

ALSO PRESENT:

CHRISTOPHER SOUSA, OAG

DAVID CHUNG, Licensee

KEVIN PUENTE, ABRA Investigator

KIJUN SUNG, Licensee's Counsel

C-O-N-T-E-N-T-S

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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Kevin Puente	9	31	92	86
Christian Silva	103	112	118	117
David Chung	119	133		

RECALLED

Kevin Puente	151
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VIDEO PLAYED

Complainant 1.17
Respondent 2	122/127

EXHIBITS

MARK RECD

JOINT

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COMPLAINANT

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7 - Maine/NJ Driver License	28	162
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1 P-R-O-C-E-E-D-I-N-G-S

2 11:21 a.m.

3 CHAIRPERSON ANDERSON: We are back on
4 the record. Our next case is Case No. 18-CC-
5 00053, Abigail Room, License No. 107468.

6 Would the parties, please, approach
7 and identify themselves for the record, please?

8 MR. SOUSA: Christopher Sousa for the
9 District of Columbia.

10 CHAIRPERSON ANDERSON: Good morning,
11 Mr. Sousa.

12 MR. SUNG: Good morning. Kijun Sung
13 for Abigail Room.

14 CHAIRPERSON ANDERSON: Good morning,
15 Mr. Sung.

16 MR. SUNG: And my client is David
17 Chung.

18 CHAIRPERSON ANDERSON: Good morning,
19 Mr. Chung.

20 MR. CHUNG: Hello.

21 CHAIRPERSON ANDERSON: All right. Are
22 there any preliminary matters in this case?

1 MR. SOUSA: No.

2 MR. SUNG: I do have one -- there is
3 potential video tape evidence that we might want
4 to submit and it may be better, more efficient if
5 we can test it out before we proceed or we can --
6 if you want to do it later, that's fine.

7 CHAIRPERSON ANDERSON: I don't have a
8 problem with that, but this hearing was scheduled
9 for 11:00. It is 11:23 and I would have
10 anticipated and expected that the Board was back
11 there and if you had -- whatever equipment that
12 you had to test out, you could do that. You had
13 25 -- I didn't realize I'm late, because we came
14 out here and it's now 11:24.

15 So fine, how long is this going to
16 take?

17 MR. SUNG: Just five minutes. I
18 apologize.

19 CHAIRPERSON ANDERSON: Go ahead.

20 MR. SUNG: Thank you.

21 CHAIRPERSON ANDERSON: We're off the
22 record.

1 (Whereupon, the above-entitled matter
2 went off the record at 11:21 a.m. and resumed at
3 11:23 a.m.)

4 CHAIRPERSON ANDERSON: Does the
5 Government wish to make an opening statement?

6 MR. SOUSA: Yes.

7 CHAIRPERSON ANDERSON: Go ahead.

8 MR. SOUSA: Mr. Chairman, Members of
9 the Board, the District of Columbia brings this
10 action with two counts: Sale to a minor, which
11 the District views as an egregious violation of
12 the Sale to Minor statute, and the second count
13 is failure to take reasonable steps necessary to
14 ascertain the legal age of a patron.

15 The District views this as an open and
16 shut case. You will hear from Investigator Kevin
17 Puente with the ABRA who will talk to you about
18 how he, other members of the ABRA Team, and
19 officers at the Metropolitan Police Department
20 were -- they visited on April 29, 2018 the
21 licensed establishment in this matter, Abigail
22 Room, also known as Shredder, LLC.

1 You will hear from Investigator Puente
2 that they observed patrons being waved into the
3 21 and over event within the licensed
4 establishment without any checking of
5 identification. You will hear from Investigator
6 Puente that when a manager noticed that ABRA
7 Investigators and MPD officers were on the scene
8 and observing the lack of checking of
9 identification, that they then started to check
10 identification.

11 ABRA Investigators and MPD officers
12 then entered the establishment and you will hear
13 from Investigator Puente how they located, in
14 their short time at the establishment, at least
15 five minors who had purchased alcoholic beverages
16 at the bar there.

17 The District again sees this as an
18 egregious violation of the Sale to Minor statute,
19 as egregious is defined in the ABRA Regulations
20 in three different ways. One of them is
21 intentionally selling an alcohol beverage to a
22 minor, which the District believes this is such

1 an instance, or that the establishment had a
2 prior -- had a pattern of prior alcoholic
3 beverage sales or services to minors.

4 And the District believes that with
5 the complaints about sales to minors at this
6 establishment and we have at least five minors
7 that were sold alcohol on this date, April 29,
8 2018, that there is a pattern of violations of
9 the statute, which would amount to an egregious
10 violation.

11 So at the end of today's hearing, we
12 will ask the Board to find Abigail Room liable
13 for those two counts under the ABRA Laws. Thank
14 you.

15 CHAIRPERSON ANDERSON: Do you wish to
16 make an opening statement, sir?

17 MR. SUNG: No, sir. We will just --

18 CHAIRPERSON ANDERSON: You will defer?

19 MR. SUNG: -- reserve our comments for
20 closing.

21 CHAIRPERSON ANDERSON: Okay.

22 MR. SUNG: Thank you.

1 CHAIRPERSON ANDERSON: All right.

2 Does the Government have a witness?

3 MR. SOUSA: Yes, Investigator Puente.

4 Mr. Puente?

5 Whereupon,

6 INVESTIGATOR KEVIN PUENTE

7 was called as a witness by Counsel for the
8 Complainant, and having been first duly sworn,
9 assumed the witness stand and was examined and
10 testified as follows:

11 INVESTIGATOR PUENTE: Yes, sir.

12 CHAIRPERSON ANDERSON: Thank you.

13 Your witness, sir.

14 MR. SOUSA: Thank you, Mr. Chairman.

15 DIRECT EXAMINATION

16 BY MR. SOUSA:

17 Q Thank you, Mr. Puente. Could you,
18 just for the record, please, state your name and
19 spell it for the record?

20 A Kevin Puente, K-E-V-I-N P-U-E-N-T-E.

21 Q Thank you. And where do you work?

22 A Alcoholic Beverage Regulation

1 Administration.

2 Q And what do you do?

3 A I'm an Investigator.

4 Q Okay. And what are the
5 responsibilities of an Investigator at ABRA?

6 A We conduct inspections and
7 investigations of licensed ABC establishments in
8 the District of Columbia.

9 Q Okay. How long have you been with
10 ABRA?

11 A About three and a half years.

12 Q Um-hum. And have you been an
13 inspector the entire time?

14 A Yes.

15 Q All right. And do you have any prior
16 law enforcement experience?

17 A I worked in corrections and I worked
18 in surveillance at a casino.

19 Q Okay. And how long total would you --
20 how many years have you worked in law enforcement
21 total?

22 A About three years.

1 Q Okay. Okay.

2 MR. SOUSA: I am going to introduce
3 Exhibit 1 for identification purposes. I'll hand
4 a copy to opposing counsel. May I approach the
5 witness?

6 CHAIRPERSON ANDERSON: Sure. What's
7 Exhibit 1?

8 MR. SOUSA: Exhibit 1 is the ABRA case
9 report and I have copies for the Board Members.
10 May I approach the Board?

11 CHAIRPERSON ANDERSON: Sure. No. We
12 have it. I just wanted to make sure that we know
13 what document you are --

14 MR. SOUSA: Okay.

15 CHAIRPERSON ANDERSON: You can just
16 pass them. You can just give her one copy.

17 MR. SOUSA: Yes.

18 CHAIRPERSON ANDERSON: And for the
19 record.

20 (Whereupon, the above-
21 referred to document was
22 marked as Joint Exhibit No.

1 1 for identification.)

2 BY MR. SOUSA:

3 Q Mr. Puente, do you -- are you familiar
4 with this document, what is marked as Exhibit 1?

5 A Yes.

6 Q Can you identify the document?

7 A It's my investigative case report.

8 Q Okay. And is this the type of
9 document that you prepare in the ordinary scope
10 of your business at ABRA?

11 A Yes.

12 Q And is it a regular part of your
13 business to keep and maintain these records of
14 this type?

15 A Yes.

16 Q Okay. And is this a true and accurate
17 copy of what you prepared after visiting Abigail
18 Room on April 29, 2018?

19 A Yes.

20 Q Okay.

21 MR. SOUSA: I'll just ask that the
22 exhibit be entered into evidence. I'll move the

1 Board for that.

2 CHAIRPERSON ANDERSON: What did you
3 say, sir?

4 MR. SOUSA: I'll just -- I'll move the
5 Board that the exhibit be entered into evidence.

6 CHAIRPERSON ANDERSON: Mr. Chung? Mr.
7 Sung?

8 MR. SUNG: Yes, at this time, we can't
9 consent because there are a bunch of exhibits
10 here that need to be --

11 CHAIRPERSON ANDERSON: All right. So
12 what --

13 MR. SUNG: -- authenticated.

14 CHAIRPERSON ANDERSON: All right. So
15 why don't you -- why don't we -- why don't you
16 utilize the document to ask the witnesses -- to
17 ask the witness. Once you have introduced all of
18 the documents, then you can move again.

19 MR. SOUSA: Sure. Thank you, Mr.
20 Chairman.

21 CHAIRPERSON ANDERSON: All right.

22 BY MR. SOUSA:

1 Q Were you on duty the night of April
2 28, 2018 and the early morning of April 29, 2018?

3 A Yes.

4 Q What were -- who were you working with
5 on that date?

6 A I was working with Investigator Jason
7 Peru as well as MPD detectives.

8 Q Okay. Do you remember the names of
9 the MPD detectives?

10 A Yes, David Carter, Scott Emmons and
11 Sergeant Terry Thorne.

12 Q Okay. What was your task that day?

13 A We were conducting ID checks at
14 various establishments throughout the District.

15 Q And was one of the establishments
16 Abigail Room?

17 A Yes.

18 Q Okay. Why was Abigail Room one of the
19 establishments that MPD/ABRA was visiting?

20 A In the weeks prior, ABRA received a
21 letter from George Washington University about
22 underage drinking with one of their sororities

1 and an event they held there and they asked us to
2 look into it.

3 Q Um-hum, okay. And what did you and
4 the rest of the team do to prepare for this visit
5 to Abigail Room?

6 A We met up with Detective Carter and I
7 mentioned Sergeant Terry Thorne at another
8 establishment previously, we conducted ID checks,
9 so we kind of rode together the rest of the
10 night.

11 Q Okay. And what time did you arrive at
12 Abigail Room?

13 A Approximately around 1:00 a.m.

14 Q 1:00 a.m. Okay. And then what
15 happened when you arrived at Abigail Room on that
16 evening?

17 A Oh, we arrived and we observed a line
18 out front. We observed a security guard at the
19 door. We walked up. We saw people just coming
20 in, not checking IDs. Then I saw the ABC
21 Manager, Alexander Sibikovic, standing there as
22 well. Us, myself and Investigator Peru, and

1 detectives were communicating, talking to each
2 other and we saw that the IDs weren't being
3 checked, so I took my cell phone out and started
4 recording a video of it. Approximately maybe
5 less than a minute later, Mr. Sibikovic, I
6 believe, recognized us and the next thing I know,
7 IDs were being checked at the door.

8 Q Okay. And did you take any sort of
9 contemporaneous record of this, of these
10 instances?

11 A Yes, I recorded a video on my cell
12 phone.

13 Q And was the video that you recorded on
14 the cell phone appended -- a copy of the video
15 that you recorded on the cell phone appended to
16 the ABRA report that you submitted on this
17 incident?

18 A Yes.

19 Q Okay. Was it Exhibit 2 to the ABRA
20 report?

21 A Yes.

22 Q Okay.

1 (Whereupon, the above-
2 referred to document was
3 marked as Complainant
4 Exhibit No. 2 for
5 identification.)

6 MR. SOUSA: Now, may I ask the Board's
7 indulgence to show Exhibit 2 to the Board?

8 CHAIRPERSON ANDERSON: Sure.

9 MR. SUNG: Yes, we have no objection.
10 We just have not seen it yet, this video that he
11 speaks of.

12 CHAIRPERSON ANDERSON: Oh, it's -- so
13 the exhibit is the video?

14 MR. SOUSA: Yes.

15 CHAIRPERSON ANDERSON: All right.

16 MR. SOUSA: All right. You can go
17 ahead and play it.

18 (Video Played)

19 (Lots of People Talking Loud)

20 (Video Stopped)

21 MR. SOUSA: Thank you.

22 BY MR. SOUSA:

1 Q Mr. Puente, is that a true and
2 accurate copy of the video that you took on April
3 29, 2018?

4 A Yes.

5 Q Okay. Could you, please, just
6 describe for the Board what you see in that
7 video?

8 A We observed the first two or three
9 females, they were standing there talking to the
10 security guard and then they were let in. Then
11 you see a security guard talk to a few more of
12 the patrons in line and the next two females were
13 about to walk in and you kind of see the ABC
14 Manager in the background say something to the
15 security guard, then he starts checking IDs.

16 Q Okay. What happened after you filmed
17 this video?

18 A I believe, from what I recall, the ABC
19 Manager came over and talked with us. We advised
20 him we were going to do ID checks and we went
21 inside.

22 Q Okay. What happened next?

1 A Myself, Investigator Peru along with
2 Sergeant Thorne, we entered the establishment.
3 We kind of walked to the back of the
4 establishment near the restroom area where we
5 observed a female and male patron consuming what
6 looked to be alcoholic beverages and they
7 appeared very young.

8 So we approached them. We identified
9 ourselves and we asked how old they were.

10 Q Um-hum. And what did -- how did they
11 respond?

12 A The female said she was 26 years-old
13 and handed me her Illinois driver's license. I
14 looked at it. I asked her if she had a student
15 identification on her. She handed me a George
16 Washington University Student Identification
17 Card.

18 Q Um-hum.

19 A I asked -- I advised her that I would
20 contact the university to verify that she was 26.
21 She then admitted that she was 18 years-old.

22 Q Okay.

1 A The male patron, I asked him for his
2 ID.

3 Q Before we talk about the male patron,
4 I apologize for interjecting, can you turn to
5 what is labeled as Exhibit 4 within Plaintiff's
6 Exhibit 1? The fourth attachment to the ABRA
7 report that you provided?

8 A Yes.

9 MR. SUNG: I need to interject here.
10 There is a potential witness sitting in the rear
11 and I would like the Rule on Witnesses. I see
12 Investigator Peru.

13 CHAIRPERSON ANDERSON: Who is that?
14 I don't know who the witness is.

15 MR. SUNG: Investigator Peru. If you
16 don't plan to call him, then we don't need to --

17 MR. SOUSA: Investigator Puente will
18 be the only witness that the Government plans on
19 calling.

20 MR. SUNG: Thank you.

21 CHAIRPERSON ANDERSON: All right.
22 Thank you. All right.

1 BY MR. SOUSA:

2 Q Have you turned to that page?

3 A Yes.

4 Q Okay. What do you recognize this
5 document to be?

6 A That was the ID that was given to me
7 by the female patron.

8 (Whereupon, the above-
9 referred to document was
10 marked as Complainant
11 Exhibit No. 4 for
12 identification.)

13 BY MR. SOUSA:

14 Q Is that a true and accurate copy of
15 what the female patron showed you on that date?

16 A Yes.

17 Q And how old -- Well, let's do it this
18 way. What is the birth date on this particular
19 ID?

20 A On this ID it is 10/16. Yeah, either
21 10/18 or 10/16/92.

22 Q Okay. And then what did the female

1 patron tell you after handing you the Illinois
2 ID?

3 A That she was 26 years-old.

4 Q And then you asked her about her GW
5 Student Card?

6 A Yes, if she had a student ID card from
7 one of the universities.

8 Q And then what did she admit to you?

9 A She handed me her GW ID card.

10 Q Um-hum.

11 A I advised her that I will contact the
12 university and then she admitted that she was 18
13 years-old.

14 Q Okay. All right. Thank you. And
15 then what did the -- what did you say to the male
16 patron?

17 A I asked him for his ID as well. He
18 handed me a Colombia identification card and said
19 he was 22 years-old.

20 Q Yeah, and may I ask you to turn to the
21 next page of the -- what is marked as Plaintiff's
22 Exhibit 1? And do you recognize the picture that

1 has been taken of this?

2 A Yes.

3 Q Does the picture -- is the picture of
4 the license or the ID, excuse me, that was shown
5 to you?

6 A Yes.

7 Q By the male patron?

8 A Yes.

9 Q Which ID did he initially show you?

10 A He showed me the Republica de Colombia
11 Identification Card.

12 Q Okay. Um-hum. And if you turn to the
13 next page, I understand that is to be the back of
14 that license, of that identification card. Is
15 that correct?

16 A Yes.

17 Q Okay. And what is the birth date
18 listed there?

19 A July 26, 1996.

20 Q All right. And what was the next
21 thing you said to the male patron?

22 A I asked him if he had another -- if he

1 had a student ID card, he said he did not. He
2 admitted that he was 18 years-old as well.

3 Q Okay. Then is that when the patron
4 showed you the Oregon license that is depicted in
5 Exhibit 5?

6 A Yes.

7 Q Yes.

8 (Whereupon, the above-
9 referred to document was
10 marked as Complainant
11 Exhibit No. 5 for
12 identification.)

13 BY MR. SOUSA:

14 Q All right. And what is the birth date
15 there?

16 A That is 7/26/1999.

17 Q Thank you. What happened next?

18 A They were escorted out, but prior to
19 questioning them, I asked them what they were
20 consuming. They advised me they were consuming
21 Tequila Sunrises, alcoholic beverages. And they
22 both put the drinks on the ground, so we -- they

1 could get their IDs out for me.

2 Q Yeah, and if you turn forward in the
3 document where it is labeled Exhibit 3 --

4 A Um-hum.

5 Q -- is that a true and -- this is a
6 picture, a photograph. Is this a true and
7 accurate depiction of the circumstances of the
8 glasses being on the floor?

9 A Yes.

10 Q Okay.

11 (Whereupon, the above-
12 referred to document was
13 marked as Complainant
14 Exhibit No. 3 for
15 identification.)

16 BY MR. SOUSA:

17 Q And the patrons, both male and female,
18 identified this as Tequila Sunrises?

19 A Yes.

20 Q Okay. Thank you. What happened next?

21 A The two individuals were escorted out
22 of the establishment.

1 Q Okay. By whom?

2 A I can't recall.

3 Q Was it an MPD-affiliated individual,
4 ABRA or someone that was affiliated with the
5 licensed establishment?

6 A I can't recall.

7 Q Fair enough, fair enough. Then what
8 happened?

9 A I continued to do a walk-through of
10 the establishment. I went towards the VIP area
11 of the establishment. It's like kind of roped
12 off and a little elevated like seating area. I
13 observed a young female consuming what appeared
14 to be alcohol, so I approached her.

15 Q What happened next.

16 A I identified myself as an ABRA
17 Investigator to her. I asked what she was
18 consuming. She stated champagne. I asked to see
19 her identification. She said something to me,
20 but I couldn't hear her, so I asked her to come
21 outside with me, so we could talk.

22 Q Why were you unable to hear the

1 individual?

2 A The music was playing and we were
3 right near the DJ booth, so it was kind of loud.

4 Q Okay. What happened next?

5 A We -- she walked in front of me as we
6 were walking outside. I see her go into her
7 purse and get something out. Then I see her put
8 something inside of her skirt.

9 Q Um-hum. What did that suggest to you?

10 A From my experience, that's usually an
11 individual trying to hide their ID.

12 Q Okay. And then what happened?

13 A We went outside. I took her to
14 Sergeant Thorne and Detective Emmons. They began
15 to question her. She admitted that she was 18
16 years-old, but couldn't produce an ID for us.

17 Q Okay. And was she speaking to you or
18 was she speaking to the detectives from MPD?

19 A She was speaking to the detectives.
20 We were all right next to each other.

21 Q You were all next to each other. So
22 what else did you overhear in that conversation?

1 Exhibit No. 7 for
2 identification.)

3 BY MR. SOUSA:

4 Q And one is a Maine identification, the
5 other one is a New Jersey identification,
6 correct?

7 A Yes.

8 Q And the New Jersey identification has
9 the individual being born in the year 1999?

10 A Yes.

11 Q Okay. And if I ask you to turn the
12 page, these pictures of photograph representation
13 of the other -- of the two identifications
14 provided for the other individual.

15 A Yes.

16 Q And one is Texas, one is Florida.

17 A Yes.

18 Q And the Texas identification indicates
19 that the individual was born in 1999, correct?

20 A Yes.

21 Q What happened next?

22 A Detective Carter advised me that him

1 and Detective Emmons were at the bar. They
2 observed the two individuals place the order.
3 The bartender served them and the individuals
4 take the drink and consume it, that's when he
5 identified himself as an MPD officer and found
6 out they were underage and they admitted that
7 they were 18.

8 Q Okay. To your understanding, did the
9 server at the bar check the identification?

10 A I don't believe they did.

11 Q Okay. Did you observe any servers
12 within Abigail Room on that night checking
13 identification?

14 A I did not.

15 Q What happened next?

16 A We left the area. We left the area.

17 Q In total, how long were you at Abigail
18 Room that on that evening, early morning?

19 A Probably about 30, 45 minutes.

20 Q And in those 30 to 45 minutes, you
21 found at least five minors. You found five
22 minors who were being served alcohol?

1 A Yes.

2 Q Yes. Thank you for your time, Mr.
3 Puente.

4 CHAIRPERSON ANDERSON: Mr. Sung?

5 MR. SUNG: Thank you.

6 CROSS-EXAMINATION

7 BY MR. SUNG:

8 Q Good morning, Mr. Puente.

9 A Good morning.

10 Q You stated that you stood outside the
11 establishment before you started filming. How
12 long were you standing outside the establishment?

13 A Maybe a few minutes.

14 Q A few minutes?

15 A Yes.

16 Q And we did see the footage. Did you
17 have any other footage from that evening?

18 A No.

19 Q Okay. So approximately 20 to 30
20 seconds that we saw, that's the only footage that
21 you recorded?

22 A Yes.

1 Q Okay. Prior to you filming that
2 footage, isn't it true that the security was, in
3 fact, checking IDs of the patrons as they were
4 entering?

5 A I can't recall. I remember when we
6 walked up, the first thing we said was we weren't
7 seeing IDs checked and Sergeant Thorne kind of
8 walked more closer to the side and that's when I
9 took the phone out to see.

10 Q Okay. So you are not sure in the
11 minutes that you were --

12 MEMBER SILVERSTEIN: Please, speak up
13 a little louder.

14 MR. SUNG: I apologize.

15 BY MR. SUNG:

16 Q So you are not sure in the minutes
17 that you were standing outside before you started
18 filming whether or not Abigail was checking IDs?

19 A No, sir.

20 Q Okay. Now, in the footage that is
21 shown, we start with the employee standing there
22 and some customers waiting outside. We don't

1 know from that footage whether, in fact, some of
2 the people that are standing by the employee
3 already had their IDs checked, correct?

4 A Yes.

5 Q Okay.

6 CHAIRPERSON ANDERSON: I'm sorry, what
7 was the answer?

8 THE WITNESS: Yes.

9 CHAIRPERSON ANDERSON: Yes?

10 THE WITNESS: We don't know.

11 CHAIRPERSON ANDERSON: All right.

12 Okay.

13 BY MR. SUNG:

14 Q So you mentioned that you received a
15 complaint from GW University. Do you have a copy
16 of that complaint?

17 A I do not.

18 Q Okay. What were the -- what did the
19 complaint say specifically?

20 A That a sorority had an event there
21 several weeks prior, one of the owners was inside
22 giving alcoholic beverages to underage patrons.

1 Q Have there been any other complaints
2 regarding Abigail and underage drinking?

3 A Since then or prior to that?

4 Q Prior to then.

5 A No.

6 Q Okay. Where were you before coming to
7 Abigail that evening?

8 A We were at a liquor store.

9 Q Okay. Do you ever perform ID checks
10 without MPD?

11 A Yes.

12 Q Okay. And under what circumstances do
13 you do that?

14 A Usually I do it about every shift I
15 work.

16 Q Understood. Just to be clear on your
17 procedures, under what circumstances do you ask
18 for IDs to customers?

19 A When we suspect underage consumption.

20 Q Okay. What happens if a customer does
21 not want to provide ID?

22 A We will ask the establishment

1 ownership or ABC Manager to try to get the ID to
2 ascertain it. If not, then they need escorted
3 out and we will try to get the ID. Most times, I
4 will call MPD to assist then.

5 Q So you don't have the power to take a
6 customer out of a venue?

7 A No. I would ask that the staff escort
8 them out.

9 Q Okay. Are you -- have you been
10 provided training on how to check for IDs?

11 A Yes.

12 Q Okay. Who provided that training to
13 you?

14 A One of the senior Investigators as
15 well as a person that the Agency hires for the
16 licensees that we bring down.

17 Q Are you familiar with the I.D.
18 Checking Guide?

19 A Yes.

20 Q Okay. Did you perform a comparison of
21 the IDs that were -- that are a part of your
22 report with the I.D. Checking Guide?

1 A I don't believe I did.

2 Q Now, this report -- in general, is it
3 fair to say that the report -- it's your aim in
4 this report to provide all important facts of
5 your investigation?

6 A Yes.

7 Q I would like to direct your attention
8 to the Illinois ID.

9 CHAIRPERSON ANDERSON: Can -- what
10 exhibit is that?

11 MR. SUNG: It is Exhibit 4 to the
12 police report.

13 CHAIRPERSON ANDERSON: All right.

14 BY MR. SUNG:

15 Q Now, you say you spoke to this
16 individual who is shown on this ID?

17 A Yes.

18 Q And you don't know how she entered the
19 venue, correct?

20 A No.

21 Q So you don't know whether she showed
22 this ID in order to gain entry into the

1 establishment?

2 A I do not know.

3 Q Okay. And the -- and your testimony
4 is that the only reason you know this ID to be
5 fraudulent is because she told you that it was
6 fraudulent?

7 A Yes.

8 Q So you haven't actually performed a
9 comparison analysis between this ID that she
10 provided and the ID guide?

11 A I don't think I did, no.

12 MR. SUNG: Chairman Anderson, I would
13 like the Board to take judicial notice of the
14 2018 I.D. Guide. I believe it is a document that
15 the Board is familiar with.

16 CHAIRPERSON ANDERSON: I'm not
17 familiar with it, so I mean, I don't have a copy
18 of it, so it's -- I don't have a copy of it.
19 It's not in front of me, so I'm not going to say
20 I'm familiar with any document that is not in
21 front of me.

22 So and I'll say it's like someone

1 saying that I need to take judicial notice of all
2 the records in ABRA's file and I have always
3 stated that I don't know what records are in
4 ABRA's file, so if you want it to be a part of
5 the record, if you want to introduce the
6 document, show it to Mr. Sousa.

7 As part of your presentation if you
8 want to introduce that, I don't have a problem
9 with that.

10 MR. SUNG: Do you need to see this?

11 MR. SOUSA: Is there a particular page
12 that you were going to ask the Board to look at?

13 MR. SUNG: The Post-Its.

14 MEMBER ALBERTI: Can I just add for
15 clarity --

16 CHAIRPERSON ANDERSON: Yes, hold on,
17 hold on a minute, Mr. Alberti. Do you have a
18 question, Mr. Alberti?

19 MEMBER ALBERTI: I just want to note
20 for the record that I understand you are asking
21 the Board to take judicial notice of that, but
22 that is not produced by ABRA.

1 CHAIRPERSON ANDERSON: Hold on a
2 minute, Mr. Alberti.

3 MEMBER ALBERTI: So it would not be
4 part of our records and I just want that to be
5 clear on the record.

6 CHAIRPERSON ANDERSON: Mr. Alberti,
7 thank you. I already pointed out that I don't --
8 I'm not going to take judicial notice, because
9 it's not part of our record. That's one of the
10 reasons why I asked him that if he wants to
11 introduce it as a part of his case --

12 MEMBER ALBERTI: Um-hum.

13 CHAIRPERSON ANDERSON: -- he can
14 produce it. But I'm not taking judicial notice,
15 because I don't have a copy of it. And once it
16 is officially introduced in the record, then it's
17 a part of the record. But currently, it is not a
18 part of the record.

19 So I think partly are you trying to
20 introduce this document as an exhibit as part of
21 your case in chief?

22 MR. SUNG: Yes, sir.

1 CHAIRPERSON ANDERSON: Mr. Sousa, do
2 you have any --

3 MR. SOUSA: I have no objections to
4 the introduction of this as an exhibit. I just
5 worry logistically that you all don't have copies
6 and maybe those copies should be made.

7 CHAIRPERSON ANDERSON: So if it's a
8 part of the exhibit, I need to be given a copy of
9 it, so therefore I can put it with our file to
10 say this is the official. So if you want to
11 introduce it, then you need to give it to me. At
12 some point before the case is over, you need to
13 give that to me, so I can make it a part of our
14 records.

15 I mean, you can hold on to it, but
16 make sure that prior to the closing of the case,
17 if it's not introduced, it's not part of the
18 record.

19 MR. SUNG: Yes, sir. Thank you.

20 CHAIRPERSON ANDERSON: All right.

21 MR. SUNG: I appreciate that.

22 CHAIRPERSON ANDERSON: Sure.

1 BY MR. SUNG:

2 Q Mr. Puente, you are familiar with the
3 ID guide as you have testified, correct?

4 A Yes.

5 Q And to your understanding, this is
6 sort of the gold standard in terms of comparing
7 IDs to make sure that they are valid?

8 A Yes.

9 Q Okay. And to your understanding, ABRA
10 shares or distributes or makes available this ID
11 guide to all ABC licensees?

12 A Yes.

13 Q I am going to hand you the guide.

14 MR. SUNG: May I approach the witness?

15 CHAIRPERSON ANDERSON: Can you show it
16 to Mr. Sousa what you are -- can you, please,
17 show it to him what you are going to show the
18 witness?

19 MR. SOUSA: I have seen it.

20 CHAIRPERSON ANDERSON: I don't know
21 what you are showing him, so just show him. I'm
22 saying show him what it is you are going to show

1 the witness, so he will see it before you show
2 the witness. That's all I'm asking.

3 MR. SUNG: All right. I apologize.
4 I thought he had seen it.

5 CHAIRPERSON ANDERSON: All right.

6 MR. SUNG: I showed him via --

7 CHAIRPERSON ANDERSON: Oh, then my
8 apologies then, sir.

9 MR. SUNG: All right.

10 BY MR. SUNG:

11 Q Mr. Puente, do you see the page that
12 has been marked for Illinois IDs?

13 A Yes.

14 Q And can you compare it to the -- to
15 Exhibit 4 to your report?

16 A Yes.

17 Q Do you see that there are two photos
18 of the individual on your Exhibit 4? Do you see
19 that?

20 A Yes.

21 Q And do you see on the ID Guide for
22 Illinois that there is -- there are also two

1 photos of the individual?

2 A Yes.

3 Q Okay. Do you also see that the digits
4 of the license or the characters, I believe it is
5 13 characters, on the stamps on the ID guide.

6 A Yes.

7 Q And on your Exhibit 4, there is also
8 the same number of characters for the license
9 number?

10 A Yes.

11 Q You also see the red and blue colors,
12 the primary colors on the sample ID, correct?

13 A Yes.

14 Q And similar for Exhibit 4 to your
15 report, this fraudulent ID, also has the same
16 color scheme?

17 A Yes.

18 Q And there appear to be wavy lines in
19 the ID, which are quite unique. Do you see the
20 wavy lines in the background of the ID? Do you
21 see that on both the sample ID as well as the
22 fraudulent ID?

1 A Yes.

2 MR. SOUSA: I would just object to the
3 characterization of unique, but he can answer.

4 CHAIRPERSON ANDERSON: Go ahead.

5 THE WITNESS: Yes.

6 BY MR. SUNG:

7 Q Do you also see the lines for date of
8 birth, expiration date, issue date and address on
9 the sample ID as well as the fraudulent ID?

10 A Yes.

11 Q And they are very similar in format,
12 correct?

13 A Yes.

14 Q In fact, this fraudulent ID pretty
15 much matches up with the sample ID shown in the
16 ID guide, correct?

17 A Yes.

18 Q You have had a lot of experience
19 detecting fraudulent IDs, Mr. Puente, yes?

20 A Yes.

21 Q So in your experience, is this the
22 fraudulent ID that is shown on your report,

1 Exhibit 4? It's a pretty good fraudulent ID, is
2 that not true?

3 MR. SOUSA: Objection to the
4 characterization of that it's pretty good.

5 CHAIRPERSON ANDERSON: I'm going to
6 sustain. Well, I'm going to sustain the
7 objection, because I guess the bottom line is I
8 don't think we have -- I don't think that Mr.
9 Puente has been -- is an expert in identification
10 of IDs, so maybe you can ask him his opinion, but
11 I'm not going to -- he can't -- so I'll sustain
12 the objection. If you want to rephrase the
13 question, you can ask him.

14 MR. SUNG: Thank you.

15 BY MR. SUNG:

16 Q Mr. Puente, you have testified that
17 you have taken training on detecting IDs. Let me
18 ask you some more questions. How -- in your
19 approximation, how many IDs -- how many
20 fraudulent IDs have you detected over the course
21 of your career at ABRA?

22 A Oh, I can't give a specific number,

1 but over 100 for sure.

2 Q Okay. And would you consider yourself
3 to have knowledge significantly above the
4 layperson in detecting fraudulent IDs?

5 A Yeah, I've been through the training
6 that we give.

7 Q And do you have an opinion as to the,
8 I guess I'm struggling for the word here,
9 workmanship of this fraudulent ID that you have
10 attached to the report?

11 A It has the same characteristics what's
12 in the page.

13 Q Do you see anything that stands out on
14 the fraudulent ID that would tell you upon
15 examination that it is a fraudulent ID?

16 A No.

17 Q I think that's sufficient. Thank you.
18 Turning your attention to the next
19 page, which is Exhibit 5 to your report, the
20 gentleman who you said gave you a Colombia ID,
21 just one question on that.

22 Did you ask this gentleman whether he

1 had shown either of these IDs to gain entry into
2 Abigail?

3 A I can't recall.

4 Q Okay. In your report you don't state
5 whether you asked him that, correct?

6 A Yes.

7 Q So you don't know whether, in fact, he
8 showed either of these IDs to gain entry into the
9 venue, correct?

10 A No, I don't know.

11 Q Turning your attention to Exhibit 7 of
12 your report, which is the -- there are two IDs
13 there, a Maine ID and a New Jersey ID.

14 A Yes.

15 Q It's the Maine ID that you have
16 identified as fraudulent, correct?

17 A Yes, that is what I was told by
18 Detective Carter.

19 Q Okay. And you haven't performed a
20 comparison of this fraudulent ID with the I.D.
21 Book Guide, correct?

22 A No, Detective Carter took those guide

1 IDs with him.

2 Q Okay. Who took these photos?

3 A I did.

4 Q You did?

5 A Yes.

6 Q Okay. Did you speak to this gentleman
7 that is shown on this ID?

8 A No. He already -- Detective Carter
9 already released him by the time I could speak to
10 him.

11 Q So how did you take the IDs?

12 A Detective Carter had them still. Oh,
13 no, I did not speak to him. Detective Carter
14 just advised me and I turned around because
15 Sergeant Thorne got done with his conversation
16 with Mr. Chung, so he was filling him in about
17 that. And Detective Carter advised me what --
18 about those individuals.

19 Q I'm just trying to understand, how did
20 you take these IDs if you didn't speak to this
21 gentleman?

22 A Because they were still standing

1 there, but I didn't question them.

2 Q Understood, understood. Did you, at
3 the time that you took these photos, look at the
4 photos of the gentleman that is shown on these
5 photos compared to the gentleman who was actually
6 standing there, that was being questioned?

7 A I can't recall.

8 Q So you didn't ask this gentleman how
9 he gained entry into the venue, correct?

10 A I did not, no.

11 Q Okay. Do you know if Detective Carter
12 did?

13 A I do not know.

14 Q Similarly for the next exhibit,
15 Exhibit 8 to your report is a Texas ID and a
16 Florida ID, correct?

17 A Yes.

18 (Whereupon, the above-
19 referred to document was
20 marked as Complainant
21 Exhibit No. 8 for
22 identification.)

1 BY MR. SUNG:

2 Q Okay. And it's the Florida ID that is
3 -- that you are saying is fraudulent, correct?

4 A Yes.

5 Q And did you speak to this woman that
6 is shown on this ID?

7 A I did not, no.

8 Q Okay. But did you take this
9 photograph?

10 A Yes.

11 Q Okay. So again, because you didn't
12 speak to this woman, you did not ask her how she
13 gained entry into the venue, correct?

14 A No.

15 Q And similarly, you don't know if
16 Detective Carter asked her how she got into the
17 venue, correct?

18 A I do not know, no.

19 Q Could you turn to the Florida ID
20 section on that identification guide?

21 A Um-hum.

22 Q Could you take a moment to compare

1 this fraudulent Florida ID that is shown in
2 Exhibit 8 to your report and the sample ID that
3 is shown for Florida in that guide?

4 And ultimately, my question to you is
5 do you see anything on this fraudulent ID that
6 would lead you to conclude that it's a fraudulent
7 ID, based on your comparison with the sample in
8 the ID guide?

9 A No.

10 Q And similarly for the Maine ID shown
11 in Exhibit 7 to your report, can you turn to the
12 Maine ID in the ID guide and perform a similar
13 comparison?

14 And ultimately again, my question to
15 you is do you see anything in the fraudulent ID,
16 any marks or features of the fraudulent ID that
17 is different from the sample ID shown in the ID
18 guide?

19 A No.

20 Q In terms of the woman that you
21 approached in what you called the VIP section,
22 when you first saw her, she already had a drink

1 in her hand, correct?

2 A Yes.

3 Q And did you ever find out her name?

4 A No.

5 Q Did you ever see an ID from her?

6 A No.

7 Q Now, you stated in your report that,
8 and I'm paraphrasing here, but I don't want to do
9 that, so I want to be specific as to what you
10 said about her.

11 You said that you advised her of what
12 you had observed and advised her that she needed
13 to cooperate. What does that mean? What did you
14 mean by that, she needed to cooperate? In what
15 manner?

16 A I advised her -- when we walked to the
17 front door, I saw her slip something out of her
18 purse into her skirt. I stopped her. I asked
19 her what she put in there. She wouldn't say
20 anything. I advised her to cooperate. Once we
21 got outside, I took her right to the MPD
22 detectives.

1 Q And later on you say that -- I
2 apologize. Not something you said, you were
3 saying something that -- I have a question. You
4 stated that Sergeant Thorne was there as well as
5 Detectives Carter and Emmons?

6 A Emmons, yes.

7 Q Emmons. Who is the higher ranking
8 officer of those three?

9 A Sergeant Thorne.

10 Q Sergeant Thorne.

11 MR. SOUSA: I'm just going to object
12 to the relevancy of this question.

13 CHAIRPERSON ANDERSON: You're
14 objecting?

15 MR. SOUSA: I'm just going to object
16 to the relevance of that question.

17 CHAIRPERSON ANDERSON: They already
18 answered the question, so --

19 MR. SOUSA: Yeah.

20 CHAIRPERSON ANDERSON: -- you have to
21 object before the answer. Okay. Go ahead.

22 BY MR. SUNG:

1 Q Now, I would like to ask you some
2 questions about the two individuals who Detective
3 Carter spoke to who are shown on Exhibit 7 and 8
4 to your report.

5 You are basically -- since you didn't
6 have any contact with them, you did not see them
7 actually order these drinks, correct?

8 A I did not, no.

9 Q Okay. And you are relying on him
10 telling you what -- you are relying on what he
11 told you to generate your report, correct?

12 A Yes.

13 Q You are not aware -- are you aware
14 whether he actually observed this or if he is
15 relying on one of the other officers, whether it
16 is Sergeant Thorne or Detective Emmons, who
17 allegedly observed these drinks being served?

18 A All he told me is that they observed
19 the drinks being served. So I don't know who --
20 what he meant by that, who -- I'm assuming it was
21 him that saw it.

22 Q Did he specifically say that it was

1 him who observed the drinks being served?

2 A I think he said they saw them. They,
3 plural, so I don't -- I'm assuming that was him
4 and Detective Emmons.

5 Q Okay. It couldn't have been Sergeant
6 Thorne?

7 A Sergeant Thorne was with me and
8 Investigator Peru with the first two individuals
9 that we got.

10 Q Do you know how it was determined that
11 the drinks being served were alcoholic in nature?

12 A He asked them from what he told me.

13 Q He asked who?

14 A The individuals.

15 Q Do you know if anyone spoke to the
16 bartender who allegedly served these drinks?

17 A I do not know.

18 Q Okay. Can you describe the physical
19 appearance of Detective Carter?

20 MR. SOUSA: Objection to the
21 relevance.

22 CHAIRPERSON ANDERSON: Why is it

1 relevant, sir?

2 MR. SUNG: We are going to be calling
3 a witness, the bartender in question who had the
4 interaction with MPD that evening and he is going
5 to describe someone else besides Detective
6 Carter.

7 MEMBER ALBERTI: I thought we called
8 the Rule on Witnesses.

9 CHAIRPERSON ANDERSON: I don't -- I
10 mean, are you questioning whether or not
11 Detective Carter was -- is an officer? I mean, I
12 guess I don't understand why that is relevant.

13 MR. SUNG: So I will proffer the
14 testimony of the -- of our witness who is going
15 to say that he had an interaction with an MPT --
16 MPD officer who does not fit the physical
17 characteristics of Detective Carter, which calls
18 into question the allegations made in this
19 report.

20 CHAIRPERSON ANDERSON: I --

21 MEMBER SILVERSTEIN: Would you say
22 that again? I didn't hear what you said. This

1 is important.

2 MR. SUNG: Yes, thank you. I am going
3 to proffer into evidence later when I call my
4 next witness that the MPD officer who the
5 bartender in question had communications with who
6 was accused of serving these drinks is not, in
7 fact, Detective Carter. And that he does not
8 know the name of the officer, but he can provide
9 a physical description and it is different from
10 Detective Carter.

11 We will show evidence that it was, in
12 fact, Sergeant Thorne, not Detective Carter who
13 made these allegations.

14 CHAIRPERSON ANDERSON: Well, I don't
15 think it is relevant, so I'm not going to allow
16 that question. Let me ask a question since Mr.
17 Alberti reminded me.

18 Do you have witnesses here who will be
19 testifying as a part of your case in chief?

20 MR. SUNG: Yes.

21 CHAIRPERSON ANDERSON: And so were you
22 -- I know you had raised earlier that if the

1 Government had witnesses, you wanted them to be
2 excluded. So what's the Government's position?

3 MR. SOUSA: We had previously
4 discussed that and I had -- I decided to have no
5 objection to the presence of the witnesses in the
6 room. So that's not an issue.

7 CHAIRPERSON ANDERSON: All right.
8 Okay. That's fine. Go ahead. Go ahead, Mr.
9 Sung.

10 MR. SUNG: Thank you. I want to hand
11 the Board copies of the relevant case exhibit
12 2018 I.D. Guide that we discussed, which are the
13 sample IDs for Illinois, Maine and Florida. Can
14 I submit these to you?

15 CHAIRPERSON ANDERSON: You can. Maybe
16 and I'm just asking a question, I mean, the two
17 charges in this case was sale to minor,
18 egregious, and failed -- failure to take
19 reasonable steps. I'm not sure why we are
20 spending all this time talking about the ID
21 whether or not it's fraudulent or not, because
22 unless there is going to be testimony, unless you

1 are going to provide testimony in your case in
2 chief to tell us how is it that your
3 establishment tried to prove that an ID is not
4 fake.

5 So I'm listening to all the testimony
6 and I'm looking at the charges and I'm not quite
7 sure why we are spending all this time on saying
8 that an ID is a fake ID, because whether or not
9 the ID is fake or not, the first charge is a sale
10 to minor. So that's -- whether or not they
11 showed you an ID that says that they are 100
12 years-old and if they are not, it doesn't really
13 matter.

14 So and failed -- the second issue is
15 failure to take reasonable steps, meaning that
16 unless you are going to have someone testify to
17 say that -- I mean, we had a video that says that
18 you weren't -- you -- I don't know if that's true
19 or not, I'm just saying there was a video that
20 was presented by the Government saying that IDs
21 were not being checked.

22 So I'm not quite sure where we are

1 going with this line of questioning.

2 MR. SOUSA: And may I interject?

3 CHAIRPERSON ANDERSON: Yes, sir.

4 MR. SOUSA: It's -- the Government
5 didn't object to the relevance of the questions
6 about the ID, because it understood those
7 questions to be seeking evidence regarding Charge
8 2, the failure to take reasonable steps.

9 MR. SUNG: Correct.

10 MR. SOUSA: A tenuous connection, but
11 I thought it was relevant.

12 But with regard -- the Government
13 agrees with how the Chairman articulated the
14 Board's understanding of Charge 1, that there is
15 a sale to a minor. If the sale existed, if the
16 sale occurred, then liability lies with the
17 licensed establishment.

18 So the Government did not understand
19 those questions about the fraudulent
20 identification similarities with the examples
21 that are in the ID book to be relevant to Count 1
22 at all.

1 CHAIRPERSON ANDERSON: So but I mean
2 if you to, but I'm just saying that I would hope
3 that you spend more time with the charges. I see
4 and again, I don't know the presentation. I
5 don't know who the witnesses are you are calling
6 to prove Charge 2. So if you are going to have
7 witnesses who is going to testify about the steps
8 that you have taken, then I mean, I think that
9 would more -- that's better testimony, direct
10 testimony rather than in cross-examination,
11 because I'm not -- I don't have any testimony to
12 counter what you are trying to put here.

13 But I'm just saying if you want to, at
14 this juncture if that's what you want to do, you
15 can go ahead and do that. But I don't see the
16 connection currently.

17 MR. SUNG: Thank you. The second
18 charge is a violation of § 25-783, which states
19 that a licensee shall take reasonable steps
20 necessary to ascertain whether any person to whom
21 the licensee sells or serves an alcoholic
22 beverage is of legal drinking age.

1 CHAIRPERSON ANDERSON: Right.

2 MR. SUNG: So it goes to the issue the
3 -- the IDs go to the issue of whether it would
4 have -- was reasonable to grant entry to these
5 individuals who showed these IDs which are
6 remarkably similar to the sample ID.

7 CHAIRPERSON ANDERSON: But I'm not
8 sure if this is the appropriate witness for this,
9 because at least what this witness testified to
10 is that you were not checking IDs. That's the
11 video that the witness testified to.

12 MR. SUNG: The burden of proof is on
13 the Government --

14 CHAIRPERSON ANDERSON: All right.

15 MR. SUNG: -- to prove that these
16 individuals who were inside the venue did not
17 have their IDs checked. The video and the
18 testimony that has been produced in this case so
19 far shows that -- the video is at most 20 to 30
20 seconds. They are not the individuals that are
21 shown in these IDs. And at most, according to
22 Mr. Puente's testimony, he only observed the ID

1 checking process for a few minutes. So that's
2 why it's relevant.

3 And I would move -- I would like to
4 share these with the Board as well as counsel.

5 CHAIRPERSON ANDERSON: Counsel?

6 MR. SUNG: And introduce them into
7 evidence.

8 CHAIRPERSON ANDERSON: Any -- what's
9 your --

10 MR. SOUSA: These are the pages I
11 reviewed before?

12 MR. SUNG: Yes.

13 MR. SOUSA: Yes, then, yes, and there
14 is no objection to it being entered into
15 evidence.

16 CHAIRPERSON ANDERSON: All right. Go
17 ahead. So you are moving these documents into
18 evidence?

19 MR. SUNG: Yes, sir.

20 CHAIRPERSON ANDERSON: Remember, we
21 have not -- this is -- so this would be Exhibit
22 No. 2. We have not moved Exhibit No. 1, because

1 I don't have Exhibit No. 1. I just want to make
2 sure that in order to move into evidence, you
3 have to provide us with a copy of Exhibit No. 1.
4 Okay. So Exhibit 2 is moved without objection.

5 (Whereupon, the above-
6 referred to document was
7 marked as Respondent Exhibit
8 No. 1A, B and C for
9 identification and was
10 received into evidence.)

11 MR. SUNG: Chairman, I understand you
12 ruled that my question about the physical
13 description of Detective Carter -- you sustained
14 the objection that I can't ask that question?

15 CHAIRPERSON ANDERSON: Right, yes.

16 MR. SUNG: And for the record, I'm
17 going to object, take exception to that
18 objection, because it's critical to our case to
19 establish that it wasn't Detective Carter who
20 observed these drinks allegedly being served.

21 CHAIRPERSON ANDERSON: Well, I --
22 there is an allegation. I mean, we have -- you

1 haven't provided any evidence and it's difficult
2 for me to -- you are posing a question. I
3 haven't had any contrary testimony from your side
4 to say - for us to make a decision. So it's
5 premature for me to make a ruling currently,
6 because I don't -- I'm not sure what I'm
7 comparing.

8 MR. SOUSA: And the Government would
9 like to say that even if Mr. Sung's theory of
10 their being a mistaken identity with the MPD
11 officers, I don't see any relevance or any direct
12 line between that fact, if proven true by Mr.
13 Sung, and whether it is more likely or not that
14 Abigail Room sold alcohol to minors and didn't
15 take reasonable steps to ascertain the legal
16 drinking age.

17 I just -- even if true, I just don't
18 see the relevance to that line of questioning.

19 CHAIRPERSON ANDERSON: And that's one
20 of the reasons why I have sustained the
21 objection.

22 MR. SOUSA: Thank you.

1 CHAIRPERSON ANDERSON: And so I -- the
2 record will reflect that you are not in agreement
3 with -- you are objecting to my ruling. Okay.
4 Let's move on, please.

5 MR. SUNG: Yes. So I was just trying
6 to save time. I suppose what we can do is we can
7 have Mr. Puente step off when he is done. I can
8 call my witness. He can provide a physical
9 description of the officer who alleged he
10 observed him serving drinks and then called Mr.
11 Puente. I just wanted to save the Board that
12 time.

13 CHAIRPERSON ANDERSON: Well, that's
14 not my call. That's between you and the
15 Government. That's not -- I can't tell the
16 Government to truncate its case to allow you to
17 put a witness on. If both sides agree that this
18 is the way they want to present the case, I am
19 not going to disagree. But I'm in no position
20 right now to tell the Government how is it that
21 they should present their case, that they should
22 allow you to call a witness out of order for

1 whatever fact if you have not discussed that with
2 them and they are in agreement with it.

3 MR. SOUSA: I believe what Mr. Sung is
4 suggesting is that during his case in chief, he
5 will provide the testimony from, I guess, the
6 bartender about the physical appearance of the
7 MPD officer.

8 CHAIRPERSON ANDERSON: I don't think
9 that's what Mr. Sung is saying. What Mr. Sung is
10 saying is once Mr. Puente gets off the witness
11 stand, he will bring his witness in the middle of
12 your case.

13 MR. SOUSA: My case, oh.

14 CHAIRPERSON ANDERSON: He will bring
15 a witness to testify and then you will go back to
16 your case. That's --

17 MR. SOUSA: Oh, I object to that.

18 CHAIRPERSON ANDERSON: -- at least
19 that's my understanding of what Mr. Sung is
20 saying. All right.

21 MR. SUNG: Just to clarify, what I
22 meant was that I would present my witness during

1 my case, not during Mr. Sousa's case.

2 CHAIRPERSON ANDERSON: All right. As
3 I said, I don't think it is relevant. I have
4 ruled on the objection. The relevancy for this
5 witness. If you -- if during your case in chief,
6 you can bring a witness who can testify, the
7 Government will have the opportunity, if they so
8 choose, to call a rebuttal witness and then we
9 can have that discussion.

10 But at this juncture, my ruling
11 stands. So let's move on.

12 MR. SUNG: Thank you.

13 CHAIRPERSON ANDERSON: And let me ask
14 just for clarification, what was the exhibit? I
15 have been handed a whole lot of documents. So
16 what was Exhibit 2? The licensee's Exhibit 2.
17 What is the document? What documents did you
18 just hand us?

19 MR. SUNG: Those are the pages from
20 the 2018 I.D. Guide.

21 CHAIRPERSON ANDERSON: Right.

22 MR. SUNG: Specific pages are for

1 Maine, Illinois and --

2 CHAIRPERSON ANDERSON: Florida?

3 MR. SUNG: Florida.

4 CHAIRPERSON ANDERSON: So those three
5 documents are Exhibit 2. Okay. All right.

6 Thank you.

7 Are you done with this witness or do
8 you have more questions?

9 MR. SUNG: If I could ask the Board
10 for one minute while I review my notes, I think
11 I'm done, but I just want to make sure, please.

12 BY MR. SUNG:

13 Q Detective Puente, you testified that
14 you sometimes ask the venue to approach.

15 CHAIRPERSON ANDERSON: You have to
16 speak up, sir.

17 MR. SUNG: I apologize.

18 BY MR. SUNG:

19 Q You testified previously that
20 sometimes you ask the venue to approach customers
21 to ask for their ID, correct?

22 A Yes.

1 Q Andy why do you do that versus you
2 asking the customers of the IDs?

3 A If customers are aggressive or
4 belligerent and whatnot, then we ask that the
5 staff try to get the IDs from them.

6 Q And to your understanding, is it a
7 requirement of the establishment, the licensee to
8 comply with your request?

9 A Yes.

10 Q Okay.

11 MR. SUNG: I have no further questions
12 of Inspector Puente. However, I would like to
13 reserve my right to call him in my case, in our
14 case.

15 CHAIRPERSON ANDERSON: Well, I'm not
16 quite sure what the rules are whether or not you
17 can reserve your right to call and this is one of
18 the -- and I have always stated I need for folks
19 to identify their documents and witnesses that
20 are called on prior to.

21 So I'm sitting here and I have no idea
22 what documents. I have no idea what witnesses

1 folks are going to call and I'm not sure in our
2 rules and regulations if that is allowable, if
3 you can -- I don't know, but we will -- well, I
4 guess what I'm saying is that why can't you -- at
5 least I have not been -- I have not stated that
6 and the Government hasn't objected to the nature
7 of your questions, so I'm not quite sure what
8 other questions would you be -- would you want to
9 ask the witness if you were to call him?

10 MR. SOUSA: It's the Government's
11 position that it is probably going to renew its
12 relevance objection when Mr. Sung calls Mr.
13 Puente back up to the Bench, but just to
14 facilitate the resolution of this hearing, I have
15 no objection to Mr. Sung calling Mr. Puente later
16 on during his case in chief.

17 CHAIRPERSON ANDERSON: All right.
18 That's fine. Do we have any questions by any
19 Board Members?

20 MR. SOUSA: May I redirect actually?

21 CHAIRPERSON ANDERSON: No, it's we go.

22 MR. SOUSA: Then is there redirect,

1 because I haven't done that yet in this forum.

2 CHAIRPERSON ANDERSON: No. We go.

3 MR. SOUSA: Okay.

4 CHAIRPERSON ANDERSON: Then Mr. Sung
5 goes back and then you get the last call. Yes,
6 Mr. Short?

7 MEMBER SHORT: Good afternoon, Mr. --
8 Investigator Puente. There were five juveniles
9 there the evening of this inspection --

10 THE WITNESS: Yes.

11 MEMBER SHORT: -- that were identified
12 as underage and drinking alcohol?

13 THE WITNESS: Yes.

14 MEMBER SHORT: When you first arrived
15 your video shows several people going through the
16 security that weren't checked, which I saw in the
17 video. Is that correct?

18 THE WITNESS: Yes.

19 MEMBER SHORT: Were any of those
20 persons among those five who you identified as
21 underage drinkers?

22 THE WITNESS: No.

1 MEMBER SHORT: So possibly there could
2 have been more than just those five?

3 THE WITNESS: Yes.

4 MEMBER SHORT: But there were five
5 identified?

6 THE WITNESS: Yes.

7 MEMBER SHORT: That's all I have.
8 Thank you, Mr. Chair.

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

11 MEMBER ALBERTI: I do.

12 CHAIRPERSON ANDERSON: Mr. Alberti?

13 MEMBER ALBERTI: Investigator Puente,
14 thank you for your report. At the risk of boring
15 everybody, I'm going to go back to the IDs,
16 because you did testify with respect to those.

17 Did you exonerate the -- you examined
18 the IDs at the time?

19 THE WITNESS: Yes, I looked at them.

20 MEMBER ALBERTI: Okay. Any thoughts
21 about them, whether they were fake or real, that
22 you can give us right now? If not, that's fine.

1 THE WITNESS: No.

2 MEMBER ALBERTI: All right. So you
3 were asked questions about the similarities
4 between what is in the ID guide and your
5 exhibits.

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: For example,
8 Illinois, all right. And you testified for, I
9 think for at least, three of them -- oh, no, you
10 testified that it was, I think, Illinois, Oregon
11 and Florida at least you testified that they were
12 similar to what was in the ID guides, the picture
13 in the ID guide was similar to your exhibit.

14 THE WITNESS: Yes.

15 MEMBER ALBERTI: Okay. Your testimony
16 about them being -- what is in the ID guide, what
17 is shown in the ID guide being similar to your
18 exhibit. Is that based on your recollection of
19 having examined them or based on what you have in
20 front of you as your exhibit?

21 THE WITNESS: Based on what is in
22 front of me.

1 MEMBER ALBERTI: Okay. So let's go to
2 Illinois, please. Would you read under Illinois,
3 would you read under validation, I'm going to
4 send you the paragraph that says prior, because
5 would you agree that this ID that is in your
6 exhibit for Illinois is not the -- not what is
7 described as the current version of their
8 license, but the prior version of their license?

9 THE WITNESS: Yes.

10 MEMBER ALBERTI: All right. Great.
11 So would you read under prior what it says?

12 THE WITNESS: Are you talking about
13 the photograph of the Illinois?

14 MEMBER ALBERTI: No. It says under
15 paragraph -- under Illinois, under the paragraph
16 that is labeled validation, do you see that
17 paragraph?

18 THE WITNESS: Yes.

19 MEMBER ALBERTI: Under -- towards the
20 bottom there is a sub sort of -- a sub-phrase
21 called prior:?

22 THE WITNESS: Yes, I see it.

1 MEMBER ALBERTI: Would you read what
2 it says after that?

3 THE WITNESS: "Ghost image, hologram,
4 color shift in ink, micro-printing, laser
5 perforation and UV feature on front.

6 MEMBER ALBERTI: Okay. Can you
7 determine from your exhibit whether there is
8 micro-printing?

9 THE WITNESS: No.

10 MEMBER ALBERTI: Typically where is
11 micro-printing? Is it on the front or the back,
12 typically?

13 THE WITNESS: Usually it's on the
14 front.

15 MEMBER ALBERTI: Okay. Hologram, can
16 you tell whether we have a hologram here or not
17 from your exhibit?

18 THE WITNESS: No.

19 MEMBER ALBERTI: All right. Thank
20 you. Laser perforation, can you determine from
21 your picture in your exhibit whether there is
22 laser perforation?

1 THE WITNESS: No.

2 MEMBER ALBERTI: So would you agree
3 that your assessment of these being similar was
4 not completely -- not based on all of the
5 features of the license?

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: All right.

8 MR. SUNG: I'm going to object to that
9 question. I believe it mischaracterizes his
10 previous testimony.

11 CHAIRPERSON ANDERSON: Well, you
12 object as soon as the question is asked before
13 having an answer, because --

14 MR. SUNG: Yes.

15 CHAIRPERSON ANDERSON: -- so all
16 right.

17 MEMBER ALBERTI: Okay.

18 CHAIRPERSON ANDERSON: Go ahead.

19 MEMBER ALBERTI: So your previous
20 testimony is that what is in the ID guide is
21 similar to your -- to what you -- is similar to
22 the ID that was given to you, right?

1 THE WITNESS: Yes.

2 MEMBER ALBERTI: And that was based on
3 what, your recollection of the license or what is
4 in this picture here on your ID?

5 THE WITNESS: What is in the picture.

6 MEMBER ALBERTI: Okay. So there are
7 some features in the picture that you can't
8 validate, right?

9 THE WITNESS: Yes.

10 MEMBER ALBERTI: From the ID?

11 THE WITNESS: Yes.

12 MEMBER ALBERTI: All right. So there
13 are features that could be missing on this ID
14 that should be there, as far as you can tell from
15 this picture. Is that correct?

16 THE WITNESS: Yes.

17 MEMBER ALBERTI: Thank you. So I
18 don't want to belabor this too long, but let's go
19 to Florida. I think your assessment of the
20 similarity is that based on the picture that you
21 have in front of you or based on your
22 recollection?

1 THE WITNESS: The picture in front of
2 me.

3 MEMBER ALBERTI: Okay. Would you read
4 under validation, would you read what it says
5 under validation for Florida?

6 THE WITNESS: Read the whole thing?

7 MEMBER ALBERTI: Yeah, please.

8 THE WITNESS: Current: Two ghost
9 images on front one with transparent circle
10 behind, one on back. UV state outline, circle
11 behind ghost image. "FL" in various locations
12 and // diagonally across the front. Optically
13 variable FD and holder's birth year EGFDA3 above
14 ghost image.

15 Prior: Ghost image, holographic "FL"
16 and state seal. UV second ghost image and
17 holder's last name.

18 MEMBER ALBERTI: Okay. Can you tell
19 from your picture whether there is -- if there is
20 a transparent circle on the back?

21 THE WITNESS: No.

22 MEMBER ALBERTI: All right. Can you

1 tell whether you have a holographic image?

2 THE WITNESS: Yes, you've got one --

3 MEMBER ALBERTI: Of Florida?

4 THE WITNESS: -- yes, there is one
5 holographic image right there right above the
6 female's --

7 MEMBER ALBERTI: Okay. Great.

8 THE WITNESS: -- small picture.

9 MEMBER ALBERTI: All right. Can you
10 tell whether there is a variable FD on the
11 holder's birth date?

12 THE WITNESS: I cannot.

13 MEMBER ALBERTI: All right. Thank
14 you. So again, on here there are features in
15 your picture that you can't determine whether or
16 not they are consistent with the description in
17 the ID guide. Is that correct?

18 THE WITNESS: Yes.

19 MEMBER ALBERTI: All right. Thank
20 you. All right. Oregon, would you read
21 validation?

22 THE WITNESS: Rainbow printing, ghost

1 image Oregon, repeats // diagonally across top,
2 varies in color as license is titled. It is
3 visible under UV light. See page 73.

4 MEMBER ALBERTI: Okay. So again, this
5 -- your assessment that this -- that the ID is
6 similar to what is in the ID guide is that based
7 on the -- what you -- based on the examination of
8 your -- the photo in your exhibit or based on
9 your recollection of what you saw?

10 THE WITNESS: From what is in front of
11 me.

12 MEMBER ALBERTI: From what is in front
13 of you. Okay. Would you agree that we cannot
14 determine whether anything is visible under a UV
15 light from that picture?

16 THE WITNESS: Yes. No, you cannot.

17 MEMBER ALBERTI: You cannot. All
18 right. Thank you. Thank you. All right. Thank
19 you. You talked about a girl, a woman, young
20 woman who you say appeared to be putting
21 something in her skirt.

22 THE WITNESS: Yes.

1 MEMBER ALBERTI: All right. I think
2 this is in your report on page 3 of your report.
3 All right. The first complete paragraph on that
4 page towards the end of that talks about your
5 encounter with her. So she did not -- she said
6 she did not have an ID. Is that correct?

7 THE WITNESS: Yes.

8 MEMBER ALBERTI: She told who that she
9 didn't have an ID?

10 THE WITNESS: She told myself and the
11 detectives out front.

12 MEMBER ALBERTI: She told you?

13 THE WITNESS: Yes.

14 MEMBER ALBERTI: Okay. Did you or the
15 detective ask her how she got in?

16 THE WITNESS: No, we did not.

17 MEMBER ALBERTI: Okay. Did you ask
18 her whether she was checked at the door, her ID
19 was checked at the door?

20 THE WITNESS: No.

21 MEMBER ALBERTI: Okay. Your report
22 talks about -- and you mentioned in your

1 testimony that Mr. Chung appeared and pulled her
2 aside. Is that correct?

3 THE WITNESS: Yes.

4 MEMBER ALBERTI: All right. Did you
5 overhear what he said to her?

6 THE WITNESS: Yes, we were all
7 standing right there.

8 MEMBER ALBERTI: You did overhear what
9 he said to her?

10 THE WITNESS: Yes.

11 MEMBER ALBERTI: And what did he say
12 to her? Can you paraphrase it? Can you
13 remember?

14 THE WITNESS: That we didn't have the
15 authority to detain her and she needed -- she can
16 walk away and she walked away.

17 MEMBER ALBERTI: Okay. Thank you.
18 Let me see, did you see any of the individuals
19 whose IDs you presented us with, did you see any
20 of them with beverages in hand? You personally?

21 THE WITNESS: The two that I got by
22 the bathroom.

1 MEMBER ALBERTI: And those were which
2 ones? Do you remember?

3 THE WITNESS: The Tequila Sunrises.
4 They put them on the ground to get their IDs out
5 of their pocket.

6 MEMBER ALBERTI: What state was that?
7 I -- that could help me, I think. If you
8 remember.

9 THE WITNESS: I have to go back and
10 look at the exhibits. Oh, she had an Illinois
11 and the male patron had a Colombia.

12 MEMBER ALBERTI: Okay. District of
13 Columbia or Colombia?

14 THE WITNESS: The country Colombia.

15 MEMBER ALBERTI: Country, okay. All
16 right. And you saw them with beverages in their
17 hands?

18 THE WITNESS: Yes.

19 MEMBER ALBERTI: Did you ask the
20 officers whether they saw whether those
21 individuals were served?

22 THE WITNESS: The two that we --

1 MEMBER ALBERTI: The two that you saw.

2 THE WITNESS: No, because they were
3 with me.

4 MEMBER ALBERTI: They were with you.
5 Okay.

6 THE WITNESS: Investigator Peru and
7 Sergeant Thorne.

8 MEMBER ALBERTI: How do you know --
9 one had a Tequila Sunrise. How do you know that?

10 THE WITNESS: That's what they told us
11 they had.

12 MEMBER ALBERTI: So the individual
13 told you that? Okay. And what about the other,
14 the second individual?

15 THE WITNESS: He said the same thing.

16 MEMBER ALBERTI: They both had Tequila
17 Sunrises?

18 THE WITNESS: Yes.

19 MEMBER ALBERTI: And they both told
20 you that they had Tequila Sunrises. Is that
21 correct?

22 THE WITNESS: Yes.

1 MEMBER ALBERTI: All right. Thank
2 you. I have no further questions. Thank you.

3 CHAIRPERSON ANDERSON: Any other
4 questions by any other Board Members? Mr. Sung,
5 any specific questions to the witness based on
6 the questions that were asked by the Board?

7 MR. SUNG: Yes, thank you.

8 REXCROSS-EXAMINATION

9 BY MR. SUNG:

10 Q That evening you or any of the other
11 ABRA Inspectors or MPD officers, there were other
12 individuals to whom you asked for IDs, correct,
13 that are not identified in this report?

14 A Yes.

15 Q And they showed valid ID and showed
16 that they were over 21, correct?

17 A Yes.

18 Q Based on the question from Board
19 Member Alberti, he asked about these fraudulent
20 IDs, not knowing today that they are fraudulent,
21 would you fault an employee of a venue for
22 accepting these fraudulent IDs as valid IDs?

1 MR. SOUSA: Objection to the relevance
2 of that question.

3 MR. SUNG: It goes to the heart of the
4 matter here.

5 MR. SOUSA: What relevance does
6 whether he would personally fault someone --

7 MEMBER SILVERSTEIN: Please, speak up, Mr.
8 Sousa.

9 MR. SOUSA: Apologies. What relevance
10 would the fact that Investigator Puente would
11 personally fault someone have to the
12 determination of whether a sale to a minor
13 happened, Count 1, or whether there were
14 reasonable steps under the law taken to ascertain
15 the legal drinking age of a patron, which is
16 Count 2.

17 MR. SUNG: I would posit that there is
18 no connection between Mr. Puente's opinion and
19 those two issues that are at stake in this trial,
20 this hearing.

21 MR. SOUSA: It is absolutely critical
22 to the issue of whether reasonable steps were

1 taken to ascertain the age of a customer. You
2 ascertain the age of a customer by verifying
3 their ID. There has been no testimony as to how
4 these individuals got into the venue. So that's
5 still an open question. So you are asking him
6 whether or not he would -- her personally would
7 fault the -- I'm going to sustain the objection.

8 Maybe you can rephrase the question,
9 but I'm going to sustain the question based on
10 the way it is phrased. I mean, I don't think
11 that is up to the opinion of the witness. I
12 mean, the law is the law what needs to be done.
13 So I don't think it is relevant what this witness
14 -- because I'm not sure that -- and I get what we
15 are saying that I've not heard the witness
16 testify that he saw these customers provide these
17 specific IDs to enter the establishment.

18 I think the witness is more so stating
19 that there is -- no ID check was done. So I'm
20 not -- so whether or not IDs were actually
21 checked, I mean, he is not -- what he testified
22 to, if I recall correctly, is that IDs were not

1 being checked.

2 So I don't -- so again, I'm going to
3 sustain the objection. If you want to rephrase
4 it and ask it a different way, but the way it is
5 framed out, I'll sustain it.

6 BY MR. SUNG:

7 Q Mr. Puente, when you generate these
8 reports, you only generate them if you believe
9 there is a violation, correct?

10 A Yes.

11 Q And the reason that you know that
12 these fraudulent IDs were fraudulent is because
13 they were admitted as being fraudulent by the
14 individuals portrayed on these IDs, correct?

15 A Yes.

16 Q Would you have known that they were
17 fraudulent had their been no admission of their
18 fraudulence by these individuals?

19 A I would have to do further
20 investigation.

21 Q What kind of investigation would you
22 have to have done?

1 A I would have used my magnifying glass.
2 I have a UV light. I would have looked at the
3 back, looked at the pictures to see if the
4 pictures were similar in color, if it was like --
5 sometimes from experience the main picture is
6 usually like it can be very light or dark and you
7 can tell that that's kind of not what is done at
8 the DMVs. So I would have done further
9 investigation.

10 MR. SOUSA: I'm just going to -- I
11 just want to interject and just kind of repeat
12 the same objection that I made to the relevance
13 of this line of questioning. There are two
14 counts at issue at this hearing.

15 Whether alcohol was sold to minors and
16 whether Abigail Room, at this particular night,
17 took reasonable steps to ascertain the legal
18 drinking age of its patrons.

19 The evidence that we offered on direct
20 examination was that five individuals told MPD
21 and ABRA officers that they were of -- they were
22 minors and that they had alcohol on them.

1 Also the evidence that -- so that's
2 for Count 1.

3 Also the evidence for Count 2 was that
4 Mr. Puente and other individuals at MPD and ABRA
5 observed there not being an ID check at the line
6 outside the building and not being -- and not IDs
7 being checked at the service of alcohol at the
8 bar.

9 Those are the issues that are at stake
10 in this litigation. Whether these specific fake
11 IDs were asked or could be ascertained at the
12 time of the -- on April 29, 2018 is not relevant
13 to those two specific questions that the Board is
14 being asked to answer in this litigation.

15 So I'm just going to repeat the same
16 standing objection -- the same objection I have
17 made to the relevance of this line of
18 questioning.

19 CHAIRPERSON ANDERSON: So you are
20 making an objection to the line of questioning?

21 MR. SOUSA: Yes, the subject matter of
22 questioning that Mr. Sung has been pursuing.

1 CHAIRPERSON ANDERSON: And I am going
2 to sustain it because I am -- based on my view at
3 this juncture, I am -- that's where I am. So
4 let's move on, please.

5 MR. SUNG: Yes. Please note my
6 exception to that ruling.

7 CHAIRPERSON ANDERSON: Yes, Mr. Sung.

8 MR. SUNG: That's all the questions I
9 have for now. Once again, I reserve the right to
10 call Mr. Puente back to the stand during our
11 case.

12 CHAIRPERSON ANDERSON: That's fine.
13 Your witness, sir.

14 MR. SOUSA: Yes. Just a few things to
15 go over.

16 REDIRECT EXAMINATION

17 BY MR. SOUSA:

18 Q You were standing out -- you testified
19 that you were standing outside of Abigail Room on
20 the night, the early morning of April 29, 2018,
21 correct?

22 A Yes.

1 Q And you observed that the bouncer or
2 whoever was manning the door or administering the
3 line was not checking IDs when you arrived,
4 correct?

5 A Yes.

6 Q And you took video of that, correct?

7 A Yes.

8 Q And you -- we saw that video, correct?

9 A Yes.

10 Q And that only changed when -- and it
11 was your testimony that that only changed when
12 someone at the licensed establishment saw that
13 there were ABRA/MPD officers observing this,
14 correct?

15 A Yes.

16 Q And you saw people enter into the 21
17 and over event whose IDs weren't checked,
18 correct?

19 A Yes.

20 Q Okay. The male patron that you
21 stopped on the way to the bathroom, do you
22 remember that testimony?

1 A Yes.

2 Q He told you he was carrying a Tequila
3 Sunrise, right?

4 A Yes.

5 Q He told you he was under 21, right?

6 A Yes.

7 Q The female patron told you she was
8 drinking a Tequila Sunrise?

9 A Yes.

10 Q She told you she was under 21, right?

11 A Yes.

12 MR. SUNG: Objection. She did not say
13 that she was drinking a Tequila Sunrise.

14 BY MR. SOUSA:

15 Q She told you that she had a Tequila
16 Sunrise, correct?

17 A Yes.

18 Q And she told you she was under 21,
19 correct?

20 A Yes.

21 Q Okay. The individual that you saw
22 coming -- walking out of the VIP room, do you

1 remember that testimony?

2 A Yes.

3 Q You asked her what she was drinking,
4 correct?

5 A Yes.

6 Q And she said she was drinking
7 champagne, correct?

8 A Yes.

9 Q Yes. And when you spoke to her
10 outside, she told you that she was 18, correct?

11 A Yes.

12 Q That means that she was under 21,
13 right?

14 A Yes.

15 Q Okay. And then you were told by an
16 MPD officer that they observed two other
17 individuals who represented that they were minors
18 drinking alcohol, correct?

19 A Yes.

20 Q And you were told by an MPD officer
21 that those individuals were seen ordering that
22 from the bar, correct?

1 A Yes.

2 Q And you were told --

3 MR. SUNG: Objection. Objection.

4 This entire line of questioning is leading. I've
5 given Mr. Sousa a lot of leeway here because we
6 just want to get to the truth of the matter, but
7 now we are venturing into very critical disputed
8 facts of the case. He cannot lead the witness.
9 This is his witness. This is direct examination.

10 MR. SOUSA: I'll rephrase the
11 question.

12 MR. SUNG: All right. Sure.

13 BY MR. SOUSA:

14 Q What did the MPD officer tell you
15 about the circumstances and facts about those two
16 individuals ordering alcohol from the bar?

17 A That they have observed two
18 individuals order alcoholic beverage, they paid
19 for it, they consumed it, then they -- I went and
20 IDed them and found out they were 18 years-old.

21 Q When you say they in that question,
22 you are not referring to the bartender, you are

1 referring to the MPD officers, correct?

2 A Yes.

3 Q Okay. Do you have any reason to
4 believe -- which MPD officer told you about those
5 last two patrons?

6 A Detective David Carter.

7 Q Do you have any reason to believe he
8 was lying?

9 A No.

10 Q Okay. Can -- because we have gone
11 over this and I just want to -- I don't want to
12 bore the Board, but -- nor do I want to belabor
13 this, but can I ask you to turn to Exhibit No. 5?
14 To the case report that you wrote. Do you see
15 the two IDs that are depicted in the picture?

16 A Yes.

17 Q Now, let me back up a second. You
18 said that in your three years at ABRA, you have
19 seen and evaluated about 100 fake IDs?

20 A Yes.

21 Q That was your testimony, correct?

22 A Yes.

1 Q So you have lots of experience when it
2 comes to determine whether an identification is
3 fake?

4 A Yes.

5 Q Okay. Do these two individuals look
6 alike?

7 A No.

8 Q Okay. Thank you. Can you turn to the
9 next page? Actually two more pages. Do you see
10 the Maine ID and the New Jersey ID?

11 A Yes.

12 Q Okay. Do the two individuals depicted
13 look alike?

14 A Yes.

15 Q They do? In your opinion they do?

16 A Yes.

17 Q Does the New Jersey ID look like the
18 individual you saw on that night, if you
19 remember?

20 A From when I glanced at him, yes.

21 Q Okay. Thank you. Then if you can
22 turn to the next page? Do the two individuals

1 depicted in the Texas ID and Florida ID look
2 alike?

3 A Yes.

4 Q Okay. All right. And just as an
5 administrative matter, I would like to move
6 Exhibit 1 into evidence, both parties have used
7 it, so I don't think there is going to be an
8 objection and I don't want to put words in the
9 mouth of my abutting counsel, but I move Exhibit
10 1 into evidence.

11 CHAIRPERSON ANDERSON: Mr. Sung, at
12 this juncture, do you have any objection to the
13 document, to the introduction of Exhibit 1 in the
14 record?

15 MR. SUNG: Yes, I do. The -- what I
16 have noticed is that the original shows much
17 better resolution of these photos that are in
18 this report than the copy itself. We received
19 this report by email. When you view it on a
20 computer, that particular report the images are
21 much clearer.

22 So I would ask that the original be

1 submitted into evidence versus a copy, which does
2 not do justice to the actual images in particular
3 of these that are fraudulent.

4 MR. SOUSA: Mr. Chairman, that's not
5 a proper response to entry of an exhibit, that
6 it's not the best version available. The witness
7 has testified that it is true and accurate to his
8 understanding. It's a true and accurate copy of
9 the document that he prepared as the case report.

10 Mr. Sung has not identified any sort
11 of mistake or misrepresentation that is made in
12 the copy that is being presented as Exhibit 1. I
13 think there is sufficient foundation to provide
14 Exhibit 1 into evidence.

15 CHAIRPERSON ANDERSON: I'm going to
16 move the document -- I'm moving the documents in
17 the record into evidence.

18 (Whereupon, the above-
19 referred to document was
20 received into evidence as
21 Joint Exhibit No. 1.)

22 CHAIRPERSON ANDERSON: I mean as these

1 are ABRAs. I appreciate the fact it was moved
2 into evidence, but this is the case report that
3 was provided by the Agency. So I'm accepting it
4 as Exhibit 1.

5 MR. SOUSA: Okay. And there is no
6 more -- no more -- no further questions for Mr.
7 Puente.

8 CHAIRPERSON ANDERSON: All right.

9 MR. SOUSA: Thank you.

10 CHAIRPERSON ANDERSON: Thank you, sir,
11 you can step down at this juncture.

12 (Whereupon, witness temporarily
13 excused.)

14 CHAIRPERSON ANDERSON: All right.

15 Does the Government have another witness?

16 MR. SOUSA: The Government rests its
17 case.

18 CHAIRPERSON ANDERSON: All right.
19 Thank you. Mr. Sung, how many witnesses do you
20 have?

21 MR. SUNG: Potentially up to three.

22 MEMBER SILVERSTEIN: Can we break?

1 MR. SUNG: Including Mr. Puente, which
2 will be very brief.

3 CHAIRPERSON ANDERSON: All right. So
4 you potentially have three witnesses. All right.
5 With that said, I'm going to take a -- I'm going
6 to restart this hearing at 1:15. Okay.

7 Okay. So we are in recess until 1:15.

8 MR. SOUSA: Thank you, Your Honor.

9 CHAIRPERSON ANDERSON: Okay.

10 (Whereupon, the above-entitled matter
11 went off the record at 12:53 p.m. and resumed at
12 1:17 p.m.)

13 CHAIRPERSON ANDERSON: All right. We
14 are back on the record. Mr. Sung, do you have a
15 witness you wish to call?

16 MR. SUNG: Yes, sir. Christian Silva.

17 CHAIRPERSON ANDERSON: Christian
18 Silver?

19 MR. SUNG: Silva, S-I-L-V-A.

20 CHAIRPERSON ANDERSON: Mr. Silva.

21 MR. SUNG: Yes.

22 CHAIRPERSON ANDERSON: Can you raise

1 your right hand, sir?

2 Whereupon,

3 CHRISTIAN SILVA

4 was called as a witness by Counsel for the
5 Respondent, and having been first duly sworn,
6 assumed the witness stand and was examined and
7 testified as follows:

8 MR. SILVA: I do.

9 CHAIRPERSON ANDERSON: Thank you.

10 When you sit, sir, please, it appears you have a
11 soft voice, so, please, pull the microphone close
12 to you. Okay?

13 MS. SILVA: Sure.

14 CHAIRPERSON ANDERSON: All right.

15 Thank you. Your witness.

16 DIRECT EXAMINATION

17 BY MR. SUNG:

18 Q Good afternoon.

19 A Good afternoon.

20 Q What is your name for the record?

21 A Christian Silva.

22 Q Where do you work?

1 A I coach soccer in Fairfax County and
2 I work at Abigail.

3 Q What is your position at Abigail?

4 A Bartender.

5 Q Can I ask you to speak up so everyone
6 can hear you?

7 A Bartender.

8 Q Thank you. How long have you been
9 working there as a bartender?

10 A About 8 to 9 months.

11 Q And were you working on the night of
12 April 28, 2018 and the morning of April 29, 2018?

13 A Yes.

14 Q What time did the event start that
15 evening?

16 A 11:00 p.m.

17 Q And when did it end?

18 A 3:00 a.m.

19 Q So that would be April 29th?

20 A Correct.

21 Q Do you -- when you are working as a
22 bartender at Abigail, do you check IDs?

1 A No.

2 Q Why not?

3 A Because that's the security job out
4 front.

5 Q Out front? You mean outside?

6 A Yes.

7 Q And are there ever any under 21 events
8 at Abigail?

9 A Yes.

10 Q So on those nights, why wouldn't you
11 be checking IDs?

12 A Because security checks IDs and people
13 who are over 21 have a wristband and people who
14 are under 21 do not have a wristband, in which we
15 are only allowed to sell them canned Redbulls and
16 Fiji waters or bottled waters.

17 Q Understood. And how do you know
18 whether a particular night is an over 21 event
19 versus an under 21 event?

20 A Before every shift we have a pre-shift
21 meeting with the managers and they inform us.

22 Q And on this particular evening, was it

1 an over 21 night or a 21 and under -- I'm sorry,
2 under 21 event?

3 A Over 21 event.

4 Q Now, directing your attention to that
5 evening and that morning, did you have any
6 interaction with a police officer that evening?

7 A Yes.

8 Q And do you know what, approximately,
9 time it was?

10 A Around 1:00 a.m.

11 Q Okay. And did he approach you or did
12 you approach him?

13 A He screamed at me and waved me down.

14 Q Okay.

15 MEMBER SILVERSTEIN: Say again,
16 please. Say again, please.

17 THE WITNESS: Oh, he screamed at me
18 and waved me down.

19 BY MR. SUNG:

20 Q What did he scream at you?

21 A He was just saying hey, you, hey, you
22 and trying to get my attention.

1 Q Where were you at that time?

2 A At the bar.

3 Q Okay. You were behind the bar?

4 A Behind the bar, correct.

5 Q Did he identify himself?

6 A No.

7 Q Okay. What did he look like?

8 A He was a very large male, bald, white.

9 Q So when you say large, what do you
10 mean? Tall or heavysset?

11 A They -- very heavysset.

12 Q Okay. How did you know that he was a
13 police officer?

14 A He showed me his badge.

15 Q Can you tell me what he said or what
16 you said after he yelled out hey, you?

17 A He asked me for my ID and he showed me
18 his badge.

19 Q Okay. And what did you say in
20 response?

21 A I asked him why.

22 Q What did he say?

1 A He said I'm not going to ask you
2 again.

3 Q Okay. What happened next?

4 A I asked him why one more time. Then
5 I went to go get my ID. When I came back, he had
6 two drinks with him and he said that I had served
7 two under 21 year-olds liquor.

8 Q Okay. Was he holding these drinks?

9 A No, they were at the bar.

10 Q Okay. Did he identify these customers
11 whom you had allegedly served these drinks to?

12 A No, he did not.

13 Q Okay. Did you see anyone else in the
14 vicinity at that time, any other law enforcement
15 or ABRA Investigators?

16 A No. The corner that he was at was
17 empty.

18 Q Okay. Do you recall serving those
19 drinks?

20 A No.

21 Q Why don't you know?

22 A Because it's --

1 MR. SOUSA: Objection.

2 Mischaracterizes the testimony. He said he
3 didn't -- strike that. Go ahead.

4 THE WITNESS: Answer?

5 CHAIRPERSON ANDERSON: Yes.

6 THE WITNESS: Because it's a very busy
7 night and I serve a lot of drinks.

8 BY MR. SUNG:

9 Q Okay. Did he say any -- did this
10 officer say anything else to you?

11 A He said that I should -- as a
12 bartender, it's my responsibility to check IDs.

13 Q Were you able to determine that night
14 what drink was in those cups?

15 A No.

16 Q Okay. So you didn't -- did you taste
17 the drinks?

18 A No.

19 Q Okay. Did this police officer, did he
20 taste the drinks?

21 A No.

22 Q Did you and the police officer have a

1 conversation about what was in the drinks?

2 A He asked me what the drinks were and
3 I told him I don't know.

4 Q Now, aside from this particular
5 exchange of communication with this officer, are
6 you aware of any other communications with law
7 enforcement that evening inside the venue?

8 A No.

9 Q Were there other bartenders working
10 that night?

11 A Yes.

12 Q Okay. And are they -- where are they
13 in relation to you?

14 A At the other side of the bar.

15 Q Okay. How big is the bar?

16 A Very large.

17 Q Very large?

18 A Or medium.

19 Q Okay. Well, how many other bartenders
20 were there that evening?

21 A There is two other bartenders.

22 Q Okay. Are they within your line of

1 sight?

2 A Yes.

3 Q Had they had an exchange with law
4 enforcement, would you have seen it?

5 A Yes.

6 Q Did you speak to the other bartenders
7 that night?

8 A Yes.

9 Q Did you talk about any communications
10 with other law enforcement besides this one that
11 you were involved with?

12 A They did not have any other
13 communication with other law enforcements.

14 Q Did they tell you this or are you just
15 concluding that?

16 A They told me this.

17 Q And just to be clear, did you have any
18 communication with ABRA that night, not MPD, but
19 ABRA?

20 A No.

21 Q Okay. Thank you. That's all the
22 questions I have. The Board and counsel may have

1 questions for you.

2 A All right.

3 CROSS-EXAMINATION

4 BY MR. SOUSA:

5 Q Thank you for your time today.

6 A No problem.

7 Q I appreciate it. Mr. Silva, you said
8 that it's not your policy to check IDs at the
9 bar?

10 A Correct.

11 Q That's because the front bouncer or
12 people administrating the line are supposed to
13 check IDs?

14 A The security, yes.

15 Q That's because they are supposed to
16 check IDs, correct?

17 A Yes.

18 Q And this was an over 21 event?

19 A Yes.

20 Q Yet you said you didn't remember
21 serving the particular rum and cokes, because you
22 serve a lot of drinks?

1 MR. SUNG: Objection.

2 THE WITNESS: Yes.

3 MR. SUNG: There -- he did not
4 identify any drinks as rum and cokes.

5 CHAIRPERSON ANDERSON: Sustained.

6 MR. SOUSA: Yeah, I'll rephrase it.

7 BY MR. SOUSA:

8 Q The two drinks that the MPD officer
9 showed you, you said you didn't remember serving
10 those drinks, correct?

11 A I said I don't know.

12 Q Yeah, and you testified today that
13 it's because you served a lot of drinks?

14 A Correct.

15 Q Okay.

16 MR. SOUSA: Yeah, no further
17 questions.

18 CHAIRPERSON ANDERSON: You have no
19 further questions?

20 MR. SOUSA: No further questions.

21 CHAIRPERSON ANDERSON: All right.

22 Just a quick question, Mr. Silva. Are you the

1 only bartender who works at Abigail?

2 THE WITNESS: No.

3 CHAIRPERSON ANDERSON: How many
4 bartenders, at least in this night in question,
5 were working?

6 THE WITNESS: That particular night?

7 CHAIRPERSON ANDERSON: Yes.

8 THE WITNESS: Two other bartenders.

9 CHAIRPERSON ANDERSON: Okay. Any
10 questions by any Board Members? Yes, Mr.
11 Alberti?

12 MEMBER ALBERTI: Thank you. Mr.
13 Silva, do you remember what the drinks looked
14 like that the police officer left on the bar in
15 front of you?

16 THE WITNESS: Yes.

17 MEMBER ALBERTI: Can you describe
18 them?

19 THE WITNESS: One was red and the
20 other one was black.

21 MEMBER ALBERTI: Okay. What do you
22 mean by red? Like cranberry juice, cherry soda,

1 I mean, red?

2 THE WITNESS: I wouldn't know that.

3 It was just red.

4 MEMBER ALBERTI: Red. And the other
5 one was black?

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: Okay. Thank you.

8 CHAIRPERSON ANDERSON: Any other
9 questions by any other Board Members?

10 MEMBER SHORT: I have one.

11 CHAIRPERSON ANDERSON: Mr. Short?

12 MEMBER SHORT: The glasses that were
13 set on the bar by the police officer, were they
14 the glasses from your establishment?

15 THE WITNESS: Yes.

16 MEMBER SHORT: And the officer said to
17 you that he had taken them from some underage
18 drinkers?

19 THE WITNESS: Correct.

20 MEMBER SHORT: And the glasses were
21 from your establishment?

22 THE WITNESS: Correct.

1 MEMBER SHORT: That's all I have, Mr.
2 Chair. Thank you.

3 CHAIRPERSON ANDERSON: All right. Let
4 me ask a question, Mr. Silva. Mr. Silva, as a
5 bartender, and you stated you don't check IDs, is
6 that correct?

7 THE WITNESS: Correct.

8 CHAIRPERSON ANDERSON: But if you see
9 someone who looks like they are not 21, do you --
10 would you -- do you ask them for ID if they look
11 to you like -- if someone comes up to you and you
12 question whether or not they are 21, do you just
13 still sell them liquor, drinks or do you question
14 them to ask them if they are 21?

15 THE WITNESS: Well, if security lets
16 them in, then I assume that they are over 21.

17 CHAIRPERSON ANDERSON: Even if they
18 might appear to -- I'm asking, because you are a
19 bartender.

20 THE WITNESS: Yeah.

21 CHAIRPERSON ANDERSON: So even if they
22 -- the person might -- you are assuming that

1 everyone who comes in that -- if it's an over 21
2 event, you are assuming that if security let's
3 them in, that they are 21 and over?

4 THE WITNESS: Correct. There are
5 people who look older than 21 that aren't 21.
6 There are people who look younger than 18 and are
7 over 21. So if the security let's them in, then
8 I assume that they are over 21.

9 CHAIRPERSON ANDERSON: And so you will
10 serve?

11 THE WITNESS: Correct.

12 CHAIRPERSON ANDERSON: Okay. Any
13 other questions? All right. No more questions
14 by the Board? All right. Go ahead, Mr. Sousa.

15 MR. SOUSA: I have a couple questions.

16 RECROSS-EXAMINATION

17 BY MR. SOUSA:

18 Q You testified that the drinks that are
19 -- the non-alcoholic drinks that are provided at
20 your bar are -- include Redbull and Fiji water.
21 Do you remember that testimony?

22 A Correct.

1 Q Are there any other drinks, non-
2 alcoholic drinks that your bar provides?

3 A Yes.

4 Q What other ones?

5 A All the drinks? Ah, coke, diet coke.

6 Q Just -- okay. So a variety of soft
7 drinks?

8 A Yes.

9 Q Okay. All right.

10 MR. SOUSA: Yeah, no further
11 questions.

12 CHAIRPERSON ANDERSON: Mr. Sung?

13 MR. SUNG: Just one.

14 REDIRECT EXAMINATION

15 BY MR. SUNG:

16 Q Did you ever find out who the police
17 officer was, his identity that you had the
18 interaction with that evening?

19 A No.

20 Q Okay.

21 MR. SUNG: That's all.

22 CHAIRPERSON ANDERSON: Mr. Silva,

1 thank you very much for your testimony. You can
2 step down.

3 (Whereupon, witness was excused.)

4 CHAIRPERSON ANDERSON: Do you have
5 another witness, sir?

6 MR. SUNG: Yes, sir, David Chung.

7 CHAIRPERSON ANDERSON: Can you raise
8 your right hand?

9 Whereupon,

10 DAVID CHUNG

11 was called as a witness by Counsel for the
12 Respondent, and having been first duly sworn,
13 assumed the witness stand and was examined and
14 testified as follows:

15 MR. CHUNG: I do.

16 CHAIRPERSON ANDERSON: Thank you.

17 Your witness.

18 DIRECT EXAMINATION

19 BY MR. SUNG:

20 Q Please, state your name for the
21 record, please.

22 A David Chung, C-H-U-N-G.

1 Q Can you speak up a little bit for the
2 Board?

3 A David Chung, C-H-U-N-G.

4 Q What is your position at Abigail?

5 A I'm a member of the LLC.

6 Q Were you at the venue on the evening
7 and morning of April 28th and 29th?

8 A I was.

9 Q Okay. Are you aware whether IDs were
10 being checked that evening?

11 A Yes.

12 Q So were they being checked?

13 A Yes, IDs were checked.

14 Q How do you know that?

15 A Because the gentleman outside, his
16 name is Koby, forgive my pronunciation, I believe
17 it is Kobayashi. He has worked with us probably
18 over five years.

19 Q Okay.

20 A And his job is to check IDs.

21 Q What kind of training has he received,
22 if you know, regarding checking IDs?

1 A We have gone over the ABRA procedures
2 just like Inspector Puente discussed. We have
3 the blue light outside. We have the magnifying
4 glass. And as you saw, we have the 2018 I.D.
5 Guide, which is distributed. We picked it up
6 right here at ABRA. So those are the
7 requirements we have.

8 He checks the date. He looks at the
9 license. It's pretty standard.

10 Q Okay. Is Koby, this employee who
11 checked IDs, is he still employed at Abigail?

12 A He is not. He was part-timing at the
13 Nigerian Embassy, father of three kids and I
14 think he has moved on. I think the schedule is a
15 little bit tough for him.

16 Q I'm going to show you a footage and
17 you have seen this footage, but I first want to
18 lay the foundation.

19 Did you review footage from the night
20 in question?

21 A I did.

22 Q Okay. How did you obtain the footage?

1 A We have the security tech person.
2 They download it. We just send them the request
3 and they convert it over and then they send it to
4 us.

5 Q Okay. Can -- the footage, does it
6 have a time and date stamp on it?

7 A Yes.

8 Q Okay. And is that accurate to your
9 knowledge?

10 A Yes.

11 Q Okay.

12 MR. SUNG: So I would like to show a
13 very short clip to the Board, a footage from
14 Abigail that evening or that morning.

15 (Video 2 Played)

16 BY MR. SUNG:

17 Q can you identify what the date and the
18 time is on that?

19 A It's the morning of the 29th of April,
20 1:02 a.m.

21 Q Okay. And can you point out for the
22 Board where Koby is?

1 A Sure. Koby is at the front, there is
2 a queue, checking IDs.

3 Q And do you notice three gentlemen to
4 the left, on the left side of the screen?

5 A Yeah. So prior to me pointing out
6 Koby, these gentlemen were not there and now they
7 have appeared.

8 Q Do you recognize those individuals?

9 A Yeah, so the African American Underage
10 Task Force, who I have known for years, is David
11 Carter.

12 Q Okay. Go ahead.

13 A The bald gentleman is Investigator --

14 CHAIRPERSON ANDERSON: Can you hold
15 on? I have -- I don't have a video.

16 MEMBER SILVERSTEIN: Yes, we have lost
17 it here.

18 MR. SUNG: You can pause it right
19 there.

20 (Vide 2 Paused)

21 THE WITNESS: If the Board would like,
22 I'll point to the screen. Adult American --

1 CHAIRPERSON ANDERSON: I --

2 MEMBER SILVERSTEIN: So where on the
3 screen are --

4 CHAIRPERSON ANDERSON: You are
5 pointing, but I -- since you are not pointing at
6 the screen I'm looking at, I have no idea what
7 you are pointing at.

8 THE WITNESS: Oh, okay.

9 MEMBER ALBERTI: So just to be
10 helpful, can you describe which -- where on the
11 screen you are seeing these?

12 CHAIRPERSON ANDERSON: Hold on, hold
13 on a minute, Mr. Alberti. You have the mouse,
14 so, yes, use that, please.

15 THE WITNESS: Okay.

16 MEMBER ALBERTI: So is this the
17 middle, the lower left hand corner, the upper
18 right hand corner? Where on the screen?

19 CHAIRPERSON ANDERSON: Follow the --

20 MEMBER ALBERTI: But for the record.
21 I think it's -- for the record, it's best that we
22 say where on the screen they are. Tell me.

1 THE WITNESS: The lower left corner.

2 MEMBER ALBERTI: Okay. The lower left
3 corner. Okay. Thank you.

4 THE WITNESS: Right where it says Cam
5 3.

6 MEMBER ALBERTI: Okay. Thank you.

7 THE WITNESS: Okay.

8 MEMBER ALBERTI: All right. That's
9 helpful.

10 THE WITNESS: Okay.

11 MEMBER ALBERTI: Thank you.

12 THE WITNESS: So the mouse is on
13 Detective Carter. He is part of the Underage
14 Task Force.

15 MEMBER ALBERTI: And he is how --

16 THE WITNESS: African American
17 Gentleman.

18 MEMBER ALBERTI: Okay.

19 THE WITNESS: All black.

20 MEMBER ALBERTI: Thank you. All
21 right.

22 CHAIRPERSON ANDERSON: I'm not sure if

1 you can tell that from the video. So I think you
2 are just pointing out.

3 THE WITNESS: I've known him for
4 years.

5 CHAIRPERSON ANDERSON: But I don't
6 think that -- that is not in the video, so you
7 are just pointing out --

8 THE WITNESS: No, he is in the video.

9 CHAIRPERSON ANDERSON: 150 pounds is
10 not in the video, so all you are doing is
11 pointing --

12 THE WITNESS: Okay. It's my firsthand
13 knowledge.

14 CHAIRPERSON ANDERSON: That's -- I'm--
15 all we are asking you to do is point out who you
16 are referring to in the video. Okay.

17 THE WITNESS: Okay.

18 CHAIRPERSON ANDERSON: So I would ask
19 moving forward if there is anyone you -- just use
20 the cursor to point out who you are speaking of.

21 THE WITNESS: All right. This
22 handsome gentleman is Investigator Puente.

1 MEMBER SHORT: He can't hear you.
2 Speak into the mike.

3 CHAIRPERSON ANDERSON: You have to
4 also go in the mike, yes.

5 THE WITNESS: This handsome gentleman
6 where the mouse is over is Investigator Puente
7 with his hands in his pockets.

8 CHAIRPERSON ANDERSON: All right.

9 MEMBER SHORT: How much does he weigh?

10 THE WITNESS: Oh, he is probably about
11 a good 182, 185.

12 MEMBER SHORT: All right. Go ahead.

13 (Video 2 Played)

14 THE WITNESS: Take on the weak. He
15 has got hair and he is standing right there. And
16 then I'm going to go ahead and move on to the
17 gentleman standing right next to him. This is
18 Investigator Peru, bald head, probably about 145,
19 150, 5'6" or 5'7". And they just appeared in the
20 video.

21 CHAIRPERSON ANDERSON: All right.

22 (Video 2 Stopped)

1 THE WITNESS: And they are both with
2 ABRA, Puente and Peru are with ABRA. Detective
3 Carter is with MPD Underage Task Force.

4 CHAIRPERSON ANDERSON: All right.

5 MR. SUNG: Thank you. Can we replay
6 that?

7 CHAIRPERSON ANDERSON: Mr. Sung,
8 remember for the transcriber, you need to speak
9 into the microphone, please.

10 MR. SUNG: Thank you, Chairman. I
11 just wanted the video to be replayed, so that the
12 Board can see what we are talking about.

13 (Video 2 Replayed)

14 BY MR. SUNG:

15 Q Mr. Chung, can you use the cursor to
16 show where Koby is, your security?

17 A Okay. I'm going to pause it.

18 (Video 2 Paused)

19 THE WITNESS: And Koby is right here
20 for the Board. The mouse right underneath the
21 time stamp of 1:02 a.m. 24 seconds.

22 BY MR. SUNG:

1 Q Okay. Great. And --

2 A This is Thomas. This is the security
3 at the exit to make sure no one comes in through
4 the exit. Thomas, Thomas Davis.

5 Q Okay. Understood. I think we just
6 saw someone actually come through the exit.
7 Under what circumstances are people allowed
8 through the exit?

9 A So if you have already gained entry
10 into the venue and you have a stamp, which is a
11 specified stamp for our venue, you would be
12 allowed to come back in, because we have to
13 accommodate smokers.

14 Q Understood. And the Board can see for
15 themselves, but can you -- if we play that
16 through, can you describe to the Board what, if
17 anything, you can see Koby doing?

18 (Video 2 Played)

19 THE WITNESS: Well, I see him checking
20 IDs. He is checking IDs. And I understand that
21 the Investigators are saying well, wait a minute,
22 why is he going so fast? My explanation of that

1 is I spoke with Koby that night and he said
2 David, how am I -- let's say Board Member Alberti
3 comes into ABRA every day. I don't think the
4 security guard at the front is going to ask him
5 for his ID every single day. I think that would
6 almost borderline on harassment.

7 So you have to use your discretion and
8 use your common sense. And that's what Koby is
9 doing.

10 (Video 2 Stopped)

11 BY MR. SUNG:

12 Q So just to be clear, you did speak to
13 Koby that evening after the visit by MPD and
14 ABRA?

15 A I did. I did speak to him that
16 evening.

17 Q And did you ask him whether he had
18 checked IDs?

19 A Yes, I did. And he verified that he
20 had checked everyone's IDs.

21 Q Was there anybody else checking IDs
22 that evening?

1 A Yes.

2 Q Okay. Was it before or after Koby?

3 A Before and after Koby actually.

4 Q So --

5 A And let me rephrase, when I said Koby
6 checked everyone's IDs, where he found it
7 necessary to check IDs, again, if you see the
8 same person over and over again and you ask me
9 for my -- if I go to the bank and you ask me for
10 my ID and I have known you for 10 years, I might
11 take that personally. So we have to use common
12 sense. We are in the customer service business.

13 Q Understood. And you saw -- what is
14 the -- is there a set procedure on who checks IDs
15 throughout the course of the night at the
16 entrance?

17 A We have our security manual and we
18 have our procedures on how to check IDs.

19 Q Right.

20 A But yeah, the manager appoints it and
21 then they rotate and they do a handoff.

22 Q Understood. You saw the video clip

1 that Investigator Puente described. In his
2 interpretation that he provided to the Board, did
3 you agree with his interpretation?

4 A No. I think the video -- frankly, I
5 wish it was much longer and it depicted a better
6 characterization of what happened, guys, because
7 that video is very short and it seems like it is
8 up to something else, trying to paint the wrong
9 picture.

10 You know, it would be like a
11 Washington Post reporter coming to a Federal
12 Courthouse and filming a Judge who closes his
13 eyes to gather his thoughts for about 10 seconds
14 and then putting on the front page "Judge
15 Kavanaugh falls asleep at DC Circuit Courthouse
16 during trial."

17 I think it is -- I don't think it is
18 the proper characterization of what went on that
19 night.

20 Q Inspector Puente testified earlier
21 about --

22 MR. SUNG: Strike that, strike that.

1 That's all the questions I have. Thank you.

2 CHAIRPERSON ANDERSON: Your witness,
3 sir.

4 MR. SOUSA: Thank you, Mr. Chairman.

5 CROSS-EXAMINATION

6 BY MR. SOUSA:

7 Q You testified this individual, Koby,
8 was checking IDs at this time, 1:02 a.m., on
9 April 29th, correct?

10 A Yes.

11 Q And you testified that there were
12 other people checking IDs?

13 A Yes.

14 Q Were the other people checking IDs at
15 the same time Koby was checking IDs?

16 A No, they were probably inside.

17 Q Okay. So when you testified other
18 people were checking IDs, there is only one
19 person at a time checking IDs at Abigail Room, at
20 least on the night of April 28th into the morning
21 of April 29th?

22 A No. I mean, that may be the case in

1 that split second where we have the video, but if
2 there is a large queue, there could be help out
3 there.

4 Q Okay.

5 A Yeah.

6 Q In your recollection, do you recall
7 multiple individuals manning the line at the same
8 time the night of April 28th and the early morning
9 of April 29th?

10 A I didn't recall. I didn't review the
11 entire night.

12 Q Okay. So you testified there were
13 some instances where this Koby individual doesn't
14 check IDs, correct?

15 A Yes.

16 Q Okay.

17 A Or he may not.

18 Q Um-hum.

19 MR. SOUSA: Yeah, that's all the
20 questions I have. Thanks.

21 CHAIRPERSON ANDERSON: Any questions
22 by any Board Members? Mr. Alberti?

1 MEMBER ALBERTI: So, Mr. Chung, just
2 so I understand, so if the bartender -- I mean,
3 I'm sorry. If Mr. Koby or whoever is in line
4 administering to the ID checking, all right, if
5 they recognize someone as a frequent customer,
6 they may not check their ID. Is that correct?

7 THE WITNESS: If they have checked --
8 if he is sure that he has checked that person's
9 IDs on multiple occasions prior to, yes.

10 MEMBER ALBERTI: Okay. And if he is--
11 hypothetically, how many times would a person
12 have to visit to be a regular customer?

13 THE WITNESS: It depends on the person
14 checking IDs. It depends on the person.

15 MEMBER ALBERTI: Is it two times?
16 Could you have seen them two times and oh, I
17 remember you from the last two weeks?

18 THE WITNESS: Sure. Sure. It could
19 be my mom and she has come twice, I know how old
20 she is.

21 MEMBER ALBERTI: Okay. Well, I'm not
22 asking about you.

1 THE WITNESS: Right.

2 MEMBER ALBERTI: Do you check IDs?

3 THE WITNESS: No, I don't, but I

4 can't --

5 MEMBER ALBERTI: Okay. Okay. So--

6 THE WITNESS: -- tell you what --

7 MEMBER ALBERTI: No, wait, wait, wait,

8 wait.

9 THE WITNESS: -- Koby thinks.

10 CHAIRPERSON ANDERSON: Mr. Alberti,

11 give him a chance to answer the question.

12 MEMBER ALBERTI: And that's fine. So

13 I'm not asking about you. So let's keep it to

14 Koby and your staff who is checking IDs, because

15 I know you can't tell me what they think.

16 So, hypothetically, if someone comes
17 in twice, three times and they make a mistake all
18 three times, thereafter -- and the person really
19 is under 21 and they made a mistake the first two
20 or three times, they are going to -- thereafter
21 they are going to let them in and the mistake is
22 going to continue. Is that correct?

1 THE WITNESS: Correct. If they have
2 a fantastic --

3 MEMBER ALBERTI: Correct.

4 THE WITNESS: -- ID that you can't
5 decipher, that only an expert that has to call in
6 the date of birth, the ID, the Social Security
7 Number, to verify the ID, absolutely.

8 MEMBER ALBERTI: So --

9 THE WITNESS: It's common sense.

10 MEMBER ALBERTI: -- Chairman Anderson,
11 would you direct the witness to answer my
12 questions? I don't really need this extraneous
13 information. I was just asking a simple
14 question.

15 CHAIRPERSON ANDERSON: All right.

16 THE WITNESS: Chairman Anderson, he
17 seems to give a lot of leeway to Government
18 witnesses.

19 CHAIRPERSON ANDERSON: Hold on.

20 THE WITNESS: But --

21 CHAIRPERSON ANDERSON: Hold on, Mr.
22 Chung, please. All right. Questions are being

1 asked and if we expect a concise answer, we have
2 to ask a concise question.

3 MEMBER ALBERTI: Okay.

4 CHAIRPERSON ANDERSON: And so we -- so
5 this is our -- Mr. Alberti is going to ask a
6 question. Mr. Chung, please, answer the question
7 to the best of your ability as brief as possible,
8 if that is something that you can do, sir, okay?

9 THE WITNESS: Yes, sir.

10 MEMBER ALBERTI: Okay. So, Mr. Chung,
11 who is responsible for training your staff, the
12 ID checkers?

13 THE WITNESS: Manager, ownership.

14 MEMBER ALBERTI: And who is
15 responsible for making sure that that gets one,
16 that training gets done?

17 THE WITNESS: Manager, ownership.

18 MEMBER ALBERTI: So as an owner and
19 licensee, you are not responsible at all?

20 THE WITNESS: Manager and ownership.

21 MEMBER ALBERTI: Okay. So you are.

22 As an owner you are responsible to make sure that

1 gets done?

2 THE WITNESS: I'm not solely
3 responsible.

4 MEMBER ALBERTI: So who else is?

5 THE WITNESS: Ownership.

6 MEMBER ALBERTI: Ownership. Who is
7 ownership?

8 THE WITNESS: Myself and the other
9 members of the LLC and managers that work
10 underneath us.

11 MEMBER ALBERTI: I ask that because
12 you have had previous licenses. Is that correct?

13 THE WITNESS: Yes, I have been in this
14 business for 19 years.

15 MEMBER ALBERTI: And your previous,
16 most previous, I mean recently, you have had a
17 license under the trade name Chinese Disco. Is
18 that correct?

19 THE WITNESS: That's correct.

20 MEMBER ALBERTI: All right. And if I
21 recollect, in the recent past I notice there are
22 two violations that you were found guilty of that

1 occurred in 2017, but --

2 MR. SUNG: Objection. I don't think--
3 this is highly prejudicial. Any past allegations
4 or past violations that is not relevant or
5 probative to whether or not in this particular
6 instance there has been a violation. It's highly
7 improper.

8 MEMBER ALBERTI: May I respond to
9 that, since the objection is on my question?

10 CHAIRPERSON ANDERSON: But --

11 MEMBER ALBERTI: May I?

12 CHAIRPERSON ANDERSON: This is -- all
13 right. This is about Abigail. And I think --
14 and I'm going to agree with Mr. Sung.

15 MEMBER ALBERTI: So before you rule,
16 may I just speak?

17 CHAIRPERSON ANDERSON: Go ahead, Mr.
18 Alberti.

19 MEMBER ALBERTI: So this really is
20 about egregious sale to minor, is it not? Am I
21 correct?

22 THE WITNESS: Can we get a fair trial,

1 Mr. Alberti?

2 MEMBER ALBERTI: So --

3 CHAIRPERSON ANDERSON: Hold on, Mr.

4 Alberti.

5 MEMBER ALBERTI: -- I believe this is

6 on egregious --

7 CHAIRPERSON ANDERSON: Hold on, Mr.

8 Alberti. Mr. Chung, this is between Mr. Alberti

9 and myself. You are an attorney. This does not

10 concern you, sir, so once I make a ruling then

11 you can decide whether or not you are going to

12 respond. So it's not appropriate for you to

13 respond --

14 THE WITNESS: Yes, sir. I apologize.

15 CHAIRPERSON ANDERSON: -- okay. Thank

16 you, sir. All right. Go ahead, Mr. Alberti.

17 MEMBER ALBERTI: So I think one of the

18 elements of egregious is sort of intentional lack

19 of effort to make sure and ensure that no minors

20 are being served. And so I think it is

21 interesting and I think it is relevant to show a

22 pattern by this licensee of their ability to

1 manage a license without serving minors. And
2 that's why I brought that up. That's the only
3 reason because we are really dealing with an
4 egregious sale to minor, not just, you know, you
5 have been warned at this license and now this is
6 the second time.

7 So I'm just -- I thought the pattern
8 was -- would be relevant here.

9 CHAIRPERSON ANDERSON: In this
10 particular case, it's not relevant because we are
11 talking about the Abigail. I mean, but I don't
12 think it is relevant for us to talk about another
13 establishment that is not -- although it might be
14 the same ownership, but if we are talking about a
15 pattern of behavior at the Abigail, then I think
16 it would be relevant.

17 But since we are -- it's Chinese
18 Disco, that is not a part of this hearing today,
19 so that's one of the reasons why I believe that I
20 am going to sustain the objection by counsel that
21 it is not -- that having --

22 MEMBER ALBERTI: Okay.

1 CHAIRPERSON ANDERSON: -- conversation
2 about Chinese Disco is not relevant in this
3 regarding the Abigail.

4 MEMBER ALBERTI: I have no further
5 questions. Thank you.

6 CHAIRPERSON ANDERSON: Thank you.

7 THE WITNESS: Thank you, Mr. Chairman.

8 CHAIRPERSON ANDERSON: Mr. Short?

9 MEMBER SHORT: Good afternoon, Mr.
10 Chung.

11 THE WITNESS: Good afternoon.

12 MEMBER SHORT: Mr. Chung, the video we
13 saw earlier today when Investigator Puente was
14 testifying, I clearly saw several people go past
15 the person that you delegated to check IDs.
16 Several persons went by that were not checked.
17 Did you see the same video? I mean, you were
18 sitting here.

19 THE WITNESS: Mr. Short, I saw the
20 same video and I have -- I would have the same
21 concerns as you, but I spoke with Koby and he had
22 checked their IDs already.

1 MEMBER SHORT: Okay. I understand
2 that, but --

3 THE WITNESS: Prior to that video
4 film. So when I talked about filming a Judge who
5 closes his eyes to gather his thoughts, that's
6 what I meant. You just pick the right moment,
7 it's like a bad photo when you come out of --

8 MEMBER SHORT: Okay. Thank you, sir.

9 THE WITNESS: -- the pool.

10 MEMBER SHORT: We don't have to drag
11 through that, I heard that the first time you
12 said it.

13 THE WITNESS: Right.

14 MEMBER SHORT: But I still, as a Board
15 Member, have to take that evidence as what I saw
16 and it didn't appear that someone checked before
17 that person or after that person. These people
18 just walked into your establishment. And then
19 later on that same evening five people, five
20 teenagers under age were identified by MPD and
21 this ABRA staff of being under age and they
22 admitted that they were under age and were

1 drinking in your club.

2 MR. SUNG: Objection to the
3 characterization not all -- there was no
4 testimony as to all of these individuals drinking
5 in the club.

6 MEMBER SHORT: Okay. Let me restate
7 that. The testimony of Investigator Puente was
8 that at least two to three other people that he
9 checked in your establishment admitted to going
10 to the university and being under age. Do you
11 remember that?

12 THE WITNESS: Yes, sir, I do.

13 MEMBER SHORT: So how -- explain that
14 to me. How did that happen?

15 THE WITNESS: They probably showed --
16 well, I don't want to speculate, but to satisfy
17 your question, Mr. Short, I know you are a former
18 Fire Marshal guy. We had Mr. Thomas at the back
19 for the exit. I know you know how important that
20 is.

21 MEMBER SHORT: Right.

22 THE WITNESS: Double doors open in

1 case there is an emergency, people come out.
2 Koby is at the front. There is a queue. We
3 don't just blindly egregiously hey, it's a free-
4 for-all, come on in, you know. What kind of
5 person runs their business that way?

6 MEMBER SHORT: With all --

7 THE WITNESS: So --

8 MEMBER SHORT: -- fairness, Mr. Chung,
9 that's -- you're getting beyond the question
10 asked.

11 THE WITNESS: Okay. Well, I want to
12 go back to what you think. What do I think
13 happened? I think those guys used a great ID
14 that who knows any one of us in this room could
15 have figured out if it was real or not. And I --
16 and, you know, from a personal standpoint, it
17 sucks being here spending all this time preparing
18 for this. It's these kids that should be
19 penalized. We are doing our job. We are doing
20 it the best we can.

21 MEMBER SHORT: Okay. To bring my
22 questioning to an end, but I'll just tell you, I

1 have been to Chicago International Airport on
2 several occasions, in and out of the country or
3 back and forth, and every time I go to the bar
4 there, every time and I do it on most flights
5 like myself, I am asked to show my ID. Every
6 time. And I ask the bartender why do you do
7 this? He said because I cherish my ABC License.

8 And I'll be darned if I'm going to let
9 anybody sit here and have a drink and jeopardize
10 my business and my license. Explain why you
11 think differently than them.

12 THE WITNESS: Because they don't know
13 who you are. If your brother did that, he would
14 be crazy.

15 MEMBER SHORT: Excuse me?

16 THE WITNESS: If your brother asked
17 you for your ID and he was the bartender, there
18 would be something wrong with him and he already
19 knew how old you were. It's a formality.

20 MEMBER SHORT: I wish you wouldn't do
21 that. I have two brothers and they are both
22 deceased.

1 THE WITNESS: It's not personal.

2 MEMBER SHORT: They are both deceased.

3 THE WITNESS: Okay. Well, if my mom--

4 MEMBER SHORT: Don't use that example.

5 THE WITNESS: -- if my mother did, if

6 my mother asked me for my ID and she was a

7 bartender, I would think there was something

8 wrong with her if she already knows the year I

9 was born.

10 MEMBER SHORT: Mr. Chung, you are not

11 answering the questions. You are deflecting.

12 You are --

13 THE WITNESS: I'm not deflecting. I

14 don't know what a Chicago O'Hare Airport

15 bartender -- I don't know why he is asking you

16 for the ID every single time he sees you.

17 MEMBER SHORT: Well, I'm asking --

18 making this in the form of a question. If I had

19 a license like your here in Washington, D.C.

20 serving a lot of underage people close to a

21 university, I would check everyone's ID, because

22 I would cherish my license.

1 Do you have a statement to that?

2 THE WITNESS: I agree with you, Mr.

3 Short.

4 MEMBER SHORT: Okay. That's all I

5 have, Mr. Chair. Thank you very much.

6 CHAIRPERSON ANDERSON: Any questions

7 by any other Board Members? Mr. Chung, you have

8 this video, the video that you have covers the

9 entire event of your establishment?

10 THE WITNESS: I'm not sure it does.

11 The event was now eight months passed, who knows

12 what is left. We -- I know counsel prior to this

13 trial, the night of, wanted to prepare, took

14 notes, contemporaneous notes and then got the

15 clips he needed to get, based upon the reports

16 and stuff. So I have no idea at this point, Mr.

17 Anderson.

18 CHAIRPERSON ANDERSON: Are the videos

19 that were shown by the Government, had you seen

20 that video before?

21 THE WITNESS: I had never seen that

22 video. It would have been great to actually see

1 that video and discuss it with the Government
2 prior to trial, maybe we wouldn't even have to be
3 here today. Maybe they saw something else.

4 CHAIRPERSON ANDERSON: All right. All
5 right. I don't have any other questions. Mr.
6 Sousa, any questions?

7 MR. SOUSA: No questions.

8 CHAIRPERSON ANDERSON: You have the
9 last go around.

10 MR. SUNG: No further questions.

11 Thank you.

12 CHAIRPERSON ANDERSON: Mr. Chung,
13 thank you very much for your testimony. You can
14 step down.

15 THE WITNESS: Thank you, Board
16 Members.

17 (Whereupon, the witness was excused.)

18 CHAIRPERSON ANDERSON: Do you have any
19 other witnesses, Mr. Chung?

20 MR. SUNG: Yes, sir.

21 CHAIRPERSON ANDERSON: Mr. -- I'm
22 sorry, Mr. Sung. I apologize.

1 MR. SUNG: No worries.

2 CHAIRPERSON ANDERSON: At least I said
3 Mr. Chung. I apologize, sir. That's why I
4 actually wrote your name down, so I apologize,
5 Mr. Sung.

6 MR. SUNG: We would like to call
7 Investigator Puente back to the stand, please.

8 CHAIRPERSON ANDERSON: Mr. Puente, you
9 are still under oath, sir, okay? Go ahead, Mr.
10 Sung.

11 MR. SUNG: Thank you.

12 Whereupon,

13 INVESTIGATOR KEVIN PUENTE
14 was recalled as a witness by Counsel for the
15 Respondent, and having been previously duly
16 sworn, resumed the witness stand, was examined
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SUNG:

20 Q Investigator Puente, you heard Mr.
21 Silva's testimony regarding his interaction with
22 the police that evening, in particular his

1 physical description of the person that he
2 encountered.

3 Based on that, do you know who he
4 might be referring to?

5 A I came in right --

6 MR. SOUSA: I'm going to lodge the
7 same objection as to the relevance of this line
8 of testimony.

9 CHAIRPERSON ANDERSON: I'll allow the
10 question. And I'll give you some leeway. All
11 right. So but I -- we don't want to be going --
12 all right. Go ahead.

13 MR. SUNG: It won't be too long.

14 THE WITNESS: I can in like towards
15 the end of his testimony, so I don't think I
16 heard that part.

17 BY MR. SUNG:

18 Q Okay. Did you see the video clip that
19 Mr. Chung -- that we showed through Mr. Chung?

20 A Yes, with the security guard.

21 Q And were his identifications correct
22 of the three individuals that was shown at the

1 lower left hand screen of that video?

2 A Yes.

3 Q Okay. So one was Detective Carter,
4 one was yourself and one was Investigator Peru?

5 A Yes.

6 Q And he was correct in identifying
7 Detective Carter as an African American
8 gentleman?

9 A Yes.

10 Q And I will proffer to you that Mr.
11 Silva, when he testified, talked about his
12 interaction with MPD that evening concerning
13 drinks allegedly served by him to underage
14 customers. He identified that person as a
15 heavysset white gentleman who was bald.

16 Would you know who he is describing?

17 A It sounds like a detective I know.

18 Q Okay. And was that detective at
19 Abigail that evening?

20 A Yes.

21 Q And who is that?

22 A Scott Emmons.

1 Q Scott Emmons?

2 A Yes.

3 Q Okay. Your report, which was entered
4 into evidence, also contains an MPD Public
5 Incident Report where three MPD officers are
6 identified or listed: Detective Emmons, David
7 Carter and Sergeant Terry Thorne.

8 A Yes.

9 Q Isn't it Sergeant Terry Thorne who is
10 heavyset and bald?

11 A No, sir.

12 Q It's Detective Emmons who is heavyset
13 and bald?

14 A Yes.

15 Q Understood. So in your report you
16 state that David Carter had caught two patrons at
17 the bar ordering alcoholic beverages, but in your
18 testimony you said something about they versus he
19 saying that it's possible that someone else, some
20 other officer observed this.

21 So what is your thought now having
22 been presented with this evidence? Who was it

1 that actually observed these drinks being served
2 to underage customers?

3 A I wasn't there to see who observed it.
4 I just know when I went outside, I was advised by
5 Detective Carter that they found the two underage
6 individuals at the bar and Detective Carter
7 authored the report, so to me that's Detective
8 Carter is the one that saw that and handled that.

9 Q Okay. So you don't personally know?

10 A No, I do not know.

11 Q And did you speak to any of the
12 security that were checking IDs?

13 A No, I don't believe I did.

14 Q Why didn't you?

15 A I can't recall why.

16 Q Did you speak to any of the bartenders
17 that allegedly served the customers that were
18 underage?

19 A I did not.

20 Q Well, why didn't you?

21 A Because I -- the two that were caught
22 at the end, because I didn't handle that, no.

1 MEMBER SILVERSTEIN: I'm sorry?

2 THE WITNESS: Because I didn't found
3 those two, so I didn't handle that situation.

4 MR. SUNG: That's all the questions I
5 have. Thank you.

6 CHAIRPERSON ANDERSON: Mr. Sousa, your
7 witness.

8 MR. SOUSA: No questions.

9 CHAIRPERSON ANDERSON: Any questions
10 by any Board Members? All right. Hearing none,
11 Mr. Puente, thank you for your testimony. You
12 can step down.

13 (Whereupon, the witness was excused.)

14 CHAIRPERSON ANDERSON: Do you rest,
15 sir?

16 MR. SUNG: Yes, we do.

17 CHAIRPERSON ANDERSON: And --

18 MR. SUNG: Oh, prior to doing that, I
19 would like to introduce the video clip that we
20 discussed that Mr. Chung discussed.

21 CHAIRPERSON ANDERSON: Are you giving
22 us --

1 MR. SUNG: That would be our Exhibit
2 3.

3 CHAIRPERSON ANDERSON: -- 3.

4 (Whereupon, the above-
5 referred to document was
6 marked as Respondent Exhibit
7 No. 3 for identification.)

8 CHAIRPERSON ANDERSON: So how do -- do
9 we have a thumb drive that you are giving us or
10 how does that go?

11 MR. SUNG: We can upload it to the
12 computer that is property of ABRA.

13 CHAIRPERSON ANDERSON: I'm not sure it
14 operates that way. I'm not sure how it -- to
15 move it into evidence as I'm --

16 MR. CHUNG: I can download it right
17 now if you have a USB stick.

18 CHAIRPERSON ANDERSON: I'm sorry?

19 MR. CHUNG: I can download it right
20 now off ABRA's computer onto a USB stick if you
21 have one, Chairman Anderson.

22 CHAIRPERSON ANDERSON: I'll -- we will

1 figure out how to do that. I don't have one, but
2 in order for us -- for it to be a part of it, it
3 has to be downloaded physically. So, yes, Mr.
4 Sousa?

5 MR. SOUSA: Just to note for the
6 record that the Government has no objection to
7 the substantive moving this into evidence.

8 CHAIRPERSON ANDERSON: Right.

9 MR. SOUSA: Just figure out the
10 logistics later.

11 CHAIRPERSON ANDERSON: Right. Right.
12 Okay. But I'm -- so, Mr. Chung, in order to move
13 it into evidence, I need something physical for
14 you to give that to us.

15 Mr. Sung, I do not have Exhibit 1, so
16 if you need Exhibit 1 to be a part of the record,
17 you need to give us a copy of Exhibit 1.

18 MR. SUNG: We did give you three
19 pages, Maine, Florida and Illinois.

20 CHAIRPERSON ANDERSON: So is that
21 exhibit -- because I had identified them as
22 Exhibit 2A, 2B and 2C.

1 MR. SUNG: Understood.

2 CHAIRPERSON ANDERSON: So do you

3 want --

4 MR. SUNG: So that means Exhibit 1 was
5 the report by Investigator Puente.

6 MR. SOUSA: Yes, I think we went 1 and
7 then his -- the excerpts from the I.D. Book were
8 2 and then this is going to be Exhibit 3.

9 CHAIRPERSON ANDERSON: No, we started
10 off this by Mr. Sung providing the entire booklet
11 and I told him that I don't have it, so
12 therefore, I couldn't move it into evidence,
13 because he would have to give me the entire
14 booklet. That's how we came around what Exhibit
15 1 was.

16 And then later on we were given
17 excerpts of Maine, Illinois and Florida and that
18 was -- and I identified them for the record as
19 Exhibit 2, B and C. So are we not -- are you not
20 moving the entire booklet into evidence? Are you
21 just moving these three pages?

22 So what I'll do then, I will renumber

1 this, the pages from Maine, Illinois and Florida
2 as Defendant's Exhibit 1, 1B and 1C. And the
3 Government has -- so, Mr. Chung, are you also
4 asking to rely on the case report or is it just
5 the Government's document alone?

6 MR. SUNG: The case report?

7 CHAIRPERSON ANDERSON: Yes. The
8 Government's Exhibit 1, are you also relying on
9 that also, too?

10 MR. SUNG: Yes, sir.

11 CHAIRPERSON ANDERSON: So then that
12 will be Joint Exhibit 1 by the Government and by
13 the Defendant. Okay. And we will receive a
14 thumb drive of the -- I'm sorry, Mr. Sousa,
15 regarding the video that we had seen earlier,
16 were you -- was it your intent to move that into
17 evidence?

18 MR. SOUSA: It's part of the case
19 file. It was Exhibit 2 to the case file. If you
20 turn to page 3 of the -- I saw case file, case
21 report. If you turn to page 3 of it, it's listed
22 as Exhibit No. 2. And I just assumed that since

1 it was an ABRA document it was already in ABRA's
2 -- the ABC Board's possession and control.

3 CHAIRPERSON ANDERSON: I guess --
4 well, the unfortunate thing is that the document
5 that you handed to me as Exhibit 1, there is no
6 Exhibit 2 in that document.

7 MR. SOUSA: Right.

8 CHAIRPERSON ANDERSON: Right.

9 MR. SOUSA: It's Exhibit 2 that Mr.
10 Puente attached to case report is not -- the disk
11 itself is not included.

12 CHAIRPERSON ANDERSON: Yes, but how do
13 we know and the reason I'm saying is because
14 there is even no indication in Exhibit 1 that
15 there is an Exhibit 2. So is there somewhere
16 within the report itself that says that exhibit--
17 what Exhibit 2 is?

18 MR. SOUSA: Yes, if you look at page
19 3, it lists the exhibits attached, and it says
20 Exhibit No. 2, copy of video taken April 29,
21 2018.

22 CHAIRPERSON ANDERSON: All right. All

1 right. Okay. So we will -- the record will
2 reflect that the case report on page 3 lists what
3 Exhibit 2 is of the Government exhibit. But it's
4 not attached to the document that is going in the
5 record. I just want to clarify the record to
6 state that. Okay. Then so moved.

7 (Whereupon, the above-
8 referred to documents were
9 received into evidence
10 marked as Complainant
11 Exhibit No. 2 through 8.)

12 CHAIRPERSON ANDERSON: All right.

13 Does --

14 MEMBER SHORT: Mr. Chair, can I make
15 an observation?

16 CHAIRPERSON ANDERSON: Yes, Mr. Short.

17 MEMBER SHORT: I would like to suggest
18 strongly to this Board that we ask anyone coming
19 before this Board that want to introduce videos
20 or tapes, that they should provide their own
21 thumbnails and provide that to this Board,
22 because we normally get that from licensees. We

1 normally do that. So this is the very first time
2 I have ever heard of a licensee asking us to
3 provide them with part of their exhibit.

4 MR. SUNG: Yes. All right.

5 CHAIRPERSON ANDERSON: I will talk to
6 our General Counsel, because I am a practicing
7 attorney. I do this every day when I'm not here.
8 And in my practice, if I have a hearing, I have
9 to disclose all documents and witnesses five days
10 before the hearing. And I complain that I have--
11 it's problematic for me that I'm having a Show
12 Cause Hearing and I have no idea what documents
13 or witnesses are coming in. I don't know until
14 people call.

15 And so I have asked that we change the
16 process and procedures here, because as an
17 attorney, it's a more efficient process. I
18 really don't understand Show Cause Hearings are
19 more formalistic than Protest Hearings, but in
20 Protest Hearings, you have to exchange your
21 documents and witnesses seven days prior for a
22 process that I believe is less formal than a Show

1 Cause Hearing.

2 And I have asked that the Agency
3 change the process and it's my understanding it
4 has been changed and I'm trying -- I'll find out
5 when that is effective, because as an attorney,
6 this does not work for me. But thank you for
7 your comment, Mr. Short.

8 MEMBER SHORT: Thank you.

9 CHAIRPERSON ANDERSON: But I have
10 asked that that process be changed, because it
11 doesn't make sense. All right.

12 Do the parties -- Mr. Sousa, do you
13 wish to make a closing statement?

14 MR. SOUSA: Sure. A short statement.

15 CHAIRPERSON ANDERSON: Yes.

16 MR. SOUSA: The Board was asked to
17 consider at this hearing two questions: Whether
18 Abigail Room is liable under Count 1 for an
19 egregious sale to minors and under Count 2 for
20 failure to take reasonable steps to ascertain the
21 drinking age of patrons.

22 As to Count 1, you heard testimony

1 from Mr. Puente, who is an Investigator at ABRA,
2 who identified one male patron who said he was 18
3 years-old and was holding an alcoholic beverage,
4 who you heard testimony from Mr. Puente that a
5 female patron identified herself as 18 and was
6 holding an alcoholic beverage.

7 Another female patron testified that
8 she was a student at GW and was underage and that
9 she was holding a glass of champagne. And that
10 MPD informed Mr. Puente that two other
11 individuals who were minors purchased alcoholic
12 beverages from Abigail Room on the night of April
13 29th, the early morning of April 29, 2018.

14 Nothing that you heard from the other
15 side contradicts that, those facts. And I would
16 take the underage minors testimony or underage
17 minors statements as credible, they are not here,
18 but I would take them as credible because why
19 would they identify themselves as minors to law
20 enforcement officers and then be escorted out of
21 the building?

22 With regards to Count No. 2, failure

1 to take reasonable steps to ascertain the legal
2 drinking age of patrons, you saw a video of
3 patrons walking into Abigail Room without having
4 their identifications checked. You heard
5 testimony from Mr. Puente, an Investigator, that
6 he observed individuals walking in without having
7 their identifications checked and you heard
8 testimony from the owner of the establishment,
9 Mr. Chung, saying that there are certain
10 occasions that he understands that his employees
11 do not check the identifications of patrons.

12 That buttressed by the fact that we
13 now know that five minors at least purchased
14 alcohol on that date and that the ABRA
15 Investigators that were at Abigail Room on that
16 date didn't see anyone checking IDs supports --
17 shows that there is sufficient evidence that
18 Abigail Room failed to take reasonable steps to
19 ascertain the drinking age, the legal age of its
20 patrons on that night, April 28th to April 29th.

21 This is a preponderance of the
22 evidence standard. The District has met its

1 burden as to both counts and asks for a \$3,000
2 fine for the first count and a \$1,000 fine for
3 the second count. Thank you.

4 CHAIRPERSON ANDERSON: Okay.

5 Mr. Sung?

6 MR. SUNG: Thank you. Chairman and
7 Board Members, these allegations are very serious
8 allegations, because the penalties are severe and
9 the Board has the discretion to impose not only
10 financial penalties, but also suspend the
11 licensee and that is why as Mr. Sousa has
12 indicated, the Government does have the burden of
13 proof and it is a preponderance of the evidence.
14 And as the Board probably well-knows, it is a
15 substantial evidence standard.

16 Now, there are two statutes in play
17 and it is already in the record. It is shown in
18 the Notice of Status Hearing and Show Cause
19 Hearing.

20 The first statute is DC Code 25-
21 781(a)(1) and that states "The sale or delivery
22 of alcoholic beverages to persons under the age

1 of 21 is prohibited."

2 The report and the testimony of
3 Investigator Puente identifies five individuals
4 who allegedly were the subjects to whom alcohol
5 was sold and served to.

6 And we should go through each one
7 separately. The first one is -- are the two
8 people who Inspector/Investigator Puente said
9 were holding Tequila Sunrises in their hand.
10 There is nothing in the evidence that shows/
11 demonstrates that the licensee sold or served
12 these Tequila Sunrises to these individuals.
13 None whatsoever.

14 You would need to make a leap, an
15 evidentiary leap to conclude that they were
16 served by one of the bartenders in the club. How
17 can you do that? I submit that you cannot.
18 There is no evidence that one of the bartenders
19 served the woman who presented an Illinois ID and
20 the gentleman who presented the Colombia ID.

21 As precedent, this Board ruled in Case
22 No. 17-CMP-00020 in the matter of Prospect

1 Dining, LLC t/a Chinese Disco a very similar set
2 of facts. A customer who appeared under age was
3 seen by Investigator Puente holding an alcoholic
4 drink. He did not see her being served that
5 drink. As a result, this Board ruled that the
6 Government failed to establish a violation of the
7 exact statute that we are discussing today, 25-
8 781(a)(1).

9 Again, the statute is very clear you
10 have to prove sale of alcoholic beverage and that
11 was -- that is missing today.

12 For the two individuals who allegedly
13 were holding Tequila Sunrises, similarly, for the
14 woman who was in the VIP area, she was allegedly
15 holding a glass of champagne. Again, Mr. Puente
16 did not testify as to how she obtained that drink
17 nor is there anything in the report that shows
18 how she was -- she got a hold of that drink.

19 Therefore, again, relying on the words
20 of the statute itself, there is no evidence of
21 the sale of alcoholic beverages to a minor.

22 As for the two individuals from -- the

1 two individuals who bore Maine and Florida IDs,
2 the ones who Investigator Puente said that he did
3 not personally observe, the evidence is very
4 problematic. We do know, we do acknowledge that
5 this Board does accept hearsay evidence. But
6 there is a reason why hearsay is suspect and
7 looked upon with skepticism.

8 And in this case it's not just
9 hearsay, it's double hearsay, because as we have
10 shown, the police officer who actually allegedly
11 observed the sale of the drinks was not Detective
12 Carter. It was actually Detective Emmons.

13 So you have Detective Emmons telling
14 Detective Carter telling Investigator Puente that
15 he observed these two individuals being served
16 alcohol. We do not have an opportunity to cross-
17 examine Detective Emmons. He didn't come here to
18 testify today. And puzzlingly, Detective Carter
19 wasn't here either, so we don't know.

20 But the best we can make out of it,
21 based on the evidence that we heard today, is
22 that it's double hearsay. Are you going to, as a

1 Board, penalize a venue and cost them a
2 substantial portion of their revenues based on
3 double hearsay?

4 The only evidence that you heard was
5 the testimony of the bartender, who allegedly
6 served these drinks. In the report they claim
7 that it was two rum and cokes. You heard Mr.
8 Silva say that one of the drinks was red and one
9 of them was black. So there is an inconsistency
10 there.

11 You also heard him say I don't recall
12 whether he served those drinks. You also heard
13 him say I didn't see these customers who were
14 allegedly served these drinks. The only evidence
15 that we have again is Investigator Puente
16 testifying as to his understanding of what a
17 detective saw heard through another detective.
18 That is not the burden of proof that is required
19 to find a violation against the licensee.

20 The second charge relates to statute
21 DC Code 25-783(b). Again, we go to the statute
22 "A licensee or his employee shall take steps

1 reasonably necessary to ascertain whether any
2 person to whom the licensee sells, delivers or
3 serves an alcoholic beverage is of legal drinking
4 age.

5 So again, every element of this
6 statute must be proved in order to find a
7 violation. And we need to go through the five
8 individuals again. And once again, as you will
9 note, the statute requires the sale or service of
10 alcohol to these individuals.

11 I have already discussed how the first
12 three individuals, there is no evidence that was
13 presented today showing that they were served or
14 sold alcohol by the licensee. So obviously, this
15 statute doesn't apply to those first three
16 individuals.

17 As to the two remaining individuals,
18 I'm going to refer to them as the rum and coke
19 individuals, even though we -- just for ease of
20 reference. Again, the evidence that they were
21 served or sold alcohol is very tenuous and we
22 submit that it is not sufficient.

1 Moreover, and this is why it is very
2 important and it is critical to this Board's
3 inquiry, what were the IDs that they presented or
4 that they had in their possession that they
5 shared with the Investigators? It is up to this
6 Board and I'm sure it is perfectly capable of
7 comparing the IDs of the Exhibit 7, marked as
8 Exhibit 7, to what is actually Exhibit 1, the
9 case report. The Maine ID and the Florida ID.

10 And we submit to you that these are
11 amazingly precise IDs. The Government would like
12 the Board to conclude that because they showed a
13 20 second, approximately 20 second, video clip of
14 the processing of customers that based on that
15 alone, we have -- they would like you to infer,
16 take a giant step and infer that these two
17 individuals did not have their IDs checked when
18 they came in.

19 We have established, Investigator
20 Puente established that the individuals shown in
21 that 20 second video are not the individuals who
22 were later allegedly served these drinks. So

1 with that, we can't find a violation of 25-783.
2 They weren't the individuals whose IDs were not
3 allegedly checked.

4 This is a I'll leave it in the Board's
5 discretion to take the time to look at these IDs
6 and compare it to the sample IDs that are in the
7 I.D. guide. And I would also ask the Board to
8 review the footage, the two video footages that
9 are entered into evidence.

10 I submit that in Investigator Puente's
11 video clip, there is indeed, I believe, two
12 females that you see that enter without their IDs
13 being checked. However, the video doesn't show
14 whether their IDs were checked prior to that
15 filming taking place. The footage does show at
16 least one individual whose ID was checked.

17 There is a male whose ID is checked by
18 Koby. So the assertion made at the opening
19 statement is false that people were processed
20 without their IDs being checked. That is not
21 universally the case.

22 The footage that Mr. Chung described,

1 the licensee's footage, I would ask the Board to
2 also review that. You will see MPD and ABRA
3 approach the venue. Before Koby, the employee,
4 knows that they are there, he is checking IDs.
5 You can see that in the video clip. So again, it
6 is false that the venue was not checking IDs of
7 the people that came into the club.

8 Why is there a line if we are not
9 checking IDs? There is an exit rope. There is a
10 clear queue. You can see they are being
11 processed in an orderly manner. The video should
12 speak for itself, but it should not speak for
13 more than what they show.

14 Both video clips show IDs being
15 checked. There is no video showing that these
16 two individuals, Marvin Castillo, Kendall
17 Wheeler, that their IDs were not checked. There
18 is no evidence that their IDs were not checked.
19 It is the burden of the Government to show that
20 their IDs were not checked, so that is the
21 inference to be drawn?

22 The inference to be drawn is that

1 their IDs were checked pursuant to the testimony
2 of Mr. Chung. And the evidence shows that the
3 IDs are spectacularly good. They are amazing
4 fake IDs. The statute says reasonable inquiry
5 into whether an ID is good. I believe we have
6 established that the licensee was reasonable in
7 accepting these IDs to what otherwise is unfair.

8 Accordingly, we would ask the Board to
9 dismiss both charges and in the alternative, in
10 the alternative, should the Board find otherwise,
11 I would point out since Mr. Sousa talked about
12 actual fines, this is a first offense.

13 In my years of being in front of ABRA,
14 and my general knowledge of ABRA's decisions,
15 it's unusual to fine or suspend a licensee on
16 their first alleged violation for underage
17 drinking. So at most, I would ask the Board to
18 issue a warning letter. Thank you very much.

19 CHAIRPERSON ANDERSON: Thank you, Mr.
20 Sung.

21 All right. The record is now closed.

22 MR. SOUSA: Actually, do the rules

1 provide for a rebuttal? There were a lot of
2 factual representations that need to be
3 addressed.

4 CHAIRPERSON ANDERSON: No, the rules--
5 at least the rules that they gave me have not --
6 it does not provide for rebuttal. And in the
7 three years I have been here, I have not allowed
8 that, so I'm not going to start the trend today.
9 But I -- all right.

10 All right. But do the parties wish to
11 file proposed findings of fact and conclusions of
12 law or waive their right to do so?

13 MR. SOUSA: We will be filing such
14 proposed findings of fact and conclusions of law,
15 yes.

16 CHAIRPERSON ANDERSON: Mr. Sung?

17 MR. SUNG: As will we.

18 CHAIRPERSON ANDERSON: Okay.

19 Normally, I always hear -- I have never heard the
20 Government volunteer to do that, but that is
21 fine.

22 MR. SOUSA: Well, there were

1 misrepresentations made in the closing statement
2 and I want to have an opportunity to address
3 them.

4 CHAIRPERSON ANDERSON: All right. If
5 the parties choose to file proposed findings of
6 fact and conclusions of law, then 90 days from
7 when the Board receives the proposed findings of
8 fact and conclusions of law due to the Board. So
9 they are due to the Board 30 days after receipt
10 of the transcript and the transcript will be
11 emailed to the parties in approximately three
12 weeks.

13 If you change your mind, you can also
14 -- if both sides change their mind to do that,
15 you can also let us know that you have changed
16 your mind.

17 All right. As Chairperson of the
18 Alcoholic Beverage Control Board for the District
19 of Columbia and in accordance with DC Official
20 Code Section 2-574(b) of the Open Meetings Act, I
21 move that the ABC Board hold a closed meeting for
22 the purpose of seeking legal advice from our

1 counsel on Case No. 18-CC-00053, Abigail Room,
2 pursuant to DC Official Code Section 2-574(b)(4)
3 of the Open Meetings Act and deliberating upon
4 Case No. 18-CC-00053, Abigail Room, for the
5 reasons cited in DC Official Code Section 2-
6 574(b)(13) of the Open Meetings Act.

7 Is there a second?

8 MEMBER SHORT: Second.

9 CHAIRPERSON ANDERSON: Mr. Short has
10 seconded the motion. I will now take a roll call
11 vote on the motion before us now that it has been
12 seconded.

13 Ms. Wahabzadah?

14 MEMBER WAHABZADAH: I agree.

15 CHAIRPERSON ANDERSON: Mr.
16 Silverstein?

17 MEMBER SILVERSTEIN: I agree.

18 CHAIRPERSON ANDERSON: Mr. Short?

19 MEMBER SHORT: I agree.

20 CHAIRPERSON ANDERSON: Mr. Alberti?

21 MEMBER ALBERTI: I agree.

22 CHAIRPERSON ANDERSON: Mr. Cato?

1 MEMBER CATO: I agree.

2 CHAIRPERSON ANDERSON: Mr. Anderson?

3 I agree.

4 As it appears that the motion has
5 passed, I hereby give notice that the ABC Board
6 will recess these proceedings to hold a closed
7 meeting in the ABC Board conference room pursuant
8 to Section 2-574(b) of the Open Meetings Act.

9 I want to thank both parties for their
10 presentation today. It's always good when we
11 have parties who are well-prepared to argue their
12 respective cases and I want to thank both sides
13 for their presentation.

14 All right. Thank you very much.

15 MR. SUNG: Thank you for your time.

16 CHAIRPERSON ANDERSON: All right.

17 (Whereupon, the Show Cause Hearing was
18 concluded at 2:27 p.m.)

19

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21

22

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Before: DCABRA

Date: 11-28-18

Place: Washington, DC

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