

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
Half Smoke, LLC :
t/a Half Smoke :
651 Florida Avenue NW : Fact Finding
Retailer CR - ANC 1B : Hearing
License No. 100855 :
Case #23-CMP-00009 :
 :
(Increase in Occupancy :
Without Board Approval) :
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Wednesday
March 15, 2023

The Alcoholic Beverage Control Board
met via WebEx videoconference, Chairperson
Donovan W. Anderson presiding.

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
- BOBBY CATO, JR., Member
- RAFI ALIYA CROCKETT, Member
- EDWARD S. GRANDIS, Member
- JENI HANSEN, Member
- JAMES SHORT, JR., Member

ALSO PRESENT:

- JOSE ORELLANA, DC ABRA Staff
- ANDRE MCCAIN, Applicant
- INVESTIGATOR TAVRIL PROUT, DC ABRA

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

2 11:13 a.m.

3 CHAIRPERSON ANDERSON: The next case on
4 our calendar, we have a fact finder, I believe
5 that's the end of your day, Mr. Lutes.

6 MR. LUTES: All right, thank you.

7 CHAIRPERSON ANDERSON: The next case on
8 our calendar is a fact finding hearing, Case No.
9 23-CMP-00009, Half Smoke, License No. 100855.

10 Mr. Orellana, can you please elevate
11 the rights of the licensees in this case, please?

12 MR. ORELLANA: Mr. McCain, your access
13 has been elevated.

14 Tavril Prout, your access has been
15 elevated.

16 That appears to be all, sir.

17 CHAIRPERSON ANDERSON: There's no ABRA
18 investigator?

19 MR. ORELLANA: Tavril Prout is the
20 investigator.

21 CHAIRPERSON ANDERSON: All right, let
22 me see. The licensee, do you have a camera you
23 can elevate your -- can you, do you have a
24 camera?

25 MR. MCCAIN: Yes.

1 CHAIRPERSON ANDERSON: Yes, please set
2 your camera.

3 MR. McCAIN: All right, good morning.

4 CHAIRPERSON ANDERSON: Good morning.
5 Let's have the parties identify themselves for
6 the record. Let's start with you, Mr. Prout.

7 INVESTIGATOR PROUT: Good morning, Mr.
8 Chairperson. My name is ABRA Investigator Tavril
9 Prout, T-A-V-R-I-L P-R-O-U-T.

10 CHAIRPERSON ANDERSON: Mr. McCain, can
11 you identify yourself for the record?

12 MR. McCAIN: Good morning. My name is
13 Andre McCain, A-N-D-R-E M-C-C-A-I-N.

14 CHAIRPERSON ANDERSON: All right, good
15 morning, sir.

16 All right. This is a fact finding
17 hearing. At a fact finding hearing, the Board is
18 an incident occurring and all the Board is doing
19 here is to gather information to make a
20 determination whether or not any further action
21 is taken on -- to make a determination whether or
22 not any further action should be taken in this
23 case.

24 A fact finding hearing is, basically,
25 as I said, we are just gathering facts. The

1 parties are not sworn. The Board cannot order a
2 licensee to make any changes at a fact finding
3 hearing. If the licensee, however, volunteers to
4 make changes than it's binding on the licensee.
5 But, I just want to be clear that the Board
6 cannot order the licensee to make any specific
7 changes or any specific agreement at the fact
8 finding hearing.

9 At the end of this hearing, the Board
10 can make one or two determinations. We can
11 determine that no further action is required, or
12 we will submit this case to the Office of the
13 Attorney General, who then can make the
14 determination whether or not a violation has
15 occurred, and whether or not the party should be
16 charged. And then, if that decision is made,
17 then we'll have to, then the matter will come
18 back to the Board for a formal show cause
19 hearing.

20 Any questions before we start?

21 INVESTIGATOR PROUT: No.

22 CHAIRPERSON ANDERSON: All right. So,
23 just some background information. On January 23,
24 January 26, 2023, it was determined that the
25 establishment had 465 patrons inside when its

1 license allowed for 199, and it's Certificate of
2 Occupancy allowed for 221 patrons.

3 The establishment was cited by ABRA
4 agency for crowding, didn't have emergency exit
5 doors, obstructed, exposed wires, and preventing
6 the exit of patrons.

7 And, the establishment claimed that
8 the security footage was not available that day
9 due to a technical failure.

10 So, what I will do is that I will have
11 Mr. Prout just -- Mr. Prout, did you draft a case
12 report on this case, sir?

13 INVESTIGATOR PROUT: Yes. I am willing
14 to share my strategy of the license, Mr.
15 Chairperson.

16 CHAIRPERSON ANDERSON: Can you please
17 share your comments of, tell us what happened on
18 that day?

19 Mr. Orellana, can you please allow Mr.
20 Prout to share his screen?

21 MR. ORELLANA: Mr. Prout, your access
22 has been elevated.

23 INVESTIGATOR PROUT: Thank you, sir.

24 All right, can everybody see my screen
25 at this time?

1 CHAIRPERSON ANDERSON: Yes, sir, we can
2 see. Tell us what happened.

3 INVESTIGATOR PROUT: So, on Thursday,
4 January 26, 2023, I was sent to the establishment
5 to advise them of a noise complaint. Upon
6 arrival to the establishment at, approximately,
7 10:38 p.m., on the evening of January 26, 2023, I
8 noticed a large crowd at the front entrance of
9 the establishment.

10 Upon trying to gain entry into the
11 establishment to notify them of the noise
12 complaint, I was unable to get to the front door
13 as with all the huge crowd that was standing in
14 front of the front entrance, and which were
15 impeding the ingress and egress of the
16 establishment.

17 So, I then walked over to the side
18 fire exit on the Georgia Avenue side of the
19 establishment, and I put my ABRA credentials up
20 to the door instructing one of the establishment
21 staff to open up the side door so I could gain
22 entrance into the establishment in order to
23 conduct a regulatory inspection and to make
24 notification with the on-duty ABC Manager.

25 At that time, the staff did open up

1 the side door and he allowed me to gain entrance
2 into the establishment. I asked that person to
3 direct me to where the ABC Manager was at that
4 time. The ABC Manager on duty, there were
5 multiple ones, but the person who I made contact
6 with was Ms. Avery Lancaster.

7 As a result of speaking with Ms. Avery
8 Lancaster, I asked for the Certificate of
9 Occupancy, as well as the ABRA license that is at
10 the establishment. And so, in asking Ms.
11 Lancaster for the Certificate of Occupancy, which
12 is C of O No. 1603755, which is my Exhibit No.
13 12, and which states that the establishment's
14 occupancy level was 271 persons at any given
15 time. And then, their ABRA license, which is
16 ABRA 100855, they have a max capacity of 199
17 persons in the establishment at any given time.

18 And so, upon gaining access into the
19 establishment, I asked Ms. Lancaster how many
20 persons were in the establishment at that time,
21 and she stated to me that it would be in lieu of
22 what the C of O stated.

23 So, upon going to the establishment,
24 I was able to, I'm going to show the Board the
25 number of persons which I saw upon accessing the

1 establishment. So, this is the picture of the
2 crowd standing on the Florida Avenue side of the
3 establishing trying to gain entry into the
4 establishment on the night of, and this is the
5 crowd from the Georgia Avenue side, which I saw
6 as well.

7 So, where my cursor is at this time is
8 the door in which I was able to gain access to in
9 order to be able to gain access into the
10 establishment on the night of.

11 And so, what drew my attention to the
12 overcrowding was, these are the pictures of the
13 patrons that were at the front entrance and
14 surrounding the main bar area of the
15 establishment. This is the crowd that is at the
16 middle of the main bar area where my cursor is.
17 And where my cursor is to the left hand corner of
18 the establishment is on the left hand side of the
19 establishment going towards the rear, where
20 there's someone guarding. Whereas, I was unable
21 to get no further than this area, in which going
22 back to where my pointer is I got to about this
23 area here in this photo, where this photo here
24 was actually taken.

25 And, this is the crowd towards the

1 rear of the establishment and towards the summer
2 garden, which is where my cursor is on the right-
3 hand side in Exhibit 9.

4 So, as of this I made contact with
5 Supervisory Investigator Leah Singleton to advise
6 her of my observations on the night of. And, she
7 then sent Investigators Mark Ruiz and Chris
8 Condon to the establishment.

9 From there, I made contact with MPD,
10 as well as requested a fire marshal over the air
11 of the police radio that's provided by the
12 Agency. And, from there Sergeant Vernick and
13 Fire Investigator Chalante Harris were able to
14 arrive on scene with several of their MPD
15 officers.

16 As a result of the large crowd, the
17 establishment was asked to instruct the patrons
18 to leave out of the establishment. As a result
19 of the patrons leaving, we were able to conduct a
20 formal head count in which we were able to
21 observe approximately 465 people at the
22 establishment on the night of.

23 From there, Fire Investigator Harris
24 several citations, and which were the
25 establishment having overcrowding, or having

1 emergency exit doors obstructed, exposed wires,
2 and prevented the exit of the place of business
3 at all times by patrons.

4 From there, I was able to meet with
5 Mr. Andre McCain, who is on the line at this
6 time, and I requested from the establishment for
7 all camera angles to be provided to ABRA by the
8 team for the hours of 10:00 p.m., to 11:18 p.m.,
9 and that was requested only on the night of
10 January 26, 2023.

11 From there, I asked my colleague, ABRA
12 Investigators Shamell Murray on January 31, 2023,
13 to visit the establishment to gain, to retrieve
14 the camera footage that was requested on the
15 night of Thursday, January 26, 2023, and that
16 camera footage was not provided, and ABC Manager
17 was spoken to by Investigator Murray and it was
18 advised to her that the establishment was
19 experiencing technical issues, in which they were
20 unable to transfer the video on to a USB drive.
21 And, consequently, the video recording system
22 failed to record and store footage for up to 30
23 days.

24 And, at the time of this report, which
25 was on Wednesday, February 1, 2023, I conducted

1 an ABRA bucket check, and the establishment does
2 have some agreement on file, however, there were
3 no additional ABRA violations that were observed
4 as was on reviewing the settlement agreement, and
5 the establishment does not have a security plan
6 on file.

7 And, that concludes my testimony at
8 this time, Mr. Chairperson.

9 CHAIRPERSON ANDERSON: Thank you, Mr.
10 Prout.

11 If we can go to the screen, I just
12 want to ask you a couple questions just for the
13 record.

14 As far as ABRA -- yeah, close the
15 screen.

16 CHAIRPERSON ANDERSON: As per ABRA
17 their license, what is your occupancy, what's on
18 their ABRA license?

19 INVESTIGATOR PROUT: The ABRA license
20 states 199 persons total.

21 CHAIRPERSON ANDERSON: And, you stated
22 that you used a clicker. How many -- how many
23 folks did you count?

24 INVESTIGATOR PROUT: 465 persons were
25 counted as they exited the establishment on the

1 night of Thursday, January 26, 2023.

2 CHAIRPERSON ANDERSON: All right. How
3 did you, I'm sorry, how were you able to count
4 465?

5 INVESTIGATOR PROUT: So, I stood at the
6 exit of the establishment, and I counted persons
7 as they exited the establishment, once the music
8 was turned off.

9 CHAIRPERSON ANDERSON: Hold on, Mr.
10 McCain, are you with us, sir? Mr. McCain? Mr.
11 McCain, are you with us, sir?

12 Mr. McCain, I would ask that you
13 remain on camera, because I need to make sure
14 that you are here, and the only way that I can
15 know that you are here is with that camera,
16 because I just looked up and I saw a blank
17 screen, so I need to make sure that you are here.
18 Thank you.

19 All right. Mr. Prout, you are telling
20 us now how is it you were able to count? I'm
21 sorry.

22 INVESTIGATOR PROUT: Sir, I stood at
23 the entrance door of the establishment, and I
24 counted patrons as they egressed out of the
25 establishment on the night of.

1 CHAIRPERSON ANDERSON: And, how many
2 then did you count?

3 INVESTIGATOR PROUT: 465 patrons in
4 total.

5 CHAIRPERSON ANDERSON: Okay. What
6 agencies, if any, did ABRA contact regarding what
7 was seen at the establishment?

8 INVESTIGATOR PROUT: I contacted the
9 Metropolitan Police Department, as well as DC
10 Fire and Emergency Management Services.

11 CHAIRPERSON ANDERSON: And, did they
12 show up?

13 INVESTIGATOR PROUT: Yes, Sergeant
14 Vernick from 3D showed up to the scene with
15 several officers assigned to the 3rd District, as
16 well as Fire Investigators Chalante Harris.

17 CHAIRPERSON ANDERSON: So, what is it
18 that MPD, what action did they take?

19 INVESTIGATOR PROUT: They asked for the
20 establishment to allow the patrons to egress out
21 of the establishment. As a result of his
22 observations, he cited the establishment for
23 overcrowding, having exposed wires, and then
24 preventing the obstruction of persons being able
25 to egress from the establishment, as well as

1 obstruction of the emergency side door as well.

2 CHAIRPERSON ANDERSON: And what action,
3 if any, was done by the Fire Department?

4 INVESTIGATOR PROUT: There were several
5 citations that were issued at the conclusion of
6 Fire Investigator Harris' investigation from that
7 night. So, I presume that the establishment was
8 cited once he completed his formal report.

9 CHAIRPERSON ANDERSON: I'm going to
10 have some more questions for you, but any
11 questions, any questions of the investigator by
12 the Board?

13 MEMBER SHORT: Mr. Chairman?

14 CHAIRPERSON ANDERSON: Go ahead, Mr.
15 Short.

16 MEMBER SHORT: Thank you, Mr. Chairman.
17 Investigator Prout, thank you for your
18 comprehensive, clear and concise report for this
19 incident. And, for the record, FEMS is the Fire
20 and Emergency Medical Services Department.

21 You, upon observing the violations,
22 what did you write them up for that particular
23 day, for the record?

24 INVESTIGATOR PROUT: I cited them for
25 overcrowding, which is a substantial change of

1 their ABRA license. And, since they had over the
2 total allowed occupancy as stated on their ABRA
3 license in the amount of 199 patrons total at any
4 given time.

5 MEMBER SHORT: This may be beyond
6 what you are trained and what you normally do or
7 say at these hearings, but what would be the
8 result of overcrowding, should something happen
9 out of the normal with that number of people over
10 the amount they are legally there?

11 INVESTIGATOR PROUT: A stampede can
12 transpire and can result in multiple fatalities.

13 MEMBER SHORT: That's all I have, Mr.
14 Chair. Thank you very much again for a
15 comprehensive, and clear and concise report, sir.

16 CHAIRPERSON ANDERSON: Thank you, Mr.
17 Short. Any other Board members?

18 Go ahead, Mr. Grandis.

19 MEMBER GRANDIS: Thank you.

20 Mr. Investigator, are you familiar
21 with this establishment?

22 INVESTIGATOR PROUT: Yes, I am
23 familiar, sir.

24 MEMBER GRANDIS: And, had you been sent
25 there as an investigator on any prior nights

1 before this incident that you noted?

2 INVESTIGATOR PROUT: I have been there
3 to conduct regulatory inspections, as well as to
4 provide with subpoenas for other ABRA hearings.

5 MEMBER GRANDIS: And on the nights that
6 you have been there as an investigator, have you
7 had concerns about overcrowding on any of those
8 experiences?

9 INVESTIGATOR PROUT: No, sir.

10 MEMBER GRANDIS: On this particular
11 night that you went, do you know if, and maybe I
12 missed it in the report, do you know if this was
13 an advertised special event, or an event that was
14 advertised?

15 INVESTIGATOR PROUT: The establishment
16 advised me that it was a regular weekly Howard
17 University event, but there was nothing that I
18 found doing social media or there was no type of
19 flyers that were provided to substantiate that it
20 was a formal Howard U. event on the night of, Mr.
21 Grandis.

22 MEMBER GRANDIS: Did I hear you just to
23 say that it was a weekly event that the
24 establishment acknowledged?

25 INVESTIGATOR PROUT: Yes.

1 MEMBER GRANDIS: And, I think I heard
2 you say that you were able to count the occupants
3 as they left. Once the place was cleared, was
4 the establishment allowed to let you go reenter
5 and continue the evening? Or, what occurred at
6 that point after they exited?

7 INVESTIGATOR PROUT: The establishment
8 elected to close for the evening, and they
9 awaited for Mr. McCain, the establishment owner,
10 to arrive on scene per the request of Sergeant
11 Vernick contacting him personally.

12 MEMBER GRANDIS: And, were you there
13 long enough to know that they actually did close
14 for the evening?

15 INVESTIGATOR PROUT: Yes.

16 MEMBER GRANDIS: And, they did close,
17 was that your observation?

18 INVESTIGATOR PROUT: Yes, sir.

19 MEMBER GRANDIS: Mr. Chairman, thank
20 you very much.

21 CHAIRPERSON ANDERSON: Thank you, Mr.
22 Grandis.

23 Any other questions by any other Board
24 members?

25 Mr. Prout, tell us about the cameras.

1 Did you -- does the establishment have cameras?

2 INVESTIGATOR PROUT: Yes, they do have
3 cameras, sir.

4 CHAIRPERSON ANDERSON: And, so you are
5 stating that you did not receive the requested
6 camera recordings, is that correct?

7 INVESTIGATOR PROUT: Yes. I have not
8 received the camera footage to date, which is
9 March 13, 2023.

10 CHAIRPERSON ANDERSON: And, what,
11 specifically, why did not the establishment
12 inform you you could not receive the camera
13 recordings?

14 INVESTIGATOR PROUT: So, the
15 establishment advised Investigator Murray on
16 January 31st that the establishment was unable to
17 transfer the data footage. Consequently, as a
18 result of the establishment's camera system not
19 being able to record and store 30 days' worth of
20 actual footage, so that's what was advised to
21 ABRA officials.

22 CHAIRPERSON ANDERSON: Do you know
23 whether or this establishment has a security
24 plan?

25 INVESTIGATOR PROUT: No, they do not

1 have a security plan, Mr. Chairperson.

2 CHAIRPERSON ANDERSON: And, what type
3 of license does this establishment have?

4 INVESTIGATOR PROUT: Board's
5 indulgence, sir. The establishment has a
6 Restaurant C license.

7 CHAIRPERSON ANDERSON: A restaurant
8 license, all right. Thank you.

9 Any endorsement, are you able to tell
10 if they have an endorsement?

11 INVESTIGATOR PROUT: The endorsement
12 they have carry out and delivery, entertainment,
13 as well as a summer garden endorsement, Mr.
14 Chairperson.

15 CHAIRPERSON ANDERSON: Okay. All
16 right.

17 Mr. McCain, do you have -- I'm sorry,
18 does any other Board member have any other
19 questions before I turn to Mr. McCain.

20 Go ahead, Mr. Short.

21 MEMBER SHORT: Yes. Thank you, Mr.
22 Chair.

23 This is to Investigator Prout.
24 Investigator Prout, since this is a restaurant,
25 did you observe any cooking or any serving of

1 food, or was their kitchen operating as required
2 by code?

3 INVESTIGATOR PROUT: Yes, sir. So,
4 there was a kitchen operating at that time. And,
5 I did see patrons eating fries in the
6 establishment on the night of Thursday, January
7 26, 2023.

8 MEMBER SHORT: Maybe you know this
9 question, maybe you don't.

10 Does this bar or does this
11 establishment meet the requirements, the full
12 requirements for a restaurant?

13 INVESTIGATOR PROUT: Yes.

14 MEMBER SHORT: Thank you. That's all
15 I have, Mr. Chair.

16 CHAIRPERSON ANDERSON: All right. Mr.
17 McCain, I'm going to, you are going to have an
18 opportunity to present your side of the story.
19 But, do you have any specific questions that you
20 want to ask the investigator?

21 MR. McCAIN: Thank you. The only
22 question I have is, I don't recall what the means
23 and methods that were used for obtaining the
24 occupant count.

25 CHAIRPERSON ANDERSON: I think he's

1 asking you, Mr. Prout, how did you -- you are
2 asking him how many people were, actually, in
3 there, or what is your occupancy? Which part of
4 the question did you ask, sir?

5 MR. McCAIN: I'm asking what was the
6 method for determining the count?

7 INVESTIGATOR PROUT: Yes.

8 CHAIRPERSON ANDERSON: Mr. Prout?

9 INVESTIGATOR PROUT: So, the method
10 that was used, I used a counting device. Each
11 time I saw a person exiting out of the
12 establishment that counter device was clicked.
13 At the end of me counting all the patrons leaving
14 out of the establishment, the resulting number
15 for 465 patrons in total.

16 CHAIRPERSON ANDERSON: Any --

17 MR. McCAIN: And, we, privy to the
18 results of that count, and I'm not sure in fact
19 finding myself, are we allowed to visualize that
20 count as well, or how does that work?

21 INVESTIGATOR PROUT: So, I'm more than
22 welcome to show you the exhibit that's in my
23 report that outlines what the establishment, I'm
24 sorry, the clicking device that I utilized. I'm
25 going to try to share my screen once more.

1 Board's indulgence.

2 This is the clicker, which is Exhibit
3 No. 14, which resulted in 465 patrons in the
4 establishment on the night of Thursday, January
5 26, 2023.

6 CHAIRPERSON ANDERSON: Any other
7 questions for the Investigator, Mr. McCain?

8 MR. MCCAIN: No further questions.
9 Thank you.

10 CHAIRPERSON ANDERSON: As I said, Mr.
11 McCain, this is a fact finding hearing. We are
12 trying to gather information to determine what
13 next, what next step should be taken. And, I
14 guess I'm kind of trying to find out from you,
15 and let me ask you a couple questions, sir.

16 What was the specialty of your
17 restaurant? So, what was -- tell me, explain to
18 me your business model, sir. What type of
19 establishment?

20 MR. MCCAIN: Thank you, sir, Mr.
21 Chairman. Half Smoke is a casual dining
22 restaurant, a full service restaurant that has
23 been open and operating since October of 2016.

24 We serve affordable American food,
25 mainly including the Half Smoke sausage, as well

1 as a wide array of alcohol and non-alcoholic
2 beverages.

3 CHAIRPERSON ANDERSON: And so, on
4 January 26, 2023, your restaurant, what -- Mr.
5 Prout, approximately, what time did you get to
6 this establishment, sir?

7 INVESTIGATOR PROUT: Yes, sir. I
8 arrived at, approximately, 10:38 p.m.

9 CHAIRPERSON ANDERSON: So, what was
10 going on on January 26, 2023, that, allegedly,
11 there were 465, well, the clicker states, the
12 clicker Mr. Prout -- well, let me ask that
13 question.

14 What is the occupancy as your license
15 is concerned, sir? What is the occupancy of your
16 establishment?

17 MR. McCAIN: 199 occupants.

18 CHAIRPERSON ANDERSON: Now, did -- what
19 controls that as far as your restaurant is
20 concerned, is it your Certificate of Occupancy or
21 is it your license? Which one, which one of the
22 numbers are you supposed to comply with?

23 MR. McCAIN: The license number.

24 CHAIRPERSON ANDERSON: So, if your
25 Certificate of Occupancy says you can have 500,

1 and your license says that you can only have 300,
2 is it your position that you can only have 300
3 people based on your ABRA license?

4 MR. McCAIN: Correct.

5 CHAIRPERSON ANDERSON: So, what was
6 going on on January 26, 2023? What, in the sense
7 as Mr. Prout stated, that the clicker had 465
8 individuals?

9 MR. McCAIN: Thank you.

10 As you may or may not be aware, we are
11 located on the corner of Florida and Georgia
12 Avenue, directly adjacent to Howard University
13 Hospital and two blocks away from the Howard
14 University campus. Since 2016, we've had regular
15 events that have been planned in conjunction with
16 the University, in conjunction with student
17 groups at the University, as well as ad hoc
18 visits, in addition to being sort of in the epi
19 center of many Howard University homecomings.

20 This particular night, a Thursday
21 night, was a regular routine Thursday night for
22 us, where we, typically, expect the Howard
23 students to come. Again, since 2016, leading up
24 to 2020, the four year stint, and then we stopped
25 for the pandemic, and then resumed in 2022, we've

1 hosted students on Thursdays, typically, ending
2 around 11:00, never with any violations, also
3 never with any issues.

4 I think it's also worth noting prior
5 to COVID we had these events with no security,
6 post COVID we incorporated security at our
7 expense, at great expense, licensed, bonded,
8 reputable street, that's, actually, the last
9 street for the majority of the corridor, because
10 of the influx of crime in the neighborhood, and
11 for the safety of our patrons, notwithstanding
12 the fact that we are not a nightclub, not
13 11:43:53, we are operating events during what
14 would I think objectively be considered no more
15 restaurant hours.

16 We have security who are responsible
17 for several things, including keeping patrons off
18 the street, ID'ing patrons, watching patrons at
19 the bar, in addition to like the bartenders that
20 we have, making sure that we adhere to the
21 occupancy requirements, general safety in terms
22 of, you know, any altercations that may arise
23 inside the venue and outside of the venue. This
24 particular time we had four security guards there
25 present at each of the doors, and also inside.

1 This, frankly, was an aberration.
2 There's no, there's nothing out of the normal
3 that would have suggested that as many people
4 would come as they did, and as many people would
5 come to, essentially, bombard the door as they
6 did, which is why the doors were momentarily
7 locked, as we were trying to get people to exit.
8 They were not locked to keep people in. It is not
9 in our best interest to have that many people
10 inside, whatever the number may be, because we
11 are not able to provide the quality of service
12 that we like to provide on a normal basis.

13 And so, we were surprised, but we were
14 also surprised by the fact that the security that
15 we have paid handsomely and again have used over
16 a dozen times for these recurring weekly events
17 with no issue whatsoever was on this occasion
18 unable to crowd control in an effective manner.

19 I also would like to thank the
20 Investigator for a very thorough investigation.
21 I take these matters very seriously. As I've
22 mentioned, we've been in operation for almost ten
23 years, never with an incident of this nature, in
24 spite, unfortunately, it's something that we take
25 very seriously, and something that we are looking

1 to do best efforts to avoid in the future.

2 It's also worth noting, for what it's
3 worth, that Officer Vernick, who has a personal
4 relationship with, I'm sorry, professional
5 relationship with relative to his service in the
6 neighborhood. We had a lengthy conversation that
7 night about measures that we could take from a
8 crowd control standpoint, and I do believe that
9 his view was that we did everything that we could
10 do to slow the crowd, including closing down the
11 restaurant once we were unable to effectively
12 control the crowd.

13 CHAIRPERSON ANDERSON: Mr. McCain, what
14 type of mechanism, you stated that your occupancy
15 says 199, so what type of mechanisms do you
16 utilize to stay within your occupancy level,
17 because, how large is your establishment?

18 MR. McCAIN: How large in terms of
19 square footage?

20 CHAIRPERSON ANDERSON: Yes.

21 MR. McCAIN: Approximately, 4,500
22 square feet.

23 CHAIRPERSON ANDERSON: Because the
24 pictures that were shown by Mr. Pruitt, Prout,
25 I'm sorry, it appears that there was

1 overcrowding. And, it just without counting,
2 just looking at the pictures, it looks -- the
3 serving area looks like there was a lot of
4 people.

5 So, I guess I'm just trying to find
6 out, do you use a clicker, how do you, what
7 mechanism do you use to control the crowds that
8 enter your establishment? How do you do crowd
9 control?

10 I can't hear you.

11 MR. McCAIN: Yes, we do use a clicker,
12 and that's one of the services, in addition to
13 the clicker that our manager is using the
14 security guards have a clicker too. So, the main
15 mechanism for crowd control, again which we've
16 never had issue with before, is the security at
17 the door checking Ids, and the addition of the
18 clicker, and also as a practical matter I'm not
19 quite sure that -- notwithstanding the fact that
20 our license allows for 199 patrons, I'm not quite
21 sure that's an ideal number in terms of what we
22 wanted.

23 So, we, typically, do not allow
24 anywhere near the maximum occupancy for this
25 particular reason.

1 CHAIRPERSON ANDERSON: Now, tell me
2 about, how many cameras do you have?

3 MR. McCAIN: We have several cameras.
4 I'd like to clarify the camera comments as well.

5 On the night of the incident, the
6 investigator requested the footage. Typically,
7 when we provide footage to ABRA, or to the police
8 department as an example, the party requesting
9 the camera footage, we give them full access to
10 the cameras, and they download whatever camera
11 footage they would like.

12 I offered that access to the
13 investigator who left and came back with the
14 thumb drive the night of, and I think there was I
15 guess a misunderstanding around who was
16 responsible for accessing the camera footage to
17 the investigator himself or the licensee to
18 provide the footage at that time. The
19 determination was made that we were unable to
20 provide the footage at that time, simply because
21 we would have had to get our IT person to
22 download the footage. I don't know how to
23 download the footage, he talked directly to me.
24 But, I again offered to not only the
25 investigator, but also to the police, to access

1 the footage at that time. We were told we had to
2 have the footage available on the drive by a
3 certain date.

4 For the record, I'd like to say that
5 that footage was made available at that date, and
6 is still available. So, we do have the footage,
7 the notion that the footage is not available is
8 inaccurate. The file, counsel has heard from the
9 staff, I do recall an investigator or two coming
10 to retrieve the footage, and I'm not really sure
11 why the footage wasn't taken, but the footage is
12 available.

13 CHAIRPERSON ANDERSON: So, you are
14 saying the footage is available to give, to
15 provide to the Agency. Are you saying that, so
16 what's missing in the case? Are you saying that,
17 what do you mean that the footage is available?
18 Is it available on a thumb, how is it available
19 for the Agency to review?

20 MR. McCAIN: It's available on the same
21 thumb drive that we were given by the Agency.

22 CHAIRPERSON ANDERSON: All right. So,
23 since the footage is available, when will you
24 provide this to the Agency?

25 MR. McCAIN: We were told that the

1 Agency was going to come pick it up. And, I know
2 that the Agency has made attempts to come pick it
3 up. I'm not sure, I'm not quite sure of the
4 miscommunication. No one called me and asked for
5 the footage after that. I don't know if they
6 came when somebody else was on duty, and they
7 didn't know about where the drive was, or what.
8 But, the point is we are not trying to withhold
9 the footage. The footage is available. The
10 footage has been available since the required
11 date, so I think that sounds like a
12 miscommunication.

13 CHAIRPERSON ANDERSON: All right. This
14 is something that, so you are saying today that
15 our Agency can come to your establishment at any
16 time and pick up the footage. Is that, in fact,
17 is that what you are saying today, that the
18 footage is available, and the Agency will be able
19 to come to the establishment during regular
20 operation hours and pick it up, is that correct?

21 MR. McCAIN: Correct.

22 CHAIRPERSON ANDERSON: All right.
23 Then, Mr. Prout, you are here, I don't know what
24 your hours of operations are, but can you ensure
25 that some member of the enforcement team goes to

1 Half Smoke and pick up the footage, as it has
2 been annotated it is available for ABRA to pick
3 up at any time.

4 MR. McCAIN: You can pick it up at the
5 conclusion of my testimony this afternoon, Mr.
6 Chairperson.

7 CHAIRPERSON ANDERSON: So, Mr. McCain,
8 is your establishment currently open?

9 MR. McCAIN: Yes.

10 CHAIRPERSON ANDERSON: So, Mr. Prout
11 said that this morning he will come to the
12 establishment to pick up the footage, that it
13 will be available for him to pick it up, is that
14 correct, sir?

15 INVESTIGATOR PROUT: This afternoon.

16 CHAIRPERSON ANDERSON: This afternoon.
17 Mr. McCain?

18 CHAIRPERSON ANDERSON: I can't hear Mr.
19 Prout. Mr. Prout, you are saying this afternoon
20 you are going to pick it up, is that correct?

21 INVESTIGATOR PROUT: Yes.

22 CHAIRPERSON ANDERSON: And, Mr. McCain,
23 you are -- this is the only order that I'm giving
24 you today, because you have stated that the
25 footage is available at any time for ABRA to pick

1 it up. So, you are stating today that ABRA is
2 able to retrieve the footage this afternoon. Is
3 that correct, sir?

4 MR. McCAIN: Correct, yes.

5 CHAIRPERSON ANDERSON: All right.

6 Thank you, sir.

7 All right. What's your hours of
8 operation, sir, hours of alcohol sales? Let me
9 ask it that way. I'm going to figure what time
10 your hours of operation?

11 MR. McCAIN: Like every day, or for
12 Thursday?

13 CHAIRPERSON ANDERSON: The time, the
14 time. If not, I'll go ask Mr. Prout.

15 MR. McCAIN: I think it's, I think, I
16 don't know off hand. I don't know what time we
17 are able to start alcohol sales, but I'm not sure
18 -- I'm not, actually, sure.

19 CHAIRPERSON ANDERSON: What time do you
20 close?

21 MR. McCAIN: Well, the reason I'm not
22 sure is because we have to close at 12:00, so we
23 close before, well before our end of service
24 hours for alcohol. So, I'm not, I just don't
25 know, I don't know if during the week we are

1 allowed to serve until 2:00, or what we agreed
2 to.

3 CHAIRPERSON ANDERSON: I'm just asking
4 what time you close. I mean, of course, we can
5 say that you are able to close at 2:00, but then
6 you can elect to close at 12:00, that's what I'm
7 just asking.

8 MR. McCAIN: No, on Thursdays we,
9 typically, close at 11:00.

10 CHAIRPERSON ANDERSON: On Thursdays you
11 close at 11:00, and what about the other days of
12 the week?

13 CHAIRPERSON ANDERSON: We, typically,
14 close Monday through Thursday at 11:00.
15 Saturdays, Friday and Saturday 12:00, and Sunday
16 10:00.

17 CHAIRPERSON ANDERSON: All right.

18 Now, let me ask you this. Are your
19 cameras, do they record for 30 days? I mean,
20 because I don't know, I'm just asking you, do
21 they record for, if an incident occurs, are they
22 able to record for 30 days, or what period of
23 time is your camera able to record?

24 MR. McCAIN: Our cameras, it's not
25 based on a certain number of days, it's simply

1 based on a certain volume of activity. They are
2 motion sensor based cameras. So, there's no set
3 time frame in which there may be footage
4 available or not. Each camera operates on its
5 own storage capacity. Some of the cameras may
6 use more than others relative to activity on that
7 particular camera.

8 CHAIRPERSON ANDERSON: All right. Just
9 another question on that. Are you aware, so is
10 your camera always, are your cameras always
11 operational?

12 MR. McCAIN: Yes.

13 CHAIRPERSON ANDERSON: And, you are
14 aware, you are not required to have cameras, do
15 you know that our regulation states that if your
16 camera, if you have cameras, they have to be
17 operational, and that if they are not working you
18 are supposed to alert the Agency to the fact that
19 your cameras are not working.

20 MR. McCAIN: Yeah, our cameras are
21 working.

22 CHAIRPERSON ANDERSON: Mr. Prout, can
23 you please drop some information off to the
24 licensee regarding the proper functioning in our
25 regulations, regarding the proper functioning of

1 cameras, please?

2 INVESTIGATOR PROUT: Yes, sir, I'll do
3 that this afternoon, Mr. Chairperson.

4 CHAIRPERSON ANDERSON: And, let me ask
5 a question, and I'm not sure this can be done
6 today, and this is for your own protection.

7 Would you allow ABRA, and you can say
8 no, as I stated before, would you allow ABRA to
9 do a walkthrough of your camera function to make
10 sure that you have no dead spots?

11 MR. McCAIN: Sure.

12 CHAIRPERSON ANDERSON: And, I'm not
13 saying something can be done, but I'll ask ABRA
14 to work with the licensee, and this is for your
15 own protection, sir, just to allow you to look at
16 your camera system and ensure that you have no
17 dead spot.

18 And, maybe, Mr. Prout, once you review
19 the camera footage today, then maybe the Agency
20 can assist the licensee with camera operation.
21 Okay?

22 INVESTIGATOR PROUT: I will coordinate
23 with Mr. McCain for a date in the near future for
24 us to be able to conduct our walkthrough, Mr.
25 Chairperson.

1 CHAIRPERSON ANDERSON: All right. Any
2 other questions or concerns?

3 Go ahead, Mr. Short, you want to ask
4 a question.

5 You are on mute, Mr. Short.

6 MEMBER SHORT: Good afternoon, Mr.
7 McCain.

8 MR. McCAIN: Good afternoon, Mr. Short.

9 MEMBER SHORT: Great. Mr. McCain, have
10 you -- how long have you been in the restaurant
11 and alcohol business?

12 MR. McCAIN: This location of Half
13 Smoke was my first restaurant. It opened on
14 October 4, 2016.

15 MEMBER SHORT: Okay. And, Mr. McCain,
16 have you ever had any training from ABRA, from
17 the Alcoholic Beverage Regulation Administration,
18 have you had any training regarding the dos and
19 don'ts for a CR or restaurant as yours, that
20 sells alcohol?

21 MR. McCAIN: Training in terms of what?

22 MEMBER SHORT: As far as knowing the
23 code books, and knowing what the inspectors or
24 investigators are looking for when they come by
25 to do a regulatory inspection of your facility,

1 of your business?

2 MR. McCAIN: I'm not sure that, I mean
3 it's been a long time, so I don't know, you said
4 training. I've dealt with lots of inspectors and
5 lots of walkthroughs, but I'm not sure what the
6 training mechanism would be.

7 MEMBER SHORT: Are you familiar with
8 the code book that regulates your business?

9 MR. McCAIN: I don't, see I don't know
10 it by heart.

11 MEMBER SHORT: This is just a
12 suggestion that the Chairman was saying earlier
13 to you. We can't require you to do anything at
14 this fact finding hearing. But, I would make
15 this recommendation to you as an ABC Board
16 member.

17 There is free training available for
18 anyone operating and owning and the service and
19 sales of alcohol in the District of Columbia.
20 And, all you have to do is get in contact with
21 Investigator Prout, or call our office, and they
22 will be more than happy to take you over the dos
23 and don'ts and regulations, and probably can
24 provide you with the code book to protect you and
25 your clients coming in to your business.

1 It would make for a much more fruitful
2 business experience for you, I can assure you.
3 That's just a suggestion that I would make to you
4 as a Board member, that maybe you should get in
5 contact with ABRA or when Investigator Prout
6 comes by, ask when the free training is available
7 for people like yourself who own businesses,
8 selling, serving, and delivering alcohol in the
9 District of Columbia.

10 MR. McCAIN: Thank you.

11 MEMBER SHORT: Would you be willing to
12 take that free training if it was available to
13 you? We can't make you do it, but would you be
14 willing if it's available to you?

15 MR. McCAIN: Yeah, I would, and I'd
16 also make sure that my staff on duty does as
17 well.

18 MEMBER SHORT: That's great.
19 Investigator, the investigator could help you
20 with when he comes by, and you talk to him about
21 your cameras. I'm quite sure he'd be more than
22 willing to help you and your staff to get the
23 appropriate training that you would find to be
24 very fruitful to your business.

25 Thank you very much.

1 That's all I have, Mr. Chair.

2 CHAIRPERSON ANDERSON: Thank you, Mr.

3 Short.

4 Any other questions by any other Board
5 members?

6 MEMBER GRANDIS: Chairman?

7 CHAIRPERSON ANDERSON: Go ahead, Mr.
8 Grandis.

9 MEMBER GRANDIS: Thank you, Mr.
10 Chairman.

11 Sir, is it your position that that
12 evening you believe that the number of patrons
13 that were in there at any one time was below the
14 maximum allowed by your license? I'm just trying
15 to make sure I understand what your perspective
16 is.

17 MR. McCAIN: I wouldn't say at any
18 given time. I would say, no, as per our
19 standards, our position is that we were, you
20 know, very conservative. We monitor the
21 occupancy.

22 One of the questions I had for Officer
23 Vernick, and this may or may not be the right
24 forum for this question, and, perhaps, it's in
25 the training, but, you know, somewhat of a

1 hypothetical. But, if five buses pull up right
2 now, and they are going to walk in the
3 restaurant, and the restaurant will be over the
4 occupancy, how should we go about handling that?
5 That is, essentially, what happened in this, what
6 I would consider to be a black swan event.

7 But, we were actively trying to get
8 people to leave.

9 MEMBER GRANDIS: And, I think I heard
10 you state that at one point the doors were locked
11 on the inside, so that your people, or security
12 crew, get people to exit. Am I understanding
13 that's what you said occurred?

14 I'm just trying to understand your
15 perspective.

16 MR. McCAIN: The doors were temporarily
17 locked by security, who were also standing by the
18 doors because of the stampede of people trying to
19 get in, and they were also providing crowd
20 control outside the doors to move people away
21 from the doors so that people could safely exit.

22 But, you know, reasonable speaking,
23 you can't enter and exit at the same time, so
24 that was why at least a couple of the doors were
25 temporarily locked while that very quick control

1 was trying to get in the establishment.

2 MEMBER GRANDIS: And also, did I
3 understand that this is a weekly event that the
4 establishment does to, you know, to give, you
5 know, the school, the college kids, you know, a
6 weekly venue to attend something that should be
7 positive? Is that what I understand, it was a
8 weekly advertised event?

9 MR. McCAIN: Yeah, we've had this on a
10 near weekly basis since 2016, so that would
11 account for usually several hundred times we've
12 had this event with not one violation.

13 MEMBER GRANDIS: And, how is that event
14 advertised?

15 MR. McCAIN: At this point, you know,
16 it's like football on Sunday. The students know
17 about it, so they come, but we don't really
18 advertise it. Sometimes there's a lot of people,
19 sometimes not that many people at all. It's also
20 very weather dependent, I think that was a factor
21 on that day, that was as very unseen really warm
22 day, it might have been one of our like 75
23 January days that we had this year.

24 So again, it's very much an
25 aberration, but this isn't, it's not ticketed, we

1 don't charge a cover fee, there's no promoters.
2 It's been a common role, please, just like any
3 other day.

4 MEMBER GRANDIS: But, generally, you
5 have a DJ for that weekly event?

6 MR. McCAIN: We may or may not have a
7 DJ. It just depends on what the students want.
8 It depends. Sometimes we, it also depends on the
9 day if there's a game on, et cetera. You know,
10 no different as far as the Mayor's office,
11 tomorrow we are hosting a watch event at 2:00 for
12 the Howard University basketball season it's the
13 first time I think in 30 plus years.

14 So, it just depends on what the nature
15 of the day is, but it's not promoted as a DJ
16 party, and it's not, typically, it ends around
17 11:00, so it's not even really a late night
18 thing.

19 MEMBER GRANDIS: Well, those of us who
20 live in the neighborhood know you have an
21 excellent menu, so it would probably be well
22 attended.

23 So, in the context because it does get
24 crowded because it's a college event, and it's
25 festive, how do you determine -- how is your

1 staff trained to determine that someone underage,
2 because college kids are in college below 21, how
3 do you, on a night, on a Thursday night
4 particularly, how do you control keeping under
5 age from getting alcoholic beverages?

6 MR. McCAIN: Well, first of all, we
7 don't let underage people in. And so, that's
8 part of the reason why we pay for again license,
9 bonded, and really reputable security.

10 And, as the Investigator mentioned, we
11 also have several ABRA Managers on duty as well,
12 and we also recheck the licenses, the driver's
13 licenses are restricted, as well monitor
14 consumption, focus that and a security monitor
15 consumption after the first drink to make sure
16 that the person who has purchased the drink is
17 the person who is drinking it.

18 MEMBER GRANDIS: So, I hear you, so it
19 may be helpful for me to understand that even
20 though it's a CR restaurant, and on most nights
21 any age can go in there with their family or
22 whatever, it's a very family-oriented
23 establishment.

24 But, on this particular night under 21
25 is not allowed entry during the hours of this

1 event, is my understanding, is that correct?

2 MR. MCCAIN: Correct, it's sort of
3 elevated, the obvious elevated risk of minors,
4 but on a normal day we do not have security, we
5 do not screen people at the door.

6 MEMBER GRANDIS: Yes, thank you very
7 much. Thank you.

8 CHAIRPERSON ANDERSON: You are raising
9 your hand, Mr. Prout.

10 INVESTIGATOR PROUT: I would like to
11 advise the Board on the night of Thursday,
12 January 26th, the establishment did offer a DJ as
13 entertainment to the Howard University students
14 on that evening. So, I do want to let the Board
15 know that on that night there was a DJ playing.

16 CHAIRPERSON ANDERSON: Mr. McCain, you
17 asked me a question earlier. The question is
18 that what if five bus loads show up, what are you
19 going to do? You stated that you have security.
20 You also stated that you utilize the clicker.
21 So, what do you do then, you utilize the clicker,
22 your license states that you have 199, and your
23 security utilize the clicker to ensure that there
24 are no more than 199 folks in there. So,
25 therefore, if five bus loads show up, I don't

1 know what the total capacity is of five bus loads
2 of folks, but you have security with the clicker,
3 and you have 199, and you never cross 199. When
4 one person goes out, you allow one person in to
5 maintain your occupancy. So, that's what you do.

6 MR. McCAIN: Thank you. That response
7 is helpful, but in the event that we do not have
8 security, which is the normal, what should we do?

9 CHAIRPERSON ANDERSON: Sir, your
10 license states that you can only have 199 people
11 in your restaurant, sir. You need to come up
12 with some, and you are not a nightclub, you
13 stated that your hours of operation from what I'm
14 told is 11:00, 12:00. So, you are closed
15 reasonable hours. It's not apparent to me that
16 you are a late night establishment.

17 But, your restaurant, sir, you need to
18 have an established mechanism how to maintain
19 crowd control, because if you do not maintain,
20 whether or not you have paid security, or your
21 manager, they need to control the amount of
22 people that are in your establishment, sir.

23 I know that businesses are happy that
24 folks are showing up. We are all, we are looking
25 forward to the post COVID time, and so for your

1 bottom line it does help that you have a lot of
2 people to show up. However, at what cost? So,
3 you need to balance the cost, in the sense that
4 fire code violations, someone gets injured,
5 they've got the establishment over crowded,
6 someone is suing you. Your insurance cost goes
7 up, you have to pay ABRA a fee, because ABRA
8 might find some type of violation. DC Fire
9 Department might find some violations, and so,
10 therefore, you then have to look at the options,
11 the cost, and try to come up with some mechanism
12 how to manage crowds at your establishment.
13 That's just something that you have to figure
14 out.

15 MR. McCAIN: Thank you.

16 CHAIRPERSON ANDERSON: All right. Any
17 other questions for anyone before I bring this
18 hearing to a close?

19 Hearing none, the Board will take this
20 matter under advisement, sir. Therefore, we will
21 determine that if there will is to take no
22 further action, or whether or not we will forward
23 this matter to the Office of Attorney General for
24 further investigation.

25 But, the only agreement that we had

1 today is that you would make the video available
2 to ABRA this afternoon. Okay?

3 MR. McCAIN: Thank you.

4 CHAIRPERSON ANDERSON: Oh, and I'm
5 sorry, you will also avail yourself of the
6 training opportunities that the Agency offers.

7 Is that what you wanted to say, Mr.
8 Short, and that you will avail yourselves of the
9 training opportunities that the Agency -- I'm
10 sorry, you will avail yourselves of the training
11 that the Agency offers, and also that you will
12 also agree for ABRA to use the camera to do a
13 walkthrough of your establishment to make sure
14 that you have no dead spots as far as the
15 operation of your camera. Okay?

16 All right, thank you. Thank you very
17 much. Have a great day.

18 (Whereupon, the above-entitled matter
19 went off the record at 12:15 p.m.)
20
21
22
23
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25

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This is to certify that the foregoing transcript

In the matter of: Half Smoke

Before: DC ABRA

Date: 03-15-23

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