

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

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IN THE MATTER OF:                   :  
  :  
Equity 18, LLC                       :  
t/a Twelve After Twelve           :  
1212 18th Street NW               :  
Retailer CN - ANC 2B               :  
License No. 117238                 :  
Case #22-251-00009                :  
  :  
(Allowed Establishment             :  
to be Used for                       :  
Unlawful Purposes)                 :  
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Wednesday  
December 7, 2022

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

PRESENT:

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

ALSO PRESENT:

JOSE ORELLANA, DC ABRA Staff  
BORZOU BIABANI, Applicant  
ANDREW KLINE, Applicant Counsel  
ANTHONY CELO, DC OAG  
INVESTIGATOR DONNELL BUTLER

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

2 10:40 a.m.

3 CHAIRPERSON ANDERSON: The next case  
4 on our calendar is Case Number 22-251-00009,  
5 Twelve After Twelve, License Number 117238. Mr.  
6 Orellana, can you please elevate the rights of  
7 the parties in this case, please?

8 MR. ORELLANO: Andrew, your access has  
9 been elevated. Borzou Biabani, your access has  
10 been elevated. Donnell Butler, your access has  
11 been elevated. Anthony Cello, your access has  
12 been elevated. That is all, Chairman.

13 CHAIRPERSON ANDERSON: Thank you.

14 MR. CELO: Good morning.

15 CHAIRPERSON ANDERSON: Good morning.  
16 Hold on. All right. Good morning. Let me have  
17 everyone introduce themselves for the record.  
18 Let's start with the Government.

19 MR. CELO: Assistant Attorney Anthony  
20 Cello on behalf of the District. Good morning,  
21 Your Honor.

22 CHAIRPERSON ANDERSON: Please, Mr.  
23 Celo, just as you -- just please spell your name  
24 for the record.

25 MR. CELO: I apologize.

1 A-N-T-H-O-N-Y, C-E-L-O

2 CHAIRPERSON ANDERSON: And one of the  
3 reasons I always ask the parties to spell their  
4 name for the record is because it's been -- we  
5 have a transcript with a court reporter, so I  
6 want to make sure that the court reporter  
7 properly captures the spelling of everyone's  
8 name. That's why I always ask for that.

9 All right. Mr. Kline, please spell  
10 and state your name for the record, please.

11 MR. KLINE: Yes. Good morning, Mr.  
12 Chairman, members of the Board. Andrew Kline on  
13 behalf of the licensee, A-N-D-R-E-W, last name  
14 K-L-I-N-E. Thank you.

15 CHAIRPERSON ANDERSON: And Mr. Kline,  
16 is your client here with you, sir?

17 MR. KLINE: Yes.

18 CHAIRPERSON ANDERSON: And who is  
19 that, sir?

20 MR. KLINE: Borzou Biabani, principle  
21 of the licensee.

22 CHAIRPERSON ANDERSON: Mr. Biabani,  
23 can you please spell and state your name for the  
24 record, please?

25 MR. BIABANI: The spelling is

1 B-O-R-Z-O-U, and the last name is B-I-A-B-A-N-I.

2 CHAIRPERSON ANDERSON: What's your  
3 relationship to this establishment, sir?

4 MR. BIABANI: Owner.

5 CHAIRPERSON ANDERSON: Thank you.

6 MR. BIABANI: Yes, sir. Thank you.

7 CHAIRPERSON ANDERSON: I believe I'm  
8 looking at someone's computer screen so -- all  
9 right. Mr. Celso, are there any preliminary  
10 matters in this case?

11 MR. CELO: I do believe that there is  
12 some factual agreement. I will let Attorney  
13 Kline address that but otherwise, no other  
14 procedural matters that I'm aware of.

15 INSPECTOR KLINE: Yes. We're --

16 CHAIRPERSON ANDERSON: Yes, Mr. Kline.  
17 What -- yes.

18 MR. KLINE: -- we're prepared to  
19 stipulate to facts that were in the investigative  
20 report.

21 CHAIRPERSON ANDERSON: Could someone  
22 -- I -- well, I -- what I will ask is that  
23 someone put the facts that are being stipulated  
24 though on, and so are we then going to have just  
25 arguments on if whether or not the licensee is --

1 has committed -- okay, so what are we -- what is  
2 it the Board has been asked to do?

3 MR. CELO: The Government would  
4 propose that the Board accept the investigative  
5 report as written as factually accurate. The  
6 Government does intend to present limited  
7 testimony just to flush out some details in the  
8 investigative report, but it would be very  
9 abbreviated. Obviously, the respondent can  
10 present any case they have, and then we would  
11 present argument at that time.

12 CHAIRPERSON ANDERSON: I guess I would  
13 also ask, at least for clarity of the record, is  
14 that if there are facts, then I need someone to  
15 put these facts in the record. I know that we  
16 will -- I know the investigative report -- the  
17 case report, by matter of law, is a part of the  
18 record, but if someone's going to read the  
19 transcript, well, no one's going to know what --  
20 so we can refer back to the facts. So I would at  
21 least like to have some facts -- the facts that  
22 are being stipulated, that they are provided --  
23 that they are read in the record. Or is it -- I  
24 can look up the case report. Is it a long  
25 report? Or you tell me.

1 MR. CELO: Mr. Chair, it's a  
2 three-page report with attachments. I, at this  
3 point, think probably the quickest way to deal  
4 with this is just to present testimony and  
5 understanding that I'll keep it slightly  
6 abbreviated and then the relevant facts can be  
7 put on the record through verbal testimony.

8 INSPECTOR KLINE: That's fine. We'll  
9 withdraw the offer of the stipulation.

10 CHAIRPERSON ANDERSON: All right.  
11 That's fine. All right. This is a show cause  
12 hearing and so the procedures for a show cause  
13 hearing is that the Government will make an  
14 opening statement. Once the Government makes an  
15 opening statement, the licensee can also make an  
16 opening statement or elect to waive their opening  
17 statement until the presentation of their case.

18 The Government will call its  
19 witnesses. The witnesses will testify. Once the  
20 witness has testified, the licensee will have an  
21 opportunity to cross-examine the witness. Once  
22 the licensee has had an opportunity to  
23 cross-examine the witness, then the Board would  
24 have an opportunity to cross, to ask questions of  
25 the witness. Once the Board has asked questions

1 of a witness, then the Government will have --  
2 I'm sorry -- then the licensee will have another  
3 opportunity to ask questions of the witness based  
4 on the questions that were asked by the Board,  
5 and then the Government, since it's the  
6 Government's witness, the Government will have an  
7 opportunity to redirect its witness.

8           Once they have presented witnesses,  
9 then we will have -- the Government has presented  
10 its case, then the licensee will have an  
11 opportunity to present its case, and we'll follow  
12 the same procedure.

13           Once the licensee has presented its  
14 case, we'll have closing. The parties will be  
15 asked whether or not they will do proposed  
16 findings of facts and conclusion of law. And  
17 then I'll close the case. Any questions before  
18 we move forward?

19  
20           MR. CELO: No, Mr. Chair.

21           MR. KLINE: No, Mr. Chairman.

22           CHAIRPERSON ANDERSON: All right.

23 Thank you. Does the Government wish to have a --  
24 provide an opening statement?

25           MR. CELO: Yes, Mr. Chair. May it

1 please the Board. We are here today, ladies and  
2 gentlemen of the Board, to deal with a single  
3 account of allowing the establishment to be used  
4 for an unlawful or disorderly purpose. The  
5 undisputed facts of the case are this: On  
6 February 19, 2022, a patron was found carrying a  
7 pistol inside of Twelve After Twelve. They  
8 brought the pistol into this nightclub. They  
9 engaged in an altercation with another patron.  
10 They drew the gun on that patron. Fortunately,  
11 the incident was resolved without gunfire, and  
12 that patron was arrested and subsequently charged  
13 appropriately.

14 What we are here today to discuss is  
15 how the establishment, Twelve After Twelve,  
16 operated in such a manner as to be conducive to  
17 the disorderly or unlawful conduct, specifically  
18 in this case, allowing a gun to be brought into  
19 the establishment by a patron in violation of  
20 D.C. law. What you will hear from Investigator  
21 Butler is that the security of this establishment  
22 conducted no pat-downs, no wandering, and no  
23 searching of the patrons as they entered.  
24 Security officers did not have any marked  
25 clothing or uniforms to identify them as such.



1 They received no training from the establishment.  
2 The cameras in the establishment were  
3 insufficient to cover the interior and to capture  
4 what actually occurred in this altercation. And  
5 despite being required to do so as a nightclub to  
6 obtain their license, this establishment does not  
7 have a security plan on file with ABRA. Because  
8 of these factors, the establishment did operate  
9 in a method conducive to the unlawful conduct,  
10 and the charges are appropriate.

11 After the case has been presented, I  
12 will ask for an appropriate sanction from this  
13 Board. Thank you.

14 CHAIRPERSON ANDERSON: Thanks, Mr.  
15 Celo. Mr. Kline, do you wish to make an opening  
16 statement?

17 INSPECTOR KLINE: Good morning members  
18 of the Board. This case does involve a handgun  
19 on premises, but it's a situation this licensee  
20 as well as any reasonable person would be  
21 concerned about. But the issue here is was there  
22 a method of operation or was there a course of  
23 conduct that allowed this to happen. It appears  
24 that Mr. Celo intends to throw everything against  
25 the wall, but the issue is one of causation as to

1       how did this gun get there, were things that were  
2       -- that should have been done that usually were  
3       not done that would have had an impact on this,  
4       is that why this happened? Or is this an  
5       isolated incident and a situation where a felon,  
6       according to the report of the club, brought a  
7       gun into the premises.

8               We obviously have serious problems  
9       with handguns in our society, but this  
10       establishment is not at fault. Perhaps there are  
11       things they could have done better, but I caution  
12       the Board against engaging in --

13               CHAIRPERSON ANDERSON: Mr. --

14               INSPECTOR KLINE: -- Monday morning  
15       quarterbacking and looking back and deciding  
16       after the fact what should have been done. The  
17       evidence in this case will show that the licensee  
18       acted quickly and responsibly to deal with this  
19       situation, and that is the evidence that we will  
20       hear. And at the completion of the case, we will  
21       ask that there be no (audio interference) --

22               CHAIRPERSON ANDERSON: All right,  
23       thanks. Mr. Kline, I'm not sure if it's my  
24       equipment, but I'm having some problems hearing  
25       you. Is it just me or are other parties having

1 problems hearing --

2 MR. CELO: Yes, a little bit at the  
3 end.

4 CHAIRPERSON ANDERSON: All right. So  
5 Mr. Kline, just -- yes, it's not just me so make  
6 sure that your microphone is clear and that we  
7 can hear you. All right.

8 INSPECTOR KLINE: Is this better?

9 CHAIRPERSON ANDERSON: Yes.

10 INSPECTOR KLINE: Okay.

11 CHAIRPERSON ANDERSON: All right.

12 Thanks. All right. Does the Government have a  
13 witness that you wish to -- that they wish to  
14 call?

15 MR. CELO: Yes. The Government calls  
16 Donnell Butler, ABRA investigator.

17 CHAIRPERSON ANDERSON: Mr. Butler, do  
18 you swear or affirm to tell the truth and nothing  
19 but the truth?

20 MR. BUTLER: Yes, sir.

21 CHAIRPERSON ANDERSON: Your witness,  
22 sir.

23 DIRECT EXAMINATION

24 MR. CELO: Please state and spell your  
25 name for the record?

1 MR. BUTLER: First name, Donnell,  
2 D-O-N-N-E-L-L, Butler, B-U-T-L-E-R.

3 MR. CELO: And what is your  
4 occupation?

5 MR. BUTLER: Investigator for the  
6 Alcoholic Beverage Regulation Administration.

7 MR. CELO: How long have you been an  
8 investigator with them?

9 MR. BUTLER: I've been employed for  
10 total of 24 years.

11 MR. CELO: And we are here to discuss  
12 a February 19th incident at the establishment  
13 Twelve After Twelve. Is it fair to say that you  
14 were the investigator on that incident?

15 MR. BUTLER: Yes, I was, and  
16 accompanied by my supervisor, Bob Brashears.

17 MR. CELO: And just to keep it brief,  
18 what happened before ABRA was involved in the  
19 incident, what happened to trigger your  
20 investigation?

21 MR. BUTLER: That particular day I got  
22 a phone call from my supervisor and had to  
23 respond to Twelve Twelve -- Twelve After Twelve  
24 for an incident. When I arrived -- excuse me --  
25 when I arrived there -- excuse me, give me a

1 second -- when I arrived on the scene, I was  
2 greeted by my supervisor and the -- the manager  
3 and also an MPD officer who stated that there was  
4 an incident inside of the establishment involving  
5 an altercation and possibly a handgun that was  
6 recovered.

7 MR. CELO: And -- well, give us the  
8 background on what happened with the altercation,  
9 how did it develop, to the best of your  
10 knowledge, and how was it resolved?

11 MR. BUTLER: Well, when I got there --  
12 when I arrived on the scene, pretty much the  
13 situation was over and from what I could  
14 understand, there was an altercation between two  
15 individuals and during the scuffles, somebody in  
16 the crowd hollered he got a gun, he has a gun.  
17 Security officers proceeded to apprehend the  
18 individual and escort him outside of the  
19 building. Once outside, from my understanding,  
20 he appeared to have dropped something on the  
21 ground, and along that same timeframe, MPD  
22 officers was on the scene. And when the  
23 individual bent down to grab something, the  
24 officer apprehended him and felt a handgun on his  
25 person.

1 MR. CELO: And just to be clear, is it  
2 legal to carry a handgun into a nightclub in the  
3 District of Columbia?

4 MR. BUTLER: No, it's not.

5 MR. CELO: Did you investigate  
6 security of the security personnel of Twelve  
7 After Twelve as part of your investigation?

8 MR. BUTLER: Yes. I asked the manager  
9 how many security and to also talk to the head of  
10 security who said they had six personnel, six  
11 security officers on the scene.

12 MR. CELO: Do the security officers  
13 have uniforms or identifying outfits?

14 MR. BUTLER: As I can recall, no.  
15 There was no uniform to distinguish from the  
16 patrons.

17 MR. CELO: Do the security personnel  
18 conduct any pat-down or wand of patrons  
19 entering the establishment?

20 MR. BUTLER: What I understand from  
21 the head of security, they do not conduct  
22 pat-downs or use the wand.

23 MR. CELO: And they conduct no other  
24 searching of patrons, correct?

25 MR. BUTLER: No. That's correct.

1 MR. CELO: And they do not train their  
2 security personnel but instead rely on industry  
3 experience, correct?

4 MR. BUTLER: I'm not understanding  
5 that question. Say it again?

6 MR. CELO: When you -- well, the head  
7 of security was a Boris Todorovic, is that  
8 correct?

9 MR. BUTLER: That's correct.

10 MR. CELO: And you interviewed him  
11 specifically?

12 MR. BUTLER: Yes.

13 MR. CELO: Did you ask him about what  
14 training security officers received?

15 MR. BUTLER: Yes. He stated that they  
16 were totally trained and was well aware of what  
17 their duties were as far as dealing with patrons.

18 MR. CELO: Did he tell you that they  
19 had industry experience as their training or that  
20 Twelve After Twelve trained them specifically?

21 MR. BUTLER: No. He stated that they  
22 had industry experience.

23 MR. CELO: So the establishment didn't  
24 actually training them, they just relied on  
25 whatever knowledge they had when they were hired,

1 correct?

2 MR. BUTLER: Correct. From my  
3 understanding, yes.

4 MR. CELO: Were you able to see the  
5 altercation on the security cameras from the  
6 establishment?

7 MR. BUTLER: No, not at that time. I  
8 received a copy of the video from one of their  
9 associates, and when I reviewed the camera, I  
10 could only see the scuffle. I wasn't able to see  
11 clarity as to who started the altercation.

12 MR. CELO: And the cameras did not  
13 have sufficient coverage of the establishment to  
14 actually see the entire fight, correct?

15 MR. BUTLER: Correct.

16 MR. CELO: Now from a layout, a  
17 floorplan viewpoint, this establishment has  
18 different rooms, correct?

19 MR. BUTLER: Correct.

20 MR. CELO: And the fight took place in  
21 what was called a "green room?"

22 MR. BUTLER: Yes. It's a green room  
23 that's set off to the, I believe, the left of the  
24 establishment. It's a different room.

25 MR. CELO: How many rooms -- sorry --



1       how many rooms do they have?

2                   MR. BUTLER:  They could have multiple  
3       rooms.  I think it's more than three rooms.  I'm  
4       not really certain on that.

5                   MR. CELO:  And the camera footage you  
6       showed, did it -- was it sufficient to cover  
7       every room?

8                   MR. BUTLER:  No, it wasn't.

9                   MR. CELO:  So we have no way of seeing  
10      what actually happened with the actual fight in  
11      this establishment at this time, correct?

12                  MR. BUTLER:  Correct.

13                  MR. CELO:  Okay.  Does Twelve After  
14      Twelve, at least at the time of this incident,  
15      did they have a security plan on file with ABRA?

16                  MR. BUTLER:  No.  Not at the time, no.  
17      Not at the time of the incident.

18                  MR. CELO:  And they are a nightclub --

19                  MR. BUTLER:  Correct.

20                  MR. CELO:  -- they're registered as a  
21      nightclub?

22                  MR. BUTLER:  Correct.

23                  MR. CELO:  And nightclubs are required  
24      to have security plans?

25                  MR. BUTLER:  That's right.

1 MR. CELO: Okay. And recognizing that  
2 that is not one of the charges in this case, I do  
3 just want to note that for the record.

4 Do you believe that the lack of  
5 searching of patrons as they enter the  
6 establishment enabled the patron to bring a gun  
7 into the establishment?

8 MR. BUTLER: That's correct, yes.

9 MR. CELO: And do you believe that it  
10 would have been easier to resolve and investigate  
11 the altercation if security personnel had been  
12 identifiable and if the cameras had full coverage  
13 of the establishment?

14 MR. BUTLER: Yes.

15 MR. CELO: Okay. Nothing further at  
16 this time.

17 CHAIRPERSON ANDERSON: Mr. Kline.

18 CROSS-EXAMINATION

19 INSPECTOR KLINE: Hello, Investigator  
20 Butler.

21 MR. BUTLER: Good morning, sir.

22 INSPECTOR KLINE: In terms of  
23 training, there's no standard training course  
24 with respect to security guards who work in  
25 licensed establishments in the District of

1 Columbia, is there?

2 MR. BUTLER: No, not that I'm aware  
3 of.

4 INSPECTOR KLINE: And isn't it true  
5 that one of the best ways for individuals  
6 employed in the establishments is to work in the  
7 industry and work with others that have had  
8 others that have had experience in industry?

9 MR. BUTLER: Possibly yes, correct.

10 INSPECTOR KLINE: So you're not  
11 troubled by the fact that these individuals  
12 gathered their knowledge as to how to perform by  
13 working in the industry, are you?

14 MR. BUTLER: No, I'm not.

15 INSPECTOR KLINE: Is there anything  
16 that you think that they -- that the  
17 establishment did wrong in reacting to the  
18 presence of the handgun on the premises?

19 MR. BUTLER: No. From what I believe,  
20 once the altercation was recognized, security was  
21 right on -- right on top of it and subdued the  
22 individual.

23 INSPECTOR KLINE: Do you believe if  
24 security had been wearing uniforms, that that  
25 would have prevented the handgun from getting

1 onto the premises?

2 MR. BUTLER: No -- no, not really.

3 INSPECTOR KLINE: Do you believe if  
4 there was complete coverage -- video coverage of  
5 the establishment by way of security cameras,  
6 that that would have prevented the handgun from  
7 getting on the premises?

8 MR. BUTLER: No, it wouldn't -- no.

9 INSPECTOR KLINE: Is there any  
10 requirement that you're aware of that every  
11 ABC-licensed establishment search persons  
12 entering the establishment?

13 MR. BUTLER: Well, it's certainly  
14 recommended that some type of visual or a  
15 pat-down or -- to prevent any weapons entering  
16 the establishment be conducted, yes.

17 INSPECTOR KLINE: So if someone goes  
18 into The La Diplomate, they should be searched  
19 before they go into the establishment, is that --

20 MR. BUTLER: Some type of visual or  
21 some type of means of if they have any weapons or  
22 whatever on their person.

23 INSPECTOR KLINE: Do you believe it's  
24 the responsibility of every ABC-licensed  
25 establishment to do some sort of search of

1 patrons entering the establishment to assure the  
2 patrons do not have any weapons, is that your  
3 testimony?

4 MR. BUTLER: Well, you said everybody.  
5 You're just talking specifically about  
6 nightclubs, not restaurants?

7 INSPECTOR KLINE: I said -- I went  
8 with every person. We'll get to nightclubs --

9 MR. BUTLER: No.

10 INSPECTOR KLINE: -- in a minute.

11 MR. BUTLER: Not every.

12 INSPECTOR KLINE: Is it your position  
13 that every licensed -- every establishment  
14 licensed as a nightclub is required to conduct  
15 searches of persons entering the premises to  
16 ascertain whether they have weapons?

17 MR. BUTLER: Yes. Some type of visual  
18 or some type of pat-down or some type of device  
19 that will trigger a weapons or some type of  
20 device.

21 INSPECTOR KLINE: And that's in the  
22 ABC regulations somewhere?

23 MR. BUTLER: It's not in the  
24 regulations that I'm aware of, no.

25 INSPECTOR KLINE: So where do we get

1 this --where does this requirement come from?

2 MR. BUTLER: Well, from my  
3 understanding based on today's times, I mean  
4 there's violence everywhere so if you have a  
5 nightclub and you have a party, to prevent  
6 anything, I think it's up to the --  
7 responsibility of the establishment to make sure  
8 that no weapons are entered into the  
9 establishment.

10 INSPECTOR KLINE: But that -- doesn't  
11 that normally involve a determination by the  
12 establishment as to what is reasonable for its  
13 particular type of business?

14 MR. BUTLER: It could be.

15 INSPECTOR KLINE: So I mean we talked  
16 about types of licenses. We've talked about you  
17 wanted -- you narrowed it to nightclub licenses  
18 but indeed there are some restaurants, based upon  
19 the type of operation and the clientele, you  
20 would think that's a good idea, right?

21 MR. BUTLER: If he mainly talk about  
22 nightclub, you're talking about restaurants where  
23 you have adults and, you know, kids going into  
24 different establishments, restaurants to eat,  
25 there' a visual if they presume that it's going

1 to be some type of violence or to prevent any  
2 type of violence as precaution.

3 INSPECTOR KLINE: Is there evidence  
4 that this establishment didn't conduct a visual  
5 observation of patrons entering this  
6 establishment?

7 MR. BUTLER: Not that I'm aware of.  
8 I mean I -- when I arrived on the scene, pretty  
9 much everything was over. So to verify that they  
10 did a visual or any type of search is beyond me.  
11 From what I understand, what I was told, there  
12 was no pat-downs and no wandering of any individual  
13 going into the nightclub.

14 INSPECTOR KLINE: But you suggested  
15 that under certain circumstances, a visual  
16 appraisal of the person is sufficient, right?

17 MR. BUTLER: Well, I'm certain that  
18 it's up to the individual establishments to  
19 secure their individual establishments if they  
20 want to safeguard their patrons given today's  
21 times. There's a lot of violence out here, so if  
22 I had -- myself, if I had a establishment, I  
23 would take some type of precaution to make sure  
24 that no weapons of any sort would enter into my  
25 establishment. And it's been going on for years.

1 INSPECTOR KLINE: Wouldn't that be  
2 dependent upon what type of establishment you  
3 have and who might be the clientele?

4 MR. BUTLER: Yes. It probably would  
5 be.

6 INSPECTOR KLINE: Probably would,  
7 right?

8 MR. BUTLER: If he -- yes. If you had  
9 an adult party, sophisticated party, grown adults  
10 and you had -- versus young adults, you know, you  
11 make the necessary adjustments.

12 INSPECTOR KLINE: I believe your  
13 report reflects that the establishment on the  
14 night in question had an over 21 policy in place;  
15 is that correct?

16 MR. BUTLER: That's correct.

17 INSPECTOR KLINE: Okay. So certainly,  
18 younger adults were not present on the premises,  
19 correct?

20 MR. BUTLER: I'm sorry. Say that  
21 again. You --

22 INSPECTOR KLINE: Younger adults --

23 MR. BUTLER: Oh, young adults.

24 (Simultaneous speaking.)

25 MR. BUTLER: Yes. They shouldn't have



1       been present, no.

2                   INSPECTOR KLINE:   And you didn't find  
3 anyone under 21 on the premises?

4                   MR. BUTLER:   Well, no.  I wasn't  
5 specifically looking for any young adults.  I was  
6 there mainly to assess the situation.

7                   INSPECTOR KLINE:   And this is a  
8 relatively new establishment, isn't it?

9                   MR. BUTLER:   New ownership, yes, I do  
10 believe.

11                   INSPECTOR KLINE:   New ownership?  It's  
12 a new license, isn't it?  Do you know when the  
13 license was issued?

14                   MR. BUTLER:   I'm sorry.  I can hardly  
15 hear you, Mr. Kline.

16                   INSPECTOR KLINE:   Do you know when the  
17 license was issued for this establishment?  Isn't  
18 it a new license?

19                   MR. BUTLER:   From what I understand,  
20 it's a new license.  I'm not certain of the  
21 timeframe that they acquired that license.  Less  
22 than a year I do believe maybe.

23                   INSPECTOR KLINE:   Less than a year.  
24 So one of the ways that one makes a determination  
25 as to what is adequate for security is by

1 continuing experience, correct?

2 MR. BUTLER: Correct.

3 INSPECTOR KLINE: So let's go back to  
4 La Diplomate. I seem to be picking on them. So  
5 if La Diplomate discovered, through their  
6 experience, that people were coming in with  
7 weapons, then at that point, it might make sense  
8 for them to look at their policy and change it,  
9 right?

10 MR. CELO: Objection.

11 CHAIRPERSON ANDERSON: What's the  
12 basis -- Mr. Kline?

13 MR. CELO: Objection.

14 CHAIRPERSON ANDERSON: Go ahead, sir.

15 MR. CELO: Objection based on both  
16 relevance and speculation. At this point, we are  
17 not discussing the incident. We are talking  
18 about -- there is no experience sliding scale on  
19 the requirements of the ABC license. We are not  
20 here to talk about the required procedures. We  
21 are here to talk about whether or not they  
22 conducted their business in a manner conducive to  
23 the unlawful conduct. So what we're talking  
24 about with Le Diplomate or what we're talking  
25 about how much experience somebody has or whether

1 they're a new license or an old license -- you  
2 know, I let this go for a bit, but we are beyond  
3 relevance as to the charges that are before the  
4 Board at this time.

5 INSPECTOR KLINE: Mr. Chairman, I  
6 vehemently disagreement. In the absence of a  
7 regulation that requires every licensee to  
8 conduct pat-down searches or some other  
9 requirement, then what we are looking at is the  
10 operation of the establishment and the judgment  
11 of the operator, and all of the cases deal with  
12 that. Lavelle deals with that, Bliss deals with  
13 that, Rumors deals with that. The issue is, is  
14 the establishment acting responsibly given a  
15 number of factors, and one of those factors is  
16 their own experiences and who their clientele is.  
17 That's exactly what this case is about.

18 CHAIRPERSON ANDERSON: I'm going  
19 sustain the objection, Mr. Kline. I mean we're  
20 not talking about every -- we're talking about a  
21 nightclub. I think that's one of the -- your --  
22 the best -- at least to the best of my knowledge,  
23 Le Diplomate isn't a nightclub, and you're asking  
24 there, and you are aware that depending on the  
25 license class, that there are different kind of

1 regulations that they need to comply --

2 INSPECTOR KLINE: With all due  
3 respect, there is no different regulation for  
4 nightclubs other than the filing of a security  
5 plan in terms of what -- of searches. There's no  
6 different requirement and indeed, the  
7 investigator has already admitted that there are  
8 ABC establishments that are licensed as  
9 restaurants that would merit heightened scrutiny  
10 of patrons entering based upon their clientele  
11 and based upon the way they conduct their  
12 operation.

13 CHAIRPERSON ANDERSON: Okay, listen.  
14 I'm sustaining your objection, Mr. Kline. Let's  
15 move on.

16 MR. KLINE: Okay. Investigator  
17 Butler?

18 MR. BUTLER: Yes, sir.

19 INSPECTOR KLINE: There are certain  
20 facts that are established by the report. One is  
21 that a fight broke out in the establishment,  
22 correct?

23 MR. BUTLER: Correct.

24 INSPECTOR KLINE: Second is that  
25 security went to separate the combatants in the

1 fight, correct?

2 MR. BUTLER: Correct.

3 INSPECTOR KLINE: One of the  
4 combatants had a gun, correct?

5 MR. BUTLER: Correct.

6 INSPECTOR KLINE: He was restrained by  
7 security, correct?

8 MR. BUTLER: Yes.

9 INSPECTOR KLINE: MPD was flagged down  
10 by security, correct?

11 MR. BUTLER: Correct.

12 MR. KLINE: He was taken outside and  
13 based on the video, attempted to come back in but  
14 was restrained by or prevented by security from  
15 coming back in, correct?

16 MR. BUTLER: Yes.

17 MR. KLINE: In-house security  
18 personnel effectively communicated by way of  
19 two-way radios and flashlights, correct?

20 MR. BUTLER: Correct. Yes, sir.

21 INSPECTOR KLINE: The ABC manager, in  
22 fact, was notified by security by way of a  
23 two-way radio of the incident, correct?

24 MR. BUTLER: Yes -- yes, sir.

25 INSPECTOR KLINE: So what is it, in

1 your mind, that you believe that this  
2 establishment did wrong here?

3 MR. BUTLER: Where I believe they're  
4 wrong?

5 INSPECTOR KLINE: Yes. What did they  
6 do wrong? I mean didn't they react textbook --

7 MR. BUTLER: They --

8 (Simultaneous speaking.)

9 INSPECTOR KLINE: -- the situation  
10 they were presented?

11 MR. BUTLER: Yes. I think the issue  
12 is how did he get a gun inside the establishment.  
13 Sure, they reacted to the altercation which they  
14 were supposed to do. But I think the main issue  
15 is, well, how did he get in with the gun, you  
16 know.

17 INSPECTOR KLINE: So your position is  
18 they violated a rule that a nightclub must search  
19 every patron that comes in for weapons; is that  
20 your position?

21 MR. CELO: That is a gross  
22 mischaracterization of what the testimony was.

23 INSPECTOR KLINE: Cross-examination,  
24 I think it's exactly what the testimony was.

25 CHAIRPERSON ANDERSON: I'm going to

1       overrule the objection. He can answer the  
2       question if he can.

3               MR. BUTLER: I'm sorry. Can you  
4       repeat that again then?

5               INSPECTOR KLINE: Yes. So your  
6       contention as to what this establishment did  
7       wrong is it violated an unwritten rule that every  
8       nightclub is required to conduct searches of  
9       those entering their premises for weapons.

10              MR. BUTLER: Well, I think --

11              INSPECTOR KLINE: Is that correct?

12              MR. BUTLER: No. I think that it's in  
13       their best interest when they have a nightclub  
14       with certain individuals entering the nightclub  
15       to either do a visual or a pat-down or some type  
16       of search.

17              INSPECTOR KLINE: I'm going to move to  
18       strike that --

19              MR. BUTLER: And this --

20              INSPECTOR KLINE: -- Mr. Chair,  
21       because -- Mr. Chair --

22              MR. BUTLER: I can hardly hear you,  
23       Mr. Kline.

24              INSPECTOR KLINE: Okay. I'm going to  
25       --

1 CHAIRPERSON ANDERSON: Mr. Butler, it  
2 might be your equipment. I can clearly hear Mr.  
3 Kline.

4 MR. BUTLER: Okay.

5 CHAIRPERSON ANDERSON: Maybe there's  
6 something going with your equipment. I'm sorry.  
7 Go ahead, Mr. Kline. What is --

8 INSPECTOR KLINE: Yes. I'm going to  
9 move to strike that because the chair has ruled  
10 that there is no sliding scale and, you know, the  
11 best interest or the best thoughts are not what's  
12 relevant here. I tried to develop that testimony  
13 and there was an objection, and I was not allowed  
14 to pursue that. So I would ask that the question  
15 -- that the answer be stricken and the question  
16 that I've asked be answered.

17 MR. CELO: He did answer the question,  
18 Mr. Chair. He answered it "no," and he explained  
19 his answer. Mr. Kline is seeking to strike an  
20 answer that he did not like, but he asked the  
21 question so the answer's out there.

22 INSPECTOR KLINE: The answer relates  
23 to issues that the Board ruled by an evidentiary  
24 ruling are not relevant. I mean it is or it  
25 isn't. It's either relevant to look at the facts



1 and circumstances of each licensee when we do not  
2 have a hard and fast rule in effect or it's not.  
3 It can't be both ways.

4 CHAIRPERSON ANDERSON: Do you have  
5 something to say, Mr. Celo?

6 MR. CELO: Yes, Mr. Chair. As I  
7 understood the past evidentiary ruling, the  
8 objection that I made at that time and the ruling  
9 was discussing all establishments of all types  
10 and all circumstances. Mr. Kline just asked what  
11 did this establishment do wrong, and he asked if  
12 it was violating an unwritten rule. Mr. Butler  
13 clearly testified that it is not a violation of  
14 the unwritten rule, and then he went on to answer  
15 the question and say what he felt they did wrong.  
16 It was perfectly responsive. It was within the  
17 bounds of what this Board has previously  
18 permitted as testimony. There's no reason to  
19 strike. There's no evidentiary problem with the  
20 answer that was provided.

21 MR. KLINE: I'll move on.

22 CHAIRPERSON ANDERSON: Let's move on.

23 MR. KLINE: So Mr. Butler, let's go at  
24 this a different way. Is there something that  
25 they did wrong other than not search?

1                   MR. BUTLER: Well, I'm not certain  
2 what they did wrong in the beginning because as I  
3 stated, I got there after the incident was over.  
4 So to observe what they did wrong in the very  
5 first, I'm not certain what they did wrong. I  
6 only going by what I was told, that there was no  
7 pat-downs and no wandings of individuals. And how  
8 did they guy get in there with a gun, I'm not  
9 certain.

10                   INSPECTOR KLINE: So it's your  
11 position that if a nightclub is not doing  
12 pat-downs and wandings, even though there's no  
13 indication, rule, or regulation to that effect,  
14 that they are somehow in violation of something;  
15 is that what I'm understanding?

16                   MR. BUTLER: No. The violation came  
17 in when there was altercation inside the night  
18 club but however, I do believe that each  
19 nightclub, if they have a certain type of  
20 clientele or certain crowd that enters their  
21 establishment, they should take some type of  
22 reasonable steps to ensure that their patrons are  
23 safe.

24                   INSPECTOR KLINE: So it is dependent  
25 upon the clientele, isn't it?

1 MR. BUTLER: Could be.

2 INSPECTOR KLINE: And it's dependent  
3 upon the character of the establishment, correct?

4 MR. BUTLER: That's another factor.

5 INSPECTOR KLINE: All right. And that  
6 character can change over time, can't it;  
7 establishments change all the time, don't they?

8

9 MR. BUTLER: They do.

10 INSPECTOR KLINE: An operator,  
11 typically that are newly licensed, learn things  
12 about their establishments and as a result of  
13 that, implement new procedures, don't they?

14 MR. BUTLER: Correct.

15 INSPECTOR KLINE: So someone might  
16 have then and not think that they needed to  
17 search persons entering their establishments, but  
18 then when they have an incident with a gun, they  
19 change their mind and say we need to do this,  
20 right?

21 MR. BUTLER: It would be for their  
22 betterment to take some type of precautions but  
23 here again --

24 INSPECTOR KLINE: And does --

25 (Simultaneous speaking.)

1 MR. BUTLER: -- we're -- here again,  
2 we're still talking about --

3 (Simultaneous speaking.)

4 INSPECTOR KLINE: -- direction?

5 MR. BUTLER: I'm sorry.

6 CHAIRPERSON ANDERSON: Mr. Kline, can  
7 you give the witness an opportunity to answer the  
8 question, sir?

9 INSPECTOR KLINE: and doesn't that  
10 happen all the time with or without the Board's  
11 direction where an establishment learns based  
12 upon things that happen in its establishment --

13 MR. BUTLER: You ask --

14 INSPECTOR KLINE: -- according to your  
15 procedures?

16 MR. BUTLER: Based on situations and  
17 based on incidents, yes, they modify or change  
18 the procedures, yes.

19 INSPECTOR KLINE: Okay. And the fact  
20 that they didn't have those procedures in place  
21 in the first place isn't necessarily a violation,  
22 is it?

23 MR. CELO: Objection.

24 MR. BUTLER: Thank you.

25 MR. CELO: Phrasing and a very

1       ambiguous question. I'm not quite sure what that  
2       question was referring to.

3               MR. KLINE: Pretty clear to me but I'm  
4       happy to rephrase it --

5               MR. CELO: There were a lot of  
6       pronouns there and I'm not entirely sure what  
7       that question was.

8               CHAIRPERSON ANDERSON: Please rephrase  
9       the question, Mr. Kline.

10              INSPECTOR KLINE: Mr. Butler, so --

11              MR. BUTLER: Yes, sir.

12              INSPECTOR KLINE: -- the fact that an  
13       establishment that's been open, in this case, for  
14       a brief time learns things from its operation and  
15       then makes changes, that doesn't mean that what  
16       they were doing before was somehow violative of  
17       ABC law or regulations, does it?

18              MR. BUTLER: Not necessarily, no.

19              INSPECTOR KLINE: And that's  
20       particularly true when there's no specific  
21       regulation requiring them to do what it is that  
22       they've change and are now doing, right?

23              MR. BUTLER: If I'm understanding you,  
24       you're saying that if they doesn't -- if they  
25       don't perform pat downs or searches in the

1 beginning, they pretty much not in violation of  
2 anything? It's only until something happens that  
3 they're in violation. Is that what I'm  
4 understanding you to say?

5 INSPECTOR KLINE: No. I'm not saying  
6 that. What I'm saying to you is in order -- do  
7 you agree that in order that an establishment  
8 should conduct searches, pat downs, what have  
9 you, if it knows or has reason to know that the  
10 nature of its establishments is such that it will  
11 attract people that want to bring in guns?

12 MR. BUTLER: Well, I think that given  
13 the history of violence of certain nightclubs and  
14 even though this one hasn't only been open for a  
15 few, I think that it's to their -- I think it's  
16 best that they take some type of precaution  
17 dealing with different crowds of people and  
18 different events that they have to ensure that  
19 their patrons are safe in any way given the  
20 history of violence in this city. I had a  
21 nightclub, I wouldn't want anybody to come in  
22 with a weapon. And also, I would take some type  
23 of precaution, either a visual or a pat down or a  
24 wand. So in this case, the issues are how this  
25 guy get in night club with a gun, you know,

1       whether they did a pat down or not.  So I think  
2       that, you know --

3                   INSPECTOR KLINE:  And in this case,  
4       there's no evidence that there was a lack of  
5       visual inspection when people entered the  
6       establishment, correct?  This --

7                   MR. BUTLER:  Well, as I say, you know,  
8       I -- I'm not certain happened prior to that.  
9       When I got there, you know, everything was pretty  
10      much over so I'm not certain if they did a  
11      visual.  I know some particular nightclubs, when  
12      individuals are -- females are going into the  
13      club, they do do a visual, look inside their  
14      purses and, you know, and they at least go around  
15      the waistband of guys and see if they have any  
16      weapons of sorts.  You know, it's not uncommon.  
17      But in this particular case, I think that even  
18      though they only been open for a certain amount  
19      of time and they had some type of training, they  
20      should have known to -- far as the violence and  
21      stuff in the city, they should have known to  
22      either do a visual or a -- at least a scan or a  
23      feel to see if anybody had anything on them.

24                   INSPECTOR KLINE:  A couple more  
25      questions.  So that would be true of one licensed

1 as a restaurant or a tavern that had  
2 entertainment, live entertainment as well,  
3 correct?

4 MR. BUTLER: Well, if you was talking  
5 about what type of entertainment. As you very  
6 well know, there are certain types of  
7 entertainment that attract certain crowds of  
8 individuals, you know, and you want to -- if you  
9 want to safeguard your patrons, then I'll suggest  
10 -- I would suppose that you would take the  
11 necessary steps to do that. You know, at least  
12 do a visual if not a pat down or a wand certain  
13 crowds or individuals that's going into a  
14 nightclub with certain type of entertainment.  
15 Not all entertainment is, you know, probably not  
16 required but certainly some type of visual to be  
17 on guard. I mean this is -- come on now, this is  
18 D.C. and this day and age, there's a lot of  
19 violence going on. And I'm certain if they have  
20 industrial training, security training, that they  
21 will either do a visual going inside the club or  
22 even attempt to pat down somebody, you know.

23 INSPECTOR KLINE: I don't have any  
24 further questions. Thank you, Mr. Chair.

25 CHAIRPERSON ANDERSON: Mr. Butler,



1 it's correct that this establishment is a  
2 nightclub; is that correct?

3 MR. BUTLER: Correct, sir.

4 CHAIRPERSON ANDERSON: And is it  
5 correct that all nightclubs are required to have  
6 a security plan?

7 MR. BUTLER: Security plan, yes, sir.

8 CHAIRPERSON ANDERSON: Do you know  
9 whether or not at the time of the incident if  
10 this establishment had a security plan?

11 MR. BUTLER: No. As -- no, they  
12 didn't at the time.

13 CHAIRPERSON ANDERSON: Now as part of  
14 having a security plan, would one of the -- I'm  
15 sorry. Within the security plan, are there  
16 provisions for pat downs or -- on the entrance of  
17 --

18 MR. BUTLER: Yes.

19 CHAIRPERSON ANDERSON: -- of clientele  
20 to enter the establishment; is that a part of a  
21 typical security plan, are you aware?

22 MR. BUTLER: Yes. That would be part  
23 of a typical security plan, yes.

24 CHAIRPERSON ANDERSON: All right. Mr.  
25 Short, do you have any questions you want to ask?

1 You're on mute. I can't hear you, Mr. Short.

2 MEMBER SHORT: Good morning, still --

3 CHAIRPERSON ANDERSON: Turn your  
4 volume up, Mr. Short. I can hear you but you're  
5 just -- turn your volume up, sir.

6 MEMBER SHORT: That better?

7 CHAIRPERSON ANDERSON: Up some more.

8 MEMBER SHORT: Trying to do that, Mr.  
9 Chair. I'm having a problem.

10 CHAIRPERSON ANDERSON: You're -- I can  
11 hear you, Mr. Short. I can hear you now.

12 MR. BUTLER: Yes. But I can barely  
13 hear you, Mr. Short.

14 CHAIRPERSON ANDERSON: I know, Mr.  
15 Butler. Just --

16 MR. BUTLER: Okay.

17 CHAIRPERSON ANDERSON: -- we are --  
18 okay, so try your number.

19 MEMBER SHORT: Mr. Butler, now that it  
20 has been established by the question that was  
21 given to you by our Chairman, Chairman Anderson  
22 that all nightclubs are required to have security  
23 plans; is that correct?

24 MR. BUTLER: Yes, sir.

25 MEMBER SHORT: Why is that nightclubs

1 have to have a security plan and not a restaurant  
2 or tavern as a requirement of their license?

3 MR. BUTLER: Restaurants -- here we  
4 talk about different clientele. Where you talk  
5 about a restaurant, you talk about families with  
6 little kids coming in to eat, maybe some  
7 background music at the most. When you're  
8 talking about a --

9 MEMBER SHORT: That's straight up.  
10 I'm not going to belabor that point. We've  
11 established that nightclubs are required by their  
12 license to have a security plan.

13 MR. BUTLER: Some type of --

14 MEMBER SHORT: So now I'd like to ask  
15 you what do security plans provide in the way of  
16 protections against people bringing in weapons of  
17 any type?

18 MR. BUTLER: Well, a security will  
19 indicate to their security staff what they are  
20 and what they are not supposed to do, you know.  
21 So if they had a security plan, I'm certain that  
22 it would be marked in the plan that upon entrance  
23 to this particular establishment, there's a pat  
24 down or a search of pocketbooks or a want.

25 MEMBER SHORT: So at the particular

1 time that this incident occurred and you  
2 investigated the gun incident, is it correct to  
3 say this particular establishment, Twelve After  
4 Twelve, did not have the required security plan;  
5 is that correct?

6 MR. BUTLER: That's correct, sir.

7 MEMBER SHORT: Did you check with  
8 someone and find out why they did not have a  
9 security plan that's required by law.

10 MR. BUTLER: Yes, sir. When I came  
11 back -- when I come back to the office and did a  
12 search of the records, they -- it produced no  
13 type of security plan at that particular time.

14 MEMBER SHORT: And it was also stated  
15 that training by industry; is that the standard  
16 for people with a security plan --

17 MR. BUTLER: I --

18 MEMBER SHORT: -- in your knowledge?

19 MR. BUTLER: -- in my knowledge, so  
20 I'm not certain if that's the standard or not,  
21 because I do believe that different security  
22 companies have their own way of -- in training  
23 their people, whether they come from police  
24 department or some other type of entity.

25 MEMBER SHORT: Okay. Let me ask you

1 this question. Does this establishment, Twelve  
2 After Twelve, have any, or could you find, or did  
3 you find out from anyone that Twelve After  
4 Twelve, if any training was provided by any  
5 outside security companies?

6 MR. BUTLER: No, sir.

7 MEMBER SHORT: Now the testimony also  
8 was that the security persons were not  
9 identified. They were dressed just like  
10 everybody else in the nightclub; is that correct?

11 MR. BUTLER: From my understanding,  
12 yes.

13 MEMBER SHORT: And is your  
14 understanding that the security persons wrestled  
15 down the perpetrator with a gun and escorted him  
16 out of the establishment, correct?

17 MR. BUTLER: Correct, sir.

18 MEMBER SHORT: Was that after someone  
19 had hollered "gun" in the club and before he was  
20 taken out of the club that someone said this  
21 person having the problem has a gun?

22 MR. BUTLER: I'm not certain which  
23 came first, but I believe during the struggle,  
24 from what I understand, during the struggle,  
25 somebody may have noticed that he had a gun, a

1           weapon on his person.

2                       MEMBER SHORT: Did the security  
3 persons ever check him for a gun before they let  
4 him out of the club, out of the nightclub?

5                       MR. BUTLER: No. Not that I'm aware  
6 of, no. It wasn't until, from my understanding,  
7 he was looking for something that had -- that he  
8 had dropped, and the police officer went to  
9 stabilize him and felt that on his person.

10                      MEMBER SHORT: So security never found  
11 or checked for a gun when they took him out of  
12 the club; is that a fair assessment to say?

13                      MR. BUTLER: That's -- yes, sir, it  
14 is.

15                      MEMBER SHORT: He was trying to get  
16 back into the club after security had taken him  
17 out; is that correct?

18                      MR. BUTLER: That's correct from my  
19 understanding, yes, sir.

20                      MEMBER SHORT: Now this question I  
21 hope you have the answer to. Security plans  
22 normally say that security must have -- be marked  
23 differently than the clientele; is that true or  
24 not true?

25                      MR. BUTLER: Yes. Some type of

1 identifying stating that they're security or, you  
2 know, to identify from the patrons and security  
3 staff.

4 MEMBER SHORT: Night of your  
5 investigation, no one had any identification as  
6 to being security persons; is that correct?

7 MR. BUTLER: That's correct, sir.

8 MEMBER SHORT: So would that have been  
9 in violation of a security plan?

10 MR. BUTLER: Yes, sir.

11 MEMBER SHORT: Thank you very much for  
12 your answers, sir. Mr. Chairman, that's all I  
13 have at this time.

14 CHAIRPERSON ANDERSON: Any other  
15 questions by any other Board members? All right.  
16 Go ahead, Mr. Grandis.

17 MEMBER GRANDIS: Investigator Butler,  
18 I want to thank you for your report and for your  
19 testimony today. I am correct -- it is correct  
20 that the report that you have been testifying,  
21 it's a report you wrote?

22 MR. BUTLER: Correct, sir.

23 MEMBER GRANDIS: is that correct?

24 MR. BUTLER: Yes, sir.

25 MEMBER GRANDIS: Okay. In my reading

1 of the report, it does not seem to concern that  
2 there was a gun until the gentleman was outside  
3 and someone patted his jacket; am I understanding  
4 that is what is written in your report?

5 MR. BUTLER: Yes, sir.

6 MEMBER GRANDIS: So there is no  
7 statement that anyone actually saw a gun in the  
8 establishment other than someone saying he has a  
9 gun?

10 MR. BUTLER: Yes, sir -- yes, sir.

11 MEMBER GRANDIS: And am I correct that  
12 I read the report properly or correctly that it  
13 was observed that this person threatened to kill  
14 somebody?

15 MR. BUTLER: I'm not certain about  
16 that part, sir.

17 MEMBER GRANDIS: Okay. I can go back.  
18 Okay. But as far as what your report says, the  
19 security personnel, as soon as they -- I  
20 understand as soon as they were made aware of  
21 this altercation, they attempted to remove this  
22 gentleman from the club?

23 MR. BUTLER: Yes, sir.

24 MEMBER GRANDIS: And it wasn't until  
25 they were outside the club that security or any



1 employee of the establishment actually witnessed  
2 the gun?

3 MR. BUTLER: To my understanding, when  
4 the police officer grabbed him or, you know, put  
5 him in custody, then that's when he discovered  
6 the gun.

7

8 MEMBER GRANDIS: that was outside,  
9 though?

10 MR. BUTLER: Outside of the establish  
11 -- yes, sir.

12 MEMBER GRANDIS: I think I heard you  
13 testify that this particular licensee was a new  
14 nightclub license, or was it a renewed night club  
15 license.

16 MR. BUTLER: I think it was a fairly  
17 new establishment from my understanding.

18 MEMBER GRANDIS: Is it your  
19 understanding -- do you -- and this may be  
20 outside your work area, but if there was an  
21 application for a nightclub license, as part of  
22 the application process, the agency is to request  
23 a security plan because they're seeking a  
24 nightclub license?

25 MR. BUTLER: That's -- you know,

1       sometime it can be a norm that if you have a  
2       nightclub that you should also provide some type  
3       of security plan.

4               MEMBER GRANDIS: I think regulations  
5       state nightclubs shall have security plans?

6               MR. BUTLER: Yes.

7               MEMBER GRANDIS: So I think that's  
8       part of the testimony. But my question is are  
9       you aware -- and you may not be because you're an  
10      investigator, you're not licensing -- that if  
11      it's a new application for a nightclub, isn't  
12      part of the application -- is it part of the  
13      application process that before it can be  
14      approved, there must be a security plan  
15      submitted?

16              MR. BUTLER: Yes. To my understanding  
17      from experience, yes, sir.

18              MEMBER GRANDIS: Okay. I think from  
19      your testimony -- it's my impression from your  
20      testimony that this establishment, other than  
21      having not pat down, and I understand your  
22      concern about that on the outside, but you did  
23      not state in your testimony that the personnel in  
24      the establishment had any violations in how they  
25      handled the situation and that it was appropriate

1 to take the person outside?

2 MR. BUTLER: Yes, sir.

3 MEMBER GRANDIS: Okay. Thank you.

4 Mr. Chairman, thank you.

5 CHAIRPERSON ANDERSON: Any other  
6 questions by any other Board members? All right.  
7 I have another question I want to ask you or a  
8 couple of more questions I want to ask you, Mr.  
9 Butler.

10 MR. BUTLER: Yes, sir.

11 CHAIRPERSON ANDERSON: Is it -- the  
12 person who allegedly had the gun, were they just  
13 a patron or they -- were they an employee of the  
14 -- are you if the person had any other  
15 relationship with this establishment other than  
16 just being a patron?

17 MR. BUTLER: From what I understand,  
18 he was just a patron, not a employee.

19 CHAIRPERSON ANDERSON: Are you aware  
20 if -- have you looked at the history of this case  
21 -- I'm sorry -- of this licensee? Did you  
22 provide -- as part of your report, did you list  
23 their history, do you have investigative history?

24 MR. BUTLER: Yes. I did attempt to  
25 bring up a history but there was no history

1 available under this particular license.

2 CHAIRPERSON ANDERSON: So, therefore,  
3 since -- you said -- since you're saying there's  
4 no history, the Board doesn't have or the agency  
5 doesn't have any knowledge or notice that a  
6 previous firearm or weapon was located in this  
7 establishment; is that correct?

8 MR. BUTLER: Correct, sir.

9 CHAIRPERSON ANDERSON: All right. Mr.  
10 Kline, any questions?

11 RE-CROSS-EXAMINATION

12 MR. KLINE: Yes, indeed. Mr. Butler.

13 MR. BUTLER: Yes, sir.

14 INSPECTOR KLINE: All you know is that  
15 there's no security plan on file, correct

16 MR. BUTLER: Correct, sir.

17 INSPECTOR KLINE: So in terms of what  
18 instruction was given to security or anything  
19 else, you don't know anything about that, do you?

20 MR. BUTLER: No, sir.

21 INSPECTOR KLINE: Mr. Chairman, may I  
22 be granted privileges to share my screen, please?

23 CHAIRPERSON ANDERSON: Mr. Orellana,  
24 can you please allow Mr. Kline to share his  
25 screen, please?

1 MR. ORELLANO: It's been elevated.

2 MR. KLINE: Mr. Butler, do you -- can  
3 you see what I've shared?

4 MR. BUTLER: Yes, sir.

5 INSPECTOR KLINE: All right. Do you  
6 recognize this?

7 MR. BUTLER: Not particularly, no,  
8 sir.

9 INSPECTOR KLINE: If I told you that  
10 this is what is on ABRA's website as guidelines  
11 for security plans --

12 MR. BUTLER: Oh, I'm sorry. Yes --  
13 yes -- yes.

14 INSPECTOR KLINE: -- have you --

15 MR. BUTLER: Okay. Yes. Refreshed my  
16 memory. Yes.

17 INSPECTOR KLINE: Okay. Now under  
18 minimum requirements, there's nine requirements  
19 for a security plan, correct?

20 MR. BUTLER: Yes.

21 INSPECTOR KLINE: All right. Can you  
22 show me there among those nine where it is that  
23 it says the security plan requires that an  
24 establishment search those entering the premises

25 MR. CELO: Objection, relevance. Mr.

1 Chair --

2 CHAIRPERSON ANDERSON: I'm sorry. Go  
3 ahead, sir.

4 MR. CELO: -- this document is the  
5 general requirements for all establishments. As  
6 we have talked about, this is not the -- it is  
7 not the question here as to what the regulations  
8 are as they relate to all establishments. The  
9 question is what method of operation this  
10 particular establishment was using.

11 CHAIRPERSON ANDERSON: Mr. Kline.

12 MR. KLINE: So Chair, there were a lot  
13 of questions about a security plan and there's no  
14 security plan. And somehow in some way that  
15 therefore means that this establishment has  
16 engaged in a method and manner of operation that  
17 allows guns to come into its premises. And there  
18 were lots of questions I heard about security  
19 plan. So I don't understand why this isn't  
20 relevant, and I don't like to object to Board  
21 member's question, so I normally don't but it's  
22 all come in, so let's talk about them. What are  
23 the requirements of the security plan, and how is  
24 it that a filing of a security plan consistent  
25 with these minimum requirements would have had

1 any bearing on the situation whatsoever.

2 CHAIRPERSON ANDERSON: I'm going to  
3 overrule the objection, but I know that Mr.  
4 Kline, the Board asked about it and I know I'd  
5 asked about a security plan because, as you are  
6 aware, all nightclubs are required to file  
7 security plans, and as part of the security plan,  
8 at least one of the regulations, it talks about  
9 the procedures for an individual to enter. So,  
10 but I am overruling the objection, so the witness  
11 can answer the question if he can.

12 INVESTIGATOR BUTLER: As you stated,  
13 Mr. Chair, procedures to permitting patrons to  
14 enter, you know, I think that the establishment,  
15 under those particular terms, should take some  
16 type of reasonable steps to ensure that their  
17 patrons are safe, you know, providing that the  
18 patrons are permitted to enter under certain  
19 circumstances.

20 MR. KLINE: So, you were asked, you  
21 know, why is it that nightclubs are required to  
22 have security plans, and I believe you answered  
23 because of the nature of their activities, but  
24 the fact of the matter is there are other  
25 establishments that are required to have security

1 plans as well, aren't there?

2 INVESTIGATOR BUTLER: Yeah, there are,  
3 in fact, other establishments out there that may  
4 be required to have security plans based on their  
5 activities and based on the nature of their  
6 license.

7 MR. KLINE: And the Board will impose  
8 those requirements when it deems it appropriate,  
9 correct?

10 INVESTIGATOR BUTLER: I'm sorry, can  
11 you say that again?

12 MR. KLINE: I said the Board will  
13 impose a requirement of a security plan --

14 INVESTIGATOR BUTLER: Yes.

15 MR. KLINE: -- when it deems it  
16 appropriate, correct

17 INVESTIGATOR BUTLER: Yeah, yes, sir.

18 MR. KLINE: So, if this establishment  
19 had a filed security plan, the only way it would  
20 have had any bearing on this case is if it had a  
21 requirement that those entering the premises had  
22 to be searched in some way, correct?

23 INVESTIGATOR BUTLER: Yes, if that was  
24 on their requirements, yes, sir.

25 MR. KLINE: But that is, searching is



1 not a specific requirement for a security plan  
2 for a nightclub, is it?

3 INVESTIGATOR BUTLER: You know, we --

4 MR. KLINE: By regulation --

5 INVESTIGATOR BUTLER: You know, we're  
6 going around and around. Okay, I'm sorry.

7 CHAIRPERSON ANDERSON: Mr. Butler,  
8 please listen to the question and you are  
9 required to answer the question that is --

10 INVESTIGATOR BUTLER: Okay.

11 CHAIRPERSON ANDERSON: -- being asked.

12 INVESTIGATOR BUTLER: Can you repeat  
13 the question again, sir?

14 MR. KLINE: Yes, the question is that  
15 the -- a security plan is not required to include  
16 provisions that persons entering the  
17 establishment be searched, is that correct?

18 INVESTIGATOR BUTLER: Yeah, I can  
19 barely hear you, but, yeah, I think you -- yeah,  
20 I think so. I can barely hear you.

21 CHAIRPERSON ANDERSON: Mr. Butler,  
22 it's your system. I can hear him. If you didn't  
23 hear the question, sir, do not answer a question  
24 that you can barely hear.

25 INVESTIGATOR BUTLER: Yeah.

1                   CHAIRPERSON ANDERSON: So, if you did  
2 not hear the question, please, Mister -- I can  
3 clearly hear Mr. Kline, but if you did not hear  
4 the question, I do not want you to answer, to  
5 give an answer to a question that you can barely  
6 hear, sir.

7                   INVESTIGATOR BUTLER: Yes, sir.

8                   CHAIRPERSON ANDERSON: So, do you need  
9 Mr. Kline --

10                  INVESTIGATOR BUTLER: Yeah, you need  
11 to repeat it. I couldn't hear the question that  
12 clearly, sir.

13                  MR. KLINE: Okay, so just, I mean, I  
14 think we've covered it, but I just, I want to be  
15 clear that the regulations do not require that a  
16 security plan require that persons entering a  
17 nightclub be searched, correct?

18                  INVESTIGATOR BUTLER: Correct.

19                  MR. KLINE: So, even if one had been  
20 filed, it may or may not have had that in it and  
21 it would have been acceptable, correct?

22                  INVESTIGATOR BUTLER: Correct.

23                  MR. KLINE: Thank you. I have nothing  
24 further.

25                  CHAIRPERSON ANDERSON: You can close

1 your screen, Mr. Kline, please.

2 MR. KLINE: Yes. Thank you.

3 CHAIRPERSON ANDERSON: All right, and  
4 any redirect?

5 MR. CELO: Yes, Mr. Chair. Mr.  
6 Butler, I want to jump off that last point first.  
7 When a security plan is filed, ABRA has the  
8 ability to either accept or reject a proposed  
9 security plan, correct?

10 MR. KLINE: Objection. I don't know  
11 whether he knows that. I mean, that's in the  
12 regulations and we know what the regulations  
13 require for a security plan and what they don't  
14 require, and what they require was summarized in  
15 what I just put up on the screen.

16 CHAIRPERSON ANDERSON: Overruling the  
17 objection. Let's move on. The witness  
18 testified. I'm overruling the objection. Go  
19 ahead.

20 MR. CELO: So, if ABRA determines that  
21 the proposed terms of the security plan are  
22 insufficient, they can reject it and require  
23 different terms, is that fair?

24 INVESTIGATOR BUTLER: From what I  
25 understand, yes.

1                   MR. CELO: Okay, now if we jump all  
2 the way back to the beginning of that cross  
3 examination, you were asked if the security  
4 officers were wearing uniforms, it wouldn't have  
5 stopped the handgun coming into the facility. Do  
6 you remember that question?

7                   INVESTIGATOR BUTLER: Yes, sir.

8                   MR. CELO: In this establishment, they  
9 didn't just have stationary. They had stationary  
10 and roving officers, correct?

11                  INVESTIGATOR BUTLER: Correct, sir.

12                  MR. CELO: Okay, in your experience,  
13 can the presence of clearly marked, identified  
14 security officers help to prevent an altercation  
15 from occurring?

16                  INVESTIGATOR BUTLER: In my  
17 experience, yes.

18                  MR. CELO: So, if the security  
19 officers in this establishment were wearing  
20 uniforms, might it have impacted whether or not  
21 the altercation actually occurred?

22                  INVESTIGATOR BUTLER: Yes, sir.

23                  MR. CELO: You were also asked if the  
24 cameras would have stopped handguns coming in and  
25 you said they would not have. Do you remember

1 that?

2 INVESTIGATOR BUTLER: Yes, sir.

3 MR. CELO: However, if this  
4 establishment had had full camera coverage of the  
5 interior, would that have helped with the  
6 investigation either from ABRA or MPD?

7 INVESTIGATOR BUTLER: Yes, sir.

8 MR. CELO: You spoke -- we talked  
9 about you spoke to the chief security officer, I  
10 believe it was a Mr. Todorovic, about how  
11 security occurred on that day and how the  
12 security was prepared, correct?

13 INVESTIGATOR BUTLER: Yes.

14 MR. CELO: Now, if this establishment  
15 or any establishment that relies exclusively on  
16 industry experience were to hire somebody for  
17 their first job as a security officer, would that  
18 person have any industry experience?

19 INVESTIGATOR BUTLER: Possibly, yes.

20 MR. CELO: If it was it was their  
21 first time being hired?

22 INVESTIGATOR BUTLER: If it was their  
23 first time being hired without industrial  
24 experience, would they have --

25 MR. CELO: Right.

1 INVESTIGATOR BUTLER: No.

2 MR. CELO: And they would receive no  
3 training either, correct?

4 INVESTIGATOR BUTLER: Correct.

5 MR. CELO: And you asked Mr. Todorovic  
6 what procedures they used to check patrons  
7 entering the establishment, correct?

8 INVESTIGATOR BUTLER: Correct.

9 MR. CELO: And he stated to you that  
10 the only check they did was to make sure patrons  
11 were over the age of 21 on that night?

12 INVESTIGATOR BUTLER: Yes, sir.

13 MR. CELO: So, despite all of the  
14 implications that there's no evidence of a lack  
15 of visual inspection, he didn't actually tell you  
16 they did any visual inspection?

17 INVESTIGATOR BUTLER: No, he didn't.

18 MR. CELO: And he didn't tell you that  
19 they wanted and he didn't tell you that they did  
20 pat downs?

21 INVESTIGATOR BUTLER: Correct.

22 MR. CELO: So, he only told you that  
23 they made sure people were over 21 years old?

24 INVESTIGATOR BUTLER: Over 21, yes.

25 MR. CELO: He didn't tell you that

1 they checked women's purses or handbags either,  
2 correct?

3 INVESTIGATOR BUTLER: No, sir.

4 MR. CELO: Okay, now, and just one  
5 other point on that, did Mr. Todorovic tell you  
6 that he instructed his security personnel to take  
7 any of those steps?

8 INVESTIGATOR BUTLER: Not that I'm  
9 aware of, no, sir.

10 MR. CELO: All right, so they never  
11 asserted that they were telling people to follow  
12 what a security plan would say?

13 INVESTIGATOR BUTLER: Yes, sir.

14 MR. CELO: There was also a discussion  
15 on cross examination of whether or not  
16 establishments can learn and grow from their  
17 mistakes and make changes to their procedures.  
18 Do you remember that conversation?

19 INVESTIGATOR BUTLER: Yes, sir.

20 MR. CELO: And would you hope that  
21 this establishment is now conducting pat downs or  
22 using a wand?

23 INVESTIGATOR BUTLER: Some type of  
24 security, yes, sir.

25 MR. CELO: Okay, now even if this

1 establishment were to learn and grow from its  
2 past mistakes, that doesn't mean that they didn't  
3 make those past mistakes, correct?

4 INVESTIGATOR BUTLER: Correct.

5 MR. CELO: And even if they made a  
6 determination as to what security was appropriate  
7 and reasonable, are they still responsible for  
8 the outcomes of their decisions?

9 INVESTIGATOR BUTLER: Yes.

10 MR. CELO: Okay, so you agree and  
11 we're all clear that there's no regulation  
12 requiring searching of patrons on entering the  
13 premises, right?

14 INVESTIGATOR BUTLER: Yes, sir.

15 MR. CELO: But because they chose not  
16 to search the patrons and because that lack of  
17 search led to a gun being brought in, is that why  
18 this charge was made in this case?

19 INVESTIGATOR BUTLER: Correct, sir.

20 MR. CELO: I have no further questions  
21 at this time.

22 CHAIRPERSON ANDERSON: Mr. Celo, just  
23 a quick question. You had mentioned the names of  
24 some managers. Can you spell those names for the  
25 record, please?



1 MR. CELO: Yes, thank you. I should  
2 have done that. It was head of security Boris,  
3 B-O-R-I-S, Todorovic, T-O-D-O-R-O-V-I-C.

4 CHAIRPERSON ANDERSON: Thank you. All  
5 right, does the government has another witness?

6 MR. CELO: No, Mr. Chair.

7 CHAIRPERSON ANDERSON: Does the  
8 government rest?

9 MR. CELO: Yes, Mister -- well, just  
10 for the record, I would note that the case report  
11 is made part of the record as a matter of law --

12 CHAIRPERSON ANDERSON: All right,  
13 thank you.

14 MR. CELO: -- and then we rest.

15 CHAIRPERSON ANDERSON: So --

16 MR. KLINE: I disagree with that  
17 proposition, but have no --

18 CHAIRPERSON ANDERSON: What is it that  
19 you disagree with, Mr. Kline?

20 MR. KLINE: That it's part of the  
21 record as a matter of law. This is a contested  
22 case proceeding. Unless it's introduced in this  
23 proceeding, it's not part of the record.

24 (Simultaneous speaking.)

25 MR. KLINE: I have no objection to it

1 being in the record.

2 CHAIRPERSON ANDERSON: Mr. Kline, by  
3 our rules and regulations as a matter of law, the  
4 case report is a part of the Board's records. It  
5 does not have to be introduced formally.

6 Mr. Kline, if you review the  
7 regulations -- I know that you're a learned  
8 counsel and you have been practicing law in this  
9 area for a number of years, but if you review our  
10 regulations, our regulation clearly states that  
11 the case report is a part of the Board's records,  
12 that it doesn't have to be formally moved into  
13 evidence, okay?

14 All right, do you have -- but the  
15 government has asked that the document be moved  
16 into evidence and you stated that you do not have  
17 any objection, so. All right, thank you, sir.  
18 All right, do you have a witness you wish to  
19 call, sir?

20 MR. KLINE: I do not.

21 CHAIRPERSON ANDERSON: All right.

22 MR. KLINE: We rest.

23 CHAIRPERSON ANDERSON: Okay, do the  
24 parties wish to make a -- all right, let me ask  
25 you a question then. I guess, let me ask a

1 question. Does the government have a closing,  
2 wish to make a closing?

3 MR. CELO: Yes, Mr. Chair, and perhaps  
4 before we get to that, if opposing counsel is  
5 willing, I would state that the government is  
6 willing to waive any written findings of fact and  
7 conclusions of law, and proceed exclusively to  
8 verbal closing.

9 CHAIRPERSON ANDERSON: Mr. Kline?

10 MR. KLINE: We're not waiving.

11 CHAIRPERSON ANDERSON: I'm sorry,  
12 you're what?

13 MR. KLINE: We're not waiving.

14 CHAIRPERSON ANDERSON: All right, so  
15 with that said, do you still wish to make a  
16 closing argument or -- I'm sorry, I just -- hold  
17 on. I just did something.

18 MR. CELO: Yes, then the government --

19 CHAIRPERSON ANDERSON: Hold on. Hold  
20 on, please. Hold on, please. Hold on. Hold on.  
21 I just did some -- I did -- I touched something,  
22 so my screen had disappeared for the moment. All  
23 right, so does the government wish to make a  
24 closing?

25 MR. CELO: Yes, Mr. Chair.

1 CHAIRPERSON ANDERSON: Go ahead, sir.

2 MR. CELO: May it please the Board --  
3 and I apologize if you can hear the siren  
4 outside.

5 May it please the Board, this case is  
6 about a simple fact. The establishment operated  
7 its procedures in a way to allow an altercation  
8 involving a gun to occur inside its  
9 establishment, inside its premises. What  
10 happened in this case was totally preventable.

11 Now, I anticipate that Mr. Kline will  
12 argue that there's no requirement that the  
13 establishment pat down or wand its patrons on  
14 entry, and that is true. However, should they  
15 choose not to do so, they own the results of that  
16 decision.

17 In this case, the operations of the  
18 establishment were deficient in a number of  
19 areas. First, they did not train their security  
20 personnel. Second, they did not pat down patrons  
21 entering the establishment. Third, they did not  
22 conduct any search. They did not wand patrons  
23 entering their establishment.

24 Fourth, they did not have sufficient  
25 camera coverage to allow a proper investigation

1 of the incident after it occurred by MPD or by  
2 ABRA, and as we've noted, they also did not have  
3 a security plan on file as they were required and  
4 which likely would have included the requirements  
5 that they take all of those previous steps that I  
6 just outlined.

7 Now, on their own, none of those  
8 details are a violation. We're all in agreement  
9 on that. However, when they choose not to follow  
10 those steps, when they choose not to take  
11 reasonable industry standard procedures for  
12 nightclubs, they own the consequences when  
13 somebody slips through their lack of security and  
14 brings a gun into their establishment.

15 I draw your attention to the most  
16 recent relevant case on this point, which we've  
17 already talked about, Bliss, formerly Lemma  
18 Holdings, LLC v. the Alcoholic Beverage Control  
19 Board, 235(a)3d, 802, a case from 2022 on appeal.

20 That case has some striking  
21 similarities to this case specifically as it  
22 relates to the relevant charge of violation of  
23 D.C. Code 25-803(a)(1), or (a)(2), I apologize.

24 25-803(a)(2) holds that the  
25 establishment allowed for its licensed

1 establishment to be used for any unlawful or  
2 disorderly purpose.

3 Specifically, as per 25-823(b), that  
4 occurs even in a single incident when the  
5 licensee has engaged in a method of operation  
6 that is conducive to be unlawful or disorderly  
7 conduct.

8 That is what occurred in this case for  
9 the reasons outlined earlier. They did not  
10 conduct proper searches of patrons coming in.  
11 They did not train their security officers  
12 appropriately.

13 They did not have proper camera  
14 coverage and they did not have a security plan.  
15 They operated in a method that was conducive to a  
16 gun being brought in and an altercation  
17 occurring.

18 And although I omitted it before, the  
19 lack of marked security also contributed, as we  
20 heard, to the altercation actually happening.  
21 Visual security presence could have prevented  
22 that.

23 As we look at Bliss, in both cases,  
24 the management failed to follow reasonable  
25 security procedures to prevent the incident. In

1 both cases, the establishment failed to ensure  
2 that they have security cameras covering the  
3 entire nightclub.

4 In both cases, the security operated  
5 in a way that amounted to willful blindness of  
6 the issues inside the establishment and that's  
7 precisely what we have here. We have willful  
8 blindness as to what is coming in.

9 They don't get off the hook because  
10 they decided we're not going to look at anyone,  
11 and whatever anyone brings in is fine, and oh,  
12 we're just a brand-new establishment. We don't  
13 know what industry standard is. We're just a  
14 brand-new establishment. We don't know what the  
15 rules should be.

16 They don't train their security  
17 guards. They rely on industry experience. They  
18 are responsible for what occurs. They acted in a  
19 way that demonstrated an unwillingness of the  
20 security personnel to properly manage their  
21 facility.

22 That is also identical to the  
23 precedent we have. Their choices to not monitor  
24 security resulted in what happened today and it  
25 resulted in a violation. It is consistent with

1 precedent.

2 We believe that the Board should issue  
3 an appropriate penalty and should also require  
4 that a security plan be filed and approved, and  
5 that the security plan provides for pat downs and  
6 wandering.

7 We do not want another incident with  
8 a gun coming into this establishment. With that,  
9 I rest my case. However, I reserve the right  
10 for rebuttal. Thank you.

11 CHAIRPERSON ANDERSON: Thank you, Mr.  
12 Celio. Mr. Kline?

13 MR. KLINE: -- concerning, and it's  
14 why we've spent the time on it today that we  
15 have, and the reason that it's concerning is we  
16 had a time when the Board, not made up of its  
17 current members, Monday morning quarterbacked and  
18 after the fact imposed requirements that were not  
19 requirements of law.

20 And that was finally changed when the  
21 Rumors case, 1900 M Restaurant Associates v. the  
22 ABC Board went to the D.C. Court of Appeals, and  
23 after that, the practice stopped. We didn't have  
24 the Board coming in.

25 Instead, what the Board did, to its



1 credit, was have fact-finding hearings and said  
2 hey, let's see what went on here. Let's see how  
3 we can do it better, and maybe you should do this  
4 and maybe you should do that. Are you willing to  
5 consider it?

6 That's not what we had here. We had  
7 a fact-finding hearing, and instead of the  
8 constructive approach, we end up in a show cause  
9 proceeding with the imposition of requirements  
10 that are not law, with arguments that there are  
11 these industry standards when there are no  
12 experts that have testified as to what those  
13 industry standards are, and we have a complete  
14 after-the-fact analysis of what went on.

15 Now, let's look at what did go on, and  
16 this is in the report and it was covered on  
17 testimony. The unrefuted evidence is a fight  
18 broke out. Security stepped in and separated  
19 them. One of the combatants had a gun.

20 He was restrained by security. He was  
21 brought outside. MPD was flagged down. He was  
22 turned over to MPD to be dealt with and MPD  
23 discovered the gun, and at one point, he tried to  
24 get back in and was prevented by security from  
25 going back in.

1                   Now, how do we get from there to the  
2 willful blindness and the hiding of security  
3 issues that we find in the Bliss case, where the  
4 Bliss case involved the assaulting of a patron by  
5 an employee of the establishment? That is not  
6 what we have here.

7                   I mean, what we quite simply have is  
8 after the fact, an appraisal of what went on and  
9 said yeah, you know, you should have done this  
10 because then the gun wouldn't have gotten in. I  
11 mean, after much testimony, it appears that the  
12 failure, such as there was one, was the failure  
13 not to search.

14                  Now, if one looks at the requirements  
15 for a security plan, none of that is required,  
16 nor are the other things that are listed here.  
17 There's no minimum requirement for training, and  
18 in fact, the investigator testified that hiring  
19 people who are experienced in the industry, I'm  
20 paraphrasing, but who have had training  
21 elsewhere.

22                  What is training? There is no  
23 recognize training course. There is no official  
24 training course that this Board recognizes.  
25 People learn and are trained in different ways.

1 There is no evidence whatsoever that the security  
2 personnel in this case did not have the adequate  
3 background to do the job.

4 In fact, the evidence is to the  
5 contrary, they did. When the gun was discovered  
6 and the fight broke out, they did exactly what  
7 they were supposed to do. They didn't search,  
8 again, not a requirement. Look at the security  
9 plan regulations, not there.

10 They didn't have adequate cameras.  
11 Again, there is nothing in the requirements for a  
12 security plan or nowhere is there a requirement  
13 as to what the minimum camera coverage is. The  
14 Board and licensees, including many of my  
15 clients, have had many discussions about  
16 coverage.

17 And the Board said yeah, we think you  
18 should have better coverage. We'll send our  
19 investigator out. We'll help you and look at the  
20 establishment and make sure that there's proper  
21 coverage, and we have just no evidence to support  
22 any of this.

23 What are the procedures that were  
24 lacking? I mean, the one procedure that we have  
25 is there wasn't wandering, but did this licensee

1 have reason to believe that weapons were going to  
2 be brought into the establishment?

3 Now, the investigator ultimately  
4 testified on cross with some hesitation yeah, it  
5 absolutely depends upon who your crowd is, and  
6 who is there, and in fact, we got into what  
7 seemed to me, for me, a very uncomfortable  
8 suggestion of profiling, and said, yeah, we  
9 should profile our customers to make  
10 determinations.

11 If these requirements were so  
12 important that we are going to punish licensees  
13 for failing to follow them, then they should be  
14 in the regulations, and if they're not in the  
15 regulations, then they're not going to make up a  
16 violation.

17 I mean, this is not Lavelle, which is  
18 the leading case of using your premises for  
19 unlawful or disorderly purpose. And for those of  
20 you that are unfamiliar with it, some of you  
21 Board members may be, Lavelle was a club that  
22 operated, guess where, on the first floor of the  
23 Reeves Center where the ABC Board normally sits  
24 for these hearings.

25 And if you read the opinion, it was

1 completely out of control. I mean, people were  
2 getting shot. People were getting stabbed.  
3 There were weapons in the establishment all of  
4 the time.

5 And under those circumstances, yeah,  
6 it's pretty clear a record was established that  
7 failure to wand, failure to search, and failure  
8 to do all of these things certainly created an  
9 atmosphere for, if not unlawful, certainly  
10 disorderly and probably unlawful, an unlawful,  
11 disorderly practices on the premises.

12 And it is perfectly appropriate under  
13 those circumstances to punish a licensee and say  
14 hey, you didn't pay attention to anything.  
15 People are getting shot. People were killed.  
16 That's not what we have here.

17 What we have here is a licensee who  
18 made decisions about its practices, and  
19 admittedly, based upon the testimony of the  
20 investigator, those decisions were based on your  
21 knowledge of who your crowd is, what type of  
22 place you have, what type of atmosphere you have,  
23 and that may change over time.

24 And, in fact, this Board has had many  
25 licensees before it that were on a fact finding,

1 not in this situation where we're going to punish  
2 you because after the fact, we find out you  
3 didn't do what we think you should do.

4 But the Board, in an instructive  
5 setting, in a fact-finding situation has  
6 frequently said, you know, will you consider  
7 this? Will you consider that? And that is a  
8 constructive approach to a situation like this.  
9 This is not.

10 To haul someone in and have a hearing  
11 where, well, you didn't comply with this. Where  
12 is that in the regulation? Oh, it's not, but you  
13 should do it anyway. You didn't comply with  
14 that. Where is that in the regulation? Well,  
15 it's not, but that's standard practices. You  
16 should do that.

17 This is outrageous, and it's unfair to  
18 this licensee and it is unfair to every licensee  
19 in the District. I mean, the question is did  
20 they have reason to believe that weapons were  
21 going to be brought in? There is absolutely no  
22 foundation or testimony about that in this case.

23 It's like the gun came in. It  
24 happened. You should have wanded. Did Comet  
25 Pizza know that a madman with a gun was going to

1 come into their place and shoot it up? Should  
2 they have been wanding?

3 Do we bring them in after the fact and  
4 say hey, this guy from South Carolina came in and  
5 shot up your place, people could have gotten  
6 killed, maybe you should have had procedures in  
7 place to prevent that from happening?

8 When there was a shootout on July 22,  
9 2021 in front of Le Diplomate and people were  
10 caught in the crossfire, I mean, it wasn't in Le  
11 Diplomate, but does that give reason for Le  
12 Diplomate to now pat and wand?

13 Because it easily could have been in  
14 there. Do they need to pat and wand every person  
15 that comes into their establishment? Well, if  
16 they're a nightclub, I guess they don't need to.

17 The fact of the matter is there are  
18 guns everywhere. There was another incident on  
19 The Wharf on July 17, 2022, and two were shot and  
20 one of them was killed.

21 Now, all of the establishments on The  
22 Wharf, should they be patting and searching  
23 everyone that sits there? Should The Wharf have  
24 procedures in place to prevent people from  
25 entering The Wharf area before they've been

1 searched and patted?

2 Well, maybe, and maybe that's  
3 something that needs to be considered, but to  
4 impose it after the fact and say somebody was  
5 killed on July 17, 2022. You didn't do enough.  
6 You should have known that there were guns going  
7 to come in, and Wharf, you're in violation.  
8 That's just flawed.

9 I mean, regrettably, guns are  
10 everywhere in our society and there are more than  
11 400 million guns in this country, and the Supreme  
12 Court, unfortunately, had restricted all of our  
13 ability to do much about it.

14 I mean, they basically said, you know,  
15 in a case that came out of the District, that  
16 there's little regulation that could be done, but  
17 the Attorney General's Office wants to hold this  
18 licensee to a standard that no one else can meet.

19 None of the things that are complained  
20 about here, with the exception of the pat downs,  
21 which we talked a lot about, are particularly  
22 relevant to preventing this incident.

23 And in reference to the security plan,  
24 there's one thing I want to mention. 25-836(b)  
25 says no license shall be issued to a nightclub



1 unless a security plan is filed. So, is the  
2 establishment at fault for not filing? Does the  
3 Agency bear some responsibility for that? I  
4 think Mr. Grandis touched on it. Yeah,  
5 absolutely. So, it wasn't filed.

6 There isn't any evidence that they  
7 didn't have procedures in place. Do we think  
8 that the way this security team reacted to this  
9 situation where they restrained the gunman and  
10 they brought him out and turned him over to  
11 police demonstrates that they had no plan in  
12 place and had no idea how to react to this  
13 situation simply because there wasn't a filing  
14 with the Agency?

15 The evidence is to the contrary. The  
16 evidence is that yeah, they were trained. They  
17 had a plan. They knew exactly what they were  
18 supposed to do. The only issue here is the  
19 wandering.

20 So, failure to follow the plan? Your  
21 agency shares responsibility for that because the  
22 license shouldn't have been issued. Does that  
23 excuse the licensee? No, the licensee has  
24 responsibility to file it, but the Agency had a  
25 responsibility not to issue the license until it

1 was filed.

2 So, and that's not the charge here  
3 anyway. We spent a lot of time on that. We  
4 spent a lot of time on things that would have  
5 been in the plan that are not required by law and  
6 it's very, very troubling.

7 As I said before, this is not the  
8 Bliss case. This is not Club U. What happened  
9 here, as I said before, there are a lot of  
10 guns. One of them made it into 1212. When that  
11 happened, security acted promptly, quickly, and  
12 responsibly to restrain the man. They took him  
13 out and they turned him over to police.

14 What more can we ask? And if there is  
15 more that needs to be done, these are lessons  
16 learned and lessons to be applied after the fact  
17 and say someone got a gun in. What are we going  
18 to do about this?

19 And that would be a perfectly  
20 appropriate conversation to have in a fact  
21 finding, not an appropriate conversation to have  
22 in a show cause proceeding, but this is just  
23 wildly inappropriate.

24 This case is completely different from  
25 Bliss where an employee was involved in an

1 assault and ownership tried to cover up. It's  
2 completely different than -- there's The Cabin  
3 case where an employee was involved in an  
4 assault.

5 This is certainly completely different  
6 than Lavelle, or Club U, or whatever you want to  
7 call it, where things were completely out of  
8 hand. This is more like the Rumors case.

9 We've got one incident, and although  
10 one incident as we know under the law can give  
11 rise to a showing of allowing the premises to be  
12 used for unlawful or disorderly purpose, one of  
13 the things is to be considered.

14 Even as was talked about, I think, in  
15 Bliss, is was there a pattern? In other words,  
16 if guns were coming in every week, then, yeah,  
17 we're here. It's appropriate. We should be here  
18 and the Board should be saying look at what you  
19 did. Look at this history.

20 In most cases failure to -- or using  
21 the establishment for an unlawful or disorderly  
22 purpose should require some sort of pattern. The  
23 law says some sort of pattern or a method of  
24 operation.

25 The method of operation here is an

1 after-the-fact imposed requirement that people  
2 entering the establishment be searched, and it's  
3 wrong. It won't be sustained on appeal, and we  
4 would ask that you find for the licensee and find  
5 no liability on the part of the licensee. Thank  
6 you.

7 CHAIRPERSON ANDERSON: Thank you, Mr.  
8 Kline. Mr. Celso, do you need --

9 MR. CELO: Yes, yes, Mr. Chair, I  
10 would have rebuttal close.

11 CHAIRPERSON ANDERSON: Go ahead,  
12 please.

13 MR. CELO: Thank you. May it please  
14 the Board, I'll start with the legal argument.  
15 Attorney Kline cited quite a lot to the Rumors  
16 case. However, I would note for the Board that  
17 the Rumors case was explicitly superseded by the  
18 Bliss case. That's what we have to look for now,  
19 the 2020 precedent.

20 Essentially, what I got from that  
21 closing argument is that Attorney Kline would  
22 really have preferred that ABRA decide to conduct  
23 a fact-finding hearing instead of a show cause  
24 hearing in this case.

25 There was no citation of authority

1 that says the fact-finding hearing was the only  
2 appropriate option. There was no citation of  
3 authority that says the show cause wasn't. There  
4 was no citation of authority that says that these  
5 proceedings are in any way inappropriate.

6 The determination was made that the  
7 show cause was appropriate and that determination  
8 was reasonable. It was not arbitrary. It was  
9 not capricious. It was not an abuse of  
10 discretion and this Board absolutely can impose  
11 penalties under a show cause proceeding.

12 I'd like to draw an analogy under the  
13 law here. There's a legal requirement that you  
14 have insurance if you drive an automobile, not  
15 the same requirement for a motorcycle.

16 You can choose not to have insurance  
17 for a motorcycle. However, if you get into an  
18 accident, you are still responsible for that  
19 choice. You are responsible to pay the  
20 consequences of that decision.

21 In this case, it is true that they  
22 were not required to pat people down entering the  
23 establishment or to wand people. We are not  
24 filing charges saying that they failed to do  
25 that. However, when their choice results in a

1 crime occurring, they are responsible for making  
2 that choice. That is what the reasonableness  
3 Attorney Kline kept bringing up refers to.

4 The issue of changing over time and  
5 what more can we ask of this establishment, this  
6 licensee, and how on earth do we get to willful  
7 blindness that was brought up? We got to willful  
8 blindness because the security of the nightclub  
9 willingly chose not to look. They willingly  
10 chose to let people in without searching anyone.

11 Attorney Kline says hey, we have no  
12 pattern here. It's not as if guns are being  
13 brought in on a regular basis. Well, how would  
14 the licensee know? They never look. They never  
15 search. The only reason we found out in this  
16 case is because the person who brought a gun in  
17 also started a fight.

18 The establishment chose not to have  
19 sufficient security. They bear the  
20 responsibility for that choice. With that, I  
21 rest.

22 However, I would, just for the sake of  
23 the record, I didn't want to do this to interrupt  
24 opposing counsel's close, but I do object and  
25 move to strike the facts not in evidence of

1 Attorney Kline's close specifically as they  
2 relate to the other shootings and incidents, and  
3 most especially as they relate to his suggestion  
4 of profiling comments. I would move to strike  
5 those comments.

6 CHAIRPERSON ANDERSON: I'll take that  
7 under advisement. We'll take that under  
8 advisement in the decision that the Board  
9 ultimately makes in this case.

10 All right, the record is now closed.  
11 Do the parties wish to file proposed findings of  
12 fact and conclusions of law or waive their rights  
13 to do so?

14 MR. CELO: It appears we will be  
15 filing.

16 MR. KLINE: Yeah, the licensee wants  
17 to file.

18 CHAIRPERSON ANDERSON: All right, then  
19 if the parties choose to file proposed findings  
20 of fact -- since the parties have chosen to file  
21 proposed findings of fact and conclusions of law,  
22 then 90 days from when the Board receives its  
23 proposed findings of fact and conclusions of law.

24 So, therefore, the transcripts will be  
25 available within the next three weeks and the

1 proposed findings of fact and conclusions of law  
2 are then due to the Board 30 days from the date  
3 that you receive the transcript.

4 The parties are -- if you change your  
5 mind, please advise the Board and the other party  
6 as soon as possible if you change your mind  
7 regarding doing the proposed findings of fact and  
8 conclusions of law, all right?

9 All right, as Chairperson of the  
10 Alcoholic Beverage Control Board for the District  
11 of Columbia and in accordance with D.C. Code  
12 Section 2575 of the Open Meetings Act, I move  
13 that the ABC Board hold a closed meeting for the  
14 purpose of seeking legal advice from our counsel  
15 on case number 22-251-000, I'm sorry,  
16 25-251-00009, Twelve After Twelve, pursuant to  
17 D.C. Code Section 2575(b)(4)(a) of the Open  
18 Meetings Act and deliberating upon case number  
19 22-251-00009, Twelve After Twelve, for the  
20 reasons cited in D.C. Official Code Section 2575  
21 (b)(13) of the Open Meetings Act. Is there a  
22 second?

23 MEMBER SHORT: Mr. Short, I second.

24 CHAIRPERSON ANDERSON: Mr. Short and  
25 Mr. Grandis have seconded the motion. We'll now



1 take a roll call vote. Mr. Short?

2 MEMBER SHORT: Mr. Short, I agree.

3 CHAIRPERSON ANDERSON: Mr. Cato?

4 MEMBER CATO: Bobby Cato, I agree.

5 CHAIRPERSON ANDERSON: Ms. Hansen?

6 Mr. Grandis?

7 MEMBER GRANDIS: Edward Grandis, I

8 agree.

9 CHAIRPERSON ANDERSON: And Mr.

10 Anderson, I agree. As it appears that the motion

11 has passed, I hereby give notice that the ABC

12 Board will recess this proceeding to hold a

13 closed meeting pursuant to Section 2575 of the

14 Open Meetings Act.

15 All right, thank you very much for

16 your presentation today and this matter is

17 recessed, all right? Okay, thank you.

18 MR. KLINE: Mr. Chair?

19 CHAIRPERSON ANDERSON: Yes, Mr. Kline?

20 MR. KLINE: I have the afternoon

21 matter and I just wanted to confirm that the

22 Board will be back at 1:30 in terms of time?

23 CHAIRPERSON ANDERSON: Yes, the Board,

24 we will -- we are -- I am going to read our -- I

25 know that there was a motion filed and the Board

1 will make a determination at our -- we will read  
2 the results this morning in a couple of minutes,  
3 but I believe at current, please plan, unless you  
4 hear otherwise, please plan and we'll have a  
5 hearing at 1:30 unless you hear otherwise.

6 MR. KLINE: Yeah, I wasn't asking you  
7 about that. I was just asking in terms of timing  
8 and the Board's schedule.

9 CHAIRPERSON ANDERSON: Yes, the Board,  
10 we have an extensive calendar to do before and  
11 the Board is going to go to lunch, and so I  
12 believe -- I'll say --

13 MR. KLINE: I'll see you at 1:30.

14 CHAIRPERSON ANDERSON: 2:00, Mr.  
15 Kline, okay?

16 MR. KLINE: 2:00, okay.

17 CHAIRPERSON ANDERSON: 2:00. I will  
18 advise legal to advise the other parties that we  
19 will, hold on, that we will, our afternoon, that,  
20 yeah, that the afternoon session will start at  
21 2:00, okay?

22 MR. KLINE: Thank you. That lets me  
23 eat lunch too. I appreciate that.

24 CHAIRPERSON ANDERSON: All right,  
25 thank you. All right, I'm just asking -- all

1 right, thank you. That case, your case, our case  
2 is completed, the case this morning, so thank  
3 you. The Board is now -- all right, we're going  
4 to be off the record for -- give me -- it's three  
5 minutes. I'll ask all Board members to -- sir,  
6 your case is over, so you can log off.

7 MR. BIABANI: Thank you very much.  
8 Thank you.

9 CHAIRPERSON ANDERSON: You're welcome.  
10 It's 12:24. I just need to take a six-minute  
11 break, so we're going to be off the record for  
12 six minutes. I'm just asking all Board members  
13 just hold tight and we'll come back on the record  
14 at 12:30. So, just don't log off, just -- yeah,  
15 12:30.

16 (Whereupon, the above-entitled matter  
17 went off the record at 12:24 p.m.)  
18  
19  
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25

**A**

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In the matter of: Twelve After Twelve

Before: DC ABRA

Date: 12-07-22

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*Neal R Gross*

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Court Reporter

**NEAL R. GROSS**

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