

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD
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6 IN THE MATTER OF: :
7 The Watergate Hotel Lessee LLC: CASE#16-PRO-00085
8 t/a Watergate Hotel :
9 2650 Virginia Ave. NW :
10 License #91162 :
11 Retailer CH :
12 ANC 2A :
13 Application to Renew :

14 - - - - -X

15 Wednesday, November 9, 2016

16
17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

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2 BOARD MEMBERS PRESENT

3 DONOVAN ANDERSON, CHAIRMAN

4 JAMES SHORT, BOARD MEMBER

5 MIKE SILVERSTEIN, BOARD MEMBER

6 JAKE PERRY, BOARD MEMBER

7 MAFARA HOBSON, BOARD MEMBER

8

9 ALSO PRESENT:

10 STEPHEN O'BRIEN

11 BARBARA KAHLOW

12 JACQUES COHEN

13 SARAH MADDUX

14 TASHA CULLINGS

15 ROBERT MUEHLICH

16 VINCENT MERCURIO

17 FREDERICK SCHWARTZ

18

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

2 PROTEST HEARING

3 CHAIRPERSON ANDERSON: We now call case
4 #16-PRO-00085, The Watergate Hotel, license
5 #91162. Will the parties please appear and
6 identify themselves for the record, please?

7 MR. O'BRIEN: Stephen O'Brien, with Matthew
8 Minora for the applicant. We are accompanied by
9 Jacques Cohen who is the managing member of the
10 applicant, in essence the owner of the hotel, and
11 it's spelled J-A-C-Q-U-E-S, C. C-O-H-E-N.

12 CHAIRPERSON ANDERSON: There is a sign-in
13 sheet on the table that I would like each party
14 to sign your name in, please. Yes, ma'am.

15 MS. KAHLOW: Thank you, Mr. Chair. I'm
16 Barbara Kahlow, secretary treasurer of the West
17 End Citizens Association and I am representing
18 them today. I have five other witnesses. To my
19 right is the West End Citizens Association
20 president, Sara Maddux, and the others are in the
21 audience. Shall I introduce them now or when
22 they come up?

1 CHAIRPERSON ANDERSON: You can introduce them
2 when you call them as witnesses.

3 MS. KAHLOW: Thank you.

4 CHAIRPERSON ANDERSON: Are there any
5 preliminary matters in this case?

6 MR. O'BRIEN: I believe that you do have a
7 preliminary matter.

8 CHAIRPERSON ANDERSON: What is that, sir?

9 MR. O'BRIEN: I believe it's a request from
10 an individual to be heard.

11 CHAIRPERSON ANDERSON: I know, besides that.
12 What I'm saying do either parties have any
13 preliminary matters?

14 MR. O'BRIEN: No, except that I would ask for
15 a rule on the witness.

16 CHAIRPERSON ANDERSON: Yes, I will. Ms.
17 Kahlow?

18 MS. KAHLOW: I also have a preliminary
19 matter. I received an ABRA subpoena for
20 documents already in your possession since the
21 WCA is a registered, certified civic association
22 with you, and I have given the documents to the

1 applicant. I just thought that was unusual and I
2 want to tell the board the circumstances. I got
3 a call from my front desk and they said that
4 somebody had to interview me on a case urgently,
5 and I said 'I don't have an appointment, I
6 haven't taken a shower,' and they said 'okay.'
7 And I said, 'come on up for a moment.' I opened
8 the door in bathrobe and nightgown and I said,
9 'how long will this interview take?' and they
10 said, 'oh, it's not an interview, we're just
11 handing you a subpoena.' I thought that was not
12 particularly well handled and I thought you
13 should know about it.

14 CHAIRPERSON ANDERSON: Well, the board -- I
15 know that Mr. O'Brien had requested a subpoena
16 and the board issued the subpoena but the board
17 is not in the process of serving subpoenas so I'm
18 not sure who the process server was, but --

19 MS. KAHLOW: The process server was ABRA.

20 CHAIRPERSON ANDERSON: Was it ABRA --

21 MS. KAHLOW: I have this card, it's from ABRA
22 employees.

1 CHAIRPERSON ANDERSON: I wasn't aware that --
2 I'm not sure of the process of our subpoenas that
3 are followed by our board staff but if you
4 believe that it was not served properly I do
5 apologize on behalf of the board. I'm not saying
6 that the person did or didn't do anything wrong,
7 but I'm just saying that if it's in your view if
8 you believe it was not done properly then on
9 behalf of the board, I signed the subpoena. I do
10 apologize to you on behalf of the board.

11 MS. KAHLOW: Thank you so much. I thought
12 the board would want to know the circumstances.
13 I have one other preliminary matter. Under the
14 board's rules all of the exhibits we had to
15 provide the board last Wednesday, seven days in
16 advance. We received one of the exhibits from
17 the applicant on Friday, a second one on
18 Saturday, and the others are not yet provided.
19 It's not a big deal, it's just that I hope the
20 board will enforce the rules for all parties
21 equally.

22 CHAIRPERSON ANDERSON: Well, what do you mean

1 it's not a big deal? So, you need to explain to
2 me what you mean by it's not a big deal.

3 MS. KAHLOW: I still don't have the exhibits
4 but I can move ahead with this protest without
5 having them.

6 CHAIRPERSON ANDERSON: Mr. O'Brien?

7 MR. O'BRIEN: May I ask what exhibits she's
8 talking about?

9 MS. KAHLOW: You have listed the subpoena as
10 being an exhibit as well as, if I can pull your
11 thing out, exhibit #1 is a copy of the agreement
12 of May 1st, 2013, agreement between the various
13 Watergates, and you had given that to me some
14 time ago and that's why it's not a big deal, but
15 it wasn't provided to the board, that's why --

16 CHAIRPERSON ANDERSON: I'll say this to you.
17 The board has not seen documents. Whatever
18 documents were served on the board, none of the
19 board members, we have not seen any documents so
20 we have not looked at any documents so I don't
21 know -- that's why I'm having you two address it
22 because I don't know what documents you're

1 speaking to because none of the board members
2 have looked at this file.

3 MR. O'BRIEN: Well, exhibit #1 is an aerial
4 photograph that I was provided.

5 CHAIRPERSON ANDERSON: Do you have that,
6 ma'am?

7 MS. KAHLOW: Yes, we got it on Friday, two
8 days late.

9 MR. O'BRIEN: Two days? I'm asking a
10 question, Mr. Chair.

11 CHAIRPERSON ANDERSON: Yes?

12 MR. O'BRIEN: Two days late according to what
13 rule?

14 CHAIRPERSON ANDERSON: I think what -- go
15 ahead, ma'am.

16 MS. KAHLOW: I just understood that was the
17 rule but if it's not then I'm mistaken.

18 CHAIRPERSON ANDERSON: I think the statement
19 was that she thought all the documents in the
20 case have to be exchanged seven days prior to the
21 hearing. I'm saying that's what she was saying,
22 and she did not receive the documents within the

1 seven-day period. I think that's the statement
2 that has been made.

3 MR. O'BRIEN: The PIF and the exhibit list
4 are required not by rule but by board
5 instructions to be produced seven days. There's
6 no such requirement with respect to the exhibits
7 themselves but notwithstanding when Ms. Kahlow
8 asked for the exhibits, we have a total of six
9 listed. We gave her the three we had. The other
10 three were documents that were subpoenaed for
11 this hearing and I'd asked her for advance copies
12 of those but she just handed them to me as you
13 took the bench, so we're reviewing them for the
14 first time.

15 MS. KAHLOW: I -- just to be clear, the first
16 -- document 1 we got on Friday, document 2 we got
17 a month or so ago. The next three are
18 subpoenaed. The fourth we got on Saturday, but
19 it's okay because we have what we have.

20 CHAIRPERSON ANDERSON: I think what I'm being
21 told is that whenever the documents were
22 submitted, that they're not an issue in the sense

1 that the board has not been asked to make a
2 decision on whether or not any documents should
3 or should not be included. How many witnesses do
4 you have, Mr. O'Brien?

5 MR. O'BRIEN: Four.

6 CHAIRPERSON ANDERSON: Four? And who are the
7 witnesses that you have?

8 MR. O'BRIEN: Jacques Cohen, the owner,
9 sitting next to me; Vincent Mercurio, the
10 managing director of the hotel; Robert Muehlich
11 who is the beverage manager of the hotel, and we
12 also subpoenaed ANC commissioner Florence Harmon
13 but I don't know that I've seen her today.

14 MS. KAHLOW: My understanding --

15 CHAIRPERSON ANDERSON: Go ahead.

16 MS. KAHLOW: -- is that she was not served
17 and will not be here.

18 MR. O'BRIEN: I will note that I did see from
19 the board staff a return of service on the
20 subpoena to Ms. Harmon.

21 CHAIRPERSON ANDERSON: All right, so Ms.
22 Harmon was served. I'm not quite sure whether or

1 not the board has an enforcement procedure but I
2 know that I did sign off on the subpoena for the
3 board to serve it and the board, as you stated,
4 you said you have the information that she was
5 served. I'm not quite sure if she does not show
6 up -- I guess the assumption is that she will not
7 be here today, so the board -- you can make
8 whatever argument you want to make regarding that
9 issue, but I'm not quite sure if we have served a
10 subpoena and the person has not shown up, what
11 type of enforcement mechanism the board has.

12 MR. O'BRIEN: Referral to the superior court
13 for enforcement.

14 CHAIRPERSON ANDERSON: We'll --

15 MR. O'BRIEN: Otherwise a subpoena is a
16 useless piece of paper.

17 CHAIRPERSON ANDERSON: Right. I know. So
18 what is it that you're asking -- because is this
19 -- what is it that you want the board to do? The
20 witness is not here, the witness was served, the
21 witness is not here, what is it that you're
22 asking the board to do?

1 MR. O'BRIEN: Let me suggest this. Let us
2 see how the hearing goes and if I conclude at the
3 end that her testimony is not necessary, if we're
4 able to get it in through other means, then it'll
5 become meaningless and I'll just let the board
6 decide whether it wishes to make a point of
7 enforcing its subpoena power or whether we will
8 consent to people simply thumbing their nose at a
9 subpoena.

10 CHAIRPERSON ANDERSON: Okay, thank you.

11 MR. O'BRIEN: But, what I'm saying is I don't
12 think we have to make that decision now.

13 CHAIRPERSON ANDERSON: Okay, fine. So at the
14 end of your case then you can let me know what is
15 it that you want the board to do as far as the
16 subpoena.

17 MR. O'BRIEN: At the end of all the evidence.

18 CHAIRPERSON ANDERSON: Yes. Ms. Kahlow, who
19 are your witnesses? Can they -- give me the name
20 of your witnesses again.

21 MS. KAHLOW: I'm first, Ms. Maddux is second,
22 the third is Victoria Jennings in the first row -

1 - Dr. Victoria Jennings, fourth is Pauline Neman
2 in the next row, the fifth is Cynthia Walker on
3 the left in the next row and the last is Michael
4 Walsh who is in the next row at the end.

5 CHAIRPERSON ANDERSON: I'm sorry, the lady
6 sitting next to you. What's her name again,
7 please?

8 MS. KAHLOW: Sara Maddux. M-A-D-D-U-X.

9 CHAIRPERSON ANDERSON: And who is she?

10 MS. KAHLOW: President of the civic
11 association the West End Citizens Association.

12 CHAIRPERSON ANDERSON: And give me your title
13 again, please. I know you've done it before.
14 I'm saying this for a reason, so give me your
15 title again.

16 MS. KAHLOW: Secretary treasurer of the West
17 End Citizens Association.

18 CHAIRPERSON ANDERSON: Okay. Mr. O'Brien has
19 requested the rule on witnesses so I need his two
20 witnesses to -- with the exception of the owner
21 to stay -- I am requesting that the two other
22 gentleman, any other witnesses that he has, that

1 they leave the room and I'm requesting that Ms.
2 Kahlow that all your witnesses, with the
3 exception of Ms. Maddux, leave the room.

4 MS. KAHLOW: Okay, and where will I find
5 them?

6 CHAIRPERSON ANDERSON: There is a -- within --
7 -- Mr. Moussavi can you show the witnesses where
8 the conference room is where they can sit, for
9 me, please?

10 MR. MOUSSAVI: What?

11 CHAIRPERSON ANDERSON: There's a conference
12 room that the witnesses can sit.

13 MR. MOUSSAVI: Absolutely.

14 CHAIRPERSON ANDERSON: Please. For Ms.
15 Kahlow witnesses, I need the ones who are going
16 to testify -- I need them to step out of the
17 room. You can follow Mr. Moussavi, he can show
18 you where you need to be. There was a
19 preliminary that Mr. Schwartz had requested from
20 the board stating that he has the right as a
21 citizen to be heard and so what I will do is that
22 prior to closing arguments he will get an

1 opportunity to speak, so we will have the parties
2 present their case and I will give him an
3 opportunity to speak. Mr. Schwartz, can you
4 identify yourself for the record, please?

5 MR. SCHWARTZ: I'm sorry, I can't hear, there
6 seems to be a dead spot.

7 CHAIRPERSON ANDERSON: I'm sorry, can you
8 identify yourself for the record, please?

9 MR. SCHWARTZ: Yes, Frederick Schwartz, Mr.
10 Chairman.

11 CHAIRPERSON ANDERSON: And who are you, sir?

12 MR. SCHWARTZ: I'm sorry?

13 CHAIRPERSON ANDERSON: And who are you?

14 MR. SCHWARTZ: I, as you know, submitted a
15 request to the board and requested under the
16 board's rules and statutes to testify. I've been
17 advised that the board wishes me to testify
18 before they decide whether I can testify. I'm
19 addressing the board now because if I am to be a
20 witness then I should join the other witnesses in
21 the other room. If I am not to be a witness,
22 then I'd certainly like to stay.

1 CHAIRPERSON ANDERSON: Well, part of the
2 issue -- you're not a party to this case so
3 you're not a witness, per se because you're not
4 being called by either side and so I guess, as
5 you stated that you have an opportunity that you
6 want to speak, the board will grant you -- I'm
7 not sure what it is that you want to speak about
8 but let me ask you a question. About how long do
9 you believe that you need to speak?

10 MR. SCHWARTZ: I suspect that -- it's four
11 pages, 14 point type, so if I go over three
12 minutes I will have failed my duty to the court.

13 CHAIRPERSON ANDERSON: So you're saying
14 you're asking for about ten minutes to speak.

15 MR. SCHWARTZ: Assuming a great number of
16 board interruptions.

17 CHAIRPERSON ANDERSON: Well, I'm being
18 generous when I say ten minutes to speak. You
19 said three minutes so I'm being generous when I
20 say ten minutes to speak, so I understand, so
21 yeah. It's -- this is not something that -- this
22 is new to the board but the board will grant you

1 an opportunity to speak since you have stated
2 that you can, and so prior to -- after each side
3 has presented its case then I will allow you to
4 speak for that time and we will take it for what
5 it's worth and I think that either party would
6 have an opportunity to ask questions if they so
7 desire.

8 MR. SCHWARTZ: The reason I'm addressing the
9 board is in terms of timing. Does the board wish
10 me to join the other witnesses?

11 CHAIRPERSON ANDERSON: That's something that
12 I'm wrestling with at the moment because you're
13 not --

14 MR. SCHWARTZ: I don't belong to anybody. I
15 don't want anybody to think I'm influenced by
16 what any of the witnesses say.

17 CHAIRPERSON ANDERSON: Well no one knows -- I
18 clearly do not know what is it that you're going
19 to speak about, I'm not sure that it's Mr.
20 O'Brien or Ms. Kahlow is aware, but, Mr. O'Brien?

21 MR. O'BRIEN: May I suggest that it simply
22 might be more expeditious if the board has made a

1 decision that Mr. Schwartz shall be heard, just
2 get it over with now.

3 MS. KAHLOW: I would prefer it be after our
4 testimony, please.

5 MR. SILVERSTEIN: I'm sorry?

6 CHAIRPERSON ANDERSON: I think the direction
7 was after the testimony, but -- my preference is
8 that, and I'll say it this way, and I know that
9 Ms. Kahlow always talks about, from what I was
10 told, she talks a lot about the BCA and how it
11 operates in the BCA and although this is not a
12 BCA hearing I, in my other capacity as an ANC
13 commissioner, I testified at -- I was a party to
14 a case and I testified at a BCA hearing. After
15 each side presented its case then the chair would
16 ask is there anyone in the audience who wished to
17 be heard. And so that's one of the reasons why I
18 decided I'd follow that same guideline since it's
19 new to the board in the sense that we've never
20 had someone who's not a party who stated that our
21 rules state that he should be heard as a witness
22 and so, therefore, I think that we'll have him

1 speak at the end of the case prior to closing and
2 you'll still have an opportunity if he says
3 something that either side believes that they
4 need to respond to, then you'll have the
5 opportunity at that time to respond or if you
6 believe that in this one particular case if
7 either side believes that they need to call a
8 rebuttal witness to rebut something that he
9 stated I will give you the opportunity to do
10 that, okay? So, I'm not going to require that
11 you cart yourself off to sit in a room. If you
12 care to sit here, you can sit here, sir, but
13 after each side has presented its case then I'll
14 have you speak, so it's your choice.

15 MR. SCHWARTZ: Thank you very much Mr. Chair.

16 CHAIRPERSON ANDERSON: All right, thank you.
17 Are there any other preliminary matters? No?

18 MR. O'BRIEN: No, sir.

19 CHAIRPERSON ANDERSON: Are there -- and I'm
20 doing this a little bit different -- are there
21 any documents, because since the board has not --
22 we have not looked at any of the documents as

1 yet, we have not read -- and I want the record to
2 reflect we have not read our board -- the report
3 submitted by our witness, so my rule is that
4 we're not going to review that. So, all the
5 information is coming to us first impression when
6 we hear the case. So, one way I will do, I will
7 ask do you have any documents that you wish to
8 submit? And so, if you submit them now we can,
9 if there are no objections, then the board will
10 have the documents so we can review while the
11 testimony. If there are objections to documents
12 then I'm not going to accept them at this moment.
13 I'll wait and then I'll make a ruling later on on
14 those documents. Are there any questions?

15 MR. O'BRIEN: I don't have any questions. I
16 can identify the exhibits.

17 CHAIRPERSON ANDERSON: That's what I'm
18 saying, so tell me what other documents you have
19 so I can move them into evidence if there are no
20 objections.

21 MR. O'BRIEN: Our number one is the aerial
22 photograph.

1 CHAIRPERSON ANDERSON: Hold on one minute.
2 Let me find. And therefore I wanted you to know
3 that maybe under previous leadership of the board
4 maybe board members have seen the documents
5 before but I just wanted you to know these
6 protest hearings or show cause hearings, the
7 board members will not review any documents prior
8 to their introduction in front of the hearing, so
9 I just wanted it clear that no one thinks that
10 when the board comes to listen to these cases
11 that we've already reviewed the documents and we
12 have already made our decisions and have
13 background information, and so we have no first-
14 hand knowledge of any of the issues in this case.
15 We're going to make our decisions based on what
16 is presented today at this hearing, okay? I just
17 want the record to reflect that. Let me find
18 your documents. The first document is the aerial
19 photograph. Okay, that's -- Ms. Kahlow do you
20 have any objection to his exhibit #1?

21 MS. KAHLOW: No objection.

22 CHAIRPERSON ANDERSON: So exhibit #1 is moved

1 as a part of the evidence. Any other documents,
2 Mr. O'Brien?

3 MR. O'BRIEN: Number two is a copy of the May
4 1st, 2013, settlement agreement. I think we
5 agreed that the board would not look at those,
6 but that's what it is.

7 CHAIRPERSON ANDERSON: I'm not sure when this
8 person put this binder together. That's one --
9 memorandum of agreement? That's the top of the
10 document?

11 MR. O'BRIEN: No, I believe the word is just
12 document -- I'm sorry, the word is just
13 agreement.

14 CHAIRPERSON ANDERSON: This one dated 11th of
15 September 2016?

16 MR. O'BRIEN: No, sir. May 1, 2013.

17 CHAIRPERSON ANDERSON: Do you have an extra
18 copy of that document, Mr. O'Brien, because I --

19 MR. O'BRIEN: I've got multiple copies of all
20 these documents for the board.

21 CHAIRPERSON ANDERSON: Yes, please do because
22 I don't. Oh, you know what? Is there a board

1 order attached to it?

2 MR. O'BRIEN: Yes, sir.

3 CHAIRPERSON ANDERSON: Okay. All right, the
4 way my folder is put together. All right, yes, I
5 do have that document. Ms. Kahlow, do you --

6 MS. KAHLOW: Yes, I have it. I got it months
7 ago.

8 CHAIRPERSON ANDERSON: And you have no
9 objection to this document?

10 MS. KAHLOW: I do not.

11 CHAIRPERSON ANDERSON: Okay, so that's moved,
12 that's a part -- that's moved into evidence.
13 What other documents, sir?

14 MR. O'BRIEN: Number three is one of the
15 subpoenaed documents. We will not be introducing
16 that. Scratch #3 off the list.

17 CHAIRPERSON ANDERSON: What's the other
18 document?

19 MR. O'BRIEN: The others are #4 and #5 and
20 the answer is I don't know yet because they were
21 subpoenaed documents and we were just handed them
22 as the board took the bench and we haven't been

1 through them yet.

2 CHAIRPERSON ANDERSON: So, what's #4 and #5,
3 what is that?

4 MR. O'BRIEN: Number four should be the
5 bylaws of the West End Citizens Association and
6 number five should be the minutes of the meeting,
7 I believe, and Ms. Kahlow can correct me, but I
8 believe the date is July 22nd.

9 CHAIRPERSON ANDERSON: So, we don't have
10 those documents. So, do you want to move that
11 into evidence now or do you want to wait?

12 MR. O'BRIEN: I don't know. I haven't had a
13 chance to review them. CHAIRPERSON ANDERSON:
14 Okay. All right.

15 MR. O'BRIEN: If they're used, they'll be
16 used on cross examination.

17 CHAIRPERSON ANDERSON: So, if you're going to
18 use them you can introduce them so right now --
19 any other documents?

20 MR. O'BRIEN: Our #6 is four pages of e-mails
21 from ANC commissioner Florence Harmon in March
22 through May of 2013. Ms. Harmon does not appear

1 to respond this a.m.

2 CHAIRPERSON ANDERSON: Okay, what else? Any
3 other documents?

4 MR. O'BRIEN: We only listed six exhibits.

5 CHAIRPERSON ANDERSON: Can you give me a set
6 of those documents, please? All the documents
7 you plan to rely on, because the package that I
8 have here is not -- it might be somewhere in my
9 folder but it's not the way I want it to be so at
10 least I'll have it. No, just one set is fine. I
11 think that the rest of the board might have it
12 but it's not in the order that you -- I just want
13 to make sure that I have it and then I can figure
14 out where they are. What documents do you have?

15 MS. KAHLOW: Mr. Chairman, our PIF and
16 exhibit list have four and I was asked to bring
17 seven sets for you, and I have them for you. The
18 first is a chart that was attached to our protest
19 letter on July 25th. It's entitled Proposal for
20 Watergate Hotel's Outdoor Venues Ending Hours,
21 etc. The second is also on your docket but I
22 wanted you to have your own copy of our chart,

1 the West End Citizens Association chart that was
2 attached to our September 25th follow-up letter,
3 and it is captioned Comparison of Closing Hours
4 and Music Foggy Bottom West End Establishments.
5 The third is something you've not seen, is a
6 memorandum agreement between a new property owner
7 and the West End Citizens Association directly
8 across the street from The Watergate, 1601
9 Virginia Avenue. It is referenced in that chart
10 and I thought you'd probably want to see the full
11 terms. And the fourth is an agreement that you
12 do have because it's a settlement agreement
13 that's been filed with ABRA by a new hotel a
14 couple of blocks away on Virginia Avenue called
15 The Hive. It is soon to open and it's a January
16 5th, 2016, settlement agreement. It is mentioned
17 in the chart, and I thought you may want to see
18 the full context.

19 CHAIRPERSON ANDERSON: Mr. O'Brien do you
20 have any objections to any of the documents?

21 MR. O'BRIEN: I don't object to #1. I object
22 to #2, #3 and #4 on relevance grounds. They

1 discuss other licensees and other hotels.

2 CHAIRPERSON ANDERSON: All right. I will
3 accept #1 into evidence currently and #2, #3 and
4 #4 you can present them later on and then I'll
5 see how it's been used, then I'll see what
6 objection Mr. O'Brien has at that time and then
7 I'll make a decision whether or not we will
8 accept them into the record.

9 MS. KAHLOW: Do you want me to hand your
10 staff all sets now?

11 CHAIRPERSON ANDERSON: Just the first one.

12 MS. KAHLOW: Just the first one.

13 CHAIRPERSON ANDERSON: But remember as the
14 case progresses that you need to move the other
15 documents into evidence -- yes, sir?

16 MR. O'BRIEN: You want one copy?

17 CHAIRPERSON ANDERSON: No, just document #1.

18 MR. O'BRIEN: And you only want one copy of
19 #1 at this time.

20 CHAIRPERSON ANDERSON: Yeah, I think we
21 should all have one already. The reason why I'm
22 asking you guys to give it to me, I have this

1 binder that has a whole lot of documents, but
2 they're not in order the way I want them to be,
3 so at least to be on the same page as you are I
4 want to make sure --

5 MR. O'BRIEN: We were told to give one set,
6 one of each, so that you would have it. I can
7 see Ms. Kahlow's compiling seven right now of
8 exhibit #1.

9 MS. KAHLOW: Your general counsel asked for
10 seven and I complied.

11 CHAIRPERSON ANDERSON: I think it's to make
12 sure that each board member has a copy to review.

13 MR. O'BRIEN: And we have all the copies of
14 our exhibits and were just told not to pass them
15 out.

16 CHAIRPERSON ANDERSON: Mr. O'Brien, just
17 remember when we started off, the board has this
18 folder. I think all the documents are in the
19 folder. I'm not sure. That's one of the reasons
20 when I was asking you I was like going through
21 flipping and I couldn't find them so that's why I
22 said just give it to me so I will have it and I

1 will look at it and then I will look in my folder
2 to make sure that the board has these documents,
3 but I -- since we have never looked -- since my
4 rule is we're not going to review the documents
5 prior to sitting here, so I don't know what's in
6 the folder.

7 MR. O'BRIEN: Okay.

8 CHAIRPERSON ANDERSON: So that's why. So
9 what I'm asking her to do is just give me one
10 copy so I will have it in the official record as
11 we go through, then I will know what's in the
12 folder so I can advise my other board members
13 where the documents are.

14 MR. O'BRIEN: What I'm saying, she just
15 passed up seven copies.

16 CHAIRPERSON ANDERSON: I am only taking one.

17 MR. O'BRIEN: Okay.

18 CHAIRPERSON ANDERSON: I am only taking one
19 for the board, the same way I took one from you,
20 okay? So just one. Now that I've seen the
21 document, it's in my folder and the board has
22 these documents in the folder. It just wasn't

1 where -- I couldn't find it while we were
2 discussing it. All right, the purpose of this --
3 this is a protest hearing and the board does not
4 intend to hear documents -- or, hear witnesses or
5 to rely on documents that are not relevant to the
6 matter here, so I'm asking each party to be
7 cognizant of the issues, why this protest hearing
8 was filed and that we keep on that process. The
9 way this process is going to go is we're going to
10 have -- the board will call its witness who will
11 testify, then the board will ask questions of its
12 witness. Once the board has asked questions of
13 its witness, then the applicant will have an
14 opportunity to -- then the applicant will have an
15 opportunity to ask questions of the board's
16 witness and the protestant will have an
17 opportunity to ask questions of the board's
18 witness, and then we'll do the process. Each
19 side is supposed to have 90 minutes to present
20 its case. I'm not going to be a stickler to say
21 that, okay here's your time, but time is of the
22 essence so I would ask both parties to be

1 cognizant of the time. This is the only hearing
2 that we have this afternoon. The board will sit
3 here until it's over, but I don't think we want
4 to be here until midnight, but I'm just saying
5 that to folks that we're all here and we'll just
6 keep it on point so, therefore, we will all be
7 here listening and paying full attention to
8 what's being said.

9 During this process, does the applicant wish
10 to make an opening statement? Yes, sir, go
11 ahead.

12 MR. O'BRIEN: This case is before the board
13 in what I consider to be an unusual posture.
14 Typically, the board protestors says that either
15 a discussion or debate on the likely consequences
16 and impact of a business which is not yet open,
17 or the board's hearing a renewal process will be
18 based on allegations of disruption in the
19 neighborhood, or violation of a settlement
20 agreement. This case is unique in that we have a
21 business that is up and running, subject to a
22 settlement agreement which you will see in

1 evidence, and no history of violation of a
2 settlement agreement or disruption. Rather, the
3 bedrock of this protest is a fear, and I'm
4 paraphrasing here, or summarizing I should say,
5 that somehow the settlement agreement is just
6 plain not good enough. The evidence will show
7 that the Watergate Hotel, located within the
8 Watergate complex which is bounded by the Rock
9 Creek and Potomac Parkway and the Potomac River
10 immediately to the west, by eight-lane Virginia
11 Avenue plus eight-lane sunken Potomac River
12 Freeway to the east, and to the south by the
13 Kennedy Center. The Potomac River Freeway curls
14 around the back of the Kennedy Center and onto
15 Roosevelt Bridge. The evidence will show that
16 the Watergate Hotel -- the Watergate complex,
17 which consists of six buildings, three
18 residential buildings, two office buildings and a
19 hotel -- the evidence will show that the
20 Watergate complex is an island unto itself, set
21 off, it's different. The evidence will show that
22 the Watergate Hotel went into foreclosure about

1 eight years ago and has been closed until it was
2 reopened in May of this year by the new owner,
3 our client. And in that eight years, evidence
4 will show, the Watergate Hotel became a decaying,
5 decrepit, rodent-infested hulk, virtually
6 abandoned. The evidence will show that in 2010,
7 Jacques Cohen, sitting next to me, purchased that
8 abandoned, decaying hulk for \$45 million dollars,
9 purchased it from the bank that had acquired it
10 at foreclosure. The evidence will show that in
11 2012 Mr. Cohen caused filing of an application
12 for a hotel ABC license. That application, the
13 evidence will show, was protested by a number of
14 individuals who lived in the Watergate complex
15 and by the Advisory Neighborhood Commission --
16 that's ANC 2A. The evidence will show that
17 arduous negotiations ensued over a six-month
18 period culminating in execution of a settlement
19 agreement dated May 1, 2013. That's our exhibit
20 #2. It's a detailed settlement agreement and
21 it's all encompassing. You will hear then the
22 evidence that based on that 2013 settlement

1 agreement Mr. Cohen embarked on renovation of the
2 decaying hulk. I say based on the agreement.
3 The evidence will show that projections were made
4 as to revenue that could be generated from the
5 hotel including, importantly for purposes of this
6 hearing, the outdoor venues including the
7 rooftop. The evidence will show that Mr. Cohen
8 made compromises in order to reach a settlement
9 as to hours of operation, as to hours of music at
10 all of the outdoor venues at the hotel, but based
11 on the projections of anticipated revenue from
12 these outdoor venues, Mr. Cohen embarked on total
13 renovation of the decrepit, decaying hulk to the
14 tune of an additional \$145 million dollars. The
15 evidence will show that the settlement agreement
16 was entered into between the applicant, the 2013
17 settlement agreement, and the governing boards of
18 the three residential buildings in the Watergate
19 complex known as Watergate South, Watergate East
20 and Watergate West.

21 The ANC which had been a protestant dropped
22 out -- withdrew its protest when the settlement

1 agreement was submitted by the three residential
2 boards. The evidence will show that once the ANC
3 was satisfied that the residents had protected
4 themselves, the ANC withdrew its protest. The
5 hotel opened, a soft opening in May. The
6 evidence will show that the outdoor venues were
7 not used until approximately September 1st. You
8 will hear evidence of the extensive measures that
9 the hotel has undertaken to ensure compliance
10 with the settlement agreement. You will learn
11 that no complaints have been received regarding
12 operation of the hotel's outdoor venues in the
13 two-plus months it's been open.

14 The evidence will also show that the West End
15 Citizens Association, your protestant today in
16 the person of Ms. Kahlow and Ms. Maddux, knew in
17 2013 about this application and chose not to
18 participate. What you'll find is that,
19 notwithstanding no breach of the settlement
20 agreement, the present protestants wish to take
21 the 2013 settlement agreement, use it as a
22 baseline, and then demand more in the way of

1 concessions, and I think that the conclusion that
2 the board will reach -- actually I'm reminded of
3 a case -- when I talked about the West End
4 Citizens Association doing nothing when this
5 application was submitted and the settlement
6 agreement was approved -- doing nothing -- and
7 now, after the fact, coming in and saying 'we
8 don't like it, we don't think it's good enough' -
9 - I'm reminded of the Maryland Court of Appeals
10 case Jaworski versus Jaworski -- I'll have the
11 spelling -- which is at 95 and on page 99 which
12 stands for the lesson and I'm going to change
13 this quote just for gender: "She who is silent
14 when she ought to have spoken, will not be heard
15 to speak when she ought to be silent." Thank
16 you.

17 CHAIRPERSON ANDERSON: Ms. Kahlow, do you
18 wish to make an opening statement?

19 MS. KAHLOW: I do, thank you. I, Barbara
20 Kahlow, am testifying on behalf of the West End
21 Citizens Association. The WCA as it's known was
22 named for the area west of the White House and

1 before -- many, many years before -- the office
2 of planning named the west end a different group
3 -- a different geographic area. It was
4 established in 1910. It is one of the old
5 citizens' associations in D.C. It is primarily
6 interested in maintaining the quality of life for
7 the existing residential community in Foggy
8 Bottom West End. On August 8th, WCA and ABRA
9 register community association -- that's why you
10 have our bylaws and our articles of incorporation
11 -- received protestant status for this case. The
12 applicant is seeking renewal of its 2013 license
13 including for six outdoor summer gardens. Today,
14 the WCA requests that the board add conditions to
15 its action on the renewal of these summer
16 gardens. We have six witnesses today: Ms.
17 Maddux and me for the West End Citizens
18 Association and four owners in the Watergate West
19 Cooperative apartment building which is next door
20 to the hotel. As our PIF states, I will be
21 primarily presenting the WCA case. Ms. Maddux
22 will discuss community objections to like

1 establishments and the four Watergate [inaudible
2 1:18:12] will discuss historical information
3 including before and immediately after the 2013
4 settlement agreement, ABRA case law and expected
5 adverse effects on them.

6 I want to say this is an unusual protest
7 because:

8 1) There is critically missing information
9 which the board should have prior to any action
10 on the renewal application. We will be -- I will
11 be enumerating that.

12 2) Some of the summer gardens approved in
13 2013 are not yet operational. In fact, two of
14 them are not even accessible to the public.
15 That'll be discussed.

16 3) Neither of the two summer gardens
17 approved for live music have yet had any live
18 music. The WCA does not want to wait three years
19 to protest to the board problems after these
20 outdoor venues and live music have become
21 operational. Previously, I understand the board
22 allowed -- was able to do one year renewals, but

1 now you have to do a full three years, so we
2 don't want to wait a full three years for
3 problems that we anticipate. Thank you very much
4 for letting me make an opening statement.

5 CHAIRPERSON ANDERSON: Thank you. The board
6 will now call its first witness, Ms. Tasha
7 Cullings. Can you raise your right hand, please?
8 Do you swear or affirm to tell the truth and
9 nothing but the truth?

10 MS. CULLINGS: I sure do.

11 CHAIRPERSON ANDERSON: Thank you. Can you
12 just introduce yourself for the record, please?

13 MS. CULLINGS: Yes, Tasha Nicole Cullings,
14 investigator with Alcoholic Beverage Regulation
15 Administration.

16 CHAIRPERSON ANDERSON: And can you just --
17 how are you involved in this case?

18 MS. CULLINGS: I was assigned the protest of
19 a class CH license renewal for Watergate Hotel
20 lessee trading as Watergate Hotel, located at
21 2650 Virginia Avenue Northwest.

22 CHAIRPERSON ANDERSON: And as a result of

1 your investigation did you write a report?

2 MS. CULLINGS: Yes, I did.

3 CHAIRPERSON ANDERSON: And can you summarize
4 the report for us, please?

5 MS. CULLINGS: Yes.

6 CHAIRPERSON ANDERSON: Do the parties have a
7 copy of the report?

8 MR. O'BRIEN: We do, thank you. The
9 applicant does.

10 MS. KAHLOW: Yes, I do, thank you.

11 CHAIRPERSON ANDERSON: All right, thank you.
12 Go ahead, Ms. Cullings.

13 MS. CULLINGS: Yes, I was assigned to a
14 protest of a class CH license renewal for
15 Watergate Hotel. The Watergate license renewal
16 was being protested by West End Citizens
17 Association and they are represented by Ms.
18 Barbara Kahlow who identified herself as the
19 secretary/treasurer for the West End Citizens
20 Association. The protest issues are the effect
21 of the establishment on peace, order and quiet,
22 including noise and litter provisions set forth

1 in Title 25-725 and Title 25-726.

2 In my protest packet I received a letter
3 dated July 25th that was sent to Chairman
4 Anderson of the ABC board from Ms. Sarah Maddux,
5 president of the West End Citizens Association,
6 and I included that in my packet as exhibit #1.
7 The letter is in protest of the recent license
8 renewal of Watergate Hotel. The members of West
9 End Citizens Association are concerned that the
10 establishment will interfere with the peace,
11 order and quiet of the relevant area.

12 The specific concerns of the West End
13 Citizens Association, and I quote, "are the
14 adverse impacts, especially for two of the six
15 outdoor summer gardens with live entertainment,
16 entertainment and live music for the rooftop
17 until 2:00 a.m. on Fridays and Saturdays, and
18 until midnight the rest of the week, are highly
19 objectionable. The West End Citizens Association
20 believes that such late night noise will
21 adversely affect the quality of life in the
22 surrounding neighborhood which houses not only

1 three Watergate complex cooperative apartment
2 buildings, but also the Plaza Condominium across
3 Virginia Avenue and many homes in the nearby
4 Foggy Bottom Historic District. Many Foggy
5 Bottom residents will be unable to sleep until
6 midnight on weekdays and until 2:00 a.m. on
7 weekends. This is unacceptable.”

8 On Wednesday, October 5th, I e-mailed Ms.
9 Barbara Kahlow, the designated representative for
10 the West End Citizens Association so that I could
11 discuss with her the specific concerns that the
12 West End Citizens Association had for the license
13 renewal, CH, for the Watergate Hotel. On
14 Wednesday, October 5th, I also sent an e-mail to
15 attorney O'Brien, the representative for the
16 applicant of Watergate Hotel to discuss with him
17 the specific concerns that the protestants had in
18 regard to the license renewal of the Watergate
19 Hotel.

20 On Thursday, October 6th, 2016, I had an
21 opportunity to speak telephonically with Ms.
22 Kahlow. Ms. Kahlow advised me of her concerns as

1 it relates to the license renewal of Watergate
2 Hotel and they are as follows: Ms. Kahlow stated
3 that ABRA should not have approved the ABC
4 license and that the hours -- and with the hours
5 as they are currently listed. The currently
6 listed hours of the rooftop summer garden shall
7 be allowed to operate until 12:00 a.m. Sunday
8 through Thursday and until 2:00 a.m. Friday,
9 Saturday and the eve of federal holidays. That
10 information came from exhibit #2 which is the
11 settlement agreement -- the previous -- or, the
12 current settlement agreement on file, labeled as
13 exhibit #2.

14 Ms. Kahlow also stated that there were many,
15 many elderly residents in the community and they
16 will be unable to sleep due to the allowance of
17 live music from a rooftop summer garden at such
18 late hours. Ms. Kahlow advised me that the West
19 End Citizens Association was also concerned about
20 terrace -- the area called The Terrace over the
21 ballroom area. Exhibit #2 also lists the current
22 settlement agreement and I labeled the pages #23

1 through #24, paragraph #6 status that the terrace
2 summer garden above the ballroom shall operate no
3 later than 10:30 p.m. Sunday through Thursday and
4 11:30 p.m. Friday and Saturday, and the eve of
5 federal holidays. Live music may be offered
6 occasionally and recorded music other times until
7 10:00 p.m. Sunday through Thursday and 11:00 p.m.
8 Friday and Saturday and the eve of federal
9 holidays. Music level will be controlled with a
10 55 dBA standard applicable to residential
11 balconies, terraces after 10:00 p.m. on each
12 evening. Ms. Kahlow stated to me that her
13 concerns as the current settlement agreement
14 states, was that the occupancy of the terrace
15 over the summer garden -- the terrace above the
16 ballroom area, the occupancy was not listed and
17 when it stated occasional live and recorded music
18 she wanted to know what that meant, the frequency
19 of live and recorded music in that area.

20 Ms. Kahlow also advised me that that area is
21 not being utilized at this time because there is
22 no accessibility to that area. Ms. Kahlow

1 advised me that the proper forms were not filled
2 out with ABRA and that the current ABC license
3 should not have been approved by ABRA. Ms.
4 Kahlow advised me of a follow-up letter that was
5 dated September 25th, and I contacted the
6 adjudication division of ABRA to receive a copy
7 of that and that is also in your packet labeled
8 exhibit #3. This letter contains a comparison
9 chart and it lists other nearby establishments,
10 two of which are not open yet and two other
11 hotels that are open, none of which have any live
12 music. The letter is asking that the ABC board
13 agree to a one year renewal extension since there
14 has been no experience with allowing live music
15 venues in the area.

16 On Thursday, October 6, 2016, I spoke
17 telephonically with attorney O'Brien and advised
18 him of the issues that the West End Citizens
19 Association had with the license renewal of
20 Watergate Hotel. Attorney O'Brien advised me
21 that after the hotel was purchased and the ABC
22 license was approved in 2013, and the current

1 settlement agreement was approved that is dated
2 May 1st, 2013, again, listed as exhibit #2, the
3 settlement agreement is between Watergate Hotel
4 lessee, trading as Watergate Hotel, and the
5 Watergate West Inc., Watergate East Inc., and
6 Watergate South Inc.

7 Attorney O'Brien advised me that the
8 applicant has spent \$150 million dollars to
9 renovate the hotel that was recently opened in
10 May, 2016. Attorney O'Brien stated that in 2013,
11 when West End Citizens Association had an
12 opportunity to be involved in the previous
13 protest of the new license, they were not
14 involved in the protests or the negotiations of
15 the current settlement agreement. Attorney
16 O'Brien stated that money had been spent to
17 remodel and that many concessions were made to
18 the hours and the noise level that was previously
19 approved by the ABC board according to the
20 details that are specifically outlined in the
21 settlement agreement.

22 I advised Attorney O'Brien that Ms. Kahlow

1 had expressed the objection to any live music in
2 two of the outdoor areas. Attorney O'Brien
3 stated that during the protest in 2013 the
4 settlement agreement that was signed and agreed
5 upon specifically addressed the concern of noise
6 for the residents from the outdoor venues.
7 Attorney O'Brien advised me that after money had
8 been spent to remodel the hotel to be in
9 compliance with what was previously agreed upon
10 that West End Citizens Association wants to ask
11 that the applicant not have live music and that
12 they change the agreed upon hours.

13 On Wednesday October 12th, I visited
14 Watergate Hotel and met with Attorney O'Brien and
15 Mr. Robert Muehlich, the food and beverage
16 director of the Watergate Hotel. I asked to be
17 shown the area that was considered the terrace
18 over the ballroom and I included some pictures
19 labeled exhibits #4 through #7. This area is not
20 currently being utilized and is not accessible at
21 this time. The area is a small courtyard area
22 that is over the top of the ballroom. I was

1 asked -- the pictures may not be very clear to
2 see the area. I was asked by Attorney O'Brien if
3 I wanted to go up and see the area a little
4 better but again, as I stated, it's not
5 accessible to the public now and it would have
6 been dangerous to do so.

7 I asked Mr. Muehlich were there any plans to
8 open that area anytime soon and he stated that in
9 addition to putting in an elevator that there
10 would need to be a lot of additional renovations
11 over the terr -- before the terrace over the
12 ballroom would be able to open and at this time
13 explained to me again that it was not accessible,
14 no accessibility.

15 I advised Mr. Muehlich that the West End
16 Citizens Association was concerned that the
17 current settlement agreement states that live
18 music will be offered in that area occasionally
19 and about the listing of -- not having an
20 occupancy listed. I asked Mr. Muehlich if he
21 could explain to me what occasionally meant and
22 Mr. Muehlich stated that the occasional use of

1 the area would only be at the request of a person
2 that was utilizing the ballroom for an event. He
3 stated it may be utilized as a cocktail area
4 prior to the start of a wedding reception. He
5 also stated that there would be no parties or
6 happy hour events and that the area would be
7 utilized by guests of the ballroom area only.
8 Mr. Muehlich stated that the area was very small
9 and he did not foresee dancing if that was an
10 issue from Ms. Kahlow also in that area. He
11 pretty much said after a wedding or other event
12 that the outdoor area may be used temporarily for
13 guests to enjoy cocktails and maybe live music
14 consisting of a violinist, keyboard player or
15 possibly a two or three-member band.

16 I then asked Attorney O'Brien to show me
17 where the Plaza Condominium was located which is
18 where Ms. Kahlow resides and I was pointed that
19 it was located across eight lanes of traffic
20 across Virginia Avenue. I provided exhibits of
21 that and those are labeled exhibits #8 through
22 #11. Attorney O'Brien also advised me that Rock

1 Creek Parkway was directly behind the Watergate
2 Hotel and it was a heavily traveled street with
3 lots of noise and that planes frequently fly over
4 the hotel from Reagan National Airport and that
5 also contributes to noise in the area. I also
6 included in exhibits #12 through #18 the
7 Watergate residential buildings that are located
8 nearby.

9 I was then taken to the rooftop summer garden
10 area and from there I was able to see other
11 residential buildings in the proximity to the
12 rooftop. The first area that I was shown was the
13 Virginia Avenue side of the building to determine
14 the proximity of The Plaza Condominium. I was
15 not able to see the Plaza Condominium from the
16 rooftop because it was obstructed by a mechanical
17 penthouse and that's labeled exhibits #19 through
18 #20.

19 Mr. Muelich also advised me that since the
20 hotel had been open they had not yet utilized any
21 live music on the rooftop area and he also
22 explained to me that live music on the rooftop

1 area would only be utilized at the request of
2 guests for special events and that live music
3 would only be played during a booked event. Mr.
4 Muehlich showed me the speakers and those are
5 labeled as exhibit #21, where music would be
6 played on the rooftop area.

7 On Monday, October 17th, I e-mailed Ms.
8 Kahlow to advise her that I had visited the
9 Watergate and spoke with Attorney O'Brien and
10 Mr. Muehlich and had taken a tour of the hotel.
11 I advised Ms. Kahlow that I had addressed the
12 concerns that she had mentioned to me while I was
13 there, during my visit. I explained to -- and
14 this is exhibit #22 which is an e-mail exchange
15 between myself and Ms. Kahlow -- I explained to
16 her that it appeared that many of her concerns
17 were already being addressed in the current
18 settlement agreement that's on record with the
19 ABC board in reference to music being heard in
20 residences and at or above a certain level. Ms.
21 Kahlow e-mailed me back and she had some
22 additional concerns that I was unable to answer.

1 Characteristics of the neighborhood as far as
2 zoning: The Watergate Hotel is located in a
3 mixed use zone. Zones provided for mixed use
4 development permit a wide -- a broad range of
5 commercial institutional and multi dwelling unit
6 residential development of various densities, or
7 page #6 of my report, nearby establishments,
8 according to the District of Columbia Geographic
9 Information System map there are nine ABC
10 licensed establishments within 1200 feet of
11 Watergate Hotel and that's labeled as exhibit
12 #24.

13 For the record, there were some errors made
14 on page #6 and I have provided corrected copies
15 of that to the adjudication department. At the
16 bottom of the page, of the nine establishments,
17 five of these establishments have summer gardens,
18 four of the establishments do not and of the nine
19 establishments one of the establishments has live
20 entertainment or entertainment endorsement which
21 would include live music, and that would be
22 Sequoia Grill.

1 According to the District of Columbia
2 District of Columbia Geographical Information
3 System there are no schools, public libraries or
4 daycare centers within 400 feet of the
5 establishment. The Watergate Hotel is located
6 primarily in a mixed use area in a block with
7 numerous commercial and residential buildings,
8 exhibit #23.

9 Exhibit #27 lists the hours of operation for
10 the Watergate Hotel. I listed the public
11 transportation station that is closest to
12 Watergate Hotel, Foggy Bottom Metro Subway
13 Station which is located at 2301 I Street
14 Northwest.

15 Days and hours of visit: I visited on
16 Friday, October 14th, 2016, from 10:00 p.m. until
17 11:30 p.m. During the hours I visited or
18 monitored the establishment, no ABRA violations
19 were observed. Monitoring was only done on one
20 occasion because at the present time the
21 establishment is not utilizing one of the areas
22 and the other area does not currently utilize

1 live music.

2 Also, for the record, on page 9 at the top, I
3 want to make a correction that there is one other
4 establishment within 1200 feet that has live
5 music and an entertainment endorsement, and,
6 again, that's Sequoia Grill.

7 I listed as exhibits #28 through #31 --
8 excuse me, #28 through #33, I listed pictures of
9 the parking garage area and street parking as
10 well. There are signs coming out of the parking
11 garage stating in reference to no deliveries
12 prior to 7:00 a.m. and talking about noise
13 control and advised the people that that is a
14 residential area.

15 A record search of the D.C. Office of Unified
16 Communications there were no calls for service at
17 the Watergate Hotel between October 2015 and
18 October 2016. A review of the D.C. Noise Task
19 Force Complaint Log indicates also no calls or
20 complaints for Watergate Hotel, and in their
21 investigative history there were no ABRA
22 violations found.

1 CHAIRPERSON ANDERSON: Thank you. Do we have
2 any questions by any board members? Mr. Short?

3 MR. SHORT: Good afternoon, Ms. Cullings.

4 MS. CULLINGS: Good afternoon.

5 MR. SHORT: Or investigator Cullings. Thank
6 you for an excellent report. It looks like you
7 did a lot of work and it was easy to follow your
8 report. Your communications with the community,
9 you mentioned talking with Ms. Barbara Kahlow?

10 MS. CULLINGS: Yes.

11 MR. SHORT: Did you speak with anyone else in
12 the community while you were doing the
13 investigation?

14 MS. CULLINGS: No, I did not. The letter I
15 got that I believe is labeled exhibit #1 it had
16 Ms. Kahlow listed as the point of contact.

17 MR. SHORT: To your knowledge were there any
18 other community persons who were interested or
19 concerned about this particular hotel and its
20 rooftop operations?

21 MS. CULLINGS: Well, one of the letters -- I
22 believe it was to the chairman, was from Ms.

1 Maddux. I did not make contact with her because
2 I had spoken with -- I had the contact
3 information for Ms. Kahlow and it stated that she
4 was the designated representative so I only made
5 contact with her.

6 MR. SHORT: Okay. Thank you for those
7 answers and thank you for that excellent report.

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

11 MR. SILVERSTEIN: Ms. Cullings, could you
12 describe how far this proposed sidewalk -- or
13 summer garden -- is from the nearest residence?

14 MS. CULLINGS: The summer garden over the
15 ballroom?

16 MR. SILVERSTEIN: Yes, the outdoor facility.

17 MS. CULLINGS: Well, there are three condos -
18 - condominiums in that area and they do have --
19 most of them do have balconies, so I don't know
20 how close you would say. I guess people could
21 come out on their balconies and if I could --

22 MR. SILVERSTEIN: Is it in eyeshot? Is there

1 a direct view of it? Is it in earshot?

2 MS. CULLINGS: I would imagine ear and
3 eyeshot of some of the balconies.

4 MR. SILVERSTEIN: Very well, that's fine.

5 CHAIRPERSON ANDERSON: Are there any other
6 questions by any other board members? Mr.
7 O'Brien?

8 MR. O'BRIEN: Thank you.

9 CHAIRPERSON ANDERSON: Hold on one minute,
10 Mr. O'Brien. We're good, I just want to remind
11 you that each side has 90 minutes and so we're
12 going to time you. Try to make sure that you
13 comply with the timeline moving forward from now.
14 Thank you.

15 MR. SILVERSTEIN: And to the protestants that
16 includes your cross examination, the 90 minutes.

17 MS. KAHLOW: I'm sorry? In 90 minutes?

18 MR. SILVERSTEIN: Each side has 90 minutes to
19 present your case and that 90 minutes includes
20 the time you spend cross examining witnesses.

21 MS. KAHLOW: Thank you for explaining that.

22 MR. SILVERSTEIN: Thank you. Just to make

1 sure.

2 MR. O'BRIEN: May I ask her a question?

3 CHAIRPERSON ANDERSON: Yes.

4 MR. O'BRIEN: Investigator Cullings, bringing
5 your attention back to where you referred in your
6 report to the protest letter, you describe, you
7 quoted from that letter describing the Plaza
8 Condominiums as being across Virginia Avenue from
9 the hotel. Am I accurate?

10 MS. CULLINGS: Yes.

11 MR. O'BRIEN: Now I ask you, if you don't
12 mind standing up to look at the [inaudible
13 1:44:47] at exhibit #1 and the board has a copy.
14 To orient you, you see where the Watergate Hotel
15 is?

16 MS. CULLINGS: Yes.

17 MR. O'BRIEN: Okay, do you see where the
18 Plaza Condominium is?

19 MR. SILVERSTEIN: Mr. O'Brien, I think it
20 would be better if you could get both of you --
21 because we -- we're trying to get us to see but
22 we can't because you're obstructing.

1 MR. O'BRIEN: I don't think Ms. Kahlow will
2 have any problem stipulating that that is the
3 Plaza Condominiums that the investigator just
4 pointed to. Ms. Kahlow is shaking her head to
5 confirm it.

6 CHAIRPERSON ANDERSON: All right.

7 MR. O'BRIEN: You stated in your -- first of
8 all does the Watergate Hotel front on Virginia
9 Avenue:

10 MS. CULLINGS: Yes.

11 MR. O'BRIEN: It does?

12 MS. CULLINGS: Well, there's a parking spot -
13 - a parking area that you have to go into, but
14 the main entrance is not on Virginia Avenue.

15 MR. O'BRIEN: Okay. What's between the
16 Watergate Hotel and Virginia Avenue?

17 MS. CULLINGS: There were, I want to say --
18 I'm not sure which direction --but there were
19 four lanes of traffic --

20 MR. O'BRIEN: No, I am sorry.

21 MS. CULLINGS: Four lanes of travel --

22 MR. O'BRIEN: Can one step out of the

1 Watergate Hotel and step onto Virginia Avenue
2 directly?

3 MS. CULLINGS: Not out the front door.

4 MR. O'BRIEN: Okay.

5 MS. CULLINGS: Not the entrance I went in.

6 MR. O'BRIEN: Okay. What is between the
7 Watergate Hotel -- let me suggest that this is
8 Virginia Avenue here. There's the hotel. What
9 is between the hotel and Virginia Avenue?

10 MS. CULLINGS: I believe there was another
11 office -- I think there was another building.

12 MR. O'BRIEN: Right. In order to then get to
13 the Watergate Hotel you have to go the driveway
14 behind another building.

15 MS. CULLINGS: Yes.

16 MR. O'BRIEN: A driveway off of Virginia
17 Avenue to get to the hotel itself?

18 MS. CULLINGS: Yes.

19 MR. O'BRIEN: Okay.

20 MS. CULLINGS: At the entrance I came in.

21 MR. O'BRIEN: Now, you stated that there were
22 -- that Virginia Avenue was eight lanes wide

1 there. Did I understand your testimony to be
2 correct?

3 MS. CULLINGS: Well, I was saying including
4 the underpass. I took pictures. I can't
5 remember if this was four lanes or two. I can't
6 recall. I did note it in my report.

7 MR. O'BRIEN: Well, I'm suggesting to you
8 that Virginia Avenue is eight lanes including two
9 parking lanes. Is that consistent with your
10 observation?

11 MS. CULLINGS: I don't recall. I can't
12 recall.

13 MR. O'BRIEN: Okay, and then beyond Virginia
14 Avenue before you get to the Plaza Condominium
15 there's what?

16 MS. CULLINGS: There's another underpass,
17 possibly six lanes of traffic.

18 MR. O'BRIEN: Okay. And would you point to
19 that so the board knows what you're talking
20 about?

21 MS. CULLINGS: Yes.

22 MR. O'BRIEN: Okay. If I suggested to you

1 that that is known as the Potomac River Freeway,
2 would you be familiar with that name?

3 MS. CULLINGS: Yes.

4 MR. O'BRIEN: Okay, and my suggestion to you
5 of the Potomac River Freeway is eight lanes
6 itself, would that be consistent with your
7 observations?

8 MS. CULLINGS: Yes,.

9 MR. O'BRIEN: Okay. Those are my questions
10 of the investigator.

11 CHAIRPERSON ANDERSON: Thank you. Ms. Kahlow
12 do you have any questions?

13 MS. KAHLOW: I do not. I want to compliment
14 Ms. Cullings for being available, asking good
15 questions, writing a good report. I thought she
16 did a great job.

17 CHAIRPERSON ANDERSON: Thank you. But I'll
18 just give the board members -- do they have any
19 questions of Ms. Cullings based on the questions
20 that were asked by Mr. O'Brien? Thank you very
21 much, Ms. Cullings. You're excused. Mr.
22 O'Brien, do you wish to call your first witness?

1 MR. O'BRIEN: Yes. Jacques Cohen, please.

2 CHAIRPERSON ANDERSON: I'm sorry? The last
3 name?

4 MR. O'BRIEN: Cohen. C-O-H-E-N.

5 CHAIRPERSON ANDERSON: Mr. Cohen, can you
6 raise your right hand, please? Do you swear or
7 affirm to tell the truth and nothing but the
8 truth?

9 MR. COHEN: Yes.

10 CHAIRPERSON ANDERSON: Thank you, have a
11 seat. Can you pull the microphone to you so we
12 can hear when you speak? All right, thanks.
13 Your witness, sir.

14 MR. O'BRIEN: State your full name, please.

15 MR. COHEN: Jacques Laurent Cohen.

16 MR. O'BRIEN: Okay, and what is your
17 relationship to the Watergate Hotel?

18 MR. COHEN: I am the developer and manager
19 and owner representative, so basically I
20 represent the owners.

21 MR. O'BRIEN: Mr. Cohen, how did you become
22 involved with the Watergate Hotel? How and when?

1 MR. COHEN: In 2010, we purchased the
2 Watergate Hotel from a European bank called PB
3 Capital that had foreclosed on the property after
4 it had been closed since 2007.

5 MR. O'BRIEN: And after you foreclosed on the
6 property what did you do next?

7 MR. COHEN: For about a year and a half we
8 were working on planning for new hotel
9 construction.

10 MR. O'BRIEN: Okay and did there come a time
11 when you applied for an alcohol beverage control
12 license?

13 MR. COHEN: Excuse me?

14 MR. O'BRIEN: Did there come a time that you
15 applied for an alcoholic beverage control
16 license?

17 MR. COHEN: Yes.

18 MR. O'BRIEN: Do you recall when that was?

19 MR. COHEN: That was around the end of 2012.

20 MR. O'BRIEN: I want to show you what's
21 already in evidence as exhibit #1. If you don't
22 mind standing, it's right this way. What does

1 this depict generally speaking?

2 MR. COHEN: This is the part of the Foggy
3 Bottom Neighborhood and the Watergate complex.

4 MR. O'BRIEN: Okay. Would you identify the
5 location of the Watergate Hotel for the board?

6 MR. COHEN: The Watergate Hotel is that
7 building in green here that is right behind the
8 Virginia 2600 office building.

9 MR. O'BRIEN: What is to the west of the
10 hotel?

11 MR. COHEN: It is the Potomac Parkway and
12 Potomac River.

13 MR. O'BRIEN: Okay. What is to the east of
14 the hotel?

15 MR. COHEN: To the east of the hotel there is
16 a 300,000 square foot office building and then
17 Virginia Avenue.

18 MR. O'BRIEN: Let me interrupt you. Does the
19 hotel front on Virginia Avenue?

20 MR. COHEN: No, it does not have any frontage
21 on Virginia Avenue.

22 MR. O'BRIEN: What is between the hotel and

1 Virginia Avenue?

2 MR. COHEN: A 300,000 square foot office
3 building.

4 MR. O'BRIEN: Okay. Now, what is east then
5 of that office building?

6 MR. COHEN: It's Virginia Avenue.

7 MR. O'BRIEN: And how wide is Virginia
8 Avenue?

9 MR. COHEN: It's about 8 lanes, it's 8 lanes
10 wide.

11 MR. O'BRIEN: Okay and if you continue west -
12 - oh, east, excuse me -- east. If you continue
13 east from Virginia Avenue what comes next?

14 MR. COHEN: The Potomac River Freeway that's
15 also I believe eight lanes.

16 MR. O'BRIEN: Okay. Is that at the ground
17 level, the Potomac River Freeway?

18 MR. COHEN: It's sunken.

19 MR. O'BRIEN: Now, this map depicts -- well,
20 let me go back a step. What is to the south of
21 the Watergate complex?

22 MR. COHEN: The Kennedy Center and then just

1 past the Kennedy Center the Potomac River Freeway
2 wraps around.

3 MR. O'BRIEN: And where does it go?

4 MR. COHEN: It goes to the bridge to cross to
5 Virginia, I guess.

6 MR. O'BRIEN: All right, thank you. You
7 stated that you applied for an alcoholic beverage
8 license in, I think you said 2012.

9 MR. COHEN: If I remember well I believe so.

10 MR. O'BRIEN: At that time had you commenced
11 extensive renovations of the hotel?

12 MR. COHEN: No, we had specifically not done
13 this. We wanted to make sure that we were able
14 to go forward with our planning and projections
15 before we did so.

16 MR. O'BRIEN: Was your ABC application in
17 2012 protested?

18 MR. COHEN: Yes, it was.

19 MR. O'BRIEN: What happened after the protest
20 was filed?

21 MR. COHEN: We ended up signing an agreement
22 with the neighborhoods and agreeing to some

1 substantial reductions in what we were able to do
2 on the summer gardens to get the neighborhood
3 happy and get started with our project.

4 MR. O'BRIEN: When you say that you signed an
5 agreement with the neighborhood who actually --
6 what other parties to the agreement were there
7 other than the hotel?

8 MR. COHEN: Originally the way at least I
9 understand it is the whole neighborhood, whoever
10 in the neighborhood was able to protest has
11 protested including the ANC and we've actually
12 entered in negotiations with everybody that was
13 protesting. We signed the agreement with the
14 three Watergate residential buildings and at the
15 time we came up with this deal, ANC decided that
16 they did not need to be a party to that agreement
17 anymore and decided not to be a party to it
18 because they didn't need to.

19 MR. O'BRIEN: Were these negotiations easy?

20 MR. COHEN: It was terribly difficult. It's
21 put a huge burden on the business. We were
22 literally stuck for six months.

1 MR. O'BRIEN: What was six months?

2 MR. COHEN: We were stuck for about six
3 months during the whole negotiation.

4 MR. O'BRIEN: Okay.

5 MR. COHEN: The project had absolutely no
6 progress for about six months.

7 MR. O'BRIEN: Already in evidence, and I'm
8 not going to bother to show it to you at this
9 juncture, is an applicant's exhibit #2 which is
10 the May 1st, 2013, settlement agreement. Are you
11 familiar with that document?

12 MR. COHEN: Yes, I am.

13 MR. O'BRIEN: Okay. Was that document
14 everything that you would have liked? Did it
15 contain everything that you would have liked?

16 MR. COHEN: No. It was a settlement
17 agreement.

18 MR. O'BRIEN: Okay. Did you make any
19 concessions?

20 MR. COHEN: Yes we did.

21 MR. O'BRIEN: Can you give me an example of
22 some of the concessions you made?

1 MR. COHEN: We have reduced the hours of the
2 rooftop terrace. We have limited our --

3 MR. SILVERSTEIN: Can you speak up a little
4 louder?

5 MR. COHEN: Excuse me. We have reduced our
6 hours on every one of the summer garden terraces.
7 We have reduced the noise -- we have reduced the
8 noise allowance on every one of these terraces
9 and we have agreed with the neighbors to monitor
10 any activity on the rooftop very closely. On the
11 other terraces as well.

12 MR. O'BRIEN: Speaking of the rooftop, do you
13 know what authorized capacity on the rooftop
14 would be if you simply were limited by building
15 code?

16 MR. COHEN: If I remember well, it's about
17 475.

18 MR. O'BRIEN: Okay. Did you, in the
19 settlement agreement, attain a consent to 475
20 people?

21 MR. COHEN: It was actually our largest
22 concession, is that we reduced -- we reduced the

1 number of patrons in that rooftop significantly.
2 I mean, now we're about -- we would have been
3 able to make it -- to have about 50% more people
4 in there but we've agreed with the neighbors to
5 limit it at 350 people.

6 MR. O'BRIEN: Again, that agreement is dated
7 May 1st, 2013. Once that agreement was signed
8 and approved by the ABC board, what happened
9 next?

10 MR. COHEN: Then we have followed through to
11 actually get our construction permits and get the
12 building renovated and built and hire all the
13 employees, etc., etc.

14 MR. O'BRIEN: Okay. After execution of the
15 settlement agreement in 2013 -- well, let me go
16 back a step. Did I ask you how much you
17 purchased the building out of foreclosure for?

18 MR. COHEN: It's about \$45 million dollars.

19 MR. O'BRIEN: \$45 million. After you had the
20 settlement agreement approved by the board and
21 you started with redeveloping the building, how
22 much more did you spend to get the doors open?

1 MR. COHEN: Up until now it's about \$145
2 million dollars.

3 MR. O'BRIEN: On top of the original \$45
4 million dollars?

5 MR. COHEN: On top of the original \$45 yes.

6 MR. O'BRIEN: Okay. Would you have spent
7 that money without knowing that you had reached a
8 settlement with the community in 2013?

9 MR. COHEN: Absolutely not. I mean, as we
10 had mentioned many times, these summer gardens
11 were key to our projections.

12 MR. O'BRIEN: What do you mean by
13 projections? Explain to the board.

14 MR. COHEN: You kind of make projections -- I
15 mean we -- when we took this building, we had a
16 vision and dream for it to do what nothing wanted
17 to do. I mean other developers were looking at
18 this project as a, you know, two or three star
19 hotel and this is why they couldn't find a buyer.
20 We had a vision for it but that vision also
21 included energizing the area with nicer,
22 different offerings that would let it take full

1 advantage of its positioning on the Potomac River
2 which it didn't before, necessarily always. It
3 didn't always do that. So, for us in order to
4 make that dream happen it was extremely important
5 that we would be able to get as much as possible
6 use of these terraces in order to make the
7 business model viable. And after we knew that we
8 were able to get these terraces, then we felt
9 comfortable that we could go ahead and make the
10 investment.

11 MR. O'BRIEN: Are you present at the hotel
12 every day?

13 MR. COHEN: No, I'm not.

14 MR. O'BRIEN: Where do you live?

15 MR. COHEN: I live in New York.

16 MR. O'BRIEN: And how often are you at the
17 hotel?

18 MR. COHEN: Two to three days a week.

19 MR. O'BRIEN: Okay. Since you can't be there
20 at all times, what, if anything, have you done to
21 ensure that your staff complies with the May 1st,
22 2013, settlement agreement?

1 MR. COHEN: We have made it very clear to our
2 staff that the agreement was something to take
3 very seriously. We have even paid a consultant,
4 Mr. O'Brien, to come and train our staff so that
5 they would understand all of the obligations that
6 the hotel has in this agreement and they would
7 follow it by the letter.

8 MR. O'BRIEN: Thank you, Mr. Cohen. Thank
9 you, Mr. Chair.

10 CHAIRPERSON ANDERSON: Ms. Kahlow, do you
11 have any questions?

12 MS. KAHLOW: Yes, I do. Shall I wait until
13 all of his witnesses have spoken?

14 CHAIRPERSON ANDERSON: No, ma'am, this is
15 your opportunity to -- this is your only
16 opportunity to ask him questions.

17 MS. KAHLOW: Okay. Mr. O'Brien made the
18 settlement agreement one of your exhibits and I
19 have a couple of questions about that since you
20 negotiated it. What does occasionally mean in
21 terms of frequency for the terrace of the
22 ballroom?

1 MR. COHEN: Well, I believe that occasionally
2 is a word that was used in this agreement because
3 we do not know what the frequency is exactly. It
4 is up to the clients to let us know when they are
5 going to want live music or not, so it means what
6 occasional means, I guess.

7 MS. KAHLOW: Will there be any dancing in
8 that venue?

9 MR. COHEN: Which terrace are you mentioning
10 again?

11 MS. KAHLOW: The Terrace over Ballroom.

12 MR. COHEN: Okay. This terrace is about, if
13 I remember well, 1200 square feet or so, so it's
14 not very large. I think the maximum number of
15 people we could put in there standing is about
16 100 at a maximum. Our -- we believe that what
17 clients are going to want to use it for the most
18 is for cocktail events, so we do not necessarily
19 foresee any dancing in there, but I can't say
20 either that it will never happen.

21 MS. KAHLOW: Okay, is November considered
22 summer, since the rooftop summer garden is

1 operating in November? What will be the
2 permanent calendar year periods for each of the
3 summer gardens? But is November considered
4 summer?

5 MR. O'BRIEN: I object to the question, it's
6 asking for a commitment as to what function will
7 be used? Obviously summer gardens you use
8 [inaudible 2:05].

9 CHAIRPERSON ANDERSON: Ms. Kahlow?

10 MS. KAHLOW: So, are you not willing --

11 CHAIRPERSON ANDERSON: Ms. Kahlow, he
12 objected to your question, so he's telling me I
13 should not allow his witness to answer the
14 question so I'm asking you why I should allow him
15 to speak, to answer the question.

16 MS. KAHLOW: I think it's important for the
17 board to know how long there'll be noise effects
18 on residents and you'll be hearing from
19 residents.

20 CHAIRPERSON ANDERSON: I'll allow the
21 question, Mr. O'Brien. I hear you. I will give
22 her some leeway at the start of this hearing and

1 see where she's going to go. So, can you answer
2 the question, sir, or do you need her to respond?

3 MR. COHEN: Can you ask the question again,
4 please?

5 MS. KAHLOW: Is November considered summer?

6 MR. O'BRIEN: Objection.

7 MR. COHEN: I don't understand the question.

8 CHAIRPERSON ANDERSON: Hold on, Ms. Kahlow,
9 hold on.

10 MR. O'BRIEN: It's argumentative.

11 MR. O'BRIEN: The term summer garden is a
12 term the board and ABC uses, so if the ABC wants
13 to define the word summer, fine. But, it's
14 argumentative to say 'well, is November summer?'

15 MR. SILVERSTEIN: Mr. Chair.

16 CHAIRPERSON ANDERSON: Yes, Mr. Silverstein?

17 MR. SILVERSTEIN: Is summer garden not a term
18 of art to differentiate between what is on
19 private property and what is on public property
20 that a sidewalk café is on public property, and a
21 summer garden rather than season?

22 CHAIRPERSON ANDERSON: Well, I think I know

1 what she's -- I think what she's asking is that
2 what period? Maybe you can rephrase the
3 question. I think why don't you ask him what
4 period do they plan to use it?

5 MS. KAHLOW: That's my second question.

6 CHAIRPERSON ANDERSON: Because the reason I'm
7 saying that's what -- so rephrase the question
8 and just ask -- I think you're trying to find out
9 what period, so why don't you ask him the
10 question?

11 MS. KAHLOW: Thank you, Mr. Chair. What will
12 be the permanent binding calendar year periods
13 for each summer garden?

14 MR. O'BRIEN: Objection. There is no
15 obligation for this gentleman to state a
16 permanent and binding number of months for use of
17 the summer garden. When the weather permits,
18 they'll use it. If it doesn't permit in July
19 they won't. If it does permit it in December
20 they will. I don't think the protestants have
21 the position here to demand a binding commitment
22 from us.

1 CHAIRPERSON ANDERSON: Well, I'm not taking
2 it that way, so maybe her question is inartful,
3 so I would ask you to rephrase the question and
4 I'm not -- I'm not taking anything that she's
5 asking a question that he's saying that this is
6 binding and the board is going to write -- at
7 least I would not be in favor to say the board is
8 going to write to say 'well, on the cross
9 examination you said this is what it is so this
10 is what we're going to do,' I just think, at
11 least for me anyway I'm -- I thought she's just
12 trying to get some information, so just rephrase
13 the question. Ask him what it is -- what's --
14 when will he be using the summer garden? I think
15 that's what you're trying to ask, just ask him
16 the question and if he can't answer it then we
17 can move on from there.

18 MS. KAHLOW: Would any of these six outdoor
19 venues be used year round depending on the
20 weather?

21 MR. COHEN: These venues will be open weather
22 permitting.

1 MS. KAHLOW: Including any time during the
2 year? Is that what you're saying?

3 MR. COHEN: Weather permitting.

4 MS. KAHLOW: Okay, let's move to the next
5 question. Under the settlement agreement section
6 2A there is a June 15th through September 15th
7 test period for the rooftop summer garden which
8 would possibly result in renegotiating the hours
9 and it says, if I can quote, that it was supposed
10 to be done in 2014 or 2015. When will the test
11 period be now that you didn't open that until the
12 middle of this period?

13 MR. O'BRIEN: Mr. Chair?

14 CHAIRPERSON ANDERSON: Yes.

15 MR. O'BRIEN: Since this is a question about
16 the document that is in evidence, may we have a
17 copy of it?

18 CHAIRPERSON ANDERSON: Yes, that is
19 appropriate. I myself am looking for the
20 document too, so --

21 MS. KAHLOW: Section 2A. I can read the part
22 where it says. My question now is when is the

1 June 16 to September 15th test period? When is
2 it? When will it be?

3 CHAIRPERSON ANDERSON: Well, I -- what I
4 asked you before why don't you ask the question
5 for -- did they do this test period? Because
6 we're now in 2016, I don't know whether or not
7 this test period was ever done so I think that a
8 better question to ask, and maybe you know and I
9 don't know, did they comply with this provision
10 to have this test period and if it did, what was
11 the result? If they didn't, are they going to
12 have it done in some other period of time because
13 I'm not -- I don't -- anyway.

14 MR. COHEN: I mean what I understand here
15 from this document is, it says the parties which
16 are ourselves and the signatories agree to go
17 through an interim period. The way I understand
18 this is that interim monitoring period should
19 adjustments be needed. So, we haven't been asked
20 for any adjustments, you know we've now been open
21 for a while, people have -- the applicants, I
22 mean the other signatories of this agreement are

1 very aware of what the agreement says and right
2 now we're not aware of any need to make any
3 adjustments, so --

4 MS. KAHLOW: Was it operating? Has there
5 been any live music yet?

6 MR. COHEN: We have not had any live music on
7 any of these menus -- on any of these venues yet.

8 MS. KAHLOW: As a consequence when will the
9 three-month test period be?

10 MR. COHEN: I don't think the agreement calls
11 for a test period.

12 MS. KAHLOW: Thank you. I'll move to the
13 next question. What is your plan to provide
14 access to the Terrace over Ballroom summer
15 garden? Will there be an elevator?

16 MR. COHEN: The rooftop summer garden?

17 MS. KAHLOW: The Terrace over Ballroom summer
18 garden.

19 MR. COHEN: Terrace over Ballroom. So, we
20 still have to do a little bit of construction
21 work in order to gain access to the small Terrace
22 over Ballroom. I do not know exactly when it's

1 going to be completed but the plan is to get this
2 finished for sure before the next spring season.

3 MS. KAHLOW: Spring 2017?

4 MR. COHEN: Yes.

5 MS. KAHLOW: And my question was, will there
6 be an elevator?

7 MR. COHEN: There is an ADA lift that is
8 compulsory by law that will be there and stairs
9 to access the terrace.

10 MS. KAHLOW: It's not there yet?

11 MR. COHEN: It's not there yet.

12 MS. KAHLOW: Thank you. Will there be a log
13 available to ABRA, the ANC and the West End
14 Citizens Association of all outdoor venue noise
15 complaints registered with the hotel?

16 MR. O'BRIEN: If I may -- a log available to
17 whom?

18 MS. KAHLOW: ABRA, ANC and us, and if you
19 don't want us, at least the other two, ABRA and
20 the ANC?

21 MR. COHEN: I believe ABRA keeps a log of
22 their complaints so I think complaints go through

1 ABRA

2 MS. KAHLOW: Well, my understanding, and
3 maybe I'm wrong, is that you have directed the
4 three Watergates, not the other buildings like
5 mine, to call the Watergate food beverage manager
6 or somebody else and the question is are you
7 maintaining a log that will be available to ABRA
8 when we come back in three years?

9 MR. COHEN: I think we would. Right now we
10 haven't had any complaints since we opened all of
11 these venues over two months ago, so we don't
12 have a log currently as we have had no
13 complaints.

14 MS. KAHLOW: But you intend to have a log.

15 MR. COHEN: Should we have any complaints we
16 will talk about it again.

17 MS. KAHLOW: Okay. When will the not-yet-
18 open summer gardens begin operation? If you
19 could tell me month and year. The Terrace over
20 Ballroom first?

21 MR. COHEN: Excuse me, I'm not getting your
22 question.

1 MS. KAHLOW: When will it be open? It's not
2 open yet, there's no accessibility.

3 MR. COHEN: I think I've already answered
4 that question.

5 MS. KAHLOW: You hoped spring 2017. How
6 about the hospitality suites?

7 MR. COHEN: The hospitality suites terrace
8 has been -- is already open and merged with the
9 other terrace, what's called the Café Terrace.

10 MS. KAHLOW: And it's open?

11 MR. COHEN: Yes.

12 MS. KAHLOW: When we did a walk-through they
13 said there was no access. Thank you, I didn't
14 know that. Is anything else not yet open?

15 MR. COHEN: No.

16 MS. KAHLOW: Thank you, that's all for this
17 witness.

18 CHAIRPERSON ANDERSON: All right. Thank you.
19 Any questions by the board? Mr. Short?

20 MR. SHORT: Good afternoon Mr. Cohen. So,
21 you've been involved with this building since it
22 was bought back from the bank?

1 MR. COHEN: Yes.

2 MR. SHORT: And you've made a lot of
3 progress. Is the hotel functioning now?

4 MR. COHEN: It is. It is now, yes.

5 MR. SHORT: So, how many outdoor venues do
6 you have approximately right now?

7 MR. COHEN: Right now I think there was -- is
8 that six summer gardens in the agreement?

9 MR. SHORT: How many are functioning right
10 now?

11 MR. COHEN: So, right now, everything but
12 one.

13 MR. SHORT: So you have five?

14 MR. COHEN: Five summer gardens and one is
15 merged so it's two in one, yes.

16 MR. SHORT: What are the hours of these five
17 venues?

18 MR. COHEN: I think I will read from the
19 agreement. So the hours of operation for the
20 rooftop summer garden until 12:00 a.m. on
21 weekdays --

22 MR. SHORT: What are the opening hours? What

1 hour to what hour? When do they open and when do
2 they close?

3 MR. COHEN: So, the opening time depends on
4 the day. The closing time also depends on the
5 day, it depends on the business, it depends on
6 the weather, so in September we opened very late
7 in August, very late August early September. We
8 were opening later in the day because it was too
9 hot so around 4:00 or 5:00 p.m. is when we were
10 opening our doors. Closing at around midnight
11 throughout the whole month of September -- end of
12 August, the whole month of September.

13 MR. SHORT: What are the latest hours?

14 MR. COHEN: Closing at midnight and then in
15 the weekends about the same because it was too
16 hot during the day so we couldn't open really
17 earlier than that. And then closing at 2:00 a.m.

18 MR. SHORT: Okay, and so how many months has
19 this been operating?

20 MR. COHEN: So, this has been operating now
21 for two and a half months. I don't remember
22 exactly which date of August we opened in but

1 it's two and a half to three months.

2 MR. SHORT: I guess we hear about peace,
3 order and quiet, so pretty much have there been
4 any complaints from the community since you've
5 been operating.

6 MR. COHEN: We've had zero complaints.

7 MR. SHORT: Okay, no complaints, you're
8 operating pretty much daily.

9 MR. COHEN: We're fully operating.

10 MR. SHORT: Midnight.

11 MR. COHEN: We've had 10,000 people, over
12 10,000 people go through the rooftop since we
13 opened.

14 MR. SHORT: I can imagine, I've had a chance
15 to be on top of the Watergate and a couple of
16 other buildings. That view is absolutely
17 breathtaking.

18 MR. COHEN: Breathtaking, yes. We think
19 we're the best in town.

20 MR. SHORT: Okay, so -- this is a question
21 and a comment and you can comment after you hear
22 this. What I'd like to see is more businesses

1 coming to Washington D.C. and flourish but I also
2 want our community to stay comfortable with the
3 businesses, so what are you doing to make sure
4 that the community and your business stay so both
5 of you can be comfortable?

6 MR. COHEN: We are actually extremely
7 involved with the community. Our director of
8 beverage and director of food and beverage and
9 general manager are in regular contact with
10 residents. They even have cell phone numbers of
11 residents of the three --

12 MR. SHORT: Excuse me, by contact you mean by
13 phone?

14 MR. COHEN: Phone. Phone contact, yes. They
15 --

16 MR. SHORT: Is this daily, weekly, monthly?

17 MR. COHEN: It is regular and whenever
18 needed, but we have been communicating with
19 friendly residents on a weekly basis at the
20 opening of the rooftop to make sure that they --
21 everything was okay. It's actually residences
22 that are pretty close to the rooftop --

1 MR. SHORT: How close?

2 MR. COHEN: -- make sure -- pretty much as
3 close as it gets to the complex. They've been
4 choosing, we call the general managers for the
5 buildings, ask them for some contacts, we've been
6 in touch with them to monitor if there were any
7 issues with noise or other issues coming from
8 these venues and right now it's been zero
9 complaints.

10 MR. SHORT: Okay. Thank you, that's all I
11 have. Thank you, Mr. Cohen. That's all I have,
12 Mr. Chair.

13 CHAIRPERSON ANDERSON: Mr. Silverstein?

14 MR. SILVERSTEIN: Mr. Cohen, you said that
15 these people live as close as it gets. That can
16 mean two things. It means either they're closest
17 to it or they're somewhere between you and me.

18 MR. COHEN: Sir, I --

19 MR. SILVERSTEIN: Does 'as close as it gets'
20 mean -- how close are the nearest residents to
21 the rooftop?

22 MR. COHEN: I mean, the best way is probably

1 to show it on the aerial, I guess.

2 MR. SILVERSTEIN: Give me in feet. I don't
3 do meters.

4 MR. COHEN: I'm not sure -- it's --

5 MR. SILVERSTEIN: Are they closer --

6 MR. COHEN: They're in a residential building
7 so it's -- they are a lot closer than this. I
8 mean, this is more than a thousand feet away,
9 it's very far. A thousand.

10 MR. SILVERSTEIN: Okay, let me ask you this.
11 You're pointing at that. Are they as close to me
12 as the end of this building, where the window is
13 out there in the hall?

14 MR. COHEN: This building?

15 CHAIRPERSON ANDERSON: Generally.

16 MR. SILVERSTEIN: Are they as close as the
17 building across the street over there, looking
18 down the hallway? How far away is the nearest
19 person? Or tell me how many feet. I mean, if
20 we're talking a quarter of a mile, that's one
21 thing, if we're talking a certain number of feet
22 that's something else.

1 MR. COHEN: I'm not sure what the -- I
2 wouldn't want to say something that I'm not sure
3 of.

4 MR. SILVERSTEIN: Give me a guess. Of course
5 you can.

6 CHAIRPERSON ANDERSON: If he can't answer --
7 I say well, Mr. -- if you're looking at this
8 building I guess he's saying from where he's
9 sitting to the end of the hallway, so maybe you
10 can look to see and you can say yes or no.

11 MR. SILVERSTEIN: Is the nearest person as
12 far away from your roof deck as I am from the end
13 of the hallway? Do you understand me?

14 MR. COHEN: Yes, yes I do.

15 MR. SILVERSTEIN: Are they farther than that?

16 MR. COHEN: The end of the building here?

17 MR. SILVERSTEIN: Yeah.

18 MR. COHEN: I think probably yes for all of
19 them. Some are further, some are about this or a
20 little bit more, yes.

21 MR. SILVERSTEIN: And are they at the same
22 height? Is there anything between them -- are

1 they within direct eyesight and direct earshot?

2 MR. COHEN: They are in direct eyesight. We
3 can see the balconies from the rooftop and they
4 probably can see the rooftop from their balconies
5 because they are lower.

6 MR. SILVERSTEIN: So, if somebody were to go
7 up there. You can sit down, now. Thank you
8 very much. So, if someone were to go out there
9 and say, play the tuba, would there be anything -
10 - they're not I know --

11 MR. COHEN: Excuse me?

12 MR. SILVERSTEIN: You could hear that or
13 would there be anything in between that would
14 mitigate the noise? Are there any plants, is
15 there any structure that would in any way baffle
16 the noise?

17 MR. COHEN: What I know is from what we've
18 heard from the neighbors that do have residences
19 and balconies, they haven't heard any noise.

20 MR. SILVERSTEIN: That's not the question I
21 asked, sir. Please answer the question I asked.

22 MR. COHEN: Okay.

1 MR. SILVERSTEIN: The question I asked wasn't
2 had there been any complaints, is there any bad
3 noise. The question is, is there anything in
4 between the roof deck and these people that would
5 baffle the noise? That would -- are there any --
6 you know, many places have plants or have a
7 little wall or something like that, some noise
8 mitigation.

9 MR. COHEN: We have a little bit of plants on
10 the rooftop but it's not all over, so it's not a
11 wall, a plant wall or anything like this.

12 MR. SILVERSTEIN: Okay.

13 MR. COHEN: And then there's the ambient
14 noise from the Parkway and the planes and the
15 helicopters, etc., etc.

16 MR. SILVERSTEIN: Sure, I mean, you know,
17 you're in the city. If you want absolute peace
18 and quiet you're welcome to move to Sterling. We
19 all know that on both sides. The issue here is
20 the noise from the rooftop. Is there any music
21 played out there? Is there any amplified music?

22 MR. COHEN: There has been amplified music

1 played up there all through the opening times.

2 MR. SILVERSTEIN: All through the?

3 MR. COHEN: All through the time it was
4 opened, through those -- those -- that, you know,
5 two and a half to three months.

6 MR. SILVERSTEIN: Okay. Is it music simply
7 where people are talking, where the music is not
8 so loud that it would interrupt their
9 conversation, or is this the kind of music where
10 people are up there dancing and partying?

11 MR. COHEN: No, I mean the concept is there's
12 no dancing, it's a lounge, so --

13 MR. SILVERSTEIN: So, this is basically
14 ambient music.

15 MR. COHEN: People can have conversations.
16 It's a good music level but it's --as far as we
17 know it's not audible from the residences.

18 MR. SILVERSTEIN: Great. No further
19 questions. Thank you sir.

20 CHAIRPERSON ANDERSON: Are there any other
21 questions by any other board members?

22 MS. HOBSON: I have a question.

1 CHAIRPERSON ANDERSON: Hold on -- I'm sorry,
2 Ms. Hobson.

3 MS. HOBSON: That's okay. Mr. Cohen, has
4 anyone in your working with the tenant group or
5 the community, has anyone suggested that you
6 install any type of barrier between the patios
7 and the residences or suggested that there was a
8 need to do so?

9 MR. COHEN: No.

10 MS. HOBSON: And so, it was never part of any
11 agreement or any discussion that you've had?

12 MR. COHEN: No.

13 MS. HOBSON: Okay, that's all I have.

14 CHAIRPERSON ANDERSON: Mr. Short.

15 MR. SHORT: Again, Mr. Cohen. How many
16 stories is the hotel rooftop -- the height?

17 MR. COHEN: It's on floor -- we have 14
18 floors but it's really 13, and the rooftop is on
19 top of this, so it's the 14th elevation.

20 MR. SHORT: And what is the tallest building,
21 how many stories is the next tallest building
22 near that's residential?

1 MR. COHEN: They're all about the same height
2 in the complex.

3 MR. SHORT: Okay, just for the record, it
4 might say 14th floor but there's no 13th floor,
5 is that correct?

6 MR. COHEN: Exactly.

7 MR. SHORT: That's normal in business.

8 MR. COHEN: They're all 13-story buildings as
9 far as I understand.

10 MR. SHORT: Okay. Thank you. That's all I
11 have, Mr. Chair.

12 MR. O'BRIEN: Can I ask one question based on
13 board member Hobson's question?

14 CHAIRPERSON ANDERSON: Yeah, I'm going to ask
15 her, it's your witness so I'm going to ask her
16 first and you go last. Ms. Kahlow, do you have
17 any questions based on the questions that were
18 asked of him by the board? So, you have to ask,
19 it has to be based on the questions that were --

20 MS. KAHLOW: I don't have any. But I have a
21 request after this witness is finished.

22 CHAIRPERSON ANDERSON: Okay, fine. Go ahead,

1 sir.

2 MR. O'BRIEN: Are there any governmental
3 restrictions that you're aware of that would
4 prohibit you from building walls or barriers on
5 the rooftop?

6 MR. COHEN: The Watergate complex is a
7 historical building. We have had a lot of
8 discussions with the fine arts and we did
9 actually discuss potential barriers with them.
10 They were absolutely against it, then.

11 MR. SILVERSTEIN: Mr. Cohen, please speak a
12 little closer to the mic. I'm having trouble
13 hearing, I apologize.

14 MR. COHEN: I mean, everything that we do at
15 the Watergate Hotel that's of any permanent
16 construction nature has to go through the
17 historical board, so anything we have to do there
18 we would need to get permits to do anything
19 there. Their opinion was very negative when we
20 approached the issue with them back a few years
21 ago.

22 MR. O'BRIEN: The issue of?

1 MR. COHEN: Of potentially putting in a glass
2 barrier. We thought it would be more aesthetic
3 for our clients to get a high glass barrier
4 instead of the current barrier that Watergate
5 complex buildings have, and they were against it.
6 It's very late to do this now, it would be a big
7 undertaking after the fact.

8 MR. O'BRIEN: Thank you.

9 MR. SILVERSTEIN: HPRB -- you applied for it
10 and HPRB said no?

11 MR. COHEN: We haven't applied for it. The
12 way we have been doing things is we go to HPRB
13 and Fine Arts, we discuss with them what would be
14 acceptable and then we submit it, because --

15 MR. SILVERSTEIN: They said you wouldn't get
16 anywhere with this, correct?

17 MR. COHEN: Excuse me?

18 MR. SILVERSTEIN: So, OHP staff said this
19 probably wouldn't go anywhere?

20 MR. COHEN: Exactly, exactly.

21 MR. SILVERSTEIN: Okay.

22 MR. COHEN: Yes.

1 MR. SILVERSTEIN: Thank you.

2 CHAIRPERSON ANDERSON: All right, thank you.

3 Do you have any other questions for him?

4 MR. O'BRIEN: No, sir.

5 CHAIRPERSON ANDERSON: Thank you for your
6 testimony, sir. You can step down. You're still
7 under oath. Please do not discuss your testimony
8 with anyone else until this case is over, so you
9 can have a seat. Yes, Ms. Kahlow, what's your
10 request?

11 MS. KAHLOW: I'm sorry, and I'm asking the
12 board's indulgence. Ms. Maddux has to take her
13 mother to a doctor appointment that was
14 unexpected and I wonder if she could testify out
15 of order. It's not a long statement but I would
16 like her to be able to do that. If not, that
17 would be a problem.

18 CHAIRPERSON ANDERSON: Mr. O'Brien?

19 MR. O'BRIEN: I would certainly always want
20 to accommodate my friend, Ms. Maddux.

21 MS. KAHLOW: Thank you.

22 CHAIRPERSON ANDERSON: All right. Then we'll

1 --

2 MR. O'BRIEN: If it's okay with the board
3 it's certainly okay with me.

4 CHAIRPERSON ANDERSON: I -- if you don't
5 have an objection I'm fine with it. Ms. Maddux?

6 MS. MADDUX: Thank you on behalf of my
7 mother.

8 CHAIRPERSON ANDERSON: Are you asking her
9 questions or is she making a statement?

10 MS. KAHLOW: She's making a statement.

11 MR. O'BRIEN: If there's going to be evidence
12 I think she should still be under oath.

13 CHAIRPERSON ANDERSON: I know, that's what
14 I'm, I was just trying to find -- can you raise
15 your right hand, please? Do you swear or affirm
16 to tell the truth and nothing but the truth?

17 MS. MADDUX: I do, sir.

18 CHAIRPERSON ANDERSON: Okay. Your witness,
19 Ms. Kahlow. I don't know what's going to happen.

20 MS. KAHLOW: Ms. Maddux, would you please
21 give a statement?

22 CHAIRPERSON ANDERSON: Well, why don't you

1 kind of ask her to introduce herself and kind of
2 sort of ask her a question but then she can give
3 her statement.

4 MS. KAHLOW: Aha. Ms. Maddux, in your
5 experience as president --

6 CHAIRPERSON ANDERSON: Have her introduce
7 herself first for the record.

8 MS. MADDUX: I'm Sarah Maddux. I'm president
9 of the West End Citizens Association, WCA. I
10 reside at 522 21st Street Northwest and have been
11 there since the 1960s.

12 MS. KAHLOW: Ms. Maddux, with your positions
13 as president of the West End Citizens Association
14 and an officer of the Federation of Civic
15 Citizens' Association, could you please offer us
16 some of your knowledge?

17 MS. MADDUX: Thank you. I am secretary of
18 the Board of Directors of the Federation of
19 Citizens' Association. The federation's
20 membership is composed of 21 Citizens'
21 Associations from across the District of
22 Columbia. One of the issues the members

1 frequently discuss is the impact of noise from
2 establishments which purvey alcoholic products as
3 part of their services. The noises from such
4 establishments impact the peace and quiet
5 enjoyment of residences in their areas. This is
6 a city where residential and commercial functions
7 are intermingled as the District of Columbia has
8 grown since its original establishment. Now you
9 are hearing cases from many areas of the city
10 including, but not limited to, Dupont Circle,
11 Kalorama, Adams Morgan and Congress Heights.
12 Now, also the neighborhood around the Walter Reed
13 development areas concern about the forthcoming
14 establishments with liquor licenses. A repeating
15 issue is noise and its impact upon the taxpaying
16 residences.

17 In our neighborhood of Foggy Bottom West End,
18 as described, there has been a successful effort
19 to accommodate the issues while the commercial
20 establishments have been able to operate
21 successfully. The Watergate Hotel, as has been
22 testified to, is part of a historic landmarked

1 area and takes its brand name from the national
2 and international public recognition of the whole
3 complex which, by majority, a series of
4 residential and commercial areas. The residents
5 have been supportive of the resurrection of the
6 hotel and expect reciprocal respect from the
7 hotel as a residential area.

8 The mayor of the District of Columbia has a
9 major program -- Age Friendly D.C., guided by the
10 World Health Organization. It is a city-wide
11 initiative that works to transform the District
12 into an easier place to grow older by bringing
13 together District residents of all ages with
14 government and community partners.

15 According to the report of the D.C. Office of
16 Aging released October 11, 2016, D.C. is on pace
17 to become only the third U.S. city designated by
18 WHO as an Age Friendly city. To quote the
19 announcement from the mayor's initiative works to
20 prepare D.C. for a future with more residents and
21 visitors who are age 50 and older and to ensure
22 that we offer to people of all ages opportunities

1 to thrive and live with purpose. The residents
2 of the Watergate residential buildings are
3 definitely within the intention and purpose of
4 this program. The need for mutual accommodation
5 between the hotel and the residents of the
6 compound centers upon the issues of noise and its
7 impact upon the peaceful and quiet enjoyment.
8 The issue is the sound of music and entertainment
9 which becomes noise as it impacts the hearing
10 sense of the residents. A dictionary definition
11 is: Sound: A vibration that travels through the
12 air that can be detected by the ear. The issue
13 definition of noise is "sound, especially one
14 that is loud or unpleasant." But this issue
15 we're talking about devolves to the impact of
16 noise. It can interfere with verbal
17 communications between and among individuals,
18 distract one's attention while reading, watching
19 television or listening to one's own music within
20 one's home and also interrupt one's rest or
21 sleep.

22 Given that the requested hours on the license

1 are after 11:00 p.m. the impact of the noise from
2 the hotel venues delivers a health threat. In a
3 report from the Washington Post Health and
4 Science section on September 14, 2016, Matthew
5 Walker, a professor of neuroscience and
6 psychology at the University of California at
7 Berkley, and director of the U.C. Berkley Sleep
8 and Neuro Imaging Laboratory, states "It is very
9 clear right now that the sleep loss epidemic is
10 the greatest public health crisis of first world
11 nations of the 21st century. Every disease
12 that's killing us in first world countries can be
13 linked to loss of sleep." The article continues:
14 "Indeed, the lack of sleep, in addition to
15 causing fatal accidents and injuries, has been
16 linked to an increase in hypertension, diabetes,
17 depression, obesity and even cancer. Just about
18 all citizens" -- excuse me, "scientists and
19 medical professionals agree that good sleep helps
20 keep the body healthy." We've all had
21 experiences with our sleep being interrupted by
22 loud noise and the impact on our night and the

1 next day is a misery. Thus, in the interests of
2 good neighbors and good health among all, there
3 should be no music, live or amplified, and
4 serving hours should be in keeping with the
5 standards of the neighborhood. As has previously
6 been cited in our exhibits, there are other
7 establishments in our neighborhood that maintain
8 these hours that are part of our good, friendly
9 neighborhood.

10 Additionally, I'd like to offer one
11 observation about there is an aspect about the
12 time of the day when there is noise, because it
13 rises and falls according to the various layers.
14 Early in the morning, the neighborhood is very
15 quiet. As the day builds, the trucks, the
16 traffic, everything builds up, and it all sort of
17 layers on each other and as the day goes by it
18 gets quieter and quieter until the end of the day
19 you can hear sounds bouncing off the buildings
20 coming from individual things. In the quiet
21 hours of the late night and early morning, sound
22 is more noticeable regardless of how close or far

1 away it is, especially without traffic or
2 delivery trucks. For instance, yesterday I could
3 hear the canons for salute from Arlington
4 Cemetery and you can imagine how far 21st Street
5 is from Arlington Cemetery. But I heard the
6 canons of salute for a funeral in the middle of
7 our area. So, it depends on the day, the time of
8 the day there is noise and how it's transmitted
9 and heard, and also the buildings it can bounce
10 from, because what you might think is something
11 next door can actually be coming from a building
12 three or four buildings away.

13 So, this sound issue is a very complicated
14 issue, but it is also a very health-sensitive
15 issue and I thank you for your time and your
16 accommodation for me to take care of my mother.

17 CHAIRPERSON ANDERSON: Thank you. Do you
18 have any questions for her, Mr. O'Brien?

19 MR. O'BRIEN: Ms. Maddux, it's correct, is it
20 not, for me to say that you are not aware of
21 anybody complaining that they've lost sleep as a
22 result of operations at the Watergate Hotel?

1 MS. MADDUX: Unfortunately, Mr. O'Brien,
2 several of the residents have told me that it
3 does interrupt them and I think you'll be hearing
4 from them later.

5 MR. O'BRIEN: Okay, you mentioned the
6 residents. You're talking about the residents of
7 the Watergate residential buildings, correct?

8 MS. MADDUX: Yes, sir, yes.

9 MR. O'BRIEN: Okay. You are aware that in
10 2013 the governing bodies of those three
11 residential buildings entered into a settlement
12 agreement are you not?

13 MS. MADDUX: A certain group of them, yes.

14 MR. O'BRIEN: I said the governing bodies.

15 MS. MADDUX: Okay, excuse me. Correct. The
16 governing bodies, correct.

17 MR. O'BRIEN: Each of the three entered into
18 the settlement agreement. Is that your
19 understanding?

20 MS. MADDUX: I think that's why democracy --
21 the governing bodies represent the residents,
22 either all, part or some.

1 MR. O'BRIEN: The board of directors of each
2 of those three Watergate residential buildings
3 entered into the 2013 settlement agreement,
4 correct?

5 MS. MADDUX: Yes, sir.

6 MR. O'BRIEN: Okay. None of those boards --
7 none of those three have sought to modify it, is
8 that correct?

9 MS. MADDUX: To my knowledge.

10 MR. O'BRIEN: Okay. But somehow, you know
11 better than the residents of the Watergate
12 buildings what is best for them? Is that
13 correct?

14 MS. MADDUX: I wouldn't say better than, but
15 I would say jointly as residents of the area.

16 MR. O'BRIEN: Those are my questions, Mr.
17 Chair.

18 CHAIRPERSON ANDERSON: Thank you. Do we have
19 any questions of any board members?

20 MS. HOBSON: Yes.

21 CHAIRPERSON ANDERSON: Yes, Ms. Hobson.

22 MS. HOBSON: Where do you live?

1 MS. MADDUX: On 21st Street, between E and F.

2 MS. HOBSON: And how far away is that from
3 the hotel?

4 MS. MADDUX: I would say seven blocks, seven
5 and a half blocks.

6 MS. HOBSON: Okay, thank you.

7 MS. MADDUX: Do you want me to point it out
8 on the map?

9 MS. HOBSON: No, no, no I'm good.

10 CHAIRPERSON ANDERSON: Any other questions?
11 Any -- Ms. Kahlow do you have any questions of
12 her based on the questions that were asked by Mr.
13 O'Brien and the board.

14 MS. KAHLOW: I do not, Mr. Chairman, and I
15 thank you so much for making this accommodation.

16 CHAIRPERSON ANDERSON: Thank you very much
17 and thank you, Mr. O'Brien. Thank you, ma'am,
18 you're free to go.

19 MR. O'BRIEN: Mr. Chairman, I know Ms. Maddux
20 is blasting out of here but may she be instructed
21 that she's not to discuss her testimony with any
22 other witness?

1 CHAIRPERSON ANDERSON: Yes, you are -- please
2 be directed that you cannot discuss the nature of
3 your testimony with any of the witnesses until
4 this case is over.

5 MS. MADDUX: I hear and I observe, thank you.

6 CHAIRPERSON ANDERSON: Thank you, ma'am.

7 CHAIRPERSON ANDERSON: Mr. O'Brien, your next
8 witness, please.

9 MR. O'BRIEN: Yes, Vincent Mercurio.

10 CHAIRPERSON ANDERSON: He has been
11 sequestered, so -- can you raise your right hand,
12 please, sir? Do you swear or affirm to tell the
13 truth and nothing but the truth?

14 MR. MERCURIO: Yes.

15 CHAIRPERSON ANDERSON: Thank you. Have a
16 seat please. Mr. O'Brien?

17 MR. O'BRIEN: Will you state your full name,
18 please?

19 MR. MERCURIO: Vincent Mercurio.

20 MR. O'BRIEN: And would you make sure the
21 microphone is pulled up to you? How do you spell
22 your last name, sir?

1 MR. MERCURIO: M-E-R-C-U-R-I-O.

2 MR. O'BRIEN: And what relationship do you
3 have to the Watergate Hotel?

4 MR. MERCURIO: I'm the managing director
5 there.

6 MR. O'BRIEN: How long have you been in that
7 position?

8 MR. MERCURIO: Just over two months.

9 MR. O'BRIEN: Have you ever offered to meet
10 with the board of directors of the West End
11 Citizens Association and/or the Plaza
12 Condominium?

13 MR. MERCURIO: I have.

14 MR. O'BRIEN: Have they taken you up on those
15 offers?

16 MR. MERCURIO: They have not.

17 MR. O'BRIEN: What procedures are in place
18 for receipt of complaints for such complaints as
19 might be lodged. What procedures within the
20 hotel are in place in order to deal with any
21 complaints?

22 MR. MERCURIO: As a 24/7 operation we have

1 staff on all shifts to receive calls at our main
2 number. Those staffers are strictly trained to
3 ensure that they advise management on duty
4 inclusive of myself for a quick investigation and
5 rapid action to address any concerns.

6 MR. O'BRIEN: Have you -- are you familiar
7 with the May 1st, 2013, agreement with the boards
8 of the three Watergate residential buildings?

9 MR. MERCURIO: I am.

10 MR. O'BRIEN: Have you had an opportunity to
11 read through them?

12 MR. MERCURIO: I have. That was handed to me
13 within my first days of employment.

14 MR. O'BRIEN: All right, as managing director
15 what steps have you taken in order to ensure that
16 your staff complies with the terms of that
17 agreement?

18 MR. MERCURIO: Well, as soon as I read
19 through that I wanted to be sure that my team was
20 fully fluent in understanding the limitations and
21 that those hours were fully respected in our
22 outlets and I followed up with my team personally

1 to ensure they've understood that.

2 MR. O'BRIEN: Very well. I asked you to look
3 at your last -- your most recent payroll run.
4 Did you have an opportunity to do that?

5 MR. MERCURIO: I did, yes.

6 MR. O'BRIEN: Okay. How many employees were
7 on the payroll for the most recent pay period,
8 employees of the hotel?

9 MR. MERCURIO: 222.

10 MR. O'BRIEN: Okay. Does that represent all
11 persons who work at the hotel?

12 MR. MERCURIO: No, we also have additional
13 third party companies that assist us for cleaning
14 and for service within the hotel which is
15 probably an additional 100 staff.

16 MR. O'BRIEN: Okay. Of the 222 employees,
17 actual employees on the payroll, how many are
18 D.C. residents, based on withholding from their
19 paychecks for D.C.?

20 MR. MERCURIO: 71.

21 MR. O'BRIEN: Those are my questions, thank
22 you.

1 CHAIRPERSON ANDERSON: Do you have any
2 questions based on the questions he asked?

3 MS. KAHLOW: I do. I have two questions.
4 First, when and how did you offer to meet with
5 the Plaza Condominium board of directors, and
6 when and how did you offer to meet with the West
7 End Citizens Association?

8 CHAIRPERSON ANDERSON: Why don't you -- one
9 question at a time.

10 MS. KAHLOW: Well, he mentioned them
11 together.

12 CHAIRPERSON ANDERSON: Okay.

13 MS. KAHLOW: What about the Plaza condo
14 board? When and how did you do that?

15 MR. MERCURIO: That was a request that was
16 made to us by a meeting and it was also offered
17 in writing that I would extend myself, without
18 any response.

19 MS. KAHLOW: I'm sorry, that was not my
20 question. The Plaza Condominium, which is a
21 separate entity, when and how did you speak to
22 them, did you try to have a meeting with them?

1 MR. MERCURIO: This was offered in writing
2 and this was Stephen O'Brien assisted us with
3 this offer.

4 MS. KAHLOW: And it was written to the -- who
5 -- who was it addressed to, the Plaza resident
6 board in reference?

7 MR. MERCURIO: You can refer to the letter
8 that was sent.

9 MS. KAHLOW: I haven't seen it.

10 CHAIRPERSON ANDERSON: Well, if he can't
11 answer the question, he can't answer, so -- do
12 you know, sir, who this letter was sent to?

13 MR. MERCURIO: It was sent to those boards.

14 MS. KAHLOW: Thank you. I knew nothing about
15 it. How about the West End Citizens Association?
16 Did you write them a letter? I didn't ask --
17 didn't know.

18 CHAIRPERSON ANDERSON: She asked a question -
19 - did you --

20 MR. MERCURIO: No, I didn't write to them,
21 no.

22 CHAIRPERSON ANDERSON: Okay.

1 MS. KAHLOW: Okay. The next question has to
2 do with -- you said you were familiar with the
3 exhibit of the 2013 agreement. Are there any
4 conditions in that agreement such as cover charge
5 events or whatever that may no longer be needed?

6 MR. MERCURIO: Not to my knowledge.

7 MS. KAHLOW: Will there be rooftop dancing?

8 MR. MERCURIO: I have no answer for that
9 question.

10 MS. KAHLOW: Thank you, that's all I have.

11 CHAIRPERSON ANDERSON: Any questions by the
12 board?

13 MR. O'BRIEN: I have redirect, if I may.

14 CHAIRPERSON ANDERSON: I'm coming to you, Mr.
15 O'Brien.

16 MR. O'BRIEN: Okay, thank you.

17 CHAIRPERSON ANDERSON: You asked, she's
18 asked, we have a board --

19 MR. O'BRIEN: Very well.

20 CHAIRPERSON ANDERSON: -- and then you get
21 the last laugh. So any questions by the board?
22 All right. I'll go back to her, because I want

1 to give you the last -- well I'll go back to you
2 because the board didn't ask any questions, so go
3 ahead, Mr. O'Brien.

4 MR. O'BRIEN: I'd ask that this be marked as
5 applicant's exhibit #7.

6 CHAIRPERSON ANDERSON: Did you show it to
7 her, please? Did you identify the document? Do
8 you have any objection to the document, ma'am?

9 MS. KAHLOW: I do not.

10 CHAIRPERSON ANDERSON: Okay. Go ahead, sir.

11 MR. O'BRIEN: Do you need copies?

12 CHAIRPERSON ANDERSON: Oh, I'm sorry.

13 MR. O'BRIEN: Do you have what is marked
14 exhibit #7?

15 MS. KAHLOW: Oh okay.

16 CHAIRPERSON ANDERSON: Do you have a copy I
17 can look at so --

18 MR. O'BRIEN: I don't have an extra copy --

19 MS. KAHLOW: Can I make a copy?

20 CHAIRPERSON ANDERSON: No that's not -- it's
21 --

22 MR. O'BRIEN: I'll just write exhibit 7 on

1 it.

2 CHAIRPERSON ANDERSON: Then you don't even
3 have to put 7 on it because if you don't intend
4 to introduce it into the record, into evidence.

5 MR. O'BRIEN: I [inaudible 2:49:35].

6 CHAIRPERSON ANDERSON: All right, go ahead.

7 MR. O'BRIEN: Mr. Mercurio, I'm going to show
8 you what's been marked as applicant's exhibit --
9 or what hopefully will be marked applicant's
10 exhibit #7 for identification. Do you recognize
11 this document?

12 MR. MERCURIO: I do.

13 MR. O'BRIEN: What do you recognize that
14 document as?

15 MR. MERCURIO: This document was an offer on
16 behalf of the hotel for myself to present myself
17 to the boards as referred to, to let them know
18 and assure them our commitment to the
19 neighborhood to listen -- that I could come to
20 them, present myself, and let them know that we
21 were committed to noise control, address their
22 complaints as they would arise and to assure them

1 of our fullest cooperation as a neighbor.

2 MR. O'BRIEN: Okay. Who is the author of
3 that document?

4 MR. MERCURIO: Yourself, Stephen .

5 MR. O'BRIEN: Who is the author of that
6 document?

7 MR. MERCURIO: Yourself, Stephen O'Brien.

8 MR. O'BRIEN: Okay, did you review that
9 document before it was sent out?

10 MR. MERCURIO: I've seen this, correct.

11 MR. O'BRIEN: Did you approve it before it
12 was sent out?

13 MR. MERCURIO: I did.

14 MR. O'BRIEN: All right, I move this letter
15 into evidence, #7, and then I will ask him to
16 read the pertinent portion to the board.

17 CHAIRPERSON ANDERSON: So moved.

18 MR. O'BRIEN: Thank you. Would you read,
19 please, the first paragraph of that letter aloud
20 to the board?

21 MR. MERCURIO: I write to commemorate our
22 commitment at the September 13th mediation

1 session at the Alcoholic Beverage Regulation
2 Administration, Vincent Mercurio, the new
3 managing director of the Watergate Hotel, will
4 appear at the next meeting of the board of the
5 West End Citizens Association and the Plaza
6 Condominium to introduce himself to the community
7 members, discuss hotel offerings and operations,
8 and provide a contact mechanism in the event that
9 questions or complaints regarding activities at
10 the hotel arise. Because dates for these
11 meetings have not been provided, we must allow
12 for the need to substitute other high level
13 management personnel for Mr. Mercurio in the
14 event of unavoidable conflicts.

15 MR. O'BRIEN: And who was that letter
16 addressed to?

17 MR. MERCURIO: To Sarah Maddux, president,
18 and Barabara Kahlow, secretary of the West End
19 Citizens Association.

20 MR. O'BRIEN: And what's the date of the
21 letter?

22 MR. MERCURIO: September 19th, 2016.

1 MR. O'BRIEN: Okay, thank you.

2 CHAIRPERSON ANDERSON: Do you have any other
3 questions?

4 MR. O'BRIEN: No, sir.

5 CHAIRPERSON ANDERSON: Do you have any
6 questions?

7 MS. KAHLOW: Yes. Mr. Mercurio, are you
8 aware of the 5/13 e-mail that was a response to
9 the 452 copy of this letter that was sent from me
10 to Mr. O'Brien? Are you aware of the response?

11 MR. MERCURIO: I am not.

12 MS. KAHLOW: Thank you.

13 CHAIRPERSON ANDERSON: Do you have any other
14 questions for him, Mr. O'Brien?

15 MR. O'BRIEN: No, sir.

16 CHAIRPERSON ANDERSON: You can step down sir,
17 remember you're under oath and please do not
18 discuss the nature of your testimony with any
19 witness, or any other parties in this matter. Do
20 you have another witness, Mr. O'Brien?

21 MR. O'BRIEN: Yes, I do.

22 CHAIRPERSON ANDERSON: Who is that? How many

1 other witnesses do you have?

2 MR. O'BRIEN: This is the third of my four
3 witnesses, however the fourth may not be needed.

4 CHAIRPERSON ANDERSON: Okay. Can you raise
5 your right hand, sir? Do you swear or affirm to
6 tell the truth and nothing but the truth?

7 MR. MUEHLICH: Yes, I do.

8 CHAIRPERSON ANDERSON: Okay, have a seat,
9 please. Your witness.

10 MR. O'BRIEN: Would you state your full name,
11 please, and spell your last name?

12 MR. MUEHLICH: Sure. It's Robert Muehlich.
13 And Muehlich is spelled M-U-E-H-L-I-C-H.

14 MR. O'BRIEN: All right, what is your
15 familiarity with the Watergate Hotel?

16 MR. MUEHLICH: In terms of?

17 MR. O'BRIEN: Are you employed at the
18 Watergate Hotel?

19 MR. MUEHLICH: Yes, absolutely, I'm employed.

20 MR. O'BRIEN: In what capacity?

21 MR. MUEHLICH: Director of Food and Beverage.

22 MR. O'BRIEN: All right, as Director of Food

1 and Beverage, what responsibilities do you have
2 with respect to the operation of the outdoor
3 venues?

4 MR. MUEHLICH: Full responsibility in terms
5 of operation of all of the outside venues.

6 MR. O'BRIEN: Okay. Are you familiar with
7 the May 1, 2013, agreement between the hotel and
8 the three residential buildings?

9 MR. MUEHLICH: Yes, I am.

10 MR. O'BRIEN: Have you read it carefully?

11 MR. MUEHLICH: Yes, I did.

12 MR. O'BRIEN: Are you aware that the
13 agreement envisioned testing of noise levels from
14 the rooftop as measured to residences and
15 balconies within the Watergate complex.

16 MR. MUEHLICH: Yes, I'm very well aware of
17 it.

18 MR. O'BRIEN: All right. Has any such
19 testing been undertaken?

20 MR. MUEHLICH: Yes, they have been taking
21 place last week and this week.

22 MR. O'BRIEN: All right. Did you personally

1 participate?

2 MR. MUEHLICH: I personally did this, yes.

3 MR. O'BRIEN: Okay, tell me generically, or
4 tell the board, I should say, generically what it
5 is you did.

6 MR. MUEHLICH: So, I got in touch with the
7 general managers of each one of the associations
8 and made an appointment to gain accessibility to
9 certain units and had one person stationed on the
10 rooftop, the other person was me on the
11 respective balconies and we had the volumes being
12 gradually increased and then the decibel level
13 being measured on the speakers, meaning on the
14 rooftop, as well as on the balconies.

15 MR. O'BRIEN: And were you able to determine
16 from that testing -- to which buildings did you -
17 -

18 MR. MUEHLICH: I did the first building was
19 the south building, then the west building, and
20 yesterday, or the day before it was the east
21 building.

22 MR. O'BRIEN: And the units that you -- the

1 residential units that you measured from were
2 they on the outside of the Watergate facing city
3 streets or were they on the inside facing the
4 hotel?

5 MR. MUEHLICH: They were all facing the hotel
6 and, therefore, the lawn in between us.

7 MR. O'BRIEN: Okay. Were you able to
8 determine just how far you could turn up the
9 speakers?

10 MR. MUEHLICH: Absolutely.

11 MR. O'BRIEN: Let me finish the question.

12 MR. MUEHLICH: Sorry.

13 MR. O'BRIEN: Were you able to determine just
14 how far you could turn up the speakers on the
15 rooftop without music being heard at any of these
16 balconies?

17 MR. MUEHLICH: Absolutely.

18 MR. O'BRIEN: What have you done with that
19 information?

20 MR. MUEHLICH: Well, I mean, it's helpful for
21 us now to know in terms of up until what point we
22 will be able to increase the volume on the

1 rooftop itself without, obviously, interfering
2 with our neighbors.

3 MR. O'BRIEN: Is there any other noise -- any
4 other noise conditions prevailing?

5 MR. MUEHLICH: Absolutely. I mean you have
6 air traffic very frequent during the day,
7 helicopter traffic, vehicular traffic on what's
8 it called, Rock Creek Parkway, and then obviously
9 just regular surrounding noise which you have
10 within the lawn in between the buildings.

11 MR. O'BRIEN: As food and beverage director,
12 how many employees report directly or indirectly
13 to you? How many in your department?

14 MR. MUEHLICH: Obviously, depending on the
15 season, but in between 70 and 100.

16 MR. O'BRIEN: What have you done to ensure
17 that your staff complies strictly with the terms
18 of the May 1st, 2013, agreement?

19 MR. MUEHLICH: Well, first we started with
20 the manager's training, meaning everyone who is
21 reporting to me, as a matter of fact Mr. O'Brien
22 came to the property and did a very detailed

1 revision of the 2013 agreement and then,
2 obviously, we as management team share that
3 information and train our staff members on the
4 daily lineups.

5 MR. O'BRIEN: When was the rooftop first used
6 for guests?

7 MR. MUEHLICH: Approximately September the
8 3rd.

9 MR. O'BRIEN: Okay, now do you have private
10 events on the rooftop?

11 MR. MUEHLICH: Yes we do.

12 MR. O'BRIEN: That is events not open to the
13 general public?

14 MR. MUEHLICH: Yes, we do.

15 MR. O'BRIEN: Okay, how many of those have
16 you had since September 3rd?

17 MR. MUEHLICH: Five.

18 MR. O'BRIEN: Now, on those days when the
19 rooftop is not booked for a private event what
20 use is made of it?

21 MR. MUEHLICH: It's a regular, I mean,
22 reception, welcome reception, cocktail reception,

1 that type of gathering in terms of guests
2 visiting the rooftop within a group setting, if
3 you want to call it, privately.

4 MR. O'BRIEN: Perhaps I wasn't clear. We
5 understand you've had five booked events on the
6 rooftop.

7 MR. MUEHLICH: Correct.

8 MR. O'BRIEN: Other nights.

9 MR. MUEHLICH: Oh, I'm sorry.

10 MR. O'BRIEN: What happens on the rooftop?

11 MR. MUEHLICH: It's basically guests, local,
12 as well as inhouse guests, meaning hotel guests,
13 coming, visiting, having drinks, having bites to
14 eat, and yeah, normal lounge setting if you will.

15 MR. O'BRIEN: Can the rooftop be used every
16 night?

17 MR. MUEHLICH: Weather permitting, yes it
18 can.

19 MR. O'BRIEN: Okay. I asked you to take a
20 look at what had been done in the months of
21 September and October. Were you able to
22 determine how many times the rooftop was used for

1 -- was open to the general public as opposed to
2 those private events?

3 MR. MUEHLICH: Yeah, we had a total, I mean
4 both months combined, 59 days, and minus the five
5 private events, minus seven days where we
6 couldn't open due to either weather -- meaning
7 rain -- or even windy conditions, all the
8 remaining days were basically open to the public.

9 MR. O'BRIEN: And how many days was that
10 roughly?

11 MR. MUEHLICH: 47.

12 MR. O'BRIEN: Okay. Have you -- during the
13 two months that it's been open are you aware of
14 any complaints from anybody regarding noise
15 coming from that rooftop?

16 MR. MUEHLICH: Not one.

17 MR. O'BRIEN: All right. Are you familiar
18 with where the Plaza Condominium is?

19 MR. MUEHLICH: Yes.

20 MR. O'BRIEN: Let me show you the exhibit.
21 This is exhibit #1, applicant's #1, Mr. Chair.
22 See where you enter the hotel, there?

1 MR. MUEHLICH: Yes.

2 MR. O'BRIEN: Do you know where the Plaza
3 Condominium is?

4 MR. MUEHLICH: It's there.

5 MR. O'BRIEN: Is it possible to see the Plaza
6 Condominium from the rooftop or the [inaudible
7 3:01:03]?

8 MR. MUEHLICH: No.

9 MR. O'BRIEN: Why not?

10 MR. MUEHLICH: Because you have the
11 mechanical from the mechanical rooms or
12 mechanical units from the buildings on top of
13 it. So, if you're standing on this far end here,
14 you're trying to look over it, visually you
15 can't. You have all of this upper equipment on
16 the rooftop.

17 MR. O'BRIEN: You mentioned a minute ago that
18 on the days that the rooftop is not booked for
19 private events that it is open to the public and
20 I think you used the word locals.

21 MR. MUEHLICH: Mm hmm.

22 MR. O'BRIEN: To what extent, and I realize

1 you can't quantify this, but to what extent have
2 you experienced patronage on the rooftop or the
3 other -- let me take that back to here. To what
4 extent has the hotel, including the rooftop, been
5 patronized by local residents. Can you give a
6 sense of that?

7 MR. MUEHLICH: My guess would be between 60
8 and 70% out of all of the guests coming to the
9 rooftop specifically are from our local
10 community.

11 MR. O'BRIEN: Those are my questions. Thank
12 you, Mr. Chair.

13 CHAIRPERSON ANDERSON: Do you have any
14 questions for him, ma'am?

15 MS. KAHLOW: One. Has there been any
16 dancing, so far, on the roof?

17 MR. MUEHLICH: No.

18 MS. KAHLOW: Has there been, I shouldn't say
19 -- has there been any live music?

20 MR. MUEHLICH: Live music in terms of piped
21 in music?

22 MS. KAHLOW: Live is with a band or --

1 MR. MUEHLICH: No.

2 MS. KAHLOW: Never. Thank you.

3 CHAIRPERSON ANDERSON: Any questions by any
4 board members? Yes, Mr. Silverstein?

5 MR. SILVERSTEIN: Thank you, Mr. Muehlich.
6 The first question Mr. O'Brien asked about local
7 residents, how are you defining local residents
8 at 60 to 70%. You mean of Washington, D.C., of
9 the Watergate itself, of the neighborhood?
10 What's the net you're casting here?

11 MR. MUEHLICH: Basically non-hotel guests.
12 That's what I mean by locals. Meaning guests --
13 they're coming from the outside, they're not
14 staying with us on property.

15 MR. SILVERSTEIN: How much business do you do
16 after 11:00 on weekdays and after midnight on
17 weekends?

18 MR. MUEHLICH: None.

19 MR. SILVERSTEIN: None?

20 MR. MUEHLICH: Especially not now because of
21 the weather.

22 MR. SILVERSTEIN: Well, let's say we're

1 talking about a nice day in September. How much
2 do you do after 11:00 on weeknights and midnight
3 on weekends?

4 MR. MUEHLICH: If I have to quantify right
5 now I would say the biggest bulk of the business
6 is coming in between before sunset, meaning that
7 time of the year sunset probably is around 7:30-
8 ish, and then the majority of the business leaves
9 by 10:30, 11:00. There might be some people
10 still mingling around, but not much more than
11 that.

12 MR. SILVERSTEIN: Okay, so many places have -
13 - in the district -- a template in many
14 neighborhoods where the outdoor establishments
15 close at 11:00 on weeknights and midnight on
16 weekends, and that's a general thing. It's not
17 everywhere and it's case specific. Would that
18 pose an undue burden on you? Understanding that
19 you -- it would put restrictions on you.

20 MR. MUEHLICH: I mean, at least for the time
21 we have been open so far we haven't seen -- I
22 mean those restrictions being playing against us.

1 MR. SILVERSTEIN: How about private parties
2 and things like that? If there was a wedding
3 party or some kind of event such as that, would
4 it pose a problem for that?

5 MR. MUEHLICH: We haven't had that case yet,
6 however I don't think the rooftop would even be -
7 - from its structure and from its layout -- be so
8 conducive for a wedding party. A wedding party
9 is more in a like sit-down setting. I would
10 agree with you it's more like a wedding
11 reception.

12 MR. SILVERSTEIN: Right, that's what I meant.

13 MR. MUEHLICH: Yeah, for a wedding reception,
14 yes, but we don't have wedding receptions that
15 late at night.

16 MR. SILVERSTEIN: Okay. No further
17 questions. Thank you very much, sir.

18 CHAIRPERSON ANDERSON: Are there any other
19 questions by any other board members?

20 MS. HOBSON: I have a question.

21 CHAIRPERSON ANDERSON: Yes, Ms. Hobson.

22 MS. HOBSON: So, when you guys did the sound

1 study and you sort of determined like what volume
2 -- where you choose the level -- so I think you
3 got asked the question about whether or not you
4 guys had had live music playing out on the
5 rooftop. So, if you were to have live music,
6 would that live music be amplified in any kind of
7 way? Where it would be part of your testing --
8 do you know what I mean?

9 MR. MUEHLICH: Yeah, not necessarily.

10 MS. HOBSON: Okay.

11 MR. MUEHLICH: I mean we could have -- let's
12 say for a wedding reception you can have a
13 harpist, a violinist, and it doesn't necessarily
14 -- it doesn't at all need to be amplified at all.

15 MS. HOBSON: Okay.

16 MR. MUEHLICH: At all.

17 MS. HOBSON: That's it.

18 CHAIRPERSON ANDERSON: Do you have any
19 questions, ma'am, based on the questions the
20 board members asked?

21 MS. KAHLOW: I do not.

22 CHAIRPERSON ANDERSON: Mr. O'Brien?

1 MR. O'BRIEN: No, sir.

2 CHAIRPERSON ANDERSON: Thank you, sir, for
3 your testimony. You can step down. Please do
4 not discuss the nature of your testimony with any
5 other member or party until this case is over.
6 Thank you. Mr. O'Brien, I know that you had
7 another witness who you had subpoenaed who is not
8 here today. Any representations you want to
9 make?

10 MR. O'BRIEN: I would prefer to reserve until
11 the close of all of the evidence whether I want
12 to keep my case open in order to ask the board to
13 enforce the subpoena. It may not be necessary,
14 although I'm still very troubled by it, by them
15 thumbing their nose at the board's subpoena.

16 CHAIRPERSON ANDERSON: At this juncture, you
17 are resting then?

18 MR. O'BRIEN: Only if I can unrest.

19 CHAIRPERSON ANDERSON: That's why I said, at
20 this juncture. That's why I phrased it that way.

21 MR. O'BRIEN: It won't be the final word.

22 CHAIRPERSON ANDERSON: No, I understand, sir.

1 So, you're resting at this --

2 MR. O'BRIEN: I have no further evidence to
3 present at this time, subject to revisiting the
4 issue of the court ordered subpoena.

5 CHAIRPERSON ANDERSON: That's fine. It's
6 understood. Normally when we say you rest, I
7 know it's final, you still have an opportunity to
8 call a rebuttal witness, but I know that there's
9 a subpoena witness that is still problematic and
10 you will make a determination after the
11 protestant has presented its case, whether or not
12 you still require the testimony of that witness.

13 MR. O'BRIEN: Thank you.

14 CHAIRPERSON ANDERSON: Ms. Kahlow, do you
15 wish to call your first witness?

16 MS. KAHLOW: I'm the first witness after Ms.
17 Maddux, and I have a lengthy statement. I'm not
18 a lawyer, so I can make a statement.

19 CHAIRPERSON ANDERSON: Hold on -- hold on --
20 yes?

21 MR. O'BRIEN: If Ms. Kahlow's a witness she
22 needs to be sworn before we take the statement.

1 CHAIRPERSON ANDERSON: Yeah, I'm going to do
2 that. The board's going to take a five minute
3 recess.

4 All right, Ms. Kahlow, can you raise your
5 right hand, please? Do you swear or affirm to
6 tell the truth and nothing but the truth?

7 MS. KAHLOW: I do.

8 CHAIRPERSON ANDERSON: All right. One thing
9 I'll say to you, and Mr. O'Brien doesn't object,
10 in these type of proceeding the way normally it's
11 done we'll have someone ask you a question and
12 you'll answer the question. I know that when the
13 previous witness testified she made a statement
14 and that's -- we normally don't, because in doing
15 a hearing we normally have an attorney ask direct
16 questions and they go back and forth. So, I know
17 that you're going to read a statement, but be
18 open to the fact that Mr. O'Brien will have an
19 opportunity to question you in aspects of your
20 statement and the board will also do that. So I
21 think what Mr. O'Brien has asked, which Mr.
22 O'Brien has requested, and I do not have a

1 problem with, is that you take the witness stand
2 and move from there.

3 MR. O'BRIEN: Ms. Kahlow has asked me because
4 of the volume issues, whether I would consent to
5 her delivering her testimony from the table. I
6 don't have a problem with it, Mr. Chair.

7 CHAIRPERSON ANDERSON: Well, I don't have a
8 problem, sir, and I am glad that we had the break
9 so the parties could talk and come to agreement,
10 and anytime the parties have agreement with
11 matters I will not interfere with the agreement
12 of the parties, so if the parties agree, go
13 ahead, ma'am.

14 MS. KAHLOW: Thank you, and thank you for the
15 bathroom break. For people my age, we need it.

16 CHAIRPERSON ANDERSON: I'll say this to
17 everybody. If we need a break, we're in class,
18 just raise your hand or say something and I will
19 grant you that. But thank you, I appreciate
20 that. Go ahead.

21 MR. SILVERSTEIN: Make sure to take along
22 your hall pass.

1 MS. KAHLOW: Thank you. You asked me to
2 begin by asking if I could get into evidence the
3 other exhibits, and I also want to ask, besides
4 the other exhibits, having been a staff member in
5 congress and having testified repeatedly in front
6 of the zoning bodies and other D.C. bodies, I
7 find it most helpful to have a copy of the
8 statement so you can follow along. I have copies
9 for each of you. I speak very fast -- I'm a
10 twin, and people have difficulty and if, in fact,
11 I'm too fast, raise your hand, just like in
12 class, and say 'slow down, Barbara.' But I do
13 think that would be helpful so I'd like to submit
14 the other exhibits and give you a copy of the
15 written testimony so that you can follow along.

16 CHAIRPERSON ANDERSON: Mr. O'Brien?

17 MR. O'BRIEN: I already objected to the
18 admission of numbers #2, #3 and #4 on relevance
19 grounds.

20 CHAIRPERSON ANDERSON: I've not seen the
21 documents, so what is document #2?

22 MS. KAHLOW: It is a chart that is in your

1 file already because it was appended to our July
2 25th letter.

3 CHAIRPERSON ANDERSON: Oh, but remember as I
4 -- you're talking about -- there's where you
5 stated what your protest was and the hours that
6 you were --

7 MS. KAHLOW: We had two letters we wrote the
8 board.

9 CHAIRPERSON ANDERSON: Mm hmm.

10 MS. KAHLOW: July 25th which is the protest
11 and included chart 1 which is already in your
12 exhibit #1. We then wrote on September 25th
13 after unsuccessful mediation, so we could bring
14 you up to date on the other precedents in our
15 neighborhood and it's a comparison so you could
16 understand what they are as we're speaking, and
17 exhibits #3 and #4 are samples of those. I can
18 understand if you don't want #3 and #4, it's not
19 the end of the world, but exhibit #2 you already
20 have in your record and it's going to be
21 impossible to talk about what neighbor
22 impressions are without your being able to see

1 it.

2 CHAIRPERSON ANDERSON: So, you're saying #2
3 is a July 25th chart that you attached to --

4 MS. KAHLOW: September 25th chart.

5 CHAIRPERSON ANDERSON: And I'm sorry, what's
6 the chart again?

7 MS. KAHLOW: It's the title: Comparison of
8 Closing Hours and Music, Foggy Bottom West End
9 Establishments, and here it has two rows on the
10 Watergate and four other institutions nearby. I
11 need to tell you, Mr. Chairman, I am a
12 statistician. I did charts for a living. It's
13 the only way I can understand how things work, so
14 I was trying to be helpful.

15 CHAIRPERSON ANDERSON: And, Mr. O'Brien,
16 you're saying that it's not relevant?

17 MR. O'BRIEN: Yes. Two responses: Number
18 one, the fact that Ms. Kahlow may have appended
19 the chart to a letter to the ABC board does not
20 mean it's admitted as evidence. That's what
21 we're talking about now. The second is that the
22 chart is intended to show what other licensees in

1 the Foggy Bottom area have in the way of
2 restrictions on music and entertainment hours and
3 things like that and that is simply not relevant.
4 The purpose of going through the great lengths of
5 showing this aerial photograph was that the
6 Watergate complex is an island to itself. It's
7 cut off from the rest of the neighborhood and I
8 would invite the attention of the board to this
9 issue of our Court of Appeals Jimmy Inc. Versus
10 D.C. ABC board, which is a report at 433 Atlantic
11 Second 1090 and in particular to page 1093. I
12 will say that I provided staff and Ms. Kahlow
13 with this site last night.

14 MS. KAHLOW: I don't have that.

15 CHAIRPERSON ANDERSON: And what's 1093 code?

16 MR. O'BRIEN: Case 1093 with Court of Appeals
17 said that every location is unique and the board
18 must evaluate each application according to the
19 particular circumstances involved. So I find
20 that somebody might have a 12:00 restriction on a
21 summer café elsewhere in Foggy Bottom far removed
22 from the Watergate complex has nothing to do with

1 the appropriate hours for the hotel within the
2 Watergate complex. And that's the [inaudible
3 3:15:58]

4 CHAIRPERSON ANDERSON: Well, I mean, in this
5 particular case I'm going to allow her to do
6 this. It's just a matter of she's saying, I
7 guess in basing their case, they're saying that
8 the other establishments have these restrictions,
9 they're asking for similar restrictions. That
10 doesn't necessarily mean that the board is going
11 to utilize these restrictions as their guide. In
12 presenting their case they're saying that -- at
13 least I'm taking it that in presenting their case
14 they're saying that all of these other
15 establishments have these hours it's reasonable
16 to do this. I might disagree with it, I might
17 agree with it. So, I'll take it for what it's
18 worth. For what it's worth. It's not binding on
19 the case. I hear what you're saying but I'll
20 take it for what it's worth in the sense that
21 these are other establishments that ABRA has
22 given them licenses to -- I mean one of the

1 things that you look at with the board, in our
2 board reports, it will give -- it tells us the
3 establishments within the -- I think it's, if I
4 look in here, the board report, it gives a list
5 of all the ABC licensed establishments within
6 that area which I take in the same way, to say
7 this is what's going on in the neighborhood. To
8 me, I'm not going to take -- I'm just saying I
9 will utilize -- I do have a copy of the case that
10 you provided staff and so I will rely on also
11 that case, but I will take it for what it's
12 worth. I'll let the document in.

13 MS. KAHLOW: Thank you.

14 MR. O'BRIEN: #3 and #4.

15 CHAIRPERSON ANDERSON: What are #3 and #4?

16 MS. KAHLOW: #3 and #4 are the actual
17 agreements made for two not-yet-opened
18 establishments that are nearer than those listed
19 by the ABRA investigator's report, and they are -
20 - so you can see them. They're mentioned in the
21 chart but you might actually want to read the
22 terms of the agreement.

1 CHAIRPERSON ANDERSON: Are these settlement
2 agreements that the board has signed off on?

3 MS. KAHLOW: Number 4 you have, but #3 you
4 have not seen.

5 CHAIRPERSON ANDERSON: Well, I will admit #4
6 but I will not admit #3.

7 MS. KAHLOW: Okay.

8 MR. O'BRIEN: I do object to your admission
9 of #4. What somebody else agreed to is utterly
10 irrelevant to what the board should decide is
11 appropriate. That's our position.

12 CHAIRPERSON ANDERSON: I do take that for
13 what it is worth. I -- for what it's worth I
14 will admit the document, but I will not admit #3
15 since we have never seen that one.

16 MS. KAHLOW: The one you're not admitting in,
17 just so you know, is across the street.

18 CHAIRPERSON ANDERSON: Well, that's not an
19 agreement that the board has -- it's not the
20 board -- that's not an agreement that the board
21 has seen and signed off on, so I will not admit
22 that one but I think these are establishments

1 that the board has -- as in general I'll allow
2 documents in and take it for what it's worth.
3 I'm not going to use these documents to say
4 because this is what we approved in this -- this
5 is what's approved for an establishment across
6 the street so, therefore, I'm going to use this
7 as a guide to make a determination for this
8 establishment.

9 MR. O'BRIEN: I understand what the Chair is
10 saying. I respect the rule. if I can say?

11 CHAIRPERSON ANDERSON: Yes, go ahead.

12 MR. O'BRIEN: My problem with the ruling is -
13 -

14 CHAIRPERSON ANDERSON: Yes, sir.

15 MR. O'BRIEN: -- it suggests that it is
16 relevant. Now, I understand the Chair is saying
17 we'll decide just how relevant when you
18 deliberate, but the threshold is if it's
19 relevant. I suggest what's relevant here is the
20 May 1st, 2013, agreement which the board has
21 approved. The board approved the hours in this
22 2013 agreement.

1 CHAIRPERSON ANDERSON: That is correct.

2 MR. O'BRIEN: And that's what's relevant in
3 my view, not what the board approved in some
4 other case.

5 CHAIRPERSON ANDERSON: And in making a
6 decision the board will consider the previous
7 agreement that -- the previous -- the current --
8 yeah. The board will look at the previous
9 settlement agreement and will make a decision and
10 it's -- the board will give the document the
11 weight it deserves. We -- I hear your objection
12 and your objection for the record, but I'll admit
13 that document.

14 MR. O'BRIEN: Thank you, Mr. Chair.

15 CHAIRPERSON ANDERSON: Okay.

16 MS. KAHLOW: And then the copies of my
17 testimony because I speak quickly, and every
18 other board that I've ever been involved with, as
19 well as all congressional committees require --

20 CHAIRPERSON ANDERSON: Well, the board, ABRA,
21 we don't require that, so that's not necessary.

22 MS. KAHLOW: Even though you could follow it

1 much more easily?

2 CHAIRPERSON ANDERSON: I prefer to just
3 listen --

4 MS. KAHLOW: Okay.

5 CHAIRPERSON ANDERSON: -- and give your testi
6 -- I prefer -- and the reason why I'm not going
7 to allow that is because that's not what we do
8 here, because you're not supposed to be giving a
9 statement. You're supposed -- the way it is, is
10 that you're supposed to be -- it's like we're in
11 court and someone asks you questions and you
12 answer and normally the procedure that you're
13 following would not be allowed, and if Mr.
14 O'Brien had said I have an objection to it then I
15 wouldn't allow it because a witness is not
16 allowed to just make a statement.

17 MS. KAHLOW: Well, I think the difference
18 here for me and my other witnesses is I'm not a
19 lawyer and I don't know how to ask the right
20 questions, and the other people had a two-page
21 statement so I just want to speak and in my case
22 I want to lay out the entire argument because

1 most of it has not been discussed as yet.

2 CHAIRPERSON ANDERSON: And one of the things
3 that you could have done, you could have had one
4 of your witnesses, you have the statement, they
5 could have framed it in questions and then asked
6 you the questions that would elicit the same
7 information, because normally we just don't have
8 someone just sit and speak. We need to have
9 questions asked. You answer the questions,
10 questions asked. And so in the future what you
11 can do is you have your statement and you can
12 break it up into questions, have the person ask
13 you a question, you can have one of your
14 witnesses ask you the questions, and we'll get
15 the same information rather than you sitting
16 there and read a statement, so --

17 MS. KAHLOW: I'm going to read and ad lib
18 from it.

19 MR. SILVERSTEIN: Ms. Kahlow.

20 MS. KAHLOW: Yes?

21 MR. SILVERSTEIN: This is a legal proceeding
22 and we want to be fair to non-lawyers but not to

1 the degree that we jeopardize the legal
2 proceeding or are unfair to others.

3 MS. KAHLOW: Thank you so much, Mr.
4 Silverstein.

5 MR. O'BRIEN: Mr. Chair, I need -- I'm sorry
6 to prolong it but I need it in the record, I did
7 not consent to Ms. Kahlow reading a statement as
8 opposed to answering questions. What I consented
9 to was, merely for convenience purposes, her
10 delivery from here instead of the witness box,
11 but I'm at the point now where each sentence I
12 have to scrutinize and if the sentence would
13 suggest an answer to a question that was
14 objectionable I'm going to have to be constantly
15 interrupting Ms. Kahlow as she reads it.

16 CHAIRPERSON ANDERSON: And I will allow you
17 to do that.

18 MR. O'BRIEN: I don't like to do that.

19 CHAIRPERSON ANDERSON: I will allow you to --

20 MR. O'BRIEN: That's my position I'm left in.

21 CHAIRPERSON ANDERSON: And I will allow you
22 to do that, sir.

1 MS. KAHLOW: Thank you for indulging me as a
2 non-lawyer. I've already given the opening
3 statement so you know who I am. I'm --

4 CHAIRPERSON ANDERSON: What I will do, Mr.
5 O'Brien, I'm not quite sure how to -- since I
6 don't know -- normally a question has been asked
7 and then I will have an idea why you're objecting
8 and ask each side to -- so what I'll ask you to
9 do -- maybe you can take notes and ask her
10 questions and that -- because I'm not quite sure
11 how to respond in the middle of her statement
12 because I don't know what is it -- where it's
13 going.

14 MS. KAHLOW: Mr. Anderson, I have five
15 sections and perhaps we should go section and
16 then question, section and then question. That
17 may be easier and more fair.

18 CHAIRPERSON ANDERSON: The problem is that
19 the way -- the problem is that the lawyer would
20 ask the witness a question and the question -- so
21 they would object before the answer comes out
22 because a lot of times you don't want the answer

1 to come out. I have no -- that's why if you
2 watch the legal shows the lawyer will ask a
3 question, the other lawyer will say 'objection'
4 and I will say 'don't say nothing, let us decide'
5 and then I will let you know whether or not you
6 can answer the question but because I have no
7 idea what you're about to say and even if he
8 objects in the middle of -- you make a statement,
9 he objects, then the cat's already out of the
10 bag. So what I'm going to ask you to do, Mr.
11 O'Brien, let her make the statement -- I know
12 it's somewhat unfair, but I don't know how else
13 to do it because I don't know what's in the
14 document and she might start something and I
15 don't know where she's going.

16 MR. O'BRIEN: It's inherently unfair and
17 thank you for recognizing that, but, for
18 instance, if Ms. Kahlow was to say, 'well another
19 place in Foggy Bottom has different hours' as
20 we've been discussing, my objection would be
21 based on relevance. Now, the board might sustain
22 the objection or overrule the objection, but if

1 the board sustains the objection then I have to
2 move the board to strike what's already in the
3 record. That's the awkwardness of this.

4 CHAIRPERSON ANDERSON: And I do recognize
5 that, and I do recognize that. What I'll do is
6 that if something is objectionable you can object
7 and let's -- I would prefer for you to wait but
8 if you believe that it's so prejudicial that you
9 need to object at the moment, please do, and I'll
10 make a ruling.

11 MR. O'BRIEN: I will try to exercise
12 restraint but I [inaudible 3:26:56].

13 CHAIRPERSON ANDERSON: I know you're in a
14 difficult position, Mr. O'Brien, and so I'm
15 trying to be fair to both parties, so I do
16 recognize that. In my other practice I am a
17 lawyer and I do administrative hearings and the
18 most difficult hearings are when I'm working with
19 someone who's not a lawyer. So, I do understand,
20 okay? Can you raise your right hand, please,
21 since I haven't done that? Do you swear or
22 affirm to tell the truth and nothing but the

1 truth?

2 MS. KAHLOW: I do.

3 CHAIRPERSON ANDERSON: Okay, go ahead.

4 MS. KAHLOW: So, I've told you already who I
5 am. I'm the secretary treasurer of the West End
6 Citizens Association and I live within earshot of
7 the Watergate complex across the street. I hear
8 everything that goes on in that complex. Today,
9 we'll discuss five areas: 1) Missing and
10 erroneous information in the original 2012
11 application, the 2013 settlement agreement and
12 the March 2016 renewal application; 2)
13 Objectionable provisions in the 2013 settlement
14 agreement; 3) Comparisons of other
15 establishments in Foggy Bottom West End and, most
16 importantly long-standing community precedents
17 (so, maybe I can do it without naming the
18 people); 4) Unusual circumstances; and 5)
19 requested conditions for the renewal by the
20 board.

21 CHAIRPERSON ANDERSON: What's the first area?

22 MS. KAHLOW: Missing and erroneous

1 information.

2 CHAIRPERSON ANDERSON: In what?

3 MS. KAHLOW: In three different documents.

4 CHAIRPERSON ANDERSON: What documents is
5 that?

6 MS. KAHLOW: The original application, the
7 settlement agreement and the renewal application.

8 CHAIRPERSON ANDERSON: All right, I'm not
9 going to have you discussing about the original
10 application because you're protesting their
11 renewal.

12 MS. KAHLOW: They --

13 CHAIRPERSON ANDERSON: You're protesting
14 their renewal of -- what are you protesting here
15 today?

16 MS. KAHLOW: I'm protesting the renewal --

17 CHAIRPERSON ANDERSON: Right.

18 MS. KAHLOW: -- and since the renewal is
19 based on the original application with missing
20 information, I think the board needs to know the
21 missing information.

22 CHAIRPERSON ANDERSON: I'm not going to allow

1 you to go all the way back to the --

2 MS. KAHLOW: Okay.

3 CHAIRPERSON ANDERSON: -- talk about -- it's
4 about the renewal so if you have information for
5 the renewal application you can move there.

6 MS. KAHLOW: Okay, thank you for that. I
7 will then talk about only the second two. The
8 settlement agreement, the capacity information,
9 as the chart shows, chart #1, exhibit #1 is
10 missing for three of the six outdoor venues.
11 Number two, the agreement talks about occasional
12 use for live music on the terrace over ballroom
13 summer garden and it's unclear what occasional
14 means. We heard some testimony today and it
15 could be up to 365 days a year if there's booked
16 events.

17 MR. O'BRIEN: I object, Mr. Chair.

18 CHAIRPERSON ANDERSON: What are your
19 objections?

20 MR. O'BRIEN: I challenge Ms. Kahlow's
21 standing to object to the 2013 settlement
22 agreement. She and the West End Citizens

1 Association was not a party to that agreement and
2 deliberately chose not to participate in
3 negotiations.

4 MS. KAHLOW: That is correct.

5 MR. O'BRIEN: She does not have standing now
6 to say what's wrong with it. If she didn't like
7 it then in 2013 she could have tried to appeal it
8 to the Court of Appeals but the board has
9 approved that settlement agreement.

10 MS. KAHLOW: That is part of the renewal and
11 I will be explaining why we did not do anything
12 in 2013. Basically, the civic association wanted
13 the hotel to open and we didn't want to be
14 responsible for having any interference. That
15 same is true with several of the Watergate --
16 witnesses of the Watergate buildings. We didn't
17 want to interfere with the hotel opening. Our
18 civic association is involved with almost every
19 alcohol license in our neighborhood. We
20 represent the greater good, the greater number of
21 people, and it is critical for this board to
22 allow us as a registered, certified agent to be

1 able to do our job. And I'm going to be
2 explaining how this matters now.

3 CHAIRPERSON ANDERSON: You're -- it's correct
4 that you were not a party to this agreement, so
5 I'm not going to allow you to say what portion of
6 the agreement you don't agree with.

7 MS. KAHLOW: Okay.

8 CHAIRPERSON ANDERSON: So, I think you should
9 tell us why is it that you believe that the board
10 should not renew the -- if you're saying that the
11 board should not renew their license, or are you
12 asking the board to put these conditions on the
13 license, and why is it that you believe that
14 these conditions would -- that without these
15 conditions it would not impact the neighborhood
16 peace, order and quiet. I think that's where --

17 MS. KAHLOW: Okay.

18 CHAIRPERSON ANDERSON: -- that's how you
19 should address --

20 MS. KAHLOW: Okay.

21 CHAIRPERSON ANDERSON: -- what is it that
22 you're requesting the board to do? What

1 conditions, if any, are you asking the board to
2 put on the application and how is it that without
3 these restrictions, if any, how peace, order and
4 quiet is impacted if these restrictions are not
5 placed on the renewal.

6 MS. KAHLOW: Okay. A reason that we wanted
7 to discuss this is because the renewal
8 application was filed erroneously. It requested
9 hours that are inconsistent with the settlement
10 agreement, I was trying to explain that, and both
11 the renewal application requested summer garden
12 hours of operation that were inconsistent, and
13 hours of sales and service and consumption were
14 inconsistent. We wrote the staff director of
15 ABRA and he confirmed that they were erroneous
16 and that there were different ones in the
17 agreement and I said, "are you going to re-notice
18 it?" and he did not. In every other group that
19 I'm familiar with, when you find that the notice
20 to the public about these are the hours, 2:00
21 a.m., 3:00 a.m., which is no longer relevant, you
22 re-notice it so the public can know what we're

1 talking about and that was never done, so I was
2 trying to show you what it said before and why we
3 would have liked a notice that was accurate, but
4 it's not the end of the world, that's why I
5 wanted to explain it.

6 Let's get to the heart of the matter then.
7 That was the first section which as I said was
8 errors, miscellaneous and erroneous information.
9 The second section is objectionable provisions.
10 The W's concern is with the ABC appropriateness
11 standard for peace, order and quiet. Nearby
12 residents, especially in the three Watergate
13 cooperative buildings and the Plaza where I live,
14 many of whom are elderly, deserve peace, order
15 and quiet in their homes, especially evening
16 hours after their often early bedtimes. The
17 first exhibit #1, which you have is the chart,
18 Proposal for Watergate Hours Outdoor Venues
19 Ending Hours. Unfortunately, the negotiators of
20 the 2013 Watergate settlement agreement were
21 unaware of the limitations negotiated with all
22 the other Foggy Bottom West End outdoor

1 establishments. The end result was two outdoor
2 summer gardens with live music and too late
3 closing hours. These are completely
4 inappropriate hours both for weekend and weekdays
5 that are highly objectionable to the WCA. 2:00
6 a.m. on Friday and Saturday for recorded music is
7 absolutely objectionable.

8 In addition, unspecific, occasional frequency
9 for live music in the terrace over ballroom
10 summer garden is troublesome. The applicant's
11 attorney told me that occasional could mean up to
12 365 days a year if events are booked that go on.
13 That's flatly unacceptable. The board in its
14 renewal should specify all of the missing
15 information indicated in chart #1, which you
16 have, exhibit #1, as well as specify permanent
17 yearly calendar dates for each summer garden.
18 And the reason that's important is for people
19 like me, we will go out of town to a second home
20 so we wouldn't have to suffer the noise. Not
21 everybody, people in their 80s and 90s, have the
22 ability to do that, but other people -- right now

1 there's construction noise in my building, I go
2 to California. I don't have to put up with it
3 and that's why the hours are important for the --
4 for the residents to be able to plan their lives.

5 Curiously, the ABRA's investigator report
6 that we heard earlier about following discussions
7 with the applicant made certain points. For the
8 terrace over ballroom, she said, 'there was no
9 immediate plans to use the area because an
10 elevator would need to be installed and other
11 means to make it accessible to the public. That
12 appears to be a long way off and they're not
13 applying for permits or permission to utilize
14 that area at this time. She said "in addition to
15 putting in an elevator, there would need to be a
16 lot of additional renovations before the terrace
17 over ballroom be opened. Before that work
18 commences, we -- and I asked her if there was any
19 amendment to the renewal application, because
20 it's not going to happen, and a long way off, she
21 said 'no, there has been no amendment filed" but
22 meanwhile this is a problem as I'm going to

1 explain in a few minutes.

2 Second, regarding the rooftop summer garden,
3 the ABRA investigator said there would only be
4 live music at the request of a hotel guest or
5 special booked event, it will not be used as a
6 frequent happy hour place with live music. Also
7 regarding the rooftop summer garden, she stated
8 she was told that because it's such a small area
9 it would be unlikely that a live band and guests
10 could actually fit in the area and that dancing
11 would be allowed, it would be almost impossible
12 because of the narrowness of the area. All of
13 that's not specified in the agreement and there's
14 been no amendment application to change the
15 terms; therefore, we request that limitations be
16 added by the board with this renewal for that
17 site as well as the other.

18 MR. O'BRIEN: Mr. Chair, I've got to object.

19 CHAIRPERSON ANDERSON: Yes.

20 MR. O'BRIEN: All of this is argument. I
21 haven't heard a shred of evidence in this.

22 MS. KAHLOW: The witnesses --

1 CHAIRPERSON ANDERSON: Hold on.

2 MS. KAHLOW: I'm sorry, did I interrupt?

3 CHAIRPERSON ANDERSON: What I'm hearing
4 normally comes at the end of the case when I ask
5 you to wrap up and tell me -- I'm not sure what
6 to do Mr. O'Brien. She is a lay person, she has
7 a statement and she wants to read the statement,
8 and it's -- it would more -- it would more be in
9 the style of a closing argument, but I don't know
10 where she is going and I'm trying to direct her
11 in the sense of what -- I'll just ask you to move
12 on. I'm not sure how to limit what's coming in.

13 MR. O'BRIEN: The only problem I have is the
14 statement becomes itself evidence. When I'm
15 wrapping up, my closing argument is based -- I'm
16 arguing to you what the evidence was.

17 CHAIRPERSON ANDERSON: Yes.

18 MR. O'BRIEN: And here, we're not hearing any
19 evidence, we're hearing the closing argument
20 which becomes evidence to be relied on as the
21 board is drafting it's findings of fact and
22 conclusions of law. That's my problem.

1 MS. KAHLOW: I need to explain -- maybe I
2 should have earlier -- the first case I took
3 before this board I ended up at the court of
4 appeals, the D.C. Court of Appeals, because my
5 written statement was rejected, and the Court of
6 Appeals unanimously overturned the order, the
7 board's order, and said of course they should
8 have been able to have the testimony in the
9 record. That's how you make your case,
10 especially for a non-lawyer. So that we won.

11 CHAIRPERSON ANDERSON: Well, that's a
12 different -- that's a different situation. You
13 could have -- when you're doing your opening
14 statement you're making a statement because
15 you're saying this is what we're going to prove,
16 this is where we're going, these are our
17 witnesses. Now you are actually testifying.
18 That's what you're doing right now.

19 MS. KAHLOW: That's what we did in the other
20 case.

21 CHAIRPERSON ANDERSON: But -- but -- but when
22 you're testifying, so when I ask you a question,

1 this is not where you're before the BZA or some
2 other agency where you're testifying, you're
3 actually -- we're an administrative hearing, we
4 are -- you have to prove something. You're being
5 asked questions, you're answering the questions,
6 but what we have here today is that you've
7 written a statement, you've said 'this is my
8 statement and it's not open to cross examination.

9 MS. KAHLOW: I'm very happy to have cross
10 examination.

11 CHAIRPERSON ANDERSON: But the problem is
12 that because you're just reading something, it's
13 -- I don't know where else, where are we going?

14 MS. KAHLOW: I was trying to give you a copy
15 but --

16 CHAIRPERSON ANDERSON: No, but that's still -
17 - that still doesn't address the issue when you
18 give me a copy because I'm here sitting --
19 because it's just a statement that you're making
20 and then at the end of it, then if I have any
21 questions I'll ask you, but maybe some of the
22 things that you're saying should not be in the

1 record because I don't know if it's true or not
2 and that's part of the problem is that you're
3 making some statements and are they factual, are
4 you drawing some conclusions and I've not heard -
5 - for example, you said that 2:00 a.m. time is
6 objectionable. Why is it objectionable?

7 MS. KAHLOW: Because people are trying to
8 sleep.

9 CHAIRPERSON ANDERSON: But it's -- but you're
10 making a statement, you're not telling me why --
11 how does that impact peace, order and quiet.
12 It's not -- you're just putting it out there and
13 --

14 MR. O'BRIEN: Mr. Chair, may I make a
15 suggestion?

16 CHAIRPERSON ANDERSON: Yes, Mr. O'Brien.

17 MR. O'BRIEN: Just allowing Ms. Kahlow
18 continued reading I'd like to have the board to
19 recognize on record that opinions such as "that's
20 too late" are not evidence, but factual
21 statements are. In other words, the entire
22 statement itself is not evidence.

1 CHAIRPERSON ANDERSON: I'm aware of that and
2 that's one of the reasons why, Mr. O'Brien, I had
3 asked -- it was my suggestion before to say let
4 her read her statement. If there are certain
5 things that she stated that you believe that you
6 need to address then you can ask her about those
7 things to clarify the record, because these are
8 just statements that have already been made, and
9 if you don't believe that they are factual then
10 you can ask to clarify the record, because
11 there's no other way to do it.

12 MR. O'BRIEN: I don't know that I brought
13 enough legal pads to write down each statement of
14 what I'm told is lengthy.

15 CHAIRPERSON ANDERSON: Then maybe one of the
16 things that -- ask her for a copy of the
17 statement that she has and you can put --
18 underline certain things on the statement as
19 she's going through and make sure that you bring
20 to the attention of the board that 'okay, I need
21 to rebut this because I don't need to have this
22 in the record because I'm not quite sure which

1 other way to do it.

2 MS. KAHLOW: Let me just tell you about the
3 other case, it was a protest case in front of
4 this board for an ABC license where liquor is
5 served, and it wasn't the west end, but I was
6 involved in that lawsuit and the D.C. Court of
7 Appeals said that the entire statement, some of
8 which was statistical data that I had gotten from
9 the library and some of which is what you call
10 opinions, was all of it had to go in, and the
11 board as a consequence now has regulations -- it
12 didn't have regulations back then, it is my test
13 case, it now has regulations. I was under the
14 understanding that I could present what I could
15 and each of the other witnesses could present
16 what they could, some of which will be
17 statistical, some of which won't be, and the
18 chart was supposed to be a side-by-side of facts,
19 those are facts, and I tried to get the other
20 documents in. Some of this is opinion, but the
21 whole idea is for us to be heard and since I'm
22 not a lawyer, all I know is the court of appeals

1 agreed that the whole statement should go in.
2 That was a very lengthy statement and from then
3 on I've been told I was allowed to make a
4 statement.

5 CHAIRPERSON ANDERSON: But you can't make a
6 statement in -- you have an opening, in the
7 presenting the case you make an opening argument
8 and then you call your witnesses.

9 MS. KAHLOW: And I'm one of the witnesses, I
10 can ask myself a question if that would be
11 helpful.

12 CHAIRPERSON ANDERSON: Then why don't you ask
13 yourself a question and provide the answer.

14 MS. KAHLOW: Okay, okay, good.

15 CHAIRPERSON ANDERSON: And then when you ask
16 yourself a question, then Mr. O'Brien will object
17 to the question and I will tell you that you
18 can't answer that.

19 MS. KAHLOW: Okay. That's a good solution.
20 Thank you.

21 MR. SILVERSTEIN: I'm glad you agree.

22 MS. KAHLOW: I -- well, I think -- you know,

1 I'm not a lawyer, Mr. Silverstein, and I'm doing
2 the best I can here --

3 CHAIRPERSON ANDERSON: And we all understand
4 that, so that's one of the reasons why you know
5 what is it that you're trying to bring up, so ask
6 yourself a question, then I will know what the
7 question is, Mr. O'Brien will know what the
8 question is and then prior to you providing the
9 answer then he will object and I will let you
10 know whether or not you can answer that question
11 and then I'll say move on.

12 MS. KAHLOW: Thank you. This section is
13 called Objectionable Versions. Barbara (asking
14 myself), besides yourself and the witnesses
15 today, have you heard from other affected --
16 adversely affected -- people and do they have
17 concerns as well? So, that's the question. And
18 the answer is: Yes, thanks to the ANC
19 commissioner, he has put me in touch with people
20 in each of the buildings and I have written
21 statements, e-mails from those people, Watergate
22 South, Watergate East, etc., about their problems

1 and what they've experienced and I was going to
2 read them in the record if you'll allow me to,
3 from other people.

4 MR. O'BRIEN: I object to that because I
5 cannot cross examine them.

6 MS. KAHLOW: Okay, all right, but I've got
7 them. The next section is called Comparisons
8 With Other Establishments.

9 QUESTION BY MS. KAHLOW: Barbara: Have you
10 been able to compare the Watergate 2013 terms
11 with all of the other precedents that have been
12 set over the years by the WCA and the other
13 establishments in our neighborhood. Are there
14 any others with live music?

15 ANSWER BY MS. KAHLOW: No.

16 QUESTION BY MS. KAHLOW: Are there any other
17 with outdoor amplified music?

18 ANSWER BY MS. KAHLOW: No.

19 QUESTION BY MS. KAHLOW: Do others have very
20 limited hours for recorded music?

21 ANSWER BY MS. KAHLOW: Yes.

22 MR. O'BRIEN: Objection to all of those

1 questions on relevance grounds as previously
2 stated.

3 CHAIRPERSON ANDERSON: Overruled, go ahead.
4 But I -- your objection is recorded for the
5 record.

6 MS. KAHLOW: Thank you. Thank you both. So,
7 exhibit #2 we have and that's precedent setting
8 for other nearby outdoor venues and you can see
9 that there's nothing as late as 2:00 a.m. or
10 12:00 midnight or anything else like that, so
11 this is precedent setting. In the Watergate, as
12 Ms. Maddux was starting to tell you, it's an
13 elderly community. My witnesses are in their
14 80s, some of them, and they like to go to bed by
15 10:00 and they -- this is just who we are. In my
16 building I'm the youngest and I'm 70.

17

18 MR. O'BRIEN: Objection, relevance.

19 MS. KAHLOW: I'm just explaining that they
20 have an earlier bedtime than some other places.

21 CHAIRPERSON ANDERSON: It's overruled.

22 MS. KAHLOW: Thank you. So, we wanted the

1 board condition #1 to renew with no music in any
2 of the venues and more limited operating hours,
3 which I'll enumerate later, in all of them. We
4 wanted to protect our community as the other
5 establishments have done. So, the exhibits -- #3
6 I wasn't allowed in, but #4 is the nearby hotel
7 that's opening three blocks down the street and
8 they have very limited hours and you can see that
9 by the chart what they are.

10 MR. O'BRIEN: Objection. Relevance.

11 CHAIRPERSON ANDERSON: Why is it relevant
12 that these other establishments have limited
13 hours.

14 MS. KAHLOW: Because the -- what the civic
15 association does -- and I think we're no
16 different than most civic associations -- we try
17 to protect the community standards. We try to
18 have consistency, fairness for every single
19 applicant -- you're shaking your head. We try to
20 do the same thing for everybody, and we share
21 everybody's agreement with the other entities and
22 we all try to be fair, and everybody comes to the

1 table, has sat down with us, and made an
2 agreement. And these two establishments which I
3 wanted exhibit #3 and #4, we went to as soon as
4 the ownership changed, before they even put the
5 construction thing in and the second had just
6 started construction, and that way they could
7 plan their life, and we think that's important.
8 The Watergate is a very unusual circumstance
9 because we didn't want to interfere, we didn't
10 want to be blamed since we've been living with an
11 ugly, decrepit building for a while and we wanted
12 to protect the community when three years came up
13 and that's what I'm doing, and we'll do it three
14 more years from now if, in fact, there's a
15 problem. What we're trying --

16 CHAIRPERSON ANDERSON: The problem with that,
17 Ms. Kahlow, is that it can't be a cookie cutter
18 approach, so not because -- and I think that's
19 the issue where you need to respond. The
20 Watergate is not the same establishment as the
21 establishment next door, so you told the
22 establishment next door that they can close at

1 10:00 and they agreed to 10:00, but how is that
2 relevant? I mean is it the same establishment?
3 If you could say to me, maybe if you said that
4 the establishment next door was a hotel and have
5 the same type of -- it's the same type of
6 business, they have the same business model, then
7 you can say 'well, for competition's sake we
8 provided this hotel, which is next door or across
9 the street, 10:00, so we think it's relevant that
10 for the community standard for the operation of a
11 hotel, 10:00 is -- ' but you can't say that
12 because we have a bar here, we have a hotel here
13 that we should use the same standard.

14 MS. KAHLOW: Well, the exhibit #3 was right
15 across the street, and we showed them what the
16 Watergate had as later hours. We said 'we will
17 be protesting it, it's completely inconsistent,
18 this is what every other establishment has done,
19 we want you to fall in with the rest' and they
20 agreed.

21 CHAIRPERSON ANDERSON: Okay, but, yeah that's
22 their choice. The Watergate didn't but you can't

1 say to them that because the person across the
2 street. I allow you to bring it into the record
3 because it's part of your case, but you need to
4 say to me, or prove to the board, why is the
5 10:00 hours -- why is it -- say whatever time --
6 why this is the time that will -- this is the
7 time that is agreed upon that if it's closed at
8 10:00 it's appropriate. Yes?

9 MS. HOBSON: So, I don't think she's already
10 prepared these statements, and I think as she
11 reads it and we -- there are objections where
12 we're not clear, she's not going to be able to
13 sort of do that because she has no way of knowing
14 what part of her statement that she reads is
15 going to be sort of an issue. So, maybe we
16 should sort of rethink how she is going to serve
17 as her own witness. Because I don't think her
18 reading the statement, and I don't think her
19 asking questions, is going to do it because we're
20 going to keep, you know, she's never going to get
21 through it.

22 MS. KAHLOW: I'm almost through it because

1 I've crossed out the stuff, but thank you for
2 your --

3 MS. HOBSON: How much more would you say you
4 have?

5 MS. KAHLOW: I have two pages of eight.

6 MS. HOBSON: That's not almost there.

7 MS. KAHLOW: What's that?

8 MS. HOBSON: That's a lot. Because I feel
9 like as you complete one sentence, someone has a
10 comment and then we have to take time to --

11 CHAIRPERSON ANDERSON: So, this is what I'm
12 going to do, okay? I know that Mr. O'Brien you
13 have an objection. Do you have a standing
14 objection? Because I'm looking at time. So, I'm
15 going to allow her to go through her statement
16 and you're objecting to her statement -- you are
17 objecting to her reading the statement for -- you
18 have a standing objection to the statements that
19 are being made, and the board will take the
20 statement for whatever it's worth. The board
21 will not make a determination on the statements
22 that are being made unless there are facts in

1 evidence presented to support the statements that
2 are being made.

3 MR. O'BRIEN: Well I'll attempt to expedite
4 it.

5 CHAIRPERSON ANDERSON: Okay.

6 MR. O'BRIEN: I have made clear my objection,
7 relevance grounds, as to what other people have
8 done.

9 CHAIRPERSON ANDERSON: Yes.

10 MR. O'BRIEN: If the board recognizes that
11 it's a standing objection --

12 CHAIRPERSON ANDERSON: Yes.

13 MR. O'BRIEN: -- I will not continue to
14 interrupt each time with something else that
15 comes up.

16 MR. SHORT: Mr. Chair, can I make just one
17 comment?

18 CHAIRPERSON ANDERSON: Yes, Mr. Short.

19 MR. SHORT: There is something in our
20 regulations that states that witnesses should
21 bring something new. I think that your witness,
22 your very first witness, Ms. Maddux, Sarah

1 Maddux, pretty much is saying the same thing
2 you're saying. What different things are you
3 going to say that Ms. Maddux didn't say?

4 MS. KAHLOW: Well, my next two sections are
5 completely brand new information: Unusual
6 circumstances.

7 CHAIRPERSON ANDERSON: So go ahead.

8 MS. KAHLOW: And Ms. Maddux was supposed to
9 talk about the city-wide efforts protecting the
10 elderly and how important it is to the mayor and
11 it is to the United States, but particularly in
12 D.C.

13 MR. SHORT: She did that.

14 MS. KAHLOW: I'm not talking about that.

15 MS. HOBSON: She did that.

16 But I'm not talking about that, she talked
17 about that.

18 CHAIRPERSON ANDERSON: All right.

19 MS. KAHLOW: The city-wide stuff, she's on
20 the federation board. I'm talking about Foggy
21 Bottom. But I -- we've already -- you're already
22 beating a dead horse on that. So let me talk

1 about: Are there Barbara, any unusual
2 circumstances in this case? Yes, there are two.
3 First there was supposed to be a test period as
4 we discussed earlier in 2014 and 2015, so we
5 haven't had a test with live music yet of this
6 venue. The WCA doesn't want to wait three years
7 to protect it's interest when there's going to be
8 noise testing. Second is much more important,
9 federal reviewing problems. Ms. Maddux and I in
10 the West End Citizens Association were involved
11 in the Kennedy Center recent expansion plans to
12 the south -- they want to add three buildings --
13 and they wanted to have an elevator to be able to
14 access it from below the other buildings up, and
15 the National Capitol Planning Commission and the
16 Commission of Fine Arts said, 'absolutely not
17 because you'll be above the view shed, and be
18 visible from the Potomac, from Georgetown, from
19 Teddy Roosevelt and you can't do it.' And we
20 went through a lengthy process, finally the
21 Kennedy Center agreed and they're having a ramp
22 over the whole thing; no elevator because they

1 don't want to have it any higher. So the West
2 End is asking the applicant when we went on our
3 walkthrough that that is the law and we wanted to
4 alert the board about that law, that there would
5 have to be -- it's a multi-year process to go
6 through all the different federal agencies before
7 they can use the terrace over ballroom venue, and
8 I was going to explain the different laws,
9 section 106 of the Historic Preservation View
10 Act, the National Capitol Planning Act, and go
11 through all of that with you, but at least it's
12 an unusual circumstance that one of the six
13 venues is not accessible and it can't be for a
14 long period, maybe the whole three-year period if
15 you're going to have this renewal.

16 So, the last thing I want to do is talk about
17 the three conditions we want. No outdoor music,
18 live, amplified or recorded in all of the summer
19 gardens. Two, closing by 10:00 p.m. daily seven
20 days a week in all six summer gardens. And
21 three, no use of the terrace over ballroom summer
22 garden until completion of the federal review

1 process if an elevator is to be added to allow
2 access.

3 MR. O'BRIEN: Objection. None of this is
4 factual evidence. It's all argument.

5 MS. KAHLOW: It may be argument. Those are
6 the conditions that we want and that we are
7 asking the board to have.

8 CHAIRPERSON ANDERSON: I'm overruling the
9 objection but I understand.

10 MS. KAHLOW: I will have four more witnesses.
11 One's a non-lawyer and three are lawyers, and I
12 will ask them questions and the first is the non-
13 lawyer, so be patient with her. Should we call
14 Dr. Jennings?

15 CHAIRPERSON ANDERSON: Sure.

16 MS. KAHLOW: Do I do that or how does that
17 work? And now you've educated me about the
18 questions, that's great.

19 CHAIRPERSON ANDERSON: Yes.

20 MR. O'BRIEN: Is that the end of Ms. Kahlow's
21 testimony?

22 CHAIRPERSON ANDERSON: Yes, I apologize.

1 Before you call the witness, yes, yes, yes.

2 MR. O'BRIEN: Okay.

3 CHAIRPERSON ANDERSON: I apologize, Mr.
4 O'Brien.

5 MR. O'BRIEN: Okay because I.

6 CHAIRPERSON ANDERSON: You can cross examine
7 her now.

8 MR. SILVERSTEIN: Mr. Chairman, the
9 protestant has used up 52 of their 90 minutes,
10 the licensee 30 of their 90.

11 CHAIRPERSON ANDERSON: All right --

12 MS. KAHLOW: Thank you. The rest is easy.

13 CHAIRPERSON ANDERSON: I'm going to be --
14 we've spent probably the last 20 minutes arguing
15 --

16 MR. SILVERSTEIN: I didn't count that.

17 CHAIRPERSON ANDERSON: All right. But, I'm
18 going to give them some leeway, I mean I'm not
19 going to say fine, she has three more witnesses,
20 I'm going to allow her to present her witnesses
21 so, but I'm just asking that we speed the process
22 up a bit.

1 MS. KAHLOW: I think the other four witnesses
2 are fast. Thank you very much for that time
3 keeping.

4 CHAIRPERSON ANDERSON: Go ahead. Hold on,
5 Mr. O'Brien is going to ask questions of you.

6 MS. KAHLOW: Okay.

7 MR. O'BRIEN: Ms. Kahlow, I put it to you
8 that the West End Citizens Association is nothing
9 more than you and Sarah Maddux.

10 MS. KAHLOW: There are no members, is that
11 what you're saying?

12 CHAIRPERSON ANDERSON: Mr. O'Brien, are you
13 asking a question or are you making a statement?

14 MR. O'BRIEN: I'm sorry, that's the old
15 English way -- "I put it to you" is a question,
16 sorry. Ms. Kahlow, the West End Citizens
17 Association is really nothing more than Sarah
18 Maddux and you, correct?

19 MS. KAHLOW: Incorrect. We have paid
20 membership, we have meetings, we have one
21 November 19th. We have speakers, we are
22 participating in lots of activities and we have a

1 five-person board. And yes, we have lots of
2 members, and we've become, we're a regular
3 witness at proceedings all across the city
4 agencies, so I'm not sure what your question is.

5 MR. O'BRIEN: You answered the question.
6 I'll show you what has been marked as Applicant's
7 Exhibit #4 which is the bylaws that you provided
8 pursuant to the subpoena today, the bylaws of the
9 West End Citizens Association. Do you have a
10 copy?

11 MS. KAHLOW: I do.

12 MR. O'BRIEN: Good. I will tell you that the
13 only mention of votes that I can see is in
14 Article III, Section V regarding votes of the
15 membership of the association.

16 MS. KAHLOW: Please refer to Article IV,
17 Section III.

18 MR. O'BRIEN: I'm sorry, are you answering my
19 question?

20 MS. KAHLOW: That is not the only one, to
21 your question.

22 MR. O'BRIEN: I didn't get my question out.

1 MS. KAHLOW: Oh, I'm sorry.

2 MR. O'BRIEN: I invite your attention to
3 Article III, Section V, which deals with voting
4 by the members of the association at meetings. I
5 do not see, and I ask you to point out, if you
6 will, where the board of directors of the
7 association is empowered to take a vote to
8 protest an ABC license.

9 MS. KAHLOW: Article IV, Section III.

10 MR. O'BRIEN: And what does it say in Article
11 IV, Section III regarding taking a vote.

12 MS. KAHLOW: "Meetings will take place by
13 means of conference telephone or other means of
14 communication equipment which allow for persons
15 to hear each other at the same time." It
16 explains what that is, etc.

17 MR. O'BRIEN: My question, again, is where
18 does -- where do the bylaws of the West End
19 Citizens Association authorize the board of
20 directors, as opposed to the membership, to take
21 a vote to protest an ABC license.

22 MS. KAHLOW: Though I was not on the board

1 when this was done, let me read you the section.
2 "Meetings and board of directors are called by
3 the president, notice of the meeting of the board
4 specifying the business to be conducted, shall be
5 provided to the directors at least five business
6 days in advance of the meeting. The presence of
7 the majority of the directors constitutes a
8 quorum, a quorum must be present in order for the
9 board to take any action, including a protest,
10 meetings may take place --

11 MR. O'BRIEN: Excuse me, excuse me, you're
12 not saying that this says any action including
13 protests are you?

14 MS. KAHLOW: No, I'm saying action --

15 MR. O'BRIEN: You added the words including
16 protests.

17 MS. KAHLOW: Yes, correct, including
18 protests. Meetings may take place by means of a
19 conference call or by other means of
20 communication equipment which allow for persons
21 to hear each other at the same time." Action,
22 very similar to the ANC law about D.C. agency

1 actions require -- include menus, cases, protests
2 and all that, that's what action is in the
3 general term in D.C. and that is what I've
4 always understood it to mean. Every -- I'm on
5 the board of many other groups that have been,
6 currently only a few of them, but I've been on
7 many and this is all the same. Everybody
8 operates the same way. The board is able to call
9 a meeting and vote on if they need to go for a
10 grant, if they need to protest something, that's
11 how it works.

12 MR. O'BRIEN: Is it your testimony that the
13 power of the board of directors, as opposed to
14 the membership, to protest an ABC license is
15 implied by Article IV, Section III.

16 MS. KAHLOW: I don't think it's implied, I
17 think it says the board can take any action.

18 MR. O'BRIEN: Okay, now --

19 MS. KAHLOW: I don't think it's implied, I
20 think it's explicit.

21 MR. O'BRIEN: Now, read again the last
22 sentence to me, please. Let me go back a step.

1 The protest letter that you filed in this case, I
2 think actually it was signed by Ms. Maddux,
3 states that a vote was taken on the 22nd of July,
4 is that correct?

5 MS. KAHLOW: Yes.

6 MR. O'BRIEN: Okay.

7 MS. KAHLOW: I believe -- I don't have the
8 letter right in front of me, but yes I believe
9 so.

10 MR. O'BRIEN: Okay, I would ask you to read
11 aloud, again, you've done it once, Article IV,
12 Section III, the last sentence.

13 MS. KAHLOW: "Meetings may take place by
14 means of a conference call or by any other means
15 of electronic equipment (e-mails) which allow all
16 persons --"

17 MR. O'BRIEN: Now, Ms. Maddux.

18 MS. KAHLOW: I'm not Ms. Maddux.

19 MR. O'BRIEN: I'm sorry.

20 MS. KAHLOW: Okay.

21 MR. O'BRIEN: What she does is she adds words
22 that aren't in here.

1 CHAIRPERSON ANDERSON: Mr. O'Brien I don't
2 have the document in front of me, so I don't
3 know, so --

4 MR. O'BRIEN: All right.

5 MS. KAHLOW: I'll read it without -- straight
6 -- "meetings may take place by means of a
7 conference telephone or by any other means of
8 communications equipment which allows all persons
9 to hear each other at the same time." We have
10 been interpreting that to mean e-mail.

11 MR. O'BRIEN: No -- there's no question
12 pending. Where did the board of directors
13 meeting on July 22nd take place? What was the
14 location of the meeting?

15 MS. KAHLOW: Everybody's computer. If you
16 see, on July 15th, in your other exhibit, we
17 wrote everybody and then everybody answered on
18 July 21st or July 22nd. We wrote everybody
19 saying we just went and met with the applicant
20 and this was the situation, here's the chart that
21 you all have, should we protest? And everybody
22 said yes, yes, yes -- all five board members.

1 MR. O'BRIEN: Okay. I'm looking now at
2 applicant's exhibit #5, which we subpoenaed the
3 minutes of the meeting of July 22nd and instead
4 we were given an e-mail --

5 MS. KAHLOW: Because --

6 MR. O'BRIEN: Is this e-mail stream the
7 minutes?

8 MS. KAHLOW: Yes, because it was a vote.

9 MR. O'BRIEN: All right. Now, this was what
10 we would call, I guess, an internet meeting?

11 MS. KAHLOW: Yes.

12 MR. O'BRIEN: Okay, how does that comport
13 with the requirement that you just read that
14 meetings may take place by either conference
15 telephone or by any other means of communication
16 which allows all persons to hear each other at
17 the same time."

18 MS. KAHLOW: It says means of communications
19 putting everybody, all five board members were
20 copied on all of these e-mails. Everybody was
21 copied and spoke to each other that way.

22 MR. O'BRIEN: Mr. Chair, I'm moving to

1 dismiss the protest on grounds that the vote of
2 the West End Citizens Association was not taken
3 in conformity with its own bylaws. Issue number
4 one, that the members who take votes, not the
5 board of directors, plus number two, that
6 everyone on this e-mail stream couldn't hear each
7 other at the same time as explicitly required by
8 Article IV, Section III of the bylaws.

9 MS. KAHLOW: And everyone was on the same e-
10 mail chain at the same time and some of these
11 people were out of the country. One of them, Ms.
12 _____, was out of the country. We couldn't make a
13 long distance telephone call and that's why we
14 did an electronic vote in this instance.
15 Usually, it's in a home, but this time, because
16 one was out of the country, we wanted to have
17 everybody on the same e-mail.

18 CHAIRPERSON ANDERSON: All right, Mr. O'Brien
19 can you give me a copy of the document that you
20 have since I don't have a copy of it, please?

21 CHAIRPERSON ANDERSON: As chairperson of the
22 Alcoholic Beverage Control Board for the District

1 of Columbia, and in accordance with section 405
2 of the Open Meetings Amendment Act of 2010, I
3 move that the ABC board hold a closed meeting for
4 the purpose of seeking legal advice from our
5 counsel on Case #16-PRO-00085, Watergate Hotel,
6 per section 405 B4 of the Open Meetings Amendment
7 Act of 2010. Is there a second?

8 MR. SHORT: Second.

9 CHAIRPERSON ANDERSON: Mr. Short has seconded
10 the motion. I will now take a roll call vote on
11 the motion before us now that it has been
12 seconded. Mr. Short?

13 MR. SHORT: I agree.

14 CHAIRPERSON ANDERSON: Mr. Silverstein?

15 MR. SILVERSTEIN: I agree.

16 CHAIRPERSON ANDERSON: Ms. Hobson.

17 MS. HOBSON: I agree.

18 CHAIRPERSON ANDERSON: Mr. Anderson? I
19 agree. As it appears that the motion has passed
20 I hereby give notice that the ABC board will hold
21 a closed meeting in the ABC Board conference room
22 to discuss your motion. We're in recess.

1 CHAIRPERSON ANDERSON: We're back on the
2 record. A motion was made by the applicant to
3 state that the protestant did not have standing
4 to do this motion -- I'm sorry -- to do this
5 protest. Section 25601 provides guidelines to
6 standing to file a protest against a licensee and
7 a citizen's association, which this organization
8 is, incorporated under the laws of the District
9 of Columbia located within the affected area,
10 provides that the following conditions are met:
11 a) Membership in the citizen's association is
12 open to all residents of the area represented by
13 the association and, b) a resolution concerning
14 the license application has been duly approved in
15 accordance with the association's articles of
16 incorporation or bylaws at a duly called meeting
17 with notice of the meeting given to the board and
18 body and the application at least seven days
19 before the date of the meeting. So, I now turn
20 to the bylaws of the articles of incorporation,
21 Article IV, Board of Directors' Meetings:
22 Article IV, Number III: Meetings: Meetings of

1 the board of directors are called by the
2 president. Notice of the meeting of the board
3 specifying the business to be conducted shall be
4 provided to the directors at least five days in
5 advance of the meeting, the presence of the
6 majority of the directors constitutes a quorum, a
7 quorum must be present in order for the board to
8 take any action. Meetings may take place by
9 means of conference call or by any other means of
10 communications equipment which allows all persons
11 to hear each other at the same time.

12 MS. KAHLOW: There's one more section that I
13 forgot.

14 CHAIRPERSON ANDERSON: What section?

15 MS. KAHLOW: Section V, right below it. In
16 Article V, paragraph V, written consent. I'm
17 sorry, I didn't have that in front of me.

18 CHAIRPERSON ANDERSON: All right, Written
19 Consent: Any action that is required in a
20 meeting of the directors may be taken without a
21 meeting if a consent in writing set in forth the
22 action to be taken is sent via U.S. postal

1 service or by fax to the registered board member,
2 is signed by all members of the board. Such
3 consent in writing shall have the same force and
4 effect as a unanimous vote of the board and shall
5 be filed with the corporate minutes of the board
6 of directors. It's my understanding that Mr.
7 O'Brien had requested the minutes from the board
8 of directors meeting. This is what was provided
9 which is Applicant's #5, as the minutes from the
10 board of directors. There was an e-mail sent on
11 -- sent July 22nd, 2016, at 5:37 a.m. which
12 states that "you always have my vote." There was
13 another e-mail sent on July 22nd at 2:21 a.m. to
14 say that "it's a yes" -- that was July 22nd at
15 2:21 a.m. There's another e-mail sent on July
16 22nd, 2016, at 7:34 p.m. and I guess, the e-mail
17 that was sent out requesting the vote was sent
18 out on July 21st, 2016, at 9:34 a.m. That's what
19 it is. I'm reading it now. There was an e-mail
20 sent out on July 21st at 9:34 a.m. All: Sarah
21 and I met with the manager of the Watergate Hotel
22 and his attorney last night. Sarah attended the

1 ANC meeting and was -- by the ANC commissioner
2 and the ANC will be submitting a letter in
3 support of the expected WCA protest. Hurrah.
4 Attached is my chart showing items in the
5 settlement agreement. It shows a lot of
6 misinformation. Please e-mail as soon as
7 possible your vote to support or not a protest by
8 WCA ." So that notice was sent out on July 21st,
9 2016 at 9:34 a.m.

10 I make a motion to move forward, that we
11 grant the motion brought by -- filed by the
12 applicant -- I'm sorry, filed by the licensee --
13 that the association did not comply with its
14 Article IV, Section III of its own bylaws that
15 talks about what constitutes a meeting because no
16 meeting was held.

17 MS. KAHLOW: And paragraph five also?

18 CHAIRPERSON ANDERSON: Pursuant to -- I don't
19 think that five is relevant, but still I'll also
20 bring five, that the organization did not comply
21 with its bylaws pursuant to Article IV, Section
22 III, with precedent of also five, I don't think

1 five is relevant because it basically states that
2 in order to have a meeting all members need to
3 hear each other at the same time, and even
4 consent, I still don't see anything as far as
5 Article V is written as far as Section V of
6 Article IV I don't see any written consent that's
7 signed off by all of the other members, but be
8 that it may, I make a motion -- I'm making a
9 motion to my board members that we grant the
10 motion to dismiss based on the fact that they did
11 not comply with Article IV regarding the
12 provision -- that no meeting was held or
13 authorized -- to authorize this vote.

14 MR. SHORT: I second that motion, Mr. Chair.

15 CHAIRPERSON ANDERSON: Mr. Short has seconded
16 the motion. I will now take a roll call vote on
17 this matter. Mr. Short?

18 MR. SHORT: I agree.

19 CHAIRPERSON ANDERSON: Mr. Silverstein?

20 MR. SILVERSTEIN: Reluctantly, I agree.

21 CHAIRPERSON ANDERSON: Ms. Hobson?

22 MS. HOBSON: I agree.

1 CHAIRPERSON ANDERSON: Mr. Anderson? I
2 agree. It appears that the matter has passed 5-
3 zero and so, therefore, we are dismissing this
4 matter based on the fact that the organization
5 does not have standing.

6 MS. KAHLOW: Mr. Chairman, I have a question
7 when you're finished.

8 CHAIRPERSON ANDERSON: The organization did
9 not comply with Chapter 25601 regarding having a
10 meeting as per its articles of incorporation.
11 Yes?

12 MS. KAHLOW: My question is, will there be a
13 written order that's appealable to the court?

14 CHAIRPERSON ANDERSON: Yes, we'll issue a
15 final order which will be appealable by -- which
16 you will have the opportunity to appeal, but I
17 will -- Mr. O'Brien, did you move the bylaws into
18 evidence?

19 MR. O'BRIEN: I believe, no because I hadn't
20 reviewed them beforehand so I so move now.

21 CHAIRPERSON ANDERSON: Ms. Kahlow, they're
22 your bylaws. Do you have any objection?

1 MS. KAHLOW: They're already in your
2 DCRA/ABRA's files when they were certified, I
3 believe, so I have no objection.

4 CHAIRPERSON ANDERSON: So, marked appellant
5 IV, which are the bylaws, are part of the record
6 in this case. Yes, ma'am. Do you have any other
7 questions or was that your question?

8 MS. KAHLOW: I'm stunned. I just want to
9 make a quick statement that I've testified in
10 front of every single body and I'm stunned. So,
11 this is very unfortunate.

12 CHAIRPERSON ANDERSON: One other, before
13 closing the record, Mr. O'Brien, did you move #5,
14 the e-mails, into the record also?

15 MR. O'BRIEN: I'm sorry, just now I thought I
16 said #4 and #5.

17 CHAIRPERSON ANDERSON: Numbers #4 and #5?
18 Okay. Ms. Kahlow, do you have any objection.
19 It's basically applicant #5 which is the minutes
20 from the meeting?

21 MS. KAHLOW: I do not.

22 CHAIRPERSON ANDERSON: Okay, so #4 which is

1 the bylaws, #5 the minutes of the meeting are
2 moved in as part of the record. Yes, Mr.
3 Silverstein?

4 MR. SILVERSTEIN: Thank you, Mr. Chair. My
5 concern here was that there's no indication there
6 was any contemporaneous conversation going on,
7 that these particular e-mails to one another
8 occurred several hours apart and did not appear
9 to be even a conversation, so I could not -- it
10 would be more than a stretch to consider that a
11 meeting.

12 MS. KAHLOW: Because we --

13 MR. SILVERSTEIN: Excuse me.

14 MS. KAHLOW: Oh, I'm sorry --

15 MR. SILVERSTEIN: And that to me is the
16 difficult part and that's why I voted the way I
17 did.

18 CHAIRPERSON ANDERSON: Ms. Kahlow, do you
19 need to respond?

20 MS. KAHLOW: I was trying to explain one was
21 in Europe, that's the time change, and the other
22 was out of the country -- was out of the city --

1 so that's why the times are all different. We
2 couldn't have a board meeting together if they
3 were out of the country and we had to file by
4 July 25th.

5 CHAIRPERSON ANDERSON: But did you have a
6 board meeting where everyone was -- your -- the
7 rules -- this is what -- and we're still on the
8 record -- it states that "meetings may take place
9 by means of a conference telephone or by any
10 other means of communications equipment which
11 allows all persons to hear each other at the same
12 time."

13 MS. KAHLOW: And I believe hearing includes
14 written language when you're across the
15 continent.

16 CHAIRPERSON ANDERSON: At the same time?

17 MS. KAHLOW: They all got the e-mail at the
18 same time. That's what -- the way we all operate
19 in the 21st century.

20 CHAIRPERSON ANDERSON: Hear each other at the
21 same time. So, if I send an e-mail to everyone
22 at the same time, if I'm not sitting at my e-

1 mails, how do you know that when I sent the e-
2 mail to the five people, all five people were
3 sitting at their desks checking their e-mails at
4 the same time?

5 MS. KAHLOW: One may have been asleep because
6 he was across the Atlantic Ocean, but they all
7 were -- every single reply was "reply to all" --
8 everybody was able to talk to each other.

9 CHAIRPERSON ANDERSON: At the same time?

10 MS. KAHLOW: They all got the e-mail at the
11 same time.

12 CHAIRPERSON ANDERSON: But did they hear each
13 other at the same time?

14 MS. KAHLOW: When you have international --
15 people traveling constantly, you can't always be
16 in the same room, so you send e-mails. This is
17 the way it's done all over the country at the
18 same time the people respond and then you copy
19 all of them on it all at the same time.

20 CHAIRPERSON ANDERSON: I'm only going -- you
21 wrote your bylaws.

22 MS. KAHLOW: I didn't write it, I was not in

1 the organization then.

2 CHAIRPERSON ANDERSON: Well, your
3 organization wrote the bylaws and the bylaws
4 stated that you have to hear each other at the
5 same time, and hearing each other, as an
6 attorney, hearing each other at the same time
7 means that we are at the same time we're hearing
8 the same information at the same time so we can
9 respond to each other at the same time, so
10 sending -- at least in my view and in the
11 reviewing this document, sending an e-mail at the
12 same time, folks are not hearing each other at
13 the same time and, again, your bylaws doesn't
14 talk about hear -- I mean it's a stretch to say
15 in e-mails people are hearing each other at the
16 same time but --

17 MS. KAHLOW: That's the way we do business in
18 this day and age.

19 CHAIRPERSON ANDERSON: I know, but the
20 recommendation is that the board of directors
21 should review the articles of incorporation and
22 change it to reflect what's happening. The way

1 it's read it says, "hear each other at the same
2 time" -- sending an e-mail does not appear to
3 comply with your bylaws.

4 MS. KAHLOW: When the articles were written
5 sometime after 1920 they didn't have e-mails and
6 maybe you're right that they could be cleaner up.
7 I don't think this has ever been an issue before.
8 When e-mails started, that's how common business
9 is conducted. For example, when I do real estate
10 transactions it's all done electronically so I do
11 it, they do it, everyone's doing it when they can
12 read it. Everything is done that way now.
13 That's the way business is conducted. This is,
14 as I say, a very old organization. I wasn't part
15 of either of these things, bylaws or I joined the
16 organization after I retired.

17 MR. SILVERSTEIN: What we meant, that's why
18 the constitution gets amended every now and then
19 because you have to bring it up to date.

20 CHAIRPERSON ANDERSON: And as things -- in
21 review of the document in front of us which is
22 exhibits #4 and #5, you presented exhibit #5 as

1 the minutes for the meeting. That's -- it's
2 based on a combination of reviewing both
3 documents.

4 MS. KAHLOW: But there were subsequent e-
5 mails which nobody seemed to ask for which were
6 all the different things that had taken place in
7 the last period including this and what the votes
8 were and they were sent to all five
9 simultaneously, put together all the various
10 votes that had taken place, so there are other e-
11 mails. These were the ones where you wanted to
12 see how people voted, so that's all I produced.
13 I didn't know I was supposed to produce minutes
14 later what had happened recently.

15 CHAIRPERSON ANDERSON: Thank you. Mr.
16 Schwartz, I think you missed -- you stepped out
17 of the room at one point, and you stepped out of
18 the room at the wrong time because I think you
19 missed a lot of discussion that occurred. I know
20 that you had stated that per board rule that you
21 wanted to speak as a witness in this case. Mr.
22 O'Brien, the attorney for the licensee, made a

1 motion that they did not comply with the
2 regulations to constitute having a meeting,
3 meaning that they did not comply with their own
4 rules and regulations in voting to protest this
5 matter. The board has ruled and agreed with the
6 applicant's motion, so therefore we are ending
7 this case without having an opportunity for you
8 to speak because this is not a live matter, the
9 case is over without finishing, and that's
10 including the testimony, so that's why you're not
11 speaking today, sir.

12 Thank you for the explanation, Mr. Chair. I
13 actually heard a lot of it just before you
14 adjourned to talk to counsel. I'm very familiar
15 with that argument and procedures and actually
16 [inaudible 4:26:26]. So, I'm saying thank you
17 very much for feeling sorry for me, but I'm a
18 lawyer, too, and we all suffer these burdens.

19 CHAIRPERSON ANDERSON: Well, thank you for
20 being nice, but I appreciate the fact that you've
21 been here all this time and I know you wanted to
22 be heard, and that's one of the reasons why I

1 wanted to explain to you why -- what the ruling
2 was made and why your testimony was not necessary
3 in this particular case, so I just want to thank
4 you for being here today, sir.

5 MS. KAHLOW: Mine too. Mr. Chairman, could
6 you tell my witnesses too? They've been here the
7 whole time. You can -- Mr. O'Brien before I
8 adjourn -- before I end the case you can bring
9 the witnesses in now.

10 MS. KAHLOW: Thank you. They're all lawyers
11 and they might have something --

12 CHAIRPERSON ANDERSON: As a courtesy to the
13 folks who have been here.

14 MS. KAHLOW: I don't know where they are.

15 CHAIRPERSON ANDERSON: All right, well --

16 MS. KAHLOW: I think Ms. --

17 CHAIRPERSON ANDERSON: I will close the
18 record and our general counsel will brief them on
19 what occurred today, so I -- all right, thank
20 you.

21 As Chairperson of the Alcoholic Beverage
22 Control Board for the District of Columbia and in

1 accordance D.C. Official code Section 2574 B,
2 Closed Meetings and Section 2574 Notice of
3 Meetings of Open Meetings Amendment Act, I move
4 that the ABC Board hold a closed meeting on
5 November 16, 2016, for the purpose of discussing
6 and hearing reports concerning ongoing or planned
7 investigations of alleged criminal or civil
8 misconduct or violations of law or regulations
9 and seeking legal advice from our counsel on the
10 board's investigative, licensing and legal agenda
11 for November 16, 2016 as published in the D.C.
12 Register on November 10, 2016. Is there a
13 second?

14 MR. SILVERSTEIN: Second.

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

18 CHAIRPERSON ANDERSON: Ms. Hobson?

19 MS. HOBSON: Aye.

20 CHAIRPERSON ANDERSON: Mr. Silverstein?

21 MR. SILVERSTEIN: Aye.

22 CHAIRPERSON ANDERSON: Mr. Short?

1 MR. SHORT: I agree.

2 CHAIRPERSON ANDERSON: Mr. Anderson? I
3 agree. As it appears that the motion has passed,
4 I hereby give notice that the ABC Board will hold
5 its aforementioned closed meeting pursuant to the
6 Open Meetings Amendment Act. Notice will also be
7 posted on the ABC board here in the room on the
8 room bulletin board, placed on the electronic
9 calendar on ABRA's website and published in the
10 D.C. Register in as timely a manner as is
11 practical. It's 5:52 and we are adjourned for
12 the day. Thank you.

13

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

16