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IN THE MATTER OF:           :
                             :
1218 Wisconsin Inc.,       :
t/a El Centro D.F.         : Show Cause
1218 Wisconsin Ave NW      : Hearing
License #604                :
Retailer CR                 :
ANC 2E                      :
Case #18-251-00170         :
(Failed to Follow          :
Security Plan, Interfered:
with an Investigation)      :
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Wednesday
March 20, 2019

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Donovan W. Anderson, presiding.

PRESENT :

DONOVAN W. ANDERSON, Chairperson
NICK ALBERTI, Member
BOBBY CATO, JR., Member
JAMES SHORT, Member
MIKE SILVERSTEIN, Member
REMA WAHABZADAH, Member

ALSO PRESENT:

ANDREW KLINE, Counsel for Licensee

AYYAZ RASHID, Managing Partner for Licensee

INVESTIGATOR MARK BRASHEARS, ABRA

AMY SCHMIDT, OAG

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

10:42 a.m.

CHAIRPERSON ANDERSON: The next case on our calendar is Case No. 18-251-00170, El Centro D.F., License No. 604.

Would the parties please approach and identify themselves for the record, please.

MS. SCHMIDT: Good morning. Amy Schmidt, Assistant Attorney General on behalf of the District of Columbia.

MR. KLINE: Andrew Kline here on behalf of the licensee.

MR. RASHID: Ayyaz Rashid, Managing Partner of the restaurant group.

CHAIRPERSON ANDERSON: Good morning, Ms. Schmidt.

Good morning, Mr. Kline.

Good morning -- I'm sorry, your name again, sir?

MR. RASHID: I'm Ayyaz Rashid.

CHAIRPERSON ANDERSON: Good morning, Mr. Rashid.

1 Are there any preliminary matters in
2 this case?

3 MS. SCHMIDT: No, there are not.

4 MR. KLINE: No, there are not.

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

7 MS. SCHMIDT: Yes. Good morning --

8 CHAIRPERSON ANDERSON: Are there
9 documents for these cases or are there no
10 documents?

11 MS. SCHMIDT: Just the reports.

12 CHAIRPERSON ANDERSON: Okay. All
13 right. Go ahead.

14 MS. SCHMIDT: Good morning. This is
15 a very straightforward case. Although a horrible
16 thing happened -- a horrible event happened at El
17 Centro on August 19, 2018, in which there was an
18 assault, we are here today on two charges.

19 The first charge is failure to file
20 security plan. The security plan states that
21 when there's an incident, there's a need to call
22 the -- the statute is to call the Metropolitan

1 Police Department.

2 The testimony will show that this was
3 not done today -- on that night. Also, the
4 testimony will show that on page five of the
5 security plan, there's security cameras and the
6 footage is to be produced within 48 hours of the
7 event -- of the incident.

8 And although Investigator Mark
9 Brashears went back to the establishment twice
10 and called numerous times, the footage was never
11 provided.

12 And this is very important. And this
13 is for the -- and because -- it's part of an
14 investigation, which is very important, because
15 without these tapes, AG was unable to determine
16 whether the staff could have prevented the
17 assault or if they did all they could after the
18 assault occurred to minimize any further fallout
19 from the assault.

20 Therefore, the Government will show
21 that these two charges, which are primary tier
22 violations, occurred at that establishment August

1 19, 2018.

2 CHAIRPERSON ANDERSON: Mr. Kline, do
3 you wish to make an opening statement or you
4 defer until later on?

5 MR. KLINE: I'll reserve until the
6 opening of our case in chief.

7 CHAIRPERSON ANDERSON: Does the
8 Government have a witness?

9 MS. SCHMIDT: Yes. The Government
10 calls Investigator Mark Brashears.

11 CHAIRPERSON ANDERSON: Mr. Brashears,
12 can you raise your right hand, sir.

13 Do you swear or affirm to tell the
14 truth and nothing but the truth?

15 INVESTIGATOR BRASHEARS: I do, sir.

16 CHAIRPERSON ANDERSON: Thank you.

17 Your witness.

18 MS. SCHMIDT: Mr. Brashears, could you
19 please state your name for the record and by whom
20 are you employed.

21 INVESTIGATOR BRASHEARS: Investigator
22 Mark Brashears. I'm with the Alcoholic Beverage

1 Regulation Administration.

2 MS. SCHMIDT: And what capacity are
3 you employed by ABRA?

4 INVESTIGATOR BRASHEARS: I am a
5 supervisory investigator.

6 MS. SCHMIDT: And drawing your
7 attention to August 19, 2018, do you -- were you
8 called to El Centro, located at 1218 Wisconsin
9 Avenue Northwest?

10 INVESTIGATOR BRASHEARS: I was.

11 MS. SCHMIDT: And why were you called
12 there?

13 INVESTIGATOR BRASHEARS: We were
14 notified that there had been an assault at the
15 establishment.

16 MS. SCHMIDT: And what happened when
17 you got there?

18 INVESTIGATOR BRASHEARS: I was
19 notified by the responding officer that an
20 assault had taken place in the establishment.
21 They had made contact with the victim, and they
22 had notified the detectives to come and follow

1 up.

2 MS. SCHMIDT: Okay. Let's back up.

3 So when this all initially happened,
4 did the MPD tell you who called and if they
5 recall -- let's back up a bit.

6 How did MPD know to respond to that
7 establishment?

8 INVESTIGATOR BRASHEARS: The officer
9 that I spoke with said that another agency -- he
10 wasn't sure which one -- had spotted an
11 individual, which turned out to be the victim --
12 on the sidewalk in front of the establishment
13 bleeding from his face. At that point, they
14 notified MPD, and MPD in turn notified myself and
15 Investigator Puente.

16 MS. SCHMIDT: And did he tell you
17 whether the establishment notified him?

18 INVESTIGATOR BRASHEARS: He stated --
19 when I asked him if he had been or if MPD had
20 been notified by the establishment, he said they
21 had not.

22 MS. SCHMIDT: And while you were at

1 the establishment, did you get a copy of the
2 security plan?

3 INVESTIGATOR BRASHEARS: No, I did
4 not. I brought a copy with me.

5 MS. SCHMIDT: But did you see -- have
6 you had a chance to review the security plan?

7 INVESTIGATOR BRASHEARS: Yes, ma'am,
8 I have.

9 MS. SCHMIDT: May I approach?

10 CHAIRPERSON ANDERSON: Sure.

11 MS. SCHMIDT: I'm now handing you what
12 has been marked Exhibit 12 in the investigative
13 report. Can you tell the Board what that is?

14 INVESTIGATOR BRASHEARS: The security
15 plan for El Centro.

16 MS. SCHMIDT: And on the first page,
17 do you see anything about notifying Metropolitan
18 Police Department? In paragraph -- I refer you
19 specifically to the paragraph, I think it's the
20 first -- third paragraph.

21 CHAIRPERSON ANDERSON: What page? I'm
22 sorry, where are we?

1 MS. SCHMIDT: The first page of the
2 security plan, Exhibit 12.

3 CHAIRPERSON ANDERSON: Okay.

4 INVESTIGATOR BRASHEARS: I have it,
5 ma'am.

6 MS. SCHMIDT: Okay. Page -- okay,
7 section 1. What does it say about notifying MPD?

8 INVESTIGATOR BRASHEARS: "Procedure
9 for handling violent incidents. Whenever a
10 violent incident occurs, the Metropolitan Police
11 Department is notified immediately and an
12 incident report is to be completed."

13 MS. SCHMIDT: And so did they follow
14 the security plan that night? Did they follow
15 that provision in the security plan that night?

16 INVESTIGATOR BRASHEARS: From my
17 investigation, I determined that the Metropolitan
18 Police Department had not been notified by the
19 establishment. And throughout the course of the
20 investigation, I was never provided a copy of the
21 incident report.

22 MS. SCHMIDT: So there was also a

1 request for investigation.

2 After you spoke with the police
3 officer, what did you do in the request for
4 investigation?

5 INVESTIGATOR BRASHEARS: I'm sorry,
6 would it be possible to get a copy of my report
7 to refresh my memory.

8 MS. SCHMIDT: It could be -- I could
9 just direct you.

10 What did you do with respect to
11 security cameras?

12 INVESTIGATOR BRASHEARS: I spoke with
13 the ABC manager on duty. He made me aware the
14 establishment had video cameras and recording
15 capability.

16 At that time, I requested a copy --
17 well, we talked about the potential cameras that
18 may have caught the incident. I believe it was
19 camera 15 and 16, and I requested a copy of the
20 video footage I believe from midnight to 1:30
21 a.m. on the night of the incident.

22 And I made him aware that I needed

1 copies of the footage within 48 hours.

2 MS. SCHMIDT: And did you get the tape
3 from the cameras within 48 hours?

4 INVESTIGATOR BRASHEARS: I did not.

5 MS. SCHMIDT: And did you go back --
6 did you go back around the middle of September to
7 speak to them?

8 INVESTIGATOR BRASHEARS: Yes.

9 MS. SCHMIDT: And who did you speak
10 with at the establishment then?

11 INVESTIGATOR BRASHEARS: I spoke with
12 another ABC manager who told me the first
13 individual I had spoken with had gone on
14 vacation. And she stated that she would get the
15 information for me, send it in an email and
16 provide it via a USB or a flash drive.

17 MS. SCHMIDT: And did that ever occur?

18 INVESTIGATOR BRASHEARS: No, it did
19 not.

20 MS. SCHMIDT: And how many -- did you
21 call her to remind her to do that?

22 INVESTIGATOR BRASHEARS: I believe I

1 did.

2 MS. SCHMIDT: Did you go back a third
3 time; do you remember?

4 INVESTIGATOR BRASHEARS: I did. And
5 I want to say it was almost a month if not
6 longer.

7 MS. SCHMIDT: And what happened when
8 you went back there?

9 INVESTIGATOR BRASHEARS: I spoke to
10 another gentleman who stated he was a new general
11 manager. The previous ABC manager I had spoken
12 with was no longer with the establishment and he
13 stated he would try to get the video footage --
14 or informed me -- I'm sorry, informed me that he
15 hadn't -- he would try, but the previous ABC
16 manager had not gotten the footage because it was
17 not -- they were not authorized to do so.

18 MS. SCHMIDT: Did you ever get the
19 video footage?

20 INVESTIGATOR BRASHEARS: I did not.

21 MS. SCHMIDT: Referring back to the
22 security plan, on page three, section five, what

1 does it say with respect to video footage?

2 INVESTIGATOR BRASHEARS: "Number and
3 location of security cameras both inside and
4 outside the establishment. The establishment is
5 equipped with 24 security cameras. All security
6 cameras are operational. Any footage concerning
7 a crime of violence or a crime involving a gun
8 shall be maintained by El Centro for a minimum of
9 30 days after the occurrence of such crime. And
10 all security footage shall be made available
11 within 48 hours upon the request of ABRA and
12 MPD."

13 MS. SCHMIDT: And did you ever receive
14 that video footage?

15 INVESTIGATOR BRASHEARS: I did not.

16 MS. SCHMIDT: And by not receiving the
17 video footage, how did that impact the
18 investigation?

19 INVESTIGATOR BRASHEARS: I was unable
20 to ascertain if the assault actually did -- I
21 cannot prove that it occurred inside.

22 MS. SCHMIDT: And how would you

1 characterize that, that not getting the -- well,
2 no further questions of this witness at this
3 time.

4 CHAIRPERSON ANDERSON: Mr. Kline, do
5 you have any questions?

6 MR. KLINE: I do.

7 Investigator Brashears, you indicated
8 you couldn't determine whether the assault
9 occurred inside because you couldn't view the
10 video; is that your testimony?

11 INVESTIGATOR BRASHEARS: Yes, sir. I
12 had a witness say that it occurred on the
13 second -- or on the roof deck, but I could not
14 verify that with video.

15 MR. KLINE: But there wasn't any
16 dispute that it occurred inside, was there?

17 INVESTIGATOR BRASHEARS: No.

18 MR. KLINE: And in fact the exhibits
19 attached to your report seem to reflect pretty
20 clearly that the activity occurred inside,
21 correct?

22 INVESTIGATOR BRASHEARS: There was

1 glass on the floor, and as I said, my witness
2 stated and the victim stated that it happened
3 inside the establishment.

4 MR. KLINE: All right. So in reality,
5 there wasn't -- that was not an issue in terms of
6 needing the video to verify that the incident
7 occurred inside, correct?

8 INVESTIGATOR BRASHEARS: Well, it's
9 still important to have video to corroborate
10 exactly what happened.

11 MR. KLINE: All right. You did a
12 regulatory inspection of the establishment as
13 well; is that correct?

14 INVESTIGATOR BRASHEARS: Yes.

15 MR. KLINE: Were there any issues
16 found with respect to the regulatory inspection?

17 INVESTIGATOR BRASHEARS: I don't
18 recall any.

19 MR. KLINE: Okay. If I hand you a
20 copy of the inspection report, would that refresh
21 your recollection?

22 INVESTIGATOR BRASHEARS: Yes, sir.

1 MR. KLINE: May I approach the
2 witness?

3 CHAIRPERSON ANDERSON: Yes.

4 MR. KLINE: Have you reviewed the
5 report?

6 INVESTIGATOR BRASHEARS: Yes, sir.

7 MR. KLINE: All right. And do you
8 find any violations there?

9 INVESTIGATOR BRASHEARS: No, sir.

10 MR. KLINE: In your career as an
11 investigator, have you done a number of
12 regulatory inspections?

13 INVESTIGATOR BRASHEARS: Quite a few,
14 sir.

15 MR. KLINE: How many would you say,
16 any idea?

17 INVESTIGATOR BRASHEARS: At least 400
18 a year for the last five years.

19 MR. KLINE: And in doing that, you go
20 through the items that are listed on this
21 checklist for an inspection, correct?

22 INVESTIGATOR BRASHEARS: Yes, sir.

1 MR. KLINE: And to your knowledge,
2 this checklist is complete in terms of what
3 you're required to look for at a regulatory
4 inspection?

5 INVESTIGATOR BRASHEARS: Yes, sir.

6 MR. KLINE: All right. And with
7 respect to books and records, one of the things
8 that you are supposed to look at is whether there
9 are books and records there; is that correct?

10 INVESTIGATOR BRASHEARS: That's
11 correct.

12 MR. KLINE: All right. And you didn't
13 see that as a problem at this location, correct?

14 INVESTIGATOR BRASHEARS: I believe at
15 the time of the regulatory inspection, I
16 annotated on the regulatory inspection that we
17 would follow up at a later time due to the hour
18 and what was going on.

19 MR. KLINE: And did you so follow up?

20 INVESTIGATOR BRASHEARS: I have not.

21 MS. SCHMIDT: Objection. It's not a
22 case whether -- this is not a books and records

1 case.

2 CHAIRPERSON ANDERSON: I'm going to
3 overrule the objection. I think -- I know where
4 he's going, I think.

5 MS. SCHMIDT: We concede it's not a
6 books and records case --

7 CHAIRPERSON ANDERSON: As I said, I
8 think I'm following your train of thought, Mr.
9 Kline. Go ahead.

10 MR. KLINE: So the question was, did
11 you follow up and ascertain whether there were
12 proper books and records there?

13 INVESTIGATOR BRASHEARS: I did not.

14 MR. KLINE: Okay. You've done that in
15 other establishments to assure that the
16 appropriate books and records are there, correct?

17 INVESTIGATOR BRASHEARS: Correct.

18 MR. KLINE: And what is it that you
19 look for?

20 INVESTIGATOR BRASHEARS: Alcohol
21 invoices, receipts, things to show that they're
22 getting the alcohol from approved sources and

1 ensure they're maintaining them for the proper
2 length of time.

3 MR. KLINE: And what's the proper
4 length of time?

5 INVESTIGATOR BRASHEARS: Three years
6 on premise unless they have authorization to keep
7 them off premise.

8 MR. KLINE: Security footage is not
9 part of the books and records in your experience,
10 is it?

11 INVESTIGATOR BRASHEARS: No.

12 MR. KLINE: All right. Now, when you
13 were asked about the security plan, you were
14 proffered a document. Do you still have it in
15 front of you?

16 INVESTIGATOR BRASHEARS: I do, sir.

17 MR. KLINE: All right. And you were
18 referred to the first page.

19 INVESTIGATOR BRASHEARS: Yes.

20 MR. KLINE: Do you have it there in
21 front of you? At the bottom of the first page,
22 doesn't it say "Page 2"?

1 INVESTIGATOR BRASHEARS: Yes, sir.

2 MR. KLINE: All right. You're aware
3 that El Centro has another location, are you not?

4 INVESTIGATOR BRASHEARS: Yes, sir.

5 MR. KLINE: And do you know where
6 that's located?

7 INVESTIGATOR BRASHEARS: I don't
8 recall.

9 MR. KLINE: Would you -- do you know
10 that's down the street on 14th Street? Down the
11 street from where we are right now.

12 INVESTIGATOR BRASHEARS: I'm not sure.

13 MR. KLINE: If I told you it was at
14 1819 14th Street Northwest, you wouldn't have any
15 reason to dispute that, would you?

16 INVESTIGATOR BRASHEARS: No, sir.

17 MR. KLINE: All right. May I approach
18 the witness?

19 CHAIRPERSON ANDERSON: Sure.

20 MR. KLINE: I'm going to show you
21 Exhibit 12 to your report. Do you have Exhibit
22 12 in front of you?

1 INVESTIGATOR BRASHEARS: I do.

2 MR. KLINE: And is that actually the
3 first page of the report that you're looking at
4 right now?

5 INVESTIGATOR BRASHEARS: I believe it
6 is.

7 MR. KLINE: All right. That indeed is
8 a security plan for El Centro at 1819 14th
9 Street, isn't it?

10 INVESTIGATOR BRASHEARS: That appears
11 to be, yes, sir.

12 MR. KLINE: All right. So that would
13 not be the security plan -- or a security
14 plan that pertains to this establishment, is it?

15 INVESTIGATOR BRASHEARS: I would say
16 so, sir.

17 MR. KLINE: All right. So when you
18 concluded that they were in violation of their
19 security plan, you were incorrect; is that right?

20 INVESTIGATOR BRASHEARS: It appears I
21 was.

22 MR. KLINE: I beg the Board's

1 indulgence.

2 Now, in preparing your report you
3 obtained or were provided a copy of a
4 Metropolitan Police report, correct?

5 INVESTIGATOR BRASHEARS: Yes, sir.

6 MR. KLINE: And do you know whether
7 that report listed the name of the ABC license
8 manager that would have been involved that
9 evening?

10 INVESTIGATOR BRASHEARS: I don't
11 recall, sir.

12 MR. KLINE: I want to show you what's
13 attached as Exhibit 1 and ask you to look at the
14 bottom of it and ask if that refreshes your
15 recollection.

16 Do you see at the bottom where there
17 is a reference an ABC responding manager?

18 INVESTIGATOR BRASHEARS: Yes.

19 MR. KLINE: And who is identified
20 there?

21 INVESTIGATOR BRASHEARS: An Ayyaz
22 Rashid.

1 MR. KLINE: Ayyaz Rashid, and that's
2 the person that's been identified as sitting to
3 my left in this hearing today, correct?

4 INVESTIGATOR BRASHEARS: I don't know,
5 sir.

6 MR. KLINE: All right. Now, did you
7 attempt to contact Mr. Rashid about the video
8 that you were seeking?

9 INVESTIGATOR BRASHEARS: I don't
10 recall. I spoke with the ABC manager that was
11 listed in my report.

12 MR. KLINE: Okay. Didn't you also
13 have Mr. Rashid's name listed in your report?

14 INVESTIGATOR BRASHEARS: I don't
15 recall, sir.

16 MR. KLINE: Well, at any time did you
17 contact him to obtain the video?

18 INVESTIGATOR BRASHEARS: I don't
19 recall, sir. I spoke with the ABC manager that I
20 spoke with.

21 MR. KLINE: I'm going to show you page
22 two of your report. At the top, you can see that

1 it's highlighted. And read what's there, please.

2 INVESTIGATOR BRASHEARS: ABRA manager
3 Ayyaz Rashid, ABRA No. I.D. 100618.

4 CHAIRPERSON ANDERSON: I'm sorry,
5 where -- where is he at?

6 MR. KLINE: Page two of the
7 investigative report.

8 CHAIRPERSON ANDERSON: And what
9 paragraph?

10 MR. KLINE: Top of the page -- about
11 a third of the way down in bold, the last item in
12 bold.

13 CHAIRPERSON ANDERSON: There's nothing
14 in bold. Oh, okay. All right. Okay.

15 MR. KLINE: Now, when you went back
16 the one time, you said the -- you were told the
17 previous manager was no longer there, correct?

18 INVESTIGATOR BRASHEARS: Yes, that's
19 correct.

20 MR. KLINE: So it seemed like there
21 was kind of a lack of continuity as to what was
22 going on with respect to managers there?

1 INVESTIGATOR BRASHEARS: I can't say,
2 sir.

3 MR. KLINE: What was your impression?

4 INVESTIGATOR BRASHEARS: Well, it
5 seemed like they had multiple ABC managers.

6 MR. KLINE: Okay. Yet the one who is
7 first identified in your report and is identified
8 in the police report, you never attempted to
9 contact about getting the video?

10 INVESTIGATOR BRASHEARS: When I was on
11 scene, I made contact with the ABC manager that I
12 listed in the report. He was put on notice that
13 I needed the video, and he's an ABC manager.
14 He's able to handle matters on behalf of the
15 establishment. And that's what I assumed would
16 happen.

17 MR. KLINE: I don't have any further
18 questions.

19 CHAIRPERSON ANDERSON: Mr. Brashears,
20 so it's correct that when you -- in your
21 training, when you go to an establishment, who do
22 you ask for?

1 INVESTIGATOR BRASHEARS: The ABC
2 manager or the owner of the establishment.

3 CHAIRPERSON ANDERSON: Do you ask for
4 anyone by name or do you just ask for a title?

5 INVESTIGATOR BRASHEARS: I ask for a
6 title.

7 CHAIRPERSON ANDERSON: And so when you
8 went to El Centro, who did you ask for?

9 INVESTIGATOR BRASHEARS: I asked to
10 speak to the ABC manager or owner of the
11 establishment.

12 CHAIRPERSON ANDERSON: How many times
13 did you go to El Centro and ask that question?

14 INVESTIGATOR BRASHEARS: At least
15 three.

16 CHAIRPERSON ANDERSON: Did anyone at
17 El -- once you went to the establishment and
18 asked for the title, did anyone ever direct you
19 to ask for a specific person at this location?

20 INVESTIGATOR BRASHEARS: No, sir. No,
21 I was directed to the ABC manager as this person.

22 CHAIRPERSON ANDERSON: All right.

1 INVESTIGATOR BRASHEARS: But I spoke
2 to three different -- I believe three different
3 ABC managers.

4 CHAIRPERSON ANDERSON: And it's
5 correct that you never received the information
6 that you were asking for; is that correct?

7 INVESTIGATOR BRASHEARS: That's
8 correct.

9 CHAIRPERSON ANDERSON: Now, do you
10 know whether or not this establishment has a
11 security plan? This particular location, do you
12 know whether or not they have a security plan?

13 INVESTIGATOR BRASHEARS: Sitting here
14 at this moment, I do not, sir.

15 CHAIRPERSON ANDERSON: So is it
16 correct then that -- the security plan that's
17 attached to this record, it's not the security
18 plan for this location; is that correct?

19 INVESTIGATOR BRASHEARS: That appears
20 to be the situation, sir.

21 CHAIRPERSON ANDERSON: All right.
22 Any other questions by any of the Board members?

1 Yes, Mr. Alberti.

2 MEMBER ALBERTI: Mr. Brashears, thank
3 you for your report.

4 So on the evening of your
5 investigation on August 19th, did you speak with
6 Mr. Rashid?

7 INVESTIGATOR BRASHEARS: I don't
8 recall, sir.

9 MEMBER ALBERTI: Do you know why -- do
10 you have any -- can you explain why you don't
11 recall? I mean is there any reason?

12 INVESTIGATOR BRASHEARS: Well, I mean
13 it's been seven months, sir. I don't have a copy
14 of my report to reference.

15 MEMBER ALBERTI: Okay. Do you
16 remember at all your interactions with the ABC
17 manager Ivan Rizokov (phonetic)? I mean you here
18 enumerate quite explicitly your conversation with
19 him.

20 INVESTIGATOR BRASHEARS: Yes, sir.

21 MEMBER ALBERTI: What was your
22 interaction with him, and why is he mentioned in

1 your report?

2 INVESTIGATOR BRASHEARS: If I recall,
3 he was the individual that I was directed to. He
4 provided his ABC manager's license so I was
5 asking questions of him.

6 MEMBER ALBERTI: Okay. So it's your
7 recollection that you were directed to Mr.
8 Rizokov to speak with you about what happened?

9 INVESTIGATOR BRASHEARS: Yes.

10 MEMBER ALBERTI: Okay. And not Mr.
11 Rashid?

12 INVESTIGATOR BRASHEARS: I may have
13 spoken with him. I vaguely remember possibly
14 speaking with him. And I remember speaking with
15 a young female named Amber the next time I came
16 back. So I've spoken to multiple ABC managers at
17 the establishment, sir.

18 MEMBER ALBERTI: But on this evening,
19 would it have been -- who did you have the most
20 involved conversation with, the most extensive
21 conversation with?

22 INVESTIGATOR BRASHEARS: Mr. -- I

1 apologize -- Ratovic (phonetic)?

2 MEMBER ALBERTI: Okay. The person you
3 mentioned here.

4 INVESTIGATOR BRASHEARS: Yes, sir.

5 MEMBER ALBERTI: And is it safe to
6 assume that your conversations with any other ABC
7 manager would have been much less extensive?

8 INVESTIGATOR BRASHEARS: Yes, sir.

9 MEMBER ALBERTI: Thank you. Now, as
10 for the plan, how did you get this plan that we
11 have in front of us, the one that's labeled for
12 the 14th Street location?

13 INVESTIGATOR BRASHEARS: I believe we
14 pulled it from the records prior to going.

15 MEMBER ALBERTI: Okay, pulled it from
16 the records. Can you explain to me more detail
17 what's that mean, to pull it from the records.

18 INVESTIGATOR BRASHEARS: Basically,
19 the security plans are stored in ABRA records on
20 one of our drives.

21 And looking at what Mr. Kline showed
22 me, it appears that we have an El Centro and an

1 El Centro D.F., and the establishments are listed
2 by name. And due to the hour, we may have
3 downloaded the incorrect one.

4 MEMBER ALBERTI: Okay. So it's -- all
5 right. I'm just trying to clarify -- all right.
6 Very good.

7 So did you ever check to see if our
8 records have a security plan for El Centro D.F.?

9 INVESTIGATOR BRASHEARS: I did not,
10 sir, as I just became aware of the gap.

11 MEMBER ALBERTI: Okay. I have no
12 further questions.

13 CHAIRPERSON ANDERSON: Mr. Short?

14 INVESTIGATOR BRASHEARS: Yes, sir.

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

17 MEMBER SHORT: Good morning,
18 Investigator Brashears.

19 Thank you for an excellent report.
20 And you stated in your testimony earlier you've
21 been here for several years as an ABRA
22 investigator.

1 INVESTIGATOR BRASHEARS: Yes, sir.

2 MEMBER SHORT: And so you've been to
3 many establishments where they have cameras
4 operating. And normally the procedure for
5 getting a timely video, you expect the person who
6 is there at the time to know how to operate that
7 camera normally?

8 INVESTIGATOR BRASHEARS: Well, we
9 typically request any video footage be made
10 available within 48 hours. We typically ask, if
11 there's someone there that can operate it, if
12 it's operational. And my recollection was that
13 there was not. So I asked him to provide the
14 footage within 48 hours.

15 MEMBER SHORT: So you made the request
16 for 48 hours and you never received it after
17 going back how many times?

18 INVESTIGATOR BRASHEARS: I went back
19 at -- I asked that night. I want to say I
20 visited two other times and I followed up I
21 believe with a phone call.

22 MEMBER SHORT: How many hours after

1 that was your last request?

2 INVESTIGATOR BRASHEARS: The last
3 request was over a month.

4 MEMBER SHORT: So 48 hours had passed,
5 30 days had passed. No video. And you left a
6 message there with the managers on how many
7 occasions?

8 INVESTIGATOR BRASHEARS: I believe I
9 made one follow-up phone call, and I spoke with
10 the MPD detective assigned to the case. And as
11 of the authoring of the report, he stated he had
12 not received the requested video footage.

13 MEMBER SHORT: So no police provided,
14 no ABRA provided, and you're still getting the
15 runaround or you're getting misinformation, no
16 one can provide this video to you.

17 INVESTIGATOR BRASHEARS: That's
18 correct, sir.

19 MEMBER SHORT: Thank you. That's all
20 I have, Mr. Chair.

21 CHAIRPERSON ANDERSON: Any other
22 questions by any of the Board members?

1 Mr. Kline, any questions of the
2 witness based on the questions that were asked by
3 the Board?

4 MR. KLINE: Yes, a number.

5 MS. SCHMIDT: Don't I get first shot?

6 MR. KLINE: Go ahead.

7 CHAIRPERSON ANDERSON: Remember he's
8 your witness.

9 MS. SCHMIDT: You ask questions
10 before. Usually --

11 CHAIRPERSON ANDERSON: Yeah, but it's
12 your witness. You go last. I give you the
13 chance to wrap up and correct -- you're even
14 getting a better deal because Mr. Kline might ask
15 some questions and --

16 MS. SCHMIDT: I wanted to make sure
17 I wasn't --

18 CHAIRPERSON ANDERSON: So you have the
19 last word because you have the burden.

20 All right.

21 MR. KLINE: Mr. Brashears, I'm going
22 to hand you again the police report. And I don't

1 see it, can you tell me what the date of that
2 report is?

3 INVESTIGATOR BRASHEARS: The date of
4 the occurrence was August 19th. And the report
5 was concluded and signed October 17th.

6 MR. KLINE: And where do I find that?

7 INVESTIGATOR BRASHEARS: It's on page
8 nine. It's my signature and my supervisor's
9 signature where the report was approved.

10 MR. KLINE: Okay. So it was signed by
11 you on the 17th. And it's your position on the
12 17th or the 18th, as of that date, MPD had not
13 been provided footage? Or some earlier date?

14 INVESTIGATOR BRASHEARS: There was a
15 date that I listed in the report where I
16 contacted the detective prior to concluding the
17 report. I do not recall the exact date. But at
18 that time he had stated that he had not received
19 footage and that he was going to send an evidence
20 recovery unit to the establishment.

21 MR. KLINE: All right. And do you
22 know if he did that?

1 INVESTIGATOR BRASHEARS: I do not,
2 sir.

3 MR. KLINE: Did you follow up with him
4 to see that he did?

5 INVESTIGATOR BRASHEARS: I did not.

6 MR. KLINE: Okay. So when you
7 testified earlier that as of the date of the
8 report no footage had been provided, that wasn't
9 correct because you don't know that; is that
10 right?

11 INVESTIGATOR BRASHEARS: Well, today
12 is March -- we're in March 2019, and to date I
13 still have not received a copy of the video, sir.

14 MR. KLINE: We're talking about
15 whether MPD received it at this point.

16 INVESTIGATOR BRASHEARS: I could not
17 say, sir.

18 MR. KLINE: Okay. Now, you were asked
19 about what you do when you do an investigation.
20 I presume in doing an investigation, it's your
21 job to try to determine all facts concerning a
22 particular incident, correct?

1 INVESTIGATOR BRASHEARS: That's
2 correct. Correct.

3 MR. KLINE: And in doing that, you
4 would try to speak to all relevant witnesses,
5 correct?

6 INVESTIGATOR BRASHEARS: If possible,
7 yes, sir.

8 MR. KLINE: All right. Did you ever
9 make any effort to speak to Mr. Ayyaz who is
10 listed on page two in bold as the ABC manager
11 that was involved in the situation?

12 INVESTIGATOR BRASHEARS: I don't
13 recall. I may have conducted a regulatory
14 inspection with him. But as I said, I spoke with
15 an individual who had an ABC manager's card who
16 represented the establishment that night.

17 MR. KLINE: I got that. That's not my
18 question.

19 My question to you is when you're
20 doing fact finding, you want to talk to the
21 relevant witnesses, correct?

22 INVESTIGATOR BRASHEARS: Yes.

1 MR. KLINE: And certainly there
2 couldn't be any more relevant witness to an
3 incident than the ABC manager on duty when that
4 incident allegedly occurred, right?

5 INVESTIGATOR BRASHEARS: Not
6 necessarily.

7 MR. KLINE: Well --

8 INVESTIGATOR BRASHEARS: MPD made
9 contact with that individual. That doesn't mean
10 he's in charge. He was the first ABC manager
11 that they made contact with.

12 As I said, the individual that I made
13 contact with on scene that night was there and
14 took me to where the incident occurred.

15 Again, an ABC manager -- any ABC
16 manager should be able to direct me and give me
17 information pertaining to the establishment.

18 So I went with the individual that was
19 provided to me.

20 MR. KLINE: And you don't think it's
21 necessary to talk to the witness who is listed in
22 the police report as being the ABRA manager on

1 duty when the incident occurs?

2 INVESTIGATOR BRASHEARS: Again, he was
3 not listed as a witness. He was the first
4 individual that MPD made contact with.

5 MR. KLINE: How do you know that?

6 INVESTIGATOR BRASHEARS: Because it's
7 in the police report. Typically in an MPD 251,
8 the police will look for an ABC manager or owner.
9 They made contact with this individual, but there
10 was another ABC manager there who took us to the
11 crime scene.

12 MR. KLINE: I get that. But it's your
13 contention that it's not important to talk to the
14 person that's listed in the MPD report as being
15 the ABC license manager that was on duty when the
16 incident occurred?

17 INVESTIGATOR BRASHEARS: No --

18 MR. KLINE: That's your testimony.

19 INVESTIGATOR BRASHEARS: No, my
20 testimony is not that it's unimportant. My
21 testimony is that I had spoken to an ABC manager
22 representing the establishment.

1 MR. KLINE: I get that, but the ABC
2 manager listed in the police report is not that
3 manager, is it?

4 MS. SCHMIDT: Objection. Asked and
5 answered.

6 CHAIRPERSON ANDERSON: Sustained.
7 Move on.

8 MR. KLINE: Now, you did see and were
9 provided the opportunity to view MPD body cams
10 with respect to this incident, correct?

11 INVESTIGATOR BRASHEARS: Yes, sir.

12 MR. KLINE: And would the video at
13 this point be any less useful than it might have
14 been at that point in terms of the investigation?

15 INVESTIGATOR BRASHEARS: I'm sorry,
16 you're going to have to explain that.

17 MR. KLINE: In other words, if I
18 handed you the video now, would it be any less
19 important today than it would be after the -- in
20 October?

21 INVESTIGATOR BRASHEARS: The body worn
22 camera footage?

1 MR. KLINE: No, the footage that you
2 sought to obtain.

3 INVESTIGATOR BRASHEARS: I'm sorry,
4 I'm --

5 MR. KLINE: Would the footage from the
6 establishment, if it were available, would it be
7 useful to you?

8 INVESTIGATOR BRASHEARS: I would
9 believe so.

10 MR. KLINE: Okay. And if it were
11 available today, would it be useful to you?

12 INVESTIGATOR BRASHEARS: Yes.

13 MR. KLINE: I have no further
14 questions. Thank you.

15 CHAIRPERSON ANDERSON: Ms. Schmidt?

16 MS. SCHMIDT: Now, the body worn
17 footage, was that the same -- would that show the
18 same as the video camera inside the
19 establishment?

20 INVESTIGATOR BRASHEARS: No.

21 MS. SCHMIDT: And why is that?

22 INVESTIGATOR BRASHEARS: Because the

1 body worn camera footage picked up after the
2 event had occurred when MPD made contact with the
3 victim outside, and then it was everything from
4 there forward as far as their investigation.

5 MS. SCHMIDT: And as far as -- and
6 typically when you are called to an establishment
7 for an assault, what is the usefulness of the
8 video camera footage?

9 INVESTIGATOR BRASHEARS: Well, first
10 of all, it's to corroborate what happened. But
11 secondly it's too to ascertain -- especially if
12 it's a situation where it's required by a
13 security plan or Board order, it's to ascertain
14 if the establishment was operating within the
15 established laws and regulations.

16 MS. SCHMIDT: And were you able -- and
17 so were you able to determine that without that?

18 INVESTIGATOR BRASHEARS: I mean I
19 conducted a regulatory inspection, but that was,
20 again, after the fact. So I would have to say no
21 to your question. No, I was not able to
22 ascertain if the establishment was operating

1 within the laws and regulations.

2 MS. SCHMIDT: Also, at -- also -- so
3 if you don't have -- when you go to an
4 establishment and they don't provide the
5 videotape, is that helpful to your investigation?

6 INVESTIGATOR BRASHEARS: No, ma'am.

7 MS. SCHMIDT: And how would you
8 characterize when they don't provide the
9 videotape?

10 MR. KLINE: Objection. I think we're
11 well beyond the scope of cross.

12 CHAIRPERSON ANDERSON: What was the
13 question again?

14 MS. SCHMIDT: How do you
15 characterize -- when the videotape is not
16 provided to you, how do you characterize -- how
17 would you characterize it in terms of your
18 investigation?

19 CHAIRPERSON ANDERSON: I'll allow the
20 question but -- I'll allow the question, but we
21 need to keep it --

22 So answer the question, sir.

1 INVESTIGATOR BRASHEARS: I mean,
2 again, I wouldn't be able to clearly ascertain
3 what occurred.

4 MS. SCHMIDT: No further questions.

5 CHAIRPERSON ANDERSON: Thank you, Mr.
6 Brashears. You can step down.

7 Does the Government have another
8 witness?

9 MS. SCHMIDT: No, your Honor.

10 CHAIRPERSON ANDERSON: Does the
11 Government rest?

12 MS. SCHMIDT: Yes, the Government
13 rests.

14 MR. KLINE: We would move to strike --
15 I know that there's no need to formally move the
16 investigative report because under the rules it's
17 part of the record so it doesn't need to be
18 moved. But given that Exhibit 12 does not relate
19 to this establishment, we would move to strike
20 Exhibit 12 of the investigator's report.

21 CHAIRPERSON ANDERSON: Ms. Schmidt?

22 MS. SCHMIDT: This -- the Government's

1 position is that when they did -- we did the
2 search, this is what came up and that at the time
3 they made a good faith effort, and therefore, it
4 should still be made part of the record.

5 CHAIRPERSON ANDERSON: After the
6 witness concedes that it's --

7 CHAIRPERSON ANDERSON: Yeah, I'm going
8 to --

9 MEMBER ALBERTI: Can I ask a question?

10 CHAIRPERSON ANDERSON: What's the
11 question, Mr. Alberti?

12 MEMBER ALBERTI: It's just for
13 clarity. All right.

14 The witness said that in our records
15 we have an El Centro and an El Centro D.F. Is
16 that correct?

17 Mr. Kline, is that --

18 MR. KLINE: That was my recollection
19 of his testimony.

20 MEMBER ALBERTI: And so this
21 establishment has two licenses under different
22 names; is that correct?

1 MR. KLINE: Not precisely. There were
2 two licensees with similar names.

3 MEMBER ALBERTI: I'm sorry, has two
4 licenses. The licenses have different trade
5 names; is that correct?

6 MR. KLINE: Right.

7 MEMBER ALBERTI: And one of them is El
8 Centro D.F. and one of them is El Centro.

9 MR. KLINE: Correct.

10 MEMBER ALBERTI: Okay. So the one
11 we're dealing with is at 1218 Wisconsin Avenue,
12 correct?

13 MR. KLINE: Correct.

14 MEMBER ALBERTI: And the trade name of
15 that establishment?

16 MR. KLINE: El Centro.

17 MEMBER ALBERTI: El Centro.

18 MR. KLINE: Correct.

19 MEMBER ALBERTI: Not El Centro D.F.

20 CHAIRPERSON ANDERSON: Well --

21 MEMBER ALBERTI: Wait, this is
22 important to me.

1 CHAIRPERSON ANDERSON: But --

2 MR. KLINE: I'm not sure that I know,

3 but I --

4 CHAIRPERSON ANDERSON: But it's not

5 relevant for this case.

6 MR. KLINE: I don't know and we can --

7 MEMBER ALBERTI: Can we look at

8 administrative records to find out?

9 MR. KLINE: Sure we can but the --

10 MEMBER ALBERTI: Because my point is,

11 Chairman Anderson, is that though the address

12 isn't reflective here, the name on the report

13 says "El Centro D.F." So I think it's important

14 to know, you know, if we're going to strike this,

15 whether or not we have -- I mean you're striking.

16 MR. KLINE: It says 1819 14th Street.

17 MEMBER ALBERTI: It also says "El

18 Centro D.F." on there. So I don't -- you know,

19 mistakes are made. But my point is we have the

20 name -- if we have the name correctly, that I

21 think carries weight. That's just my point.

22 MR. KLINE: I mean that would be --

1 CHAIRPERSON ANDERSON: Mr. Kline. All
2 right.

3 Although we're not in a court of law,
4 but we have a security plan that the agent says
5 belongs to an establishment that's located -- we
6 have an establishment that is on Wisconsin
7 Avenue; is that correct?

8 MR. KLINE: Correct.

9 CHAIRPERSON ANDERSON: We have a
10 security plan for an establishment that's on 14th
11 Street; is that correct?

12 MR. KLINE: That's correct.

13 CHAIRPERSON ANDERSON: Yes. I will
14 grant the motion to exclude.

15 The agency is the one who provided
16 this document. It is incorrect -- even if it's
17 the same, it's incorrect. I don't know -- based
18 on the presentation, we were provided a document
19 that stated this is the security plan for this
20 establishment.

21 This establishment is not located on
22 14th Street. So whatever -- the agency therefore

1 needs to move and correct its record. So I'm
2 going to strike the security plan from the record
3 because I do not know what -- I don't know.
4 We're in the middle of the hearing. And we don't
5 know -- we go by addresses.

6 I know that part of the issue that if
7 an -- we typically fine a licensee if we go to an
8 address and we look up and there's a different
9 name that attaches to the address. Then the
10 agency will fine the establishment to say "You
11 changed your trade name" because -- that tells me
12 that we go by the address. We don't
13 necessarily -- so the address needs to match the
14 name.

15 And in the security plan that was
16 provided to us, the address does not match the
17 name. It appears it's two different
18 establishments.

19 So, therefore, I'm going to strike
20 this document from the record.

21 All right.

22 MR. KLINE: And the Government rests;

1 is that correct?

2 CHAIRPERSON ANDERSON: Yes.

3 MR. KLINE: And with that, we would
4 move to dismiss Count One on the grounds that no
5 prima facie case has been made that there was a
6 violation of the security plan because there has
7 not been show that there was either a security
8 plan required with respect to this establishment,
9 given its license class nor that the Board ever
10 required one nor that one was ever filed with the
11 ABC.

12 CHAIRPERSON ANDERSON: Ms. Schmidt?

13 MS. SCHMIDT: Just to note that within
14 the file also, the security agreement does refer
15 to 1218 Wisconsin Incorporated. Therefore, even
16 though somehow the security agreement and
17 security plan may have been filed -- I don't know
18 if they were filed together. I don't know if
19 they were filed together or not. So I --

20 CHAIRPERSON ANDERSON: Mr. Kline, I'm
21 going to take the motion under advisement.
22 There's too much confusion and I don't -- there's

1 too much confusion. So at this juncture, I will
2 take your motion under advisement during the
3 Board's deliberation.

4 MEMBER ALBERTI: May I ask Mr. Kline
5 one other question?

6 CHAIRPERSON ANDERSON: Go ahead. Go
7 ahead.

8 MEMBER ALBERTI: So because you have
9 a motion before us to strike because this is an
10 incorrect security plan, is it your contention,
11 your client's contention that they have filed a
12 different security plan for this address?

13 CHAIRPERSON ANDERSON: Before -- I
14 think part of the problem that we're going to
15 have here --

16 MEMBER ALBERTI: Or that they never
17 filed -- but they never filed this security plan
18 that we have before us for this address?

19 CHAIRPERSON ANDERSON: Hold on there,
20 please.

21 MEMBER ALBERTI: It's important.

22 CHAIRPERSON ANDERSON: But I don't

1 even know whether or not this establishment needs
2 to have a security plan. And I think that's part
3 of the problem that we have here.

4 I don't know whether or not this
5 particular establishment is required to have a
6 security plan.

7 MEMBER ALBERTI: And I'm not asking
8 whether they're required. What I'm asking is the
9 agency relies on the -- if we have it in our
10 records, they rely on the security plan that's
11 filed by the licensee.

12 So what I'm trying to find out is was
13 there a mistake looking for the wrong address or
14 do we actually have this security plan filed by
15 the licensee in our records, the one that's
16 before us, because I don't know where the mistake
17 lies. And that's all I'm trying to find out, is
18 did the licensee -- is the licensee certain that
19 they didn't file this security plan for this
20 address with the agency.

21 CHAIRPERSON ANDERSON: But I think
22 before -- I think the problem is that this is the

1 agency of the agency of record. The agency is
2 the one that the Government provided a document
3 in evidence to say this is the security plan that
4 they have for this agency -- for this licensee.
5 That's for this licensee.

6 If that information is incorrect and
7 the licensee is saying that this information is
8 incorrect, the agency needs to correct its record
9 to figure out what it is.

10 I don't know whether or not this
11 licensee is even required to have a security
12 plan, so asking them whether or not they filed
13 the correct security plan, that's not relevant
14 here because I don't think the Government has
15 established that this particular licensee is
16 supposed to have a security plan. And I don't --

17 MEMBER ALBERTI: I didn't ask if they
18 filed the correct one.

19 CHAIRPERSON ANDERSON: But --

20 MEMBER ALBERTI: I asked them if they
21 ever filed this one.

22 CHAIRPERSON ANDERSON: But the

1 question --

2 MEMBER ALBERTI: It's a yes or no
3 question.

4 CHAIRPERSON ANDERSON: But --

5 MEMBER ALBERTI: Or they can tell me
6 "I don't know."

7 CHAIRPERSON ANDERSON: They can't
8 answer that question.

9 MEMBER ALBERTI: Sure, they can. They
10 can say if they're not required to have a
11 security plan, they can just tell me that they
12 did not file this security plan with the agency
13 for this address.

14 CHAIRPERSON ANDERSON: But they can --

15 MEMBER ALBERTI: For the address on
16 record. That's all they need to say. I'm not
17 asking whether they required one. I'm asking did
18 they do something, yes or no.

19 CHAIRPERSON ANDERSON: But the
20 response, Mr. Alberti --

21 MR. KLINE: Mr. Alberti, I'm not on
22 the stand.

1 CHAIRPERSON ANDERSON: Right.

2 MR. KLINE: We're in an administrative
3 hearing.

4 MEMBER ALBERTI: I got it, I got it.

5 MR. KLINE: It's the Government's
6 burden to move forward and prove a prima facie
7 case. It's not my burden to rebut the
8 Government's case when the Government has not
9 proved a prima facie case.

10 MEMBER ALBERTI: Mr. Kline, I'm not
11 asking that. This is not relevant.

12 My question is in reference to your
13 motion. And your motion, it's important, the
14 actions taken by licensee with respect to this
15 document that you want to strike is important to
16 this motion.

17 MR. KLINE: I thought the motion to
18 strike was granted. This is not the motion to
19 dismiss.

20 CHAIRPERSON ANDERSON: No, I --

21 MEMBER ALBERTI: What I was saying is
22 that this Board has the ability to take

1 administrative note of our records. And I'll
2 leave it at that.

3 MR. KLINE: If we properly proceed,
4 you do.

5 CHAIRPERSON ANDERSON: All right. I
6 didn't grant the motion. I said I'll take the
7 motion under advisement.

8 MR. KLINE: I thought that was the
9 motion to dismiss. Now, I'm confused.

10 CHAIRPERSON ANDERSON: Your motion to
11 dismiss, I told you that I would take it on
12 advisement because --

13 MR. KLINE: Right. The motion to
14 strike was granted.

15 CHAIRPERSON ANDERSON: Right. The
16 motion to strike was granted.

17 MR. KLINE: Okay.

18 CHAIRPERSON ANDERSON: And your motion
19 to dismiss is taken under advisement and so
20 therefore during our deliberation, we will more
21 flesh this out.

22 I don't believe that I share -- I

1 might have some powers, but I think that I have
2 to have the rest of the Board voted on whether to
3 dismiss this matter. And without knowing --
4 without discussing it further with them and
5 knowing where they're coming from, that's why I
6 stated that we'll take it under advisement.

7 So what I would say is that in your
8 presentation, you should make arguments regarding
9 that charge -- at least make some arguments
10 regarding the charge, because I do not know
11 how -- what the Board is going to rule on your
12 motion to dismiss. But I'm taking it under
13 advisement.

14 I do have my opinions, but there are
15 five other Board members.

16 MR. KLINE: All right.

17 CHAIRPERSON ANDERSON: Do you wish to
18 make an opening statement?

19 MR. KLINE: I do.

20 CHAIRPERSON ANDERSON: All right.

21 MR. KLINE: Members of the Board, we
22 all make mistakes. And I'm not going to belabor

1 it too much. But we all make mistake, and it
2 appears that a mistake was made here with respect
3 to the security plan. We think the evidence on
4 that point is clear, even though the Board has
5 not granted the motion.

6 In my experience before this Board,
7 had the Board gotten this report without the
8 security plan violation, the Board would have
9 looked at it and knowing that the licensee was
10 not required to have a security plan, would have
11 simply brought the licensee in for a fact finding
12 to figure out what went on, figure out what could
13 be done better, figure out how we might best
14 protect the citizens, residents and visitors to
15 the District of Columbia in the operation of an
16 ABC license at this establishment.

17 Because this error was made -- and it
18 wasn't made once. Let's keep in mind that the
19 investigator prepared this report. It was then
20 reviewed by a supervisor and signed off on. It
21 was then transmitted to you for review. And you
22 decided to send it to the Office of Attorney

1 General, who also reviewed it and wrote off a
2 show cause notice.

3 So this error existed upon multiple
4 reviews of this report and we believe to the
5 detriment of the licensee, because we have a
6 second issue and I'll speak to the second issue.

7 Again, our evidence will show that
8 there was an effort to provide the video to the
9 Metropolitan Police Department, as is evidenced
10 from the report and Investigator Brashears'
11 testimony. There was some transition in terms of
12 managers.

13 Now, we are not going to present
14 evidence, nor are we going to argue when the case
15 is over, about what was done was perfect or the
16 way that we would have liked it to have been done
17 or the way we think the Board would have liked it
18 to have been done.

19 But we would submit and we will argue
20 at the conclusion of the testimony and the
21 conclusion of the case that not everything is a
22 violation, and some things are better handled

1 with our licensees -- particularly one with the
2 investigative history as brief as this one is,
3 which is less than a third of a page -- that
4 common sense and the better approach would have
5 been to have brought the licensee in for a fact
6 finding and not proceeded with this show cause.

7 We will put on evidence reflecting
8 what was done here, and then at the conclusion of
9 the case, we will ask that the Board dismiss
10 this.

11 Thank you.

12 CHAIRPERSON ANDERSON: All right. Do
13 you have a witness you wish to call?

14 MR. KLINE: I do.

15 CHAIRPERSON ANDERSON: Who is that?

16 MR. KLINE: Ayyaz Rashid, will you
17 take the stand, please.

18 MR. RASHID: Sure.

19 CHAIRPERSON ANDERSON: Mr. Rashid, can
20 you raise your right hand, please.

21 Mr. Rashid, do you swear or affirm to
22 tell the truth and nothing but the truth?

1 MR. RASHID: Yes, sir.

2 CHAIRPERSON ANDERSON: Your witness.

3 MR. KLINE: Mr. Rashid, state your
4 full name for the record, please.

5 MR. RASHID: It's Ayyaz Rashid.

6 MR. KLINE: And where are you
7 employed?

8 MR. RASHID: I'm employed with the
9 Richard Sandoval organization.

10 MR. KLINE: And Richard Sandoval
11 organization operates a number of restaurants in
12 the metropolitan area; is that correct?

13 MR. RASHID: Yes. We operate four.

14 MR. KLINE: So how many in D.C.?

15 MR. RASHID: Four, sir.

16 MR. KLINE: And what are the four that
17 you operate in D.C.?

18 MR. RASHID: El Centro Georgetown, El
19 Centro on 14th Street, Masa 14, and Toro Toro.

20 MR. KLINE: And how long have you been
21 connected with the organization?

22 MR. RASHID: 10 years, sir.

1 MR. KLINE: And when did the
2 restaurant that is known as El Centro Georgetown
3 convert to El Centro Georgetown?

4 MR. RASHID: Approximately five years
5 ago.

6 MR. KLINE: Okay. So you were with
7 the organization when that happened?

8 MR. RASHID: Yes, sir.

9 MR. KLINE: And are you familiar with
10 the requirements of the four restaurants which
11 are involved to file security plans with ABRA?

12 MR. RASHID: As to the best of my
13 knowledge, yes, sir.

14 MR. KLINE: Okay. And are you
15 familiar with the security plan that we've talked
16 about today that has on its cover 1419 (sic) 14th
17 Street?

18 MR. RASHID: Fully.

19 MR. KLINE: And are you aware to what
20 establishment that applies?

21 MR. RASHID: That applies to El Centro
22 14th Street. Exact address, 1819 14th Street

1 Northwest.

2 MR. KLINE: And, to your knowledge,
3 does El Centro Georgetown have a specific written
4 security plan?

5 MR. RASHID: No, sir. To my best
6 recollection, we have never been asked to provide
7 a security plan for there.

8 MR. KLINE: Okay. But you do have
9 security procedures in place at that location,
10 correct?

11 MR. RASHID: Yes, sir.

12 MR. KLINE: So even if you don't have
13 anything formally filed with the Board, you have
14 certain expectations of your --

15 MR. RASHID: Yes.

16 MR. KLINE: -- managers and employees?

17 MR. RASHID: Yes, sir.

18 MR. KLINE: All right. Now, this
19 incident that occurred on August 19th of 2018, do
20 you recall it?

21 MR. RASHID: I do not recall it fully.
22 I wasn't present at the time of the incident.

1 MR. KLINE: All right. Do you have
2 any idea why the police report references your
3 name as the ABC manager?

4 MR. RASHID: Somebody might have given
5 them my name. I am not at locations at night at
6 that time.

7 MR. KLINE: So you weren't on site at
8 the time?

9 MR. RASHID: No, sir.

10 MR. KLINE: Are your ABC license
11 managers in the various locations instructed to
12 get you involved if there's an incident involving
13 Metropolitan Police?

14 MR. RASHID: If it's serious and my
15 assistance is needed, I do help, and they give my
16 name out.

17 MR. KLINE: So do you think it's
18 likely that that's what happened in this case?

19 MR. RASHID: Yes, they most likely
20 gave my name out to them.

21 MR. KLINE: All right. Now, did you
22 become aware of a request for videotape?

1 MR. RASHID: I checked my records and
2 there was a request by the general manager, most
3 likely because that's our protocol, that the next
4 day if something is needed, the general manager
5 approaches us -- approaches me and says "This is
6 what I need."

7 MR. KLINE: Okay. So let's talk about
8 that for a minute. So when -- do you video
9 surveillance systems in all four restaurants?

10 MR. RASHID: Yes, sir.

11 MR. KLINE: Okay. And is there a
12 certain process that's been instituted as to how
13 to retrieve the video and make it available to
14 law enforcement?

15 MR. RASHID: Yes, sir.

16 MR. KLINE: And what is that process?

17 MR. RASHID: The process is the
18 general manager at the location requests the
19 video and then we provide it directly -- if the
20 general manager needs it or if it's supposed to
21 be sent to an ABRA individual or MPD individual.

22 If I'm provided that email or contact,

1 then I send to them.

2 MR. KLINE: All right. And what else
3 do you do with respect to -- well, let me ask a
4 different question.

5 How long does the video store on the
6 DVRs in the various locations?

7 MR. RASHID: Approximately 30 days.

8 MR. KLINE: Approximately 30 days.
9 And what do you do if a request for video has
10 been made?

11 MR. RASHID: Once the request is made,
12 I send the video to whoever I need to send it to.
13 It may be the general manager or somebody else,
14 and then I save that file in my backup server.

15 MR. KLINE: Okay. And if you did not
16 do that, would the video then be unavailable?

17 MR. RASHID: Yes, sir.

18 MR. KLINE: So it would only be in
19 response to a request for a video that a video
20 would be saved?

21 MR. RASHID: Yes, sir.

22 MR. KLINE: Now, in this case, it came

1 to your attention that there was a request for a
2 video, correct?

3 MR. RASHID: Yes, sir.

4 MR. KLINE: You don't specifically
5 remember that at this point, do you?

6 MR. RASHID: I do not remember who
7 made the request, but I did check my records and
8 there was something that was sent out the very
9 next day.

10 MR. KLINE: You sent video out the
11 next day according to your records?

12 MR. RASHID: Yes, sir.

13 MR. KLINE: And to whom did you send
14 the video?

15 MR. RASHID: Leonardo Lewis, MPD. I
16 have not spoken to that gentleman. I don't know
17 personally who he is, but my records show that
18 email with a download from We Transfer was sent
19 out on August 19th at 7:30 p.m.

20 MR. KLINE: And did you, as you
21 indicated is your normal procedure, then retain a
22 copy of the video that you sent?

1 MR. RASHID: Yes, sir. Anything that
2 there is an incident or anything sent out, we
3 save it always in our backup server.

4 MR. KLINE: Okay. So you have that
5 video available?

6 MR. RASHID: Yes, sir.

7 MR. KLINE: And you're certainly
8 willing to make that video available to ABRA
9 investigators?

10 MR. RASHID: Absolutely.

11 MR. KLINE: And you're willing to make
12 that video available to the MPD in the event that
13 they do not have it?

14 MR. RASHID: Absolutely.

15 MR. KLINE: I have no further
16 questions.

17 CHAIRPERSON ANDERSON: Ms. Schmidt?

18 MS. SCHMIDT: A few questions.

19 Now, you said -- are you an ABC
20 manager for El Centro D.F. in Georgetown?

21 MR. RASHID: I am -- I do have an ABC
22 license, but I not their ABC manager.

1 MS. SCHMIDT: So if an investigator
2 came and asked for an ABC manager, you would not
3 be the person --

4 MR. RASHID: I would not be the
5 person.

6 MS. SCHMIDT: Also, now, you say your
7 staff knows that if there's a request for video,
8 that -- they know if there's a request for video,
9 they're supposed to give your name to ABRA; is
10 that correct?

11 MR. RASHID: If there's a request for
12 a video?

13 MS. SCHMIDT: Yes, the staff knows
14 that you're the one -- you're the keeper of the
15 video, correct?

16 MR. RASHID: Yes.

17 MS. SCHMIDT: Do you know why three
18 members of your staff did not tell ABRA -- did
19 not give ABRA your name with respect to the
20 video?

21 MR. KLINE: Objection. Calls for
22 speculation. He doesn't know what's in their

1 minds.

2 MS. SCHMIDT: I'll rephrase it.

3 Do you know if your staff members --
4 if the three staff members gave your name to ABRA
5 as the keeper of the video?

6 MR. RASHID: I'm not understanding
7 the question fully. If you can rephrase it.

8 MS. SCHMIDT: Let me rephrase it.

9 You state that the proper protocol is
10 that when there's a request for video, that your
11 staff knows that you're the person to go to,
12 correct?

13 MR. RASHID: Yes.

14 MS. SCHMIDT: Did your staff give your
15 name to ABRA as the person to get the video from?

16 MR. RASHID: I do not know why would
17 they give my name. Normally, the general
18 manager is the one that requests the video from
19 me.

20 MS. SCHMIDT: And did anyone from ABRA
21 ever request the video from you?

22 MR. RASHID: I do not recall directly

1 ABRA requesting a video from me.

2 MS. SCHMIDT: No further questions at
3 this time.

4 CHAIRPERSON ANDERSON: All right. Mr.
5 Rashid --

6 MR. RASHID: Yes, sir.

7 CHAIRPERSON ANDERSON: It's correct
8 that you stated that you're not the ABC manager
9 or owner; is that correct?

10 MR. RASHID: Yes, sir.

11 CHAIRPERSON ANDERSON: So it would be
12 a correct assertion that if an ABRA investigation
13 came to your location and asked for the ABC
14 manager or owner, you would not be the person
15 that they speak with?

16 MR. RASHID: Never, sir.

17 CHAIRPERSON ANDERSON: All right.

18 Thank you.

19 Mr. Short?

20 MEMBER SHORT: Yes. Rashid --

21 MR. RASHID: Yes, sir.

22 MEMBER SHORT: Mr. Rashid, apparently

1 someone was injured inside the establishment; is
2 that correct?

3 MR. RASHID: Unfortunately, I believe
4 so, sir.

5 MEMBER SHORT: When did anyone from
6 your staff at that location, at that address,
7 call for assistance from the MPD 4th, fire and
8 EMS? Did
9 anyone make a call at any time that evening for
10 assistance?

11 MR. RASHID: Yes, sir. If you review
12 the video, there's clearly an ABRA manager, Ivan.
13 That's in the report. You can see him outside on
14 the phone calling 911. And then shortly after,
15 within the video, you'll also see the cops
16 showing up.

17 MEMBER SHORT: So had that video been
18 provided in a timely fashion, this investigation
19 would have moved a lot quicker and a lot more
20 (indiscernible); is that correct?

21 MR. RASHID: Yes, sir.

22 MEMBER SHORT: So why wasn't it

1 provided within 48 hours?

2 MR. RASHID: Sir --

3 MR. KLINE: I'm sorry, I have to
4 object to the form of the question, because there
5 is no 48-hour requirement unless there's a
6 security plan.

7 MEMBER SHORT: Okay. I'll take that
8 back.

9 Why wasn't it given in a timely
10 fashion?

11 MR. RASHID: Sir, to my knowledge, how
12 our protocols are set, that the GM, the general
13 manager of the place requests what video is
14 needed.

15 As far as I recollect and I looked
16 back into my emails, what my email shows, I did
17 send out a downloadable We Transfer video
18 recording of El Centro file within that day at
19 7:30 p.m.

20 MEMBER SHORT: Okay. Let's
21 hypothetically say --

22 MR. RASHID: Yes, sir.

1 MEMBER SHORT: -- you were unable to
2 be reached and there's a homicide, so no one
3 there at that establishment can do any -- provide
4 fire, MPD or ABRA with any type of video until
5 you --

6 MR. RASHID: Sir, there are protocols
7 set in place if I'm not available.

8 MEMBER SHORT: Let me finish the
9 question.

10 MR. RASHID: I'm sorry.

11 MEMBER SHORT: Thank you. If you are
12 not notified, no one there knows how to get that
13 video, then what happens in this case would
14 happen again; is that correct?

15 MR. RASHID: Yes, sir. But may I
16 elaborate?

17 MEMBER SHORT: Excuse me. Your answer
18 is yes.

19 MR. RASHID: Right.

20 MEMBER SHORT: Okay. I have another
21 question. Do you think that's acceptable to this
22 Board and to this city that you have an

1 establishment where an incident happens, no video
2 is provided. You said you have an email, but you
3 don't know whether or not a video was provided or
4 not.

5 MR. RASHID: Sir --

6 MEMBER SHORT: Do you --

7 MR. KLINE: Mr. Short -- Mr. Chairman,
8 the witness is attempting to answer the question
9 and is not being allowed to answer.

10 MEMBER SHORT: Well, I didn't finish
11 the question.

12 CHAIRPERSON ANDERSON: I think Mr.
13 Short is asking a compound. Remember, Mr. Short
14 is not an attorney, so he's asking a compound
15 complex question, Mr. --

16 MEMBER SHORT: Let me --

17 MR. KLINE: And it deserves a compound
18 answer, so let the witness answer --

19 MEMBER SHORT: Okay. Let me restate
20 my question. Thank you very much.

21 CHAIRPERSON ANDERSON: Go ahead, Mr.
22 Short.

1 MEMBER SHORT: Thank you. I'm not an
2 attorney.

3 Why wasn't the video provided in a
4 timely fashion for this evening in question?

5 MR. RASHID: Sir, as I've stated, the
6 email that I sent, it wasn't just an email. It
7 had the copy of the videos attached to it to be
8 downloaded via We Transfer.

9 MEMBER SHORT: You're under oath.

10 MR. RASHID: Yes, sir.

11 MEMBER SHORT: Okay.

12 MR. RASHID: And I do -- it's -- it's
13 an email. It's trackable. It does show all the
14 files attached to it.

15 And in case that I am not reachable,
16 we do have individual two, individual three in
17 our organization that if I am not reachable, then
18 the general manager or the ABRA manager of the
19 facility will go to that person, "Hey, Rashid is
20 not available. We need this video."

21 If the second person is not available,
22 there's a third person that the general manager

1 will go to, "Hey, I cannot get this video for
2 this incident for one person, two person," so we
3 do have protocols in place that if I am not
4 available, there are two other individuals that
5 will provide the video.

6 MEMBER SHORT: Which leads me to ask
7 you this.

8 MR. RASHID: Yes, sir.

9 MEMBER SHORT: Why aren't the ABC
10 managers on site or any employees that work at
11 that establishment able to give a video
12 immediately upon request by --

13 MR. RASHID: Sir, if there is a
14 request that the video needs to be given to an
15 inspector immediately, either myself or somebody
16 else will go to the establishment and will make a
17 copy.

18 We do not allow our lower level
19 management to have access in terms of backing up
20 footage. They can view it, they can show it.
21 They can show the video to the ABRA manager,
22 "Hey, this is what happened. You can see it."

1 They just cannot back it up on a hard drive.

2 MEMBER SHORT: So on the night in
3 question, are you stating for the record that
4 someone in your employment at this establishment
5 could have shown the video to the investigator
6 who just testified today?

7 MR. RASHID: Sir, I was not there.

8 MEMBER SHORT: Not the question. The
9 question is, could someone there in that
10 establishment that night have said to the
11 investigator, "I don't have a copy right now, but
12 here's what you can view right now"?

13 MR. RASHID: Yes, sir.

14 MEMBER SHORT: Did they do that?

15 MR. RASHID: Sir, I don't know if they
16 were asked.

17 MEMBER SHORT: You don't know if they
18 were asked.

19 MR. RASHID: Yes, sir.

20 MEMBER SHORT: That would have helped
21 a lot of things today.

22 MR. RASHID: Yes, sir. But, again, I

1 do not know if the inspector asked or what the
2 conversation was between them as I'm not on the
3 establishment at that time.

4 MEMBER SHORT: So those questions I
5 just asked, could that lead you to change policy
6 a little bit, maybe have someone there trained to
7 be able to help the investigation with the police
8 or with ABRA --

9 MR. RASHID: Absolutely, sir.

10 MEMBER SHORT: Excuse me?

11 MR. RASHID: Yes, sir. I definitely
12 will do everything possible. If we need to
13 change something that helps ABRA and the MPD to
14 make any future incidents or investigation
15 better, we'll be happy to do so.

16 MEMBER SHORT: We can't ask you to do
17 anything today or make you do anything, but we
18 can bring these things up.

19 CHAIRPERSON ANDERSON: Yes, we can.
20 Okay.

21 MEMBER SHORT: Thank you very much.
22 I was trying to get around to --

1 CHAIRPERSON ANDERSON: This isn't a
2 fact finding. We can order them to do whatever
3 today.

4 MEMBER SHORT: Thanks very much.

5 So in light of your answers --

6 MR. RASHID: Yes, sir.

7 MEMBER SHORT: -- especially your last
8 answer, do you think you having an up-to-date
9 ABRA-approved security plan with information you
10 just gave about having someone on the premises
11 being able to provide the information right away
12 would be helpful to your business?

13 MR. RASHID: Yes, sir. If we are
14 requested for a security plan, we'll be gladly
15 making those changes.

16 MEMBER SHORT: Can I ask you to commit
17 to that then, giving this agency a security plan
18 which will eliminate or ameliorate any instances
19 where we won't be able to get video right away or
20 use right away by the staff on duty at your
21 business?

22 MR. KLINE: Objection. I'm getting

1 the fact finding hearing that I thought was
2 appropriate, but I'm not sure it's appropriate in
3 this setting. I'm uncomfortable in this
4 contested case proceeding with this line of
5 questioning.

6 If we want to recess, dismiss the
7 charges and go into a fact finding hearing, I say
8 have at it, because I think that's where this
9 case should have been in the first place.

10 CHAIRPERSON ANDERSON: I'll sustain
11 the objection.

12 Mr. Short, if you have -- during our
13 deliberations, if you have some specific concerns
14 of things that you want, then those are things
15 that the Board can order if we decide to -- if as
16 part of our deliberation the Board determines
17 that they are guilty of the charge.

18 MEMBER SHORT: I want to make sure I
19 have the facts straight, and thank you for
20 correcting me.

21 I'll simply say this. There's been
22 testimony, as I understand it, from this person

1 who is in charge of that business that had
2 someone in that business been trained and
3 directed to give that information right away to
4 the ABRA investigator or the police, we wouldn't
5 be here right now.

6 MR. KLINE: I'm not sure that that's
7 true. I think if someone had asked for it, they
8 would have been given it.

9 And if you read the report, it wasn't
10 asked for.

11 The only thing we did is look to say
12 "Oh, it will be this camera and that camera."

13 MEMBER SHORT: The testimony --

14 MEMBER ALBERTI: Who's testifying?

15 CHAIRPERSON ANDERSON: All right.

16 Hold on, Mr. Alberti. I mean this is -- hold on,
17 Mr. Alberti.

18 MEMBER ALBERTI: I'm confused.

19 CHAIRPERSON ANDERSON: This is the
20 Board questioning a witness.

21 Mr. Kline made an objection. I
22 sustained the objection.

1 So, Mr. Short, if you have some other
2 questions, you can ask the witness. If not -- if
3 you have some other questions you want to ask --

4 MEMBER SHORT: One last question just
5 to clarify things.

6 Mr. Rashid --

7 MR. RASHID: Yes, sir.

8 MEMBER SHORT: -- if someone at your
9 establishment on the night this event happened
10 had had operational knowledge of the video
11 system, would they have given it to ABRA that
12 night?

13 MR. RASHID: Yes, sir. And if you
14 will allow me to elaborate just a little bit.

15 People at the location do have the
16 operational knowledge to show the video. And I
17 might add the inspector knowing camera 15 and 16,
18 they must have shown the inspector the cameras
19 for them to know that that's the camera they
20 want.

21 So if nobody had operational
22 knowledge, the inspectors wouldn't have known "I

1 want camera 16."

2 MEMBER SHORT: How do we verify what
3 you just said?

4 MR. RASHID: It's in the police report
5 that they're asking for camera 16.

6 MEMBER SHORT: Police report.

7 MR. RASHID: The report -- I'm sorry
8 if I'm saying it wrong. To my knowledge, the
9 report that Mr. Kline has, it says that they want
10 camera 16. They wouldn't have known it's camera
11 16 if nobody has shown them that that's where the
12 incident happened.

13 So they do have operational knowledge,
14 sir. They just don't have the capability to back
15 it up.

16 We show it to MPD all the time if
17 there's an incident. Either El Centro or at any
18 other locations, any other location when the
19 inspector arrives or a police officer arrives,
20 they want to see something, we do show it. We
21 just are unable to back up the recording at that
22 very moment.

1 But all four locations, all four ABRA
2 managers have operational knowledge to show the
3 video, security camera.

4 MEMBER SHORT: You heard the testimony
5 of the investigator. You sat here and heard his
6 testimony.

7 MR. RASHID: Yes, sir.

8 MEMBER SHORT: His testimony was --
9 and correct me if I'm wrong -- he asked for and
10 did not receive a vision or any backup video for
11 that night.

12 MR. RASHID: To my knowledge, it's
13 backup. I don't know if --

14 MEMBER SHORT: I'm asking about the
15 testimony the investigator gave.

16 MR. RASHID: Yes, sir. Sir, I do not
17 recall his full testimony so I might have missed
18 it.

19 MEMBER SHORT: That's all I have, Mr.
20 Chair.

21 CHAIRPERSON ANDERSON: Thank you.

22 Any other questions? Yes, Mr.

1 Alberti.

2 MEMBER ALBERTI: I'll make this quick.

3 Mr. Rashid --

4 MR. RASHID: Yes, sir.

5 MEMBER ALBERTI: So just to be
6 clear -- a lot's been going on. You said video
7 was submitted to MPD?

8 MR. RASHID: Yes, sir. When I checked
9 my records for outgoing email on August 19th,
10 after this inquiry came up, my email shows me
11 sending out a We Transfer file with a recording
12 of videotape to an MPD officer.

13 Now, given it was August, I do not
14 know who told me to send it to this person, but I
15 do have specific record that I did send a
16 downloadable video email to an MPD officer on the
17 19th for El Centro.

18 MEMBER ALBERTI: Okay. Thank you.
19 That's fair enough. I just -- I didn't hear who
20 sent it and that's what I wanted to clarify.

21 MR. RASHID: Yes, sir.

22 MEMBER ALBERTI: Thank you. You said

1 that in the video --

2 MR. RASHID: Yes, sir.

3 MEMBER ALBERTI: -- you saw one of
4 your employees on the cell phone outside.

5 MR. RASHID: Yes, sir.

6 MEMBER ALBERTI: Who was that person
7 again?

8 MR. RASHID: ABRA manager Ivan
9 Jifkovich (phonetic). That's our ABRA manager.

10 MEMBER ALBERTI: You also said that he
11 was calling 911.

12 MR. RASHID: Yes, sir.

13 MEMBER ALBERTI: Is that assumption or
14 do you know for a fact?

15 MR. RASHID: When I spoke with him,
16 that's what he told me, that he did call.

17 MEMBER ALBERTI: So you remember
18 speaking to him that night?

19 MR. RASHID: Not that night. After
20 this case as it went forward.

21 MEMBER ALBERTI: You can't remember
22 much about sending the video, but you remember

1 him telling you that he called 911?

2 MR. RASHID: Sir, when this case went
3 forward, I took the video recently to the ABRA
4 manager and I showed him the video. And then
5 this is what he told me.

6 MEMBER ALBERTI: Oh, okay. You showed
7 him the video and that's what he told you --

8 MR. RASHID: Yes, sir.

9 MEMBER ALBERTI: -- that he was
10 calling 911. All right. Thank you. Very good.
11 Thank you.

12 MR. RASHID: Yes, sir.

13 MEMBER ALBERTI: No further questions.

14 CHAIRPERSON ANDERSON: Any other
15 questions by any other Board members?

16 Mr. Rashid, when did you know that
17 ABRA required a copy of the video?

18 MR. RASHID: Sir --

19 CHAIRPERSON ANDERSON: Not -- just
20 when is the first time it became known to you
21 that ABRA was requesting --

22 MR. RASHID: To my best recollection,

1 when I heard from Mr. Kline that this was an
2 issue, we have a hearing, that we didn't provide
3 this.

4 CHAIRPERSON ANDERSON: When was that?

5 MR. RASHID: It was --

6 MR. KLINE: Objection. That's
7 attorney-client.

8 CHAIRPERSON ANDERSON: No -- well, I'm
9 saying it different.

10 MR. KLINE: Why? He learned it from
11 me --

12 CHAIRPERSON ANDERSON: Oh, okay.

13 MR. KLINE: -- so it's attorney-client
14 privileged.

15 CHAIRPERSON ANDERSON: All right.

16 The question I'm asking is that, all
17 right, to this date, have you provided a copy of
18 this video, since you said you have it? Have you
19 provided a copy of the video to ABRA?

20 MR. RASHID: No, sir, but I do have
21 it.

22 CHAIRPERSON ANDERSON: So you have not

1 provided a copy of the video to ABRA?

2 MR. RASHID: No, sir.

3 CHAIRPERSON ANDERSON: All right. Ms.
4 Schmidt?

5 MS. SCHMIDT: No further questions.

6 CHAIRPERSON ANDERSON: Mr. Kline?

7 MR. KLINE: Yes. Just a few.

8 So just to be clear, you have an ABC
9 manager's license, correct?

10 MR. RASHID: Yes.

11 MR. KLINE: But you don't specifically
12 work in any of the restaurants, right?

13 MR. RASHID: No, sir.

14 MR. KLINE: All right. So you have a
15 manager's license so that you are available to
16 work if necessary?

17 MR. RASHID: Yes, sir.

18 MR. KLINE: And all the managers
19 pretty much report to you?

20 MR. RASHID: Yes.

21 MR. KLINE: And the reason why -- and
22 you tell me the reason why -- that you don't want

1 people in the individual restaurants accessing
2 the video to make a backup -- the reason for
3 that?

4 MR. RASHID: Yes. Just for the fact
5 a lot of times staff leaves, they misuse the
6 video, they provide it to people that it
7 shouldn't be going to.

8 MR. KLINE: And they could also delete
9 it, right?

10 MR. RASHID: Yes, sir. They don't
11 just go in -- and if they did something wrong
12 themselves, they'll go back and delete what they
13 did.

14 So for those reasons, we do not allow
15 the in-store managers to back anything up or
16 delete anything.

17 MR. KLINE: But your managers do have
18 the capability to review the video in fairly
19 close proximity in time with an investigator or
20 an MPD officer --

21 MR. RASHID: Yes, sir.

22 MR. KLINE: -- on site.

1 MR. RASHID: Yes, sir.

2 MR. KLINE: They can go back and look
3 at the last 30 days and see what's there,
4 correct?

5 MR. RASHID: Yes, sir.

6 MR. KLINE: All right. So the
7 difficulty is provided a copy, right?

8 MR. RASHID: Yes.

9 MR. KLINE: So given your procedures,
10 you presume that if Investigator Brashears had
11 requested to review the video, then Igor or Ivan
12 would have provided a review, correct?

13 MR. RASHID: Yes.

14 MR. KLINE: Okay. And you don't have
15 any knowledge that he ever requested that, do
16 you?

17 MR. RASHID: Not to my recollection.

18 MR. KLINE: You reviewed the report.

19 MR. RASHID: Yes.

20 MR. KLINE: Did you see anything in
21 the report that suggested that he ever asked --
22 requested that?

1 MR. RASHID: No.

2 MR. KLINE: If he had done that and
3 your manager had refused to provide it under the
4 circumstances, what would you have done?

5 MR. RASHID: If I was asked, I would
6 have provided it right away.

7 MR. KLINE: Right. But in terms of
8 the employee, would that have been an acceptable
9 employee behavior?

10 MR. RASHID: Not acceptable.

11 MR. KLINE: All right. And just to be
12 clear, you have the video.

13 MR. RASHID: Yes, sir.

14 MR. KLINE: You will make it available
15 to an ABRA investigator at this point.

16 MR. RASHID: Yes, sir.

17 MR. KLINE: I don't have any further
18 questions.

19 CHAIRPERSON ANDERSON: Thank you, Mr.
20 Rashid. You can step down.

21 MR. RASHID: Thank you, sir.

22 CHAIRPERSON ANDERSON: Do you have

1 another witness, sir?

2 MR. KLINE: I do not. Rest.

3 CHAIRPERSON ANDERSON: Do you wish to
4 make a closing statement?

5 MR. KLINE: I do.

6 CHAIRPERSON ANDERSON: What is that?

7 MR. KLINE: Do you want me to go first
8 or the Government?

9 CHAIRPERSON ANDERSON: Well, the
10 Government -- well, all right. The Government
11 will go. You'll go and the Government has the
12 last word.

13 Go ahead, Ms. Schmidt.

14 MS. SCHMIDT: Okay. This is a case
15 where the responsibility is a primary issue.

16 There's been a lot of back-and-forth
17 whether there was a request for the video or not.
18 However, Investigator Brashears clearly testified
19 that he asked at least four times for the video.
20 And whether El Centro's internal procedures were
21 at fault here, it still impeded the
22 investigation.

1 Investigator Brashears, even if they
2 were not required -- let's say an establishment
3 is not required to have a security plan.
4 Whenever the request for a video is made by an
5 ABRA investigator, according to the statute, they
6 must -- they should comply. Or else they
7 could -- they must comply with the request.

8 And Investigator Brashears should not
9 have to go back five times to get the video. The
10 procedure should have been that once he asked
11 once, that -- I'm sorry, Mr. -- I'm sorry. I'm
12 trying to find the correct pronunciation of the
13 witness's name. Mr. -- Mr. Rashid.

14 Mr. Rashid testified that all requests
15 go through him. Obviously it did not because he
16 kept on testifying, "Well, if it came through me,
17 I would provide the video."

18 The internal -- either he ignored the
19 request or if the internal mechanisms of the
20 establishment that four people were allegedly
21 asked for the video did not -- and it was not
22 provided, that is the responsibility of the

1 establishment. And, therefore, they violated the
2 statute.

3 And he only -- first only, he only
4 testified that he sent out the video on August
5 20th (sic). However, MPD never -- MPD never
6 indicated to Investigator Brashears they even had
7 the video. This is shown through the fact that
8 they provided the body worn footage. Two
9 different officers provided the body worn footage
10 but they didn't provide the video.

11 If they had had the video,
12 obviously -- it is very likely that they would
13 have provided it to Investigator Brashears,
14 especially since he asked for it.

15 And even if they provided it to MPD,
16 that still is not enough because once they were
17 asked by an ABRA investigator, Investigator
18 Brashears, they were responsible for providing
19 the video.

20 And if the four people he asked did
21 not provide the video, one can make a presumption
22 that the video -- that there's something wrong

1 with the way the establishment was operating and
2 they should take responsibility for impeding the
3 investigation.

4 Therefore -- and Investigator
5 Brashears testified that had he had this video,
6 he could have determined more of the
7 circumstances of the assault. Let's not forget
8 that a person was assaulted in the establishment
9 that night and was bleeding.

10 And, therefore, it is the
11 responsibility of ABRA and this Board to try to
12 ameliorate the situations in these
13 establishments.

14 CHAIRPERSON ANDERSON: Mr. Kline?

15 MR. KLINE: Mr. Chairman, I don't
16 disagree with much of that, but the question is
17 not whether everyone acted perfectly. The
18 question is whether we have a violation case.

19 There are two charges, and based on
20 the notice, they appear to be really the same
21 charge.

22 Charge One is you failed to comply

1 with the provisions of your security plan since
2 you failed to contact the Metropolitan Police
3 Department after a violent incident and you
4 failed to make security camera footage available
5 within 48 hours of the incident, in violation of
6 D.C. Official Code 25-823(6).

7 Now, 25-823(6) refers to a licensee's
8 responsibility to abide by the conditions, in
9 this case of the security plan or settlement
10 agreement. In this case, it's a security plan,
11 and there has been no evidence -- in fact, the
12 evidence is to the contrary -- that this
13 establishment had a Board approved security plan.

14 So that charge cannot be sustained.

15 The second charge is that: You
16 interfered in the MPD and ABRA investigation in
17 that you failed to provide the security footage
18 from your security cameras to ABRA and MPD
19 investigators after at least three requests, in
20 violation of D.C. Official Code 25-823(6).

21 Now, again, 823(6) relates to a
22 licensee's responsibility to comply with the

1 terms of its security plan.

2 So on the face of the notice as
3 written, there are two violations alleged of
4 25-823(6), the predicate of which the requirement
5 for a violation has to be the existence of a
6 Board approved security plan.

7 Without a Board approved security
8 plan, there can be no violation of 25-823(6).
9 And that applies to Charge One and it applies to
10 Charge Two, because the charge in Charge Two is
11 referenced to 25-823(6).

12 And we would submit that's the end of
13 it.

14 If the Board wants to go further and
15 say, "Well, what we really meant to put the
16 licensee on notice about was a violation of
17 823(5)," then we will address that as well,
18 although 823(5) is not referenced. And 823(5) of
19 course relates to an issue that the Board and I
20 have talked about many, many times. And we've
21 also talked to the Court of Appeals about.

22 And it is rare that I so get to quote

1 a case entirely on point in any of the hearings
2 that I'm in. But this case is exactly on point.

3 The case that I'm referencing is 1900
4 Restaurant Associations, Inc. v. District of
5 Columbia Alcoholic Beverage Control Board. And
6 in that case, the Board says -- I'm sorry, the
7 court says something that is very relevant here
8 and I think it's equally applicable.

9 And what the court says, "Although we
10 do not condone the manner in which petitioner
11 responded to the investigator's request, a lack
12 of dispatch without evidence of more does not
13 amount to a failure to allow an investigator to
14 examine the books and records of the business in
15 violation D.C. Code 25-823(5)."

16 Now, 823(5) has two parts that might
17 be relevant. And in previous case the Board has
18 said, well, it's a book and record. So,
19 therefore, you have an obligation under 823(5)
20 not to delay inspections of books and records.

21 Well, the investigator testified it's
22 not a book and record. He said "We don't look

1 for that." And if we go through the statutory
2 scheme, it seems pretty clear it's not a book and
3 record.

4 I draw the Board's attention to
5 several sections of the Code where books and
6 records are referenced. I think probably the
7 most relevant ones are section 1208 of the
8 regulations, "Retention of books and records."
9 That term is used.

10 And there's a requirement that
11 retailers keep and maintain books and records for
12 a period of three years after the latest
13 transaction recorded in those books and records.

14 Now, if video surveillance tape or
15 video surveillance recordings are books and
16 records, then there's a requirement that they be
17 kept for three years. I don't think anybody
18 thinks that.

19 And I don't think that that's what the
20 Board has required ever. And, in fact, I think
21 the practice is to require that they be available
22 for 30 days.

1 In addition, the Board is required as
2 one of its responsibilities under 25-201 to
3 regularly conduct inspections of the premises and
4 the books and records of all licensees during day
5 and evening hours on a reasonable number of
6 occasions without prior notification to the
7 licensee for compliance with the requirements of
8 this title and regulations under this title.

9 Now, what is that referring to?
10 That's referring to a regulatory inspection. And
11 we went through the regulatory inspection. We
12 looked at what's required.

13 The investigator said they were
14 completely in compliance.

15 So if the Board is to classify this as
16 a book and record for purposes of finding a
17 violation of -- forget my numbers now --
18 25-823(5), then the Board has not been complying
19 with its own regulations, because there's another
20 regulation that requires that those books and
21 records be inspected at least once a year.

22 And we don't go in -- you don't go

1 in -- you don't have your investigators go in and
2 inspect video once a year. When there's an
3 incident, you request it, the investigators
4 request it, MPD requests it. It is not a book
5 and record.

6 I mean that's just silly to contend
7 that it's a book and record. We didn't have any
8 precise argument on the issue.

9 But if you go through the entire
10 statutory scheme -- and I reference 25-113 of
11 D.C. Code, 25-117 of the D.C. Code, 25-125 of the
12 D.C. Code, 25-201 of the D.C. Code, 25-802,
13 25-823 which is before us today, 23 D.C.M.R.
14 1204, 23 D.C.M.R. 1208, 24 -- or 23 D.C.M.R.
15 1208.2, and 23 D.C.M.R. 1208.3, which requires
16 that they be kept for at least three years,
17 1208.4 and 1208.5 -- then it seems to be pretty
18 clear that video is not a book or record.

19 So that brings us to was there
20 interference with an investigation as a potential
21 other basis for finding liability here.

22 And we would submit to you in the

1 Rumors case, which is the Court of Appeals case
2 that I cited earlier, the court sort of ducked
3 the issue, the board ducked the issue. In the
4 first instance, the board said, "Well, it's a
5 book and record."

6 Then the Court of Appeals said yeah,
7 without analysis -- they called it a book and
8 record. Well, we don't really care because we
9 don't think there's a violation and the reason
10 that there's not a violation is because just
11 failing to respond is not enough in and of
12 itself.

13 What you would have to have is
14 interference with an investigation, not lack of
15 cooperation, which is simply what we have here.
16 They didn't cooperate and they should have. And
17 as the Court of Appeals says, we don't condone
18 it. He doesn't condone it, and it shouldn't be
19 done. And we agree.

20 And we should have been here you in a
21 fact finding hearing so that Mr. Short's very
22 cogent and intelligent questions could have been

1 answered, could have been addressed, and you
2 would have said, "We think you should have a
3 security plan so we're all clear on what you're
4 supposed to do and you're clear on what you're
5 supposed to do."

6 And he's I think already said, over my
7 objection at some point, "They would do that.
8 That's not an issue."

9 But that doesn't mean that there's a
10 violation.

11 The difference between cooperation or
12 non-cooperation, as the case may be, interference
13 might be best demonstrated by unfortunately our
14 current national political situation with our
15 president.

16 Now, when he refuses to testify before
17 the special prosecutor or Congress, as the case
18 may be, he's refusing to cooperate. But is he
19 interfering? I don't think so. I mean I think
20 there's a difference in the two words.

21 And the point is, interference
22 requires some active part on the person or the

1 entity that's sought to be held responsible.

2 It's not inaction. It's not not answering
3 questions. It's doing something to prohibit them
4 from interacting with another party or likewise.

5 It's not just not cooperating.

6 So under the circumstances and under
7 all the facts and circumstances, we don't believe
8 that there is a violation of Count Two, number
9 one, the section that's cited, and we've already
10 shown that there's not a violation.

11 Number two, we don't think the facts
12 rise to the level.

13 One other point. The investigator
14 conceded that the video available today -- and
15 remember, the only reason it's available today is
16 because they complied with the instruction,
17 because you heard the witness testify that if
18 they hadn't sought to send it to MPD, it would
19 have been recorded over.

20 The only reason it even exists is
21 because they did attempt to comply. Now, they
22 failed. You know, we don't deny that. But the

1 point is, they did try. And it is available
2 today.

3 Ad the investigator conceded it's as
4 valuable today as it was then. It's still useful.
5 We'll turn it over right after this hearing.

6 And we would submit under these
7 circumstances, there's no harm. Again, we don't
8 condone it. I'm not going to sit here and tell
9 you, "Yeah, they did everything the way they were
10 supposed to." They didn't. They need to do
11 better. There's no question about that. But
12 that doesn't mean it's a violation.

13 And then the last point is if there is
14 a violation, we believe under the circumstances
15 what is appropriate is a written warning, which
16 is permissible under the Code and the regulations
17 for this type of violation. And we would submit
18 that that should resolve the case.

19 And the reason for that, I'm going to
20 be -- I'm going to be straightforward about this.
21 It wasn't argued by the Government but let's put
22 it on the table.

1 This establishment when this happened
2 was about three weeks short of a year of the
3 adjudication of a prior violation for which it
4 accepted a staff settlement that involved a
5 five-day suspension, stayed for a year.

6 Now, the order -- I read the staff
7 settlement. It doesn't say stayed for what. It
8 just says stayed for a year.

9 You may wish to have ABRA look at that
10 form because when you have a form that says you
11 have a five-day suspension, stayed for a year,
12 pending what?

13 I mean I know and you know, but I
14 think that the licensees are entitled to written
15 notice as to what stayed for a year means. And
16 it could mean a couple different things in this
17 context.

18 It could mean stayed for a year
19 provided that there are no further violations
20 involving sale to minors, which is what the
21 charge was, 11 months and a week before this
22 happened. Or it could be -- which would be

1 disastrous in these circumstances -- it could be
2 any violation.

3 So under the circumstances, we think
4 that the charges should be dismissed.

5 If the Board is inclined to accept the
6 second charge, we respectfully request that the
7 Board issue a written warning.

8 And I would offer this. If the Board
9 wants us to come back in for a fact finding to
10 talk about what this establishment can do better,
11 we're happy to do that and certainly we're
12 willing to do that.

13 This establishment wants to comply
14 with the law. They're not interested in
15 non-compliance, and that's why they take this
16 matter so seriously.

17 He's in charge -- I suspect the reason
18 that it is his name in the police report, even
19 though he wasn't there and he's not the regular
20 license manager, was MPD was told, "Yeah, you
21 need video. This is the guy you need to call."

22 Now, that's not very clear from the

1 record. But it's pretty clear he's not on site.
2 And it's pretty clear there's some reason that
3 his name is in the police report. So we're left
4 to speculate.

5 And I think the reason his name is in
6 the report is because the manager knew, well,
7 they're going to need video and they need to talk
8 Mr. Rashid.

9 And that doesn't mean they did right,
10 but I think it sort of explains what went on here
11 and why there seems to be some confusion, which
12 there should not be. And he will take an offer,
13 I promise you that.

14 Thank you.

15 CHAIRPERSON ANDERSON: Ms. Schmidt.

16 MS. SCHMIDT: Just very briefly.

17 The Government has not contended all
18 this falls on the books and records section. We
19 have not -- there's not any argument. We do not
20 say that. However, the second part of that says,
21 which was passed after the Rumors case by the
22 way, which was -- said or otherwise for the

1 investigation.

2 And then Mr. Kline raised a point.
3 When does lack of cooperation become an
4 interference. When you have to go physically to
5 an establishment four times to request a video
6 and make phone calls, I think that crosses the
7 line into active interference.

8 CHAIRPERSON ANDERSON: That's it? All
9 right.

10 The record is now closed.

11 Do the parties wish to file proposed
12 findings of fact and conclusions of law or waive
13 their right to do so?

14 MR. KLINE: We'd like to file.

15 CHAIRPERSON ANDERSON: Okay. So if
16 the parties choose to propose findings of fact
17 and conclusions of law, then 90 days from when
18 the Board receives the proposed findings of fact
19 and conclusions of law, due to the Board 30 days
20 after receipt of the transcript.

21 The transcript will be emailed to the
22 parties in approximately three weeks. If you

1 change your mind about filing, then please inform
2 the Board.

3 As chairperson of the Alcoholic
4 Beverage Control Board for the District of
5 Columbia and in accordance with D.C. Official
6 Code section 2574(b)(4) of the Open Meetings Act,
7 I move that ABC Board hold a closed meeting for
8 the purpose of seeking legal advice from our
9 counsel on Case No. 18-251-00170, El Centro D.F.,
10 pursuant to D.C. Official Code section 2574(b)(4)
11 of the Open Meetings Act and deliberate upon Case
12 No. 18-251-00170, El Centro D.F., for the reason
13 cited in D.C. Official Code section 2574(b)(13)
14 of the Open Meetings Act.

15 Is there a second?

16 MEMBER SHORT: Second.

17 MEMBER SILVERSTEIN: Second.

18 CHAIRPERSON ANDERSON: Mr. Short and
19 Mr. Silverstein have seconded the motion.

20 I will now take a roll call motion --
21 I will now take a roll call vote on the motion
22 before us now that it has been seconded.

1 CHAIRPERSON ANDERSON: Ms. Wahabzadah?

2 MEMBER WAHABZADAH: I agree.

3 CHAIRPERSON ANDERSON: Mr. Silverstein?

4 MEMBER SILVERSTEIN: I agree.

5 CHAIRPERSON ANDERSON: Mr. Short?

6 MEMBER SHORT: I agree.

7 CHAIRPERSON ANDERSON: Mr. Alberti?

8 MEMBER ALBERTI: I agree.

9 CHAIRPERSON ANDERSON: Mr. Cato?

10 MEMBER CATO: I agree.

11 CHAIRPERSON ANDERSON: Mr. Anderson,

12 I agree.

13 As it appears that the motion has
14 passed, I hereby give notice that the ABC Board
15 will recess these proceedings to hold a closed
16 meeting in the ABC Conference Room pursuant to
17 section 2574(b) of the Open Meetings Act.

18 Thank you very much.

19 MR. KLINE: Thank you.

20 CHAIRPERSON ANDERSON: All right.

21 (Whereupon, the above-entitled went
22 off the record at 12:23 p.m.)

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In the matter of: El Centro

Before: DCABRA

Date: 03-20-19

Place: Washington, DC

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