

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF:
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:
Omni Hotel Management :
Corporation, :
t/a The Shoreham Hotel :
2500 Calvert Street, NW : Fact Finding
Retailer CH - ANC 3C : Hearing
License #13816 :
Case #21-251-00038 :
:
(Assault with a :
Dangerous Weapon) :
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Wednesday
March 30, 2022

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:
MARK BRASHEARS, DC ABRA Investigator
SARAH FASHBAUGH, DC ABRA Staff
ANDREW KLINE, Licensee's Counsel
MARK ROCHE-GARLAND, Licensee

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

2 11:11 a.m.

3 CHAIRPERSON ANDERSON: The next case  
4 on our calendar is another fact-finding hearing,  
5 Case Number 21-251-00038, the Shoreham Hotel,  
6 License Number 13816. Ms. Fashbaugh, can you  
7 please elevate the rights of the participants in  
8 this case, please?

9 MS. FISHBAUGH: Please stand by.  
10 Andrew Kline, your rights have been elevated.  
11 Mark Brashears, your rights have been elevated.  
12 That is all, Mr. Chair.

13 MR. KLINE: Mr. Chair, if -- oh --

14 CHAIRPERSON ANDERSON: Yes, Mr. Kline.  
15 Mr. Kline, you're in blur so I can't really see  
16 you.

17 MR. KLINE: Yes.

18 CHAIRPERSON ANDERSON: You're blurred.

19 MR. KLINE: No. Let's fix it.

20 CHAIRPERSON ANDERSON: I think it's a  
21 matter of you changing your background, Mr.  
22 Kline.

23 MR. KLINE: I just switched cameras so  
24 I agree with that.

25 CHAIRPERSON ANDERSON: That's fine.

1 Before we start, Mr. Kline, you're trying your  
2 hardest.

3 MR. KLINE: Yes -- yes. I was getting  
4 to that when I was blurring, so elevate, please,  
5 the rights of the area managing director, Mark  
6 Roche-Garland?

7 CHAIRPERSON ANDERSON: Ms. Fashbaugh,  
8 do you see Mr. -- you said Garland?

9 MR. KLINE: Yes. Mr. Roche-Garland,  
10 yes.

11 CHAIRPERSON ANDERSON: Mr. Garland,  
12 can you identify yourself through the chat so we  
13 will elevate your rights, please?

14 MEMBER GRANDIS: His rights have been  
15 elevated.

16 CHAIRPERSON ANDERSON: Thank you. Is  
17 that it, Mr. Kline?

18 MR. KLINE: Yes, it is. Thank you.

19 CHAIRPERSON ANDERSON: All right.  
20 Thank you. Good morning. Let's have the parties  
21 identify themselves for the record. Let me start  
22 with you, Mr. Kline. Can you please spell and  
23 state your name for the record, please?

24 MR. KLINE: Yes. Thank you. Good  
25 morning, Mr. Chairman, Members of the Board.

1 Andrew Kline, first name A-N-D-R-E-W, last name  
2 K-L-I-N-E, counsel to Shoreham in this case.

3 CHAIRPERSON ANDERSON: And who's here  
4 with you this morning, Mr. Kline?

5 MR. KLINE: Mark Roche-Garland.

6 MR. ROCHE-GARLAND: Good morning,  
7 Chair --

8 CHAIRPERSON ANDERSON: Mr. Garland,  
9 good morning. Can you please spell and state  
10 your name for the record and your ship to this  
11 establishment, sir?

12 MR. ROCHE-GARLAND: Okay. My name is  
13 Mark Roche-Garland. That's M-A-R-K, last name R-  
14 O-C-H-E-hyphen-G-A-R-L-A-N-D, and I'm the  
15 managing director of the Omni Shoreham Hotel.

16 CHAIRPERSON ANDERSON: Good morning  
17 And we have our investigator, Mr. Brashears. Can  
18 you please spell and state your name for the  
19 record and identify yourself, please?

20 INVESTIGATOR BRASHEARS: My name is  
21 Mark Brashears. That's M-A-R-K, B-R-A-S-H-E-A-R-  
22 S. I am a supervisory investigator with ABRA.

23 CHAIRPERSON ANDERSON: Good morning,  
24 Mr. Brashears.

25 INVESTIGATOR BRASHEARS: Morning, sir.

1                   INVESTIGATOR BRASHEARS: Thank  
2 everyone for being here this morning. This is a  
3 fact-finding hearing, and this case was initially  
4 -- I assume this was scheduled a couple of weeks  
5 back, but we -- but it was postponed until today.  
6 And so this is an investi-- basically a fact find  
7 hearing. It's MPD filing a gunshot victim in  
8 front of the Shoreham Hotel. On the date of the  
9 incident, on November 28, 2021, five gunshots  
10 were heard in the vicinity of the hotel. A  
11 victim was found with gunshot wounds to the  
12 buttocks and femur. The hotel was hosting an  
13 event on the date of the incident. No indication  
14 that the shooting victim was -- what were you  
15 trying to find out? I don't think it's -- I  
16 don't -- it -- I don't think it's apparent to the  
17 Board, and Mr. Brashears can further elaborate on  
18 this, whether or not the victim -- or the victim  
19 was any way associated to the incident. But I  
20 think as part of our investigation, the Board is  
21 concerned with the attendance at the incident,  
22 whether or not the hotel was over capacity. And  
23 there are some concerns by the agency whether or  
24 not there was a capacity limit that was surpassed  
25 by the hotel based on its certificate of

1 occupancy and/or -- or not necessarily a -- it's  
2 more so based on the license that they have that  
3 was granted to them by ABRA, because as you're  
4 aware, our license, the license that you received  
5 from us, that determines what the certificate --  
6 what the occupancy is, although you can have a  
7 certificate of occupancy for a larger number, but  
8 that number cannot exceed what's on the license.  
9 So we just need to get some clarification on  
10 that. And I'm hoping that Mr. Brashears maybe  
11 can put some -- bring some clarification, and  
12 then we'll have -- hear response from the  
13 licensee regarding therapist issue.

14 So again, this is a fact-finding  
15 hearing. The Board is just gathering  
16 information. None of the witnesses will be under  
17 oath today. By law, at a fact-finding hearing,  
18 the Board cannot order the licensee to take any  
19 specific action. Board Members might ask the  
20 licensee to agree or -- to agree to take some  
21 action, but it's just a conversation that has  
22 been requested. It's not -- the Board cannot  
23 order a licensee to take any specific action at a  
24 fact-finding hearing.

25 So as I said before, we have made no

1 decision and so at the end of a hearing, the --  
2 what the Board can do is either decide that no  
3 further action is necessary or the Board might  
4 forward this matter to the Office of Attorney  
5 General for them to determine whether or not  
6 there are any legal violations.

7 Okay. So what we will start of is that  
8 we'll have Mr. Brashears, he can -- I believe,  
9 Mr. Brashears, that there is a report that was  
10 generated from your agency that Mr. Brashears, I  
11 would ask him to go through his report. Then  
12 Board Members can ask questions of Mr. Brashears.  
13 And then on behalf of your client, Mr. Kline, you  
14 are welcome to ask questions of Mr. Brashears,  
15 and then if the licensee has any specific  
16 representations they want to make, then they'll  
17 have an opportunity to do that. Any questions  
18 before we start?

19 MR. KLINE: Mr. Chairman, I just have  
20 one comment that I think might facilitate clarity  
21 on this issue.

22 CHAIRPERSON ANDERSON: Go ahead, Mr.  
23 Kline.

24 MR. KLINE: And that is unlike an on  
25 premise license, like a restaurant or a tavern or

1 a night club, the occupancy on an ABC license is  
2 the number of rooms. So I would just -- you  
3 know, I want to point that out out front, cause I  
4 can see where we can down a road that would be  
5 confusing. So I just wanted to make that comment  
6 and then obviously defer to Mr. Brashears to give  
7 his report, but given the Chair's introductory  
8 comments, it seemed like there might be some  
9 confusion on that point, and I just wanted to  
10 make sure that that's clear?

11 CHAIRPERSON ANDERSON: And I'm hoping  
12 that the report that's written by Mr. Brashears,  
13 that Mr. Brashears can enlighten the Board on  
14 that issue. And as I --

15 MR. KLINE: He -- oh, and it's in his  
16 report? Thank you.

17 CHAIRPERSON ANDERSON: And I said  
18 before, although it was a shooting incident that  
19 brought this to our attention, this hearing will  
20 not, in no way, focus on that incident because  
21 there is -- at least it's my understanding that  
22 there is -- I'm not aware of a nexus between the  
23 incident and the hotel --

24 MR. KLINE: Proximity --

25 CHAIRPERSON ANDERSON: -- other than



1 --

2 MR. KLINE: All right.

3 CHAIRPERSON ANDERSON: -- the incident  
4 itself. I was just letting you know not that you  
5 can be prepared to address the incident per se,  
6 because that's not why you're here today. You're  
7 not here because of the incident for us to -- for  
8 you to tell us whether or not there was a  
9 violation occurred because of the incident. It  
10 was because of the incident that the Board -- the  
11 agency became aware, and there are some confusion  
12 regarding the occupancy. And so that's why --  
13 the purpose of this hearing is to get some  
14 clarification on the occupancy and the license  
15 itself.

16 All right. But thank you for that,  
17 Mr. Kline and it appears that Mr. Brashears  
18 disappeared, so let me see. Let me -- all right,  
19 Mr. Brashears, can you -- good morning, sir. Can  
20 you just tell us who you are, sir, and how you're  
21 familiar with this case?

22 INVESTIGATOR BRASHEARS: I'm an  
23 investigator here at ABRA and basically, I took  
24 the ABRA hotline call for the complaint that led  
25 me to visit the establishment.

1                   CHAIRPERSON ANDERSON: So just tell us  
2 about the hotline call? How is that ABRA became  
3 aware of this incident, and once you became  
4 aware, what is it that the agency did there,  
5 please?

6                   INVESTIGATOR BRASHEARS: Yes, sir. So  
7 basically, on Sunday November 28th, at  
8 approximately 2:20 a.m., I received a telephone  
9 ABRA hotline call from MPD stating that a  
10 shooting had occurred in the vicinity of the  
11 Shoreham Hotel. So I was asked to respond to the  
12 establishment. Upon responding, I spoke with an  
13 MPD sergeant who basically advised me that the  
14 shooting occurred off the premise of the  
15 establishment in the street. He further advised  
16 that the individual was -- there was an MPD  
17 presence due to the event that was happening at  
18 the establishment. While that was going on, off  
19 premise, in the street, an individual was found  
20 shot, as you stated earlier, through the buttocks  
21 into his leg. Based on that and the clothing the  
22 individual was wearing, MPD believed that the  
23 individual was not part of the event because it  
24 was a formal affair and everyone was dressed in a  
25 particular way.

1           So while there, I spoke with the  
2 director of loss prevention for the  
3 establishment, and he had worked with MPD to  
4 reveal any camera footage. And Basically, he  
5 allowed -- or let me know that they had  
6 approximately nine security personnel from the  
7 establishment on hand for the event and another  
8 25 from the promoter having the event.

9           The issue with the question concerning  
10 the occupancy, it started with -- you know, based  
11 on what I observed on the certificate of  
12 occupancy. And as Mr. Kline alluded to the  
13 certificate of occupancy gives an occupant load  
14 of 836, and since it's a hotel, it's basically a  
15 single occupant per room. So based on that  
16 information and MPD had gotten, that there were  
17 approximately 1,200 people or more, MPD believed  
18 there could have been an issue with occupancy.  
19 As such, MPD and myself met with the management  
20 of the establishment, Mr. Roche-Garland, and  
21 discussed the event. Basically, it was a formal  
22 affair. It was scheduled to go from 8:00 a.m. --  
23 or I'm sorry -- 8:00 p.m. to 2:00 a.m. and  
24 originally had set up for 1,200 people.  
25 Throughout the night, the promoter brought a few

1 more people in but as things went on, Mr. Roche-  
2 Garland was there at one scene and they basically  
3 handled the issues that came up.

4 I further spoke with the detective who  
5 was investigating the situation. The detective  
6 basically stated that the victim, he said he was  
7 in the area because he heard some things were  
8 going on, but the detective was not able to place  
9 the subject or the victim at the event or even on  
10 the property nor could I through my  
11 investigation.

12 As my investigation progressed, I  
13 spoke with the ABC manager. The ABC manager  
14 basically let me know that on the night of the  
15 event, they had approximately 10 bars, over 1,200  
16 people. He wasn't sure of the exact number. He  
17 thought it might have gotten as high as 2,500,  
18 but he showed me the -- the establishment has  
19 some very large event spaces. And as I put in my  
20 report, the event spaces were placarded by the  
21 fire marshal, so four large event spaces, all of  
22 them listing an overall occupancy of 5,696.

23 So I also looked at the hallways,  
24 routes of entrance and exit, and although the  
25 establishment technically, if you look at the

1 occupant level, yes, it was probably exceeded,  
2 but the fire marshal placarded the establishment  
3 in such a way that it could facilitate over 5,600  
4 people. So I don't know -- and it would be a  
5 good thing for -- you know, we have the  
6 management of the establishment, if there was a  
7 second certificate of occupancy, if these areas  
8 were added later, because what I found in our  
9 records, ABRA records, and what was provided to  
10 me, was basically the certificate of occupancy  
11 with an occupant load of 836.

12 So I don't believe the incident --  
13 obviously, we can't draw a nexus, as you stated,  
14 between the individual being shot and  
15 establishment, and I don't believe the occupancy  
16 that evening had any bearing on the incident.  
17 But at the end of the day, technically, the  
18 establishment was over what's on their occupant  
19 load.

20 CHAIRPERSON ANDERSON: Now Mr.  
21 Brashears, their license that was granted to them  
22 by ABRA, it has an occupancy load. So what was -  
23 - what's on the license itself?

24 INVESTIGATOR BRASHEARS: Eight hundred  
25 eighty.

1                   CHAIRPERSON ANDERSON: Now what does  
2 that mean? As an ABRA investigator, you have a  
3 license that -- an ABRA license that says the  
4 occupancy load is 880, so as an investigator,  
5 what does that mean to you?

6                   INVESTIGATOR BRASHEARS: Well,  
7 obviously, I would look at the number of people  
8 and compare it to that number, and if it exceeded  
9 it, then I would assess a violation.

10                  CHAIRPERSON ANDERSON: Thank you. Any  
11 questions by any Board Members? Yes, Mr. Short.

12                  MEMBER SHORT: Thank you, Mr.  
13 Chairman. Good morning, Mr. Brashears -- or  
14 Investigator Brashears. Investigator Brashears,  
15 you stated that the application for this event to  
16 ABRA was for 880 people max, is that correct?

17                  INVESTIGATOR BRASHEARS: No, sir.

18                  MEMBER SHORT: What was the max that  
19 was given on the permit for the -- or did they  
20 need a permit for this event?

21                  INVESTIGATOR BRASHEARS: No, sir. No,  
22 they did not. My understanding was the event was  
23 scheduled for approximately 1,200 and that at  
24 some point during the event, the promoter  
25 basically took it upon himself to allow extra

1 people in at the door. When that occurred, the  
2 atmosphere of the event somewhat changed, and Mr.  
3 Roche-Garland had stated that, you know, the  
4 establishment was on top of it, and they made a  
5 decision at that point shut everything down,  
6 disrupt it, or keep an eye on it, let it play out  
7 -- and bear in mind a lot of the party goers to  
8 this event were also guests. So at that point,  
9 the -- from what I got from the management is  
10 that there weren't any issues with anything going  
11 on inside, so they just managed the event and  
12 then afterward, if I remember correctly, Mr.  
13 Roche-Garland had stated that this promoter would  
14 not be brought back.

15 MEMBER SHORT: Okay. Now I do  
16 understand that answer and thank you for that  
17 honest answer. I would just like to ask you  
18 basically, the room that was used for this event,  
19 what was the occupancy of that particular room,  
20 just that room that was supposed to be for this  
21 event?

22 INVESTIGATOR BRASHEARS: Well, there  
23 were actually four large event spaces utilized.  
24 There was also the main -- it appeared part of  
25 the lobby so all of those combined were over

1 5,600. The fire department had placarding in  
2 each of the rooms designating the space. And  
3 from what I understand speaking with the ABC  
4 manager, they didn't get close to any of those  
5 occupancies in any of the rooms. And bear in  
6 mind, as the ABC manager had described to me,  
7 even though there were quite a few people there  
8 that night, people came and went. It wasn't a  
9 consistent number throughout the night. So the  
10 number they originally forecast for was 1,200.  
11 It may have gone substantially higher, but it may  
12 not have been all at one time.

13 MEMBER SHORT: Okay. So where did the  
14 issue of overcrowding come up? I mean we're just  
15 here to hear the facts because this is a fact  
16 finding. Where did the issue of overcrowding  
17 become an issue if all you say is true?

18 INVESTIGATOR BRASHEARS: Well, MPD had  
19 concerns and basically, they believe that it  
20 could have -- whatever issue happened in the  
21 street, which as I said, we can't say the  
22 establishment was involved in, but they believe  
23 that that could have had -- the occupancy could  
24 have had an issue on those things.

25 MEMBER SHORT: So you, as the ABRA



1 representative for that event, who investigated  
2 that event, first of all, where did the complaint  
3 come from? Was it from the community? Was it  
4 from -- or do you have any idea where the  
5 complaint came from?

6 INVESTIGATOR BRASHEARS: The complaint  
7 to ABRA came from MPD for a shooting in front of  
8 the establishment.

9 MEMBER SHORT: Okay. And again, just  
10 if you can clarify, I'm still now clear how did  
11 the issue of overcrowding come up?

12 INVESTIGATOR BRASHEARS: The issue of  
13 overcrowding came up when based on my initial  
14 investigation, I was speaking with MPD, and we  
15 were told there were approximately 1,200 slotted  
16 for the event, and I advised the MPD captain that  
17 looking up the certificate of occupancy and the  
18 ABC license, they were over that amount. So  
19 they're -- the MPD's concern was there some type  
20 of severe overcrowding issue that led to what  
21 occurred in the street.

22 MEMBER SHORT: Okay. I understand  
23 that a little better. And thank you again for  
24 your report. And I guess I will attempt to say  
25 this, that the security persons, you said they

1 were nine security from the hotel, correct?

2 INVESTIGATOR BRASHEARS: Yes, sir.

3 MEMBER SHORT: And 25 from the  
4 promoter?

5 INVESTIGATOR BRASHEARS: Yes, sir.

6 MEMBER SHORT: Okay. As I normally  
7 would ask, I would imagine that the hotel  
8 security were trained persons who were licensed  
9 persons or do you know?

10 INVESTIGATOR BRASHEARS: From what I  
11 understand speaking with the director of loss  
12 prevention, the staff is all trained. And if I  
13 remember correctly, the director of loss  
14 prevention is retired federal law enforcement, so  
15 they're well-trained and were on hand. They were  
16 -- the director and his assistant were on hand  
17 throughout the course of the event that evening.  
18 That was another concern I had, whether or not  
19 the establishment was turned over to a promoter  
20 but clearly, the establishment had their security  
21 personnel and had two ABC managers on staff to  
22 manage the event.

23 MEMBER SHORT: As an ABRA investigator  
24 with your experience and time on the -- at this  
25 agency, are there any recommendations that you

1 would make to the hotel regarding incidents like  
2 this not happening again?

3 INVESTIGATOR BRASHEARS: Well --

4 MEMBER SHORT: If you can.

5 INVESTIGATOR BRASHEARS: I mean if I  
6 were going to make a recommendation, I mean  
7 clearly the fire department saw fit to grant a  
8 larger capacity than what ABRA licensed. My only  
9 recommendation would be if there's something that  
10 bears weight on that, that a new C of O be  
11 submitted or something to reflect the higher  
12 number, because as I said, the fire department  
13 gave them, you know, placarding for 5,600 people.

14 MEMBER SHORT: Thank you very much for  
15 your answers, Mr. Brashears. That's all I have  
16 of this witness, Mr. Chair.

17 CHAIRPERSON ANDERSON: Thank you, Mr.  
18 Short. Any other questions by any other Board  
19 Members?

20 (No response.)

21 CHAIRPERSON ANDERSON: Mr. Kline.

22 MR. KLINE: Yes. Investigator  
23 Brashears, thank you for the complete and  
24 thorough report. I do have a couple questions,  
25 though. You said you looked at the certificate

1 of occupancy and you determined from the  
2 certificate of occupancy that the capacity in  
3 terms of number of people was limited to 836?

4 INVESTIGATOR BRASHEARS: Well, that's  
5 what was one on the certificate of -- well, the  
6 certificate of occupancy was basically listed as  
7 hotel, 836 rooms.

8 MR. KLINE: So it's rooms that's  
9 mentioned on the certificate of occupancy?

10 INVESTIGATOR BRASHEARS: Yes, sir.

11 MR. KLINE: And there isn't any  
12 limitation in terms of persons on the certificate  
13 of occupancy, is there?

14 INVESTIGATOR BRASHEARS: Not that I  
15 recall, no, sir.

16 MR. KLINE: Okay. Well, you have it  
17 attached. Do you have your report in front of  
18 you?

19 INVESTIGATOR BRASHEARS: I do.

20 MR. KLINE: Will you take a look at  
21 Exhibit 3?

22 INVESTIGATOR BRASHEARS: Yes, sir.

23 MR. KLINE: Okay. Does that refresh  
24 your recollection? You said, "Not that I  
25 recall," but let's make sure that we have it

1 clear in the record as to what it says.

2 INVESTIGATOR BRASHEARS: Yes, sir.  
3 Description of use, hotel, 836 rooms, restaurant,  
4 swimming pool, and parking garage.

5 MR. KLINE: Okay. So there's no  
6 mention of occupancy there and as is the fire  
7 department's custom, they issued capacity  
8 placards for each of the rooms, correct?

9 INVESTIGATOR BRASHEARS: Yes, sir.

10 MR. KLINE: All right. And based upon  
11 all the information that you discovered during  
12 the course of your investigation, the hotel, for  
13 the rooms utilized, was way under that capacity  
14 limitation, weren't they?

15 INVESTIGATOR BRASHEARS: Yes, sir.

16 MR. KLINE: Okay. And the ABC license  
17 which is attached to your report as Exhibit 2, it  
18 says capacity -- it says license class, hotel C,  
19 capacity 880, correct?

20 INVESTIGATOR BRASHEARS: Yes, sir.

21 MR. KLINE: All right. Now if you  
22 know, isn't it true that the differentiation of  
23 capacity numbers with respect to hotels is for  
24 purpose of calculating the fee that's due to ABRA  
25 for the license?

1                   INVESTIGATOR BRASHEARS: I can't speak  
2 to that, sir. I'm not aware.

3                   MR. KLINE: Okay. That's fair --  
4 that's fair enough. But there isn't any belief  
5 that more than 880 hotel rooms were being  
6 utilized, correct?

7                   INVESTIGATOR BRASHEARS: Correct.

8                   MR. KLINE: All right. So it seems  
9 this whole issue concerning capacity was  
10 basically a misunderstanding, right?

11                   INVESTIGATOR BRASHEARS: Well, as I  
12 said, the occupant load listed on the C of O, and  
13 it does talk about rooms, but it does also say  
14 occupant load of 836 was exceeded. But at the  
15 end of the day --

16                   MR. KLINE: But you --

17                   INVESTIGATOR BRASHEARS: I'm sorry.

18                   MR. KLINE: Okay. But you're using  
19 occupant load as being 836, which is the same  
20 number in the description of use as to the number  
21 of rooms?

22                   INVESTIGATOR BRASHEARS: Yes, sir.  
23 And typically, what I've found with certificates  
24 of occupancy in hotels, it's based on the number  
25 of rooms with single occupancy. So clearly, if

1 every room had two occupants, it could be higher.

2 MR. KLINE: Well, if every room had  
3 two occupants and you also had event space like  
4 this hotel or meeting rooms or other public  
5 facilities, it probably would be higher, wouldn't  
6 it?

7 INVESTIGATOR BRASHEARS: Well, yes,  
8 sir, and that's why I suggested having some type  
9 of documents to cover that number so that, you  
10 know, in the -- going forward, situations like  
11 this wouldn't happen.

12 MR. KLINE: Don't we have capacity  
13 placards on the wall approved by the fire  
14 department that cover that number?

15 INVESTIGATOR BRASHEARS: We do but the  
16 fire department did not license the  
17 establishment, ABRA did.

18 MR. KLINE: For the sale of alcohol?

19 INVESTIGATOR BRASHEARS: Yes, sir.

20 MR. KLINE: All right. And you don't  
21 know as to whether that number on the alcohol  
22 license relates to rooms or persons, is that your  
23 position?

24 INVESTIGATOR BRASHEARS: My  
25 understanding is what's on the ABC license is the

1 capacity granted for the license by the ABC  
2 Board.

3 MR. KLINE: And you believe that  
4 capacity to be number of persons rather than  
5 number of rooms?

6 INVESTIGATOR BRASHEARS: On the ABC  
7 license, yes, I do, yes, sir.

8 MR. KLINE: All right. I don't have  
9 any further questions. Thank you.

10 CHAIRPERSON ANDERSON: Any questions  
11 by any other Board Members?

12 (No response.)

13 CHAIRPERSON ANDERSON: Okay. Mr.  
14 Kline, how -- does your client have a response  
15 and as I stated before, there is an issue here  
16 that needs to be addressed. It should either be  
17 addressed by the agency or some other -- because  
18 as Mr. Brashears stated, the ABRA license stated  
19 what the capacity is for the facility.

20 MR. KLINE: So I would ask that the  
21 Board get with Mr. Moosally in terms of the way  
22 these licenses have been treated for many, many  
23 years. The C of O is dated 2002, which means  
24 it's been in effect almost 20 years. In my  
25 experience, in my practice, with respect to both



1 DCRA and ABRA and the ABC Board, and its  
2 predecessors is that hotels with respect to  
3 licensing are measured by rooms, not by occupant  
4 load. The C of O has the same number under  
5 occupant load as it has in the more precise  
6 description of 836 rooms. I hope that ABRA's not  
7 -- the ABC Board is not telling us that we need  
8 to go back to DCRA and change a 20-year old C of  
9 O, because I don't think that that's the  
10 authority of the Board.

11 And number two, I would ask the Board  
12 to confer with ABRA as to its practice. The --  
13 this growth into policing occupancy that the  
14 Board has undertaken is an outgrowth of a belief  
15 that the fire marshal wasn't doing it properly.  
16 But the fact of the matter is the numbers on  
17 these licenses are related to the amount of fees  
18 that are charged. That's where these numbers  
19 come from. If you go to the section concerning  
20 license fees, you will see that there is one  
21 license fee for hotels of 99 rooms or less and a  
22 greater fee for -- and I'll give you the steps; I  
23 don't know if I can find it; it's in the regs --  
24 and a greater fee for those that are more than  
25 99. And that is the only reason that number

1 appears on the license. So to suggest that that  
2 somehow now has become a capacity number in terms  
3 of people who can occupy the premises, unless the  
4 regulations or the law is amended, that's just  
5 incorrectness about our law.

6 CHAIRPERSON ANDERSON: I guess, Mr.  
7 Kline, you stated that the certificate of  
8 occupancy is 20 years old. Has the facility  
9 changed over the 20 years, or has this been the  
10 same? I mean is -- the certificate of occupancy  
11 that the hotel currently has, does that  
12 accurately reflect the occupancy of the hotel? I  
13 don't know. So -- because you stated it was 20  
14 years ago. So there have been a lot of changes  
15 that have been made generally, not necessarily in  
16 this hotel but in life. And so I'm asking is --  
17 the certificate of occupancy from 20 years ago,  
18 does that accurately reflect the occupancy of the  
19 hotel in 2022? I don't know. I'm asking.

20 MR. KLINE: My understanding is it  
21 does. I'll work backwards. The hotel has a  
22 parking garage. It has a swimming pool. It has  
23 a restaurant, and it has 836 rooms, and it's a  
24 hotel. So that's what's on the C of O. I don't  
25 have any knowledge that that's changed, and

1       there's no reason to believe it's changed. I  
2       mean the hotel is well-known. I've been in it  
3       many times and I suspect members of the Board  
4       have been in it many times over the years, and I  
5       don't believe that there's been any change.

6               I just think that what we're doing is  
7       we're bootstrapping dropping a hotel room number  
8       into an occupant load, and that's just incorrect.

9               CHAIRPERSON ANDERSON: And I know that  
10       you're an attorney, Mr. Kline, and so I'm  
11       purposing that, but is it true that as far as  
12       ABRA is concerned, the occupancy on the ABRA  
13       license is the occupancy that when the  
14       investigator goes to facility that they look at,  
15       isn't that true? I'm just in generally, isn't  
16       that -- when an investigator getting -- go into a  
17       facility, the investigator asks for your ABRA  
18       license and we make a determination -- I know  
19       that this might be a policy issue that needs to  
20       be -- and you're correct, that needs to be  
21       addressed by the director, but what I'm saying to  
22       you, based on your experience as an attorney,  
23       isn't it correct that when the investigator goes  
24       into a facility, that to determine the occupancy  
25       of the space, they look at the ABRA license?

1 MR. KLINE: Depends on the type of  
2 ABRA license. They certainly don't do that with  
3 respect to a Class A license. They don't do it  
4 with respect to a Class B license. And with  
5 respect to a hotel, the appropriate inquiry is  
6 the number of rooms, because that's the figure  
7 that's used on a hotel license. That's the  
8 figure that's been used in my almost 40 years of  
9 doing this. And if that's going to change, then  
10 okay, then there needs to be a rulemaking to  
11 change it.

12 But to somehow all of a sudden you  
13 have a misunderstanding by an investigator where  
14 he believes, in good faith and I don't fault him  
15 for it, he believes that the number on the ABRA  
16 relates to number of people when it relates to  
17 number of rooms and always has related to number  
18 of rooms is no reason to visit anything upon this  
19 licensee. It's an issue that perhaps should be  
20 discussed by the Board. If a change needs to be  
21 made, then it should be done by an appropriate  
22 rulemaking.

23 But at this point, in my experience --  
24 and you asked me my experience -- hotels'  
25 licenses list the number of rooms and the reason

1 for that is the amount of fee that's paid to the  
2 agency is based on the number of rooms. Now it  
3 used to be that way with respect to CRs and CTs  
4 and CNS and DRs, DTs, and DNS until the Board  
5 decided that it was going to enforce occupancy,  
6 and then those numbers took on a different  
7 meaning.

8 But prior to that, those numbers were  
9 for purposes of measuring the amount of the fee  
10 that is paid to the agency. And I would -- you  
11 know, we need to get Mr. Moosally in here to talk  
12 about it. He's been doing this a very long time.  
13 I think he's very familiar with that history.

14 MEMBER GRANDIS: Mr. Chairman, may I  
15 ask a question?

16 CHAIRPERSON ANDERSON: I'll come to  
17 you -- and I'll come to you, Mr. Short. Go  
18 ahead, Mr. Grandis.

19 MEMBER GRANDIS: Thank you. Mr.  
20 Kline, in my understanding then the issue  
21 regarding occupancy for the hotel would be more  
22 of a fire marshal concern because the rooms,  
23 these ballrooms each have their own number of  
24 occupancy which is unrelated to the number of  
25 hotel rooms? So the fire marshal would be the

1 one to determine whether the occupancy had been  
2 exceeded as opposed to the ABC license for a  
3 hotel?

4 MR. KLINE: Absolutely correct and I  
5 think in this case, you saw that through the  
6 testimony concerning the occupancy placards that  
7 were approved by the fire marshal which reflected  
8 the total occupancy in each of the various event  
9 spaces and the fact that overall, it was -- what  
10 was allowed among the four event spaces that were  
11 being used for this event exceeded 5,000. I  
12 forgot the exact number but well above what was  
13 permitted in --

14 MEMBER GRANDIS: Mr. Kline if I  
15 understand this, maybe it's already been stated  
16 for the record today, but has your client or you  
17 stated what, based on the fire marshal ruling on  
18 occupancy, what the occupancy of that facility  
19 would be?

20 MR. KLINE: Well, in terms of the --  
21 it's in the report and in terms of the rooms that  
22 were used for the event, the overall occupancy of  
23 the four rooms was 5,696 people.

24 MEMBER GRANDIS: Okay. So based on  
25 those occupancy limits set by the fire marshal

1 for each of these ballrooms, was that number  
2 exceeded that night?

3 MR. KLINE: No -- no. The highest  
4 number that we have heard that may have been in  
5 at one time is about 2,500, which is, you know,  
6 obviously less than half of that. So the answer  
7 to that is, no, not even close. It's not an  
8 issue. I think this all comes about because of  
9 confusion concerning what's on the ABC license.

10 MEMBER GRANDIS: Yes. So to follow-up  
11 on that, so the confusion is that the license  
12 that the agency issues for a hotel uses the term  
13 occupancy, but it's defined by, I think, our  
14 regulations as the number of rooms, not the  
15 occupancy set by the fire marshal?

16 MR. KLINE: That's correct. And, you  
17 know, to clarify that -- I'm trying to make the  
18 point, maybe not clearly -- but historically, the  
19 numbers on ABC licenses were used to calculate  
20 fees. That's why they were there. And the C of  
21 O governed overall occupancy, and the fees that  
22 are charged for hotels are not based on the  
23 number of people, they're based on the number of  
24 rooms, which is why the number of rooms appears  
25 on the ABC license.

1                   MEMBER GRANDIS: Okay. Thank you. I  
2 want to thank you for giving us that information  
3 for this record. Thank you.

4                   MR. KLINE: And thanks for your  
5 clarifying questions, cause I think that might be  
6 very helpful.

7                   CHAIRPERSON ANDERSON: Thank you, Mr.  
8 Grandis. Mr. Short.

9                   MEMBER SHORT: Thank you very much,  
10 Mr. Chair. I would just like to state for the  
11 record a hazardous condition is a hazardous  
12 condition whether it was 20 years ago when it was  
13 established with occupancy or today. A hazardous  
14 condition is a hazardous condition. ABRA is a  
15 fairly new or one of the newest agencies of the  
16 District Government. I say that for the record  
17 because again, overcrowding is a hazardous  
18 condition whether we want to talk about the  
19 number of people who are in the rooms or the  
20 number of people who are at an event.

21                   And so to get around all of the  
22 convoluted legal conversation, apparently, this  
23 was a hazardous condition seen by our  
24 investigator --

25                   MR. KLINE: No, sir.



1                   MEMBER SHORT: -- see by the police  
2 officer --

3                   MR. KLINE: That is not correct. I'm  
4 sorry to interrupt --

5                   MEMBER SHORT: Please let --

6                   CHAIRPERSON ANDERSON: Mr. --

7                   MEMBER SHORT: -- me speak, Mr. --

8                   CHAIRPERSON ANDERSON: -- Mr. Kline.

9 Hold on, Mr. Short. Mr. Kline, please allow --  
10 you'll get an opportunity to correct the record  
11 if you believe a correction is necessary. Go  
12 ahead, Mr. Short.

13                   MEMBER SHORT: Thank you, Mr.  
14 Chairman. To give a perfect example, through my  
15 personal knowledge of public safety in this city,  
16 I can say to you on different occasions at hotels  
17 during inaugurals of presidents, this hotel  
18 before was cited for overcrowding, and no one  
19 asked about the number of rooms, no one asked  
20 about anything else. They said it was too  
21 hazardous for the president to stay there unless  
22 they reduced the numbers.

23                   And again, let's go back. You want to  
24 go 20 years or you want to go today, a hazardous  
25 condition is a hazardous condition. We can

1 hagggle about numbers or who gives the numbers or  
2 what numbers they are, but apparently the  
3 investigator, apparently MPD, apparently other  
4 people who were there thought or seeing what was  
5 going on at that time came to the conclusion that  
6 it was hazardous the number of people that were  
7 in that room. Whether the promoter let them in  
8 or the hotel let them in, all of those things are  
9 moot when it comes to an investigation had  
10 someone got injured, hurt, or killed that night,  
11 in fact, because of the overcrowding.

12 So let's cut to the chase and let's  
13 get down to the point. If it was overcrowded, we  
14 can talk about numbers or who gives the numbers  
15 20 years ago, who gives the numbers 20 minutes  
16 ago, if it was overcrowded and hazardous, then we  
17 need to alleviate those kind of conditions so the  
18 city doesn't get a smudge on its record of  
19 safety. Thank you very much, Mr. Chair. Thank  
20 everyone who is listening. Thank you.

21 CHAIRPERSON ANDERSON: Thank you, Mr.  
22 Short. Mr. Kline.

23 MR. KLINE: Yes. There is no evidence  
24 that there was any hazardous condition. The  
25 overall occupancy that was allowed by the fire

1 marshal, Mr. Short, based upon the placards that  
2 are posted in the various rooms is 5,696. The  
3 only discussion concerning any number of people  
4 that were in there at most, at most was 2,500,  
5 which is less than half of that. And the  
6 investigator testified that there were about  
7 1,200. It's only through our client where they  
8 say, yeah, at the most, there was 2,500, which is  
9 less than half of the allowed number by the fire  
10 marshal. The agency with which you used to work,  
11 they allowed 5,696, and there were no more than  
12 2,500 people in there according to the testimony.

13 As I tried to state at the beginning,  
14 obviously not very clearly because it seems to be  
15 still misunderstood, this is all based on a  
16 misunderstanding as to the number printed on the  
17 ABRA license which relates to the number of  
18 rooms, not the number of bodies, the number of  
19 bodies allowed, as established by the placards  
20 that are posted on the wall and approved by the  
21 fire marshal. So there was no hazardous  
22 condition, and there's been no testimony adduced  
23 during this fact finding hearing that any  
24 hazardous condition existed.

25 CHAIRPERSON ANDERSON: Thank you, Mr.

1 Kline? Any other questions by any other Board  
2 Members?

3 (No response.)

4 CHAIRPERSON ANDERSON: Any further  
5 representation you need to make, Mr. Kline,  
6 before I bring this hearing to closure?

7 MR. KLINE: No. I mean I hope we can  
8 get some clarity on this and get this cleared up.  
9 I mean in looking at the report, I mean this is  
10 the Omni Shoreham hotel, and I don't say that  
11 just by its reputation. I go to the last page  
12 when I get these cases and I always look at the  
13 investigative history. You will see that it's  
14 clear.

15 With respect to this event, you will  
16 also see in the report, and we stand by this,  
17 that the hotel does not intend to work with this  
18 promoter in the future. And although not before  
19 the Board cause the Board has indicated this was  
20 -- the question is all about occupancy, they were  
21 concerned about some things that went on and  
22 tried to wind things down and at one point, even  
23 considered shutting the event down, but they  
24 thought that they would -- that would create more  
25 problems than it would solve.

1           So I think overall, the hotel acted  
2 responsibly and prudently. It was unfortunate  
3 that there are so many guns in our city right  
4 now. And it's unfortunate that there's so much  
5 violence. The only connection to this  
6 establishment is the proximity of the incident  
7 based on what we know.

8           And in terms of the occupancy issue,  
9 we're certainly willing to continue to work with  
10 the Board and the agency to make sure that  
11 there's clarity and everybody understands. I  
12 mean perhaps the licenses need to be reformatted  
13 with respect to hotels so investigators will know  
14 that the number on those ABC licenses relates to  
15 the number of rooms and not the number of  
16 physical bodies that are all owed in the  
17 establishment. Thank you.

18           CHAIRPERSON ANDERSON: Thank you, Mr.  
19 Kline. Thank you, Mr. Brashears. I know Mr.  
20 Roche-Garland, you didn't speak today. Thank  
21 you, Mr. Kline. As I stated, this is a fact-  
22 finding hearing, and the Board is gathering  
23 facts. And the next step is for us to -- we're  
24 going to take this matter under advisement. The  
25 option that the Board has if no further action --

1 well, probably, in this particular case, we have  
2 -- three decisions have to be made, either no  
3 further action, whether or not we will send this  
4 matter to the Office of Attorney General because  
5 it's determined that there is a violation, or  
6 whether or not the Board or the agency needs to  
7 look at its license and what does it mean for a  
8 hotel if their license states the occupancy is  
9 800, what -- exactly what does that mean. All  
10 right. So we will make a decision and inform you  
11 of what our decision is.

12 Thank you very much.

13 MR. KLINE: Thank you.

14 CHAIRPERSON ANDERSON: Have a good  
15 day.

16 (Whereupon, at 11:57 a.m., the above-  
17 entitled matter was adjourned.)  
18  
19  
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25

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: The Shoreham Hotel

Before: DC ABRA

Date: 03-30-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

**NEAL R. GROSS**

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