of a settlement agreement. And so that brings
15 me here before you guys today. We -- one of the issues
16 that is -- the largest issue, and I think it's also
17 represented in the -- the PIF on behalf of the
18 protestant as well has been related to the noise and to
19 the change of our hours of our rooftop. That seems to
20 be a -- a huge concern for this settlement agreement
21 being -- not being signed as of now. So we -- as we've
22 stated -- feel that the change in the hours of our

1 rooftop deck, we're being asked to change our hours
2 from -- which currently are -- on our rooftop between --
3 Sunday and Thursday afternoon they're currently at 2
4 a.m., and Friday and Saturday -- I'm sorry -- 12 p.m.
5 -- 12 a.m. and Friday and Saturday 2 a.m. I'm going to
6 repeat that. I apologize. That sounded a little
7 confusing. Currently our hours are -- on our rooftop
8 between Sunday and Thursday 12 a.m. closing -- 10 a.m.
9 to 12 a.m.; Friday and Saturday 10 a.m. until 2 a.m.
10 closing. We have been, according to our meeting that we
11 had with the ANC ABL Committee -- some time ago they put
12 in a -- a -- their recommendation to the -- to the ANC
13 Committee was to have our hours be changed to 11 a.m.
14 Sunday through Thursday and 12 a.m. Friday and Saturday.

15 CHAIRPERSON ANDERSON: You mean 11 p.m.?

16 MS. PRICE: 11 p.m. Thank you very much.

17 I'm sorry. 11 p.m. Sunday through Thursday, 12 a.m.
18 Friday and Saturday. We feel that the change of hours
19 is consistent with what's happening in other businesses
20 around that are similar to our establishment. And
21 I'm -- I'm here to talk about that in the information
22 that we're here to present today. We want to show you

1 as I presented in our exhibits several establishments'
2 settlement agreements that -- and -- and they're -- and
3 they are operating on different -- on hours not the same
4 as what we're being proposed to change our hours to. In
5 addition to that, we don't feel our current hours are an
6 adversely affecting the community. We don't feel as if
7 it is -- we are a detriment in any way closing any
8 earlier or a detriment based on the hours that we have
9 to the community or anything in that nature. The noise
10 level we feel is not creating a hazard or -- or any
11 negative effect or impact to the community. We also
12 feel and have been told by our employees that -- and we
13 feel based on our business that a change in these hours
14 to limit us to -- by nine hours total during the week
15 would affect us in our -- it's going to impact the local
16 economy because of course we do pay taxes into the
17 economy, and that's -- the loss of revenue for that, you
18 know, will not allow us to be able to do that or will
19 not allow as much as we already are doing. Our business
20 revenue -- of course we -- we won't be able to make
21 money that we would have made during those hours. So it
22 does impact us in that way. And of course we went into

1 business to, you know, with a positive, and we did have
2 an opportunity to do that already for the last year and
3 a half. And our wages, it -- our employees do work.
4 You know, that -- especially for the months that our --
5 our rooftop are open during that time of the year they
6 anticipate being able to earn additional income during
7 that time. It does give them an opportunity to do that.
8 And many of these employees do work right there right
9 there in the community. And so we feel that there's --
10 it will definitely impact us in that way as well. And
11 we're asking for you all -- your understanding and
12 approval of the -- of the current hours or something not
13 what was being proposed. Our capacity is current --
14 they are what we -- which is not listed in the -- the
15 protestant's PIF. However, it was one of the items that
16 was listed when they went and the recommendation that
17 was made to the ANC. So we want to be certain that
18 we're clear on this part since we have not reached a
19 settlement agreement. We have a capacity that has been
20 afforded to us of 110 on our rooftop. And currently we
21 have no problem with 50 seated. However, our capacity
22 that's -- that's been issued to us by the D.C.

1 Government is 110 for that level. It's going to impact
2 us in the sense of if we've got -- whatever the -- the
3 level is, if we close our hours earlier or what have
4 you, then we do have to do a shift in people going from
5 one level to another. We already understand that
6 because we experience that a little bit. Currently
7 our -- as an example currently on a Friday and a
8 Saturday night our rooftop hours are 2 a.m., and our
9 internal hours -- the hours for the other levels is 3
10 a.m. And so we already are -- you know, we shift and we
11 try to deal with our total capacity of our -- our
12 establishment based on that currently. So now they're
13 asking for us to shift for two hours earlier than that
14 where people have sometimes left by -- by 2 a.m. versus
15 leaving by 12 p.m. -- or 12 a.m. So it does make a
16 difference to us, the whole picture. Music on the
17 rooftop deck, again, we feel as if we are -- we do have
18 an entertainment endorsement. We are not being treated
19 consistently as other businesses are which is
20 demonstrated in the settlement agreements that I've
21 provided to you all today to -- to look at. And we
22 would like to maintain what's existing as far as

1 providing background music on our rooftop and possibly
2 even being put to the same level as some of the other
3 businesses that are currently like ours which I will
4 show you as we look through the -- that actually have
5 live entertainment and entertainment being allowed on
6 their rooftops up until 8:00 p.m. on -- on weekend -- on
7 weekend nights. And so currently that is not being
8 provided to us at all. And so we would like to -- to --
9 to have, you know, some equality given to us as far as
10 that's concerned. They also raise the issue of third
11 party promoters. However, that's a non-issue for us.
12 We don't -- we don't turn our venue to over third
13 parties promoters at all. We do definitely -- we always
14 maintain control of our bar, of our food, of our
15 everything. And so, you know, sometimes our door, we,
16 you know, work deals out or that kind of thing. Again,
17 that a conjunction. It's not a -- where we turn our
18 venue over to any third party promoters. So to us
19 that's mute in this instance. And I don't think that
20 they've -- as we began our settlement negotiations and
21 discussions and our mediation it was not something that
22 was a huge thing for us. So of the exhibits that were

1 provided to you guys we have a petition in -- that we
2 submitted initially when we were -- when we came up for
3 a renewal for this with over 90 signatures on it or at
4 least up to 90 signatures on it of our patrons and also
5 residents of those. Many of them are right here in
6 the -- or are there in the community that we -- that we
7 do business in, and they are our patrons, and they come
8 in and -- and they're happy to have us there. And we're
9 glad to be there for them. So we would really like to
10 be able to continue to provide the -- the entertainment
11 and the food and the atmosphere that we are becoming --
12 you know, we're proud to be known for. Additionally,
13 the exhibits that we are prepared to -- to present are
14 photos of our rooftop. We are also looking into for --
15 to use our business for other purposes as well. We've
16 got some plans. We've been in -- in -- for the --
17 since -- since we started we've been in a process of
18 trying to house our business in the daytime during the
19 hours that it's not running as a -- as a supper club,
20 restaurant, and what have you as a training facility for
21 hospitality, bartending, and culinary arts. And so
22 we're working with the Office of Licensure Commission

1 trying to get a provisional license to offer
2 certification in that area. Financially its been --
3 trying to get this up and that at the same time we
4 thought okay, what are we thinking, let's sort of, you
5 know, step this out a little bit. And so we are now a
6 year and a half doing this. You know, we're moving even
7 more forward with that process. So in light of that for
8 us we want to be able to utilize our rooftop on a
9 year-round basis for our students and all. So we are
10 looking at doing a covering on our rooftop as well as of
11 course being able to use the rooftop for entertainment
12 and for the same other reasons that we use it during the
13 summer months during the -- at putting in a covering.
14 So we're looking to do that. And some of the photos
15 will demonstrate some of an idea of what we're trying to
16 do, what we're planning to do. I mentioned the
17 settlement agreements. And then I have a statement --
18 some statements from employees. So that's witnesses
19 that are not physically here, are not able to be here
20 due to their schedules. And I'd like to read that for
21 the record as well. That demonstrates a reduction in
22 their hours that's going to affect them. They were very

1 concerned about that and also supporting us being our
2 renewal. I just -- I'm looking forward to being able to
3 continue the relationship that we have with the ANC.
4 We -- we continue the relationship that we have in the
5 community being a vital part of the H Street community
6 and also, you know, having this -- this licensure we're
7 respected very much, and we'd like to continue to have
8 that for us as well. Thank you.

9 CHAIRPERSON ANDERSON: All right. Thank
10 you. Yes. Yes, sir.

11 MR. WILLIAMS: Thank you. Chairperson
12 Anderson and Members of the Board, thank you for your
13 time this afternoon. I'll do my best to keep things
14 focused because I know we're all in the interest of
15 getting out of here at a reasonable hour this evening.
16 And I want to make it clear at the outset we're not here
17 to fully oppose the renewal of Touche's license. We're
18 not saying you should yank away their -- their license,
19 they should stop operating and being able to sell
20 alcohol. We're here for a very specific issue. As
21 Ms. Price inferred during her opening statement I'm here
22 before you to ask that you place straightforward and

1 reasonable limitations on the operations of Touche's
2 roof deck. Nothing else. We're not asking for a few of
3 the things that Ms. Price mentioned that came up during
4 confidential settlement agreement negotiations. I'm not
5 going to talk about, you know, the limit of patrons on
6 the rooftop because that's already in place in their
7 existing settlement agreement which you'll hear about
8 today. We're not going to talk about the requirement
9 that they not have entertainment on the roof deck
10 because that's already in existence in the settlement
11 agreement that is in place today with Touche. So as --
12 as you've heard currently Touche is permitted to keep
13 its roof deck open until midnight on the -- on
14 weeknights and 2 a.m. on weekends. This is an agreement
15 that was made with Touche's predecessor and the
16 neighborhood back in October 2007 and was put into what
17 was then a voluntary agreement now called the settlement
18 agreement which as I said is still in place today.
19 Unfortunately years of experience have proven that those
20 hours were a mistake. And I'm not talking just about
21 Touche's predecessor, which I know we're not getting
22 into the details there. I am talking about the year and

1 a half that Touche has been in operation. We still
2 believe that those hours are a problem. So I'm not here
3 to rehash the ridiculously long investigative history
4 and Board history of the predecessor. We acknowledge
5 that Touche is run by new management and new owners, and
6 for that we're very -- we're very thankful quite
7 frankly. However, unfortunately with Touche we've seen
8 a lot of the same. We've seen more noise. We've seen
9 additional empty promises, and we've seen quite frankly
10 disinterest in working with the neighborhood to -- to
11 deal with these issues. As you're going to hear when we
12 present our evidence and our witnesses there's extensive
13 opposition from neighbors to Touche's current roof deck
14 hours. These individuals have experienced firsthand the
15 unbearable noise coming from Touche's roof deck on a
16 regular basis, and this is noise that can be heard from
17 within their homes. We're not talking about just when
18 they're out walking their dogs right next door to
19 Touche. And these are neighbors who live -- some of
20 whom live near other establishments that have similar
21 outdoor spaces, and they have virtually no issues with
22 those outdoor spaces. And we'll talk about the

1 comparisons that it sounds like Ms. Price is going to
2 want to make with some other establishments in the ANC
3 6A, and I'm happy to talk about those. Further the
4 evidence is going to show that Touche is regularly and
5 openly violating its existing settlement agreements
6 including the -- including some limitations that were
7 specifically put into place to mitigate noise coming
8 from their roof deck and -- and including also
9 additional recent incidents where Touche was knowingly
10 operating past its permitted hours. Because of the
11 neighborhood's experience with Touche and this
12 establishment's track record to date we respectfully ask
13 The Board to take the following actions: Limit the
14 hours of Touche's rooftop deck to 11 p.m. on weeknights
15 and 12 a.m. on weekends and order that Touche cannot
16 operate any music on its roof deck, be it performed by
17 DJs, live bands, or even background music. In
18 conclusion although Touche has so far been an
19 improvement over its predecessor 12, unfortunately the
20 bar was set pretty low. Touche has continued to operate
21 in such a way that flaunts its existing settlement
22 agreements and has continued to produce unacceptable

1 noise from its roof deck that has negatively affected
2 the peace, order, and quiet in the neighborhood. We ask
3 that The Board take very limited and reasonable steps to
4 mitigate these problems. Thank you for your time.

5 CHAIRPERSON ANDERSON: I just need some
6 clarification. What does the old settlement agreement
7 state regarding noise -- music on the roof deck because
8 I thought you said that was covered?

9 MR. WILLIAMS: And in the -- so there are
10 two settlement agreements that are currently in place;
11 one that was reached with the neighborhood association
12 and one that was reached with ANC 6A. And the language
13 -- and if -- if you have copies of your exhibits, the
14 Protestants' Exhibit 1 are the settlement agreements.
15 If you look on Page 3 of the first agreement, 1.3C says
16 12 agrees to no -- and 12 being now Touche -- agrees to
17 no live bands or musical entertainment on the roof deck,
18 but soft background music will be played for dining
19 subject to the above restrictions. And the above
20 restrictions are basically, you know, you can't produce
21 any sound that can be heard. It's essentially like a
22 noise ordinance provision. And then the ANC's agreement

1 which is further in that exhibit, Page 3 out of 4, Part
2 4C says applicant agrees that sounds on the rooftop
3 shall not be amplified. This includes sounds from
4 entertainment defined below and those of a jukebox, TV,
5 or radio. Part D -- Subpart D says prerecorded music
6 can be utilized on the rooftop as background for dining
7 under the following conditions. Several conditions are
8 put in place including that seating capacity will not
9 exceed 50 persons and then -- and that the rooftop will
10 be utilized only for dining and therefore will not be
11 utilized beyond the hours of food service and will not
12 be used for events in which patrons are standing. And
13 then Subpart G defines entertainment to mean live music
14 or any other live performance by an actual person
15 including live bands, Karaoke, comedy shows, poetry
16 readings, and disc jockeys.

17 CHAIRPERSON ANDERSON: So what type of --
18 I'm just trying to narrow it. So what type of
19 entertainment if -- if any are you asking for on the
20 rooftop?

21 MS. PRICE: Well, we're asking for -- we
22 want to stay where we are with using, you know, recorded

1 music and some type of music as opposed to what they're
2 proposing which is no music at all.

3 CHAIRPERSON ANDERSON: That's not -- I'm --
4 because that's what I'm -- I'm just trying to find
5 out -- I -- I thought that -- I thought that they said
6 there was agreement with what's in the settlement
7 agreement. That's why I was asking what's in the -- I
8 thought that's what you're -- I thought that the
9 settlement agreement had talked about entertainment on
10 the rooftop. And so --

11 MR. WILLIAMS: The current settlement
12 agreement does not allow entertainment on the rooftop.
13 And one thing I intend to show today is that they have
14 been having entertainment on the rooftop in violation of
15 their agreement.

16 MS. PRICE: On -- to answer your question if
17 I may, Chairman, one of the things that we're asking is
18 for entertainment in the form of live bands and/or DJs
19 that shall not be, you know, on our rooftop up until
20 8:00 p.m. similar to other establishments.

21 MR. WILLIAMS: And if -- if I may for just a
22 second, it sounds like what Touche is asking for is a

1 modification or an amendment to their current settlement
2 agreement, and this is not the place for that to be
3 done. There's a -- there's a process for amending or
4 terminating current settlement agreements, and I
5 haven't -- we haven't received a petition. It's --
6 we're here to talk about the appropriateness of this
7 license. And if they're going to ask for a changes to
8 their settlement agreement, they should do it in the
9 proper venue.

10 MS. PRICE: Okay. So I'd like to address
11 that. May I?

12 CHAIRPERSON ANDERSON: No. That's one of
13 the reasons why I was just trying to figure out what
14 were the -- what -- what were the issues that if --
15 if -- if you're asking for what's in the current
16 settlement agreement, then that's fine. But if you're
17 asking us to change what's in a settlement agreement,
18 that's not something that we can do in this forum in the
19 sense of if this current settlement agreement says no
20 live music or a DJ or whatever, then in the -- in this
21 forum we -- then we can't do that. So that's -- that
22 cannot be an issue that we can address.

1 MS. PRICE: So I guess I'm not understanding
2 that -- and of course, you know, the ANC is definitely
3 much more, you know, experienced at this and -- and all.
4 But my understanding was that we go into -- you know, we
5 have to have -- in order for us to obtain our license or
6 even a renewal we have to have a settlement agreement in
7 place.

8 CHAIRPERSON ANDERSON: No. That's only --
9 you don't have to -- you don't have to have a settlement
10 agreement in place. I mean that's only if the -- if the
11 ANC or say an abutting property -- property manager says
12 that we're going to protest your license. And so then
13 the parties can agree that rather than coming through
14 this process then we'll -- we'll have a settlement
15 agreement, but --

16 MS. PRICE: We want a -- I mean we don't
17 problem.

18 CHAIRPERSON ANDERSON: Right. But a
19 settlement agreement is still -- is still in place. And
20 so therefore if you're trying to change the terms in the
21 settlement agreement, then -- then you would have to try
22 to negotiate what's in the settlement agreement with --

1 with -- you'd have to -- well, make -- make an
2 application to -- to ABRA to say that we're trying -- we
3 want to -- see, because since the settlement
4 agreement -- say for example a settlement agreement is
5 from 2007 and so it's more than four years old. Then
6 you can try to negotiate with the party to see if it can
7 change that provision. But if you can't, then you can
8 make -- after you have made certain inquiry to get the
9 parties to see if you can change it, then you can come
10 to ABRA to say that we have had a settlement agreement
11 for -- and it's longer -- it's older than four years
12 old, this is what we have tried to do, and it hasn't --
13 and then we'll make a determination whether or not we're
14 going to placard that for the community for input. But
15 -- so we cannot change. So the issue regarding you
16 asking for live -- live entertainment on the rooftop, if
17 that's prohibited in the current settlement agreement,
18 then that's not an issue here that we cannot -- at least
19 in this hearing we cannot make any changes to that.

20 MS. PRICE: Okay. We definitely -- then I
21 would, you know, I'm certain that I will get an
22 opportunity to address. What I've just, you know, heard

1 is that we are violating in some ways some of the
2 language that's in our current agreement. So --

3 CHAIRPERSON ANDERSON: Well, I -- I -- and I
4 think -- I think -- I think that the parties need to --
5 need to be clear what it is that -- what -- what's meant
6 by violating a settlement agreement. Because maybe from
7 what I'm -- I'm not sure if it's clear to them what --
8 what type of music if any they can have on their -- on
9 their rooftop. And so that's something that the parties
10 need to -- to talk about, and that's not an issue. So I
11 mean I think when we're talking about that they're
12 violating a settlement agreement, it appears that
13 there's a misunderstanding between the -- from what I'm
14 hearing here it appears that there's a misunderstanding
15 between the parties about what it is that they can or
16 can't have as regarding music. One thing I'll say to
17 you is that you cannot have live music as -- from what
18 I'm told from what a settlement agreement is. Now, it
19 appears there's some type of music can be played, and I
20 think that the parties need to have that discussion
21 about what type of music can be played. So -- because
22 it -- it's not apparent that they know that they are

1 violating the settlement agreement from what I'm being
2 told here. I'm not saying -- from what -- from what I'm
3 being told here. Okay. All right.

4 MS. PRICE: But I do want to say we
5 definitely -- I think we can agree that pre-recorded is
6 allowed. That is in the settlement agreement that we
7 currently have and that is what we do, pre-recorded
8 music.

9 CHAIRPERSON ANDERSON: All right. Because
10 there's a misunderstanding between --

11 MR. ALBERTI: But I think we need to get to
12 the facts.

13 CHAIRPERSON ANDERSON: All right. Well --

14 MS. PRICE: We don't have any live music.

15 CHAIRPERSON ANDERSON: All right. Well,
16 anyway.

17 MR. WILLIAMS: We'll get it -- I mean I
18 think when I put on my case you -- I'll -- I'll
19 hopefully be able to kind of illustrate what -- what I'm
20 getting at and I think --

21 CHAIRPERSON ANDERSON: Okay.

22 MR. WILLIAMS: Yeah. I think the

1 settlement -- the -- the language of the settlement
2 agreement that we believe is -- we allege is being
3 violated goes -- just goes to the appropriateness of the
4 license and their -- and their actions. And a lot of
5 the -- the language that I'm going to be focusing on is
6 noise mitigation language that in -- in my mind -- and
7 of course it's you were The Board to decide -- is -- is
8 very clear and straightforward. And if there's a
9 misunderstanding, I feel like it's -- that's -- that's
10 not an excuse for -- for that, the behavior that we're
11 going to be discussing.

12 CHAIRPERSON ANDERSON: All right.

13 MR. WILLIAMS: But we can get into in our
14 case.

15 CHAIRPERSON ANDERSON: Okay. All right.

16 Hold on one minute please. All right. Well, all right.
17 The way the process is supposed to work is that each
18 side is supposed to have 90 minutes to present its case.
19 Now, what I'll ask each -- each of you to do, not -- to
20 do or not to do don't spend 20 minutes cross-examining a
21 witness. I mean that's what eats into the time. So I
22 mean if -- your direct should not take more than triple

1 the amount of time -- I'm sorry your cross-examination
2 should not take triple the time of the direct
3 examination. So -- so -- so that's what I'm -- in a
4 sense of if -- if you kind of keep -- we'll get the
5 point. Okay. We'll have objections. And I -- I know
6 you're an attorney, sir, but I guess you're not working
7 at your -- you're not --

8 MR. WILLIAMS: I am not here in my capacity
9 as an attorney.

10 CHAIRPERSON ANDERSON: Huh?

11 MR. WILLIAMS: I'm not here officially as an
12 attorney.

13 CHAIRPERSON ANDERSON: Right. So -- but --
14 and you are not an attorney. But at the same time
15 it's -- it's -- who's going to do the time?

16 MR. ALBERTI: I -- I will do the timing.

17 CHAIRPERSON ANDERSON: All right.
18 Mr. Alberti's going to do the timing. And so we'll let
19 you know how much time you have. But -- but I think
20 that we need to be efficient. And I mean we get it.
21 Okay. We get it. So you don't have to keep on going
22 over the same issues over and over. We'll -- we'll get

1 it. Okay. All right. All right. So The Board then
2 will call its first witness, Investigator Ghenene. All
3 right. Will you raise -- do you swear or affirm to tell
4 the truth and nothing but the truth?

5 MR. GHENENE: Yes, sir.

6 CHAIRPERSON ANDERSON: All right. Thank
7 you. All right. So can you tell us what is it you have
8 been a look at find out regarding this applicant, sir.

9 MR. GHENENE: Sure. And I'll try and be as
10 brief as possible.

11 CHAIRPERSON ANDERSON: No. You don't have
12 to be -- I mean we can take as much time as we want.
13 They're the ones that need to be brief.

14 MR. GHENENE: No problem.

15 MR. WILLIAMS: The Board is not limited to
16 90 minutes.

17 MR. GHENENE: On December 2nd, 2015 I was
18 assigned the protest investigation of Touche. The
19 renewal is being protested by one group, the ANC. The
20 ANC submitted a letter to ABRA dated April 12th, 2015
21 which is attached. I attempted to speak with the
22 protestants several times but was unsuccessful. The

1 zoning information is in there. It's -- Touche is
2 located in a C2A, and there's a lot of technical
3 language in there so I'll leave that alone. According
4 to the District of Columbia Geographic Information
5 Systems there are nine licensed ABC establishments
6 within 1,200 feet of Touche, and I've listed -- I'm
7 sorry, not nine -- 23. And I've listed all 23 there and
8 their retail class designations. According to the GIS
9 information there is one school or a child development
10 center within 500 feet of -- I think specifically 381
11 feet away from the establishment. There's parking
12 available around Touche on H Street and 12th Street and
13 11th Street to the west. Touche is one of several
14 businesses on the 1100 block of H Street. It's a very
15 busy area. Touche is a three-story -- three-story
16 building with a kitchen and a first floor bar on the
17 first floor where they're street level. The second
18 floor there's a bar and dining area. And then on the
19 rooftop, as discussed earlier, there is a summer garden.
20 I think they've already talked about the hours of
21 entertainment and hours of operation. And listed I have
22 my hours and more specifically ABRA investigators hours

1 of observation, and those observations that we saw.
2 The -- the establishment was monitored during
3 operational hours and non-operational hours. And this
4 is a snapshot of the times that I monitored. Touche is
5 located on 8th Street which is a main corridor for all
6 of us. So I've -- I've personally monitored --
7 monitored Touche much more than the listed times here.
8 So I think I have a pretty good understanding of what's
9 going on there. During the daytime hours monitored
10 there was a decent amount of parking available. There
11 was a lot of pedestrian activity. During nighttime
12 hours much more pedestrian activity but more so geared
13 to the businesses for the ABC licenses in the area. And
14 there was some parking available off of H Street -- not
15 on H Street but off of H Street. Thursday, March 31 is
16 it I spoke with Touche owner Jayne Price. Ms. Price,
17 much like she said in her introduction stated that some
18 of the things that she's done in addressing some of the
19 written ANC's protest issues was they soundproofed the
20 second floor by sealing all the windows and putting up
21 specific soundproofing devices to mitigate the sound.
22 And Ms. Price also stated that Touche's looking into

1 enclosing its rooftop and is currently -- rooftop summer
2 garden and is currently taking bids from several
3 contractors and evaluating the cost effectiveness of it.
4 I requested and reviewed the records for the Noise Task
5 Force, ABRA's Noise Task Force from March 25th, 2015
6 through March 25th, 2016, and there were six noise
7 complaints. And I contacted via e-mail the Office of
8 Unified Communications requesting the NPD calls for
9 service. But as of today I still haven't received any
10 sort of documents. And that's it.

11 CHAIRPERSON ANDERSON: All right. Thank
12 you. Do you have any questions for the investigator?
13 Yes, Ms. Miller.

14 MS. MILLER: Hi, Mr. Ghenene.

15 MR. GHENENE: Hey, how you doing,
16 Ms. Miller?

17 MS. MILLER: Okay. So when you did your
18 visits to the establishment were you aware of what the
19 focus of the protest was going to be?

20 MR. GHENENE: Only from reading the letter.

21 MS. MILLER: So I don't know about the
22 letter. But -- so -- and I'm glad you've had more

1 exposure to the establishment because it seems like the
2 focus of this hearing if -- if I'm not mistaken is the
3 noise from the rooftop in the evening. And so I didn't
4 see that you actually -- or the later hours after
5 midnight or whatever. I do see one I guess at 11 p.m.,
6 the latest.

7 MR. GHENENE: Right.

8 MS. MILLER: Do you have any general
9 observations even separate from this with respect to
10 noise at the later hours?

11 MR. GHENENE: Not really. At the time this
12 was assigned in December I don't think they were using
13 their rooftop as much as, you know, the --

14 MS. MILLER: Oh, right.

15 MR. GHENENE: So -- so that's the
16 difficulty.

17 MS. MILLER: And they haven't been there
18 that long --

19 MR. GHENENE: I'm sorry, ma'am.

20 MS. MILLER: -- is that right? I think she
21 said a year and a half or so.

22 MR. GHENENE: Sure. But I was -- I was only

1 assigned it in December.

2 MS. MILLER: Right.

3 MR. GHENENE: So, you know, I -- I probably
4 have some I guess memories of what it was like during
5 last summer.

6 MS. MILLER: Right.

7 MR. GHENENE: But I don't want to speak
8 specifically to it, because it -- it may be inaccurate.

9 MS. MILLER: It may be a little bit vague
10 too?

11 MR. GHENENE: Sure. Sure.

12 MS. MILLER: Okay. How about -- did you say
13 that she sealed the windows?

14 MR. GHENENE: Yes. According to Ms. Price
15 the windows have been sealed. They're blocked, they're
16 unable to be opened, and they're covered.

17 MS. MILLER: Did you -- do you have any
18 opinion or knowledge about how it was -- how the noise
19 was before they were sealed and after they were sealed?

20 MR. GHENENE: I don't know when they were
21 specifically sealed.

22 MS. MILLER: Uh-huh.

1 MR. GHENENE: And I want to be careful to
2 not talk about their predecessor too much.

3 MS. MILLER: Okay.

4 MR. GHENENE: So yeah.

5 MS. MILLER: Okay. How about -- and in the
6 noise complaints do you have any more information about
7 what they entailed or anything?

8 MR. GHENENE: No, ma'am.

9 MS. MILLER: And how they were resolved or
10 no?

11 MR. GHENENE: No, ma'am. Other than the
12 investigative history.

13 MS. MILLER: Right. Okay.

14 MR. GHENENE: That's a part of my report.

15 MS. MILLER: Do you have an opinion -- and
16 it might be hard because last summer was a long time ago
17 then, but -- I guess we'll hear all the testimony -- but
18 related to the noise from this rooftop compared to
19 similar establishments in the area? Are there other
20 rooftops located nearby?

21 MR. GHENENE: Yes, ma'am.

22 MS. MILLER: Okay. Do you have any -- any

1 opinion with respect to the noise that's generated from
2 this one?

3 MR. GHENENE: Not really. I think that
4 they're all fairly similar.

5 MS. MILLER: Okay. All right. Thank you.

6 MR. GHENENE: Yes, ma'am.

7 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

8 MR. ALBERTI: Hi. Thank you for your report
9 Mr. Ghenene.

10 MR. GHENENE: Sure, Mr. Alberti.

11 MR. ALBERTI: I want to just go -- go --
12 sort of look at the general area so we get a context for
13 what it looks like. So -- so -- so this establishment
14 sits on the corner of -- it sits on the corner of, what,
15 12th and -- and H Street; is that correct?

16 MR. GHENENE: More or less, yes.

17 MR. ALBERTI: More or less. So on the
18 ground floor is there -- on the second floor does it
19 take up the entire portion of the building?

20 MR. GHENENE: That -- I mean that's a good
21 question. It is the biggest area I believe. But I'm
22 not sure --

1 MR. ALBERTI: Other business that takes up
2 the second floor?

3 MR. GHENENE: I'm unaware.

4 MR. ALBERTI: Let me ask it this way: The
5 windows on the east side of the building, do they
6 overlook 12th Street?

7 MR. GHENENE: I believe so. Yes.

8 MR. ALBERTI: Okay. And the windows that I
9 see on the front that go all the way to the edge of the
10 building sort of that sit above its main entrance, are
11 all of those windows all the way to the east corner, are
12 all those part of the establishment?

13 MR. GHENENE: I believe so. Yes.

14 MR. ALBERTI: Okay. All right. But on the
15 first floor it looks like half of the first floor
16 belongs to another business.

17 MR. GHENENE: Yes, sir.

18 MR. ALBERTI: But again, the second floor,
19 it looks like the entire second floor is -- is -- is
20 owned on rented by this business.

21 MR. GHENENE: Yes, sir.

22 MR. ALBERTI: Okay. What about the rooftop?

1 MR. GHENENE: The same thing. It goes to
2 the --

3 MR. ALBERTI: So it goes to the -- if I'm
4 standing at the front of the rooftop what am I -- am I
5 over looking H Street?

6 MR. GHENENE: Yes, sir.

7 MR. ALBERTI: And if I stand to the left --
8 to the east side of the rooftop what am I overlooking?

9 MR. GHENENE: 12th Street.

10 MR. ALBERTI: Okay. How close to the edge
11 am I getting?

12 MR. GHENENE: Its -- I'm sorry. I don't --

13 MR. ALBERTI: How close to the edge of the
14 building am I getting if I'm standing up there?

15 MR. GHENENE: It is the edge of the
16 building.

17 MR. ALBERTI: It is. You can go all the way
18 -- the roof -- the garden goes all the way -- the
19 rooftop garden goes all the way to the edge?

20 MR. GHENENE: It covers the entire -- it
21 goes to the corner, yes.

22 MR. ALBERTI: All right. And in the back

1 how far back does it go?

2 MR. GHENENE: I believe it's the same. I
3 don't know. I don't know.

4 MR. ALBERTI: Okay. All right.

5 MR. GHENENE: Actually it can't be because
6 there's a stairwell. So I don't think it -- it go --
7 you can't look into the alley I don't think.

8 MR. ALBERTI: Okay.

9 MR. GHENENE: Do you understand what I'm
10 saying?

11 MR. ALBERTI: All right. All right. All
12 right. We'll get more clarity on that. The area around
13 it, I'm looking at your Exhibit Number -- one of your
14 maps.

15 MR. GHENENE: Yes, sir.

16 MR. ALBERTI: The two exhibits that's your
17 maps. I don't know what those -- that are part of your
18 report.

19 MR. GHENENE: Yes, sir.

20 MR. ALBERTI: All right. So directly behind
21 the building there are some narrow lots. Are those
22 businesses or residential?

1 MR. GHENENE: Residential.

2 MR. ALBERTI: Is there an alley there that
3 separates them? If you don't know, that's fine.

4 MR. GHENENE: Yeah. I don't know.

5 MR. ALBERTI: All right.

6 MR. GHENENE: I can't -- I can't remember.

7 MR. ALBERTI: And it doesn't -- I am not
8 seeing it on here. That's why I'm --

9 MR. GHENENE: Yeah.

10 MR. ALBERTI: -- I'm asking. Okay. It
11 looks like directly across the street on -- from 12th on
12 the east side of 12th Street directly across from the
13 establishment there's a -- on your map there's a big
14 solid rectangle. Is that commercial?

15 MR. GHENENE: Yes, sir.

16 MR. ALBERTI: [Inaudible 46:53] H Street.
17 Behind that there's an alley?

18 MR. GHENENE: Yes, sir.

19 MR. ALBERTI: And the narrow rectangles
20 there, right there, are those residential?

21 MR. GHENENE: Yes. Yes, sir.

22 MR. ALBERTI: Linden Place, do you know if

1 that's -- any of that's commercial or it's all -- it's
2 all --

3 MR. GHENENE: I believe it's all
4 residential.

5 MR. ALBERTI: Okay. Any idea how wide that
6 alley is on the --

7 MR. GHENENE: No, sir.

8 MR. ALBERTI: Okay. Fine. That's all the
9 questions I have. Thank you.

10 MR. GHENENE: Yes, sir.

11 CHAIRPERSON ANDERSON: Do you have any
12 other -- yes, Mr. Short.

13 MR. SHORT: Good afternoon, Inspector
14 Ghenene.

15 MR. GHENENE: Good afternoon.

16 MR. SHORT: You've been working this general
17 vicinity for how long as an ABRA investigator?

18 MR. GHENENE: Next week five years.

19 MR. SHORT: Five years. So you have a lot
20 of history with most of the establishments there on H
21 Street in that 1100, 1200, and 1300 block?

22 MR. GHENENE: Yes, sir.

1 MR. SHORT: The neighbors, do they do a lot
2 of complaining about businesses generally in that area?

3 MR. GHENENE: I -- I'd say it's probably
4 about the same over the five years as every other
5 neighborhood where there's residential property abutting
6 commercial property.

7 MR. SHORT: And those complaints are
8 generally?

9 MR. GHENENE: It ranges. But I -- I haven't
10 really worked the Noise Task Force as much. But, you
11 know, I -- I think that there have been a lot of
12 complaints regarding noise on H Street in the past five
13 years. Yes.

14 MR. SHORT: Okay. And -- and basically with
15 your knowledge as an investigator and outside of noise
16 what is the general -- what the general consensus of the
17 community with businesses? I mean how well do they get
18 along?

19 MR. GHENENE: I'm not sure I can really
20 answer that. I can say that my personal experience
21 from -- and again, I'm trying to not talk about the
22 prior licensee.

1 MR. SHORT: Okay.

2 MR. GHENENE: But I could say that there's
3 been --

4 MR. SHORT: I'm just looking at the general
5 area.

6 MR. GHENENE: Sure. There's been -- in
7 general there's been a reduction in the complaint cases
8 that I've handled in the area.

9 MR. SHORT: So not to put words in your
10 mouth, but things have gotten better in the last five
11 years?

12 MR. GHENENE: Absolutely.

13 MR. SHORT: Would you say it's a 40 percent
14 reduction, 50 percent, 30 percent?

15 MR. GHENENE: It would be tough for me to
16 say because I could only speak to my experience, and
17 there are several other investigators. But for me --

18 MR. SHORT: Yes.

19 MR. GHENENE: -- more than 50.

20 MR. SHORT: More than 50 percent?

21 MR. GHENENE: Yes, sir.

22 MR. SHORT: So apparently some new

1 regulations that have come in to play and some new
2 things that you are doing as investigators have helped
3 quiet -- quiet down some of the situations between the
4 community and business?

5 MR. GHENENE: I'd hope so. Yes, sir.

6 MR. SHORT: That's all I have. Thank you,
7 Mr. Chair.

8 CHAIRPERSON ANDERSON: Yes, Mr. Silverstein.

9 MR. SILVERSTEIN: Picking up on my
10 colleague's question there, could it have also been that
11 certain places like TruOrleans were shut down?

12 MR. GHENENE: Absolutely, sir.

13 MR. SILVERSTEIN: That really that some of
14 the most difficult offenders went out of business?

15 MR. GHENENE: Absolutely sir.

16 MR. SILVERSTEIN: No further questions.

17 CHAIRPERSON ANDERSON: Any other questions
18 by any of the board members? Hearing none, Ms. Price,
19 do you have any questions for the investigator?

20 MS. PRICE: I do.

21 CHAIRPERSON ANDERSON: Go ahead please. And
22 it should be based on his report and our questions by

1 The Board.

2 MS. PRICE: Yes. Definitely. Based on your
3 report -- I don't know if this is necessarily totally a
4 question. I don't want to be out of line. But I did
5 look at the address that you gave, 1016 H Street for
6 the -- for the daycare, the child center, it's
7 referenced on Page 3 --

8 MR. GHENENE: Yes, ma'am.

9 MS. PRICE: -- in your report. And what I
10 find is that that is currently a ABRA licensed business
11 as well which is listed in Number 4 of your report, The
12 Liberty Tree. So I wanted to know from you how, you
13 know, as far as the GIS information is concerned how --
14 how much you truly rely on that information.

15 MR. GHENENE: I rely on it totally.

16 MS. PRICE: Well, then for the record there
17 is no New Horizon Child Development Center located at
18 1016 H Street NE. In your -- in your experience you
19 reference there were six complaints between March
20 2015 -- noise -- from the Noise Task Force. And March
21 25th, 2016 I guess I'm trying to understand. You said
22 no -- there were no NPO calls for service -- you weren't

1 able to get that. So is that to say you have not been
2 able to substantiate this particular information, these
3 noise complaints that -- how were they -- how were they
4 substantiated? Do you know the outcome of them at all?

5 MR. GHENENE: No, ma'am.

6 MS. PRICE: Because you weren't able to get
7 the information?

8 MR. GHENENE: Yes, ma'am.

9 MS. PRICE: Okay. I just wanted to
10 understand that. And then would you say in your five
11 years of experience that six complaints in a year time
12 is a lot or a little for a business such as ours?

13 MR. GHENENE: Such as ours is the qualifier.
14 I think that that --

15 MS. PRICE: Or in that area, just is that a
16 lot of complaints to you?

17 MR. GHENENE: It -- it could be, but it also
18 could not be. You know, it's -- it's difficult to say.

19 MS. PRICE: Well, is -- what -- what do you
20 think is a lot of complaints? I mean if you're called
21 out all the time, what do you think is a lot? I mean
22 is -- you're called out in a year six times versus the

1 previous -- I mean --

2 MR. GHENENE: Well, maybe I'll put it in
3 prospective. There are some places that there are zero.
4 There's a lot of places that there are none. You know,
5 there is probably some places that have 20. So it's
6 tough to say. I can't really answer that.

7 MS. PRICE: So do you think it's a lot or a
8 little versus -- compared to other businesses in our
9 area?

10 MR. GHENENE: Again, I mean I can't really
11 speak to that.

12 MS. PRICE: Okay. You did say earlier that
13 it was kind of similar to other establishments. So --
14 [inaudible 53:17]. So I'm sorry if I was redundant.
15 How do you know where the noise is generating from? As
16 an investigator when you're there I mean how do you know
17 if you're investigating a noise complaint where the
18 noise is coming from specifically?

19 MR. GHENENE: Again, I haven't gone out on
20 any noise calls for -- for Touche. So I can't speak to
21 Touche's noise calls.

22 MS. PRICE: Okay. And then you did visit

1 the establishment and you did take pictures. And so can
2 we -- can we look at your Exhibit 6.

3 MR. GHENENE: Yes, ma'am.

4 MS. PRICE: This is our second level. Would
5 you say that this is the second level of our
6 establishment?

7 MR. GHENENE: Yeah. Yes, ma'am.

8 MS. PRICE: And so would you just
9 acknowledge that the photos of the white -- those are
10 windows that are covered, correct? So you did see for
11 yourself that these windows are covered?

12 MR. GHENENE: Well, I saw that -- what --
13 whatever is white is there. You know, obviously I don't
14 know that -- what's on the other side of it. Do you
15 understand what I'm saying?

16 MS. PRICE: Right. But I'm saying you saw
17 that there's --

18 MR. GHENENE: I saw the -- the --

19 MS. PRICE: -- they're not open to -- like
20 you can't see out of them?

21 MR. GHENENE: Yes. Yes, ma'am.

22 MS. PRICE: And then from the outside you

1 saw that you can't see inside?

2 MR. GHENENE: Yes, ma'am. Yes, ma'am.

3 MS. PRICE: So there is no noise that's able
4 to -- well, you're not able to see inside or outside?

5 MR. GHENENE: Yes, ma'am.

6 MS. PRICE: And then there are no windows
7 that are showing facing -- on that level of -- that's
8 facing H Street?

9 MR. GHENENE: No, ma'am. Well, I'm sorry.
10 Can you repeat that?

11 MS. PRICE: On that level looking at this
12 picture as you can see straight ahead there are no
13 windows?

14 MR. GHENENE: Well, there are windows there,
15 but I think they're covered, correct?

16 MS. PRICE: There's no windows showing?

17 MR. GHENENE: Yes.

18 MS. PRICE: And then when you -- did you
19 notice that there's a sub-roof underneath that they
20 built for the transformers for the street cars so we're
21 not to the corner of H Street -- I mean of 12th Street?
22 You know that our building doesn't go -- like there's

1 sidewalk and a lot of -- we're not right at the corner.

2 Did you notice that out there?

3 MR. GHENENE: On which side?

4 MS. PRICE: On the H Street -- on the 12th
5 Street side, did you -- did you happen to notice that?

6 MR. GHENENE: No, ma'am. I mean it sounds
7 right. But I -- yeah, I did notice.

8 MS. PRICE: Okay. And then of your
9 investigative -- in your -- on Page 6 of your -- of your
10 report your investigative history, as far as the -- the
11 Number 1 and Number 2 I know we were not able to obtain
12 this because -- copies of these because they haven't
13 gone to the -- to The Board or what have you, they're
14 not -- we couldn't find these cases. Were you able to
15 get any information about these?

16 MR. GHENENE: No, ma'am.

17 MS. PRICE: So I'd like for them not to
18 be -- I don't know how you say this, but I --

19 CHAIRPERSON ANDERSON: Well, I mean it's --
20 it's part of the -- it's part of the investigative
21 history. So clearly this is something that's in ABRA's
22 records. But I -- one thing I'll just point out to you,

1 Ms. -- Ms. Price, that's not an issue. I think the
2 issues --

3 MS. PRICE: Right. Okay.

4 CHAIRPERSON ANDERSON: So just ask questions
5 that I think that talks about noise and I think just
6 make sure that you focus your questions to the issues at
7 hand. And so I know that you're trying to get some
8 other things out. But remember if they're not
9 contesting it, we're not going to. So just make sure
10 that you -- you get the questions answered to -- to --
11 to the issues that we -- we want to focus on. And so I
12 think your time is better off trying to maybe elicit
13 testimony that's positive regarding those type of
14 issues.

15 MS. PRICE: Yeah. I -- I appreciate that,
16 chairman. I will definitely do that. However, I do
17 want to just point out you got this in writing. And so
18 you've got knowledge of something that doesn't have
19 our -- we don't have full understanding of it. This is
20 our opportunity --

21 CHAIRPERSON ANDERSON: Well, I don't -- I
22 myself -- and I am the chairman of this board, and I

1 don't know what it is too. So I won't be giving it --

2 MS. PRICE: Well, no. I mean it's in
3 writing here. And so --

4 CHAIRPERSON ANDERSON: But I'm saying I'm
5 not going to give any consideration to it because it
6 just says --

7 MS. PRICE: Great. Okay.

8 CHAIRPERSON ANDERSON: It's -- it's -- we
9 have -- I'm not aware if we have had a hearing on that.
10 So you don't -- don't worry about that please. All
11 right.

12 MS. PRICE: Okay. There was one other
13 question I did have for you and that is you -- you did
14 reference that you're -- that you weren't certain if
15 there was an alley between us and the -- and the
16 building, you know, behind us or beside us. Did you
17 notice trees or anything else that -- behind that, our
18 building and --

19 MR. GHENENE: No, I did not notice.

20 MS. PRICE: Okay. Thank you.

21 MR. GHENENE: Sure.

22 CHAIRPERSON ANDERSON: Your witness, sir.

1 MR. WILLIAMS: Okay. Hi, Mr. Ghenene.

2 Thank you very much for your time. And as -- as an
3 initial matter I apologize for not responding to your
4 voicemails. I have no excuse for it.

5 MR. GHENENE: No problem.

6 MR. WILLIAMS: It's been a crazy few months.
7 But I really appreciate the work you put into this --
8 this investigation. And I apologize I could not
9 contribute to it. So just a couple of very brief
10 questions. On Page 5 of your report you indicate that
11 Ms. Price mentioned that they considering enclosing the
12 rooftop; is that correct?

13 MR. GHENENE: Yes, sir.

14 MR. WILLIAMS: Is it -- is it a fair
15 assumption that their motivation for doing so would be
16 to lessen noise coming from the rooftop?

17 MR. GHENENE: I think in our conversation
18 that that was one of the reasons for looking into it.

19 MR. WILLIAMS: Okay.

20 MR. GHENENE: But there could be several
21 other reasons. I didn't ask any further.

22 MR. WILLIAMS: Sure. Understood. Thank

1 you. And just out of curiosity did Ms. Price provide
2 any copies of contractor bids that she referenced?

3 MR. GHENENE: No, sir.

4 MR. WILLIAMS: Thank you. Is it a fair
5 description of Touche's rooftop deck as unenclosed at
6 the moment?

7 MR. GHENENE: Yes, sir.

8 MR. WILLIAMS: In fact, three -- you were --
9 you've -- you've been up on the rooftop; is that
10 correct?

11 MR. GHENENE: Yes, sir.

12 MR. WILLIAMS: So is it fair to say that at
13 least three of the four walls are no higher than waist
14 high in terms of the actual like structural walls?

15 MR. GHENENE: Yeah. I believe so. Yes,
16 sir.

17 MR. WILLIAMS: Okay. I think that's all I
18 have. Thank you.

19 CHAIRPERSON ANDERSON: All right. Thank
20 you. All right. You're free to go. You may step down,
21 sir.

22 MR. GHENENE: Thank you.

1 CHAIRPERSON ANDERSON: The Board doesn't
2 have any other witnesses. So, Ms. Price, you may call
3 your first witness.

4 MS. PRICE: Okay. Well, I'd like to call
5 Tim Franklin.

6 MR. FRANKLIN: Hello, everybody.

7 CHAIRPERSON ANDERSON: You can go over
8 there, sir. Can you raise your right hand please. Do
9 you swear or affirm to tell the truth and nothing but
10 the truth?

11 MR. FRANKLIN: Yes.

12 CHAIRPERSON ANDERSON: Thank you. Have a
13 seat. Your witness, ma'am.

14 MS. PRICE: Thank you. Mr. Tim, would
15 you -- Mr. Franklin, would you --

16 MR. SILVERSTEIN: Would the witness identify
17 him?

18 CHAIRPERSON ANDERSON: Well, yeah. Just
19 hold on please. Just ask him -- yeah. Just have him
20 identify himself for the record please. Okay?

21 MS. PRICE: I'm sorry. I'm -- I cannot hear
22 you.

1 CHAIRPERSON ANDERSON: Have him identify
2 himself. The first question that you should ask him is
3 to ask him to identify himself.

4 MS. PRICE: Thank you.

5 CHAIRPERSON ANDERSON: And maybe you just
6 want to give some background information and his
7 affiliation with the establishment.

8 MS. PRICE: Would you please identify
9 yourself for the record.

10 MR. FRANKLIN: I'm Mr. T. H. Franklin. I
11 live at 1200 G Street NE which is about 150 feet from
12 your club. I'm the Neighborhood Watch every day for the
13 last five years. I'm there all day, every day. I'm
14 getting quite anxious right now because I'm not there.
15 It seems like when I'm not there something happens. And
16 I come out every night during the summertime at 2 p.m.
17 I've been living at 1200 G since 1959. I've watched the
18 area change tremendously. I'm a musician and writer and
19 live sound engineer. So I'm very much into sound. So
20 I'm writing a book. I'm in direct observation of the
21 area of the rooftops, of the music, of the crowd noise.
22 I actually four years ago did a sound monitoring with a

1 device that measures the dBs of noise. And actually at
2 2:00 in the morning on Friday and Saturday nights just
3 the street level noise is louder than most of the
4 rooftops. So anyway, I'm there every day. I'm the
5 Neighborhood Watch and I observe to see what's
6 happening. And I listen to complaints from neighbors
7 about noise. And the only one point I would like to
8 make quickly is any changes in the hours of the
9 rooftops, it should be one size fits all. If everybody
10 close their -- if one person as to close at 12, it
11 should be all. Because the sound the way the block is
12 set up from H Street in the 1100 block and the 1200
13 block sound bounces off walls. Some neighbors that live
14 on Linden Street at 2:00 in the morning if it's 50
15 people on the roof, you might think it's coming from one
16 roof, but it's actually coming from another roof like
17 Smith Commons, or it could be the crowd noise from
18 Sticky Rice or Crown Vic (ph) or Vendetta. Because I'm
19 out and doing some -- I purposely come out at 2 a.m.
20 every night just to walk the dog and to see the people
21 and monitoring the sound. Because being there since '59
22 I never thought I would be able within steps of my house

1 walk out and see this wonderful H Street district that's
2 now like Georgetown, Adams Morgan, and so on. So I mean
3 that's my take of the whole situation. It should be
4 uniform, everybody closed at 12 or 1 or whatever.
5 Because noise comes in different directions. I've
6 actually stood with a monitor on my back porch, which is
7 like 150 feet from H Street, and I can hear noises from
8 Smith Commons. I can here noises from Rock and Roll
9 Hotel, the music because I listen to music. I try to
10 get some inspiration to even steal a rip. I can hear
11 noise coming from Sticky Rice. I can hear noise coming
12 from Vendetta when they have their live groups. So I
13 mean to me we signed up -- the people in that area --
14 for a arts and entertainment district and noise comes
15 along with it. So -- and that's it.

16 MS. PRICE: Mr. Franklin, when -- when you
17 are walking along the corridor and coming on 12th Street
18 to H Street from our -- our -- where our business is --

19 MR. FRANKLIN: Right.

20 MS. PRICE: -- you have us and then there's
21 Khan's, correct --

22 MR. FRANKLIN: Right.

1 MS. PRICE: -- on the -- on the side of us.

2 MR. FRANKLIN: Right.

3 MS. PRICE: Then directly across from us
4 there is Auto Zone, correct?

5 MR. FRANKLIN: Right.

6 MS. PRICE: So let's talk about the houses
7 behind us sort of. Can you describe the closest
8 resident to -- to --

9 MR. FRANKLIN: Well, when you walk around
10 the corner from H --

11 CHAIRPERSON ANDERSON: Mr. Franklin --

12 MR. FRANKLIN: Yes.

13 CHAIRPERSON ANDERSON: -- let her finish her
14 question first --

15 MR. FRANKLIN: Oh, okay. Go ahead.

16 CHAIRPERSON ANDERSON: -- before you answer
17 the question.

18 MS. PRICE: So you -- you're Neighborhood
19 Watch. I know you are familiar with many of the
20 residents that are in the -- in the area. So I don't
21 have it to show you. It's -- it's easier for you The
22 Board to look at even investigator's report, that

1 diagram of the -- of the neighborhood.

2 CHAIRPERSON ANDERSON: You can -- you can --
3 if you have a document, just identify it. You let
4 Mr. Matthew know what -- what document you're showing
5 him and then you can show him the document and let us
6 know what document it is. Let the protestants know what
7 document, and then you can show it to -- you can
8 approach the witness and show him the document and ask
9 him to identify it.

10 MS. PRICE: Okay. Bear with me. Thank you.
11 I know -- I think I can try to use Investigator
12 Ghenene's report, his Exhibit 3. It might be the
13 easiest me to -- to sort of describe the -- could I show
14 it to --

15 MR. WILLIAMS: No objection.

16 CHAIRPERSON ANDERSON: Let him know what
17 document you're referring to so he'll know and then you
18 can.

19 MR. SILVERSTEIN: He said okay.

20 CHAIRPERSON ANDERSON: And then ask him to
21 identify the document, can he identify the document.
22 All right. Go ahead. Have him identify the document,

1 and then you can ask him questions.

2 MS. PRICE: Can you identify this?

3 MR. FRANKLIN: Oh, yeah. It's kind of a
4 generic scale of our neighborhood.

5 MS. PRICE: I'll let you look at it.

6 MR. FRANKLIN: Okay.

7 MS. PRICE: I'm just going to kind of --
8 and -- and, Board, I'm going off of that Exhibit 3. Can
9 you look at Exhibit -- that document, you see Touche.
10 If you turn it where H Street is there, you see where
11 Touche is pointed out. So right next to us is Khan's.

12 MR. FRANKLIN: Right.

13 MS. PRICE: So then right behind us is there
14 a resident currently in that -- can you tell us a little
15 bit about just the culture of that area. I know there
16 might be, you know, people that are residents of that
17 side or what have you. But my understanding is that,
18 you know, like for instance there's a musician that
19 lives directly behind us. And so --

20 MR. FRANKLIN: Right. Yeah. It's a base
21 player that lives there and practices. And that house
22 is being rented by young urban professionals that

1 frequent H Street a lot. And the next house is --

2 MR. ALBERTI: Ms. Price, I'm trying to be
3 helpful here. I don't know what house he's referring
4 to.

5 MS. PRICE: I'm sorry.

6 MR. ALBERTI: So maybe you can for the
7 record describe what house you're pointing out to him.
8 It wasn't clear to me.

9 MS. PRICE: So for the record I'm speaking
10 of the block that is -- if you see the H -- the H Street
11 diagram where it shows H Street and then 12th Street,
12 you see a block and then there's a long block directly
13 behind that.

14 MR. ALBERTI: So -- so directly behind the
15 block that's identified as 12th there is a long
16 rectangle. There are several long rectangles.

17 MS. PRICE: That's correct.

18 MR. ALBERTI: You're talking about the long
19 rectangle closest to -- closest to --

20 MS. PRICE: Yes, sir. Yes, sir.

21 MR. ALBERTI: Okay. I'm trying to make this
22 clear for the record so when we go back we know what

1 we're looking at. All right.

2 MS. PRICE: Yes. That's what I'm speaking
3 of.

4 MR. ALBERTI: Okay.

5 MS. PRICE: And so go ahead. I'm sorry.

6 You were --

7 MR. FRANKLIN: Oh, yeah. I've only -- I've
8 met one guy that lived there because that's a rental
9 property, and the guy that lived there was a base player
10 that practices, and they had the first place behind
11 Khan's and [inaudible 1:08:22].

12 MS. PRICE: And, oh, how do I describe this
13 for the record? So across the street from us there's
14 the Auto Zone --

15 MR. FRANKLIN: Right.

16 MS. PRICE: -- you're aware. And then next
17 to the Auto Zone there's a huge parking lot, correct?

18 MR. FRANKLIN: Yes.

19 MS. PRICE: And then there's Smith Commons
20 next to the -- behind the -- next to the parking lot?

21 MR. FRANKLIN: Right.

22 MS. PRICE: Then you see behind there

1 there's an alley?

2 MR. FRANKLIN: Yes.

3 MS. PRICE: And then there are a block of --
4 of homes. And then there's Linden Place. So when you
5 were speaking in terms of the noise and not being able
6 to distinguish sometimes between, you know, where the
7 noise is coming from and that kind of thing a moment ago
8 how would you describe the -- like give us a visual of
9 what -- the back of those homes here. Like how can --
10 you know, as far as music and things that are -- as a
11 sound engineer as well, how that -- that sound is
12 traveling.

13 MR. FRANKLIN: Well, yeah. The -- well,
14 the -- your rooftop --

15 MR. WILLIAMS: Can I -- can I object for a
16 moment. I -- I don't believe Mr. Franklin's been
17 offered as an expert in sound, and it sounds like he's
18 about to get into technical details about how sound
19 travels and noise issues that I don't think he's
20 properly equipped to testify to.

21 MS. PRICE: May I point out that he --

22 CHAIRPERSON ANDERSON: Go ahead.

1 MS. PRICE: He -- he -- for a living -- what
2 do you do for a living?

3 MR. FRANKLIN: I'm a live sound engineer
4 since 1970 doing all type of live events, outdoor
5 concerts, clubs, and so on. We rent out professional
6 equipment to groups that come in town.

7 CHAIRPERSON ANDERSON: Hold on, Mr. --

8 MR. SILVERSTEIN: Would you please move
9 forward. I can't see at all. I want to hear what he
10 says.

11 MR. FRANKLIN: I work for Infant Eyes
12 Production Company. Well, I've been doing that since
13 1970. We rent out professional equipment to
14 professional groups that come in town. Last year we had
15 the contract for Dupont Park, Carter Barron. We are
16 sound engineers, work at Howard Theater, Lincoln
17 Theater, and so on, all the venues which I've been a
18 part of since 1970.

19 MS. PRICE: So maybe not an expert witness
20 in our instance but definitely someone within the
21 community that has -- that's speaking that has some
22 idea.

1 MR. FRANKLIN: Yes. And like I said, I've
2 actually taken a sound monitor.

3 CHAIRPERSON ANDERSON: Hold on. Hold on.
4 I'm going to overrule the objection. And -- and it -- I
5 mean he did testify that he's a Neighborhood Watch, that
6 he has a sound boom that he goes. And so although he
7 might not be an expert per se, but he does have some --
8 he has more expertise in the area than I do based on the
9 presentation that was made before. So go ahead. Go
10 ahead, sir. You can answer the question.

11 MS. PRICE: So I want -- yeah. If you could
12 describe from -- from our -- our establishment, you
13 know, the Khan's, what's happening with the Smith
14 Commons and that Auto Zone, all of that -- that --
15 following that big large rectangle that's across from --
16 from us looking at H Street and even across on the
17 opposite side as far as how the sound is traveling what
18 do you witness? What do you --

19 MR. FRANKLIN: Well, I definitely witness at
20 different areas. So different residents will hear
21 different things. And at 2:00 in the morning when you
22 get most complaints of people leaving the clubs and

1 coming to their vehicles that parked in our neighborhood
2 sometimes you can hear or can't distinguish all the time
3 exactly where the noise is coming from. Because like I
4 said, I can sit on my back porch which is like less than
5 a 100 feet -- well, the next alley from Linden Place and
6 hear stuff from Rock and Roll Hotel, Smith Commons, the
7 other businesses on the other side of H Street. Matter
8 of fact, I hear in my back yard more noise at 2:00 in
9 the morning from the businesses in the 1200 block of H
10 Street on the other side than I can hear from your
11 rooftop. Now, other neighbors might hear other things
12 by the way sound travels. But from my back yard I hear
13 more of the other side of H Street than your
14 establishment. So and I can professionally say -- and
15 it will be so easy to find out where the sounds is
16 coming from because you can take an easy sound
17 generation -- generating device, sit it on the rooftop
18 say of Smith Commons and go in each resident's back yard
19 and see what the dB level is and see where the noise are
20 coming from. It's too easy to do. So -- but anyway,
21 like I said again it should just be one size fits all.
22 If everybody -- if everybody -- whatever time should be

1 uniform.

2 MS. PRICE: And are you aware that we
3 provided -- that I've been -- my year there and -- year
4 and a half very concerned about being sure that we are
5 -- as a resident that we are having us a place that you
6 all feel good about having in your neighborhood and all?
7 And -- and I just -- so from time to time I've called on
8 you to use our machine to have -- not to -- to make sure
9 that we're not too loud or from the talking noise?
10 Could you testify to that or I mean --

11 MR. FRANKLIN: What about, just doing that?
12 Yeah. I've done that, and I was amazed at some of the
13 findings from the sound measuring device. You know,
14 like I said, it -- it comes, and the street noises were
15 louder than the rooftops, and I've been on every
16 rooftop. And those in the 1100 block and 1200 block and
17 1300 block of H Street, and it's all the same. It's
18 basically all the same. I mean noise is noise. We are
19 a arts and entertainment district, you're going to get
20 noise. And we should be regulated uniformly.

21 MS. PRICE: Would you -- do you feel that
22 Touche has a negative impact on the peace and order of

1 the community?

2 MR. FRANKLIN: I'd say it has a positive
3 impact now because one thing I can definitely notice
4 through my daily observation I've seen families bring
5 kids there to eat. And -- and as far as the nighttime
6 life it's no different than any other club on H Street.

7 MS. PRICE: No more questions.

8 CHAIRPERSON ANDERSON: Your witness, sir.

9 MR. WILLIAMS: Mr. Franklin, I'll -- I'll be
10 brief. Part of your testimony you said that you -- you
11 know, the nature of noise, you really can't tell where
12 it's coming from --

13 MR. FRANKLIN: Right.

14 MR. WILLIAMS: -- is that correct?

15 MR. FRANKLIN: Right.

16 MR. WILLIAMS: But then soon after that you
17 said that you hear more noise from the 1200 block and
18 you listed some specific establishments that you knew --
19 you said you heard noise coming from. How -- how
20 could you -- how are you so sure that they're coming
21 from those establishments?

22 MR. FRANKLIN: By the music they play

1 because I'm a musician. And like the sound -- the music
2 I hear coming from Rock and Roll Hotel is more rock,
3 grunge. Like the sound coming from Vendetta, they have
4 more acoustic bands. The -- the sound coming from Smith
5 Commons, they have more jazz groups. So I can pick out
6 the music and tell where they're coming from.

7 MR. WILLIAMS: So you -- so in some
8 circumstances you can tell where noise is coming from?

9 MR. FRANKLIN: Yeah. Some circumstances.
10 Yes.

11 MR. WILLIAMS: Okay. Thank you.
12 Mr. Franklin, you say your -- your profession, you're a
13 sound engineer; is that correct?

14 MR. FRANKLIN: Yes.

15 MR. WILLIAMS: Have you done any sound
16 engineer work for Touche specifically or for bands that
17 are performing at Touche?

18 MR. FRANKLIN: I think once in the past on
19 the second floor.

20 MR. WILLIAMS: So you -- you derived income
21 from working -- from [inaudible 1:15:56] Touche; is that
22 correct?

1 MR. FRANKLIN: Well, no. Let me take that
2 back. Not for Touche. For the old owners.

3 MR. WILLIAMS: The 12?

4 MR. FRANKLIN: Yeah. Yeah.

5 MR. WILLIAMS: Okay. And, Mr. Franklin, you
6 said you -- you actually had a sound measuring device.
7 It's fair to say you don't have any -- you don't have
8 that device here with you today, do you?

9 MR. FRANKLIN: No.

10 MR. WILLIAMS: You don't have any paperwork
11 from that device?

12 MR. FRANKLIN: No.

13 MR. WILLIAMS: You didn't bring any reports
14 that were generated from the sound measurements you took
15 at Touche for that device?

16 MR. FRANKLIN: No, I didn't.

17 MR. WILLIAMS: Okay. So, Mr. Franklin, you
18 talk about one size fits all. Are you aware of the
19 arrangements that other establishments have with the
20 ANC --

21 MR. FRANKLIN: No.

22 MR. WILLIAMS: -- in -- in terms of

1 settlement agreements?

2 MR. FRANKLIN: Huh-uh. Not at all.

3 MR. WILLIAMS: Okay. So would -- are you
4 aware that both Smith Commons and Khan's close their
5 outdoor space at earlier times than Touche does?

6 MR. FRANKLIN: I'm not certainly aware. I
7 mean when I come out at 2:00 during the warm days it's
8 hard to tell. I mean I can see the people outside.
9 Like I know I've sat outside at Khan's on the corner
10 until two and even three sometimes.

11 MR. WILLIAMS: Okay.

12 MR. FRANKLIN: And yeah. So it's hard to
13 tell.

14 MR. WILLIAMS: And yeah. Mr. Franklin, have
15 you -- have you reviewed the settlement agreements of
16 other establishments down there?

17 MR. FRANKLIN: No. Huh-uh. No. I'm not
18 interested in that.

19 MR. WILLIAMS: I think that's all I have.
20 Thank you.

21 CHAIRPERSON ANDERSON: You're done?

22 MR. WILLIAMS: Oh, yeah. Sorry. I have no

1 more questions for Mr. --

2 CHAIRPERSON ANDERSON: Do we have any
3 questions by The Board? Yes, Mr. Short.

4 MR. SHORT: Good afternoon, Mr. Franklin.

5 MR. FRANKLIN: Hey.

6 MR. SHORT: Like yourself I've been -- well,
7 I was raised in that area, 9th and Terrace. I remember
8 Lovejoy Playground and I remember buying shoes and
9 shopping with my family and walking from 9th and Terrace
10 to 12th -- H Street all up and down, Union Station, and
11 it has changed over the years quite a bit. It's like
12 it's making a change from your testimony for the better
13 or -- do you think or --

14 MR. FRANKLIN: Well, I think it's for the
15 better. I mean pre '68 it was a wonderful community.
16 Everybody knew everybody. Nobody locked their doors.
17 You could go ask your neighbors for anything. And then
18 it was such a dark area for 20 years after '68. So now
19 finally it seems like we're building communities again.
20 I mean some people have resentment because they feel
21 like they're being priced out. And -- but yeah. But I
22 can say from my direct neighborhood we're building a

1 community because I know all my neighbors and I look out
2 for my neighbors. And it seems like they look out for
3 each other. So I mean there will be differences. But
4 it seems like we're building a community again.

5 MR. SHORT: Okay. Now, 20 years ago you
6 couldn't have stood on your back porch as you testified
7 and heard music coming from H Street, correct?

8 MR. FRANKLIN: Definitely not.

9 MR. SHORT: So this is a new phenomenon?

10 MR. FRANKLIN: Yes. Yes.

11 MR. SHORT: And you did say also that you
12 thought there should be a regulation where they -- all
13 of the rooftops and all of the noise cuts off a
14 certain -- what -- what hour would that be if you could
15 have uniform? You as a neighbor for 50 years, what
16 would be -- what would be acceptable to you, just
17 your -- your personal?

18 MR. FRANKLIN: Well, truthfully on weekdays
19 it -- it would have to be before midnight. Because I
20 mean I have elderly ladies, neighbors and they always
21 call me what's all that noise, you know, and I can't get
22 to sleep. So during the week it should be before

1 midnight. Now, the weekend, that's kind of I don't
2 know. Because all the bars and stuff, they stay open
3 until, what, three, 4:00 sometimes.

4 MR. SHORT: Well, what's acceptable? What
5 would be acceptable to you? If you -- if you could wave
6 a wand and -- and make a wish today and it happen, what
7 would be acceptable to you as a 50-year resident of the
8 neighborhood?

9 MR. FRANKLIN: Well, I would go back to the
10 old school 10 to 2.

11 MR. SHORT: 10 to 2.

12 MR. FRANKLIN: 10 to 2. I would make it 2.

13 MR. SHORT: 2:00 everybody would have to
14 shut down?

15 MR. FRANKLIN: That's it. That's it, 2:00.

16 MR. SHORT: Okay. Also, as far as sound is
17 concerned -- and we've already identified that you're
18 not an expert witness but you do know something about
19 the field. Rooftops, do you think they should be
20 allowed to operate until 2:00 in the morning or would
21 you say rooftops close at 12 too?

22 MR. FRANKLIN: Well, I say the people should

1 be allowed to be on the rooftop until that time, maybe
2 not music.

3 MR. SHORT: Okay.

4 MR. FRANKLIN: Music should be kept inside
5 that late.

6 MR. SHORT: So specifically -- this question
7 is specific to music. What would be acceptable to you
8 as a 50-year resident -- acceptable to you as a 50-year
9 resident of that area for rooftop music? Speak of music
10 or anything that produces sound that would be heard in
11 our residences or heard in residences, what's an
12 acceptable hour for you?

13 MR. FRANKLIN: For music?

14 MR. SHORT: Yeah. This is weekend and week.
15 This is --

16 MR. FRANKLIN: Before 12 on the week and by
17 2 on the weekend as far as music. Yeah. I wouldn't let
18 it go over 2:00.

19 MR. SHORT: All right. Thank you very much.
20 That's all I have, Mr. Chair. Thank you for your
21 testimony, sir.

22 MR. FRANKLIN: Okay. Thank you.

1 CHAIRPERSON ANDERSON: Any other questions
2 by any of the board members? No. All right. Do you
3 have any -- all right. Mr. -- Mr. Franklin, I tell you
4 when it's time to go, sir. Okay. I know how you do,
5 mozy on out, you know, say hello to everybody. But, you
6 know, you -- you need to have gone me a chance to -- to
7 do my part. When you can play your music you're in
8 control. So I'm trying to control this show.

9 MR. FRANKLIN: Okay. All right.

10 CHAIRPERSON ANDERSON: All right. So thank
11 you very much, sir.

12 MS. PRICE: I have one follow-up question.
13 Could I do that or no?

14 CHAIRPERSON ANDERSON: Based on?

15 MS. PRICE: His testimony, his question --
16 his --

17 CHAIRPERSON ANDERSON: Well, all right.
18 Just one question. Just one question. All right. Go
19 ahead.

20 MS. PRICE: The street car --

21 MR. WILLIAMS: I'm going to go ahead and
22 object to this.

1 CHAIRPERSON ANDERSON: Well, yeah. That --

2 MR. WILLIAMS: The street car hasn't come up
3 in his -- either direct questioning or in my cross.

4 CHAIRPERSON ANDERSON: It had to be based
5 on -- it has to be based on a question that was asked.

6 MS. PRICE: No problem.

7 CHAIRPERSON ANDERSON: And so since --

8 MS. PRICE: No problem.

9 CHAIRPERSON ANDERSON: Since it was not, you
10 can't.

11 MS. PRICE: No problem.

12 CHAIRPERSON ANDERSON: Thank you very much,
13 sir, for your testimony.

14 MS. PRICE: Thank you.

15 CHAIRPERSON ANDERSON: Thank you for being
16 here today. All right. Thank you. You're now free to
17 go. All right. Do you have another witness you want to
18 call, Ms. Price?

19 MS. PRICE: Oh, thank you. I do. I would
20 like to call Dwayne Greenwood. I'll keep it brief.

21 CHAIRPERSON ANDERSON: Mr. Greenwood, can
22 you raise your right hand please. Do you swear or

1 affirm to tell the truth and nothing but the truth?

2 MR. GREENWOOD: Yes, I do.

3 CHAIRPERSON ANDERSON: Be seated please.

4 Thank you. Your witness, ma'am.

5 MS. PRICE: For the record would you please
6 state your name.

7 MR. GREENWOOD: My name is Dwayne Greenwood.

8 MS. PRICE: Mr. Greenwood, and can you tell
9 us a little bit about where you live, your -- your
10 address and your involvement within the community
11 please.

12 MR. GREENWOOD: Yes. I live at 804 9th
13 Street NE, and it's right on the corner of where the
14 Downtown Locker Room is. And I actually work in that
15 area as well. I work at the Family Dollar right --
16 that's next door to Touche.

17 MS. PRICE: Okay. And how long have you
18 been at the Family Dollar?

19 MR. GREENWOOD: I've been at Family Dollar
20 for four years, and I also have been in this
21 neighborhood for four years.

22 MS. PRICE: Okay. All right. And do you

1 frequent any businesses along H Street?

2 MR. GREENWOOD: Yeah. I go to quite a few
3 of the businesses, but mostly I go to Touche. I like
4 Touche's, it's a little more safer to me than most of
5 the other ones. So that's why I always go to Touche.

6 MS. PRICE: And as far as -- have you been
7 onto Touche's rooftop?

8 MR. GREENWOOD: Yes, I have several times.

9 MS. PRICE: All right. And have you --
10 being on our rooftop have you ever noticed any loud --
11 or I'm sorry -- any live entertainment?

12 MR. GREENWOOD: No.

13 MS. PRICE: Okay.

14 MR. GREENWOOD: Actually they just play a
15 little music, and it -- it don't even be that loud.
16 Some time I'll be asking them to turn it up, but they
17 don't never turn it up though. I'm sorry. I mean, I'm
18 just being truthful.

19 MS. PRICE: Okay. And then as far as noise
20 is concerned how -- because you all -- what time does
21 your establishment -- do you get off work?

22 MR. GREENWOOD: I get off at 8.

1 MS. PRICE: 8 p.m.?

2 MR. GREENWOOD: Yes.

3 MS. PRICE: Okay. And would you -- would
4 you say that from -- from coming -- or being out late at
5 night that -- that you hear noise any louder from one
6 place than another or --

7 MR. GREENWOOD: We talking about H Street.
8 H Street is noisy anyway. I mean after a certain time H
9 Street going to be loud anyway. I mean you have bars,
10 clubs. I mean what you expect? You get -- that's --
11 that's going to be -- that's going to happen, you're
12 going to hear noise.

13 MS. PRICE: And as far as -- the streetcar
14 is now open until -- you live down 9th. So from time to
15 time I'm sure you might be getting on the streetcar,
16 what have you to go up and down. Is -- it's open until
17 2 a.m. Is that a problem for you as a resident?

18 MR. GREENWOOD: I mean I'm not sensitive to
19 noise. So I mean when I moved in the neighborhood I
20 knew they were growing, the neighborhood was growing and
21 you seen bars and all this stuff. It -- I mean I'm
22 not -- I'd have moved next to a church if I was

1 expecting it to be quiet. I mean that's just going to
2 happen. You're going to have a lot of people out there.
3 You have bars, you have clubs. I mean, you know, that's
4 H Street. It's just like living up at Adams Morgan.
5 I'm not going to move up to Adams Morgan and be like
6 quiet down. That don't make no sense to me.

7 MS. PRICE: As a -- would you have a problem
8 with -- would it affect you if Touche were to close its
9 rooftop at midnight?

10 MR. GREENWOOD: Yeah. When I go out I don't
11 expect to go home at no 12:00. When I do have a chance
12 to go out, I'm -- I'm expecting to stay out at least
13 until 1:30 or 2:00 in the -- in the morning. And
14 most -- every club down there close at that time, two,
15 some of them three. So I mean why would I want to be
16 put out of -- or not even to be able to enjoy myself?
17 Because the rooftop is good, it's nice especially when
18 the weather is nice. You can look over the horizon and
19 look at it -- the whole city like, I mean what parts you
20 can see. And I like it to be honest with you.

21 MS. PRICE: Is there anything that you'd
22 like to say today before I tell you I have no further

1 questions?

2 MR. GREENWOOD: No. All I have to say is I
3 mean I understand, you know, at a certain time people
4 don't want to hear noise. But I mean H Street is noisy,
5 period. I mean it's no way around that. I mean you
6 going to have a lot of people on the street, you're
7 going to get noise. And I know that I don't live on
8 that block right there. I do know when I'm out I hear a
9 lot of noise out there and it's coming from all kinds of
10 businesses. So I wouldn't just -- just direct it to one
11 business saying that that's the business that's making
12 the most noise. I don't know how you could do that.

13 MS. PRICE: No -- no questions.

14 CHAIRPERSON ANDERSON: Yes. Mr. Williams,
15 your -- your witness.

16 MR. WILLIAMS: Hi, Mr. -- Mr. Greenwood.
17 Just to confirm you live on 9th Street NE just north of
18 H; is that correct?

19 MR. GREENWOOD: Yes.

20 MR. WILLIAMS: So it's fair to say that even
21 if Touche were causing unbearable amounts of noise, it
22 wouldn't affect you as some -- as a resident because you

1 live more than three blocks away from Touche, is that
2 fair?

3 MR. GREENWOOD: Of course.

4 MR. WILLIAMS: Okay. And you said that
5 closing the rooftop early would -- would be a problem
6 because you want to stay out. But beyond that you're
7 aware that you could just go inside to Touche and stay
8 inside Touche until 3 a.m.? Is that -- are you aware of
9 that?

10 MR. GREENWOOD: Yes, I am.

11 MR. WILLIAMS: Okay. Mr. Greenwood, do you
12 think it's reasonable to -- do you think it's reasonable
13 for residents to accept hearing loud music coming from
14 establishments inside -- inside of their homes with
15 their windows and doors closed at 1 a.m. on -- on any
16 given night? Do you think that's acceptable?

17 MR. GREENWOOD: Actually it's not.

18 MR. WILLIAMS: It's not. Okay. And do you
19 think it's acceptable to hear any type of loud noises
20 inside your home after midnight?

21 MR. GREENWOOD: No.

22 MR. WILLIAMS: Okay. That's all I have.

1 CHAIRPERSON ANDERSON: Any questions by any
2 board members? No. All right. Hearing none,
3 Mr. Greenwood, thank you very much for your testimony,
4 sir. You can step down. Do you have any other
5 witnesses?

6 MS. PRICE: I don't see anyone else here.

7 CHAIRPERSON ANDERSON: Do you rest your
8 case, meaning that you don't have any other witnesses
9 to -- to -- to bring?

10 MS. PRICE: I do. I don't know what the
11 next process is.

12 CHAIRPERSON ANDERSON: Do you think that
13 anyone is going to show up or --

14 MS. PRICE: It's just at 4:30. So it's very
15 possible that they will. I wasn't able to -- some of --
16 you know, able to get ahold of everyone to let them know
17 that we were starting earlier.

18 CHAIRPERSON ANDERSON: All right. Well,
19 what -- what I will do is that I will allow you to rest
20 your case now. And it's a little bit unorthodox because
21 we did change -- did change it so it would be fair. So
22 if there are -- and I'll -- you can present your case.

1 But if there are witnesses that show up that you would
2 like to call after they have presented their case, then
3 I'll allow you to do that.

4 MS. PRICE: Thank you.

5 CHAIRPERSON ANDERSON: Okay. And I will
6 give you the same flexibility too. All right.

7 MR. WILLIAMS: I understand. Thank you.
8 Could I request a brief five-minute recess just so I can
9 confirm who's here and who's ready? We've also been
10 going on for an hour and a half.

11 CHAIRPERSON ANDERSON: I've been doing this
12 since 9:00 this morning. You know --

13 MR. WILLIAMS: If we need to plow ahead, I
14 can call my first witness. It's -- it's --

15 CHAIRPERSON ANDERSON: All right. We'll --
16 we'll take a --

17 MR. WILLIAMS: I defer to The Board.

18 CHAIRPERSON ANDERSON: We'll take a ten
19 minute -- ten minute recess. Okay. All right. Thank
20 you.

21 [Off the record at 4:36 p.m.]

22 [On the record at 4:50 p.m.]

1 CHAIRPERSON ANDERSON: Back on the record
2 and we're going to have the protestants present his face
3 in chief. And one thing that I'll remind you,
4 Ms. Price, prior to -- I have not really closed your
5 case. So if there are documents that you want us to --
6 I need you to -- before the case is closed for you to
7 introduce them and for them -- for us to admit them as
8 part of the record. Okay. I just want to remind you of
9 that.

10 MS. PRICE: Thank you.

11 CHAIRPERSON ANDERSON: If you don't do that,
12 I'm not going to -- you need to do that. Okay. And I
13 do the same thing for lawyers too because they don't do
14 it. So that's why I always remind everyone that if you
15 need The Board to consider records, you need to make
16 sure that they're part of the evidence. And the same
17 thing too, Mr. Williams. Yes.

18 MR. ALBERTI: Will there be any testimony on
19 documents? I mean because the other side might want to
20 respond to documents that are entered into evidence.
21 And I say this only based on remarks from both sides
22 that were made in the opening. So I don't know if

1 anyone wants to address that.

2 CHAIRPERSON ANDERSON: Well, I -- I think
3 that what I will -- what -- what I will ask is that
4 we'll go through all the documents and I'll see if there
5 are documents that they're -- both sides are agreed that
6 they don't have a problem with. And if there are
7 documents that are disputed, then we can address it and
8 see. Okay. So I'll -- I'll address that.

9 MR. ALBERTI: It's not -- it's not the
10 documents itself. It's the significance of the
11 documents that one side may want to make over the other.
12 And then there may not be an opportunity for the
13 opposing side to refute the significance that the one
14 side places on that. And so that's tantamount to -- you
15 know, stating a significance for -- for a document could
16 be an -- could be I think about tantamount to testimony
17 in a way. And I'm just a little concerned based on
18 comments that I heard from both sides about the
19 documents and their potential significance that -- that
20 was laid out in the opening statement. So I'll leave it
21 at that.

22 MS. PRICE: Thank you, Mr. Chairman. I

1 understood resting was related to the witnesses -- the
2 testimony of witnesses.

3 CHAIRPERSON ANDERSON: Yeah. That's fine.
4 I'm -- I'm just reminding you that that is something
5 that needs to be done before the record is closed.

6 MS. PRICE: Okay. Good. Thank you.

7 CHAIRPERSON ANDERSON: Okay. And -- and I
8 know that based on -- I've not had a chance to look at
9 all your documents. And I'm not sure if the two
10 witnesses who testified can -- could authenticate some
11 of the documents. I know that some of the documents
12 that you have here are statements from employees, which
13 I mean they're -- we'll address that. But I mean
14 they're -- I guess we're not going to have direct
15 testimony on those folks. And I guess I'm not -- I
16 doubt Mr. Williams will have problems with that because
17 documents speak for themselves just like -- okay.

18 MR. WILLIAMS: I have a couple -- I'll have
19 a couple of comments, but I'll save those for when --

20 CHAIRPERSON ANDERSON: Right. Okay.

21 MR. WILLIAMS: -- particular exhibits are
22 attempted to be entered.

1 CHAIRPERSON ANDERSON: All right. All
2 right. So do you wish to call your first witness?

3 MR. WILLIAMS: Yes. I'd like to call Megan
4 Uzzell.

5 CHAIRPERSON ANDERSON: Megan -- I'm sorry?

6 MR. WILLIAMS: Uzzell, U-Z-Z-E-L-L.

7 CHAIRPERSON ANDERSON: Ms. Uzzell, can you
8 raise your right hand please. Do you swear or affirm to
9 tell the truth and nothing but the truth?

10 MS. UZZELL: I do.

11 CHAIRPERSON ANDERSON: Thank you. Have --
12 you may have a seat. Your witness, sir.

13 MR. WILLIAMS: Hi, Ms. Uzzell. Could you
14 please state your name and spell it for the record.

15 MS. UZZELL: Megan Uzzell. First name
16 M-E-G-A-N, last name U-Z-Z, both like zebra, E-L-L as in
17 lamb.

18 MR. WILLIAMS: And, Ms. Uzzell, where do you
19 live please?

20 MS. UZZELL: 1116 G Street NE.

21 MR. WILLIAMS: And approximately how far is
22 that from Touche?

1 MS. UZZELL: About 75 yards off of the back.
2 So if you're in the rear of our home, you step into the
3 back yard and it faces the alley across which is the
4 back side of Touche.

5 MR. WILLIAMS: So from your home can you see
6 Touche and its roof deck?

7 MS. UZZELL: Yes.

8 MR. WILLIAMS: And are you familiar with
9 Touche which is at 1123 H Street NE?

10 MS. UZZELL: Yes.

11 MR. WILLIAMS: Can you please describe your
12 experience with Touche's rooftop deck?

13 MS. UZZELL: Our experience with Touche's
14 rooftop deck has been one of hearing excessive noise
15 very late into the evenings on several occasions.

16 MR. WILLIAMS: And can you describe the
17 nature of the noise that you're hearing from Touche.

18 MS. UZZELL: Inside our home we have on at
19 least two to three occasions been able to hear music.
20 We've heard microphones amplifying the music, and that's
21 over the sound of an air conditioner on -- running on at
22 least one occasion.

1 MR. WILLIAMS: And, Ms. Uzzell, is that --
2 is it fair to say that when you're hearing that windows
3 are closed, doors are closed?

4 MS. UZZELL: Windows and doors are closed.

5 MR. WILLIAMS: And I understand that you --
6 your house has some particular soundproofing measures
7 that are in the back; is that correct?

8 MS. UZZELL: Yes. When we renovated our
9 home three years ago and installed new doors and windows
10 in the back of the house we also installed additional
11 insulation in the drywall and had special protections
12 placed upon the windows and the doors from the window
13 and door manufacturers to try to further soundproof our
14 home.

15 MR. SILVERSTEIN: Excuse me. Could you
16 repeat what you had -- what you installed.

17 MS. UZZELL: We -- we installed new windows
18 and doors. We bumped our house back. So it's
19 essentially a new construction on the rear of the house.
20 And when they were framing the back and installing the
21 drywall we had additional insulation placed in the walls
22 to help provide additional soundproofing. And then when

1 we were working with window and door manufacturers to
2 try to get windows and doors for the back of our house
3 we asked them to put additional soundproofing, like a
4 laminate on the windows and the doors to provide
5 additional soundproofing for the back of the house. We
6 have similar measures placed on the front of the home as
7 well.

8 MR. WILLIAMS: And, Ms. Uzzell, when you
9 were taking these extra soundproofing measures why were
10 you doing that?

11 MS. UZZELL: We were doing it because we
12 were familiar with the sound coming from H Street and in
13 particular the -- I think for us it was the previous
14 establishment at the location was very loud. And so we
15 want to be able to live in our neighborhood for a long
16 time. I want to raise my children in this house. I
17 want to be a good neighbor. I want the businesses on
18 the street to thrive. So we took the measures we could
19 to try to make the inside of our house quiet.

20 MR. WILLIAMS: And, Ms. Uzzell, despite
21 these various efforts you -- you still hear noise coming
22 from Touche?

1 MS. UZZELL: Yes.

2 MR. WILLIAMS: And to make sure the record
3 is clear -- I think it is, but just in case is the sound
4 coming from the roof deck?

5 MS. UZZELL: Yes.

6 MR. WILLIAMS: And have you heard -- and you
7 said you heard music and amplified voices as well?

8 MS. UZZELL: Yes.

9 MR. WILLIAMS: Do you know if the -- if any
10 of the noise has come from disc jockey's on the roof or
11 do you know one way or the other?

12 MS. UZZELL: I don't. Someone was speaking
13 into a microphone, and then music would start again.

14 MR. WILLIAMS: And both of the -- and
15 when -- when you heard that that was inside of your
16 home?

17 MS. UZZELL: Inside our home.

18 MR. WILLIAMS: And have you ever contacted
19 ABRA about these noise issues?

20 MS. UZZELL: Yes, I have.

21 MR. WILLIAMS: About how many times.

22 MS. UZZELL: Two to three times in the last

1 year.

2 MR. WILLIAMS: And what happens when you
3 contact ABRA?

4 MS. UZZELL: On at least one occasion ABRA
5 came to our home, came into the back of the house. The
6 sound at that point in time had quieted. What the
7 person that came to our home told us was that they had
8 rolled up on the establishment prior to coming to our
9 house so they were not surprised that the inside of our
10 house was quieter at that point in time.

11 MR. WILLIAMS: And do you hear noise from
12 any other establishments in your house?

13 MS. UZZELL: No.

14 MR. WILLIAMS: And you -- you mentioned you
15 have a child. How many --

16 MS. UZZELL: I should say we -- I mean we --
17 we hear noise between like two and three in the morning
18 when a lot of places let out and people are parking.
19 You can park on our street I think more freely than you
20 can park on other streets. But to us that's a noise
21 that we expect to hear. You know, establishments close,
22 you're going to hear people getting in their cars. And

1 that's just an expected noise of living on our street.

2 MR. WILLIAMS: And you mentioned -- how many
3 children do you have?

4 MS. UZZELL: I have two.

5 MR. WILLIAMS: And how old are they?

6 MS. UZZELL: Almost five and just turned
7 three.

8 MR. WILLIAMS: And how is -- how has the
9 noise that you hear from inside your house from Touche
10 affected the quality of your life?

11 MS. UZZELL: One of the reasons we put the
12 additional soundproofing on the back of the house is
13 because the rear bedroom is my five year-old -- almost
14 five year-old daughter's room, and it has not been fun
15 having her wake up in the middle of the night. And on
16 those two occasions what drew our greatest attention to
17 it was the fact that the sound could be heard in her
18 room and one of them woke her up.

19 MR. WILLIAMS: I don't have any more
20 questions.

21 CHAIRPERSON ANDERSON: Your -- your witness,
22 Ms. Price.

1 MS. PRICE: You say that you're on G Street,
2 correct?

3 MS. UZZELL: Yes.

4 MS. PRICE: And so from -- can you describe
5 like how it is that you can see us from -- from G Street
6 or hear us.

7 MS. UZZELL: Sure. Sure. If you are on
8 12th Street between H and G, there's an alley that runs
9 to the west between two homes, and it's the back of --
10 that alley is the back of our house. It's an alley that
11 does not have an exit. So it just comes in, you -- you
12 know, there's parking spots, you -- you turn back
13 around. If you're standing in our back yard, which
14 faces that alley, you can look up to your right and see
15 the roof of Touche.

16 MS. PRICE: Okay. I'm sorry. Repeat that
17 one more time when [inaudible 9:24] you just said.

18 MS. UZZELL: Sure. Sure. If you're
19 standing in our back yard --

20 MS. PRICE: Standing in your back yard.

21 MS. UZZELL: -- you can look up to the --
22 it's -- the direction is the northeast and you can see

1 the roof of Touche.

2 MS. PRICE: Okay. And what do you see?

3 Because there's a -- there's a stairwell and then
4 there's a -- a wall. Can you describe what you see. I
5 mean do you see the floor of the roof? Do you see the
6 entire roof?

7 MS. UZZELL: You do not see the --

8 MS. PRICE: Do you see the bar of the roof?
9 What do you see?

10 MS. UZZELL: You do not see the floor of the
11 roof. You see the wall on the back side of the roof. I
12 don't know that I've seen the bar on the roof from the
13 back of our house, not from -- I think I've seen it from
14 the roof of our house, but not from just standing on the
15 ground in our back yard.

16 MS. PRICE: Okay. So you don't see people?
17 Do you see people?

18 MS. UZZELL: Not standing on the ground in
19 my back yard.

20 MS. PRICE: Okay. Do you see people on
21 the -- so -- so your home is how many levels?

22 MS. UZZELL: Two.

1 MS. PRICE: Levels of your home. And --

2 MS. UZZELL: And we have roof access. So we
3 do not have anything on our roof. But you can -- we
4 have a hatch that allows us to go up to our roof for
5 maintenance.

6 MS. PRICE: Okay. And there are several
7 houses that -- that between -- there's a whole block
8 between your home and -- if you were on the ground,
9 there's a whole block between your home and the back of
10 Touche, correct?

11 MS. UZZELL: So it's from where -- from our
12 back yard it's more like half a block because our back
13 yard runs toward H Street.

14 MS. PRICE: So you're able to see other
15 homes or other -- other things --

16 MS. UZZELL: I can see the -- the roof and
17 the top of Touche more easily than I can see the homes
18 that abut it.

19 MS. PRICE: Because you're looking up?

20 MS. UZZELL: Right.

21 MS. PRICE: Okay. And then that's looking
22 straight on, right? So if you were to look to the --

1 MS. UZZELL: It's to the northeast.

2 MS. PRICE: So standing that way. So if you
3 look to the -- to the right, what would you see?

4 MS. UZZELL: So if I'm -- if I am standing
5 in my back yard and I look to the northeast --

6 MS. PRICE: Yes.

7 MS. UZZELL: -- like directly on that
8 northeast angle, that is the roof of Touche. If I look
9 directly to my right like standing from my back yard,
10 it's the alley exit out and --

11 MS. PRICE: Okay. So if you looked a little
12 bit further -- so just do a panorama. If you were to
13 kind of pan over to the -- to the right, do you see any
14 other businesses, any other buildings, the rooftop of
15 say -- the rooftop of the -- or above the Auto Zone? Do
16 you see anything over by the Smith Commons maybe, or
17 anything across from the Auto Zone or anything? Do you
18 see H Street at all, or what do you see, what else do
19 you see?

20 MS. UZZELL: So no, I cannot see H Street.
21 I cannot see Auto Zone or Smith Commons or any of those
22 which are across 12th Street. So I'm between 11th and

1 12th so I cannot -- I can't see anything across 12th
2 Street.

3 MS. PRICE: Okay.

4 MS. UZZELL: You know, our alleyway is
5 somewhat insulated from H and from 11th and 12th. So
6 you see other people's back yards and you see the backs
7 of the newly constructed condos and you see Touche's
8 back, the roof.

9 MS. PRICE: You see the back of Touche?

10 MS. UZZELL: Yes.

11 MS. PRICE: Correct. Okay. Have you ever
12 been to Touche's rooftop?

13 MS. UZZELL: I have not.

14 MS. PRICE: Okay. So you haven't seen it
15 from that prospective, you know, looking back towards
16 your house or anything?

17 MS. UZZELL: No.

18 MS. PRICE: So I wouldn't be able to see
19 your house. I don't think I'd be able to see your home
20 from that direction, but I'll look. Do you attempt
21 to -- do you -- how late generally do you stay up? Now,
22 I know you have small kids. So I'm sure -- during the

1 summer months more than anything.

2 MS. UZZELL: I mean it -- it depends on the
3 night. Between 11 and one. My daughter goes to bed at
4 eight.

5 MS. PRICE: And you're up past that time to
6 do the stuff mommies do?

7 MS. UZZELL: Do the stuff everybody has to
8 do to --

9 MS. PRICE: You got that right.

10 MS. UZZELL: -- take care of their jobs and
11 their homes.

12 MS. PRICE: Yeah. Right. Are you member a
13 member of ANC 6 by any chance? Are you on the
14 commission or anything --

15 MS. UZZELL: No.

16 MS. PRICE: -- of that nature?

17 MS. UZZELL: Huh-uh. I am just a resident.

18 MS. PRICE: Okay. All right. And the times
19 that you did -- you did -- you mentioned you called ABRA
20 two to -- two to three times last year.

21 MS. UZZELL: Uh-huh.

22 MS. PRICE: Was this early summer,

1 mid-summer?

2 MS. UZZELL: One was mid-spring last year,
3 one was during the summer. I don't believe I called
4 into the fall, slash, winter.

5 MS. PRICE: And -- and just to repeat you
6 were told by ABRA at one of the instances that they had
7 come by us first. And so that's why the noise --

8 MS. UZZELL: Correct.

9 MS. PRICE: -- had -- and how are you -- how
10 do you --

11 MS. UZZELL: I mean they also told us they
12 were leaving our house to go to another residence that
13 had called and complained. But --

14 MR. SILVERSTEIN: Please let her finish.

15 MS. UZZELL: I'm so sorry.

16 MS. PRICE: You -- you referenced this
17 microphone amplifying. First you said the microphone
18 was amplifying music, and then you said you heard
19 someone speaking over a microphone. Which is it?

20 MS. UZZELL: Both.

21 MS. PRICE: Okay. So you -- you heard
22 someone -- how do you know it was a microphone? Maybe

1 it was just because you heard -- it was loud or how
2 do -- I mean I'm trying to understand.

3 MS. UZZELL: I suppose it could have been a
4 megaphone. It was some -- their voice was loudly
5 amplified from the roof such that you could hear it
6 clearly in my back yard and in my kitchen with the
7 closed door and window.

8 MS. PRICE: Okay. And about what time did
9 you think this was?

10 MS. UZZELL: I mean late enough that I
11 called ABRA out of concern. I don't remember exactly.
12 But I'm also familiar with and have a general acceptance
13 of the fact that there's going to be some noise in our
14 neighborhood. So I try not to call unless it's past
15 midnight.

16 MS. PRICE: So past --

17 MS. UZZELL: I could look back in my notes.
18 I don't -- I don't -- I would have to look at e-mails.
19 I don't know.

20 MS. PRICE: And -- and in particular are you
21 saying this was on the second level of your home that
22 this was -- was heard or --

1 MS. UZZELL: You could hear it from the
2 second level of my home where my daughter's bedroom is
3 and you could hear it from our kitchen which is the
4 first level facing the back of the house.

5 MS. PRICE: Okay. Have you ever -- I know
6 the great resources to be able to -- you know, to
7 definitely come together. Have you ever reached out to
8 Touche at all and -- and --

9 MS. UZZELL: I came to a local ANC meeting
10 where the -- the noise and -- and Touche was the topic
11 of the discussion so that I could participate. And I
12 left that meeting frustrated because I didn't feel like
13 there was truly a willingness to be able to engage in a
14 discussion. So I have not called, I have not gone in.
15 And I frequent a lot of the establishments on H Street,
16 but I have not come in.

17 MS. PRICE: I'm sorry. A willingness by
18 Touche to --

19 MS. UZZELL: Yes.

20 MS. PRICE: -- engage in the discussion with
21 you?

22 MS. UZZELL: To engage in the discussion

1 with the neighborhood and with the neighbors about --
2 about the sound. Unfortunately I believe the discussion
3 at that particular meeting turned into discussion more
4 about the previous establishment which just was not a
5 constructive dialog. But I think to the point of your
6 question I have not entered Touche, and I have not
7 attempted personally to make a discussion with Touche
8 about the noise in our particular home. I've gone
9 through what I've understood when we've had challenges
10 and heard sounds was the appropriate process to call.

11 MS. PRICE: Right. Do you feel that -- you
12 mentioned you value the businesses that are -- that are
13 there.

14 MS. UZZELL: Yes.

15 MS. PRICE: Do you feel that Touche is a --
16 is a good addition to the -- to the community? I know
17 you've been there since previous and that kind of thing,
18 and there are other establishments similar -- or other
19 establishments up and down H Street. How do you feel
20 just in general about having a business that's a
21 nightclub or having rooftops in general?

22 MS. UZZELL: If I could take those kind of

1 as a two separate questions.

2 MS. PRICE: Yeah, please.

3 MS. UZZELL: I -- when my husband and I
4 bought our house we knew we were moving into a
5 neighborhood that was thriving and changing and had a
6 lot of employers. And he was born and raised in D.C.
7 We wanted to raise our children in D.C. We like a lot
8 of what the neighborhood has to offer. When we were
9 very excited about the transition from the previous
10 establishment into what the possibility for the
11 establishment that is there now could be. I think we
12 would feel much more comfortable in our home and feel
13 much more comfortable in the neighborhood if I didn't
14 have to worry that there was going to be sound problems
15 in my home where I know I have taken every step I
16 possibly can to try negate them after hours at night.
17 And -- and I think that -- that for me is the challenge
18 and the problem with -- with what currently exists with
19 Touche.

20 MS. PRICE: Okay. I'm touched by that. I
21 want to just say this before I ask you the next
22 question. We want to be your neighbor. So, you know,

1 feel free to come in and talk with us, and we will
2 definitely -- you know, we want -- we want you to feel
3 comfortable about us doing what we can to mitigate the
4 sound. Okay. So I want to let you know that. Do you
5 feel if there were a covering over the rooftop, that
6 that might be an effort that would be positive to
7 helping, you know, you feel -- live comfortably in the
8 neighborhood and us do a comfortable business within the
9 community as well?

10 MS. UZZELL: I'm not a sound expert, and I
11 don't feel qualified to opine on what difference on the
12 noise level a covering would make.

13 MS. PRICE: Okay. You -- you -- do you know
14 that there are other rooftops throughout H Street and so
15 there's entertainment that goes on on a rooftop whether
16 it's at Touche or someone -- or down the street? What's
17 your general opinion about live entertainment or -- not
18 live entertainment, but about people and noise generated
19 from rooftops, period? I mean --

20 MS. UZZELL: I don't object to noise
21 emanating from a rooftop as long as I'm not hearing it
22 past midnight inside my house with my doors and windows

1 closed.

2 MS. PRICE: Okay. So again, you -- you
3 moved -- you -- you understand that establishments have
4 hours that last past midnight, you just don't want to
5 hear the noise from those establishments past midnight.
6 Is that what I'm hearing?

7 MS. UZZELL: I don't want to hear the noise
8 from a rooftop past midnight in my house with my doors
9 and windows closed.

10 MS. PRICE: On a rooftop. Okay. Thank you.

11 MS. UZZELL: I mean I would -- if I heard it
12 from inside the establishment, I would probably -- and
13 it was inside my house over the sound of my air
14 conditioning unit having done everything else I could, I
15 would probably be displeased about that too. But I
16 don't turn and call the police every time there's people
17 drunk waddling down the front of my street at 2:00 in
18 the morning. I try -- you know, I don't have problems
19 with the sounds of car doors slamming in the middle of
20 the night. Those are -- those things I understand.
21 Well, it'd be, you know, preferred if they were quiet.
22 It's not -- it's not the fact of where I live and I

1 understand that. I just think that there's a courtesy
2 that if we are all going to live and thrive and have an
3 awesome neighborhood together, which I think we can, I
4 think there's a courtesy and agreement that we can reach
5 about how we can co-exist in that neighborhood.

6 MS. PRICE: Thank you very much.

7 CHAIRPERSON ANDERSON: Ms. Uzzell, just one
8 question I want to ask you. If you said -- you're
9 saying that this establishment has -- you has to call
10 the -- the ABRA to complain about noise, why would you
11 not approach the establishment just to find out from
12 them -- to let them know that you had had some problems
13 with the sounds coming out from the establishment?

14 MS. UZZELL: Part of the reason why I did
15 not approach the establishment is because when it's
16 after midnight on the Friday or Saturday night or
17 weekend night where I called the last thing that I
18 wanted to do was go further than I had to go like --
19 like if I'm hanging out in my pajamas. Like I was
20 already making an effort to walk out of the back of my
21 house and figure out where the sound was coming from. I
22 also just wasn't going to walk around and knock on the

1 door of -- of Touche and say can you please turn it --
2 you know, can you please turn it down or can you please
3 get off -- off the roof. I thought the process that
4 was -- you know, the process to follow was to call, you
5 know, ABRA at the time. And I did go to a community
6 meeting at the ANC in an attempt to express concerns and
7 address my concerns there. And as I mentioned, you
8 know, it -- unfortunately I believe it turned into a
9 discussion about the -- the previous establishment and
10 the role of the previous owner and Touche now. And that
11 just wasn't leading to any constructive discussion about
12 how to resolve the issue.

13 CHAIRPERSON ANDERSON: Well, I guess the
14 question I'm asking -- I didn't expect you -- well, and
15 rightly so, I wouldn't expect you at -- at that moment
16 to go knock on their door to tell them. But since you
17 are a neighbor and live there and you had to call at
18 least twice, why not at some point go talk to the owner
19 to explain to them that, you know, I live around back,
20 you know, I understand I live in a neighborhood that --
21 that there's going to be noise, but -- but just to alert
22 them that you do have some problems with the noise

1 coming from their rooftop? I'm just asking.

2 MS. UZZELL: I mean I -- I suppose I could
3 have done that to be courteous. But I guess I also
4 thought that the courteous behavior would have been a
5 commitment and to the existing agreement that I thought
6 was in place which was that there wasn't going to be
7 that sound coming off the rooftop at midnight. So I
8 suppose in a perfect universe we all could have been
9 more considerate neighbors.

10 CHAIRPERSON ANDERSON: All right.

11 MS. UZZELL: I mean I'm sorry if I don't
12 have a more satisfactory response.

13 CHAIRPERSON ANDERSON: I'm not -- I'm just
14 asking a question. And there -- there's no satisfactory
15 response. I am just asking a question. So it is not a
16 perfect --

17 MS. UZZELL: No. I -- I appreciate the
18 question. Just --

19 CHAIRPERSON ANDERSON: There's not a perfect
20 answer or question. I'm just -- just some curiosity.
21 Any other questions by any board member? Yes,
22 Ms. Miller.

1 MS. MILLER: So -- so the sound that
2 bothered you from the rooftop of Touche was that which
3 is disallowed by the existing settlement agreement?

4 MS. UZZELL: My understanding is it was
5 disallowed by the existing settlement agreement.

6 MS. MILLER: So -- so you're not talking
7 about voices or -- or whatever else might have been
8 allowed in the settlement agreement?

9 MS. UZZELL: No. On at least one occasion I
10 called because there was like music that was being
11 amplified by some -- some mechanism, and I -- you know,
12 to be clear I did not see if it was a microphone or a
13 megaphone or what that vehicle was.

14 MS. MILLER: Okay.

15 MS. UZZELL: But it was -- it was very loud.
16 It was clearly amplified, and it could be heard in a way
17 that did not seem like it was in agreement with the --
18 consistent with the current settlement agreement.

19 MS. MILLER: Okay. And I mean I'm impressed
20 that you did all this insulation to your house. But
21 when you did that did you have any kind of experts do it
22 in -- in sound mitigation, or is it just contractors who

1 said, you know, I'm going to add insulation and that
2 will protect you?

3 MS. UZZELL: So I didn't call like a -- a
4 sound expert. But I did spend quite a bit of time on --
5 on the phone with the company that was manufacturing the
6 windows for our house and spent a lot of time talking to
7 them about I need it to be as quiet as possible, what
8 additional things can you put on the windows, and did
9 some Google researches to try to make sure I wasn't
10 getting, you know, swindled with additional add-ons that
11 weren't going to be effective. But I did not call a
12 sound expert and say can you come over here?

13 MS. MILLER: And -- and did they tell you
14 what it should protect you from, for instance what kind
15 of music or not -- not megaphones, but it will protect
16 you from this or, you know, recorded music? Or did
17 they -- did they --

18 MS. UZZELL: No. They didn't get that
19 specific.

20 MS. MILLER: They didn't get into that
21 detail?

22 MS. UZZELL: No. They just said, you know,

1 for a residential home --

2 MS. MILLER: Yeah.

3 MS. UZZELL: -- and the window -- the size
4 of the windows that we're making for you this is what we
5 can do and this is what it -- it -- you know, it should
6 be able to muffle the outside sounds. But they
7 didn't -- we didn't say come see if you think if there
8 was a megaphone on that rooftop, if it would --

9 MS. MILLER: Right. Okay.

10 MS. UZZELL: -- you know, if it would keep it
11 quiet.

12 MS. MILLER: Okay. And then I think my last
13 question is -- I don't know if you can articulate any
14 further on this, but how it is that you're like -- you
15 can say that well, I can live with the voices of people
16 coming out of the bars at two or three in the morning,
17 but the sound from the -- Touche's roof deck is
18 disturbing?

19 MS. UZZELL: So would I prefer to not deal
20 with the sounds of patrons and others like wandering in
21 front of our house in the middle of the night and, you
22 know, like there was bottles breaking last week? Would

1 I prefer to not have to live with that? Absolutely.

2 MS. MILLER: Okay.

3 MS. UZZELL: But those people don't own an
4 establishment. They don't have a consent agreement
5 already -- or a settlement already in place. They don't
6 have something they're supposed to adhere to and they're
7 not kind of profiting off of being able to run a
8 business in our neighborhood. So I guess my expectation
9 of the -- like the behavior and what can be controlled
10 versus what can't be controlled are two different
11 expectations.

12 MS. MILLER: Okay. I -- I guess in
13 conclusion I just want to confirm, it sounds like
14 your -- your concerns are one, that they not violate the
15 previous settlement agreement with respect to the type
16 of sounds up on the rooftop; and number two, you'd like
17 it -- the -- the limitations to still be earlier than --
18 than what's in the current settlement agreement; is that
19 right?

20 MS. UZZELL: Yes and yes.

21 MS. MILLER: Okay. Thank you.

22 CHAIRPERSON ANDERSON: Any other questions

1 by any of The Board? Yes. Yes, Mr. Silverstein.

2 MR. SILVERSTEIN: Thank you, Ms. Uzzell.

3 How far in distance is your back window from Touche?

4 Give me a --

5 MS. UZZELL: I mean to my best estimate is
6 that the back of my house is 75 yards or so. It's a --
7 there are some buildings in between, but it's a clear
8 shot from the back of the roof to the back of our house.

9 MR. SILVERSTEIN: And there's no shortage of
10 ambient noise in your neighborhood, correct?

11 MS. UZZELL: On the front of the house
12 there's no shortage of ambient noise.

13 MR. SILVERSTEIN: How -- how specifically do
14 you know where the noise is coming from and especially
15 how are you sure that it's from Touche?

16 MS. UZZELL: Because when we heard it my
17 husband walked out the back door, walked through the
18 alley, and walked down the street to go see where the
19 sound was coming from before we called ABRA.

20 MR. SILVERSTEIN: You can hear this from
21 inside your home?

22 MS. UZZELL: The times that we've called

1 ABRA we could hear it from inside our home.

2 MR. SILVERSTEIN: Even with white noise such
3 as from an air conditioner going?

4 MS. UZZELL: That's why I called to express
5 concern.

6 MR. SILVERSTEIN: How much of this is a
7 possibility that Touche is simply adding to an already
8 existing din of -- of other things and how much of it is
9 exclusively theirs by your reckoning?

10 MS. UZZELL: By my reckon the nights that we
11 have called ABRA to complain were the result of Touche.

12 MR. SILVERSTEIN: I'm -- I'm sorry. I
13 didn't hear you.

14 MS. UZZELL: The nights that we have called
15 ABRA to complain were directly the results of Touche.

16 MR. SILVERSTEIN: If Touche's rooftop hours
17 were restricted, would that end your problems or is
18 there some sort of a wider resolution that would be more
19 helpful to you?

20 MS. UZZELL: I think if their rooftop hours
21 were restricted and there were not an amplification of
22 the sound was not permitted and there were not things

1 like -- you know, and there was not greater leniency
2 about what kind of activities would be permitted on the
3 roof, that would -- that would go very far to
4 resolving -- if not completely resolve my issues with --

5 MR. SILVERSTEIN: Let's -- let's bifurcate
6 that. Let's start with allowing them to have the
7 rooftop open so that people could smoke up there but no
8 music after a certain hour. Would that be a big
9 improvement? Would that be satisfactory? Would that be
10 not -- or would that be a step not far enough?

11 MS. UZZELL: I -- I guess I don't -- I guess
12 I don't understand why -- I mean there's a -- there's a
13 place in front of the establishment on the street where
14 if people needed to smoke, they could smoke. So I guess
15 I'm not certain why after a certain hour anyone needs to
16 be on the roof.

17 MR. SILVERSTEIN: Okay. How much extra did
18 you spend to help soundproof your home? I mean, okay,
19 you were fixing your house so you know you were going to
20 get windows, you were going to get doors, and you're
21 going to paint the place. How much extra did you spend
22 on sound mitigation?

1 MS. UZZELL: I should have pulled my
2 receipts before I came I did not.

3 MR. SILVERSTEIN: I'm sorry?

4 MS. UZZELL: I should have pulled my
5 receipts before I came and I did not pull them.

6 MR. SILVERSTEIN: What do you think, \$50,
7 \$100, \$500 --

8 MS. UZZELL: Oh, no.

9 MR. SILVERSTEIN: -- 1,000?

10 MS. UZZELL: I mean it was -- the insulation
11 alone was --

12 MR. SILVERSTEIN: Say again.

13 MS. UZZELL: The insulation alone was at
14 least several hundred -- several hundred dollars, and
15 the windows was -- was definitely more than that.

16 MR. SILVERSTEIN: And did you buy a windows
17 based on the R unit or whatever the -- the insulation,
18 was that part of what you did as well when you -- did
19 you pay extra for windows to --

20 MS. UZZELL: Yes.

21 MR. SILVERSTEIN: How does this late noise
22 affect your children?

1 MS. UZZELL: So I don't know if you've had
2 small children. But it's kind of like an adult, when
3 you wake up in the middle of the night because your
4 sleep is disrupted, you're kind of cranky the next day.
5 And when you're little it makes you more unbearable to
6 deal with. But it's the -- it -- you know, I want --
7 what my husband and I want is to be able to raise our
8 children in the neighborhood that we live in because we
9 think that there's a lot of benefits to it. We like
10 that there's restaurants. We like that there's music.
11 We like that it's a diverse community. We like that
12 there's new playgrounds and libraries. But what I don't
13 like is that she's going to get woken up and, you know,
14 after midnight because of sounds that shouldn't be
15 coming from the establishment if we were all just able
16 to adhere to the agreements and were a little more
17 courteous about it. I guess the -- the -- you know,
18 I've heard people say that when you move into a
19 neighborhood and you live in a place like H Street that
20 you should just expect and be able to accept everything
21 that comes along with it. And I -- I refuse to believe
22 that that's what we have to do. Like I want -- as I

1 said a little bit ago I want the businesses to thrive.
2 I mean not only because I enjoy them, but I mean it's
3 good for property values, it's good for all of the
4 neighbors, and it's good for the city. And that's --
5 and that's what I want. And that's what we want to
6 continue to live and why my husband, who grew up in
7 D.C., said we're -- we're not going to live in Virginia
8 or Maryland because we want to stay in D.C. But I -- I
9 don't think that it's too much to ask a business that
10 has another option like what is probably a really
11 awesome indoor space -- I mean there's definitely
12 multiple levels, I've looked at the pictures online and
13 it looks beautiful -- to be able to profit.

14 MR. SILVERSTEIN: But again get -- get back
15 to the question, how this directly affects your children
16 and their health and their well-being.

17 MS. UZZELL: It wakes them up. It deprives
18 them of their sleep. It makes the next day very hard
19 for them to function, and it makes it challenging for
20 our family to stay in the neighborhood.

21 MR. SILVERSTEIN: Thank you very much. No
22 further questions.

1 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

2 MR. ALBERTI: All right. Ms. Uzzell, I'm
3 going to keep this short, really -- Uzzell. I'm sorry.
4 Just really to the point and this is sort of tagging
5 onto Mr. Silverstein's questions. How late is
6 acceptable to hear noise in your home do you think first
7 during the week, weekdays -- and you can define that
8 however you want -- and weekends?

9 MS. UZZELL: I would not find it
10 unreasonable to hear noise up to -- up to midnight if I
11 needed to on weekends.

12 MR. ALBERTI: Uh-huh.

13 MS. UZZELL: Up to ten during the
14 weeknights. That's what I've understood. That's what
15 had been kind of a general acceptance or in the
16 settlement, the -- I don't know that I should ever hear
17 it inside my house frankly. But if I have to hear it in
18 my back yard, if I hear it in my neighborhood, that's
19 what I think I should hear.

20 MR. ALBERTI: Okay. Fair enough. All
21 right. Just -- just real quick. So, you know, The
22 Chair asked you if you had ever approached them. So

1 that begs the question with me is should they have
2 been -- should Touche have been aware of the problems --
3 the complaints of the neighbors, that there was some
4 disturbance in the neighborhoods? So had you ever
5 discussed this with your ANC commissioner?

6 MS. UZZELL: I participated in an ANC
7 meeting last year where this was the topic of the
8 meeting and where Touche was present at the meeting for
9 the discussion with the neighbors.

10 MR. ALBERTI: So was it your impression that
11 Touche knew that neighbors had some concerns about
12 noise?

13 MS. UZZELL: Yes.

14 MR. ALBERTI: All right. Thank you.

15 CHAIRPERSON ANDERSON: Any other questions
16 by any other board members?

17 MS. MILLER: I just had a real quick follow
18 up.

19 CHAIRPERSON ANDERSON: Yes. Yes.

20 MS. MILLER: I guess could you tell me how
21 many times you called ABRA?

22 MS. UZZELL: Between two to three.

1 MS. MILLER: Between two to three. Okay.

2 And I -- did you get a result that -- that you were
3 satisfied with or -- or -- or not? What was the outcome
4 of those calls?

5 MS. UZZELL: The sound ended that night.

6 MS. MILLER: The what?

7 MS. UZZELL: The sound ended that night.

8 MS. MILLER: Okay. Each time you called the
9 sound ended?

10 MS. UZZELL: Yes.

11 MS. MILLER: Okay.

12 MS. UZZELL: But we're here today. So
13 it's -- no, not satisfactory.

14 MS. MILLER: So that it was satisfactory
15 that night, but then it continued so it wasn't
16 satisfactory. Is that what you mean?

17 MS. UZZELL: Right. I don't consider a
18 continuation of the problem to be a satisfactory result.

19 MS. MILLER: And how -- how spread out were
20 those calls? Was it over a period of months or like all
21 at the same --

22 MS. UZZELL: They were throughout last year.

1 So --

2 MS. MILLER: Okay.

3 MS. UZZELL: It was not consecutive
4 evenings.

5 MS. MILLER: It was not what?

6 MS. UZZELL: It was not consecutive
7 evenings.

8 MS. MILLER: Uh-huh. Okay. Thank you.

9 CHAIRPERSON ANDERSON: Do you have any other
10 questions for this witness? Do you have any other
11 questions for this witness, Mr. Williams, questions that
12 were asked by The Board?

13 MR. WILLIAMS: No, I don't.

14 CHAIRPERSON ANDERSON: Ms. Price, based on
15 the questions that were asked by the board members -- do
16 you have any questions based on the questions that were
17 asked?

18 MS. PRICE: I do. You said that you were at
19 a meeting that Touche was there to discuss the concerns
20 of the noise, that we knew about the noise. How do you
21 know that?

22 MS. UZZELL: We were discussing it at the

1 meeting. It was an ANC meeting at Minor Elementary.
2 The only other thing I remember about the night and the
3 timing is it was -- there was some crazy police chase.
4 I know this sounds insane. But there was a crazy police
5 chase through the city. So people were checking like
6 their BlackBerries and the Twitter feed for the police.
7 And the mayor was at the ANC meeting to talk about the
8 budget for the neighborhood and middle schools and had
9 to leave. I know that seems like a weird thing to
10 remember about it. But I feel like the police chase
11 ended in our neighborhood. So there was a lively
12 conversation.

13 MS. PRICE: But was it on the agenda, we're
14 going to be talking about the noise level or anything
15 like that?

16 MS. UZZELL: Yes. Yeah. Touche was on the
17 agenda for that night.

18 MS. PRICE: About the noise?

19 MS. UZZELL: I don't know if -- I don't
20 remember if the agenda said noise specifically, but I
21 know I spoke about the noise --

22 MS. PRICE: Right. But you --

1 MS. UZZELL: -- at that meeting.

2 MS. PRICE: -- you stated that we were
3 there, that we -- we were there to -- to -- to address
4 the concerns of the community about the noise and that
5 you knew that. And I'm asking how did you know that?

6 MS. UZZELL: Touche was at the meeting.

7 MS. PRICE: Right.

8 MS. UZZELL: The neighbors were expressing
9 concern about the noise at that meeting. That meeting
10 was some time early last year. And so between early
11 last year and this year as a result of that meeting
12 there had to have been knowledge that the neighbors had
13 concern because we raised the concern at that meeting.

14 MS. PRICE: Right. But we're talking about
15 Touche's ability to address the neighbors about it. And
16 so you -- you -- am I correct, you stated that we didn't
17 have an opportunity to address your concern at that
18 meeting and you had no opportunity to address us at that
19 meeting? Is that what I heard?

20 MS. UZZELL: No. I -- I -- I'm sorry if I
21 was not clear. Touche was on the agenda for that
22 meeting. At least I and one other neighbor that I

1 recall expressed concerns about the sound at that
2 meeting. Touche had an opportunity to respond at that
3 meeting. There was a conversation about the noise at
4 that meeting. I think -- you know, the unfortunate part
5 of it was after -- was at that meeting there was
6 conversation that got very contentious about the role of
7 the former management and the current establishment's
8 operations that I think distracted from the further
9 conversation about the noise. But it was at that
10 meeting that we raised the conversation about noise and
11 the concerns about that noise. And so there was --
12 there had to have been knowledge because we had the
13 discussion at that meeting about noise.

14 MS. PRICE: And your impression is that
15 because you had to call a couple of times after that,
16 that we -- that Touche did not -- did not consider your
17 concern?

18 MS. UZZELL: Did not consider the concerns
19 in a satisfactory way because the noise from the roof
20 was still after the -- was still after the hours that I
21 had understood was the settlement.

22 MS. PRICE: Okay. And of the two to three

1 times that you contacted ABRA about the noise do you
2 recall how many times -- were all of these times after
3 that meeting or was some of these times before and some
4 after?

5 MS. UZZELL: They were all after that
6 meeting.

7 MS. PRICE: So you had concerns about the
8 noise, you came to a meeting, and then you called ABRA,
9 that's what you're saying?

10 MS. UZZELL: Yes.

11 MS. PRICE: And so you mentioned they
12 weren't back to back. They were maybe once or twice or
13 what have you. When you say last year can you give me
14 an idea of what, you know, out of the 12 months of the
15 year, you know, what we're talking about within two or
16 three months this -- this happened?

17 MS. UZZELL: I recall one was late spring,
18 one was in the summer. I don't recall specific dates.

19 MS. PRICE: Okay. Late spring and summer.
20 And -- but after the ABRA meeting?

21 MS. UZZELL: Yes. I believe the community
22 meeting must have been in April. The street cars were a

1 subject of conversation. I believe the mayor's budget
2 had just come out because people were talking about
3 budget for construction in the middle schools.

4 MS. PRICE: Thank you.

5 MS. UZZELL: Okay.

6 MS. PRICE: I don't have any questions.

7 CHAIRPERSON ANDERSON: All right. Thank you
8 very much, Ms. Uzzell, for being here and testifying. I
9 really -- The Board really appreciates you taking the
10 time to express your comments. Okay. Thank you very
11 much. You can -- you can step down. Mr. Williams, do
12 you have any other witness?

13 MR. WILLIAMS: Yes. Next up is Katherine
14 Paniagua. I'm probably butchering her last name.

15 CHAIRPERSON ANDERSON: Ms. --

16 MR. WILLIAMS: I practiced all night last
17 night.

18 CHAIRPERSON ANDERSON: Well, I -- well,
19 someone needs to help me. Okay. So --

20 MR. WILLIAMS: I'll -- I'll let Ms. Paniagua
21 do that.

22 CHAIRPERSON ANDERSON: Do you swear or

1 affirm -- raise your right hand please. Do you swear or
2 affirm to tell the truth and nothing but the truth?

3 MS. PANIAGUA: Yes, I do.

4 CHAIRPERSON ANDERSON: And can you for the
5 record please state your name and spell it for us
6 please.

7 MS. PANIAGUA: Sure. Katherine Paniagua,
8 P-A-N-I-A-G-U-A. It's really easy if you know Spanish,
9 bread and water, Paniagua. So Paniagua.

10 CHAIRPERSON ANDERSON: Paniagua.

11 MS. PANIAGUA: My big joke is that I'm
12 gluten-free and I can't eat bread. My name is
13 Mrs. Bread and Water. So --

14 CHAIRPERSON ANDERSON: All right. Paniagua.
15 Thank you. All right. Go ahead, sir.

16 MR. WILLIAMS: So, Ms. Paniagua, I guess
17 you've already stated your name and spelled it for the
18 record. Can you -- can you please tell us your address.

19 MS. PANIAGUA: Sure. 713 is 12th Street NE.

20 MS. PRICE: I'm sorry?

21 MS. PANIAGUA: 713 12th Street NE.

22 MR. WILLIAMS: And approximately -- and so

1 are you familiar with where Touche is located?

2 MS. PANIAGUA: Yes. I can see it out of my
3 bedroom window.

4 MR. WILLIAMS: And approximately how far is
5 Touche from your house?

6 MS. PANIAGUA: I would say 100 feet. I
7 don't know. I'm not a -- a distance expert.

8 MR. WILLIAMS: Understood. Can you please
9 describe for us your experience with Touche,
10 specifically their rooftop deck.

11 MS. PANIAGUA: So I've called ABRA several
12 times for noise complaints from rooftop noise. Like
13 Megan I have heard amplified voices and then people
14 screaming afterwards. So it sounded like there was an
15 announcer of some sort. I don't know what he was using
16 to amplify the voice. But then, you know, the crowd was
17 responding and cheering and music that sounded much
18 louder than the background noise that I believe is in
19 the settlement agreement.

20 MR. WILLIAMS: And, Ms. Paniagua, you said
21 you -- you made some -- you made calls to ABRA. Can you
22 recall approximately how many you've made?

1 MS. PANIAGUA: I've made at least ten calls
2 to ABRA. Several times I have reached out to Phil and
3 let him know that I called ABRA and I either got
4 voicemail or there was a couple times when I -- I had a
5 baby in August. And so there's a couple times that I
6 called and they said that they would send someone out
7 and that they didn't necessarily have to come into my
8 home. Being so pregnant and with a newborn I didn't
9 really want -- my husband travels a lot for work, and I
10 really didn't want a stranger in my house after
11 midnight.

12 MR. WILLIAMS: And, Ms. Paniagua, these --
13 these incidences you mentioned after midnight, is --
14 would -- the -- the noise you're hearing, is it for the
15 most part after midnight when you have the -- the
16 concerns?

17 MS. PANIAGUA: Yes. It's after midnight. I
18 understand living in a neighborhood that there's noise
19 issues. But when I can see the rooftop and see -- you
20 know, I have to look up on to it, but I can see people
21 walking around and hearing things, I can -- I can pretty
22 much tell where the sound is coming from.

1 MR. WILLIAMS: And, Ms. Paniagua, just a
2 moment ago you mentioned you had contacted Phil. Can
3 you -- can you describe who -- who is Phil?

4 MS. PANIAGUA: Phil is our ANC.

5 MR. WILLIAMS: He's your ANC commissioner?

6 MS. PANIAGUA: Yes.

7 MR. WILLIAMS: So he covers your single
8 member district?

9 MS. PANIAGUA: Yes, he does.

10 MR. WILLIAMS: Okay. And do you know --
11 does Touche fall under Mr. Toonajian's single member
12 district as well?

13 MS. PANIAGUA: I believe so. It's 6A. I
14 think the boarder is H Street.

15 MR. WILLIAMS: Thank you. Can you describe
16 just generally how the noise issue, specifically from
17 Touche's rooftop deck, have affected your quality of
18 life?

19 MS. PANIAGUA: It's kept me up a lot of
20 times. It -- I get stressed out really easily, and its
21 just raised my blood pressure, lack of sleep. I would
22 just prefer to not have noise coming from a rooftop that

1 could be contained inside coming into my house with the
2 windows closed and doors closed.

3 MR. WILLIAMS: I think that's one thing I
4 wanted to specify. When you -- when you've complained
5 and when you've heard -- when you've heard these noises
6 has that be from inside of your house with windows and
7 doors closed?

8 MS. PANIAGUA: Yes. Windows closed, doors
9 closed, shutters down.

10 MR. WILLIAMS: And are you aware of general
11 noise ordinances that prevent -- that prohibit that type
12 of noise from being heard in your house?

13 MS. PANIAGUA: Right. I'm -- I was under
14 the impression that you're not supposed to hear any
15 sound from a business inside your home.

16 MR. WILLIAMS: And do you hear noise from
17 any other businesses near your home inside your house?

18 MS. PANIAGUA: I don't believe so. I can
19 see when there's a lot going on on the rooftop. And I
20 would assume that that noise is coming from the rooftop
21 into my house. I can't -- you know, I don't see an -- I
22 don't have any other rooftops in my direct line of

1 sight. And from where my bedroom window is to where
2 Touche's roof deck is it is certain to me that that's
3 where the noise is coming from.

4 MR. WILLIAMS: Okay. I think that's all the
5 questions I have. Thank you.

6 CHAIRPERSON ANDERSON: Ms. Price.

7 MS. PRICE: Hi.

8 MS. PANIAGUA: Hi. How are you?

9 MS. PRICE: Congratulations on your baby.

10 MS. PANIAGUA: Thank you.

11 MS. PRICE: I heard you guys talking a
12 little bit about it. Your address is 713 you said?

13 MS. PANIAGUA: Yes.

14 MS. PRICE: So --

15 MS. PANIAGUA: I'm one house in from the
16 corner of Linden.

17 MS. PRICE: Right. You're across -- across.

18 So -- so --

19 MS. PANIAGUA: Across the street.

20 MS. PRICE: So on your side of the street --

21 MS. PANIAGUA: Uh-huh.

22 MS. PRICE: Let me just kind of draw an idea

1 of --

2 MS. PANIAGUA: Yeah. Yeah.

3 MS. PRICE: -- where -- where things are.

4 So you've got Touche.

5 MS. PANIAGUA: Uh-huh.

6 MS. PRICE: 12th Street. Across is Auto
7 Zone.

8 MS. PANIAGUA: Yeah.

9 MS. PRICE: Then there is an alley, and then
10 there's one, and then you, correct? One unit -- one
11 house and then you or -- there are several houses and
12 then there's Linden Street, and then there's a house and
13 then you? Is that -- is that more accurate?

14 MS. PANIAGUA: So I'm one house in from
15 Linden Place. So between 12th and -- between H and G
16 there's a cross street, Linden.

17 MS. PRICE: Right.

18 MS. PANIAGUA: And I am one house in --

19 MS. PRICE: Correct.

20 MS. PANIAGUA: -- on 12th Street from the
21 corner of 12th and Linden.

22 MS. PRICE: Correct. And so that's a

1 good -- well, a block if you will from H Street.

2 MS. PANIAGUA: It's less than half a block

3 because G would be --

4 MS. PRICE: No. I'm talking about H Street.

5 MS. PANIAGUA: Yes.

6 MS. PRICE: Okay. G is a full block and
7 that's a half block.

8 MS. PANIAGUA: G is a full block, and Linden
9 is less than half of the block between G and H.

10 MS. PRICE: Linden is about half of the
11 block. Okay. So from your bedroom window -- so your
12 bedroom window -- are you speaking of -- the bedroom
13 window you're speaking of, it looks out onto 12th Street
14 or does it look out onto Linden?

15 MS. PANIAGUA: It looks onto 12th Street.

16 MS. PRICE: Okay. And if you were to look
17 just out the window, what all do you see other than
18 directly Touche's -- I mean can you look and see cars
19 coming up and down 12th -- H -- 12th Street?

20 MS. PANIAGUA: Yeah. I -- I can see cars
21 coming up and down the street.

22 MS. PRICE: Can you see H Street at all?

1 MS. PANIAGUA: If I stuck my head out the
2 window and turned to the right, I could see H Street.

3 MS. PRICE: But you don't have to look a lot
4 to the right to see Touche?

5 MS. PANIAGUA: No. I can -- the way my
6 window is facing it's -- I can look out the window and
7 look on a diagonal across the street back. Before you
8 put the covering on the windows I could see laser lights
9 from inside the second floor of Touche in my --

10 MS. PRICE: And then you see those trees
11 that are behind there and then the elevator whole thing,
12 and now there's the -- well, it's not --

13 MS. PANIAGUA: The substation, yeah.

14 MS. PRICE: The substation. Okay. And how
15 long have you lived on -- on 12th Street?

16 MS. PANIAGUA: It will be five years in
17 July.

18 MS. PRICE: Okay. Have you ever been to
19 Touche at all?

20 MS. PANIAGUA: I have not.

21 MS. PRICE: We invite you to come. We've
22 got some good food. The kids will like that too.

1 MS. PANIAGUA: Great.

2 MS. PRICE: And you have to do brunch. What
3 time do you usually go to bed during the week?

4 MS. PANIAGUA: Now that I have a baby about
5 10:00.

6 MS. PRICE: Okay. And you -- you said
7 you -- you've made calls to Phil and to the ABRA.
8 What -- what -- what was the result of that? Did
9 they --

10 MS. PANIAGUA: So I was -- there was a
11 couple times when I got ABRA's voicemail, and then I
12 left messages. Then there was another time -- well,
13 two -- at least two other times where they told me that
14 they were sending someone out and that they didn't have
15 to enter my home because they could make the assessment
16 from outside the establishment.

17 MS. PRICE: Okay. And about what time were
18 these do you recall?

19 MS. PANIAGUA: After midnight.

20 MS. PRICE: After midnight. Yeah. You did
21 say that. I'm sorry. And -- and you talk about several
22 times there was -- that there were amplified noise.

1 This is more than once, more than twice you heard
2 something being amplified from the rooftop?

3 MS. PANIAGUA: Yes. I would say more than
4 five times that I've heard a voice amplified from the
5 rooftop, not people talking very loud. But there's a
6 distinguishment between a microphone or an amplified
7 voice.

8 MS. PRICE: Okay. I don't have any other
9 questions. But I do want to just say the same thing I
10 said to the last person. We welcome you -- I would like
11 to talk with you if you need to, and, you know, we want
12 to -- we want to be a good neighbor. We don't want you
13 disturbed at all which I'm glad that you no longer see
14 the -- the flashing lights anymore.

15 MS. PANIAGUA: Great. Thank you.

16 CHAIRPERSON ANDERSON: All right. Do we
17 have any questions by any board members? Yes,
18 Mr. Short.

19 MR. SHORT: Good afternoon.

20 MS. PANIAGUA: Hi.

21 MR. SHORT: And I see you've been [inaudible
22 51:17] great attention. [Inaudible 51:21] in Washington

1 D.C. five years. And as I said to a previous witness
2 I've been in this area most of my life -- all of my life
3 and I can remember the street when it was a lot quieter.
4 And I had relatives that lived on Linden Place back in
5 the '50s and early '60s.

6 MS. PANIAGUA: Right.

7 MR. SHORT: But things have changed in the
8 neighborhood, and I guess the [inaudible 51:42] and
9 there are businesses that [inaudible 52:02]. But
10 there's -- there's got to be a way that businesses and
11 the community can [inaudible 52:12]. And that's one of
12 the -- I guess one of the -- forgive me -- one of the --
13 one of the main reasons we have to have this board and
14 have the citizens come before us, so we can work things
15 out. And we've heard what you said. Your -- your
16 testimony has been quite compelling. And -- and I'll
17 just say help is on the way. We're going to have the
18 businesses, and we're going to have the community too.
19 And you do your job, and we're going to see that the
20 businesses do theirs.

21 MS. PANIAGUA: Great. I -- I completely
22 agree. I want businesses to thrive. I patronize some

1 of the businesses in the past eight months and couple
2 months of -- last month before that, my pregnancy. I
3 haven't been out in probably the last year much. But I
4 agree, I want businesses to thrive. I have no problems
5 with businesses on the street. I just -- I'm mainly
6 concerned about the rooftop noise. I've been in my home
7 for five years. Before that I lived on East Capitol
8 Street which is a little quieter. We made the choice to
9 move up and purchase our first home up in -- in that
10 area because it's a great area that has changed a lot
11 even in the five years that we've been there and we
12 respect and welcome the change. I'm just mainly
13 concerned about the rooftop noise.

14 MR. SHORT: Yeah. Where were you at on East
15 Capitol?

16 MS. PANIAGUA: 10th and East Capitol in a --

17 MR. SHORT: I went to Eastern High School on
18 East Capitol Street.

19 MS. PANIAGUA: How much is the house?

20 MR. SHORT: I said I went to Eastern High
21 School on East Capitol Street.

22 MS. PANIAGUA: Oh, okay.

1 MR. SHORT: But I'll just say this to you,
2 rooftop issue in your neighborhood is -- is pretty
3 much -- there are several other areas in the city, and
4 by and by there's ways that the city finds to again have
5 people co-exist. And if -- if a business is not
6 being -- being a good business, then things that done to
7 regulate that. And -- and again, neighbors in the
8 community have -- and businesses have to learn how to
9 co-exist.

10 MS. PANIAGUA: Yeah, of course.

11 MR. SHORT: Thanks for your testimony. Its
12 been quite compelling and congratulations to you and
13 your baby.

14 MS. PANIAGUA: Thank you.

15 CHAIRPERSON ANDERSON: Do we have any other
16 questions by any other -- yes, Ms. Miller.

17 MS. MILLER: Good afternoon still. Okay. I
18 just want to be sure I understand. What sounds from the
19 rooftop -- what types of sounds bother you at night? Is
20 it, you know, amplified music, microphones versus
21 recorded music versus sounds of people talking, or
22 anything else?

1 MS. PANIAGUA: The thing that bothers me
2 mostly is the amplified music. Like I would presume
3 it's a -- a DJ. I'm not an expert, but you know the
4 difference between background noise and projected noise.
5 Someone -- if I can make out what they're saying in my
6 home, they're using some sort of projection device.
7 That -- that bothers me. And then, you know, you can't
8 control people how loud they talk. But if they're not
9 on a roof after midnight, you can control people not
10 talking on the rooftop after midnight.

11 MS. MILLER: That was going to be my next
12 question, the hours. You know, after midnight on a
13 weekend, after midnight during the week, what do you --

14 MS. PANIAGUA: I would say midnight on the
15 weekend, 10 or even 11:00 on the -- the weekdays.

16 MS. MILLER: For any of those sounds -- for
17 any sounds, correct?

18 MS. PANIAGUA: Correct.

19 MS. MILLER: Okay.

20 MS. PANIAGUA: Because if you allow people
21 up on the roof, you know, you can't control how loud
22 they talk.

1 MS. MILLER: And then my other question is
2 what was the -- or what were the results of your calls
3 to ABRA?

4 MS. PANIAGUA: As I mentioned a couple times
5 I was frustrated because nobody call -- nobody picked up
6 my phone or nobody returned my calls. Like Ms. Uzzell
7 I've been to committee meetings, and I think I spoke
8 with you at the one that the mayor was at. And a couple
9 of times I reported they said they were sending an
10 investigator out, but I don't know. You know, there was
11 no report filed back to me. So --

12 MS. PRICE: Okay. I mean did you have the
13 experience that perhaps the sound was mitigated but you
14 just didn't get a report on it?

15 MS. PANIAGUA: I don't really remember much
16 of a difference.

17 MS. PRICE: Okay. Thank you.

18 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

19 MR. ALBERTI: Yeah. Paniagua.

20 MS. PANIAGUA: Paniagua.

21 MR. ALBERTI: Paniagua. I'm sorry.

22 MS. PANIAGUA: Close enough.

1 MR. ALBERTI: So I just -- and just -- this
2 is just search for clarity. So you live two houses in
3 from Linden north or south of Linden?

4 MS. PANIAGUA: South.

5 MR. ALBERTI: South. Okay. Two doors south
6 of Linden on the east side of the street?

7 MS. PANIAGUA: Yes.

8 MR. ALBERTI: Okay. Great. So I just want
9 it for the record so we can place your house.

10 MS. PANIAGUA: Yeah.

11 MR. ALBERTI: And I think you said -- you
12 said something like 10 or 11:00 week -- weekdays was
13 when you -- it was up to that time you could tolerate
14 hearing noise inside your house. What about weekends?

15 MS. PANIAGUA: Midnight.

16 MR. ALBERTI: Midnight you said. Okay.
17 Great. Thank you. That's it. I don't have anything
18 else.

19 CHAIRPERSON ANDERSON: Any other questions
20 from any of the board members? Mr. Williams, do you
21 have any questions based on the questions The Board had
22 asked?

1 MR. WILLIAMS: Yes. Thank you. Just one
2 real quick question, Ms. Paniagua. Is it a fair
3 representation that the -- your comfort with 11 p.m.
4 rooftop closing on weeknights or 10:00 and midnight on
5 weekends may not be the most ideal solution but it's one
6 that you think is a fair compromise?

7 MS. PANIAGUA: Yeah.

8 MR. WILLIAMS: Thank you. I don't have any
9 other questions. Sorry.

10 CHAIRPERSON ANDERSON: Well, I thought you
11 were pondering.

12 MR. WILLIAMS: I was pondering. Right. Now
13 I --

14 CHAIRPERSON ANDERSON: All right.
15 Ms. Price, based on the questions that The Board asked,
16 any questions?

17 MS. PRICE: Based on his question is it fair
18 if the -- would you say the same thing if there were a
19 covering over that rooftop?

20 MS. PANIAGUA: No. Because from where I am
21 I'm across the street so I feel like the sound projects
22 straight out. So I don't care about the noise going up.

1 Do you know what I mean?

2 MS. PRICE: You're not directly across
3 though. It's not projecting that way. I'm just asking
4 based on his question you were talking about hours. So
5 if you're comfortable with those hours, would you be
6 comfortable with those same hours or would it been okay
7 for later if there were a covering over that rooftop?

8 MS. PANIAGUA: I would not be comfortable
9 with later under any circumstances.

10 MS. PRICE: Thank you.

11 CHAIRPERSON ANDERSON: I suppose the -- I
12 think that maybe the question I was asking if they --
13 are you talking if the roof was enclosed not just a
14 covering? Which one are you asking?

15 MS. PRICE: Correct. If it were enclosed.

16 CHAIRPERSON ANDERSON: If it was enclosed.

17 So if it was enclosed you shouldn't hear any --

18 MR. ALBERTI: Well, Mr. Anderson, I don't
19 think we've heard any testimony as to even the nature of
20 an enclosure. So I'm not sure these are fair questions.

21 CHAIRPERSON ANDERSON: I -- I was just
22 trying to clarify the type of questions that was asked.

1 I -- I -- my impression the question that was asked and
2 there is no presentation that we're -- we're enclosing
3 the -- the area. So I was just trying to clarify what
4 she said by covering. I -- my assumption is that she
5 was talking that we were going to close the roof.

6 That's what -- that's all I was saying. I'm not saying
7 that -- because there was no presentation to say that
8 we're going to enclose the roof. So therefore --

9 MS. PANIAGUA: Right. I -- yeah. So I -- I
10 can't assume what that is. But I don't think unless
11 brick walls were constructed and a brick roof.

12 CHAIRPERSON ANDERSON: All right. Okay.
13 All right. That's fine. Thank you very much,
14 Ms. Paniagua.

15 MS. PANIAGUA: Paniagua.

16 CHAIRPERSON ANDERSON: You know, I wrote it
17 phonetically. I'm -- and I'm trying to do well. But I
18 guess I'm -- I'm going to butcher it. So thank you very
19 much for your testimony. I really appreciate your being
20 here.

21 MS. PANIAGUA: Thank you.

22 CHAIRPERSON ANDERSON: Okay. Thank you.

1 All right. Mr. Williams, do you have any other
2 witnesses?

3 MR. WILLIAMS: Yes. Denise Corte.

4 CHAIRPERSON ANDERSON: Corte.

5 MR. WILLIAMS: Corte, C-O-R-T-E.

6 CHAIRPERSON ANDERSON: Can you -- can you
7 please raise your right hand. Do you swear or affirm to
8 tell the truth and nothing but the truth.

9 MS. CORTE: I do.

10 CHAIRPERSON ANDERSON: Okay. You may be
11 seated. Thank you.

12 MR. WILLIAMS: Hi, Ms. Corte. Can you
13 please state your name and spell it for the record.

14 MS. CORTE: Denise Corte, D-E-N-I-S-E,
15 C-O-R-T-E.

16 MR. WILLIAMS: All right. Thank you. And
17 if you'd speak up just a little bit. Sorry.

18 CHAIRPERSON ANDERSON: Or you can use the
19 microphone too.

20 MR. WILLIAMS: Or just -- yeah, lean into
21 the microphone a little bit. There we go.

22 MS. CORTE: Like this?

1 MR. WILLIAMS: Yeah. Perfect. Thank you.

2 Can you please state your address.

3 MS. CORTE: 711 12th Street NE next door to
4 Katherine.

5 MR. WILLIAMS: That's what I -- that was my
6 next question. Thank you.

7 CHAIRPERSON ANDERSON: I'm sorry. What did
8 she say?

9 MR. WILLIAMS: She's -- I'm sorry. Is -- is
10 that next door to Ms. Paniagua?

11 MS. CORTE: Yes.

12 CHAIRPERSON ANDERSON: Okay. All right.

13 MR. WILLIAMS: How far -- so approximately
14 how far is your home from Touche?

15 MS. CORTE: Like 70 meters.

16 MR. WILLIAMS: Okay. And can you --

17 CHAIRPERSON ANDERSON: 70 meters.

18 MS. CORTE: 70 meters.

19 MR. SILVERSTEIN: How many feet is that?

20 MS. CORTE: 50 yards kind of. I thought we
21 were the metric system already.

22 MR. WILLIAMS: We -- America hasn't caught

1 up yet. Sorry.

2 MR. SILVERSTEIN: Approximately 42 feet.

3 MR. WILLIAMS: Can you please briefly
4 describe your experiences with Touche's rooftop deck.

5 MS. CORTE: Yes. I -- as others said before
6 me I had the same experience of having sound of people
7 talking loudly and music inside my house with the
8 windows shut.

9 MR. WILLIAMS: Okay. And can you provide a
10 little bit more detail on the nature of the noise that
11 you've heard like music? Have you heard recorded music,
12 voices? Can you provide a little more detail there?

13 MS. CORTE: I believe I heard recorded
14 music. I don't know if I -- more than two or three
15 times I heard amplified, someone -- not -- it looked
16 like someone talking on a microphone -- I don't know if
17 it was a -- a microphone or a megaphone or whatever --
18 not for long. It's almost as if there was some game
19 going on and someone would say something on the
20 microphone, and then people will cheer and -- and -- and
21 loud -- loud laughing and talking, talking loudly.

22 MR. WILLIAMS: And, Ms. Corte, this

1 happens -- you hear this from inside of your house with
2 your doors and windows shut?

3 MS. CORTE: Yes.

4 MR. WILLIAMS: And have -- have you
5 contacted ABRA about these concerns?

6 MS. CORTE: I tried to call once. I got
7 their mailbox. And then after hearing the saga of
8 Katherine calling many times I decided not to because we
9 wake up at 4:30 in the a.m. to go to work, and I cannot
10 at 2 a.m. wait for someone to come. And so no, I never
11 even tried to call.

12 MR. WILLIAMS: And, Ms. Corte, have you
13 contacted your ANC commissioner or other representatives
14 of the ANC?

15 MS. CORTE: Yes. Yes. This is the second
16 time I'm here as a witness about this business.
17 Before -- not about Touche, but before about 12 I also
18 testified because I had noise problems inside my house.
19 And I've been in all ANC meetings regarding Touche. We
20 met two or three times, already, right? And yes, so
21 I -- I didn't contact Touche, but I contact the ANC.

22 MR. WILLIAMS: Okay. And -- and -- but you

1 did provide -- you -- you raised complaints having to do
2 with noise at ANC meetings where you were aware that
3 representatives of Touche were present?

4 MS. CORTE: Yes.

5 MR. WILLIAMS: Okay. And can you briefly
6 describe how noise from Touche's rooftop deck has
7 affected the quality of your life.

8 MS. CORTE: Yes. When you wake up at 4:30
9 a.m. to go to work it's really hard. It's -- noise
10 comes inside your house at 2 a.m. or at midnight. I
11 mean I go to bed at 10. My husband goes to bed at 9:30.
12 Okay. We're old, we need a lot of sleep. Wake up very
13 early. But I'm there since 2002. There was no
14 Touche. I didn't sign up for -- for noise
15 inside my house, and I think it's against the law. And
16 I don't want to compromise.

17 MR. WILLIAMS: And, Ms. -- Ms. Corte, are
18 you positive that the noise that you are talking about
19 is coming from Touche?

20 MS. CORTE: Yes.

21 MR. WILLIAMS: How do you -- how are you
22 positive of that?

1 MS. CORTE: Because I open my window when it
2 happened and I heard -- and I could see people and I
3 could even identify who was screaming.

4 MR. WILLIAMS: And, Ms. Corte, there's an
5 Auto Zone near your house?

6 MS. CORTE: Yes.

7 MR. WILLIAMS: Do you hear music coming from
8 Auto Zone?

9 MS. CORTE: No.

10 MR. WILLIAMS: Okay.

11 MS. MILLER: I'm sorry. What did she say?

12 MS. CORTE: No.

13 MS. MILLER: No.

14 MR. WILLIAMS: She does not hear music
15 coming from Auto Zone.

16 MS. Miller: Thank you. Okay.

17 MR. WILLIAMS: Ms. Corte, you've heard a
18 proposal of -- you know, that Touche must close its roof
19 deck at -- we would like Touche to close its roof deck
20 at 11 p.m. on weeknights and midnight on weekends.
21 Would this be an acceptable change for you?

22 MS. CORTE: No.

1 MR. WILLIAMS: What -- what would be
2 acceptable for you?

3 MS. CORTE: 10 p.m.

4 MR. WILLIAMS: 10 p.m. across the board?

5 MS. CORTE: Uh-huh. Yes.

6 MR. WILLIAMS: All seven days?

7 MS. CORTE: Yes.

8 MR. WILLIAMS: That's all I have. Thank
9 you.

10 CHAIRPERSON ANDERSON: Ms. Price.

11 MS. PRICE: Thank you. Hello.

12 MS. CORTE: Hey.

13 MS. PRICE: You stated that you raised
14 concerns with Touche at these meetings about the noise.

15 MS. CORTE: Uh-huh.

16 MS. PRICE: Or was it about the noise from
17 the previous people and you didn't want to have that to
18 happen with Touche?

19 MS. CORTE: No. It was about Touche because
20 the last time we talked I remember the mayor -- when the
21 mayor was present. Well, that was not the last time.
22 The second time you announced -- we were there talking

1 about noise, and you announced that you had done work on
2 the windows.

3 MS. PRICE: Okay.

4 MS. CORTE: And -- and then when -- when
5 there was the mayor I think -- the mayor was there we
6 were talking about the roof deck and the parties there
7 and the -- and the hours. Yeah. I didn't voice my
8 opinion about the hours. But we did talk about the
9 noise and the roof deck.

10 MS. PRICE: Okay. What -- what days do
11 you -- do you work on the weekends?

12 MS. CORTE: Yes. I work Saturdays and
13 Sunday mornings.

14 MS. PRICE: Saturday and Sunday morning?

15 MS. CORTE: Uh-huh.

16 MS. PRICE: And so your off days are
17 typically --

18 MS. CORTE: During the week.

19 MS. PRICE: -- during the week?

20 MS. CORTE: Yeah.

21 MS. PRICE: Okay. And you -- you just --
22 you testified a -- you said that you believed it was --

1 that you believed it was amplified music like a mic or
2 a -- a microphone or like a megaphone or something and
3 it wasn't that long that you heard loud laughing and
4 talking. And then you said that you could identify who
5 was scream -- who it was?

6 MS. CORTE: Yeah. I could -- I opened my
7 window and I looked at the roof deck, and there were
8 like 50 people there. I don't -- I don't know how many.
9 But I could -- I could watch the people and see who was
10 laughing and just, you know, gesturing, and then I could
11 identify the sound.

12 MS. PRICE: And about what time was this?
13 Was it after --

14 MS. CORTE: It was always after midnight.

15 MS. PRICE: After midnight?

16 MS. CORTE: Uh-huh.

17 MS. PRICE: Okay. And you said you've been
18 there since 2002 and you didn't want to have -- so
19 you -- you don't -- how do you feel about other
20 establishments or any establishment having a rooftop
21 where people are out and -- and what have you?

22 MS. CORTE: I don't mind. You can do

1 whatever you want until 10 p.m. .

2 MS. PRICE: As long as it's until 10.

3 MS. CORTE: Yeah. As long as we respect my
4 right to sleep.

5 MS. PRICE: Okay. And have you ever -- have
6 you heard -- is Touche the only establishment [inaudible
7 1:07:54]?

8 MS. CORTE: Unfortunately it is because
9 I'm --

10 MS. PRICE: We've heard [inaudible 1:07:57].

11 MS. CORTE: -- really protect -- you know,
12 Auto Zone protects me from other noises from H Street.
13 I really don't -- I don't know how Tim said that he --
14 he -- he hears noise. And I'm sorry, but --

15 MS. PRICE: Well, the rooftop of -- of -- so
16 H Street -- so you said Auto Zone protects you. But the
17 rooftop and -- and all of that is above the -- the --
18 where Auto Zone is. So if you could straight across on
19 your side of the street, but you don't have a window
20 that points that direction. But if you would look
21 straight off of Auto Zone, you would -- you would see --

22 MS. CORTE: No. I can see Auto Zone. I

1 have a bay window.

2 MS. PRICE: You do? So can you see --

3 MS. CORTE: Yeah.

4 MS. PRICE: -- what's across from Auto Zone
5 like Vendetta or --

6 MS. CORTE: Not really.

7 MS. PRICE: -- any of the other businesses
8 that are on that side or what about --

9 MS. CORTE: No, I cannot --

10 MS. PRICE: -- Smith Commons or anything in
11 Auto Zone's parking lot?

12 MS. CORTE: No. It's farther away. It's on
13 the other side.

14 MS. PRICE: It's farther away. Okay. Thank
15 you.

16 MS. CORTE: Unfortunately the only business
17 I hear is you.

18 MS. PRICE: Thank you. You answered.

19 CHAIRPERSON ANDERSON: All right. Are there
20 any questions by any board members? Yes, Ms. Miller.

21 MS. MILLER: Good evening I think almost.

22 All right. So when -- when you talk about -- you were

1 talking about people being particularly loud and it's
2 always after midnight or something.

3 MS. CORTE: Uh-huh.

4 MS. MILLER: Is that -- is that associated
5 with any other type of activity that you could see like
6 a DJ or something that happens at midnight or -- or do
7 you have any reason to understand why that happens after
8 midnight?

9 MS. CORTE: No. I mean when I say after
10 midnight I say not exactly.

11 MS. MILLER: Uh-huh.

12 MS. CORTE: Maybe midnight, maybe 12:30,
13 maybe 11:30. But I have -- I haven't heard any live
14 music from the deck, from the roof. As I said, I heard
15 amplified voices, someone talking on the microphone
16 announcing something, and people talking, laughing,
17 drinking, what, you know, you do in a roof deck. So --
18 and it's loud.

19 MS. MILLER: I guess I mean does it get
20 louder as it gets later?

21 MS. CORTE: Usually because people start
22 drinking, and then, you know, they get louder as times

1 goes by.

2 MS. MILLER: Okay. And I wanted to ask you
3 -- you -- the 10:00 that you're proposing --

4 MS. CORTE: Uh-huh.

5 MS. MILLER: -- that's reasonable, is it --
6 what's it based on? Is it based on when you need to go
7 to sleep or is it based on something else?

8 MS. CORTE: I thought there was a law. I
9 mean if my neighbor has a party until midnight, I can
10 call the police, right?

11 MS. MILLER: Well, I don't want to --

12 MS. CORTE: Based on that.

13 MS. MILLER: I think you're referring to
14 some law that is kind of related to between 10 and 7
15 where the police can stop somebody for noise or other
16 things.

17 MS. CORTE: Uh-huh.

18 MS. MILLER: So that's what you're basing it
19 on?

20 MS. CORTE: Yeah.

21 MS. MILLER: Okay.

22 MS. CORTE: I mean if my neighbor cannot

1 wake me up, why a business can? I don't think it's
2 fair.

3 MS. MILLER: Do you think it's possible for
4 them to be on the rooftop at all without being --
5 disturbing your peace?

6 MS. CORTE: Until 10 p.m., yes, I'll accept.
7 Because I think -- if it could change the law, maybe it
8 could do something else. It could be even earlier. But
9 I think 10:00 is a good time. I have to be awake until
10 10:00, that's okay.

11 MS. MILLER: Okay. Thank you.

12 CHAIRPERSON ANDERSON: Thank you,
13 Ms. Miller. Any other questions by any of the board
14 members?

15 MR. WILLIAMS: I have no other questions.

16 CHAIRPERSON ANDERSON: All right. Thank you
17 very much, Ms. Corte. Thank you for your testimony.
18 All right. Any other witnesses, Mr. Williams?

19 MR. WILLIAMS: Yeah. Mr. Claude Labbe.

20 CHAIRPERSON ANDERSON: Mr. Labbe.

21 Mr. Labbe, can you raise your right hand please. Do you
22 swear or affirm to tell the truth and nothing but the

1 truth?

2 MR. LABBE: I do, sir.

3 CHAIRPERSON ANDERSON: Have a seat please.

4 MR. WILLIAMS: Mr. Labbe, can you please
5 state your name and spell it for the record.

6 MR. LABBE: Claude Labbe, C-L-A-U-D-E,
7 L-A-B-B-E.

8 MR. WILLIAMS: Mr. Labbe, can you please
9 tell The Board your current address.

10 MR. LABBE: 1214 Linden Place.

11 MR. WILLIAMS: And approximately how far is
12 that from Touche?

13 MR. LABBE: I'm probably the furthest one
14 away I think.

15 MR. SILVERSTEIN: Speak up, sir.

16 MS. MILLER: I -- I missed the address. I'm
17 sorry.

18 MR. SILVERSTEIN: I can't hear a word you're
19 saying.

20 MR. WILLIAMS: Well, can you repeat your
21 address please.

22 MR. LABBE: Sure. Is that better? Is that

1 better?

2 MS. MILLER: Yeah.

3 MR. LABBE: 1214 Linden Place.

4 MS. MILLER: What place?

5 MR. LABBE: Linden.

6 MS. MILLER: Linden. Thank you. Okay.

7 MR. WILLIAMS: And -- and approximately how
8 far is that from Touche?

9 MR. LABBE: Well, 1214 would be the seventh
10 house in from Linden which is midway between 12th and
11 13th.

12 MR. WILLIAMS: Okay. And, Mr. Labbe, I'm
13 not going to -- I'm going to try and focus this because
14 I don't want to have a lot of duplicate of testimony
15 from previous witnesses. Are there other establishments
16 besides Touche that you live near?

17 MR. LABBE: Yes. My back yard backs to the
18 Auto Zone parking lot. So that The Pug and all the --
19 everything on the north side of H directly impacts me.
20 So from Vendetta all the way down to Da Luft I can
21 hear --

22 MR. WILLIAMS: Okay.

1 MR. LABBE: -- as well as the rooftop deck
2 on Smith Commons --

3 MR. WILLIAMS: Okay.

4 MR. LABBE: -- which is further towards the
5 13th Street side.

6 MR. WILLIAMS: What about in terms of
7 distance H Street Country Club or Rock and Roll Hotel?

8 MR. LABBE: Those are -- those are further
9 away, and they don't -- I don't believe that noise comes
10 to me.

11 MR. WILLIAMS: Okay. And comparatively
12 speaking thinking about Touche as -- versus the other
13 establishments that directly affect you -- can you
14 describe kind of the noise levels that you hear from
15 Touche.

16 MR. LABBE: Well, let's be clear. I don't
17 believe I hear Touche in my house either.

18 MR. WILLIAMS: Okay.

19 MR. LABBE: Okay. So the -- when I hear
20 Touche -- I will walk my dog every night, that's just
21 one of the things we do. And so that's when I'll see
22 the noise. And so I can -- I can understand how the

1 people on 12th and the people on the end of Linden will
2 get the noise. But to be honest it doesn't come into my
3 block. And the way noise goes over it -- noise comes
4 over from the parking lot and it jumps over the
5 building, then bounces back. So from the front of my
6 house you can hear the -- the noises bounce across the
7 street back to me. But I don't really believe that's
8 Touche.

9 MR. WILLIAMS: And, Mr. Labbe, do you
10 have -- have you had any -- have you had noise concerns
11 with for instance Smith Commons rooftop deck?

12 MR. LABBE: Sure.

13 MR. WILLIAMS: And how often have that --
14 those been? How often have you had those?

15 MR. LABBE: I've not -- I've not called
16 ABRA. I don't believe calling ABRA at midnight is going
17 to do anything so I don't bother. I know neighbors
18 have.

19 MR. WILLIAMS: And do you know that -- are
20 you aware that Smith Commons closes its roof deck at
21 midnight on weekends?

22 MR. LABBE: Something like that, correct.

1 MR. WILLIAMS: Okay. When you're walking
2 your dog near Touche do you hear music coming from the
3 roof.

4 MR. LABBE: It's the -- what I've noticed --
5 and let's -- let's be clear, this happens -- it doesn't
6 happen five nights a week, right? But when I've heard
7 the noise what -- what I hear is not the noise coming
8 from the music, but it's the people who are partying.
9 As Denise said, they've been -- they've been out there
10 drinking for a while, it's starting -- it gets rowdy,
11 somebody says a joke. And there is no enclosure, so
12 they're essentially hanging on the -- on the railing
13 having a drink, smoking. And so that noise carries wide
14 and far. So as I'm walking down Linden I can hear that
15 noise.

16 MR. WILLIAMS: Okay. I think that's all the
17 questions I have.

18 CHAIRPERSON ANDERSON: Ms. Price.

19 MS. PRICE: Hi.

20 MR. LABBE: Good evening.

21 MS. PRICE: How -- how late are you walking
22 your dog on the weekends?

1 MR. LABBE: Usual -- I'm a late -- I'm a
2 night -- I am a night owl. So usually between 10 and
3 12, and I usually go to sleep between three and four.

4 MS. PRICE: Okay. So -- so between 12 and
5 three you're pretty much inside?

6 MR. LABBE: I'm inside. And -- and to be
7 honest, Ms. Price, it doesn't bother me. I don't have
8 children who I'm waking up.

9 MS. PRICE: Right.

10 MR. LABBE: But I do know there's -- when
11 I -- when I hear that noise I realize there are other
12 people who it does bother.

13 MS. PRICE: Definitely. I want to consider
14 everyone. Are you a member of the ANC?

15 MR. LABBE: No.

16 MS. PRICE: And you've -- you've been in the
17 community how long?

18 MR. LABBE: Since 2000.

19 MS. PRICE: Since 2000.

20 MR. LABBE: Since -- since 2000. Let's be
21 clear, I love the businesses, we want a thriving
22 community. In 2000 it was not a thriving community.

1 The people that you would see at 2 a.m. when I'm walking
2 a dog you didn't want to see. That's not what we have
3 now. And we want -- I want your business to thrive.

4 MS. PRICE: Thank you.

5 MR. LABBE: Because if you weren't there,
6 we'd have something else or a vacant shop. That's not
7 healthy at all. So I do want your business to thrive
8 for sure.

9 MS. PRICE: Thank you very much. We want to
10 keep you in the community as well.

11 MR. LABBE: I'm not leaving.

12 MS. PRICE: You should know that. Good. We
13 want -- we want to live and work together that's for
14 sure. You mentioned your -- and Linden, I've -- I've
15 visited. Behind you there's an alley, and then there
16 are -- you're right across from a huge open --

17 MR. LABBE: Correct.

18 MS. PRICE: -- parking lot.

19 MR. LABBE: Correct. And that's why -- so
20 that's why the -- the Vendetta and that stuff I can see
21 them out my back windows. And you're right, there's --
22 the noise comes straight at us.

1 MS. PRICE: And -- and then you're -- and --
2 but even as your walking you're able -- you know, you --
3 you mentioned you can -- when you walk down -- right at
4 our block, right there is when you --

5 MR. LABBE: Sure.

6 MS. PRICE: -- see something or hear --

7 MR. LABBE: Sure.

8 MS. PRICE: -- or are able to determine if
9 it's Touche.

10 MR. LABBE: At that point I know it's Touche
11 because at that point I can usually -- I can see who it
12 is that's having the good time usually on -- on the
13 railing.

14 MS. PRICE: Okay.

15 MR. LABBE: And, you know, if -- and I
16 usually walk to the block, Linden to 12th, over to H,
17 down through, you know, by the bars on H, and then back
18 down -- back down to 13th and back to the house.

19 MS. PRICE: Okay.

20 MR. LABBE: One way or the other. And so
21 when I'm at 13th I don't hear you guys. When I'm at
22 13th I'll hear the Smith Common people again based on

1 what time of night it is.

2 MS. PRICE: Right. And do you ever -- and
3 you mentioned you walk that way. Do you ever walk a
4 little bit further down to the right down where say the
5 H Street Country Club may be or --

6 MR. LABBE: I do sure. Yeah.

7 MS. PRICE: Or -- and -- and what's your
8 observation as far as sound there, coming from there?

9 MR. LABBE: As people have said it's H
10 Street, it's a nightclub zone, there's going to --
11 there's going to be people on the streets. There's
12 going to be people on the streets. And -- and the
13 problem we're having as neighbors isn't the people on
14 the streets because that noise is usually pretty
15 muffled. But it's the people on the rooftop that are
16 usually a lot closer to us, and the sound comes right at
17 our windows. That's --

18 MS. PRICE: And do you think that the sound
19 is any -- what you hear, is that any more or less than
20 what you may have heard from Touche?

21 CHAIRPERSON ANDERSON: Ms. -- Ms. Price, he
22 said that the sound from Touche does not bother him. So

1 I think he did --

2 MS. PRICE: He did. But he also said that
3 he was walking down and -- and that -- I just wondered
4 if he hears anything any less or more.

5 CHAIRPERSON ANDERSON: Oh, but I -- I think
6 you're -- listen carefully. This is not a witness that
7 is hostile to you because he's --

8 MS. PRICE: I'm not being hostile toward
9 him.

10 CHAIRPERSON ANDERSON: No. I don't -- I'm
11 not saying you are. But I'm saying that remember he
12 stated that he doesn't hear the sound from your business
13 from his home.

14 MS. PRICE: I did hear that.

15 CHAIRPERSON ANDERSON: So therefore I mean
16 you need to move on and ask your questions from that.

17 MS. PRICE: I'm just trying to gain my
18 better understanding, that's all, and do what I need to
19 do to be a great business there, to address -- you know,
20 I mean I agree. Thank you. He did say it wasn't a
21 problem for him and that's he's a member of our
22 community. And I want to be certain that I understand

1 what -- what he's witnessing.

2 CHAIRPERSON ANDERSON: All right.

3 MS. PRICE: Thank you very much. I don't
4 have any further questions. Thanks.

5 MR. LABBE: Thanks.

6 CHAIRPERSON ANDERSON: Questions from the
7 board? Yes, Mr. Alberti.

8 MR. ALBERTI: Hi. Good evening, Mr. Labbe.

9 MR. LABBE: Yes.

10 MR. ALBERTI: Labbe?

11 MR. LABBE: Labbe.

12 MR. ALBERTI: Labbe. Okay. I'm sorry. All
13 these years I've never known how to pronounce your name.

14 MR. LABBE: It's all right.

15 MR. ALBERTI: I've seen you at meetings. So
16 I -- you said that you -- you have been disturbed by
17 Smith Commons.

18 MR. LABBE: Sure.

19 MR. ALBERTI: All right. And can you tell
20 me in what way have you been disturbed by Smith Commons?

21 MR. LABBE: It's usually going to be -- it's
22 usually going to be later at night. And, you know,

1 look, if it's -- if it's 10:00 at night, let's get over
2 it, we're on H Street. But it's going to be usually
3 later at night I'll -- I'll be hearing the noise.

4 MR. ALBERTI: In your house?

5 MR. LABBE: Yes.

6 MR. ALBERTI: Okay.

7 MR. LABBE: Smith Commons is maybe 60 feet
8 from me.

9 MR. ALBERTI: I'm doing this -- I'm doing
10 this for a reason. Just stay with me. Can you see
11 Smith Commons --

12 MR. LABBE: Yes.

13 MR. ALBERTI: -- the back of Smiths Commons
14 from your house?

15 MR. LABBE: Yes.

16 MR. ALBERTI: Is -- a leading question. Is
17 that disturbance that you're hearing because of noise
18 emanating from their rooftop deck or their -- their back
19 deck, their summer garden?

20 MR. LABBE: That's what I believe. Yes.

21 MR. ALBERTI: Okay. And you can see that
22 deck from your -- your back yard?

1 MR. LABBE: Yes.

2 MR. ALBERTI: Okay. And you're about 60
3 feet you said?

4 MR. LABBE: Yeah. It's about seven or eight
5 homes. Yes.

6 MR. ALBERTI: All right. And can you sort
7 of tell me where it is? I mean is it on the first
8 level, the second level? Is it on the roof? Where is
9 it on that building?

10 MR. LABBE: Where the Smith Commons deck is?

11 MR. ALBERTI: Yeah.

12 MR. LABBE: I thought it was the second and
13 third level.

14 MR. ALBERTI: Okay. Second and third level?

15 MR. LABBE: That's what I believe. Yeah.

16 MR. ALBERTI: Okay.

17 MR. LABBE: I -- I haven't been there, but
18 I -- but I think it's you go up two flights for one and
19 you -- I think it's second or third level.

20 MR. ALBERTI: Okay. Great. Okay. And are
21 you aware that -- and this is going into our record.

22 Are you aware -- I think it was mentioned earlier that

1 -- I guess the question was asked are you aware of the
2 fact that they have -- their -- their summer garden,
3 that deck closes at 12?

4 MR. LABBE: I thought so. Right. Because
5 I've been -- I've been to the ANC meetings where we've
6 talked about that many times.

7 MR. ALBERTI: Okay. Thank you. That's -- I
8 just wanted to get a contrast -- context of another
9 establishment in -- that's situated to your house like
10 some of these others -- like Touche is situated to the
11 other houses. That's the reason for my question.

12 MR. LABBE: Okay.

13 MR. ALBERTI: And I thank you. I have no
14 further questions.

15 CHAIRPERSON ANDERSON: Any other questions?
16 Yes, Ms. Miller.

17 MS. MILLER: I just want to follow up on
18 Mr. Alberti's line of questioning even though this isn't
19 about Smith Commons. It is about how is there noise
20 from other establishments and rooftops and how they're
21 being treated. So my question is are you taking any
22 action to -- or have you to resolve your concerns about

1 their noise?

2 MR. LABBE: I don't believe that I have
3 personally reached out to Smith Commons or to ABRA about
4 a Smith Commons issue. I do know that other neighbors
5 have. I also know that I have Smith Commons
6 management -- manager's phone number in my phone, and --
7 and even the past two days we've had communication. So
8 they are very responsive.

9 MS. MILLER: Oh.

10 MR. LABBE: So I do think that it's -- as
11 businesses and as neighbors we need to communicate
12 clearly because issues happen. I haven't reached out to
13 Smith Commons because I haven't had a need to. But no,
14 I think -- yeah, Smith Commons, when -- when there is a
15 problem I have reached out to them or -- or I know how
16 to get to them.

17 MS. MILLER: Uh-huh. Okay. Thank you.

18 CHAIRPERSON ANDERSON: Yes, Mr. Silverstein.

19 MR. SILVERSTEIN: Mr. Labbe -- it is Labbe?

20 MR. LABBE: It is.

21 MR. SILVERSTEIN: Should we be looking just
22 in general if we're going to solve this problem to sort

1 of something a little more universal than just the --
2 the noise issues involving Touche? Is it unfair to
3 blame everything on them or, you know, and -- and think
4 that it's going to be solved if we do this, or is there
5 something larger that we should -- and that the ANC
6 should also be looking at?

7 MR. LABBE: I think you've heard from the
8 people who have been before me that the neighbors are
9 willing to abide by a certain code if you will. And it
10 seems to be fair that every business should have the
11 same type of hours and that -- that especially gets to
12 be difficult when we're talking about the rooftop,
13 right, because they're all open until 3 in the morning
14 which is -- which is fine. I think the rooftop is
15 the -- the issue where we have more problems and that's
16 what we have to pay attention to.

17 MR. SILVERSTEIN: Of course.

18 MR. LABBE: And I'm not sure how to -- how
19 to get there at times.

20 MR. SILVERSTEIN: Nor -- nor do we.

21 MR. LABBE: Yeah. But you're on that side.

22 MR. SILVERSTEIN: And -- and, you know, I

1 have one mouth and two ears. So I'm listening to you
2 and -- and the others and trying to work our way through
3 this.

4 MR. LABBE: I know that.

5 MR. SILVERSTEIN: It -- it appears to be
6 unfair to say this place can be open until this time and
7 this place. But then again if someone is close to
8 residences, you have to make accommodations for one
9 another.

10 MR. LABBE: And -- and Smith Commons --

11 MR. SILVERSTEIN: I'm asking do you see any
12 suggestions or is it something we're just going to have
13 to do on a case-by-case basis and -- and muddle our way
14 through and just do our damndest?

15 MR. LABBE: Smith Common is as close to
16 those residences -- to my neighbors as Touche is to
17 hers. And -- and -- and the owner has to be just rock
18 solid tight. When we're closing we're shutting you guys
19 down now and you're coming downstairs. We'll -- we'll
20 gladly serve you another two, three, four hours, but
21 you're coming downstairs. And I don't know how else
22 you -- I don't know how as a business owner we make them

1 do that. It has to be difficult. Because yeah,
2 someone's having a good time, they've been there all
3 night. It's, you know -- you know, it's 15 minutes
4 past, now it's a half hour past, and now you've got
5 neighbors calling ABRA which gets everyone all upset.

6 But I -- I mean --

7 MR. SILVERSTEIN: Okay.

8 MR. LABBE: -- I think Smith Commons has a
9 good relationship with the neighbors because they've
10 kept a really good tight lid.

11 MR. SILVERSTEIN: Thank you. No further
12 questions.

13 CHAIRPERSON ANDERSON: Any other questions
14 by any of the board members? Mr. Williams?

15 MR. WILLIAMS: I -- I don't have any more
16 questions for Mr. Labbe.

17 CHAIRPERSON ANDERSON: All right.
18 Ms. Price, I assume not. Do you have -- do you have any
19 questions?

20 MS. PRICE: No, I don't. Thank you.

21 CHAIRPERSON ANDERSON: All right. Thank
22 you. Thank you very much, sir. And you're free to go.

1 MR. LABBE: Thank you.

2 CHAIRPERSON ANDERSON: Do you have any other
3 witnesses, sir?

4 MR. WILLIAMS: I -- I do. Phil Toonajian
5 please. [Inaudible 00:00] a witness myself, and I
6 promise myself will be relatively brief. I just need
7 a -- and I'll have somebody else asking me questions.

8 CHAIRPERSON ANDERSON: All right. I was
9 about to --

10 MR. WILLIAMS: Part of that is to get
11 exhibits in --

12 CHAIRPERSON ANDERSON: I was trying to --
13 okay.

14 MR. WILLIAMS: -- honestly.

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

18 MR. TOOHAJIAN: I do.

19 CHAIRPERSON ANDERSON: You may be seated.
20 Thank you.

21 MR. WILLIAMS: Hi, Mr. Toonajian. Can you
22 please state your name and spell it for the record.

1 MR. TOOHAJIAN: Yes. My name is Phil
2 Toonajian. My last name is spelled T-O-O-N-A-J-I-A-N.

3 MR. WILLIAMS: And can you please state your
4 address.

5 MR. TOOHAJIAN: I live at 631 10th Street NE
6 here in Washington D.C.

7 MR. WILLIAMS: That's about three blocks
8 from Touche; is that right?

9 MR. TOOHAJIAN: Yes. That's correct.

10 MR. WILLIAMS: And could you explain your
11 role on the Advisory Neighborhood Commission?

12 MR. TOOHAJIAN: Yes. I'm the elected
13 representative for Single Member District 6A02, and I'm
14 also the chair of ANC 6A.

15 MR. WILLIAMS: And does Touche fall into
16 Single Member District 6A02.

17 MR. TOOHAJIAN: It does.

18 MR. WILLIAMS: As the ANC commissioner for
19 the SMD covering Touche what has -- what has been your
20 experience with that establishment?

21 MR. TOOHAJIAN: It's -- it's been a
22 troubling experience. I've received a number of

1 complaints from residents who live closer to the
2 establishment than me.

3 MR. WILLIAMS: And just to clarify these are
4 neighbors who have reached out to you with complaints?

5 MR. TOOHAJIAN: That's correct. Several of
6 the residents of my Single Member District have reached
7 out to me with concerns regarding noise, late night
8 hours, violations of the settlement agreement that we
9 understand to be in place, and noise that emanates
10 inside their own homes.

11 MR. WILLIAMS: And, Mr. Toonajian, do you
12 have other establishments with liquor licenses in your
13 SMD?

14 MR. TOOHAJIAN: Yes. There are several.

15 MR. WILLIAMS: And how does Touche compare
16 to these other establishments in terms of receiving
17 complaints from your constituents.

18 MR. TOOHAJIAN: I've received more
19 complaints regarding Touche than all of the other
20 establishments combined.

21 MR. WILLIAMS: And speaking specifically
22 about establishments that you're aware of that have roof

1 decks in ANC 6A -- so either in your SMD or in ANC 6A as
2 a whole how do those establishments compare to Touche?

3 MR. TOOHAJIAN: Actually I've received more
4 complaints about Touche than all of the other
5 establishments with roof decks in ANC 6A.

6 MR. WILLIAMS: And can you describe briefly
7 kind of the nature of your Single Member District and
8 ANC 6A in general?

9 MR. TOOHAJIAN: Yes. My Single Member
10 District includes approximately two and a half blocks of
11 H Street NE and several blocks of single family homes to
12 the south of H Street NE.

13 MR. WILLIAMS: And, Mr. Toonajian, as chair
14 of ANC 6A you have some knowledge about how the ANC
15 approaches liquor licenses; is that correct?

16 MR. TOOHAJIAN: That is correct.

17 MR. WILLIAMS: Can you describe generally
18 the ANC's opinion for lack of a better term with regard
19 to roof decks and noise and hours?

20 MR. TOOHAJIAN: Yes. The ANC is generally
21 very welcoming of new businesses. As -- as many people
22 know H Street NE has been littered with vacant

1 properties for decades. And so while some communities
2 regard liquor license holders with scepticism, our
3 community has generally welcomed them as a way to
4 continue to reduce the number of vacant properties and
5 blighted properties along the corridor. With respect to
6 our approach to license applicants, we have a standard
7 settlement agreement that we present to each of the CR
8 or CT applicants who come into our community. And that
9 generally includes the provisions that require that the
10 roof decks or summer gardens close at 11:00 during the
11 week, at midnight on the weekends, and that they not
12 play amplified music on the outdoor space.

13 MR. WILLIAMS: And do you have an opinion as
14 to the reasonableness of that -- that general stance by
15 the ANC?

16 MR. TOOHAJIAN: It -- it's generally been
17 very successful in my experience. As I think we've
18 heard a number of people say today, residents do at
19 times hear noise from -- from establishments. But most
20 of the time they're content hearing noise prior to a
21 certain hour. However, it's when it wakes them up late
22 at night that they have greater concerns. And so for us

1 what we've found is it's very difficult to get an
2 applicant to abide by a noise level that will not affect
3 nearby neighbors. And so the safest move has been not
4 to talk about adding plants, not to talk about adding
5 drapes, not to talk about pointing the speakers in
6 different directions, or receiving promises to change
7 the windows. It's been let's have a clear line that at
8 this hour we will ask people to go back inside. That
9 gives the residents certainty. That doesn't place us in
10 the position of having to question whether someone is
11 complying with an agreement by not using a -- a DJ for
12 example or by keeping the sound at a level that is
13 permissible under the law or under the ABRA regulations.
14 It's the safest way to allow people to sleep in their
15 own homes, not have to --

16 MR. SILVERSTEIN: Can you speak up.

17 MR. TOOHAJIAN: -- and not have to call ABRA
18 and not have to wait for investigators to show up.

19 MR. WILLIAMS: Mr. Toonajian, you -- you may
20 have heard some discussion about an ANC meeting where
21 representatives from Touche were present. Were you
22 at -- were you present at that meeting?

1 MR. TOOHAJIAN: I was present at two
2 meetings that the ANC held with Touche.

3 MR. WILLIAMS: And can you describe what
4 concerns neighbors raised at those two meetings.

5 MR. TOOHAJIAN: Yes. The first meeting was
6 in March of 2015. It was chaired by our co-chairs of
7 our Alcohol Beverage and Licensing Committee. Ms. Price
8 represented Touche at the meeting, and a handful of
9 neighbors attended and raised some concerns. There were
10 a number of concerns discussed. Some of them related to
11 truthfulness of the applicant and to the history of the
12 prior establishment, the location, and regarding the
13 continued involvement for members of that establishment
14 in the new establishment. Others related to noise on
15 the roof deck, the number of patrons on the roof deck,
16 and the type of music that may or may not be allowed on
17 the roof deck.

18 MR. WILLIAMS: And -- and, Mr. Toonajian,
19 were you aware that -- can you confirm that
20 representatives from Touche were present at both of
21 those meetings?

22 MR. TOOHAJIAN: Yes. That's correct.

1 MR. WILLIAMS: Mr. Toonajian, you -- are you
2 aware of an incident of an assault that -- that occurred
3 in front of Touche in February of 2016?

4 MS. PRICE: I object to that.

5 CHAIRPERSON ANDERSON: I -- sustained.

6 MR. WILLIAMS: I -- can I explain why I'm
7 going in that direction?

8 MS. PRICE: I object to that. I don't know
9 why you're even bringing that up. I don't know what
10 he's talking about.

11 MR. WILLIAMS: I -- if I -- if I may explain
12 where I'm going maybe -- and I -- I can explain the
13 relevance in how it relates to what -- the case that I'm
14 putting on. And I'm not -- I -- I can explain.

15 CHAIRPERSON ANDERSON: All right. I did
16 sustain it, but since I -- I should have given you a
17 reason to -- why -- why is it that you believe it's
18 relevant. So just give me a -- tell me why and I mean I
19 -- go ahead.

20 MR. WILLIAMS: Yes. What I will be
21 attempting to show is that -- that during this incident
22 it was pretty clearly uncovered that Touche was

1 operating beyond -- were operating at 3 a.m. and beyond
2 which is in violation of their settlement agreement.

3 MS. PRICE: I object to that. We don't have
4 any -- any information related to what he's talking
5 about.

6 MR. WILLIAMS: And -- and The Board can
7 weigh Mr. Toonajian's testimony as -- and I completely
8 acknowledge that it's hearsay. We don't have
9 documentation of it because it's not public yet, and I
10 fully respect that. And The Board can weigh it as --
11 as -- as they wish. But --

12 MS. PRICE: So us operating past hours, what
13 does that have to do with noise?

14 CHAIRPERSON ANDERSON: Can -- can -- can --

15 MR. WILLIAMS: But I do believe that them
16 violating their settlement agreement is -- goes to my
17 general case of they're ignoring noise mitigation issues
18 which do include operating hours because when you have
19 to close at 3:00, you got to be quiet at 3:00. So it
20 goes to my general idea of there are noise problems at
21 this place and they're openly violating their settlement
22 agreement as it stands now.

1 CHAIRPERSON ANDERSON: But I'm -- I -- I am
2 going to sustain the -- the objection. So I -- I -- I
3 mean that's not an issue that's here. And so I'm not
4 going to -- I'm not going to address that. So let's
5 not -- let's -- let's move on from there.

6 MR. WILLIAMS: Okay. I -- I don't have any
7 other questions for Mr. Toonajian.

8 CHAIRPERSON ANDERSON: Okay. Ms. Price.

9 MS. PRICE: Hi. How are you?

10 MR. TOOHAJIAN: Fine. Thanks.

11 MS. PRICE: It's good to see you again.

12 MR. TOOHAJIAN: You too.

13 MS. PRICE: You mentioned that you had --
14 there was a March meeting where we met, and there were
15 discussions around that. Well, let me back up. Have
16 you ever contacted Touche or myself directly related to
17 any of the complaints that you received?

18 MR. TOOHAJIAN: Yes. I spoke with you in
19 March of 2015 at the Sherwood Recreation Center when I
20 provided you with my business card and asked you to
21 provide me with your contact information. And I spoke
22 with you again in April of 2015 when the ANC voted to

1 move forward with the protest unless our standard
2 settlement agreement could be negotiated with your
3 establishment.

4 MS. PRICE: I'm -- I'm hearing you say you
5 spoke with me in March, and our rooftop wasn't open in
6 March. So we're talking about noise emanating from our
7 rooftop, and you're saying you spoke to me in March
8 about complaints that you had received?

9 MR. TOOHAJIAN: Yes. Regarding your
10 establishment making loud noise and sending lights into
11 nearby neighbor's residences.

12 MS. PRICE: Okay. And then you reached
13 out -- I gave you my contact information.

14 MR. TOOHAJIAN: No, ma'am. That's not what
15 I said. I gave you my contact information and asked you
16 to share yours with me. I did not receive it.

17 MS. PRICE: Okay. Even though I said that
18 you could reach me directly. You didn't receive my --

19 MR. TOOHAJIAN: No. No. Yes. I -- I asked
20 you at that meeting who we should bring complaints to
21 when we receive them. And you said you should bring
22 them directly to me. I gave you my card which had my

1 cell phone and my e-mail address and asked me to receive
2 yours. You did not have a card, and I did not receive
3 information from you thereafter.

4 MS. PRICE: Do you feel -- or is it the
5 expectation for the ANC to overall push for earlier
6 hours of all rooftop decks along the corridor?

7 MR. TOOHAJIAN: So I -- I think I've already
8 stated that we try to have a standard settlement
9 agreement which includes consistent hours including 11
10 p.m. during the week and 12 a.m. on the weekends.

11 MS. PRICE: Of the rooftops?

12 MR. TOOHAJIAN: That's correct.

13 MS. PRICE: Okay. And were you part of the
14 settlement agreement for other establishments that
15 are -- or let me back up. Would -- you mentioned you're
16 0 -- 02; is that correct, how -- how far that extends?
17 Can you tell me does that extend to the H Street Country
18 Club?

19 MR. TOOHAJIAN: No, it does not.

20 MS. PRICE: Does it extend to -- coming --
21 coming closer in give me an idea of any establishments
22 that have rooftop decks that that would apply to that

1 are within your --

2 MR. TOOHAJIAN: There are outdoor spaces at
3 -- license holding establishments in my Single Member
4 District include Smith Commons, Khan's, Touche, and I
5 believe that's it.

6 MS. PRICE: Okay. You said you had other
7 establishments, but we're -- that have rooftop decks.
8 So that would only be two of those, correct?

9 MR. TOOHAJIAN: Yes. The Khan's deck is an
10 outdoor ground level space.

11 MS. PRICE: Correct. Okay. And you have
12 not received any -- you didn't receive my personal
13 information, but you've never called Touche to -- to
14 talk about any concerns that have been brought to you
15 from -- from these concerned residents?

16 MR. TOOHAJIAN: I have not called the
17 general phone line for Touche in an attempt to reach
18 you. That's correct.

19 MS. PRICE: Okay. And you -- you -- you --
20 how familiar are you with the settlement agreement that
21 exists currently?

22 MR. TOOHAJIAN: My understanding is that

1 there are two settlement agreements in place regarding
2 your -- your -- your business, and I've read them both
3 although it's been quite some time since I read through
4 either one carefully.

5 MS. PRICE: And as far as -- the one I'm --
6 in particular that there is a -- that states -- and
7 I'm -- I don't know if I can -- I don't know how we deal
8 with the -- the documents or anything. I'm sorry.

9 CHAIRPERSON ANDERSON: I mean if you have a
10 document, why don't you pull the document, let
11 Mr. Williams know what document you are referencing, and
12 then you can show the witness the document and ask him
13 to identify it. Then you can ask him questions from the
14 document.

15 MS. PRICE: Okay. So I'm referring to
16 Exhibit 1 of the Protestant.

17 CHAIRPERSON ANDERSON: Protestant's, I
18 mean --

19 MS. PRICE: I always say that wrong.

20 CHAIRPERSON ANDERSON: And then you can --
21 you can show the witness the document. And then you can
22 ask him to identify it, and then you can ask him

1 questions from the -- from the document.

2 MS. PRICE: Thank you. Thank you.

3 MR. WILLIAMS: Yeah. That's the version
4 that I sent out, right? This is the -- she's presenting
5 Protestant's Exhibit 1 which has not been entered just
6 yet.

7 MS. PRICE: So this is the document. So,
8 Mr. Toonajian, are you familiar with that document? You
9 mentioned you are -- you have -- you've read it before,
10 correct?

11 MR. TOOHAJIAN: I -- I have read two
12 settlement agreements related to --

13 CHAIRPERSON ANDERSON: Can -- have -- why
14 don't you -- why don't you have him identify what the
15 document is for the record please.

16 MS. PRICE: Would you identify what that
17 document is? It's --

18 MR. TOOHAJIAN: I -- I've been provided with
19 a document, the cover page is marked Protestant's
20 Exhibit Number 1 in the matter of BEG Investments LLC
21 t/a 12, application for a new retailers Class CT license
22 at premises 1125 H Street NE in Washington D.C.

1 MS. PRICE: And do you -- would you -- would
2 you say that that document would be considered a
3 settlement agreement from your experience as an ANC --

4 MR. TOOHAJIAN: Not having had an
5 opportunity to read the entire document, it appears to
6 be the settlement agreement that was reached between the
7 prior license holder at your location and a group of
8 neighbors.

9 MS. PRICE: And now that I've given you my
10 copy -- I'm sorry -- I have to kind of go through how --
11 because I'm -- I'm speaking specifically to the
12 settlement agreement. You mentioned in this document
13 there were two settlement agreements. And I'm speaking
14 specifically of the settlement agreement that -- that
15 is -- is executed between the ANC and the previous
16 people. And so that's -- that's more than halfway back
17 through. It begins with Page 1 of 4 after the signature
18 page of the cooperative agreement that's not in place
19 any longer. It will it be Page 1, slash, 4. It starts
20 out made this 19th day of March.

21 MR. TOOHAJIAN: Okay. I found that page.

22 MS. PRICE: All right. Perfect. So if you

1 would go over to the last page of that or the next to
2 the last page, Page 4, are you aware that if either
3 party agrees that one party isn't acting in good faith,
4 that they have an obligation to notify that party?

5 MR. TOOHAJIAN: I'm sorry. Are you asking
6 me about a particular provision of the page that you
7 referenced?

8 MS. PRICE: 8A. 8A I'm speaking of.

9 MR. TOOHAJIAN: Okay. So 8A reads if either
10 party heretofore believes in good faith that the
11 applicant is in violation of this agreement, written
12 notice specifying the violation shall be delivered to
13 the applicant, and the applicant shall have ten days
14 after receipt of such written notice to come into
15 compliance with this agreement or respond to said
16 alleged notice of default.

17 MS. PRICE: Okay. And have you contacted
18 or -- or served any notice on Touche regarding concerns
19 of them -- us not being in compliance with the
20 agreement?

21 MR. TOOHAJIAN: Mr. Williams has been the
22 ANC's primary authorized representative in this matter,

1 and I believe when you filed a protest he copied you on
2 that protest.

3 MS. PRICE: Okay. So you believe that
4 the -- the -- the protest is notification of us being in
5 violation.

6 MR. TOOHAJIAN: Yes. My recollection is it
7 discussed the concerns that we had with the operation of
8 the business, although again I've not read it in quite
9 some time.

10 MS. PRICE: Okay. But as -- as the ANC
11 commissioner that is being -- receiving the phone calls
12 you -- you're -- you're contacting Mr. Williams, and
13 that's who -- and you're relying on his protest letter
14 as our notification that there have been issues in the
15 neighbor -- in the community?

16 MR. TOOHAJIAN: So I think I forwarded some
17 of them to him. And unfortunately as I said when I
18 asked you for your contact information you did not
19 provide it to me. I intended to ask you when you came
20 to the next ANC meeting.

21 MR. SILVERSTEIN: Sir, please speak into the
22 microphone.

1 MR. TOOHAJIAN: I'm sorry. As I think I
2 said I don't have your contact information. So
3 unfortunately I haven't been able to forward an e-mail
4 to you or call you directly.

5 MS. PRICE: Okay. Are you aware that
6 Touche -- I think you've been on our website or what
7 have you. Are you aware our phone number is -- is
8 printed, is published?

9 MR. TOOHAJIAN: I -- I assume that to be the
10 case, but I can't confirm it personally.

11 MS. PRICE: Correct. You just -- okay. And
12 we've never exchanged any e-mails or anything in the
13 past?

14 MR. TOOHAJIAN: No. I don't believe so.

15 MS. PRICE: Okay. Do you feel that Touche
16 is having a -- a negative impact on peace and order?

17 MR. TOOHAJIAN: I guess it depends on how
18 you define peace and order. But yes, I've heard from
19 several people that they have difficulty sleeping inside
20 their own homes due to noise emanating from Touche
21 either on the inside or the outside of the business.
22 And to me that affects the peace and order of the

1 community. I think it's important that my residents and
2 my neighbors be able to sleep comfortably inside their
3 own home without hearing significant noise emanating
4 from standing businesses or establishments.

5 MS. PRICE: And you've been on the ANC
6 Commission for how long now please?

7 MR. TOOHAJIAN: Since -- I was elected in
8 November of 2014 and I was sworn in in January of 2015.

9 MS. PRICE: Okay. I have no further
10 questions.

11 CHAIRPERSON ANDERSON: Thank you. Any
12 questions by any of the board members? Yes, Ms. Miller.

13 MS. MILLER: Okay. Good evening.

14 MR. TOOHAJIAN: Hi.

15 MS. MILLER: I want to see if you can answer
16 this question. You -- you said you received a lot of
17 complaints about noise related to Touche.

18 MR. TOOHAJIAN: Yes.

19 MS. MILLER: And in particular the roof
20 deck?

21 MR. TOOHAJIAN: Many of them have been
22 focused on noise from the roof. Yes. I would most of

1 them.

2 MS. MILLER: Okay. And would you say that
3 those complaints concerned violations of the settlement
4 agreement or disturbances despite the provisions in the
5 settlement agreement or both?

6 MR. TOOHAJIAN: I think both. You know in
7 our view as I think we discussed when we met with
8 Ms. Price in March of last year, we don't believe it's
9 appropriate to have DJs or loud amplified music on the
10 roof deck. So I think that's the first piece. The
11 second is -- is there's an hour at which the other
12 establishments nearby shut down and don't have loud
13 noise or have patrons outside. And so there is an
14 expectation and a degree to which things settle down for
15 much of the nearby H Street neighbors whether it's 11:00
16 during the week or 12:00 on the weekends. And I think
17 at that point probably it seems to stand out more
18 because there aren't other establishments that are
19 making loud noise nearby at that hour.

20 MS. MILLER: So are you saying that other --
21 all the other establishments nearby shut down at the
22 hours that the ANC is proposing or -- or their roof

1 decks shut down at those hours or --

2 MR. TOOHAJIAN: The other establishments in
3 my single member district within a block or two of the
4 establishment shut down at 11:00 during the week and
5 12:00 on the weekends for their outdoor space.

6 MS. MILLER: Outdoor space. Okay.

7 MR. TOOHAJIAN: Yes. Not -- not overall. I
8 don't -- I don't believe we ask any of the businesses to
9 close inside prior to the permitted hours under the regs
10 and their applications.

11 MS. MILLER: Okay. And when you talked
12 about standard settlements with respect to hours that
13 these rooftops should shut down does it matter whether
14 or not they are in close proximity to residences or does
15 it matter?

16 MR. TOOHAJIAN: I think the answer is sort
17 of both. This is our standard approach. And so I think
18 we ask everyone to do it in the first instance or at
19 least we certainly intend to ask everyone to do in the
20 first instance. It is relevant to us if there is a
21 history of complaints or if there is no history of
22 complaints as to when and where we're comfortable

1 considering deviations from agreements. There may also
2 be instances such as this application which was back in
3 2007. And I'm not sure who the commissioners were at
4 that time or precisely what went into the thinking. But
5 my general understanding is that we were newer to uses
6 of outdoor spaces on H Street. At the time there were
7 not as many license holders, and I think very few of
8 them were building roof decks or choosing to use the
9 outdoor space perhaps not yet believing fully in how
10 successful they could be on H Street or perhaps
11 preferring to have their patrons inside. I'm not sure.
12 But yes, it's -- it's very relevant to me personally as
13 a single member district commissioner how close it is.
14 Again, our -- our intention is to be as consistent and
15 transparent as we can be about our expectations because
16 that tends to be the safest way to proceed but also
17 because we want to present ourselves as being as fair
18 and consistent as we can be and because we're mindful
19 that once a license is granted under certain terms those
20 terms continue in place regardless of who the owner of
21 the business is. So for example there are -- when --
22 when we have people come to us at times and say well --

1 I've been a good neighbor and you can trust me, I
2 typically say unfortunately that really doesn't work for
3 me because your business could be sold to someone else.
4 And so if I tell you you can stay open all night, even
5 if I know you live in the neighborhood and you're trying
6 to run a good business and you've been a nice neighbor
7 for the most part and I've got your contact info, I
8 don't know who will have the license after you. And so
9 for me personally it's really unsafe for us to be
10 forward leaning and to consider significant deviations
11 and -- and allow the potential for those things to
12 happen because it does seem likely in the future that
13 someone else will hold these licenses and would take
14 full advantage of what's available to them.

15 MS. MILLER: Okay. Thank you. And another
16 question I have is I think you talked about the hours
17 being the best formula across the board for controlling
18 noise on rooftops. Are you no longer pursuing buffers
19 at all because of that or I mean or do you do that
20 sometimes?

21 MR. TOOHAJIAN: So I don't recall any recent
22 instances in which we've focused heavily on buffers. I

1 believe there may be examples in the past where we've
2 asked, you know, limit a space in the interest of the
3 neighbors to the top half of the deck or, you know,
4 build a wall, et cetera. There are certainly
5 discussions that have been had along those lines. But
6 that doesn't necessarily substitute itself for our
7 concern about the noise. Because can you build a buffer
8 in every direction, how strong is the buffer? The
9 reality is is we don't know until its been built and we
10 don't have our own sound testing devices. And I think
11 we've had mixed experience when people have reported
12 concerns finding that they're enforced and that they're
13 timely resolved. So it's -- it's been safer for us to,
14 where we can say, it's clear for everyone, we know the
15 noise won't go through whether it's this barrier or this
16 bar or this drapery that's hung down or this plant
17 that's in place. We're just not confident -- I'm not
18 personally confident.

19 MS. MILLER: Right. And I -- I'm really
20 just asking mainly in addition say for instance in this
21 case I think the ANC is just asking -- one of the things
22 its asking for is just the hours, it's not asking for

1 buffering. But on the other hand say we've heard
2 complaints from some neighbors, one neighbor in
3 particular who has all this insulation and she can still
4 hear noise. So -- but you're not seeking any other
5 relief for that?

6 MR. TOOHAJIAN: So I -- I -- I don't know
7 what -- exactly what Mr. Williams has requested in a
8 formal capacity. You know, our -- our protest has been
9 focused on the late night hours, the use of music on the
10 outdoor space, and I think we also said that we were
11 requiring them to abide by what we believe is already in
12 place which is a 50 person maximum on the roof.

13 MS. MILLER: Uh-huh.

14 MR. TOOHAJIAN: I -- I do think it's good --
15 my personal view is that it's good practice that they
16 have a very large roof deck and that it would be helpful
17 if we cordoned it off in some ways, in particular along
18 the back of the property since we've got at least one
19 neighbor there whose gone to significant expense to
20 prevent sound from coming from in and whose not been
21 able to prevent it.

22 MS. MILLER: It would be helpful to what,

1 cordon it off. Is that what you said?

2 MR. TOOHAJIAN: I -- I suspect it would be.
3 You know, the more space there is and the more barrier
4 there is in between the more likely that -- whether it's
5 loud at midnight or earlier in the day -- that it's not
6 troubling people.

7 MS. MILLER: Okay.

8 MR. TOOHAJIAN: But I -- I don't consider
9 that a substitute.

10 MS. MILLER: Right. And -- and my last
11 question just is a general one. Based on your
12 experience and what the testimony I think I've heard in
13 this hearing is that the people who are in somewhat
14 close proximity are bothered by the rooftop decks but
15 people who live further away are not, that the sound
16 isn't traveling that much. Do you have a comment on
17 that?

18 MR. TOOHAJIAN: So I -- I think I'd -- I'd
19 describe it slightly more broadly than that. These are
20 not just next door neighbors who are here today. These
21 are people who live approximately, you know, half a
22 block to a block away.

1 MS. MILLER: Okay. All right.

2 MR. TOOHAJIAN: And so that concerns me
3 because I think there's a different level for when you
4 live literally next door to H Street and you are the
5 closest person to it. I think there's a slightly
6 greater understanding that you're going to hear stuff.
7 For example I sometimes hear in my next door neighbors
8 inside their own homes and from their own back yards. I
9 think when you're hearing sound half a block away --

10 MS. MILLER: Okay.

11 MR. TOOHAJIAN: -- that's a significant
12 concern for me and -- and not something that happens on
13 a regular basis and that has happened multiple occasions
14 for me with other establishments.

15 MS. MILLER: Great. Okay. Thank you very
16 much.

17 MR. TOOHAJIAN: Thank you.

18 CHAIRPERSON ANDERSON: Mr. Alberti.

19 MR. ALBERTI: Good evening, Commissioner
20 Toonajian.

21 MR. TOOHAJIAN: Good evening.

22 MR. ALBERTI: I want to ask you some

1 questions about the effects on business. Obviously when
2 you limit someone's hours to a portion of their
3 establishment you will affect their -- their business.
4 So of all the outdoor spaces on H Street within the ANC
5 what percentage would you say are limited to hours of 11
6 and 12 or -- or less?

7 MR. TOOHAJIAN: I believe the overwhelming
8 majority.

9 MR. ALBERTI: The overwhelming majority you
10 said?

11 MR. TOOHAJIAN: Are limited to those hours.

12 MR. ALBERTI: Okay.

13 MR. TOOHAJIAN: Or at least to earlier
14 hours.

15 MR. ALBERTI: Have you seen many new
16 businesses attempting to open on H Street? I know
17 there's a lot of vacant storefronts. Have you seen many
18 new businesses?

19 MR. TOOHAJIAN: We see new business --

20 MR. ALBERTI: Opening after the ANC sort of
21 put in place this -- this standard?

22 MR. TOOHAJIAN: Yes.

1 MR. ALBERTI: And do you think that they
2 were aware of it?

3 MR. TOOHAJIAN: I believe so. Yeah. I --
4 most of the time when applicants when applicants come to
5 us we mention that we've got a standard settlement
6 agreement, it's posted prominently on our website, and
7 most of the time they're already familiar with it.

8 MR. ALBERTI: Okay. And have you seen many
9 businesses fail?

10 MR. TOOHAJIAN: No. Very few new businesses
11 on H Street have failed.

12 MR. ALBERTI: All right. So --

13 MR. TOOHAJIAN: Particularly those that sell
14 alcohol.

15 MR. ALBERTI: So is it fair to say that
16 businesses are generally -- I don't know if I'd say
17 we're thriving, but they're -- but they're -- they're
18 successful enough to stay in business over a long period
19 of time, two years or more along H Street if -- and I'm
20 talking about businesses who have outdoor space and may
21 depend somewhat on the outdoor space and have to close
22 it by 11 or 12?

1 MR. TOOHAJIAN: That's correct. Almost all
2 of our businesses with -- I can't recall a business with
3 outdoor space having to close for lack of business,
4 and I have a -- hard pressed to remember liquor license
5 holding businesses on H Street closing due to lack of
6 business at all.

7 MR. ALBERTI: Okay. Thank you. So
8 Ms. Price brought up the settlement agreement. So I'm
9 going to ask some questions about it. The door has been
10 open. Do you have it in front of you?

11 MR. TOOHAJIAN: I do. I have both in front
12 of me.

13 MR. ALBERTI: Okay. Section 4 on Page 3,
14 this is the settlement agreement with the ANC?

15 CHAIRPERSON ANDERSON: What exhibit? Are
16 we -- we're still talking about --

17 MR. ALBERTI: We're looking at the
18 Protestant's Exhibit Number 1.

19 CHAIRPERSON ANDERSON: Okay.

20 MR. ALBERTI: The second -- sort of in two
21 pieces; the first one -- it contains two settlement
22 agreements. The first settlement agreement is between

1 the licensee and a group of neighbors. And the second
2 settlement agreement that's in that exhibit is between
3 the ANC and the -- the licensee. And I'm looking at the
4 ANC's settlement agreement, Section 4 on Page 3.

5 MR. TOOHAJIAN: Okay. I'm there.

6 MR. ALBERTI: So it says in here -- 4C2, it
7 says -- 4C3. I'm sorry. 4C3 says seating capacity will
8 not exceed 50 persons. I will tell you up front that
9 The Board has generally sort of taken the plain meaning
10 of these settlement agreement language requirements. So
11 this says to us you can't have more than 50 seats out
12 there, you can't have more than people sitting. It
13 doesn't say to us that you can't have 110 people which
14 is the C of O capacity that Ms. Price has quoted. I
15 don't know if that's accurate, but it doesn't say that
16 you can't go beyond that to the -- up to the capacity of
17 your C of O. So my question to you is you talked about
18 limiting the number of persons up -- up on the rooftop.
19 Can you tell me what you would want that -- if you had
20 your desire to rewrite this and renegotiate it, what
21 would you want that limit to be?

22 MR. TOOHAJIAN: So it would be a clearer

1 statement that it should not exceed 50 persons, hard
2 stop.

3 MR. ALBERTI: So 50 persons is the limit
4 that you would like to see on the rooftop?

5 MR. TOOHAJIAN: Yeah. And -- and --

6 MR. ALBERTI: At all times?

7 MR. TOOHAJIAN: Yes. And my understanding
8 and expectation was that the intention in this language
9 and others like it was that the space was to be used for
10 seating not for standing and partying. So for example
11 there was not to be had a live DJ or live music. And so
12 the intention was to have table seating. And so it
13 wasn't -- and my reading of it was not that this was a
14 only 50 people are going to be seated and a 100 more
15 could be standing, but that the intended use was for
16 there to be people seated on the roof for lunch or
17 dinner and that the total number of them could be 50.
18 But I -- yes. I think our request and were we to
19 succeed in negotiating a settlement agreement, would be
20 a clearer statement that it's 50 people, hard stop.

21 MR. ALBERTI: Okay. So I think is it -- is
22 it possibly the case -- is it the case that your

1 interpretation is supported or comes from Number 4, the
2 rooftop will be utilized only for dining?

3 MR. TOOHAJIAN: That -- that is exactly --

4 MR. ALBERTI: Therefore it will not be
5 utilized beyond the hours of food service?

6 MR. TOOHAJIAN: That's exactly what I'm
7 referring to. So I -- I think the intention was -- and
8 I think it's clear based on the document -- that the
9 seating is to be used for dining. So if you're open at
10 lunch hours or breakfast hours or dinner hours, you
11 would have people seated and having food brought to
12 them, not that it would be used for drinking, for
13 standing, for listening to DJs, for --

14 MR. ALBERTI: But would you be okay with 50
15 people having cocktails up there in the evening?

16 MR. TOOHAJIAN: Yeah. I think I would be
17 comfortable with people standing rather than being
18 seated because I think that's generally been our
19 standard. You know, there is the -- the possibility
20 that if we were to go from dining experience to drinking
21 experience, we would have more drunk people who think in
22 the neighborhood's experience tend to be louder.

1 MR. ALBERTI: Okay. Now a tough question.
2 Why? Why 50 people?

3 MR. TOOHAJIAN: So I -- I was not involved
4 in the negotiation of this document. I think when --
5 when we chose that level it was because we understood
6 that to already be in place. I think there has also
7 been some discussion about whether it's safe and
8 appropriate to have more than 50 people on a roof deck
9 for fire code purposes. And I think our understanding
10 was that the intention of the existing document was in
11 fact that; that if there were people on the roof, there
12 would be no more than 50 people. And therefore we would
13 be uncomfortable switching from seated at tables to
14 standing around and having many more people.

15 MR. ALBERTI: Okay. Are there other --

16 MR. TOOHAJIAN: But in -- in the interest of
17 fairness to the applicant it seems clear that she's
18 already allowed to have 50 people seated on the roof
19 deck.

20 MR. ALBERTI: Right. So are there any other
21 reasons? I mean we're talking about noise and
22 disturbance. Is there any nexus between the number of

1 people and -- and disturbance -- and noise disturbances?

2 MR. TOOHAJIAN: Absolutely. In our
3 experience when -- when there's complaints about people
4 leaving establishments when the hours close it tends to
5 be the spots that have many people leaving all at a
6 certain time, and the larger establishments tend to have
7 more people rushing out and tend to have more incidents,
8 disagreements, et cetera. Louder -- louder voices tend
9 to occur when there are many people in one place rather
10 than a smaller number of people in one place because
11 you're speaking over other conversations for example.

12 MR. ALBERTI: Okay. So it -- it seems to me
13 -- whether or not it's true, but it's your impression
14 that there was a violation of the settlement agreement
15 with respect to the items we just talked about.

16 MR. TOOHAJIAN: Yes.

17 MR. ALBERTI: Is -- is that correct? All
18 right.

19 MR. TOOHAJIAN: That is correct.

20 MR. ALBERTI: All right. I'm not passing
21 judgment. I'm just saying that's your impression?

22 MR. TOOHAJIAN: Yes.

1 MR. ALBERTI: Okay. So are there any other
2 violations, time of operations, anything in the -- of
3 the SA that you believe have existed?

4 MR. TOOHAJIAN: Yes, I --

5 MS. PRICE: Can I object to that question?

6 MR. TOOHAJIAN: I -- I --

7 CHAIRPERSON ANDERSON: You can object -- you
8 can -- of course you can object to any question.

9 MS. PRICE: Then I object to that.

10 CHAIRPERSON ANDERSON: So what -- what's the
11 basis -- what --

12 MS. PRICE: He's leading him to something
13 that we've already said --

14 CHAIRPERSON ANDERSON: I -- I don't know
15 yet.

16 MS. PRICE: -- we're not going to talk
17 about.

18 CHAIRPERSON ANDERSON: So what -- as I said
19 before, you can object to anything you want to object
20 to.

21 MS. PRICE: Thank you. I object for the
22 record.

1 CHAIRPERSON ANDERSON: And what are you
2 objecting to?

3 MS. PRICE: My objection is he's asking him
4 were there any -- any other violations of incidents is
5 what he just said I believe.

6 MR. ALBERTI: The violations. Does he --
7 does he have any violations that he suspects of this --
8 of this. And this is just his suspicions.

9 MS. PRICE: Oh, suspicion. I don't think
10 that's what --

11 MR. ALBERTI: I'm just asking his -- I am
12 just asking his opinion.

13 MS. PRICE: I'm sorry. My hands are -- I
14 mean -- this is obviously something that is going on
15 that, you know --

16 CHAIRPERSON ANDERSON: What -- what is,
17 ma'am?

18 MS. PRICE: This -- this line of
19 questioning.

20 CHAIRPERSON ANDERSON: What -- what line of
21 questions? I mean I --

22 MS. PRICE: What he's just asking him I'm

1 objecting to, and I've told you why.

2 CHAIRPERSON ANDERSON: Well, he asked a
3 different question. I'm not quite sure what it -- I'm
4 not sure what it is that -- that -- I mean one of the
5 things that -- I'm not going to -- I'm not going to
6 allow him to ask the same question that Mr. Williams had
7 asked so he did not. I mean one of the things that --
8 one of the things that Mr. Toonajian had talked about
9 was that his -- his -- his constituents have complained
10 about violations of a settlement agreement which I don't
11 know what it is. I mean he had stated that. So I mean
12 I think that he could answer it from that prospective.
13 But -- and I will take it for what it is. And --

14 MR. ALBERTI: And Ms. Price -- and Ms. Price
15 brought up -- may I just make it clear Ms. Price
16 brought -- started the line of questioning about
17 violations of the settlement agreement in her line of
18 questioning.

19 CHAIRPERSON ANDERSON: Well, I think her
20 line of questions --

21 MS. PRICE: We said we were taking the
22 noise.

1 CHAIRPERSON ANDERSON: Hold -- hold -- no.
2 Hold on one minute. Her line of questions came from the
3 fact that -- I think what she was trying to prove was
4 that there's a settlement agreement that says that if
5 there are complaints, that you need to come to the --
6 the --

7 MS. PRICE: Thank you.

8 CHAIRPERSON ANDERSON: -- the -- the
9 licensee and bring it to their attention.

10 MR. ALBERTI: Well, that assumes that there
11 are complaints.

12 MS. PRICE: Related to noise.

13 MR. ALBERTI: So -- so she actually opened
14 the door.

15 CHAIRPERSON ANDERSON: Well, that's a
16 different -- that's a different interpretation. Okay.
17 I'm not going to allow -- if I -- if I say someone can't
18 answer a question, I'm not going to allow anyone to say
19 it. And it's actually very brave of you to object to a
20 board member. I mean when I first joined this --

21 MS. PRICE: I'm sorry, but --

22 CHAIRPERSON ANDERSON: No. And nothing is

1 wrong with it. No. You -- you have that -- no, I'm
2 sure you do have that right. Okay. You do have that
3 right. I -- I had to get that straight in my mind, that
4 you -- you could get that -- you have that right. But
5 let's answer the -- let's -- you can answer the
6 question, sir. But -- but let me -- let me -- let me
7 see where it's going. All right. You can answer the
8 question.

9 MR. TOOHAJIAN: The answer is yes, I -- I'm
10 aware of multiple alleged violations and believe there
11 have been multiple violations.

12 MR. ALBERTI: Can you sort of enumerate what
13 those alleged violations are?

14 MR. TOOHAJIAN: In particular the applicant
15 agrees that sound on the rooftop shall not be amplified.
16 This includes sounds from entertainment. I believe the
17 applicant has made extensive use of DJs on the rooftop
18 which falls under the category of amplified noise and
19 entertainment both. I've seen events advertised that
20 have stated that they were having DJs on the rooftop and
21 parties on the rooftop. And I've heard from my
22 constituents who live closer to the establishment that

1 that in fact appears to be happening and that indeed
2 they're hearing it on their property, in their property,
3 or seeing other evidence of it when they go outside and
4 look closer at the establishment.

5 MR. ALBERTI: Anything else?

6 MR. TOOHAJIAN: Yes. I've also received
7 credible allegations that the establishment has been
8 open past the 3 a.m. closing time.

9 MS. PRICE: Credible allegations, there we
10 go.

11 CHAIRPERSON ANDERSON: Well, the bottom line
12 is that --

13 MS. PRICE: I mean he's still speaking to
14 something that we just said wouldn't be spoken to.

15 MR. ALBERTI: How?

16 MS. PRICE: And he made it available for him
17 to do that. And I'm not -- I'm sorry if I'm out of
18 order. I do apologize.

19 CHAIRPERSON ANDERSON: You're not out of
20 order, ma'am. You're fine.

21 MS. PRICE: But I definitely feel as if I
22 am, you know, caught at a disadvantage here. We're

1 talking to a -- an -- you know, these guys know one
2 another. Now, I don't know any of you all. And so
3 there was an opportunity for something to be brought up
4 that wasn't allowed. So now we've opened the door for
5 it to be brought up again. And Chairman -- and again,
6 Board Member, no -- no disrespect to you and your
7 position. But I want respect for the position that I'm
8 in as well.

9 MR. ALBERTI: May I respond quickly? All of
10 my questions -- all of my questions are based on
11 information that has been presented to us either in the
12 PIF or brought out in testimony.

13 MS. PRICE: [Inaudible 39:46] --

14 MR. ALBERTI: Wait. Wait. Let me -- may I
15 finish?

16 MS. PRICE: -- about a violation that he
17 just brought up.

18 MR. ALBERTI: Ms. Price, you must let me
19 finish. That has been brought out in testimony. Now,
20 you opened the door to the settlement agreement, not I,
21 not I. You opened the door to the settlement agreement.

22 MS. PRICE: Prepared to talk about it.

1 MR. ALBERTI: You opened the door to
2 complaints about the settlement agreement.

3 MS. PRICE: And I'm prepared to talk about
4 it.

5 MR. ALBERTI: So once that door is open I
6 get to go through it.

7 MS. PRICE: Correct. And if we can talk
8 specifically about complaints that are related to noise,
9 which I was told earlier that that is what we would be
10 sticking to, then I would love to continue this
11 conversation.

12 MR. ALBERTI: Well, I don't know if it's not
13 related to noise.

14 CHAIRPERSON ANDERSON: Well, I'll say this
15 to Ms. -- Ms. --

16 MS. PRICE: Well, he just --

17 CHAIRPERSON ANDERSON: Let me -- let me say
18 this to you, Ms. Price. Of course board members, they
19 can ask questions that they -- are in their mind. It is
20 a decision that the entire board has to make. And so I
21 mean I'll say to you -- I'll -- I'll say to you that I
22 will listen to it. But if it's not -- if I don't

1 believe that it's relevant to the decision that we need
2 to make, that I am not going to consider it. So --

3 MS. PRICE: Thank you. And I would ask that
4 of the others of the -- the members also.

5 CHAIRPERSON ANDERSON: So -- but -- so but
6 I -- I'm -- I mean I'm not going to try to open up new
7 areas. I mean it's late. We have not had discussions
8 regarding that before. And so I'm not going to try to
9 open up new areas. So you can answer the question, sir.
10 But I'll just say to you that in making my decision if
11 it's -- if -- if I don't think it's relevant to making
12 the decisions that we need to make, then I am not going
13 to consider it.

14 MS. PRICE: Thank you. And I -- I do
15 understand we were also told we weren't -- I can't
16 negotiate the settlement agreement here and neither can
17 they.

18 CHAIRPERSON ANDERSON: All right.

19 MS. PRICE: That we are specifically talking
20 about pieces of the settlement agreement that they --
21 that they have alleged are -- we're in violation of.

22 MR. ALBERTI: All right. So, Commissioner

1 Toonajian, I think -- what was your last suspicion of a
2 violation that you just said?

3 MR. TOOHAJIAN: I -- I've heard about late
4 night hours suggested on multiple occasions. I think
5 its been months since the last night that I heard about
6 it.

7 MR. ALBERTI: Okay. So to be fair we have
8 been focusing on the operation of the roof deck, all
9 right, and noise from the roof deck. I have heard no
10 complaints in testimony about noise being of concern
11 from the interior of the establishment. There's been no
12 testimony about the effects of that. There may be, but
13 we haven't heard testimony. So is this late night
14 operation of the roof deck that we're talking about?

15 MR. TOOHAJIAN: I -- no. My -- my
16 understanding was that there were patrons inside the --
17 the business that were visible from the street after
18 hours.

19 MR. ALBERTI: Okay. Thank you. I have no
20 further questions.

21 CHAIRPERSON ANDERSON: All right. Do we
22 have any questions by the board members? Hearing none,

1 Mr. Williams, do you have any other -- any follow-up
2 questions?

3 MR. WILLIAMS: I have a couple of very brief
4 redirect questions. Mr. Toonajian, is it your
5 understanding -- Protestant's Exhibit 1 shows two
6 different settlement agreements; is that correct?

7 MR. TOOHAJIAN: Yes.

8 MR. WILLIAMS: Is it your understanding that
9 both of those settlement agreements are still in force?

10 MR. TOOHAJIAN: Yes, it is.

11 MR. WILLIAMS: Have you received any
12 notification of Touche requesting that either settlement
13 agreement be rescinded?

14 MR. TOOHAJIAN: No.

15 MR. WILLIAMS: Or amended?

16 MR. TOOHAJIAN: No.

17 MR. WILLIAMS: Board Member Alberti, he
18 spent some time on Section 4D of the ANC settlement
19 agreement. Do you have that in front of you? It's on
20 Page 3 out of 4 near the back of Protestant's Exhibit 1.

21 MR. TOOHAJIAN: Yes, I do.

22 MR. WILLIAMS: I -- I think it would be

1 helpful to -- to view this one kind of holistically. We
2 talked about some excerpts from it, but can you read --
3 starting at 4C and 4D can you just read the text of that
4 entire -- of those two entire subsections.

5 MR. TOOHAJIAN: Yes.

6 MR. WILLIAMS: It's not that long. I
7 promise.

8 MR. TOOHAJIAN: Section 4C, Applicant agrees
9 that sounds on the rooftop shall not be amplified. This
10 includes sounds from entertainment, parenthesis, defined
11 below, and those of a jukebox, TV, or radio. D,
12 prerecorded music can be utilized on the rooftop as
13 background for dining under the following conditions;
14 Number 1, the speakers will be in small plant boxes
15 below the brick wall, Number 2, trees will be placed
16 between tables on the edge of the brick to help buffer
17 the noise; Number 3, seating capacity will not exceed 50
18 persons; Number 4, the rooftop will be utilized only for
19 dining and therefore will not be utilized beyond hours
20 of food service and will not be used for events in which
21 patrons are standing; i.e., receptions, private parties,
22 et cetera.

1 MR. WILLIAMS: Thank you, Mr. Toonajian. Is
2 it your understanding based on your conversations with
3 neighbors that there have been instances of music being
4 played on Touche's roof deck with patrons standing?

5 MR. TOOHAJIAN: Yes.

6 MR. WILLIAMS: And finally just a very brief
7 question. Would you agree that generally speaking the
8 more people you have in a particular place, the more
9 noise they may be giving off?

10 MR. TOOHAJIAN: Yes. That's been our
11 experience.

12 MR. WILLIAMS: Thank you. I don't have any
13 more questions.

14 CHAIRPERSON ANDERSON: Ms. Price.

15 MS. PRICE: I have no questions for you.

16 CHAIRPERSON ANDERSON: Thank you. You're --
17 you can step down.

18 MS. PRICE: I do want to say as I've said to
19 the others, Touche's phone number is 202-399-1123. You
20 can always reach me there.

21 CHAIRPERSON ANDERSON: Do you have another
22 witness, sir?

1 MR. WILLIAMS: Yes. If -- if -- your
2 indulgence for just one moment. We're actually going to
3 call myself, Jay Williams and Mr. Segal will be
4 questioning. I promise -- this is our last witness, and
5 I promise I'll try and keep it brief. It's mostly to
6 get in some exhibits on behalf of the ANC.

7 CHAIRPERSON ANDERSON: All right. You can
8 take the stand, sir.

9 MR. SEGAL: Good evening. I'm Christopher
10 Segal. I'm the co-chair of the ABL Committee for ANC 6A
11 along with Jay.

12 CHAIRPERSON ANDERSON: All right. Do you
13 swear to tell the truth and nothing but the truth?

14 MR. WILLIAMS: I do.

15 CHAIRPERSON ANDERSON: All right. Be
16 seated. Your -- your witness, sir.

17 MR. SEGAL: Can you please state your name
18 and spell it.

19 MR. WILLIAMS: Sure. It's Jay Williams, the
20 last name -- or the first name J-A-Y, last name
21 W-I-L-L-I-A-M-S.

22 MR. SEGAL: And your address.

1 MR. WILLIAMS: I live at 1532 A Street NE.
2 That's A as in apple.

3 MR. SEGAL: And how long have you -- what's
4 your current role with ANC and how long have you been in
5 the position?

6 MR. WILLIAMS: I'm currently the co-chair of
7 the ANC 6A Alcohol Beverage Licensing Committee, and I
8 think I've been in that role for approximately three
9 years now.

10 MR. SEGAL: As co-chair of the ABL Committee
11 have you had an opportunity to discuss the -- the
12 community's opinion of Touche's operations?

13 MR. WILLIAMS: I have.

14 MR. SEGAL: Did this discussion take place
15 in an ABL Committee meeting?

16 MR. WILLIAMS: Yes. And I mean besides that
17 I have had other communications from neighbors about
18 Touche. But there was an ABL committee meeting where
19 Touche was -- Touche's license renewal was discussed as
20 well as issues having to do with Touche.

21 MR. SEGAL: Mr. Williams, I have a copy of
22 what's marked as Protestant's Exhibit 2, which these

1 were the minutes from the ABL meeting from March 17,
2 2015. Okay.

3 MR. WILLIAMS: That second Redweld has all
4 clean copies if you need one.

5 MR. SEGAL: Okay. Perfect. Who prepared
6 the minutes?

7 MR. WILLIAMS: I did.

8 MR. SEGAL: Do you believe those minutes
9 accurately reflect what took place at that meeting?

10 MR. WILLIAMS: I do.

11 MR. SEGAL: And, Mr. Anderson, we submit
12 Protestant's Exhibit Number 2 into evidence.

13 CHAIRPERSON ANDERSON: Hold on. I haven't
14 found them yet.

15 MR. ALBERTI: I think it's Tab Number 6.
16 Tab Number 6.

17 MR. WILLIAMS: I have a -- yeah. If you
18 need a -- it's Protestant's Exhibit Number 2.

19 CHAIRPERSON ANDERSON: No. I've seen them
20 before.

21 MR. WILLIAMS: Okay.

22 CHAIRPERSON ANDERSON: But what is it --

1 what's the -- what's the purpose? Okay. They're
2 minutes from an ANC meeting. What's the purpose of --

3 MR. WILLIAMS: Oh, sure. I mean this is
4 just to show that there have been discussions related to
5 Touche, Touche was present at the meeting, and that
6 neighbors had raised a variety of concerns including
7 issues related to how the rooftop deck is going to
8 operate, and that we had neighbors talking about that at
9 this meeting.

10 CHAIRPERSON ANDERSON: Okay.

11 MR. SEGAL: What was the outcome of that
12 meeting?

13 MR. WILLIAMS: This meeting is when the
14 committee recommended to the ANC that they protest --
15 the ANC protest the renewal unless we could work out a
16 reasonable restriction on -- excuse me -- Touche's
17 rooftop hours to be limited to 11 p.m. on weeknights and
18 midnight on weekends among other things.

19 MR. SEGAL: Thank you. And, Mr. Williams,
20 what has been your experience with Touche as compared to
21 other establishments within 6A?

22 MR. WILLIAMS: Based on my experience

1 I've -- I've -- it's very similar to what Commissioner
2 Toonajian reported is that I think the number of the
3 complaints I've heard about this establishment far
4 out -- outstrip any other complaints I've heard about
5 other establishments in ANC 6A.

6 MR. SEGAL: And, Mr. Williams, I'm going to
7 be showing you some exhibits and I'm going to give
8 them -- the first one is Exhibit Number 8.

9 MR. WILLIAMS: Protestant's Exhibit 8?

10 MR. SEGAL: Protestant's Exhibit 8.

11 MR. WILLIAMS: Thank you.

12 MR. SEGAL: And can you -- if -- if you're
13 ready, I can begin.

14 MR. WILLIAMS: Uh-huh.

15 MR. SEGAL: Can you describe this exhibit
16 please.

17 MR. WILLIAMS: Sure. This is an image that
18 I pulled off of Touche's -- I believe Touche's Instagram
19 account showing a very large crowd of people standing
20 and sitting on Touche's rooftop deck.

21 MR. SEGAL: And you -- and you said you
22 obtained it from their Instagram account?

1 MR. WILLIAMS: I did.

2 MR. SEGAL: And, Mr. Anderson, we submit
3 this exhibit into evidence. And, Mr. Williams, what's
4 the significance of this exhibit?

5 MR. WILLIAMS: This exhibit, this is an
6 image that shows -- it's what -- I mean we can sit here
7 and count the number of people, but it seems pretty
8 clear that there are more than 50 people on this rooftop
9 deck and they are currently not seated most of them.
10 And that's in my mind a violation of Touche's current
11 settlement agreement.

12 MR. SEGAL: And the next one is -- I'm going
13 to show you Protestant's Exhibit Number 9.

14 MR. WILLIAMS: Uh-huh. I have it in front
15 of me.

16 MR. SEGAL: And, Mr. Williams, can you
17 describe this exhibit please.

18 MR. WILLIAMS: Sure. This is a photo that
19 was posted to Touche's Instagram account that shows a
20 disc jockey or DJ, Curly Sue I believe it looks like her
21 name is, on the rooftop deck of Touche.

22 MR. SEGAL: And where did this image come

1 from?

2 MR. WILLIAMS: I pulled this from Touche's
3 Instagram account. I believe they posted this some
4 time -- unfortunately I don't know the exact date, but I
5 believe it was some time last summer.

6 MR. SEGAL: Thank you. And, Mr. Anderson,
7 we also submit this, Protestant's Exhibit Number 9 into
8 evidence.

9 CHAIRPERSON ANDERSON: All right. So -- so
10 that's -- it was what, it was Number 8, Number 9. And
11 what was this first one?

12 MR. WILLIAMS: The first one was
13 Protestant's Exhibit 2. Yeah.

14 CHAIRPERSON ANDERSON: So this Number 2,
15 Number 8, and Number 9 are part of the evidence. Okay.

16 MR. WILLIAMS: Thank you.

17 MR. SEGAL: And what's the -- what is the
18 significance of the Exhibit Number 9?

19 MR. WILLIAMS: The -- the significance of
20 Protestant's Exhibit -- Exhibit 9 is that it shows that
21 Touche is clearly utilizing the services of a -- of a DJ
22 on the rooftop deck despite -- actually I would say

1 provisions in his both settlement agreements that state
2 that entertainment cannot be used on the rooftop deck
3 and entertainment includes disc jockeys.

4 MS. MILLER: This is Exhibit 10?

5 MR. WILLIAMS: That was 9.

6 MS. MILLER: Okay.

7 MR. SEGAL: And, Mr. Williams, we're going
8 to do Protestant's Exhibit Number 10 next.

9 MR. WILLIAMS: Can we do -- just to kind of
10 stream line this --

11 CHAIRPERSON ANDERSON: Well, I -- remember,
12 you are the witness.

13 MR. WILLIAMS: Okay. I'm sorry. It's a
14 little harder when -- we'll do them one at a time. No
15 problem.

16 MR. SEGAL: And let's go -- let's do
17 Protestant's Exhibits 10, 11, and 12.

18 MR. WILLIAMS: Thank you. I have those in
19 front of me.

20 MR. SEGAL: And, Mr. Williams, can you
21 describe those three exhibits please.

22 MR. WILLIAMS: Sure. Protestant's Exhibit

1 10 is an image that -- it's a screen capture from
2 Touche's Instagram account where they are advertising a
3 Friday night event on the rooftop where a DJ -- DJ Ron
4 will be performing.

5 MS. PRICE: I don't see that. Oh, I see.

6 MR. SEGAL: And Number 11 and 12?

7 MR. WILLIAMS: Protestant's Exhibit 11 is an
8 image that I pulled that was posted on Touche's Twitter
9 account advertising an event called sundresses and
10 whiskey rooftop edition presumably on Touche's rooftop
11 where a DJ -- DJ Utmost Sash would be performing.

12 MR. SEGAL: And Number 12?

13 MR. WILLIAMS: And Protestant's Exhibit 12
14 is another image that I pulled from Touche's Twitter
15 account advertising an event on July 19, 2015, reggae
16 rooftop party, and hookah is available, and it would be
17 hosted by DJ Trani, T-R-A-N-I.

18 MR. SEGAL: Thank you. And, Mr. Anderson,
19 we submit all four of these into evidence.

20 CHAIRPERSON ANDERSON: Ms. Price, do you
21 have any -- do you have any objection to any of the
22 documents that were proposed as part of the record?

1 MS. PRICE: Okay. That's tricky because I
2 don't know what to say. So if I have an objection, can
3 I just speak to them --

4 CHAIRPERSON ANDERSON: Yeah. Tell me what
5 objections you have.

6 MS. PRICE: -- as an objection? Okay. So
7 we'll start with no objection to 2 -- to Exhibit 2.

8 MR. ALBERTI: Which is?

9 MR. SEGAL: We're on -- we're on 10, 11, and
10 12.

11 MS. PRICE: But I didn't -- wasn't asked
12 about the other one.

13 MR. ALBERTI: Okay. So Exhibit 2 is what,
14 the --

15 MS. PRICE: It is the minutes from the --

16 MR. ALBERTI: Okay. Very good. So all
17 right.

18 MS. PRICE: What I would like to speak to is
19 that when these -- this was discussion, the rooftop was
20 not opened.

21 CHAIRPERSON ANDERSON: I'm sorry. The what?

22 MS. PRICE: The rooftop was not open at the

1 time. We talked about other things, but I just wanted
2 to --

3 CHAIRPERSON ANDERSON: So you're -- so
4 what -- what exhibits here? Tell me the problem. Let's
5 go -- let's go back th.

6 MS. PRICE: I have no objection to 2.

7 CHAIRPERSON ANDERSON: Which -- which is the
8 minutes. Fine.

9 MS. PRICE: Which are minutes.

10 CHAIRPERSON ANDERSON: The other documents,
11 let's go through other documents.

12 MS. PRICE: All right. Then to 8 I have an
13 objection that again this goes into what we talked about
14 earlier as to the confusion as to seated. Definitely we
15 had seating for 50 people, we've always had it. So --
16 and -- and that we -- you know, at this point we were
17 into the settlement mediation with the intent to bring
18 the capacity -- you know, to 110.

19 CHAIRPERSON ANDERSON: But -- but I'm -- I
20 mean I'm trying to -- well, I want -- what was -- what
21 was said it's clear there's more than 50 people here. I
22 don't -- I -- --

1 MS. PRICE: My objection is that this does
2 not violate a noise because it's in the daytime during
3 time where there was no --

4 MR. SEGAL: Right. But the settlement
5 agreement also -- it speaks for itself.

6 CHAIRPERSON ANDERSON: Hold on. Hold on. I
7 mean the document says that --

8 MS. PRICE: Only 50 people seated. Okay.
9 No objection.

10 MR. ALBERTI: Is this -- is this your
11 Twitter account? Or is this your Instagram account or
12 Twitter account?

13 MS. PRICE: Yes.

14 MR. ALBERTI: Okay. Very good.

15 CHAIRPERSON ANDERSON: How about -- just
16 hold on please. Just hold on. Okay. Let me get in my
17 mind what's going on. All right.

18 MS. PRICE: Okay.

19 CHAIRPERSON ANDERSON: What was the -- what
20 was the nature of the objection to 8?

21 MS. PRICE: The nature of the objection to 8
22 is that we are allowed 110 people on our rooftop. There

1 are not 110 people on the rooftop. But we are not in
2 violation of the agreement because there are 50 people
3 seated.

4 CHAIRPERSON ANDERSON: All right. Well,
5 the -- I mean the documents -- the -- I'll let the
6 document in for whatever it stands for. What's the
7 next -- the next document?

8 MS. PRICE: Okay.

9 MR. SEGAL: And, you know, I would argue
10 that this is not an evidence objection; that Ms. Price
11 can cross-examine Mr. Williams as an interpretation of
12 the settlement agreement and what was happening.

13 CHAIRPERSON ANDERSON: Well, the document is
14 a part of the record. So I mean I said for whatever
15 example. So we can move on. What's the next -- what's
16 the next document?

17 MS. PRICE: Okay. Number 9.

18 MR. SEGAL: Which is already in evidence.

19 MS. PRICE: And am I able to ask questions?

20 CHAIRPERSON ANDERSON: Well, tell me what --

21 MS. PRICE: My objection is that this --
22 there is pre-recorded music. This person doesn't --

1 there's not a microphone. This person is not doing any
2 type of live entertainment. She does advertise herself,
3 you know, here on there, but she is clearly doing --
4 there's an output -- there's a recorded device, a
5 pre-recorded device.

6 MR. SEGAL: But she's testifying right now,
7 sir.

8 MS. PRICE: There's an output and an input.

9 CHAIRPERSON ANDERSON: But I don't -- all
10 right.

11 MR. SEGAL: She's testifying right now, sir.

12 CHAIRPERSON ANDERSON: Just hold on one
13 minute please.

14 MS. PRICE: So my -- I do not object that a
15 DJ is spinning records.

16 CHAIRPERSON ANDERSON: Right. Hold on. I
17 see I see a computer and I saw someone standing with
18 their hand -- their hand on -- on -- on her hips. So I
19 don't know what this stands for because it says DJ Curly
20 Sue. So I mean I don't know what that is. So I mean
21 it's a nice picture. Okay. It's a part of the record
22 for whatever it is. But I mean they're -- I -- I'm not

1 going to -- it's -- I hear she objects. She's given her
2 reason why she is objecting. And all right. So I'll --
3 I'll allow it in. What's the next one?

4 MR. SEGAL: We were on 10, 11, and 12.

5 MS. PRICE: 10, 11, and 12. I object
6 because none of these say that the music is specifically
7 being DJed on the rooftop. We talk about the rooftop,
8 but this is an advertisement for the -- these are
9 advertisements for the entire venue and it's a way that
10 we invite people to come in letting them know that all
11 three levels are open. But we do not play live -- you
12 know, we don't have DJ on there. It can tell you music
13 is provided. We're doing a rooftop edition, meaning if
14 you want to wear something fun, you know, the rooftop is
15 open. We're just advertising that the rooftop is open.
16 It's a way that we do --

17 MR. SEGAL: Sir, she's --

18 MS. PRICE: -- our advertisement to invite
19 to come. So I object to -- to them --

20 CHAIRPERSON ANDERSON: Sir, all right. Hold
21 on. Hold on. Hold on.

22 MS. PRICE: Well, he said because we were

1 advertising [inaudible 59:05].

2 MR. SEGAL: But I mean she's not objecting
3 to the authenticity of this exhibit which is what we're
4 trying to do right now.

5 CHAIRPERSON ANDERSON: Right. So the -- but
6 it's like she's putting it in context. Okay. You're
7 saying you are -- you are putting them in -- you're --
8 you're looking at it to say okay, well, to prove that
9 they have a DJ, and all she's doing is commenting. So
10 okay.

11 MR. WILLIAMS: She can do that during
12 cross-examination or with her on witnesses. I mean this
13 is -- we're just talking about whether --

14 CHAIRPERSON ANDERSON: Hold on. Hold on.
15 Hold on. Okay. This is not a court of law in a sense
16 that okay, we're going to object. And I know both of
17 you are lawyers and stuff. And I mean and -- and so you
18 know what it is? You can put in all the documents
19 that -- that you want. When we go back there and
20 determine -- okay, I might decide that I'm not going to
21 consider it. So we don't need to spend 20 minutes about
22 it. The documents -- the different documents, there are

1 different interpretation. Okay. Fine. They're --
2 they're part -- they are part of the record. I
3 understand your objection, Ms. Price. But for -- for me
4 it's all about nothing. Okay. So you can object to the
5 wazoo. I'm going to look at what the issue is, and I'm
6 going to make a determination at least in my mind when I
7 make -- when I vote and I decide it's my mind. So
8 people can always give documents with a different
9 interpretation. Your interpretation -- the bottom line
10 is that you're -- you're putting the documents to state
11 that this is what it stands for, and she states they
12 stand for something else. Okay. So it's said, it's a
13 part of the -- it's a part of the record. We'll move
14 on.

15 MR. SEGAL: And I have one more question. I
16 have one more question. What's the significance for
17 Exhibits 10, 11, and 12?

18 MR. WILLIAMS: It's -- it's pretty clear in
19 both versions of the -- both settlement agreements that
20 currently apply to Touche that they are not to have DJs
21 on the roof and these -- the image of an actual DJ on
22 the roof couldn't be clearer, that they have a DJ on the

1 roof deck. And I believe the other advertisements
2 pretty clearly show that they are having DJs on the
3 roof. And this also goes along with what neighbors have
4 told me they've heard from Touche's roof deck.

5 MR. SEGAL: Okay. Thank you. I have no
6 more questions.

7 CHAIRPERSON ANDERSON: Fine. Ms. Price,
8 you're welcome to question him if you have any questions
9 on all the exhibits. And you can, if you need to, to
10 put it in context, that is your -- that is your right.
11 Clearly he's -- he's put in the documents in for one --
12 for a specific purpose. If you have a different
13 interpretation of it, then you can -- you can ask him
14 about those same documents and make whatever arguments
15 or interpretation you want to do. I mean and as -- when
16 you're cross-examining -- when you cross-examine someone
17 you can ask isn't -- isn't it true or yes, sir, no, sir.
18 That's your -- your -- your -- your goal in a sense that
19 if you choose to go there.

20 MS. PRICE: Thank you. I want to get this
21 right. Okay. So Exhibit 8 that you brought up --

22 MR. WILLIAMS: Yes.

1 MS. PRICE: -- my understanding of it is
2 that it is -- well, when -- when you're looking at this
3 photo what -- does this -- does this look like it's
4 after or before the hours that you're proposing we
5 close?

6 MR. WILLIAMS: Oh, it's before I -- I would
7 assume. It -- I mean it -- I mean the sun's out.

8 MS. PRICE: Okay. And so are any violations
9 that we have as to noise from neighbors or -- or
10 anything like that, this may not have been one of the
11 events that that happened in, correct?

12 MR. WILLIAMS: That's -- that's correct in
13 the sense of that neighbors have been complaining
14 primarily about late night noise. The context of this
15 is that there are noise mitigation provisions currently
16 in your settlement agreements that you're not following,
17 and that some of those mitigation requirements aren't,
18 you know, just based on late night. They're also -- I
19 mean they apply whenever the rooftop deck is open.

20 MS. PRICE: But based on the testimony of
21 the witnesses that you provided today their concerns are
22 noise late night and a lot of people.

1 MR. WILLIAMS: I -- I wouldn't characterize
2 it as their -- their sole concerns are late night noise.

3 MS. PRICE: Concerns that they -- they spoke
4 about today?

5 MR. WILLIAMS: I -- I wouldn't say that all
6 of their concerns were -- were only late night noise.

7 MS. PRICE: Okay. Number 9.

8 MR. WILLIAMS: Okay.

9 MS. PRICE: Pre-recorded music can happen on
10 my iPhone or your iPhone, correct?

11 MR. WILLIAMS: Yes.

12 MS. PRICE: Is that considered to be similar
13 to a computer?

14 MR. WILLIAMS: Yes.

15 MS. PRICE: Okay. And so there needs to be
16 an input device would you say or something in order for
17 that to go through in order to then emanate out. Even
18 if it's low volume it would need to have something to
19 get an output to to -- to something.

20 MR. WILLIAMS: Technically computers and
21 iPhones have their own speakers so you could play it off
22 of that.

1 MS. PRICE: Technically. But on a rooftop
2 where you have 50 or 110 people seated -- 50 people
3 seated, 110 people, what have you -- you're -- you
4 wouldn't get even at low -- according to the way the --
5 the settlement agreement implies, you would need some
6 type of speakers, wouldn't you? Or -- or --

7 MR. WILLIAMS: Yes.

8 MS. PRICE: -- is that what --

9 MR. WILLIAMS: Sure.

10 MS. PRICE: So you need something to input
11 and output that over, correct?

12 MR. WILLIAMS: Yes.

13 MS. PRICE: Okay. Looking at this photo do
14 you see a microphone?

15 MR. WILLIAMS: I do not see a microphone.

16 MS. PRICE: So do you think this person is
17 actually DJing?

18 MR. WILLIAMS: I believe she is actually
19 DJing because the banner right in front of her says DJ
20 Curly Sue.

21 MS. PRICE: But that's -- but other than the
22 banner you -- you don't see her making any motion or

1 DJing?

2 MR. WILLIAMS: Well, I see a pair of
3 turntables right in front of her that -- you know, her
4 hands on her hips right now. But I imagine that she may
5 be manipulating those turntables while playing music
6 which is what a DJ does.

7 MS. PRICE: But she's got a -- a device
8 that's there, and that's strictly -- that's an output to
9 the speakers. There's got to be something that allows
10 that. So -- so let me -- let me move on. If you had a
11 T-shirt that said DJ Jay and you were on the rooftop and
12 I asked you hey, Jay would you go over to that laptop
13 and change the music for me real quick, would you be
14 DJing?

15 MR. WILLIAMS: I -- I would not.

16 MS. PRICE: Thank you. Okay. Exhibit 9 --
17 10 -- 10. I'm sorry.

18 MR. WILLIAMS: Uh-huh.

19 MS. PRICE: We -- we identified this as --
20 as to be on our Instagram -- Touche's Instagram.

21 MR. WILLIAMS: Correct.

22 MS. PRICE: What does a read over to -- to

1 the side?

2 MR. WILLIAMS: Stay tuned, rooftop opening

3 soon.

4 MS. PRICE: So if you were interested in
5 coming to our rooftop or to our establishment period, to
6 know that our rooftop is opening soon, would that be of
7 interest to you that on Friday nights we've got -- the
8 rooftop's opening?

9 MR. WILLIAMS: Yeah. If I were interested
10 in seeing the rooftop. Yes.

11 MS. PRICE: Right. Are you aware of
12 advertisements that seeks to entice people to come into
13 an entire establishment and what you may -- either it
14 may say drinks available.

15 MR. WILLIAMS: Uh-huh.

16 MS. PRICE: But maybe those drinks might be
17 only available on one level. Would that seem like
18 typical type of advertisement that goes on today or --

19 MR. WILLIAMS: Sure.

20 MS. PRICE: And then Number 12, down here it
21 talks about what -- what do you read down by the hosted
22 by DJ Trani?

1 MR. WILLIAMS: I'm sorry. Which exhibit are
2 we on?

3 MS. PRICE: At Number 12.

4 MR. WILLIAMS: Oh, 12. Okay. We skipped
5 11. Okay.

6 MS. PRICE: Yeah, I did.

7 MR. WILLIAMS: Sure. I see hosted by DJ
8 Trani 10 p.m. to 2 a.m., concerts start at 11 p.m.

9 MS. PRICE: Okay. All right. So there's
10 nothing that -- other than the fact that we're saying
11 it's a -- it's a reggae rooftop, there might be some
12 reggae, you know, music being played on the rooftop,
13 nothing else speaks to the fact that the whole thing
14 is -- is happening -- and I mean do you read this
15 strictly as it's being only on the rooftop? Is that --

16 MR. WILLIAMS: That's how I read it because
17 you're -- the -- the establishment is advertising a
18 reggae rooftop party, sundress and linen edition hosted
19 by DJ Trani. To me that reads pretty logically as there
20 is a rooftop party going on that is being hosted by a
21 DJ.

22 MS. PRICE: Okay. And so this is actually a

1 copy of a flyer. Are you aware that on the opposite
2 side of the flyer -- there's another side to this right
3 here?

4 MR. WILLIAMS: You know, this -- this is the
5 image that was posted to Twitter. So if there were a
6 separate side of the flyer, either it was posted
7 separately and I was not aware of it. I have not seen a
8 physical flyer of this advertisement.

9 MS. PRICE: Okay. So -- so this is the only
10 thing you were able to capture. But there possibly is
11 another -- a side to this that was posted as well --

12 MR. WILLIAMS: I -- I can't speculate to
13 that because I haven't --

14 MS. PRICE: -- that might have more detail?

15 MR. WILLIAMS: I can't speculate to that
16 because I haven't seen it.

17 MS. PRICE: Okay. If you believed in good
18 faith that we were in violation of this agreement --
19 we -- we talked a little bit about in the settlement
20 agreement Page -- let me back up. Do you recall
21 receiving our -- and I don't know how it's worded --
22 when we applied for our renewal?

1 MR. WILLIAMS: Uh-huh.

2 MS. PRICE: I think we also present
3 documents to -- to you all, right?

4 MR. WILLIAMS: There's a public placard that
5 we -- we see, what makes us -- it's a public notice of
6 the -- of the license renewal.

7 MS. PRICE: Okay. And then we respond to
8 that, right? Is that how that --

9 MR. WILLIAMS: Well, the -- the placard
10 states that the ANC or anybody who objects to that
11 renewal has a particular date in which they would --
12 they would object. And the ANC's typical method of
13 dealing with that is that we then have a committee
14 meeting to discuss the placard to determine if there are
15 any community objections, and then the ABL Committee
16 would make a recommendation to the full ANC who would
17 then take up that recommendation, discuss the issue
18 again, and vote.

19 MS. PRICE: I don't know how to ask this
20 one. We -- we -- we applied to strike the -- to
21 disregard the first -- that Linden Street one and only
22 go to one.

1 MR. WILLIAMS: I'm not aware of that.

2 MS. PRICE: Okay.

3 MR. WILLIAMS: I -- and in fact I -- I
4 specifically checked to confirm that I hadn't overlooked
5 it or -- or missed it. And I was informed by ABRA
6 representatives just this week that they had not
7 received any request to terminate or dismiss either
8 settlement agreement and that both remained in full
9 force.

10 MS. PRICE: Okay. I'm going to look that
11 up. Would you go to Page 3 of the settlement
12 agreement -- the second settlement agreement.

13 MR. WILLIAMS: The second with the ANC.
14 Sure.

15 MS. PRICE: Yeah. Which is Exhibit 1 of
16 yours I think.

17 MR. WILLIAMS: Yes.

18 MS. PRICE: First would you please read for
19 me 4E.

20 MR. WILLIAMS: In the event that noise from
21 conversations and pre-recorded music on the rooftop
22 repeatedly disturbs homeowners -- homeowners to the rear

1 of the building, the ANC and owner will work in good
2 faith to negotiate an addendum to this agreement to
3 mitigate noise through additional soundproofing
4 measures.

5 MS. PRICE: And do you -- would you say
6 we've attempted to negotiate in good faith?

7 MR. WILLIAMS: We -- we did. We attended --
8 you attended two different ANC meetings where these
9 issues were discussed, and we negotiated in good faith
10 during mediation to reach a settlement agreement which
11 we were unable to do.

12 MS. PRICE: Do you -- have you -- you
13 haven't been inside of Touche either, have you? I'm
14 asking.

15 MR. WILLIAMS: No, I have not.

16 MS. PRICE: Okay. Would you read Number 5
17 on that same page please.

18 MR. WILLIAMS: Applicant agrees to work with
19 the single member district ANC commissioner within whose
20 boundaries the establishment is located on resolving
21 issues preventing the applicant from fulfilling its
22 obligations under this cooperative agreement.

1 MS. PRICE: And are you aware of any times
2 where a single member district ANC commissioner has
3 reached out to Touche?

4 MR. WILLIAMS: Yes, I am. As I said, there
5 have been two actual ANC related meetings. And although
6 Mr. Toonajian may not have been at settlement agreement
7 negotiations, I was there to represent the ANC including
8 Mr. Toonajian.

9 MS. PRICE: And how would you say that was
10 -- anyone, you and/or Mr. Toonajian brought it to our
11 attention and since -- since any types of calls you
12 received from concerns or --

13 MR. WILLIAMS: We -- we've discussed
14 neighborhood concerns about noise coming from Touche at
15 two different ANC meetings as well as during our
16 confidential settlement negotiations.

17 MS. PRICE: And do you think that Touche has
18 made any effort to address those by --

19 MR. WILLIAMS: I -- I -- I will acknowledge
20 that Touche has made efforts to address noise concerns
21 from coming from the inside of the establishment.
22 You -- you guys installed new windows which were for --

1 for years been causing problems on the inside. I -- I
2 do not believe that Touche has taken any efforts to
3 mitigate noise coming from its roof deck. In fact, I
4 think Touche has taken efforts to blatantly ignore
5 agreements that it has reached with the -- with the
6 community.

7 MS. PRICE: That's unfortunate you feel that
8 way. So is that why you -- you feel it's -- you use the
9 term unworkable in your -- in your -- you know, your
10 application. Can you describe that -- that term please.

11 MR. WILLIAMS: Yeah. So when -- there -- I
12 believe that the current status quo is unworkable. The
13 current status quo has led to multiple complaints from
14 neighbors. It has led to a negative impact on the
15 quality of life of people, and has had a negative impact
16 on peace, order, and quiet in the neighborhood and
17 therefore that's why we're here. Because if the status
18 quo were still workable, we would not be in a protest
19 before the ABC Board.

20 MS. PRICE: How do you feel about people
21 that live in the community that work in the
22 establishments that are along on H Street?

1 MR. WILLIAMS: Can you rephrase your
2 question.

3 MS. PRICE: I mean are you aware that there
4 are a lot of people that are employed by the businesses
5 along H Street?

6 MR. WILLIAMS: Yes.

7 MS. PRICE: And do you think that it would
8 be a negative impact on the community if people that
9 lived in the community were to make less money?

10 MR. WILLIAMS: I think that's kind of an
11 unfair question in the sense that you have to balance
12 the needs of neighbors who are directly affected by
13 these businesses and the hours that they're operating
14 and given that we're -- we are just trying to find --
15 we're working on a reasonable limitation that can work
16 for both the business and the community which is why
17 we're not asking for, for instance, the rooftop deck to
18 be shut down completely or for the rooftop deck to close
19 at 7 p.m. every night. We're asking for a -- what we
20 believe is a reasonable restriction of one fewer -- one
21 less hour on weeknights and I believe it would be two
22 less hours on weekends.

1 MS. PRICE: Board Member Alberti brought up
2 in -- in the testimony of one of your witnesses that
3 outdoor space may not be as affected by hours for -- for
4 some businesses that are -- you know, the timing of that
5 may not be affected. But for -- would you think that
6 for a business that -- let me ask it this way. Is the
7 rooftop on Smith Commons open year round?

8 MR. WILLIAMS: I -- honestly I don't know if
9 they're open year round. They may be. But I can tell
10 you that they agreed to close their rooftop -- their --
11 I actually would not describe Smith Commons' deck as a
12 rooftop deck. I believe it's a third floor deck at the
13 back. But they agreed with the ANC to close that
14 outdoor space at 11 p.m. on week nights and midnight on
15 weekends which is what the ANC typically asks for.

16 MS. PRICE: And they're open year round or
17 you -- you're not sure about that part?

18 MR. WILLIAMS: I don't know for sure. They
19 may be.

20 MS. PRICE: Okay. And were you part of the
21 negotiations with other -- the other establishments
22 that -- that we listed?

1 MR. WILLIAMS: Can you specify which
2 establishments you're talking about?

3 MS. PRICE: RedRocks.

4 MR. WILLIAMS: I was not part of those
5 negotiations.

6 MS. PRICE: But are you aware of what --
7 what their rooftop hours are?

8 MR. WILLIAMS: I believe that RedRocks,
9 there was a provision that stated that their summer
10 garden closes at 11 p.m. and midnight.

11 MS. PRICE: Okay. How about H Street
12 Country Club?

13 MR. WILLIAMS: What -- what's the question
14 about H Street Country Club?

15 MS. PRICE: Are you aware of their hours of
16 their rooftop?

17 MR. WILLIAMS: Yes. We -- we negotiated
18 with H Street Country Club I'd say probably maybe a year
19 or two ago regarding their rooftop hours.

20 MS. PRICE: And they are?

21 MR. WILLIAMS: I don't recall off the top of
22 my head. I believe they were -- they are -- they are

1 now slightly low -- later than the 11 p.m. and midnight.
2 They were originally under the 11 p.m. and midnight, but
3 we negotiated with them. And due to a variety of
4 factors that do not yet apply here the ANC and the
5 neighbors were comfortable with some concessions due to
6 the track record of the establishment, the lack of noise
7 complaints from neighbors, the distance from that
8 establishment to other residences nearby, and their
9 agreement to close the small portion of their rooftop
10 deck that was closest to residences earlier than the
11 further -- the -- the front part, and the fact that they
12 have much more significant noise mitigation on their
13 rooftop deck than Touche does.

14 MS. PRICE: What is the distance, do you
15 know, of their establishment to other --

16 MR. WILLIAMS: I -- I -- I don't know off
17 the top of my head. I can tell you that there's a much
18 larger alley between H Street Country Club than there is
19 for instance with Touche. And the -- the neighbors who
20 are directly -- who are the closest to H Street Country
21 Club were involved in these discussions.

22 MS. PRICE: Okay. How do you -- if -- I

1 don't know if I can ask this question. I'm sorry.

2 CHAIRPERSON ANDERSON: Well, also you're
3 running out of time too. So cross-examination -- just
4 want to let you know that you had 90 minutes, and I
5 think you're bumping up close to 90 minutes for -- for
6 cross examination, but --

7 MR. ALBERTI: Two and a half minutes.

8 CHAIRPERSON ANDERSON: So you can ask
9 probably one more question and --

10 MS. PRICE: No further questions.

11 CHAIRPERSON ANDERSON: I didn't want to cut
12 you off. I'm just saying that -- and now we're at the
13 end of the day. I think this is the last witness. So
14 I'm not going to be like okay, I'm sorry, but you can't
15 ask any more questions.

16 MS. PRICE: No further questions.

17 CHAIRPERSON ANDERSON: All right. And I
18 guess this was the second round of questions. All
19 right. Thank you, Mr. Williams.

20 MR. WILLIAMS: Thank you. No -- no Board
21 questions? I mean I'm perfectly fine.

22 CHAIRPERSON ANDERSON: We -- we already --

1 MR. WILLIAMS: I am more than happy to step
2 down.

3 CHAIRPERSON ANDERSON: That would have been
4 the second round of Board questions. So --

5 MR. WILLIAMS: For me?

6 CHAIRPERSON ANDERSON: Yes.

7 MR. WILLIAMS: I -- I'll take your word for
8 it, but I'm pretty sure I have not been --

9 MR. ALBERTI: I appreciate -- I appreciate
10 Mr. Williams keeping us in line. But I don't -- but it
11 wouldn't -- it wouldn't be the first. But I will tell
12 you I have no -- no questions. Do any --

13 CHAIRPERSON ANDERSON: Oh, so The Board have
14 not asked any questions?

15 MR. WILLIAMS: There was some discussion
16 over the exhibits. But I don't think we actually had
17 formal board questioning.

18 CHAIRPERSON ANDERSON: All right. Do we
19 have any questions by any board members? I guess not.
20 Well, you can step down then, Mr. Williams. I -- I
21 apologize. This has been going on so long I thought
22 that The Board did ask you questions.

1 MR. WILLIAMS: Glad we started at 3:30.

2 CHAIRPERSON ANDERSON: All right. All
3 right. Once you step down does the Protestant have any
4 other witnesses?

5 MR. SEGAL: I -- no, the Protestant does not
6 have any other witnesses.

7 CHAIRPERSON ANDERSON: All right. All
8 right. And does the Protestant rest?

9 MR. WILLIAMS: Yes. The Protestant rests.

10 CHAIRPERSON ANDERSON: All right. I'm going
11 to come -- all right. I know, Ms. Williams, (sic) we
12 had started earlier, and I know that you had not -- we
13 were saying that if you had any other witnesses and so
14 I-- I'm sorry. Ms. Price. Ms. Price. Ms. Price.

15 MS. PRICE: That's okay.

16 CHAIRPERSON ANDERSON: I apologize. So you
17 don't have any other witnesses to present?

18 MS. PRICE: I don't. I just wanted to put
19 the documents in.

20 CHAIRPERSON ANDERSON: And what documents --
21 what documents is it that you're -- you're trying to --
22 you're trying to move into evidence?

1 MS. PRICE: Okay. Well, all of them. We'll
2 just kind of go by them real quickly. I already
3 mentioned our Exhibit 1 which is the petition that we
4 filed and we applied for the renewal.

5 MR. WILLIAMS: I don't object to entering
6 this into -- into evidence. But I just -- just point
7 out that -- and I'm sure The Board will study it, the
8 number of residents who actually signed this who may
9 actually live within a few block radius of Touche.
10 I -- -- I don't -- I don't object to it in any other
11 fashion. Well, actually sorry. I -- I did -- there was
12 one other note is that the petition states we the
13 undersigned support Touche Supper Club and the renewal
14 of their license. It says nothing about rooftop deck or
15 hours.

16 CHAIRPERSON ANDERSON: Well, they're --
17 renewing their license is a part of the renewal process.
18 It's a broad --

19 MR. WILLIAMS: Just pointing -- just
20 pointing it out.

21 CHAIRPERSON ANDERSON: All right.

22 MS. MILLER: Can I ask a question because I

1 don't really know what to -- what weight to give this at
2 all. How was -- who conduct -- who -- who conducted the
3 petition? How was it done?

4 MS. PRICE: We -- we conducted the petition.
5 And let me just refer you first -- when we submitted the
6 petition this is -- if you read it, we requested at this
7 time to withdraw our voluntary settlement agreement of
8 the Linden Place associates and we served that to all
9 parties. So --

10 MR. WILLIAMS: I mean I may have missed it
11 before. The first time I saw this was when it was
12 submitted at this hearing. And my -- and this is
13 clearly not the proper way of requesting termination of
14 a settlement agreement to The Board. So I mean to the
15 extent of -- to get to that I -- I mean I object to it.
16 And I don't think there's -- if it's -- if it's -- if
17 there's a question as to whether the Linden Place
18 associates settlement agreement is still in -- in
19 effect, like I -- I think that -- that it is what it is.
20 Like The Board can confirm that its still in place. I
21 don't think this gets to that it has been dismissed
22 because obviously it has not.

1 CHAIRPERSON ANDERSON: What you need to do,
2 Ms. Price, is to -- if you're trying to terminate or
3 you're trying to make changes to an existing settlement
4 agreement, you can talk to our -- our general counsel,
5 Ms. Jenkins, and Ms. Jenkins can give you some
6 directions what is it that can be done to move toward
7 terminating a settlement agreement that's longer --
8 that's older than four years. And I think that you
9 would make a -- I guess through the renewal process you
10 would make -- there -- they'll provide you the
11 information. But as I said before, in this process we
12 cannot terminate -- we cannot terminate a settlement
13 agreement in this process moving forward. It's a
14 separate process that has to be followed in a sense that
15 we -- I think that the -- you would make the request,
16 The Board would make a determination and we'd make a
17 determination whether or not that needs to be placarded,
18 and you would go back through the same proceedings
19 specifically on a settlement agreement. But that's
20 not -- this is just a renewal. And I guess if it was
21 much clearer when we were going through the process that
22 as part of renewing your -- your license you wanted to

1 -- you wanted to terminate a certain settlement
2 agreement, then I think that information would have been
3 provided. Because I -- I know at least when we had had
4 our status hearing -- and I was never -- at least I was
5 never aware that that was a provision.

6 MR. ALBERTI: Well, Chairman Anderson, just
7 to be fair to Ms. Price I believe your renewal period is
8 coming up in this fall, October?

9 MR. WILLIAMS: I think it's -- yeah.
10 There's a new renewal period.

11 MR. ALBERTI: So my advice to you is to talk
12 to -- as -- as the Chairman said, talk to her general
13 counsel as to what requirements there are to make that
14 request and the opportunity will be at renewal for your
15 new -- for your current license which happens in
16 October. And I'm helping you out here. You need to
17 talk to our general counsel before then to understand
18 what steps you need to go through.

19 MS. PRICE: Okay. Thank you. I -- I do
20 feel when we received the -- the renewal, you know, it
21 was time, we looked up what to do because we didn't
22 know. And that's when we began to go about -- so I just

1 want you all to understand why this was filed to begin
2 with, that we thought that this was the process. We
3 were under the impression also from looking -- I may
4 have even spoken with someone at ABRA. But I will
5 take -- you know, I understand what you're saying, this
6 isn't the, you know --

7 CHAIRPERSON ANDERSON: Because this is
8 not -- this is not a renewal of your licensing
9 application.

10 MS. PRICE: It's a renewal of our license we
11 thought.

12 MR. ALBERTI: Yeah. But it -- it stems from
13 a -- a renewal period that -- that -- from three years
14 ago.

15 MR. WILLIAMS: Yeah.

16 MR. ALBERTI: It stems from a renewal period
17 from three years ago. I know it's a technicality. We
18 don't need to discuss it here, it's not going to be
19 helpful. But I'm telling you right now talk to our
20 general counsel because the window of opportunity will
21 be during the October licensing period. All right.
22 It's the best advice I can give you, and I'm being

1 completely honest and trying to be as helpful as I can.

2 MS. PRICE: Thank you. I agree.

3 MR. ALBERTI: All right.

4 MS. PRICE: And I'm definitely going to take
5 you up. But I'm looking at --

6 MR. SHORT: Do you -- do you have a copy
7 of --

8 MS. PRICE: I have them right here, and
9 that's why I was trying to go through them to find out.
10 Because again, I know the renewal period was -- had come
11 about. And we did not -- we had not gone through a
12 renewal. And so we were told we were being triggered
13 into a renewal based on our purchase of the license even
14 though we got all new license and everything. So we
15 were trying to follow the -- the -- and using our small
16 window that we had.

17 MR. SHORT: Everything everybody to know
18 about the law is in that book.

19 MR. WILLIAMS: I think this is irrelevant.

20 MS. PRICE: And using that small -- I just
21 want you to understand why we did this.

22 CHAIRPERSON ANDERSON: But I -- I think the

1 reason why this discussion --

2 MS. PRICE: You brought it up.

3 CHAIRPERSON ANDERSON: I think what -- it is
4 relevant. And the reason why it's relevant is because
5 we're going to do closing and they're going to ask what
6 we want. And I think part of what one of the documents
7 that she put forward that she was asking to be
8 considered as a part of the record, it was that here are
9 the folks in the community who want us to lift this
10 settlement agreement. So -- so that's one of the
11 reasons why we have a document here for that purpose.
12 And so it is relevant for us to say well, okay, this
13 document is not relevant for that issue. Because what
14 you're -- what you're trying to do, it can not occur in
15 this proceeding.

16 MR. WILLIAMS: Sure. And I mean I'll also
17 point out that I -- I have no idea -- the petition
18 itself says nothing about lifting settlement agreements.
19 So I don't even know if these people are signing it
20 saying they're in favor lifting the Linden Place
21 settlement agreement. So I --

22 CHAIRPERSON ANDERSON: All right. And I

1 said before --

2 MR. WILLIAMS: In terms of how -- in terms
3 of the weight of this I'm just pointing out that the
4 context of this petition that addresses, and I have no
5 objection to it being entered as an exhibit.

6 CHAIRPERSON ANDERSON: All right. What is
7 the document? What -- what --

8 MS. PRICE: Exhibit 2 is a diagram of -- of
9 our rooftop, and this is presented to demonstrate to you
10 from some of the testimony that you heard the area
11 that's where the planter is and all of that, there are
12 no people that are sitting or standing or anything from
13 that point forward and -- or behind and that there are
14 walls as -- as one of the witnesses did talk about. So
15 I just wanted you to get a -- you know, a mental picture
16 of what's -- you know, what's happening there as far as
17 noise level is concerned. And --

18 MR. ALBERTI: So may -- may I ask a
19 question?

20 MS. PRICE: Yes, sir.

21 MR. ALBERTI: So the area to the -- to the
22 west of the stairs, is that assessable to the public?

1 MS. PRICE: No.

2 MR. ALBERTI: There's a -- there's a blue
3 arrow there.

4 MS. PRICE: That's the walkway that shows
5 you that you're coming in a door and -- and it leads you
6 into the larger --

7 MR. ALBERTI: So it is assessable to people,
8 people walk through there?

9 MS. PRICE: I'm sorry. I misunderstood you
10 then. Yes. That's how you get in.

11 MR. ALBERTI: Yeah. People walk through
12 there?

13 MS. PRICE: That's right. And out. That's
14 right. It's one of the ways you get in and out.

15 MR. ALBERTI: All right. Thank you.

16 CHAIRPERSON ANDERSON: All right. What's
17 Number 3?

18 MS. PRICE: Number 3 in our -- in our -- I
19 just wanted to go through the -- I didn't label the
20 pictures, each one. The first one, it's not very clear
21 so I apologize for that. But I wanted The Board to --
22 to have a understanding of what we're trying to do as

1 far as enclosing our rooftop. We're -- we've reached
2 out for several requests for proposals. So -- so this
3 first one that's -- it -- it demonstrates what the sides
4 look like, and they'll -- you know, what we're hoping
5 anyways. We haven't -- you know, they will kind of roll
6 up. And then the same picture. So -- and then the
7 other demonstrates the -- the construction type of piece
8 and then this rolls.

9 MR. WILLIAMS: I mean that -- I guess I'll
10 -- I'll object to these -- these photos to the extent
11 that they don't represent the current state of play on
12 the rooftop at Touche.

13 CHAIRPERSON ANDERSON: All right.

14 MR. WILLIAMS: They're all hypothetical
15 images.

16 MS. MILLER: Mr. Chairman, I'm just also
17 concerned that her explanations sound like testimony,
18 and she's --

19 MR. WILLIAMS: Yeah.

20 MS. MILLER: -- and you're not under oath.

21 MS. PRICE: I'm sorry.

22 MS. MILLER: So I don't -- you know, I don't

1 know how you want to handle that. But it's not really
2 evidence unless you want to go under oath.

3 CHAIRPERSON ANDERSON: We're getting --
4 we're getting a --

5 MS. PRICE: The other photos --

6 CHAIRPERSON ANDERSON: We're getting a bunch
7 of photos that --

8 MS. PRICE: -- they all combined just give
9 you an idea of what the -- the rooftop and -- and the
10 sound mitigation, trees and -- and walls.

11 MR. ALBERTI: Is Exhibit 3 entered?

12 MR. WILLIAMS: And, you know, I'll -- I will
13 formally object to entering Exhibit 3 for the reasons
14 that I stated previously, that these do these do not
15 represent -- these are completely irrelevant to the
16 protest hearing at hand and they could do not represent
17 Touche's current roof deck.

18 MS. PRICE: Yes, they do. I -- I'm sorry.
19 I'm speaking of the last -- so Exhibit 3 -- Exhibit 3
20 has seven, eight photos. So if you want to disregard
21 the first two, that's one thing. But the others are
22 more current than the exhibits -- the photos that he

1 entered.

2 CHAIRPERSON ANDERSON: What are the purpose?

3 MR. ALBERTI: We haven't heard any

4 testimony.

5 CHAIRPERSON ANDERSON: Can -- can -- hold
6 on. Hold on. Hold on. Just can some -- you folks just
7 let me run this hearing, okay, because there's just too
8 many pieces going on. All right. When documents come
9 in we're going to give them the weight that it is. I
10 mean people want to give documents. So you're -- you're
11 saying, Ms. Price, the documents that -- Exhibit 3, 4,
12 5, 6. And what is the purpose why these documents
13 are -- are -- are part of it, are being -- you're asking
14 us to make this a part of the record?

15 MS. PRICE: Number 3 other than the first
16 two photos, the others currently show you what people --
17 if you're on the rooftop. And none of those people saw
18 what the rooftop looks like from being on the rooftop.

19 CHAIRPERSON ANDERSON: All right.

20 MS. PRICE: And I want them to see what
21 sound mitigation is there, you know, like walls and
22 other things.

1 CHAIRPERSON ANDERSON: All right.

2 MS. PRICE: So that's the focus of those
3 photos.

4 MR. WILLIAMS: And -- and I'll -- can I --
5 can I -- can we talk briefly on Exhibit 3 just so I can
6 put my objection on the record? My objection to Exhibit
7 3 including the current -- and including what Ms. Price
8 is representing are current photos of the roof deck is
9 that the we -- there's been no testimony as to these
10 exhibits, nobody to authenticate them, no sworn
11 testimony regarding them. So I object to them -- to
12 their admission in that sense.

13 CHAIRPERSON ANDERSON: Okay.

14 MS. PRICE: So do I need to
15 cross-examine myself? And should I have been a witness
16 myself?

17 CHAIRPERSON ANDERSON: Ms. Price, move on.
18 He can object, and I can decide whatever we're going to
19 do with that.

20 MS. PRICE: Number 5 -- Number 4, we --
21 we -- in our statements that we've made today we feel
22 that the change of hours is inconsistent with other

1 businesses along H Street. And also in his testimony
2 he -- I'm sorry -- Mr. Williams indicated that there
3 were other businesses that have different hours than --
4 than -- their rooftops than what is being proposed here.
5 So that's what 5, 6, and 7 are.

6 CHAIRPERSON ANDERSON: All right.

7 MR. WILLIAMS: I'll formally object to these
8 simply because we haven't had anyone authenticate them,
9 there's been no testimony.

10 CHAIRPERSON ANDERSON: They are -- they are
11 part of ABRA's records. I mean these are -- these are
12 settlement agreements that are part of -- that are part
13 of the agency's records. I mean I see board members who
14 are sitting here who signed off on it. So --

15 MR. WILLIAMS: I'll withdraw.

16 CHAIRPERSON ANDERSON: So there -- the
17 authentication issue is not -- they're -- they're ABRA's
18 documents. So I'm -- that -- for that reason they are
19 part of the record.

20 MR. ALBERTI: I just -- I just want to make
21 a statement about these. I'm having trouble with these
22 because I haven't had a chance to ask any of the

1 witnesses what the relevance of these documents are.
2 And I'm just putting that out there so everybody
3 understands that in our decision if they're -- they
4 don't like the reference to these, it's because I for
5 one haven't had a chance to ask anyone what the
6 relevance of these documents is.

7 CHAIRPERSON ANDERSON: Well, I -- I think
8 it's my understanding that the -- that these documents
9 are being -- are being submitted to say these are
10 settlement agreements that are in the neighborhood, and
11 so therefore we -- I think this entire case has been --
12 has been around we want to be treated as the other --
13 the other -- the other businesses in the area, and these
14 are settlement agreements for the other businesses in
15 the area. And so therefore because they have these
16 hours, we believe that we should have these hours.

17 MR. ALBERTI: Yes. But the ANC has not had
18 a chance to speak to them. And we heard testimony of
19 the context of one of these settlement agreements from
20 Mr. Williams. And so I think that that's important if
21 The Board's going to use them, that they get the context
22 to get the -- to get testimony from the ANC about these

1 and we just can't take these at face value for well,
2 these are comparable.

3 CHAIRPERSON ANDERSON: Well, I think --

4 MR. ALBERTI: I just -- I'm just putting
5 that out there.

6 CHAIRPERSON ANDERSON: Well, and -- and I'll
7 say this, this is my position, okay. One of the things
8 that I've heard throughout this entire proceeding is
9 that -- that the ANC is saying that we have a standard
10 settlement -- we have a standard settlement agreement
11 that we have all the other establishments sign, and this
12 is what we're asking them to do, it's on our website.
13 And I'm hearing the -- the applicant saying that well,
14 these are the -- these are the settlement agreements
15 that are in the area that I want -- you want to treat us
16 similar. That's what I'm being told. And when I make a
17 decision -- I mean because I'm being told that we want
18 -- the ANC's saying that the ANC's position -- at least
19 it's what I'm hearing, and this is just what I'm hearing
20 -- is the ANC's position is that these are the hours
21 that we can live with, we have told all the other
22 businesses to sign it, and these are the appropriate

1 hours for the neighborhood. The -- the protestant --
2 the applicant is stating that well, these are the hours
3 that everybody else has, and so therefore I need to --
4 so I need --

5 MR. ALBERTI: Mr. Anderson, may I just speak
6 real quickly? So I think Ms. -- Ms. Price's conjecture
7 here is that as you believe the ANC's position is is
8 that, you know, we have these standard hours and want
9 everybody to abide by them. And Ms. Price I believe is
10 entering these into evidence to show -- to show that the
11 ANC has contradicted itself in some instances. And I
12 think it's -- you know, if -- if you're going to -- if
13 you're going to take these for that purpose, then you
14 need to allow the ANC a chance to testify to them, which
15 you -- which you haven't.

16 CHAIRPERSON ANDERSON: I don't need to --
17 but I don't need to ask the ANC. Because one of the
18 things that -- we have two lawyers on the ANC, and they
19 have seen the documents and nobody has objected to it.
20 So --

21 MR. ALBERTI: They have. They have.

22 MR. WILLIAMS: We -- we -- but we haven't --

1 MS. PRICE: They have not.

2 MR. WILLIAMS: I mean I -- we haven't had an
3 opportunity to put in an explanation aside from the H
4 Street Country Club any explanation because no
5 questioning or no testimony has come in on those. I --
6 you know --

7 MS. PRICE: I did just question.

8 MR. WILLIAMS: -- Ms. Price questioned me on
9 H Street Country Club.

10 MS. PRICE: On RedRocks and Rock and Roll.

11 MR. WILLIAMS: She questioned me on -- she
12 questioned me on RedRocks, and I acknowledged that I was
13 not aware of that, there were no follow-up questions.
14 There were not -- there have not been any questions
15 about Rock and Roll Hotel.

16 MS. PRICE: I did question you about Rock
17 and Roll.

18 MR. WILLIAMS: I think the record will stand
19 for itself on whether I was questioned about that.
20 But I -- I do think that Ms. Price hasn't put on any
21 testimony at all related to these -- these settlement
22 agreements. She -- she -- she spoke about them. Sure,

1 in her opening statement she implied that there's been
2 some inconsistency, but there's been no proof on the
3 part of the applicant who has the burden here to
4 actually show what's going on here, and she hasn't put
5 on evidence to -- to show this. And just admitting this
6 exhibit without, you know, properly, you know, getting
7 testimony about it I think seems unfair to the ANC.

8 MS. PRICE: How is an exhibit that says it
9 in writing not evidence? I don't understand. It's
10 clear in these that their rooftop closes at 2:30 on --
11 you know, if you read them that you all signed on, some
12 of you, it's clear in there. I don't understand what
13 other testimony needs to be said to that.

14 MR. ALBERTI: So, Ms. Price, fine.

15 MS. PRICE: Now you're interrupting me. I
16 wasn't finished. You didn't interrupt him.

17 MR. ALBERTI: Ms. Price -- okay. I'm sorry.
18 Go ahead.

19 MS. PRICE: So my point is I don't
20 understand what -- why we got to -- we're talking about
21 let's close this up -- let's not spend a whole lot of
22 time on it. And so it's right here in writing. I did

1 question him about each of them. You -- you know,
2 you --

3 MR. ALBERTI: So, Ms. Price, I'm trying to
4 understand what the purpose -- what's the relevance of
5 the -- what is the relevance of these?

6 MS. PRICE: The relevance is, as I stated in
7 my PIF, is that a change in our hours is inconsistent
8 with that in other businesses.

9 MR. ALBERTI: So, Mr. Anderson, my point
10 exactly.

11 MS. PRICE: And -- and the evidence of that
12 is in these documents, that their hours are later than
13 and not all the same than what is being proposed our
14 hours be. And I don't know what else to say about it.

15 MR. ALBERTI: Fine. So -- so Ms. -- so all
16 right. So -- so first of all, this is not under -- so
17 Ms. Price's conjecture here is that this shows a
18 contradiction. And I'm -- if the ANC is willing to live
19 with that, I'm fine. But I -- but I wonder if the ANC
20 is willing to live with that conjecture in -- in
21 allowing The Board to give that kind of weight and
22 interpretation to these.

1 MR. WILLIAMS: The ANC was hoping for more
2 of an opportunity during cross examination to -- to
3 address those seeming contradictions. And I'm happy to
4 be a witness because I was directly related to the H
5 Street Country Club and Rock and Roll Hotel's. And I
6 can speak to some extent to -- to RedRocks even though I
7 was not directly involved in that. And I'd like the
8 opportunity to do so if I can, and I will make it brief.
9 I can -- I can be re-sworn in and -- and give you a very
10 brief explanation as to all three of those.

11 MR. ALBERTI: Or we cannot accept it for the
12 purpose in which -- we can -- we cannot accept it for
13 the purpose of which they're offered.

14 MS. MILLER: No. No. We have accepted
15 settlement agreements lots of times because they're part
16 of our record. And --

17 MR. ALBERTI: But she's placing -- she's
18 placing a certain relevance on them, and -- and that --
19 that's -- that's the crux of the argument here. She's
20 placing a certain relevance -- she's making a conjecture
21 as to their interpretation. She's not saying oh, take a
22 look at these and decide for yourself. She's making a

1 conjecture, a proffer as to what -- how we should
2 interpret them, and that's the problem.

3 CHAIRPERSON ANDERSON: All right. Okay.

4 All right. Hold on. Hold on. Hold on. Hold on. Yes,
5 Mr. Silverstein. Yes.

6 MR. SILVERSTEIN: Thank you, Mr. Chairman.
7 I think we can move forward on this. These -- these are
8 being entered, but there has been no testimony, there
9 has been no context, there has been no cross
10 examination. And yet we can take administrative notice
11 of anything that we have ever done.

12 MS. MILLER: Right.

13 MR. SILVERSTEIN: So I will personally look
14 at these and give them the weight they deserve being
15 that there has been no testimony, no context, and no
16 cross examination. There are words.

17 MR. SHORT: I concur with Mr. Silverstein.

18 MS. PRICE: Exhibit 7.

19 CHAIRPERSON ANDERSON: What is 7, ma'am?

20 MS. PRICE: It's being entered.

21 CHAIRPERSON ANDERSON: What's 7?

22 MS. PRICE: The 7 -- Exhibit 7 are

1 statements from -- two different statements or letters
2 to you all from employees of our establishment that
3 feel -- well, I'd like to read them. Am I allowed to do
4 that or --

5 MR. WILLIAMS: Maybe I think if they're
6 admitted, then The Board will be able to read them.

7 CHAIRPERSON ANDERSON: The documents speak
8 for itself. I -- I have read the documents, and
9 they're -- they're documents from -- from employees who
10 basically state detrimental impact that it would if the
11 hours are reduced. And so those -- yeah.

12 MS. PRICE: Correct. And they -- and the
13 purpose for them being entered is that -- the same as
14 we've heard from members of the community, there's also
15 workers within the community that want to be heard from
16 as well.

17 CHAIRPERSON ANDERSON: All right. I mean
18 one of the things that I'll say -- one of the things
19 I'll say about these documents, all the documents that
20 were submitted by the -- the applicant, these are part
21 of ABRA's records. And whether or not we admit them in
22 evidence, whether or not we sit here and discuss it and

1 they are cross examined, they're ABRA's records. And
2 one of the things that I will do -- okay. I need to see
3 for ABRA's records if we're asking -- and we need to be
4 consistent with whatever our decisions are. So whether
5 or not we cross examine them here and the ANC explains
6 them, they're ABRA's records. So then ABRA needs to --
7 needs to be consistent in the decision. And so
8 therefore I said -- so we don't need to have the back
9 and forth that we have not had testimony here or
10 testimony here because they are part of the agency --
11 one of the -- one of the issues that I've seen here is
12 that we -- I have been told that oh, you know, they're
13 part of ABRA's records. No one -- no one puts them into
14 evidence. But ABRA is free to go look at it as
15 administrative records. And so therefore if we have a
16 1,000 settlement agreements that's sitting back there
17 that ABRA's issued a decision, whether or not someone
18 has sat here and cross examined and we had had and -- or
19 someone explain what they are, they are what they are,
20 they're part of our records. So it's irrelevant this
21 going back and forth whether or not -- whether or not
22 the ANC has had an opportunity to explain what it is.

1 They're our records, and so we should know as the agency
2 what our records stands for. So the -- the long and
3 short of it is that these -- all these exhibits that are
4 the settlement agreements, they are part of ABRA's
5 records, they are part of the records whether or not
6 they are admitted specifically here. But it's something
7 that we will consider. ABRA will consider its records
8 if we're going to make a decision, and we don't need an
9 explanation from the ANC. Okay. Simple as that.

10 MR. WILLIAMS: So for Exhibit 7, the two
11 letters, just to formally put an objection that the
12 matters that they're discussing regarding economic
13 impact to employees I would argue are irrelevant to the
14 appropriateness requirements that are set forth in the
15 regulations for what the applicant should be putting
16 forward on a license renewal.

17 CHAIRPERSON ANDERSON: I mean the bottom
18 line the document -- I mean it's not -- it's -- it -- am
19 I going to -- because someone says that I'm cutting
20 their hours because I'm cutting their hours, that it's
21 going to weigh my decision?

22 MR. WILLIAMS: I understand.

1 CHAIRPERSON ANDERSON: It's -- okay. Okay.
2 It's a fact of life, whatever decision we make here.
3 And even if -- if ABRA, we have a witness who states
4 that I want this place to be closed at 10:00. And so we
5 might make a decision -- we might make a decision and
6 say that the ANC says that they want 11:00. It's going
7 to detrimentally impact that person, that person is
8 going to be upset because one of the witnesses -- one of
9 your witnesses says well, 10:00. So whatever decision
10 we make it is going to impact someone somehow. And so
11 therefore it's -- the purpose of this hearing is for
12 everyone to make their decision, state their position,
13 and we will weigh what is in the best interest of the
14 citizens of the District of Columbia for -- for both the
15 taxpayer and for the neighbors who live there. Okay.
16 And I -- this -- this -- and I know maybe it's because
17 it's 8:00 and The Board has been here since 9:00 and
18 folks are contentious and -- and we are not leaving here
19 today until we make a decision. So we'll probably be a
20 little bit more contentious, but I'll say that to you.
21 Okay. But because since we're not going to meet back
22 for another two weeks, I'm not -- I need to make a --

1 make a decision today so at least it's fresh in our
2 minds so I'm not scratching my head trying to figure out
3 who said what and said whatever. Okay. So the --
4 the -- the documents, they're part of the record. Both
5 documents, they are part of the record. We will give it
6 whatever weight it is due. Okay. Simple as that. I'm
7 going to take -- we'll take a ten minute break, and then
8 we'll do closing. What I will ask you to do is to wrap
9 up your case. Please give us -- and just tell us what
10 it is that -- what it is that you have proven, what it
11 is that you want the agency to rule. I mean and please
12 make your closing statements as concise, go to the point
13 and tell us what it is that you want us to do. Okay.
14 And based on the issues that we -- we -- we have here.
15 Okay. So it's four minutes after eight. We'll come
16 back at I'll say 15 minutes after -- 11 minutes, 8:15
17 for two closing arguments. Okay.

18 [Off the record at 8:04 p.m.]

19 [On the record at 8:19 p.m.]

20 CHAIRPERSON ANDERSON: We're -- we're back
21 on the record, and this is the time that we're going to
22 do closing. And the -- the purpose of the closing is to

1 tell us basically that this is the evidence, why -- why
2 is it that The Board should -- why -- why the applicant
3 has met its burden that the business -- that its
4 license -- they should receive the license because it
5 should -- they have met their burden and basically tell
6 us what it is that you're asking The Board to rule. And
7 the protestant should say in closing what it is that
8 they're asking The Board to do, why is it that they
9 believe that the applicant should not be approved for
10 the hours. Because I think from what was told is that
11 you're not contesting the license per se. It's more so
12 the hours. So, Ms. Price, since you know what the
13 issues are, make sure that in your closing you address
14 the issues that you think that that was -- the issues
15 that were raised by the Protestant's PIP, what the
16 issues are. I know that you presented issues that
17 didn't necessarily -- they did not necessarily mirror
18 the protestant's issues. So you need to try to address
19 those issues. Okay.

20 MS. PRICE: Okay.

21 CHAIRPERSON ANDERSON: All right. So you
22 can present please.

1 MS. PRICE: Thanks everyone for -- members
2 of -- of The Board and [inaudible 2:03] for --

3 CHAIRPERSON ANDERSON: Speak up. I can't
4 hear. Please, yeah.

5 MS. PRICE: Okay. That's fine. Again, it's
6 late for me too. I wanted to -- I first want to thank
7 you all for -- I know we wanted -- we started earlier
8 hoping to end earlier. And I know that -- but I do see,
9 you know, a very strong consideration for both sides and
10 for what everybody is has said here. And so I -- I'm
11 very pleased to see the sincerity of which I -- I
12 believe you all take your positions, and I appreciate
13 that very much. I want to say that Touche has heard
14 some things today that -- from -- from the neighbors and
15 people that are around us that we believe can be -- and
16 we will definitely make every effort to address in every
17 way and that will we hope cause us to not -- to cause
18 things to not feel as if we're unworkable and -- or that
19 the current agreement is unworkable and that we are
20 somehow violating what -- what has been put forth. We
21 are requesting that -- let me back up. We received on
22 February the 27th, 2015 a notice that we were being --

1 our license was up for renewal, and that's what we
2 are -- are -- you know, came here to do. We filed
3 petitions and what have you in -- in light of that. And
4 understand that the main concern is the rooftop, the
5 noise on the rooftop and our outdoor space. We also
6 heard that there are other outdoor spaces whether they
7 are right near us or not that possibly there's a
8 difference in the hours but that there's a consideration
9 for what's going on on H Street altogether. Our request
10 is that we be allowed to maintain the current hours that
11 they are for our operations and for our rooftop
12 operations which is a major [inaudible 4:11] that we've
13 had today, which are Sundays through Thursday until 12
14 a.m. and Friday and Saturday until 2 a.m., giving an
15 opportunity to work closer with the residents and the
16 ANC to mitigate the concerns that they have and to build
17 confidence in us as a business right there in their
18 community. Again, you know, we -- we want to be viable,
19 and we want to continue to afford the ability for people
20 to work within our establishment. Our rooftop is only
21 open from April until possibly -- depending on the
22 weather -- the end of -- of -- the beginning of

1 September. And then we take into account times and days
2 that we close due to the weather, rain, and what have
3 you. So we're limited already, and we're asking that no
4 further limitations be put on us by forcing us to close
5 even earlier than we already do. It will be an impact
6 on us as a business, and when we came into this we came
7 in with that. We've had one summer shot at it, and I
8 think we did fairly good even with six complaints that
9 have not been substantiated as to what happened and the
10 outcome of that, six complaints by the -- that have been
11 registered in ABRA during that period of time. And
12 again, we heard -- I heard what our -- our residents,
13 the people that are right there with us are saying. And
14 I want them to have confidence in us and bringing them
15 into our community and to our -- and to our business and
16 have them patronize us as well. And we want to, you
17 know, we want to stay there and we want to keep them
18 there. But we would like -- our request is that no
19 change be made to the current hours that are -- that
20 exist for us under what we have currently. And -- and
21 we agree to closer adhere to the settlement agreement in
22 place until a new one has been renegotiated -- or

1 negotiated. Thank you so much, you guys.

2 CHAIRPERSON ANDERSON: Thank you.

3 Mr. Williams.

4 MR. WILLIAMS: Members of the Board, thank
5 you very much for your time this evening. I'll keep
6 this brief. At the outset I just would like to point
7 out that, you know, Touche is required by the -- the
8 regulations to establish its appropriateness. There are
9 specific factors that should be established. And I
10 think as you go back and think about the testimony today
11 you will realize that there has been very little
12 testimony as to Touche's appropriateness presented by
13 Touche. And also in terms of what the protestants have
14 put on, as you've heard today Touche's current
15 operations have caused actual, not speculative harm, to
16 nearby neighbors. Not only that, Touche has shown a
17 willingness to violate its current settlement agreements
18 openly ignoring existing restrictions in place for noise
19 mitigation. At best Touche's management is unaware of
20 the law in its own settlement agreements. At worst they
21 have affirmatively chosen to violate their neighborhood
22 agreements. Neither explanation is valid here. The

1 status quo has proven to be unacceptable. Neighbors are
2 constantly experiencing loud noises from voices and
3 music from Touche in their rooftop deck inside their
4 homes. And you heard plenty of testimony from neighbors
5 about that. Briefly speaking to the issue of whether
6 the ANC has been consistent in its settlement agreements
7 and treatment of rooftop decks, Commissioner Toonajian
8 spoke to the consistency in the surrounding area and the
9 single member district in which he covered, and I think
10 you would find that there has been consistency there.
11 And when I did have the opportunity to explain supposed
12 inconsistencies I was able to explain what was going on
13 there. And also, remember specifically that there has
14 been testimony that you've heard today as to the
15 comparison between the number of complaints that
16 neighbors have made about Touche versus other
17 establishments that have similarly situated rooftop
18 decks in ANC 6A. The neighbors in the ANC are here
19 before you not asking that you deny their renewal.
20 We're not asking that you shut the rooftop down, and
21 we're not even asking that you severely restrict their
22 hours which honestly we think could be justified here

TOUCHE

1 given what's -- what's happened. Instead we acknowledge
2 the value such as space to the establishment, and we do
3 acknowledge that Touche has been an improvement over who
4 may have been there before. This is why instead we're
5 here asking for three things. We're asking for a basic
6 scaling -- a minor scaling back of Touche's rooftop deck
7 hours to close at 11 p.m. on weeknights and 12 a.m. on
8 weekends. We're asking for clarification because there
9 seems to be some disagreement or misunderstanding
10 regarding the limit of 50 patrons on the roof, and we
11 ask that that be set as an actual limit of 50 patrons on
12 the roof to assist in mitigating noise. And we are
13 asking for an order that Touche not be allowed to have
14 any sort of music or entertainment regardless of whether
15 it's background music, live entertainment, or DJs who
16 are actually live entertainment on their roof deck. We
17 believe that this proposal is a reasonable compromise.
18 It's not ideal to the neighbors. It's not ideal to the
19 ANC. In fact, you heard at least one neighbor talk
20 about how they were hoping for even stricter hours. But
21 we believe this is a reasonable compromise that will
22 give neighbors peace of mind and allow Touche to

1 continue to use its roof deck and be a successful
2 business in our community. With all that, thank you
3 very much for your time and your patience today, and
4 that's all I have.

5 CHAIRPERSON ANDERSON: So you're saying no
6 entertainment on the rooftop?

7 MR. WILLIAMS: No entertainment or music of
8 any kind on the roof deck.

9 MR. ALBERTI: Another way of putting it is
10 that are you asking for no amplified sound?

11 MR. WILLIAMS: Yes. Although I -- I --
12 there's the issue of whether like acoustic bands and
13 entertainment falling under entertainment, which is why
14 I specify entertainment plus amplified sound.

15 MR. ALBERTI: That's why I'm asking.

16 MR. WILLIAMS: Yes.

17 MR. ALBERTI: So you're really referring to
18 no music?

19 MR. WILLIAMS: No amplified.

20 MR. ALBERTI: When you say no music, you're
21 really saying no amplified sound?

22 MR. WILLIAMS: I apologize. Yes. Amplified

1 sound.

2 MR. ALBERTI: Okay. And no entertainment.
3 I got it. All right. I just want -- I just want to
4 make clear what you're asking for.

5 MR. WILLIAMS: Sure. Thank you.

6 MS. MILLER: So what kind of music would be
7 allowed just to be clear?

8 MR. WILLIAMS: None.

9 MS. MILLER: You say none?

10 MR. WILLIAMS: I mean I guess if they're --
11 I mean --

12 MR. SHORT: That's what he's saying, what I
13 heard him say. Yeah.

14 MR. WILLIAMS: And that -- that's what I'm
15 asking.

16 MS. MILLER: Okay. None.

17 MR. WILLIAMS: Yes.

18 CHAIRPERSON ANDERSON: All right. Thank you
19 very much for the presentation. I think that the -- the
20 -- at least the closing were very clear, very -- very
21 clear and very concise. And at least -- at least in my
22 mind I know that when we will deliberate I will know

1 what it is that both parties are requesting, and I think
2 that's what I like. That's one of the reasons I'd asked
3 both parties to do that. A lot of times when we do
4 protest hearings we get lost in the weeds and we go on.
5 But at the end of the day it's clear that both parties
6 are -- it's clear to both parties what it is that we're
7 asking for. So here's the -- the part that probably,
8 Mr. Williams, you will understand this and maybe
9 Ms. Price will not understand this. And it's not a
10 putdown. But it says does the parties wish to file
11 proposed findings of facts and conclusions of law or
12 waive their right to do so? And what this means,
13 Ms. Price and Mr. Williams -- and I said because maybe
14 Mr. Williams would because I assume because he's a
15 lawyer he's done this before. You can say that you know
16 what, I've done my best and I've presented my case, and
17 I want to you make the decision based on the hearing
18 that we have today. Or you can say that you know what,
19 I want to wait until the transcript comes and I'll
20 write -- then I'm going to write -- do findings of facts
21 and conclusions of law, and then you can use that to
22 make a decision. But -- so you have an option. We can

1 close the record on -- on the presentation today or do
2 you want to wait until the transcript is available? The
3 transcript probably is available in about three weeks.
4 And then after three weeks you have probably about 30
5 days to submit something in writing to us to make a
6 decision.

7 MR. WILLIAMS: If it helps, Ms. Price --

8 CHAIRPERSON ANDERSON: And it's no -- and
9 it's no new evidence. It's basically based on what was
10 presented before. So it's not like you forgot to
11 bring -- to do something before. No. It's basically --
12 that's why I said you would review the transcript and if
13 you -- there are things you want to bring out, but
14 not --

15 MR. WILLIAMS: If it -- if it helps at all
16 I -- I intend to -- to waive the proposed conclusions of
17 law and findings and fact.

18 CHAIRPERSON ANDERSON: Right. And meaning
19 that we'll just -- you have presented your case, and
20 we'll make a decision based on what's presented, that
21 you don't need to wait for -- to make closing arguments
22 and draw -- Ms. Price.

1 MR. ALBERTI: Can I just -- just add that --

2 CHAIRPERSON ANDERSON: Go ahead,

3 Mr. Alberti.

4 MR. ALBERTI: -- it's not -- it's not
5 very -- it's not very often that we have parties submit
6 that document for protests. Even in other cases it's --
7 it's seldom done, but especially in protests it's not
8 typically done.

9 MS. PRICE: Well -- well, I guess I'm a
10 little confused as far as we're -- you said you wanted
11 -- what we're asking for is outside of what we asked for
12 begin with I guess or --

13 CHAIRPERSON ANDERSON: I'm sorry.

14 MS. PRICE: We -- we waive. I think we
15 waive.

16 CHAIRPERSON ANDERSON: All right. Okay. So
17 The Board will issue a decision in 90 days. So hold on.
18 As chairperson of the Alcoholic Beverage Control Board
19 for the District of Columbia and in accordance with
20 Section 405 of The Open Meetings Amendment Act of 2010 I
21 move that the ABC Board hold a closed meeting for the
22 purpose of seeking legal advice -- for seeking legal --

1 legal advice on Case Number 15-PRO-00023, Touche as per
2 Section 405(b)4 of The Open Meetings Amendment Act of
3 2010 and deliberating upon Case Number 15-PRO-00023,
4 Touche for the reasons cited in Section 405(b)13 of The
5 Open Meetings Amendment Act of 2010. Is there a second?

6 MR. SHORT: Second.

7 CHAIRPERSON ANDERSON: Mr. Short has
8 seconded the motion. I will now take a roll -- a roll
9 call vote on the motion before us now that it has been
10 seconded. Ms. Miller.

11 MS. MILLER: Agree.

12 CHAIRPERSON ANDERSON: Mr. Alberti.

13 MR. ALBERTI: I agree.

14 CHAIRPERSON ANDERSON: Mr. Short.

15 MR. SHORT: I agree.

16 CHAIRPERSON ANDERSON: Mr. Silverstein.

17 MR. SILVERSTEIN: I agree.

18 CHAIRPERSON ANDERSON: Mr. Anderson. I
19 agree. As it appears that the motion has passed I
20 hereby give notice that the ABC Board will hold a closed
21 meeting in the ABC Board conference room pursuant to The
22 Opening Meetings Amendment Act of 2010 and issue an

1 order within 90 days. Thank you very much for your
2 presentation.

3 MS. PRICE: Thank you very much.

4 MR. WILLIAMS: Thank you.

5 CHAIRPERSON ANDERSON: Okay.

6 (Whereupon the above-entitled matter was
7 concluded.)

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