

UNION KITCHEN

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

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IN THE MATTER OF: :

Union Kitchen, LLC,
t/a Union Kitchen Case Number 15-CMP-00662
538 3rd Street NE
License Number 98204
Retailer B

ANC 6C

SHOW CAUSE HEARING

- - - - -X

Wednesday, May 4, 2016

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

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2 CHAIRPERSON:

3 DONOVAN W. ANDERSON, Presiding

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5 OTHER PERSONS PRESENT:

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7 RUTHANNE MILLER, BOARD MEMBER

8 JAMES SHORT, BOARD MEMBER

9 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 --
3 we're back on the record. We have a show cause hearing,
4 Case Number 15-CMP-00662, Union Kitchen, License Number
5 98204. Will the parties please approach and identify
6 themselves for the record please. I would also ask that
7 you identify yourself for the record. There's a piece
8 of paper at the table in front of you. Could you please
9 sign your name in please.

10 MR. SINGER: Sure. I'm Jonas Singer the
11 owner of Union Kitchen.

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

14 CHAIRPERSON ANDERSON: Good afternoon. And
15 your part it.

16 MS. HALFPAP: Yeah. I'm Rachel Halfpap.
17 I'm the finance manager at Union Kitchen.

18 CHAIRPERSON ANDERSON: All right. Are there
19 any preliminary matters in this case?

20 MR. RIVERO: There are not. The Government
21 is ready for the hearing.

22 CHAIRPERSON ANDERSON: Okay.

1 MR. SINGER: Yeah. We had one question.
2 Are we able to have a witness -- or testimony by phone
3 for someone who had an obligation and couldn't attend in
4 person?

5 MR. ALBERTI: What was the question?

6 CHAIRPERSON ANDERSON: Can he have a witness
7 testify by phone?

8 MR. ALBERTI: See what the Government says
9 about this.

10 CHAIRPERSON ANDERSON: Mr. Rivero, your
11 position?

12 MR. RIVERO: I don't have enough information
13 to take a position because for instance I don't know
14 what reason there is that someone cannot be ready to
15 testify here today. So I can't answer your question.

16 CHAIRPERSON ANDERSON: Can you tell us who
17 is this witness, what is it? Just give us a -- what is
18 it that the person would testify to and why is it that
19 the person is not here today to testify in person, sir?

20 MR. SINGER: Sure. It is my business
21 partner Cullen Gilchrist who is unable to be here today
22 because of an obligation he had at this time that was --

1 preceded him being able to attend. But he was there the
2 night of the Inspector Jones' visit and can speak to
3 some of what happened that evening.

4 CHAIRPERSON ANDERSON: But -- and -- and
5 when is it that you realized that this person was not
6 available to testify today, sir?

7 MR. SINGER: I don't know when his
8 obligation was scheduled, but this is something he had
9 to attend to.

10 CHAIRPERSON ANDERSON: I'm asking you, sir,
11 when is it that you realized that.

12 MR. SINGER: I realized that today.

13 CHAIRPERSON ANDERSON: I mean part of the
14 problem that I have -- I mean this hearing has been
15 scheduled for a while back. I know that you're here for
16 the show cause hearing, and so you have been aware of
17 the -- of the time for the hearing. So therefore if you
18 had a critical witness that was not available if they
19 had something that was scheduled before, then it's up to
20 them -- you to ask for a continuous. I mean I think
21 that asking at the last minute for -- and I'm -- I need
22 to consult legal because I'm not sure whether or not

1 this is something that we can have telephone testimony.
2 But I -- I do believe that if the person had a previous
3 engagement, that's not -- that's not -- that's not good
4 cause to have -- for them not to be here today. But I
5 will -- I'll -- I need to just ask my general counsel
6 whether or not this is even permissible. I don't know.

7 MR. ALBERTI: It should not be. Ask her.

8 CHAIRPERSON ANDERSON: They're asking for
9 telephone testimony. Is that something? Although --
10 it's my understanding although the regs are silent on
11 whether or not telephone testimony is permissible, I --
12 I'm not going to allow the telephone testimony and I'll
13 give you the reasons why I don't think that I will allow
14 it in this particular case. This -- this hearing has
15 been scheduled for a while. I know that you were here
16 for the status case -- the status hearing. And at --
17 on -- and I'll just say this from my memory, sir. At
18 the status hearing you were ready to argue your case,
19 and I did advise you that that was not the proper forum
20 to argue your case, that -- that the proper forum to
21 argue the case was at the show cause hearing. So you
22 have been aware a while back that this hearing was

1 scheduled because I think the show cause hearing was
2 held on April 6, 2016. So you -- you have been aware at
3 least since April 6 that this hearing was scheduled for
4 today. It's -- it's not -- the representation that
5 preparation that you're making today is not that it was
6 an emergency -- that you had a -- a witness who had an
7 emergency morning are this morning who could not appear.
8 The representation that you made was that they had a
9 previous engagement, and that's just something that you
10 should aware of. You could have requested a continuous
11 from counsel and The Board. If counsel had agreed, The
12 Board would probably agree to a continuous. And even if
13 the counsel hasn't agreed, The Board would consider it
14 and make a determination on whether or not we would
15 grant a continuous. So for those reasons The Board will
16 not -- and I guess I will -- I mean I'm speaking as a
17 board chair. But I just want to make sure that my
18 colleagues are in favor or agree that we should not
19 grant telephone testimony in this particular case. Is
20 that -- I mean, Ms. Miller, your position?

21 MS. MILLER: No. Yeah. I would agree. I
22 certainly haven't -- I mean it may have been in hearings

1 that I wasn't participating in, but I have not seen it.
2 I think it's only in rare -- would be in only rare
3 situations. And I don't know if your witness is in
4 town, whether or not they could get over at a certain
5 point or not. But that -- that's really the way to go
6 if they could.

7 CHAIRPERSON ANDERSON: Thank you,
8 Ms. Miller. Mr. Alberti.

9 MR. ALBERTI: I agree and certainly not on
10 this short notice.

11 CHAIRPERSON ANDERSON: Mr. Short.

12 MR. SHORT: I concur because I wouldn't know
13 who we're hearing over the telephone. It could be who
14 we say it is or it could be -- it could be somebody from
15 the White House. I don't know who he's calling. That's
16 all I have.

17 MR. SINGER: Can we FaceTime? Then you can
18 see him.

19 CHAIRPERSON ANDERSON: All right. Well,
20 it's -- Mr. -- Mr. --

21 MR. SINGER: So someone has to be an
22 embodied being here?

1 CHAIRPERSON ANDERSON: Sir, sir, sir,
2 please, please. Mr. Silverstein.

3 MR. SILVERSTEIN: In my five years on The
4 Board we have not allowed it. The only exceptions I
5 would make would be those that are federal -- federally
6 required such as the Americans with Disabilities Act, if
7 person cannot physically be here because of a disability
8 or something of that sort which is mandated upon us.
9 Otherwise I would fall on precedent and I would lien on
10 precedent, and I believe that's what we should do.

11 CHAIRPERSON ANDERSON: Well, sir, it's
12 the -- it's the position on The Board that good cause
13 has not been shown why telephone testimony should be
14 granted. And so therefore we will not -- The Board will
15 not allow telephone testimony to -- to -- to move
16 forward. If you believe that it's a -- if this is a
17 critical witness, you can -- you can of course talk to
18 Mr. Rivero if you want to continue the case as to
19 whether or not he would agree. I don't know what he's
20 going to state. Then The Board will make a decision on
21 that. But that's if you believe that he's a critical
22 witness, you're -- of course, you can ask counsel would

1 they agree to a continuous and The Board will make a
2 decision based on what the recommendation of counsel.
3 So what's your position? What's your position, sir?

4 MR. SINGER: Thank you for your
5 consideration. Let's proceed.

6 CHAIRPERSON ANDERSON: Okay. Thank you,
7 sir. All right. All right. I guess does the
8 Government -- is the Government ready to move forward?

9 MR. RIVERO: Yes.

10 CHAIRPERSON ANDERSON: And does the
11 Government wish to make an opening statement?

12 MR. RIVERO: Yes.

13 CHAIRPERSON ANDERSON: Go ahead, sir.

14 MR. RIVERO: Good afternoon, Board Members.
15 We are here today in the show cause matter of Union
16 Kitchen LLC trading as Union Kitchen located at 5358
17 (sic) 3rd Street NE in Washington D.C. The show cause
18 notice issued in this matter concerns the charge that
19 the licensee failed to take reasonable measures to
20 ensure that property used by the licensee is kept free
21 of litter in violation of DC Official Code 25-726. It
22 is our belief that by a preponderance of the evidence

1 the testimony of our witness, ABRA Investigator Earl
2 Jones, will show that the licensee's trash receptacle
3 call was overflowing with trash which was exposed in the
4 rear of the establishment's property on the evening of
5 August 19th, 2015. Thank you.

6 CHAIRPERSON ANDERSON: Sir, do you wish to
7 make an opening statement now or you could do that once
8 -- prior to presenting your case?

9 MR. SINGER: I'll do it prior to presenting
10 our case. Thank you.

11 CHAIRPERSON ANDERSON: Okay. So you reserve
12 the right. All right. Fine. Does the Government wish
13 to call its first witness?

14 MR. RIVERO: Yes. The Government will call
15 Investigator Earl Jones.

16 CHAIRPERSON ANDERSON: Yes. Can you raise
17 your right hand, sir, please.

18 INVESTIGATOR JONES: Yes, sir.

19 CHAIRPERSON ANDERSON: Do you swear -- do
20 you swear or affirm to tell the truth and nothing but
21 the truth?

22 INVESTIGATOR JONES: Yes, sir.

1 CHAIRPERSON ANDERSON: Thank you. Have a
2 seat. Your witness, sir.

3 MR. RIVERO: Thank you. Good afternoon.
4 Will you please state your name for the record.

5 INVESTIGATOR JONES: Earl Jones.

6 MR. RIVERO: Thank you. Mr. Jones, what is
7 what is your occupation?

8 INVESTIGATOR JONES: I am a compliance
9 investigator with the Alcoholic Beverage Regulation
10 Administration.

11 MR. RIVERO: And how long have you been
12 employed in that capacity?

13 INVESTIGATOR JONES: Since September of
14 2009.

15 MR. RIVERO: Okay. And what are your duties
16 as an ABRA investigator?

17 INVESTIGATOR JONES: As an ABRA investigator
18 I conduct inspections and investigations of licensed ABC
19 establishments within the District of Columbia.

20 MR. RIVERO: Okay. And are you familiar
21 with the establishment known as Union Kitchen?

22 INVESTIGATOR JONES: Yes, sir.

1 MR. RIVERO: And how are you familiar with
2 this establishment?

3 INVESTIGATOR JONES: I became familiar with
4 the establishment because our office has received an
5 anonymous complaint about their rear trash containers.

6 CHAIRPERSON ANDERSON: Okay.

7 MR. RIVERO: Okay. I'm going to go ahead
8 and show you a document that's marked as Government's
9 Exhibit 1 for identification a copy of which has been
10 provided to the licensee prior to this hearing, and I'd
11 like you to take a moment to look at this and tell me
12 what this document is.

13 INVESTIGATOR JONES: This is a copy of my
14 report.

15 MR. RIVERO: And is that an accurate copy of
16 the report that you drafted for this investigation?

17 INVESTIGATOR JONES: Yes, sir.

18 MR. RIVERO: Thank you. The Government
19 would move into evidence at this time Government's
20 Exhibit 1 which is the investigator's report in this
21 case.

22 CHAIRPERSON ANDERSON: Do you have any

1 objection to the document, sir?

2 MR. SINGER: No, sir. Thank you.

3 CHAIRPERSON ANDERSON: It's -- it's so
4 moved. Thank you.

5 MR. RIVERO: Thank you. So when did you
6 visit the establishment in response to this complaint
7 that you just testified about?

8 INVESTIGATOR JONES: I visited the
9 establishment on August 11, 2015.

10 MR. RIVERO: Okay. And what -- and around
11 what time if you can recall?

12 INVESTIGATOR JONES: At 3:40 p.m.

13 MR. RIVERO: Okay. And when you arrived at
14 the establishment with whom did you speak if any person?

15 INVESTIGATOR JONES: I spoke to an
16 individual by the name of Cullen Gilchrist. He stated
17 he was the owner of the establishment.

18 MR. RIVERO: Okay. And what was your
19 conversation with Mr. Gilchrist on that afternoon?

20 INVESTIGATOR JONES: The conversation
21 involved me advising him of the complaint that was
22 levied against the establishment from an anonymous

1 complainant regarding their -- again their rear trash
2 receptacles overflowing with trash, issues with -- there
3 was also -- the complainant also complained about issues
4 with delivery trucks that were making deliveries; while
5 leaving there I guess refrigeration units running, and
6 that was causing a noise issue in the neighborhood,
7 those types of things.

8 MR. RIVERO: Okay. And what was
9 Mr. Gilchrist's response to your report?

10 INVESTIGATOR JONES: His response was that
11 he probably knew who the complainant was. He stated
12 that he had tried to make efforts to meet with the
13 complainant to try to resolve issues. He made mention
14 of the -- the truck -- the delivery trucks, that that
15 was kind of out of his purview, he couldn't really do
16 anything about the trucks making the deliveries and the
17 refrigeration units running. He also stated that he
18 understands that the rear trash receptacles were an
19 issue for the complainant that he believes is the one
20 who lodged the -- lodged the issue with our office and
21 made mention that he was in the process of going through
22 the District of Columbia to construct a rear -- sort of

1 a storage facility for the trash receptacles.

2 MR. RIVERO: Okay. What happened after
3 that?

4 INVESTIGATOR JONES: After that we -- I
5 asked him to review the licenses. I looked at the
6 licenses, made sure everything was current and
7 up to date and conducted the regulatory inspection of
8 the licenses. And I advised him that I would be
9 monitoring the establishment for -- for the issues that
10 were -- that the complaint was about going forward.

11 MR. RIVERO: All right. I'm going to stop
12 you there for a minute. Looking at the report that is
13 in evidence right now, you have an Exhibit 3 in your
14 report.

15 INVESTIGATOR JONES: Uh-huh.

16 MR. RIVERO: And can you tell me what that
17 is?

18 INVESTIGATOR JONES: That's the regulatory
19 inspection.

20 MR. RIVERO: Okay.

21 INVESTIGATOR JONES: Yes.

22 MR. RIVERO: And it -- and it talks about

1 their -- the hours of --

2 INVESTIGATOR JONES: Operation.

3 MR. RIVERO: -- operation.

4 INVESTIGATOR JONES: Yes, sir.

5 MR. RIVERO: And what are they?

6 INVESTIGATOR JONES: On this one this says
7 the hours of operation or the sales are to 10:00, 10
8 p.m.

9 MR. RIVERO: Okay. So you said you left the
10 establishment after the conversation?

11 INVESTIGATOR JONES: Yes, sir.

12 MR. RIVERO: Okay. And then what was your
13 next action in this investigation?

14 INVESTIGATOR JONES: In the monitoring
15 effort I visited the establishment again on Wednesday,
16 August 19th at 8 p.m. I drove down the F Street side of
17 the establishment which leads to an opening to their
18 rear patio area. And from that -- from that view I
19 could see that they had -- trash was overflowing from
20 their trash container.

21 MR. RIVERO: Okay. Let me stop you again
22 because in your report it looks like you have a

1 photograph here.

2 INVESTIGATOR JONES: Yes, sir.

3 MR. RIVERO: All right. I'm calling your
4 attention to Exhibit 2 of your report which is in
5 evidence.

6 INVESTIGATOR JONES: Uh-huh.

7 MR. RIVERO: Okay. So does this photograph
8 reflect what you're talking about now, this visit?

9 INVESTIGATOR JONES: Yes, sir.

10 MR. RIVERO: Okay. Who took that
11 photograph?

12 INVESTIGATOR JONES: I took the photograph.

13 MR. RIVERO: Okay. And that is a photograph
14 of what?

15 INVESTIGATOR JONES: This is a photograph of
16 the rear patio area from the F Street side, and it shows
17 the two picnic tables. It shows the numerous trash
18 containers which also shows the overflowing of trash and
19 the receptacle is open.

20 MR. RIVERO: Okay. So then you took the
21 photograph. And what did you do right after you took
22 the photograph?

1 INVESTIGATOR JONES: Well, at that point in
2 time normally when -- depending on the circumstance, but
3 normally when you encounter a violation, you make
4 advisement of the violation to the establishment.
5 However, the establishment was closed at that time.

6 MR. RIVERO: Okay. Well, you just testified
7 that the establishment has hours of sales until 10 p.m.

8 INVESTIGATOR JONES: Yes, sir.

9 MR. RIVERO: So how did you surmise that the
10 establishment was closed after you took that photo.

11 INVESTIGATOR JONES: The lights were off and
12 no one was inside.

13 MR. RIVERO: Okay. All right. Once you
14 made that determination what did you do next?

15 INVESTIGATOR JONES: The next time I visited
16 the establishment was on August 27th, it was a Thursday,
17 to make the advisement of the violation that was
18 observed on the 19th.

19 MR. RIVERO: August 27th?

20 INVESTIGATOR JONES: Yes, sir.

21 MR. RIVERO: Okay. And was the
22 establishment when you visited on August 27th.

1 INVESTIGATOR JONES: Yes, sir. Yes, sir.

2 MR. RIVERO: Okay. Around what time were
3 you there?

4 INVESTIGATOR JONES: I want to say it was
5 probably around 4 or 5:00.

6 MR. RIVERO: Okay. All right. And with
7 whom did you speak when you visited?

8 INVESTIGATOR JONES: I spoke to an
9 individual by the name of Jacob Perkinson. He stated
10 that he was the GM for the establishment.

11 MR. RIVERO: Okay. And what did you say to
12 Mr. Perkinson?

13 INVESTIGATOR JONES: I spoke to him about
14 the -- the complaint that was levied against the
15 establishment, and he stated that he was aware of the
16 complaint. And I also wanted to see if he and
17 Mr. Gilchrist were on the same page regarding the rear
18 trash storage unit that they were trying to construct.
19 And he stated that yes, that that was something that
20 they were trying to put in place and that -- you know,
21 that -- that they would -- he said that he understood
22 the notification of the violation, and they would deal

1 with the problem.

2 MR. RIVERO: Okay. When you say he
3 understood the notification of the violation what did
4 you notify him of?

5 INVESTIGATOR JONES: I notified him that I
6 observed overflowing of trash on the 19th of August and
7 the trash receptacle was open.

8 MR. RIVERO: And what happened after that?

9 INVESTIGATOR JONES: After that I left the
10 establishment.

11 MR. RIVERO: Okay. Okay. So you conducted
12 a regulatory inspection at the time?

13 INVESTIGATOR JONES: Yes, sir.

14 MR. RIVERO: All right. And then you left
15 the establishment?

16 INVESTIGATOR JONES: Oh, yes. Yes, sir.

17 Yes, sir.

18 MR. RIVERO: All right. Let's look at
19 Exhibit 3 in your report.

20 INVESTIGATOR JONES: Uh-huh.

21 MR. RIVERO: This is the document that you
22 said you wrote down the hours there?

1 INVESTIGATOR JONES: Yes, sir.

2 MR. RIVERO: Is that your regulatory
3 inspection?

4 INVESTIGATOR JONES: Yes, sir.

5 MR. RIVERO: Okay. And when you did conduct
6 that inspection.

7 INVESTIGATOR JONES: This was on the 27th.

8 MR. RIVERO: Okay.

9 INVESTIGATOR JONES: Correct.

10 MR. RIVERO: All right. Did you take any
11 further -- did you make any further inquiries after the
12 visit with Mr. Perkinson?

13 INVESTIGATOR JONES: No, sir.

14 MR. RIVERO: Okay. The Government has no
15 further questions.

16 CHAIRPERSON ANDERSON: All right. Thank
17 you. Do you have any -- do you wish to ask him any
18 questions, sir, based on the report and based on the
19 questions that Mr. Rivero had asked?

20 MR. SINGER: I would. Could I have one
21 moment? Thank you. Okay. Hello, Mr. Jones.

22 INVESTIGATOR JONES: Hello.

1 MR. SINGER: First question, could you
2 articulate for me what constitutes control of litter
3 according to D.C. Code 25-726?

4 INVESTIGATOR JONES: Basically it's when the
5 trash is exposed to the environs of the -- of the
6 surrounding areas. So that could be open trash
7 containers. That could be overflowing of trash. That
8 could be rats going through the dumpsters, those types
9 of things.

10 MR. SINGER: Would you agree as I'm reading
11 it go right now that the code states that -- and I quote
12 -- the license under a retailer's license -- the
13 licensee under a retailer's license shall take
14 reasonable measures to ensure that the immediate
15 environs of the establishment are kept free of litter?

16 MR. RIVERO: I'm going to go ahead and
17 object to the question at this time. The investigator
18 is not going to be called upon to give a legal
19 conclusion. It is his job to state what he saw on that
20 date. And it is the lawyer's jobs to talk about what
21 the legal conclusions are in this matter.

22 CHAIRPERSON ANDERSON: Can you rephrase your

1 question, sir? Mr. Rivero is correct. We're not asking
2 him to make a legal conclusion. So if you can rephrase
3 the question so you're not asking him to -- to -- yeah.

4 MR. SINGER: Mr. Jones, would you mind
5 explaining how ABRA inspectors are trained on the
6 enforcement of the law so as that the enforcement meets
7 the letter of the law?

8 MR. RIVERO: Well, I'm sorry. I'm going to
9 have to object. I don't see how that is relevant to the
10 facts of the case. The investigator testified there was
11 trash overflowing.

12 MR. SINGER: I believe it's reason -- if I
13 can state my case. I believe it's important because the
14 letter of the law says reasonable measures, and I'm
15 going to show that we've taken reasonable measures over
16 a very long period of time and that we are thus meeting
17 the letter of the law. And I think it's important that
18 we establish that an inspector is aware of that and
19 knows how to enforce the law and that we are able to
20 justify that we've taken reasonable measures to meet the
21 letter of the law.

22 CHAIRPERSON ANDERSON: Well, I mean I -- I

1 think you could ask him the question about his training.
2 I don't have a problem. I think that's appropriate. So
3 you could ask him about the training, how to -- how
4 basically to know that there's a violation. So I mean
5 if you're -- if that's the question you're asking him,
6 you can ask him that.

7 MR. SINGER: Okay. So I would resubmit my
8 question.

9 CHAIRPERSON ANDERSON: Will you repeat the
10 question unless he knows the question that's been asked.

11 INVESTIGATOR JONES: I know the question.

12 CHAIRPERSON ANDERSON: Okay.

13 INVESTIGATOR JONES: I will tell you that
14 there -- there was no formal class training for this.
15 However, when you have trash exposed to the environ,
16 again that's just the same definition as what I
17 explained to you earlier. So if I come to your
18 establishment and I see that your dumpsters are open, if
19 you have trash overflowing, that's -- that's being
20 exposed to the environs.

21 MR. SINGER: Understood. And so is the --
22 is the enforcement about in the submission of a

1 violation against a licensee with regards to trash being
2 open or a violation that the licensee is not taking
3 reasonable measures?

4 INVESTIGATOR JONES: You're asking me about
5 the licensee not taking reasonable measures. Is that
6 what you're asking me?

7 MR. SINGER: Yes, sir.

8 INVESTIGATOR JONES: Okay. So when I
9 observed what I saw to me that wasn't taking reasonable
10 measures, and the establishment was closed.

11 MR. SINGER: Could you in your mind define
12 what reasonable measure means?

13 INVESTIGATOR JONES: The trash is closed.

14 MR. SINGER: Okay. Are there other things
15 that are reasonable measures that you would expect to
16 see out of a licensee?

17 INVESTIGATOR JONES: The trash is closed.

18 MR. SINGER: Okay. What time was the
19 photograph taken?

20 INVESTIGATOR JONES: At 8:00.

21 MR. SINGER: 8:00 in the morning, 8:00 in
22 the evening?

1 INVESTIGATOR JONES: At night.

2 MR. SINGER: 8:00 at night.

3 INVESTIGATOR JONES: Yes, sir.

4 MR. SINGER: And you've stated that the
5 operation was closed at that time?

6 INVESTIGATOR JONES: Yes, sir.

7 MR. SINGER: Could you articulate what our
8 stated hours of operation are?

9 INVESTIGATOR JONES: I see that your hours
10 of operation are until 10:00 p.m.

11 MR. SINGER: Okay. How many times have you
12 visited Union Kitchen Grocery located at that corner?

13 INVESTIGATOR JONES: Probably three times.

14 MR. SINGER: Okay. Have you returned since
15 the issuance of this violation?

16 INVESTIGATOR JONES: Yes.

17 MR. SINGER: Okay. And could you articulate
18 what you found upon those return visits.

19 INVESTIGATOR JONES: The dumpsters were
20 closed.

21 MR. SINGER: Okay. Thank you.

22 INVESTIGATOR JONES: There was no trash on

1 the ground.

2 MR. SINGER: Could you tell us how many
3 complaints you received prior to the -- this visit.

4 INVESTIGATOR JONES: I don't know if I could
5 do that.

6 MR. SINGER: Is it more than one complaint?

7 INVESTIGATOR JONES: Yes.

8 MR. SINGER: Do you know that -- is it more
9 than five complaints?

10 INVESTIGATOR JONES: It could be right at
11 five.

12 MR. SINGER: In your work space perhaps
13 around the water cooler has there ever been conversation
14 around the complaints that we have received at our
15 location?

16 INVESTIGATOR JONES: No.

17 MR. SINGER: Okay. How many complaints have
18 you -- has ABRA received since the issuance of this
19 violation?

20 INVESTIGATOR JONES: I couldn't tell you
21 that. I know that I haven't received any.

22 MR. SINGER: Okay. Do you know if ABRA has

1 received any or multiple.

2 INVESTIGATOR JONES: I couldn't tell you
3 that.

4 MR. SINGER: Okay. And so how do you end up
5 receiving a complaint? Is it triaged to you through
6 ABRA, or is it directly to your inbox? How does that
7 come about?

8 INVESTIGATOR JONES: Our offices has --
9 they -- they -- we have a hotline as well as we have an
10 online process. So a complainant can file an online
11 complaint through our agency or either they can call our
12 hotline.

13 MR. SINGER: Okay. And what are
14 complainants permitted to complain about that would then
15 facilitate a visit from an ABRA inspector?

16 MR. RIVERO: I'm trying to give as much
17 leeway as possible, but I don't see the relevance of
18 this question. It is already established that the
19 investigator was responding to a complaint. The
20 complaint is the subject of the facts of this case.

21 MR. SINGER: I think that there's --

22 MR. RIVERO: That's what this case is about.

1 CHAIRPERSON ANDERSON: Hold on, sir. I'm
2 getting to you.

3 MR. RIVERO: So the kinds of different
4 complaints that could be the subject matter of an
5 investigator's investigation are not relevant since any
6 other hypothetical complaint is not before this board.
7 The only complaint is a concrete complaint about trash,
8 and that's what this case is about.

9 CHAIRPERSON ANDERSON: Yes, sir.

10 MR. SINGER: So I think there's a couple
11 things I'd like to establish during the course of this
12 hearing. One is that we need to be found in violation
13 of not having taken reasonable measures and that the
14 inspector needs to be aware of that and defend what a
15 reasonable measure is. And secondly, we are the victims
16 of a number of nuisance complaints from our neighbors.
17 We have passed dozens probably of ABRA inspections at
18 this point. And to be fined or to be accused of one
19 time during our hours of operation when we were open not
20 being in control of our trash or not taking reasonable
21 measures does not constitute this violation. And
22 therefore I think it is important to create the case and

1 create an understanding that we have received a
2 disproportionate amount of complaints about our
3 establishment for really no good reason as all of those
4 inspections have turned up nothing except this one
5 photograph which I think also does not constitute a
6 violation of the reasonable measures we've taken to
7 control the trash.

8 CHAIRPERSON ANDERSON: But I mean that's
9 more for closing argument, sir. But I -- I think a lot
10 of the -- a lot of the questions you're asking towards
11 the investigator, I -- I mean that's -- the arguments
12 that you're making I mean are reasonable arguments as
13 closing -- as presenting your case. But I don't think
14 that they're -- they're questions that are appropriate
15 for the investigator at least the way the -- the
16 questions are phrased. So I will sustain the objection
17 and ask you to move on to another area.

18 MR. SINGER: Okay. Inspector Jones, how
19 many complaints do you receive and investigate on a
20 weekly basis if you could estimate?

21 MR. RIVERO: Again, I'm going to have to
22 object.

1 CHAIRPERSON ANDERSON: Well, why don't
2 you -- I -- I hear your objection. I'm going to sustain
3 it and -- I'm -- I'm sorry -- I'm going to overrule it.
4 And I know, Mr. Rivero, you are -- you are an attorney
5 and a very good attorney. He's a layperson, and so --
6 so I'll just give him a little leeway. I'll see where
7 he's going. I do -- but I do appreciate the fact that
8 you're on the ball. So I'll give him some leeway to see
9 where he's going.

10 MR. SINGER: Thank you.

11 CHAIRPERSON ANDERSON: But remember, sir,
12 you are treading on -- on -- on a road that counsel has
13 some objections with. So he's going to object. But I'm
14 giving you some leeway to see where you're going.

15 MR. SINGER: I understand. Thank you. So I
16 would resubmit my question.

17 CHAIRPERSON ANDERSON: Yes. Go ahead, sir.

18 INVESTIGATOR JONES: It depends on -- on --
19 on the week. I can't really -- I can't verify a number
20 for you.

21 MR. SINGER: Okay.

22 INVESTIGATOR JONES: It could be anywhere

1 from one to five.

2 MR. SINGER: So with consideration to the
3 letter of the law stating that we must take reasonable
4 measures, which is a vague term, I would ask you how
5 does our establishment as you've been there now a number
6 of times compare with other ones that you are asked to
7 investigate?

8 INVESTIGATOR JONES: Your establishment is
9 definitely on the -- from what a lot of places that I've
10 seen -- may be on the lesser of the scale.

11 MR. SINGER: What do you mean by that,
12 lesser being we are in better custody of our trash,
13 we're in worse custody of our trash?

14 INVESTIGATOR JONES: I think that you guys
15 are probably in a better position.

16 MR. SINGER: Okay. Thank you. When you
17 were visiting I understand that you are stating that the
18 establishment was closed.

19 INVESTIGATOR JONES: Yes.

20 MR. SINGER: As the proprietor of the
21 establishment I believe we have financial records to
22 dispute that. Is there the possibility that trash was

1 being taken in and out and this was taken during the
2 course of operations and that the bin was ajar as the
3 photograph shows because of ongoing operations that we
4 were still taking reasonable measures to control here?

5 INVESTIGATOR JONES: Are you under the
6 impression that if you're operating that you cannot have
7 trash overflowing?

8 MR. SINGER: I am under the impression
9 that --

10 CHAIRPERSON ANDERSON: All right. All
11 right. Mr. Jones, he's going to ask you a question and
12 you answer the question. If you don't -- if you don't
13 understand the question or if you can't understand the
14 question that he's asking, then say I --

15 INVESTIGATOR JONES: Yes, sir.

16 CHAIRPERSON ANDERSON: -- I -- I don't. But
17 you can't ask him questions. Okay. That's Mr. Rivero's
18 job right there or The Board's job. But I appreciate
19 you --

20 INVESTIGATOR JONES: Yes, sir.

21 CHAIRPERSON ANDERSON: Okay. So --

22 INVESTIGATOR JONES: Could you rephrase your

1 question. I'm sorry.

2 MR. SINGER: Sure. So my -- with
3 consideration to the fact that I would take the position
4 that the operation was open at that time because it is
5 during the normal course of our operations would it
6 possible that we were taking reasonable measures to
7 control the trash and the litter and that we were taking
8 trash in and out of the facility did as you do during
9 the course of operations and that that is the time upon
10 which you found the trash receptacle ajar with litter?

11 INVESTIGATOR JONES: No.

12 MR. SINGER: Okay. So I will ask again
13 where I started. Could you articulate for us what
14 constitutes control of litter according to D.C. Code
15 25-726?

16 MR. RIVERO: The witness answered the
17 question. The witness answered the question.

18 MR. SINGER: Okay. I'll rephrase.

19 CHAIRPERSON ANDERSON: All right.

20 MR. SINGER: Mr. Jones, could you articulate
21 in your own words what you consider reasonable measures
22 of control of the litter to be.

1 MR. RIVERO: The witness answered that
2 question.

3 CHAIRPERSON ANDERSON: Asked and answered.
4 So sustained. So I mean that you have to ask a
5 different question, sir.

6 MR. SINGER: Okay. Upon your other visits
7 were you witness to Union Kitchen Grocery taking
8 reasonable measures to ensure the control of trash and
9 litter on the premises?

10 INVESTIGATOR JONES: One more time.

11 MR. SINGER: Upon your other visits when a
12 violation was not issued were you witness to Union
13 Kitchen taking reasonable measures to control the litter
14 on the premises?

15 INVESTIGATOR JONES: Yes. As I stated
16 before, there were other times where I have passed by
17 Union Kitchen and definitely their -- their -- the trash
18 was contained. Yes, sir.

19 MR. SINGER: Okay. Thank you. I have no
20 further questions.

21 CHAIRPERSON ANDERSON: Thank you. Any
22 questions by any board members?

1 MS. MILLER: Yes.

2 CHAIRPERSON ANDERSON: Yes, Ms. Miller.

3 MS. MILLER: Good afternoon, Mr. Jones.

4 INVESTIGATOR JONES: Good afternoon.

5 MS. MILLER: I wanted to ask you just to
6 follow up is it your assessment that if you find trash
7 overflowing in a trash can exposed to the air like in
8 Exhibit 2, that that means reasonable measures were not
9 taken to ensure that the immediate environs were --
10 weren't kept free of litter as in 25-726?

11 INVESTIGATOR JONES: That's the way that I
12 understand it, ma'am. And I'm saying it especially
13 because at that time the establishment was closed. Had
14 the establishment been open, I would have made the
15 advisement at that time which is why I came back at a
16 later date.

17 MS. MILLER: Okay. And is this an isolated
18 event that is shown in Exhibit 2 as far as your view
19 of -- of the trash on their property? I mean was this
20 the -- is this picture the only example of the trash
21 overflowing?

22 INVESTIGATOR JONES: This is the only

1 picture that I have. However, the complainant sent
2 numerous pictures to our agency regarding the complaint.
3 But again, we can't verify that. We have to go out and
4 see it ourselves.

5 MS. MILLER: Okay. Okay. In -- in your
6 experience in investigating trash violations is there
7 ever an incident where you find the trash is overflowing
8 but then the licensee takes all these steps to correct
9 it and -- and do you take that into consideration --

10 INVESTIGATOR JONES: Yes, ma'am.

11 MS. MILLER: -- as to the reasonableness of
12 the whole situation?

13 INVESTIGATOR JONES: Yes, ma'am.

14 MS. MILLER: Okay. And are you aware of
15 what steps this licensee took to make any corrections?

16 INVESTIGATOR JONES: As I stated before I
17 know that what I was told was that they were going
18 through the process of trying to get a storage facility
19 built through the Government to get the permits. I
20 don't know what that time frame looked like. But as I
21 said before I -- after this time I have passed by the
22 establishment and I have seen that the trash cans have

1 been closed --

2 MS. MILLER: Okay.

3 INVESTIGATOR JONES: -- and the trash was
4 not overflowing.

5 MS. MILLER: And was that storage
6 situation -- was that underway before you found the
7 violation or did that occur afterwards?

8 INVESTIGATOR JONES: I'm sorry?

9 MS. MILLER: The -- the corrections of the
10 storage, they were going to get a whole new storage unit
11 or something to contain the trash, was that already in
12 the works before you found the violation or did that
13 come to be after you found the violation?

14 INVESTIGATOR JONES: That was -- that was
15 what I was told when I initially made contact to advise
16 of the complaint. So yes, that was before.

17 MS. MILLER: Before?

18 INVESTIGATOR JONES: Yes, ma'am.

19 MS. MILLER: And could you tell when you
20 visited afterwards whether that was in place?

21 INVESTIGATOR JONES: I had -- no, I didn't
22 see anything.

1 MS. MILLER: Okay. Okay. Thank you.

2 INVESTIGATOR JONES: Uh-huh.

3 CHAIRPERSON ANDERSON: Any other questions?

4 Yes, Mr. Alberti.

5 MR. ALBERTI: Investigator, thank you for
6 your report.

7 INVESTIGATOR JONES: Yes, sir.

8 MR. ALBERTI: So you said that you believe
9 that they were closed when you visited them on -- I'm
10 sorry -- August 19th --

11 INVESTIGATOR JONES: Yes, sir.

12 MR. ALBERTI: -- at 8 p.m.

13 INVESTIGATOR JONES: Yes.

14 MR. ALBERTI: Approximately 8 p.m. How did
15 you ascertain that they were closed?

16 INVESTIGATOR JONES: Again, the lights were
17 off. There was no one inside. Walked up to the ramp --
18 to the rear door, looked on the door. They was locked.
19 There was no one inside.

20 MR. ALBERTI: Did you go to the front door?

21 INVESTIGATOR JONES: No.

22 MR. ALBERTI: Okay.

1 INVESTIGATOR JONES: But you can see
2 straight through the establishment.

3 MR. ALBERTI: From -- from the rear?

4 INVESTIGATOR JONES: From the rear, yes.

5 MR. ALBERTI: Okay. So you can see straight
6 through the establishment from -- your testimony is you
7 can see straight through the establishment from the rear
8 to the front?

9 INVESTIGATOR JONES: To the front. Yes,
10 sir.

11 MR. ALBERTI: All right. So that's how you
12 saw that the lights were closed?

13 INVESTIGATOR JONES: Yes, sir.

14 MR. ALBERTI: Okay. Did you knock on the
15 rear door? Did I ask that?

16 INVESTIGATOR JONES: No. I didn't knock,
17 sir.

18 MR. ALBERTI: All right. Have you cited
19 other establishments for a similar violation who have
20 had a trash can open?

21 INVESTIGATOR JONES: Yes, sir.

22 MR. ALBERTI: The lid open on a trash can?

1 INVESTIGATOR JONES: Yes, sir.

2 MR. ALBERTI: And -- and the reason I ask
3 that is because you describe this licensee's behavior as
4 being on the lesser end of the spectrum. But where --
5 where does that fall? Does that fall below violation or
6 above violation? And, you know, where is your starting
7 point for saying lesser or more?

8 INVESTIGATOR JONES: Well, I believe he
9 was -- well, I believe he was asking me about the
10 egregiousness of it.

11 MR. ALBERTI: Right.

12 INVESTIGATOR JONES: Right. So --

13 MR. ALBERTI: Egregiousness of what, the
14 violation?

15 INVESTIGATOR JONES: What was found, right.

16 MR. ALBERTI: Okay.

17 INVESTIGATOR JONES: As far as -- exactly.
18 And so no, I've -- I've seen instances where there has
19 been what you see in this exhibit that -- that is in my
20 report today to where I have seen rats jumping out of
21 the trash cans, dead rats all around the dumpsters,
22 multiple trash cans and dumpsters that have spilled

1 food, you've got grease pits that are wide open with
2 used food, and those types of things.

3 MR. ALBERTI: Thank you. I think I
4 understand your earlier comment --

5 INVESTIGATOR JONES: Yes, sir.

6 MR. ALBERTI: -- based on that. And you
7 said you had five complaints from -- from -- about this
8 establishment, about trash at this establishment?

9 INVESTIGATOR JONES: I said about. Yeah.
10 Maybe about, yes.

11 MR. ALBERTI: About. And there was
12 sufficient information in that -- in those -- well, I
13 assume that there was -- all right. Am I correct in
14 assuming that there was sufficient information in those
15 complaints to lead you to follow up and visit the
16 establishment?

17 INVESTIGATOR JONES: Well, any time we get a
18 complaint it's -- it -- more or less it's directed for
19 us to do something.

20 MR. ALBERTI: Okay. Thank you.

21 INVESTIGATOR JONES: So --

22 MR. ALBERTI: I have no further questions.

1 INVESTIGATOR JONES: Yes, sir.

2 MR. ALBERTI: All right. Thank you.

3 CHAIRPERSON ANDERSON: Now, all right.

4 MR. SINGER: May I have one thing in here?

5 CHAIRPERSON ANDERSON: I'm sorry.

6 MR. SINGER: I just have one regarding us
7 being closed.

8 CHAIRPERSON ANDERSON: Hold on. Hold on.
9 All right.

10 MR. SINGER: I have some evidence here that
11 it was the case that we were not closed.

12 CHAIRPERSON ANDERSON: Hold on. Hold on.
13 Hold on. This is -- this is -- this is what's going to
14 happen. You can do that as -- as part of the
15 presentation of your case.

16 MR. SINGER: Okay.

17 CHAIRPERSON ANDERSON: Basically where we
18 are now is that -- that Mr. Jones is on the witness
19 stand. The -- it's Mr. Rivero's witness.

20 MR. RIVERO: Thank you.

21 CHAIRPERSON ANDERSON: The Board asks him
22 some questions. You are -- you can now ask him

1 questions based on the questions that The Board asked.
2 So you can ask questions to him. But the questions have
3 to be based on the questions that were asked of him by
4 The Board --

5 MR. SINGER: Okay.

6 CHAIRPERSON ANDERSON: -- if you want to ask
7 questions. You don't have to.

8 MR. SINGER: I guess the question is whether
9 I can submit evidence based on his testimony to you?

10 CHAIRPERSON ANDERSON: You can.

11 MR. RIVERO: The question is to be directed
12 at the witness.

13 CHAIRPERSON ANDERSON: Right. So -- so
14 that's what I'm saying.

15 MR. SINGER: It's a procedural question.

16 CHAIRPERSON ANDERSON: That's -- all right.
17 After-- after Mr. Rivero presents his case then you'll
18 have an opportunity to present your case. So if you
19 have a witness you want to call or if you want to call
20 yourself as a witness, I'll swear you in.

21 MR. SINGER: Okay.

22 CHAIRPERSON ANDERSON: And then you can

1 present whatever evidence that you have to support your
2 case.

3 MR. SINGER: Okay. Thank you.

4 CHAIRPERSON ANDERSON: But where we are
5 right now is that you have an opportunity to ask
6 Mr. Jones questions based on the questions that were
7 asked by the board members.

8 MR. SINGER: I have no further questions for
9 Mr. Jones.

10 CHAIRPERSON ANDERSON: Mr. Rivero, do you
11 have any other questions of the witness based on the
12 questions that were raised by The Board?

13 MR. RIVERO: Yes.

14 CHAIRPERSON ANDERSON: Go ahead, sir.

15 MR. RIVERO: You indicated as a result of
16 one of the questions that subsequent to the incident
17 that you document here you visited the establishment and
18 you saw that there was no visible trash.

19 INVESTIGATOR JONES: Uh-huh.

20 MR. RIVERO: Okay. Were you able to observe
21 the receptacles directly, or were the receptacles inside
22 this container that they were building.

1 INVESTIGATOR JONES: Yes. I -- I think
2 we -- we did mention that. I did not see the receptacle
3 that they stated. So I -- there was -- the trash
4 containers were still along the fence line open.

5 MR. RIVERO: So you were able to see the
6 trash receptacles directly?

7 INVESTIGATOR JONES: Correct.

8 MR. RIVERO: They were sort of outside?

9 INVESTIGATOR JONES: Yes.

10 MR. RIVERO: And they were closed?

11 INVESTIGATOR JONES: Yes.

12 MR. RIVERO: Okay. Great. No further
13 questions.

14 CHAIRPERSON ANDERSON: All right. All
15 right. Since you have -- there are no further,
16 questions thank you very much, Mr. Jones, for your
17 testimony.

18 INVESTIGATOR JONES: Thank you.

19 CHAIRPERSON ANDERSON: And then you --
20 you're -- you can step down. Does -- Mr. Rivero, do you
21 have another -- any other witnesses?

22 MR. RIVERO: No. The Government closes its

1 case.

2 CHAIRPERSON ANDERSON: All right. All
3 right. Thank you. All right, sir. This is -- the
4 Government has now rested its case so this is your
5 opportunity to present your case. And do you have any
6 witnesses you plan to call?

7 MR. SINGER: I will call myself.

8 CHAIRPERSON ANDERSON: All right. So what I
9 want you to do is -- it's going to be a little bit
10 different since you're not --

11 MR. SINGER: I run on and off the stand and
12 ask myself questions?

13 CHAIRPERSON ANDERSON: Well, that would
14 be -- that would be good. But the only thing I'll ask
15 you to do is to raise your right hand.

16 MR. SINGER: Yes, sir.

17 CHAIRPERSON ANDERSON: Do you swear or
18 affirm to tell the truth and nothing but the truth?

19 MR. SINGER: Yes, sir.

20 CHAIRPERSON ANDERSON: All right. Then you
21 can present your case. And then based on the
22 presentation that you make Mr. Rivero's going to have

1 opportunity to cross examine you to ask you questions
2 and The Board will have -- also have the opportunity to
3 cross examine you. And then if you have documents that
4 you want to introduce, what I'll ask you to do is first
5 you show them to Mr. Rivero.

6 MR. SINGER: Sure.

7 CHAIRPERSON ANDERSON: And then once you
8 show them to Mr. -- if you want to introduce a document,
9 you show them to Mr. Rivero then you provide The Board.
10 If he has an objection, I will look at the document and
11 then I'll make an -- I will make a ruling whether or not
12 the document will be allowed.

13 MR. SINGER: Okay.

14 CHAIRPERSON ANDERSON: Okay. So you can go
15 ahead. So now -- if you want now, you can do an opening
16 statement and then --

17 MR. SINGER: Okay. So I'll do the opening
18 statement please if I may.

19 CHAIRPERSON ANDERSON: All right.

20 MR. SINGER: So I think one would -- we
21 would like to demonstrate one is that the Government has
22 not met the burden of proof to show a violation based on

1 the preponderance of the evidence that we have not met
2 reasonable measures to control the custody of trash. I
3 think in fact that the testimony we've heard and all
4 evidence including our history with ABRA suggests that
5 we have taken very reasonable measures far above and
6 beyond what is expected of others in order to control
7 the trash and have done so effectively. Secondly, I
8 think we would like to contest the statement from the
9 inspector that the facility was closed at 8 p.m. and
10 submit in the evidence. And I will admit that this was
11 something we had not heard. It is not included in the
12 report that he made the statement that the establishment
13 was closed. Financial data from our point of sale
14 system showing that sales were made between 8 p.m. and 9
15 p.m. at the same time the inspector claims to have been
16 there and that the Government itself did not take the --
17 one has potentially perjured in terms of filing this
18 report. And secondly, even if that is accurate, made no
19 effort as -- as -- as the witness testified to to then
20 engage with our staff to ensure that we were taking
21 reasonable measures to control the trash which -- which
22 we are. So that would be the opening statement. If

1 possible I would be happy to show you the financial data
2 from our point of sale system which I only have on my
3 cell phone because we were not expecting that to be part
4 of what was entered into evidence today. We did not
5 expect that as part of the testimony, and it was not in
6 the report at all.

7 CHAIRPERSON ANDERSON: Mr. Rivero, just a
8 question. Does it -- does it matter whether or not the
9 establishment was open or not? Is that a -- is that
10 relevant for your case?

11 MR. RIVERO: It only goes to the state of
12 mind of the investigator. It is not relevant to the
13 ultimate facts of this case. The evidence only explains
14 why the investigator decided not to talk to anyone.
15 There's no legal requirement that the investigator
16 advise anyone.

17 CHAIRPERSON ANDERSON: Not -- not whether or
18 not -- just whether or not -- I think what he's trying
19 to prove to say that -- the investigator said that the
20 establishment was open -- was closed. He's stating that
21 the establishment was open. So I'm just saying as far
22 as your case is concerned is it relevant whether or not

1 the establishment is open or closed?

2 MR. RIVERO: It's not relevant to the
3 ultimate facts of the case.

4 MR. SINGER: I think that if the veracity of
5 the inspector is in question being under oath and
6 providing testimony and then is proven otherwise, I
7 believe that this entire report has to be thrown out.

8 CHAIRPERSON ANDERSON: Well, all right.
9 The -- the issue is that -- assuming arguendo because
10 you -- you have a document that's not -- you can't give
11 us physically a copy of the document, right, because
12 it's on your phone?

13 MR. SINGER: I can -- I have it right here.
14 I can hand it to you.

15 CHAIRPERSON ANDERSON: But I'm saying you
16 can't physically give us.

17 MR. SINGER: I can print it out.

18 CHAIRPERSON ANDERSON: I can't -- I cannot
19 introduce that into the evidence. So I mean I can't say
20 you want to -- because you have it on your phone, so I
21 can't have it to --

22 MR. SINGER: We were never given the

1 opportunity to know the facts of the case.

2 CHAIRPERSON ANDERSON: I'm not -- I'm not

3 I'm not --

4 MR. SINGER: Did not submit that the

5 establishment was closed.

6 CHAIRPERSON ANDERSON: I'm not objecting to
7 you -- one of the -- that's one of the reasons why I had
8 asked the Government. The Government is stating that
9 whether or not the -- the establishment is open or
10 closed is not -- is not a necessary -- that's not going
11 to make or break the case. Now, if you're saying that
12 the -- if you're -- if you're trying to introduce that
13 to say that you didn't think that the investigator was
14 being truthful, is that the reason why you're trying to
15 investigate -- you're trying to --

16 MR. SINGER: I believe that if the
17 investigator has not gone and done the full due
18 diligence and has presented facts here that are not
19 accurate and can be proven to be inaccurate, that that
20 undermines the entire validity of the entire report. I
21 am not going to go as far as saying Mr. Jones is being
22 untruthful. I don't know him well. He seems like a

1 great guy. I'm not going to make accusations. But I do
2 think that that single statement can be proven to be
3 infactual and -- and that that should undermine the
4 entire case here.

5 CHAIRPERSON ANDERSON: Well, let me ask you
6 a question, sir. One of things --

7 MR. SINGER: I also think it calls into
8 question his ability to properly enforce the code in
9 this case when I think he also struggled to define what
10 reasonable measures are which is very clearly in the
11 code what we need to be shown in violation of.

12 MR. RIVERO: I'm going to be objecting right
13 now because we're doing -- we're in legal argument
14 again. So let's -- please let's stick to the piece of
15 evidence at issue.

16 CHAIRPERSON ANDERSON: I thought -- I
17 thought he's trying to justify. I'm taking it as him
18 giving me a reason why I should allow that piece of
19 evidence. That's -- that's what -- I'm taking it from
20 that prospective. Sir, whatever the investigator stated
21 -- I mean the question was asked. The investigator
22 stated that he did not -- he did not knock on the door.

1 The investigator did state that he -- because the --
2 because he was at the back of the -- let me -- let me
3 ask you a question. Is it correct, sir, that if you're
4 at -- as the investigator stated, that if you're
5 standing at the back of the establishment, you can see
6 through the establishment; is that correct?

7 MR. SINGER: You can see inside. There's
8 glass on the back and a glass on the front.

9 CHAIRPERSON ANDERSON: All right.

10 MR. SINGER: Yes. That's correct.

11 CHAIRPERSON ANDERSON: And the investigator
12 has stated that. So -- so I -- I think that as part of
13 your closing you can make arguments to state that the
14 establishment was open. Because you don't have a
15 physical piece of document to give it to us today,
16 that --

17 MR. SINGER: I have a physical document I
18 can show to you. Because it's not on paper does not
19 mean it is not a document.

20 CHAIRPERSON ANDERSON: Sir, although --

21 MR. SINGER: We can probably get into the
22 legal definition of a document. I have the report --

1 our sales report.

2 MR. ALBERTI: Sir, do not speak over the
3 Chair.

4 CHAIRPERSON ANDERSON: Hold on. Hold on.

5 MR. SINGER: My apologies.

6 CHAIRPERSON ANDERSON: Sir, on -- on
7 Wednesdays I have this role here. But when I -- when
8 it's not Wednesdays I am also a lawyer and I have a
9 private practice and I practice administrative law.

10 MR. SINGER: Yes, sir.

11 CHAIRPERSON ANDERSON: Although I don't go
12 to court. But I can go to court or neither can I go to
13 an administrative agency and tell the judge that the
14 information is on my phone. They're not going to accept
15 it.

16 MR. SINGER: Would the judge --

17 CHAIRPERSON ANDERSON: Lawyers -- hold on,
18 sir.

19 MR. SINGER: Yes, sir.

20 CHAIRPERSON ANDERSON: Lawyers are still one
21 of the -- one of the only creatures that still -- we
22 still want paper. Okay. So --

1 MR. SINGER: Can we take a recess -- a five
2 minute recess to print this out?

3 CHAIRPERSON ANDERSON: If you need a five
4 minute recess to print it out --

5 MR. RIVERO: No objection.

6 CHAIRPERSON ANDERSON: -- we'll -- we can
7 take a five minute recess, sir, for you to get the
8 paper. Lawyers like paper. Okay. We're -- so if you
9 go to court you have to -- you can't have your phone. A
10 court wouldn't even allow you -- some courts wouldn't
11 even allow you to come in the courthouse with your
12 phone.

13 MR. SINGER: I understand.

14 CHAIRPERSON ANDERSON: So -- so therefore
15 you can't say to the judge here's my phone. So you have
16 to have a piece of paper.

17 MR. SINGER: I understand, and I understand
18 your concerns. As a citizen my concern is that a
19 representative of the Government has presented facts
20 that are not accurate and that for our society to remain
21 just and have a fabric we need to be able to print
22 out --

1 CHAIRPERSON ANDERSON: All right. It's --
2 it's 4:21. We'll be in recess until 4:30. I'll give
3 you nine minutes to -- and if --

4 MR. RIVERO: If this is just something that
5 can be e-mailed, maybe he could e-mail it to the
6 investigator.

7 CHAIRPERSON ANDERSON: Yes.

8 MR. RIVERO: The investigator can go to his
9 computer and print it.

10 CHAIRPERSON ANDERSON: Do you -- so that's
11 what I said we're in recess for nine minute until 4:30.
12 And you guys can figure out how to get us a copy of the
13 document. Okay. Thank you.

14 MR. ALBERTI: Our staff will be available to
15 assist you in any way.

16 CHAIRPERSON ANDERSON: All right. 4:30.

17 (Whereupon, a short break was taken.)

18 CHAIRPERSON ANDERSON: All right. We're
19 back on the record. We do have three members here.
20 Okay. All right. Is -- you're saying, sir, that you're
21 trying to -- there's a document that you want to show
22 us. And what document is this now, sir?

1 MR. SINGER: So what you are looking at is
2 we use a point of sale system called Square. You guys
3 may have seen them [inaudible 00:25:08]. I'm sorry.

4 CHAIRPERSON ANDERSON: All right. Now,
5 before we -- Mr. Rivero, I'm going to give you an
6 opportunity to -- I'm asking what the -- what the
7 document so he's explaining to me what the document is.
8 This is what is going to happen. You have presented us
9 with the document that you want to introduce into
10 evidence, and so you're just explaining to us what the
11 document is. And then I'm going to ask Mr. Rivero
12 whether or not he has any objection to the document.
13 So --

14 MR. SINGER: So this is the point of sale
15 system Square. I could find it on my phone because I
16 have access. This is the transactional log from the
17 night of August 19th, 2015 with the times posted in
18 military time in the second column. That is what this
19 document is.

20 CHAIRPERSON ANDERSON: Mr. Rivero.

21 MR. RIVERO: Well, there's very little
22 foundation laid for this document, but I'm not really

1 worried about it so I'm not going to make an objection.

2 CHAIRPERSON ANDERSON: I -- well, all right.

3 Well, since Mr. Rivero doesn't have an objection, this

4 will be this -- this document will be Applicant's

5 Exhibit 1, and The Board will give the weight that --

6 the weight that it deserves. Go ahead, sir.

7 MR. SINGER: Okay. Where -- I'm sorry.

8 Where are we at in our process here?

9 CHAIRPERSON ANDERSON: You are -- you're
10 presenting your case.

11 MR. SINGER: Okay.

12 CHAIRPERSON ANDERSON: So I guess you've
13 done your -- let me -- are you the only witness?

14 MR. SINGER: I'm the only witness.

15 CHAIRPERSON ANDERSON: Okay. So you're --
16 you presented your -- you have done your openings and
17 now you're presenting your case. So I guess you're
18 going to -- yes, Mr. Rivero.

19 MR. RIVERO: Has he been sworn in?

20 CHAIRPERSON ANDERSON: Yes, I did do that.
21 I did -- that was the first thing I did.

22 MR. RIVERO: Okay.

1 CHAIRPERSON ANDERSON: Okay. Go ahead, sir.

2 MR. SINGER: Okay. I will just present the
3 case then. Stop me if I get out of line here. I
4 apologize in advance if I do. So one, I think the --
5 the evidence in front of us in this document is intended
6 to and I believe does demonstrate that our establishment
7 was open at 8 p.m. at the time that Inspector Jones was
8 to have taken the photograph. I believe that it
9 contradicts his verbal testimony that was made under
10 oath that the establishment was closed at that time.
11 The purpose of taking that matter into hand is to
12 establish that the shortcoming in the observational
13 skill or the observation of the inspector and the
14 custody that the inspector might have over engaging with
15 a licensee. Clearly the establishment was open and
16 making transactions at the time the inspector made
17 the -- took the photograph. Reporting of inaccurate
18 facts I believe calls into question the other facts
19 reported in this violation. And I believe it to some
20 degree undermines some of the other statements made by
21 the witness during testimony. The inspection stated
22 that the cans must be -- the inspect or stated that the

1 cans must be closed. And again part of the beginning of
2 my cross examination was intended to demonstrate that
3 there may be a disconnect between the written letter of
4 the law by which we comply and the enforcement that the
5 inspector -- that is in the inspector's job. And I
6 believe that the combination of being unable to properly
7 articulate that our obligation is to take reasonable
8 measures and the reporting of inaccurate facts
9 demonstrates that the inspector was not in a position to
10 create a valid violation and that the preponderance of
11 the evidence, the burden of the state to show the
12 preponderance of the evidence has not been met, that
13 would warrant a violation. On our end the case has
14 shown that we have a consistent track record of taking
15 reasonable measures to control the litter as
16 demonstrated by the fact that we do have nuisance
17 complaints filed against us, this is the only complaint
18 or alleged complaint that's ever led to a violation, and
19 that the inspector on his other visits had witnessed us
20 taking reasonable measures to control the litter. In
21 addition, the inspector stated that the only way to take
22 reasonable measures was to close the trash lid. That is

1 not stated in the code anywhere, nor is that alone
2 necessarily undermining our ability to take reasonable
3 measures. Now lastly, while we have demonstrated and to
4 the witness's own testimony reasonable measures to
5 control the litter around our establishment, the
6 Government has failed to meet its burden to show a
7 violation by the preponderance of the evidence that
8 reasonable measures were not taken. Thank you very
9 much.

10 CHAIRPERSON ANDERSON: That's -- that's
11 the -- all right. The -- Mr. Rivero, do you have any
12 questions you need to ask?

13 MR. RIVERO: No.

14 CHAIRPERSON ANDERSON: You don't have any
15 questions?

16 MR. RIVERO: None.

17 CHAIRPERSON ANDERSON: All right. Well,
18 I'll ask you a question, sir. Do you have the -- the
19 exhibit -- the case file in front of you?

20 MR. SINGER: Yes, I do. Thank you.

21 CHAIRPERSON ANDERSON: All right. I want
22 you -- I want you to go to what has been identified as

1 Exhibit 2 in the -- in the case report. And can you --
2 can you -- is this -- can you just tell us what's in the
3 document [inaudible 05:36]?

4 MR. SINGER: I am looking at a photograph of
5 trash bins, one of which looks to be in the midst of an
6 employee preparing to compact it to fit it within.

7 CHAIRPERSON ANDERSON: Well, okay. So is
8 this your establishment, sir?

9 MR. SINGER: It is indeed. Yes.

10 CHAIRPERSON ANDERSON: And the -- the
11 picture shows that there is a trash bin in the
12 establishment that is open. Is that -- is that -- and
13 is that correct?

14 MR. SINGER: That is correct.

15 CHAIRPERSON ANDERSON: All right. And --
16 and it's also correct that this is your establishment;
17 is that correct?

18 MR. SINGER: It is also correct. It shows
19 four other trash bins that are proper secured.

20 CHAIRPERSON ANDERSON: All right. Do we
21 have any other questions -- any questions by the -- yes,
22 Mr. Alberti.

1 MR. ALBERTI: I think Mr. Short has one. Go
2 ahead.

3 CHAIRPERSON ANDERSON: Go ahead. All right.
4 Go ahead, Mr. Short.

5 MR. SHORT: Good afternoon again.

6 MR. SINGER: Good afternoon, Mr. Short.

7 MR. SHORT: You -- how long have you had
8 your business in this community?

9 MR. SINGER: Well, it's about a year to the
10 day. This is the -- of this location -- we've been in
11 business in the district for four years.

12 MR. SHORT: But you've been at this location
13 for --

14 MR. SINGER: One year.

15 MR. SHORT: -- one year. Okay.

16 MR. SINGER: It's about the anniversary.

17 MR. SHORT: How would you describe that
18 community?

19 MR. SINGER: Great. Love the neighborhood.
20 Really nice people. Very active and engaged, very
21 supportive of our business.

22 MR. SHORT: Are there any other people that

1 have complaints of trash, or do you have any -- have you
2 have you -- have you noticed any neighbors who don't
3 take care of their litter properly?

4 MR. SINGER: Yes. We have -- we have one
5 neighbor who is -- who is active in complaining about
6 us. Yes.

7 MR. SILVERSTEIN: Say again please.

8 MR. SINGER: We have one neighbor --

9 MR. SHORT: My question was are you a
10 witness of any -- of anybody else who has litter
11 problems?

12 MR. SINGER: Are there other establishments
13 that have litter problems in our neighborhood?

14 MR. SHORT: That's -- that would be a
15 fair -- yes, that's my question.

16 MR. SINGER: I don't actively seek it out.
17 But I can't think of anything off the top of my head
18 other than maybe the construction crews and -- and
19 general litter because it's a -- it's a heavily
20 trafficked area. We have a public trash receptacle out
21 front on the corner that I believe is picked up by DPW
22 that tends to get overfull and not emptied. We

1 certainly take more reasonable measures to contain our
2 trash than probably the city government does cleaning up
3 the corner. But other establishments are -- are not
4 causing litter as I understand it.

5 MR. SHORT: So would you say that most
6 people in your community care about and take care of
7 their litter properly?

8 MR. SINGER: As do we.

9 MR. SHORT: Okay.

10 MR. SINGER: Yes, sir.

11 MR. SHORT: And so pretty much you try to
12 stay on that same basis?

13 MR. SINGER: We try to lead from the front.
14 I say that 30 times a day. Yes, sir. We want to be the
15 cleanest and the best. Certainly we understand the
16 importance that maintaining our litter, wearing gloves
17 when we make food, keeping the establishment clean is --
18 is good for business and also the least we can do for
19 the community.

20 MR. SHORT: Do you believe that someone did
21 make a valid complaint against you when the investigator
22 came out?

1 MR. SINGER: No, I do not.

2 MR. SHORT: Okay. In the picture that --
3 that was just referenced in the Exhibit Number 2 you
4 were stating that someone was ready to put the top on
5 that as this picture was taken.

6 MR. SINGER: To compact it down so it can
7 fit in there. Yes, sir. You know, part of the
8 challenge that we have in this location is that, because
9 it is a historic neighborhood, like -- unlike many
10 businesses or other facilities we are unable to have a
11 dumpster there. So instead we have these totes, and you
12 can only fit a certain amount. They're also vastly more
13 expensive than having a dumpster because they're more
14 expensive for the trash company to maintain. And so we
15 have a limited amount of trash capacity. And so our
16 team is instructed that during the course of the working
17 day and certainly at closing they need to compact the
18 trash within the cans so that they are all fitting and
19 that the lids are entirely closed. Because certainly
20 we -- our neighbors communicated to us that we need to
21 make sure the lids are closed at all times. We worked
22 closely with our ANC to make sure that we're in custody

1 of our trash. And so we have these totes to meet the
2 standards of the neighborhood. We fit all of our trash
3 within these totes. We have five trash cans for a
4 business that will do -- you know, does about a million
5 dollars a year. It's a lot of trash, and we do an
6 excellent job of compacting it to fit within the amount
7 of space.

8 MR. SHORT: Okay. It sounds like -- it
9 sounds like you're on top of your game.

10 MR. SINGER: Yes.

11 MR. SHORT: What happened this particular
12 time that the investigator was able get close enough to
13 the can prior to someone immediately after he took this
14 picture packing it down and why didn't they pack it down
15 when they put the trash in?

16 MR. SINGER: So I think number one, the --
17 the neighbors who do like to complain about us do so
18 very frequently to the point that I think they now have
19 been the boy who cried wolf. And so I think the reality
20 is that a great deal of taxpayer resources have been
21 spent by ABRA and other agencies to come to our site.
22 And so --

1 MR. SHORT: Let me -- let me ask that
2 question one more time.

3 MR. SINGER: At any given time the trash
4 [inaudible 10:16].

5 MR. SHORT: Can I -- okay. Okay. Again,
6 I'm looking at the picture.

7 MR. SINGER: Sure.

8 MR. SHORT: And when you described it you
9 said someone was ready to come and compact it.

10 MR. SINGER: That's correct.

11 MR. SHORT: Why didn't it get compacted when
12 the trash was put into it?

13 MR. SINGER: So this photograph was taken at
14 8 p.m. while our establishment was open which the
15 exhibit I have submitted corroborates. Our staff is
16 shuttling trash in and out. It is the end of the shift.
17 8:00 is when we start our closing checklist. And so
18 we're removing the other internal trash cans from the
19 site to bring them out to these trash cans so that we
20 can properly compact and secure all of the trash lids.
21 He took a photograph at a moment when we're probably
22 moving trash in and out and making certain that we're

1 able to fit all of the trash. As you can see there's
2 only five totes. We play a Tetris game to make sure
3 that we are containing all of our trash and taking
4 reasonable measures to do so as accorded by the code. I
5 believe in my opinion that we have demonstrated above
6 and beyond a doubt that we take reasonable measures.
7 And I do not believe that this photograph constitutes
8 anything that would suggest we are not taking reasonable
9 measures to control the litter on the premises on the
10 space around our premises.

11 MR. SHORT: Which will make me ask again why
12 was not the trash compacted when it was placed in the
13 can?

14 MR. SINGER: I can't -- my guess would be
15 that our staffer was inside getting another bag of trash
16 or a cardboard box or something else that was going to
17 add on top of that trash can to pack down into the can.

18 MR. SHORT: Okay. And you gave us a
19 document with military times on it.

20 MR. SINGER: Yes, sir.

21 MR. SHORT: And I see the different columns.

22 MR. SINGER: Yes, sir.

1 MR. SHORT: And I see the dates.

2 MR. SINGER: Yes, sir.

3 MR. SHORT: How is this in any way
4 affiliated with the address or the name of your
5 business?

6 MR. SINGER: I'm happy to show it to you on
7 a fuller document. Obviously this was a part of a
8 witness testimony that we were responding to. So it was
9 something we were given an opportunity to prepare for.
10 This is -- and I am under oath right now. This is a
11 direct pull from square.com, which is our point of sale
12 system. This is the data generated on that website that
13 is sent on a spreadsheet that I took a screen shot of on
14 my phone. I am swearing under oath that this is the
15 transaction record from the evening of August 19th, 2015
16 that demonstrates that sales were made between -- on
17 this sheet 7:18 p.m. and it looks to be 9:04 p.m.

18 MR. SHORT: Your answers -- your answers
19 state that you're a very bright person.

20 MR. SINGER: Thank you.

21 MR. SHORT: And it says that you are a
22 person that prepares properly for different things. So

1 you had notice of this hearing a month ago, correct?

2 MR. SINGER: Probably more than that. Yes,
3 sir.

4 MR. SHORT: More than that?

5 MR. SINGER: Yes.

6 MR. SHORT: And this is the best evidence
7 that you could bring to prove your point today?

8 MR. SINGER: Mr. Short, I think if you
9 review the violation, the case, there is no statement
10 within that that states that the facility -- that the
11 establishment was closed. There is no statement that
12 would have allowed us to prepare evidence that would say
13 that we are -- that we should have brought a transaction
14 log to demonstrate that we were open in order to contest
15 the statement of the inspector. I think it's very fair
16 to say we didn't bring a witness. We were unprepared
17 for that. I'm running a business. We're trying to
18 create jobs. We've created over 700 jobs. We've hired
19 over 70 people straight out of prison or with a
20 disability in just the last three years. We've
21 generated over -- probably nearly a \$100 million in
22 revenues for small businesses in the district. I

1 apologize if my preparation is focused on other things.
2 What I do think is commendable is that we heard an
3 inspector say something that was factually untrue and
4 within minutes we managed to identify the records that
5 would support our case and bring them to you so that we
6 could demonstrate that the inspector himself was
7 unprepared for this testimony because he did not know
8 the facts of the case at the time he took the
9 photograph.

10 MR. SHORT: My last statement will be this
11 and then I want you to reply to it.

12 MR. SINGER: Thank you.

13 MR. SHORT: You aren't coming across as a
14 prepared person and you are testifying or answering that
15 the investigator is coming off as unprepared. What
16 differently are you doing than the investigator has
17 done? He's produced a picture.

18 MR. SINGER: He did.

19 MR. SHORT: What have you produced?

20 MR. SINGER: I produced the transaction log,
21 and I -- and I --

22 MR. SHORT: With -- with no name -- with no

1 name, no address. Just a -- just a log.

2 MR. SINGER: Sir, I will sit in front of the
3 computer and show it to you right now. We can call
4 Square. If -- if the question is how do we validate
5 this information, I'm more than happy to do so.

6 MR. SHORT: I'm more than happy not to ask
7 you any more questions. Thank you very much.
8 Mr. Chair, thank you.

9 CHAIRPERSON ANDERSON: Thank you, Mr. Short.
10 Mr. Alberti.

11 MR. ALBERTI: Actually I have to say I don't
12 have any.

13 CHAIRPERSON ANDERSON: You don't have any
14 questions?

15 MR. ALBERTI: I have no further questions.
16 No.

17 CHAIRPERSON ANDERSON: I'll go to Mr. -- I'm
18 sorry -- Mr. Silverstein.

19 MR. SILVERSTEIN: Mr. Alberti has no
20 questions?

21 MR. ALBERTI: No, I don't. I don't. I --

22 CHAIRPERSON ANDERSON: Go ahead, Ms. Miller.

1 Then Mr. -- Mr. Silverstein.

2 MS. MILLER: Okay. I really don't have that
3 many since this was pretty enlightening. But I would
4 say personally for me it's not that important. I
5 don't -- you know, the investigator could have thought
6 that the establishment was closed. And I think what's
7 important to me is -- is quote whatever reasonable
8 measures the licensee has been taking with respect to
9 trash. So what I heard you say I just want to clarify
10 because I think it's significant at least to my
11 assessment is that this picture is Exhibit 2 which we
12 keep looking at which is -- looks like, you know, trash
13 open. And, you know, it could -- could reflect that the
14 establishment didn't take reasonable measures to control
15 its trash. However, what I hear you saying and I want
16 to confirm is that this was just right in the middle of
17 a process that -- that -- that the trash is in here and
18 then the next process is to compact it down. And that's
19 not shown in the picture; is that right?

20 MR. SINGER: That is correct.

21 MS. MILLER: Okay. And -- and how -- what's
22 -- what's the time frame in which that occurs? So if we

1 saw this picture, the trash in the state that it's in
2 Exhibit 2, how soon after would you expect the
3 compacting to take place?

4 MR. SINGER: I would imagine within minutes.
5 Five to 15 minutes. Typically again at 8 p.m. we start
6 our closing checklist, and we -- our staff is clocking
7 out usually at around 9:30. So all of the removal of
8 trash, everything happens in that -- in that window.

9 MS. MILLER: Okay. And so there's a whole
10 standard of procedure that -- that's set?

11 MR. SINGER: There is.

12 MS. MILLER: And did you see this -- this
13 trash that night personally?

14 MR. SINGER: I don't believe I was there
15 that evening. No.

16 MS. MILLER: Okay. And when -- are you
17 there normally at closing hours?

18 MR. SINGER: I am not. No.

19 MS. MILLER: Okay. Did you --

20 MR. SINGER: I'm sorry. Mr. Perkinson who
21 Mr. Jones interacted with is typically one of the
22 closing managers most nights.

1 MS. MILLER: Who set the trash procedure?

2 MR. SINGER: My business partner Cullen
3 Gilchrist who is our operating officer and then
4 Mr. Perkinson who is the general manager of this
5 building.

6 MS. MILLER: Okay. And that's what you have
7 been following for the whole time you've been in
8 operation?

9 MR. SINGER: Yes. Well, it's evolved, but
10 yes.

11 MS. MILLER: Okay. And how about this new
12 storage unit that we are -- we heard about, is that in
13 place?

14 MR. SINGER: So the goal is to build -- the
15 goal is to build as you're looking at Exhibit 2 a fence
16 across the face here so that we essentially have a
17 separate area for trash that folks can't see it and
18 to -- to make it harder for pests to come and to control
19 the litter even better. That is something that we're
20 engaged in permitting for. Its been held up by other --
21 other things. But the goal is to have that constructed
22 hopefully within the next few months.

1 MS. MILLER: Okay. Thank you.

2 MR. SINGER: Thank you.

3 CHAIRPERSON ANDERSON: Mr. Silverstein.

4 MR. SILVERSTEIN: Thank you. Mr. Singer,
5 you say that this was a result of a -- of a complaint
6 that was not legit. Why would you say that?

7 MR. SINGER: I -- we have a -- I can tell
8 you the whole story. Would you like to hear the whole
9 story? There's a long record.

10 MR. SILVERSTEIN: Keep it short, but --

11 MR. SINGER: Essentially what happened is
12 when we opened sort of -- this is the -- this is the
13 first retail liquor license we have -- or I'm sorry --
14 the second liquor retail license we've applied for.
15 The -- the previous one was under sort of unique
16 circumstances in the same ANC. We had a track record
17 with this ANC. We submitted the application. I do it
18 myself. We don't have a lawyer. We don't have other
19 folks who do it. At that time we were basically advised
20 to apply for 12 a.m. to 12 p.m. liquor license hours
21 with no actual expectation of doing it. When we posted
22 those up in the middle of Capitol Hill to Mr. Short's

1 question there's general outrage because they think
2 we're opening an nightclub in what is an R4 zone. That
3 is not what we're doing. We're opening a corner store.
4 Essentially this got us off on a very bad start with the
5 neighbors. And as you guys have gotten a small dose of
6 me, I'm not always the most likeable person. And so
7 over the course of our time interacting with the
8 neighbors some of them came to become quite fond of us
9 because they knew we were doing good things and some did
10 not. Most notably our next door neighbors to the south
11 in 536 3rd Street who have almost every single day
12 since, you know, we've opened filed some sort of
13 complaint a government agency. Some of those complaints
14 are probably valid. Many of them are entirely nuisance
15 complaints which I think our record will show if we
16 looked into all of the different inspections we've had
17 by DCRA, the Fire Marshall, the Department of Health,
18 and ABRA. The reason I say that this is not legitimate
19 is because it has gotten to the point where the
20 neighbors are just volume complaining, where they're
21 just sending it in on any given day to simply be a
22 nuisance to us. Now, this is of my own doing because

1 I'm not always the most likeable person, but it does not
2 warrant us being complained about all the time.

3 MR. SILVERSTEIN: Okay. So --

4 MR. SINGER: Nor does it warrant us not
5 taking reasonable measures.

6 MR. SILVERSTEIN: Let me stop you. So what
7 you're saying in essence is that you have -- you have
8 a -- a toxic relationship with the neighbor --

9 MR. SINGER: That is correct.

10 MR. SILVERSTEIN: -- who is constantly
11 calling, and that's the genesis of this?

12 MR. SINGER: Yes.

13 MR. SILVERSTEIN: Looking at -- you're also
14 saying that you can't for some reason have a trash
15 compactor because even a portable trash compactor would
16 be a violation of some historic preservation law?

17 MR. SINGER: Well, we can't have a dumpster.
18 We are not --

19 MR. SILVERSTEIN: Pardon me?

20 MR. SINGER: We cannot move a dumpster in
21 and out nor do the neighbors want it. It violates --
22 you know, they're worried about the noise. They're

1 worried about smelling odor. They prefer us to have
2 totes. That was part of our --

3 MR. SILVERSTEIN: They prefer --

4 MR. SINGER: As part of the conversation
5 during our sort of settlement agreement with the ANC.
6 And certainly a trash compactor is a big noisy thing
7 that they would not want, nor do I know if we even have
8 the power in the building to -- to make that happen.

9 MR. SILVERSTEIN: Have you tried to get a
10 trash compactor?

11 MR. SINGER: We have looked into it.
12 There's a trash compact or tax credit in fact we were
13 interested in trying to take advantage of.

14 MR. SILVERSTEIN: Right.

15 MR. SINGER: But that tax credit is for much
16 larger trash compactors that would not even fit on this
17 premises. And beyond that frankly we have taken very
18 reasonable measures to control the litter. And it -- I
19 don't think it's necessary as of yet. We have two other
20 facilities that make lots more trash that would be a
21 higher priority to get a trash compactor than this
22 facility where we effectively control it within the five

1 totes that we have.

2 MR. SILVERSTEIN: Let me ask about -- there
3 are five -- in Exhibit 2 there are five trash cans here.

4 MR. SINGER: Yes, sir.

5 MR. SILVERSTEIN: I can't see into the other
6 four. Are they full?

7 MR. SINGER: The lids are closed so they
8 could be empty, they could be full. I do not know.

9 MR. SILVERSTEIN: So you don't know if in
10 fact they are?

11 MR. SINGER: I'm presuming on the end of a
12 Wednesday on August 19th it's probably a middle of the
13 road day for us that time of year. I'm sure that
14 there's trash in each of those four totes. I don't know
15 how full they are. But considering that this one needs
16 to be compacted down, I bet they are full or close to
17 it.

18 MR. SILVERSTEIN: Okay. You -- you're
19 giving us this transaction log, Mr. Singer, and it shows
20 any number of transactions during the 8:00 hour.

21 MR. SINGER: Yes, sir.

22 MR. SILVERSTEIN: Assuming arguendo this is

1 all good --

2 MR. SINGER: Yes, sir.

3 MR. SILVERSTEIN: -- how does this tie in
4 with the choreography of -- you know, the place is
5 supposedly open.

6 MR. SINGER: Yes, sir.

7 MR. SILVERSTEIN: But you're taking the
8 trash out while the place is open?

9 MR. SINGER: Yes, sir.

10 MR. SILVERSTEIN: How does that work?

11 MR. SINGER: Well, the store itself is
12 small. It's about 950 square feet. We have a -- a, you
13 know, first floor sales floor that has trash cans on it.
14 We have one trash can and one recycling can on the floor
15 for customers. So those tend to get full quickly
16 especially after an evening rush when we're serving
17 sandwiches and people are throwing things away. So
18 quite regularly during the day we remove trash from the
19 sales floor to the trash bins out back. And again,
20 typically our closing starts at 8 p.m. So that's a time
21 where we would naturally do it and start clearing trash
22 out as well.

1 MR. SILVERSTEIN: Why are you spending so
2 much time on this matter? It seems to be a pretty de
3 minimus thing.

4 MR. SINGER: I agree. Because I think that
5 this is frivolous and I think it's unfair that we are
6 guilty until proved innocent and I think that our due
7 process has been abrogated repeatedly during this
8 process most -- most recently by someone presenting
9 inaccurate facts under oath. And I think it's important
10 that we as constituents, citizens, and business owners
11 come and argue our case and demonstrate that this is
12 clearly not the worst thing happening in the city, we're
13 clearly taking reasonable measures to control our
14 litter, and that we should in fact be applauded and
15 celebrated for our work and the fact that we're taking
16 advantage of our due process as best we can. It's a
17 very de minimus thing, but I -- what we were offered was
18 a settlement where we admitted guilt, and I'm not going
19 to admit guilt because I do not think we are guilty of
20 anything. And thus I'm not going to smear my family's
21 name by being accused of a violation and be held guilt
22 for something that we did not do.

1 MR. SILVERSTEIN: No further questions.

2 Thank you and thank you for your self awareness.

3 MR. SINGER: Thank you, Mr. Silverstein.

4 CHAIRPERSON ANDERSON: All right. Do you
5 rest your case, sir?

6 MR. SINGER: I rest my case. Thank you.

7 MR. RIVERO: Not without the Government
8 cross-examining the witness hopefully.

9 CHAIRPERSON ANDERSON: I thought you --

10 MR. ALBERTI: It's late, Mr. Rivero. Please
11 forgive us.

12 CHAIRPERSON ANDERSON: I thought -- I
13 thought --

14 MR. RIVERO: We get another round of cross
15 based on The Board questions.

16 CHAIRPERSON ANDERSON: Okay. I -- I
17 apologize.

18 MR. RIVERO: Or is that only the licensee's
19 purview?

20 CHAIRPERSON ANDERSON: No. I -- I
21 apologize, Mr. Rivero. I got lost -- sidetracked
22 some --

1 MR. RIVERO: Not a problem. This -- we've
2 been coming and going.

3 CHAIRPERSON ANDERSON: Right. So you do
4 have an opportunity to -- to ask questions of the
5 licensee based on the questions that were --

6 MR. RIVERO: Thank you.

7 CHAIRPERSON ANDERSON: Yes.

8 MR. RIVERO: I've had heard that -- the
9 testimony about the word location. The record reflects
10 that Union Kitchen is located at 5358 (sic) 3rd Street
11 NE. What other locations are there?

12 MR. SINGER: We have a location at 1110
13 Congress Street NE, 1369 New York Avenue NE, and we will
14 soon have a location opening at 1251 9th Street NW.

15 MR. RIVERO: So the answer is there are two
16 others right now?

17 MR. SINGER: Currently two, yes, sir.

18 MR. RIVERO: And you heard the
19 investigator's testimony about a structure or permit for
20 a structure to be built around the trash containers.
21 And in your testimony I think you used the word fence.

22 MR. SINGER: Uh-huh.

1 MR. RIVERO: So I'd like you to clarify
2 whether there is a fence to be constructed or some
3 structure that will contain the trash containers that
4 you see in the picture.

5 MR. SINGER: Sure. So the plan is to build
6 again across the face a wooden fence that would --
7 that -- so we would not put any sort of ground or top on
8 it. It would be a wooden fence across the front with a
9 gate that you could swing open so that the trash company
10 could access the trash receptacles. That would be an
11 enclosure both to block vision and also hopefully to
12 contain any litter as well as to prevent pests in
13 getting into the trash as best as possible.

14 MR. RIVERO: And so is this just a fence --
15 there is no roof if you will?

16 MR. SINGER: Correct.

17 MR. RIVERO: Okay. So the goal of the fence
18 is to block the visibility of the -- of the containers?

19 MR. SINGER: That's the main reason, yes.

20 MR. RIVERO: Okay.

21 MR. SINGER: To make it more appealing and
22 less disruptive to the premises.

1 MR. RIVERO: And then the fence has a door.

2 MR. SINGER: Yes.

3 MR. RIVERO: So I guess drawing your
4 attention to the picture that is in the investigator's
5 report, Exhibit 2 we see that the trash receptacles are
6 up against a fence there.

7 MR. SINGER: Yes.

8 MR. RIVERO: So if I understand your
9 testimony correctly, there's going to be a fence placed
10 in such a way that I would not be seeing these
11 receptacles and they're still remaining in the same
12 location so they're backed up by that other fence that's
13 visible and then there's a fence -- there's a door --
14 excuse me -- at some point along this picture, right?

15 MR. SINGER: Yes. More or less. The
16 receptacles right now are actually not backed up all the
17 way against the fence. They don't abut it. There's a
18 concrete curb there, but there within --

19 MR. RIVERO: Okay.

20 MR. SINGER: -- maybe six inches or a foot.
21 And then yes, the front fence will run across the front
22 with a door for access.

1 MR. RIVERO: Okay. Okay. All right. And
2 so you say you're currently in the process of getting
3 the permits for this fence?

4 MR. SINGER: I believe we are in the process
5 of getting permits. We have been -- we -- we've been --
6 we were the recipients of a Great Streets Grant, and so
7 we are in the process right now of trying to excavate
8 our front yard which is all concrete, and we're in the
9 process of understanding what those permits are and
10 including the permit for this fence as well as a wrought
11 iron fence sort of where Inspector Jones is standing
12 when he takes the photo --

13 MR. RIVERO: Okay.

14 MR. SINGER: -- to fully enclose the yard.
15 So I'm actually not entirely aware of the exact status
16 of those permits.

17 MR. RIVERO: Okay.

18 MR. SINGER: But as mentioned the goal is to
19 have them submitted and have this thing built within the
20 next three to four months.

21 MR. RIVERO: Okay. Thank you.

22 MR. SINGER: Thank you.

1 MR. RIVERO: No further questions.

2 CHAIRPERSON ANDERSON: All right, sir. Do
3 you -- since you're the witness do you have any final
4 thoughts based on the questions that Mr. Rivero just
5 asked you?

6 MR. SINGER: I believe we have and we have
7 shown and we will continue to take reasonable measures
8 to control the litter as required by D.C. Code 25-726,
9 and I appreciate the time and audience today. Thank
10 you.

11 CHAIRPERSON ANDERSON: All right. So you
12 rest your case?

13 MR. SINGER: I rest my case. Thank you.

14 CHAIRPERSON ANDERSON: I know that you had
15 -- the only document that you presented today was the --
16 the record that you said showed that the establishment
17 was open.

18 MR. SINGER: Yes, sir.

19 CHAIRPERSON ANDERSON: Is that the only
20 document that you have?

21 MR. SINGER: That is all. Thank you, sir.

22 CHAIRPERSON ANDERSON: All right. Okay.

1 Mr. Rivero, does the Government wish to make a closing
2 statement?

3 MR. RIVERO: Yes.

4 CHAIRPERSON ANDERSON: Go ahead, sir.

5 MR. RIVERO: Thank you. Board Members,
6 today you have heard a lot of testimony about what is or
7 is not a reasonable effort in order to ensure that
8 litter is not on the property that is being used by the
9 licensee. That is what this case is about because the
10 statute said that a licensee that uses property shall
11 take reasonable measures to make sure that there's no
12 litter on that property. The investigator has testified
13 that on a certain date and time there was trash
14 overflowing. And the investigator's definition of a
15 reasonable effort is to have the lid closed. That's
16 basically the message there. There is testimony that
17 the investigator may or may not have been reasonable in
18 the sense that the investigator did not immediately
19 notify the licensee about his observations such that to
20 allow the licensee an opportunity to maybe close the
21 lid. You've heard the investigator indicate that he
22 believed the establishment was closed. And at that

1 point this case takes a sharp turn left and goes down
2 this meandering road, and all kinds of evidence are
3 raised about the question of whether the establishment
4 was closed or not that take away from what this case is
5 really about. As the question was asked why make such a
6 fuss about this little case? This case is really about
7 whether we have these laws on the books or not. If we
8 have trash overflowing from a receptacle, but hey, you
9 know, it's just one time and you've got someone whose
10 got a clean record, let's just let it go. That's
11 actually not what an investigator is called upon to do.
12 And if we're going to be saying oh, well, just wave away
13 isolated incidents of a violation, well, that raises a
14 whole set of questions about who gets to decide what's
15 an isolated violation or not. That's called a slippery
16 slope and before we know it we're not -- we're not
17 enforcing these laws about these little things called
18 litter control. So really the issue is on that evening
19 in which was there or was there not litter that was
20 visible to the investigator? It was, and it was
21 reasonable for him to believe that the lid should have
22 been closed and that would have satisfied what the

1 statute requires. But no, the investigator did not,
2 according to his testimony, talk to the licensee because
3 the licensee was apparently not there. Now, evidence
4 has been submitted to question the license -- the
5 investigator's testimony about his perception, was the
6 establishment closed or open? He testified that it was
7 closed. What you have in your exhibit is -- licensee's
8 Exhibit 1 or A, I'm not sure how it was labeled -- it is
9 the only exhibit here. And the Government in fact did
10 not object to the introduction of this exhibit because
11 it's not really very persuasive. But it's going down
12 that left path I talked about, and this case has always
13 about what's on the other -- right side. What do I mean
14 by that? Well, first of all, let me just point out the
15 infirmities of this document. This is supposed to show
16 sales that took place between say 8 p.m. and 9 p.m.
17 thereabouts of the very night in question when the
18 investigator said well, the establishment was closed.
19 So what we have here is a document that actually doesn't
20 testify to the sales at this location. There's already
21 evidence the licensee admitted that there are multiple
22 locations of this establishment. Also on the record is

1 mention of something called Square. There's no actually
2 are actual evidence on the record what that is.
3 Evidence has been presented that this is produced by
4 something called Square. You may or may not have some
5 sort of real world understanding about what that is.
6 But the licensee did produce this evidence from a phone,
7 a mobile phone. Perhaps the mobile phone can take these
8 very transactions somewhere else, another location. So
9 this is not terribly persuasive. But let's assume that
10 it is. Let's assume that I just admit for the sake of
11 argument -- arguendo is a word that's been bandied about
12 -- that this proves that there were sales taking place
13 between 8 and 9 on the date in question. This is where
14 this is -- this -- this argument goes off the rails
15 because the logical inference that you take from that is
16 the investigator testified incorrectly or as we like to
17 say more bluntly he wasn't telling the truth. Well, if
18 the investigator wasn't telling the truth so the path
19 goes, you eventually arrive at the conclusion that maybe
20 he wasn't telling the truth about the trash either or
21 telling the truth about anything else. Maybe this is a
22 false report. That will be the only logical use of this

1 testimony. The problem is there's a logical disconnect
2 because if the point is to prove that the investigator
3 lied or wasn't telling the truth about the trash, then
4 you need evidence to say this wasn't your trash. But we
5 don't have evidence about that because by admission this
6 was the licensee's trash. So just because we're
7 attempting to prove that the investigator had an
8 incorrect observation about whether the establishment
9 was closed does not in fact prove that there was trash
10 not overflowing on the evening in question. And this --
11 the right side of the case -- is what this case is
12 about. Now, so the investigator may have been
13 incorrect. Let's assume -- because that's actually not
14 something I think the evidence shows. But if it were to
15 show that the only other possible consequence you can
16 eke out of that evidence is that the investigator didn't
17 take the time to notify somebody inside hey, the trash
18 is open, close it. But we have evidence of some kind of
19 notice. It happened days prior when the investigator
20 showed up and spoke to Mr. Gilchrist according to the
21 investigator's testimony and said look, we're getting
22 complaints, do something about the trash and

1 Mr. Gilchrist said words to the effect yes, we are aware
2 of the complainant. And you do have testimony here
3 about the complainant, whoever this person is apparently
4 there's a toxic relationship. Well that's unfortunate,
5 but it's also not part of this case because there could
6 be one complaint or 5,000 complaints. I'm assuming that
7 the frequency of the complaints has a correlation to the
8 nature of the relationship between the neighbor and the
9 business. But it has no relationship to the facts of
10 the case. As I said this goes to the central question
11 of the case. You got one violation. All you need is
12 one complaint. The investigator did testify if we have
13 a complaint, we got to do something about it. So if you
14 obviate the need for responding to one complaint, then
15 you're talking about the time that the city counsel and
16 this board is wasting putting laws on the books about
17 these concerns. So that's what this case is about, that
18 one violation on that evening not the relationship
19 between the licensee and the neighbor -- the
20 neighborhood and certainly not the -- the behavior of
21 the licensee on any other date and night besides this
22 one. Because on that question of what the licensee does

1 on every other night -- day or night besides this one
2 the Government and the licensee are telling you the same
3 story. We're saying the licensee keeps a clean
4 business, and we do not dispute the licensee's statement
5 that the licensee aids the neighborhood or the community
6 in any number of ways by employing people and the like.
7 This is not a comment on the licensee's business methods
8 or whether the licensee's efforts in the neighborhood
9 are meritorious or not, none of that. We concede that
10 the licensee's a model operator. But even model
11 operator's may make a mistake every now and then.
12 Because last time I checked human beings are fallible.
13 Therefore a mistake may have been made that one night.
14 Now, we don't have evidence concerning the details of
15 who walked in and out of that shop in the process of
16 pressing down the garbage. And I do agree with the
17 licensee by the way that it's -- and I bend over
18 backwards to accept evidence on the point in question
19 that was raised by the investigator's testimony that the
20 establishment was closed. But what I'm talking about
21 now whether the -- whether there was an employee that
22 was in the process of pressing down the garbage. That

1 has nothing to do with surprise and me wanting to bend
2 over backwards to allow evidence. That's the actual
3 notice that the Government gave to the licensee a month
4 ago. And the licensee has admitted they weren't as
5 diligent in producing witnesses that there otherwise
6 could have been. But any testimony that may have been
7 produced by those hypothetical witnesses would go to
8 that question and not whether the establishment was open
9 or closed. So again, we're not here to adjudicate
10 guilt, that's actually a criminal law concept. So the
11 licensee is not guilty until proven innocent. That's
12 not what this process is about and I would want to
13 clarify that on the record. Also, what this process is
14 not about is a violation of due process simply by the
15 words that a witness utters. Violations of due process
16 have to do with whether the Government takes action
17 against you without giving you notice that its going to
18 take action against you and an opportunity for you to
19 tell the Government why it shouldn't take action against
20 you. And it seems to me like due process was followed
21 in this case because we gave notice and the licensee is
22 here attempting to persuade this board why it should not

1 take action against the licensee. No due process
2 violation, no guilt here. It's a civil proceeding, and
3 this is all about what happened one night. So I
4 certainly submit that the Government has more than met
5 its burden, and that being -- since it's not a criminal
6 proceeding -- a preponderance of the evidence. Is it
7 more likely than not that this happened? Yeah. What
8 punitive measures The Board undertakes are not the
9 province of my office. My job is to ensure that you
10 find by a preponderance of the evidence that I met my
11 burden. How you wish to deal with the punitive end of
12 this case is entirely up to you whether you issue a
13 warning or some fine or anything else. But certainly
14 this case isn't about the Government not presenting
15 enough evidence to prove what it has stated in its
16 notice. Thank you very much.

17 CHAIRPERSON ANDERSON: Thank you,
18 Mr. Rivero. Yes, sir. Go ahead.

19 MR. SINGER: Thank you. Well, first of all,
20 I'm not a lawyer. I appreciate you guys tolerating my
21 naivety today as well as for not, you know, being fully
22 prepared with witnesses and rules of evidence. We spend

1 a lot more time worrying about maintaining reasonable
2 measures of control of our trash than preparing for
3 hearings. I do want to describe a little bit about who
4 we are partly to address some of what Mr. Rivero said
5 and to give you a little background on our -- our
6 business. While this may or may not be a matter of
7 guilt, it will be attached to our permanent record with
8 ABRA. So certainly there is a sort of gold star that
9 goes along with us. This also incurs a direct financial
10 penalty to us. We are a food incubator. Our mission is
11 to create a food system that is profitable, just, and
12 sustainable. We started off with a cafe in northwest
13 D.C. called the Blind Dog Cafe. We have since opened a
14 food incubator in NoMa and a food incubator in Ivy City.
15 These are production kitchens that house about a 100
16 different small businesses in the city. In this time
17 we've worked closely with agencies like the Department
18 of Employment Services to hire over 60 folks straight
19 out of prison through the Project Empowerment Program.
20 We've been given awards and hired multiple people by the
21 Department on Disability Services. We have been
22 celebrated by the White House as champions of change for

1 working with those with disabilities. We've gone to
2 great lengths to work with agencies like the D.C.
3 Sustainable Energy Utility to be good neighbors and to
4 create an influence of, you know, green attitudes in
5 business. All of our employees have healthcare. We
6 provide paid time off. We're currently lobbying for
7 paid family leave. We are active and engaged members of
8 our community. Whether this is about guilt or not, this
9 will be about money for us. My goal is not to pay you
10 guys a dime. My goal is to pay Rachel and all of the
11 employees who are on Medicare and to our need to take
12 public transition and can't feed their kids. I would
13 like the \$500 for that rather than to pay for this. And
14 frankly I think this is a waste of all of our time and
15 it's a waste of taxpayer resources, and I'm sorry for
16 being involved in it. I apologize to all of you on my
17 behalf. But I think that the money can be spent better.
18 That's who we are, and I think it's important that you
19 understand our background and why we're fighting this
20 because I believe it is our obligation as a business and
21 as a member of the community to fight for social
22 justice. On that note I do not think that the

1 Government has proved with a preponderance of the
2 evidence that a violation occurred. I do not think the
3 Government has proved that it -- it's valid to take our
4 money and put it into its own coffers as opposed to pay
5 the child care payments of our employees or for other
6 things that would be more readily needed by folks. And
7 so the fact is that when this photograph was taken we
8 were in the midst of closing. I do think it is
9 important to understand that under oath an inspector --
10 an agent the Government with whom we trust that when
11 they give testimony it is truthful -- inaccurate facts
12 were presented. Whether that was nefarious or
13 accidental, I think it goes to the fact that the
14 Government is an invested entity in these things. The
15 Government will benefit directly by making money off of
16 the outcome of this case potentially, and that it is
17 important to understand that we follow very set
18 procedures whenever we close, that we do compact our
19 trash, that we have been complained about many times
20 which is not relevant to this case beyond the fact that
21 the code itself -- and please do let me read it --
22 states this: The licensee under a retailer's license

1 shall take reasonable measures -- shall take reasonable
2 measures to ensure that the immediate environs of the
3 establishment including adjacent alleys, sidewalks, or
4 other public property immediately adjacent to the
5 establishment, or other property used by the licensee to
6 conduct its business are kept free of litter. We shall
7 take reasonable measures. It is not about whether a lid
8 is closed or not. It is about what constitutes a
9 reasonable measure, the muster of which I think we have
10 more than met. And so I want to agree wholeheartedly
11 with Mr. Rivero. This is about ours being a city of
12 laws and not laws that are open for interpretation based
13 on what an inspection or thinks is enforceable but
14 what's written and that we all agree upon on the letter
15 of the law which clearly states reasonable measures.
16 Not whether a trash can lid is closed or open, but a
17 reasonable measure which I think we have proven that we
18 do and more importantly the city has not proven that we
19 do not do. I also want to make the case that we are a
20 city of laws. We as citizens of this city need to
21 believe in the faith and the fastidiousness and the
22 veracity of our Government agencies. And when an agent

1 of the Government, be it a police officer or an ABRA
2 inspector, gets on the stand and testifies another under
3 oath and lies or misconstrues the truth, I believe that
4 is cause for outrage amongst all of us. I believe you
5 guys should be outraged that you have in front of you
6 documentary evidence that directly contradicts the under
7 oath statement of a Government official. If we are a
8 city of law, the Government too must follow those laws.
9 They cannot simply do what they want, nor are they
10 simply a neutral body. The Government not here on high
11 as a third party. The Government has a direct financial
12 interest in the outcome of these proceedings. The
13 inspector has his own career to consider. And the
14 Government has now come and presented false evidence or
15 made false statements to a board that is adjudicating a
16 matter. And I believe that if we are a city of laws,
17 then we should follow the laws. We should be held to
18 the standard of taking reasonable measures which we have
19 proven that we do and the Government has not proven that
20 we do not do and that the standard of excellence of the
21 Government itself should be considered deeply when
22 considering the submission of a violation like this when

1 false testimony is then presented. So I want to
2 conclude by thanking you guys for your time, by
3 acknowledging too that this is a frivolous use of all of
4 our time in many ways. But in much grander ways this is
5 very important to me and our business because it does
6 cost us real money and it does hold a mirror up to the
7 operations of the Government and the way in which they
8 enforce rules. And my last point will be they are
9 enforcing rules they are not fully aware of. The
10 inspector could not state what the code was or what
11 reasonable measures meant to him. And he then proceeded
12 to submit false testimony to the esteemed board here and
13 was contradicted, and that's clearly a misconstrual of
14 the truth. I think all of these things combined
15 demonstrate that we are in great custody of our litter
16 despite being maybe lesser prepared for this hearing
17 than I or you would like, and that the Government has
18 entirely failed in its obligation to show that we are
19 not taking reasonable measures. So I ask that you
20 dismiss this. I appreciate your time. Thank you very
21 much.

22 CHAIRPERSON ANDERSON: Thank you very much,

1 Mr. Singer. All right. With that the record is now
2 closed. Do the parties wish to file a proposed findings
3 of facts and conclusions of law or waive their right to
4 do so? What that means is that you can wait for the
5 transcript of this hearing and then you can write
6 something to say this is what was proven or not or you
7 just want us to make a decision based on the
8 presentation today.

9 MR. RIVERO: The Government waives its
10 right.

11 MR. SINGER: We will do the same.

12 CHAIRPERSON ANDERSON: Okay. Thank you.
13 The Board then will issue a decision within 90 days.
14 Hold on one minute. As -- as chairperson of the
15 Alcoholic Beverage Control Board for the District of
16 Columbia in accordance with Section 405 of the Open
17 Meetings Act of 2010 I move that the ABC Board hold a
18 closed meeting for the purpose of seeking legal advice
19 from our counsel on Case Number 15-CMP-00662, Union
20 Kitchen per Section 405B4 of the Open Meetings Act of
21 2010 and deliberating upon Case Number 15-CMP-00662,
22 Union Kitchen for the reason cited in section 405B13 of

1 the Open Meetings Act of 2010. Is there a second?

2 MS. MILLER: Second.

3 CHAIRPERSON ANDERSON: Ms. Miller has
4 seconded the motion. I will now take a vote -- roll
5 call vote on the motion before us that now has been
6 seconded. Ms. Miller.

7 MS. MILLER: Agree.

8 CHAIRPERSON ANDERSON: Mr. Alberti.

9 MR. ALBERTI: I agree.

10 CHAIRPERSON ANDERSON: Mr. Short.

11 MR. SHORT: I agree.

12 CHAIRPERSON ANDERSON: Mr. Anderson. I
13 agree. As it appears that the motion has passed, I
14 hereby give notice that the ABC Board will hold a closed
15 meeting in the ABC Board conference room pursuant to the
16 Open Meetings Amendment Act of 2010 and issue a decision
17 within 90 days. Thank you very much for both parties
18 for your testimony. And again, we'll issue a decision
19 within 90 days. All right. As chairperson of the
20 Alcoholic Beverage Control Board for the District of
21 Columbia in accordance with D.C. Official Code Section
22 574B Closed Meetings and Section 2574, Notice of

1 Meetings on the Open Meetings Act I move that the ABC
2 Board hold a closed meeting on -- on -- on May 6 -- on
3 May 6, 2016 for the purpose of discussing and hearing
4 reports concerning ongoing or planned investigations of
5 alleged criminal or civil misconduct or violations of
6 law or regulations and seeking legal advice from our
7 counsel on the board investigative licensing and legal
8 agenda for -- for May 6, 2016 as published in the D.C.
9 Register -- I'm sorry. I -- I -- I apologize. The next
10 hearing is May 11th, 2016. This -- the agenda will be
11 published in the D.C. Register on May 6th, 2016. Is
12 there a second?

13 MR. SILVERSTEIN: Second.

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

18 MR. SILVERSTEIN: I agree.

19 CHAIRPERSON ANDERSON: Mr. Short.

20 MR. SHORT: I agree.

21 CHAIRPERSON ANDERSON: Mr. Alberti.

22 MR. ALBERTI: I agree.

1 CHAIRPERSON ANDERSON: Ms. Miller.

2 MS. MILLER: Agree.

3 CHAIRPERSON ANDERSON: Mr. Anderson. I
4 agree. As it appears that the motion has passed, I
5 hereby give notice that the ABC Board will hold the
6 aforementioned closed meeting pursuant to the Open
7 Meetings Act. Notice will also be posted on the ABC
8 Board hearing bulletin board, placed on the electronic
9 calender on ABRA's website and published in the D.C.
10 Register in as timely a manner as practical.

11 It is 5:22, and we are now adjourned. Thank
12 you.

13 (Whereupon the above-entitled matter was
14 concluded.)

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