

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE REGULATION
ADMINISTRATION BOARD

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IN THE MATTER OF: :

:

MPAC, LLC, t/a The Scene : Summary

2221 Adams Place NE : Suspension

License #78642 : Hearing

Retailer CX :

Chief of Police Closure :

May 17, 2014 :

:

Case # 14-251-00133 :

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Friday,

May 23, 2014

ABRA Hearing Room

Reeves Building

2000 14th Street N.W.

Washington, D.C. 20002

The above-entitled matter convened

at 9:43 a.m., before the District of Columbia

Alcoholic Beverage Regulation Administration

Board.

BEFORE:

RUTHANNE MILLER, Chairperson

DONALD BROOKS, Member

HERMAN JONES, Member

JAMES SHORT, Member

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

[9:43 a.m.]

CHAIR MILLER: The main matter that we are here for today is a summary suspension hearing and I understand that the government attorney is on his way. Is that correct?

Wait, you are not on the record until you come forward to the table.

MR. LeFANDE: I am Matthew LeFande.

CHAIR MILLER: Okay.

MR. LeFANDE: We have seen the Attorneys General --

Matthew LeFande for the Respondent Licensee, MPAC, LLC. With me is Emmanuel Mpras.

We did see the Attorneys General over half an hour ago. They are here somewhere in the offices conferring with one another. I can start to see if I can find them. They might be in the conference room

1 around the corner here.

2 CHAIR MILLER: Okay, that would be
3 helpful because we are ready.

4 MR. LeFANDE: Okay.

5 CHAIR MILLER: Wait a minute. I'm
6 sorry. I understand that one of the attorneys
7 for the Board has gone there. So, you don't
8 need to do that.

9 MR. LeFANDE: Okay, very good.

10 CHAIR MILLER: Okay. Thank you
11 for offering, though.

12 MR. LeFANDE: Oh, here they are.

13 CHAIR MILLER: There we go. Okay.

14 Okay, so we are here for Case
15 Number 14-251-00133, The Scene, located at
16 2221 Adams Place, Northeast, License Number
17 78642 in ANC 5C. This is a summary suspension
18 hearing involving The Scene, which is a
19 Retailers Class CX located at 2221 Adams
20 Place, Northeast.

21 On May 17, 2014, an altercation
22 occurred between patrons that resulted in the

1 shooting of five patrons outside the
2 establishment. As a result of this incident,
3 the chief of police, Cathy Lanier, closed the
4 establishment pursuant to her authority under
5 D.C. Official Code 25-827.

6 Chief Lanier submitted a letter to
7 ABRA dated May 17, 2014, seeking revocation of
8 the establishment's ABC license. The Board
9 voted 7-0 on May 21, 2014 to continue the
10 suspension of the establishment's license.

11 The Respondent requested a hearing
12 on May 21, 2014 under D.C. Official Code 25-
13 826 .

14 Today the Board will be hearing
15 testimony from the Office of the Attorney
16 General, the Respondent, and their respective
17 witnesses. The purpose of the hearing is so
18 that the Board can determine under D.C.
19 Official Code 25-826 whether the operations of
20 the Respondent presented imminent danger to
21 the health and safety of the public.

22 The Board will be announcing its

1 decision at the conclusion of today's hearing.
2 The Board asks that parties stick to the facts
3 and issues related to the incident. The facts
4 and issues are those contained in the Summary
5 Suspension Notice dated May 21, 2014 and the
6 Investigative Report, Case Number 14-251-
7 00133.

8 The Board is only interested in
9 hearing about those matters that can be used
10 to establish whether the establishment is an
11 imminent danger to the health and safety of
12 the public.

13 The Board will begin the case by
14 hearing the opening statement from the
15 Government, represented by Assistant Attorney
16 General Walter Adams, followed by the opening
17 statement of Manny Mpras, Counsel for the
18 Respondent.

19 Before we start with that, though,
20 I would ask if there are any procedural or
21 preliminary matters that the parties want to
22 bring to the Board's attention.

1 Let's introduce yourself for the
2 record, starting with that one.

3 MR. ADAMS: Good morning --

4 CHAIR MILLER: Good morning.

5 MR. ADAMS: -- Chairman. My name
6 is Walter Adams, representing the District of
7 Columbia. And sitting at Counsel's table is
8 my co-counsel Kawaun Sankar, who is a pro bono
9 attorney for the Office of the Attorney
10 General.

11 CHAIR MILLER: Okay. Mr. LeFande,
12 maybe you should introduce yourself again, now
13 that we are starting the proceedings.

14 MR. LeFANDE: Good morning. Thank
15 you, Madam Chair.

16 Matthew LeFande, a member of the
17 District of Columbia Bar, for and on behalf of
18 MPAC LLC, the Licensee operating as The Scene
19 at 2221 Adams Place, Northeast. With me today
20 is Attorney Emanuel Mpras and William
21 Blakeney, who is the owner of the LLC which
22 owns the establishment.

1 CHAIR MILLER: Okay, thank you.

2 Mr. Adams, were you going to say
3 something?

4 MR. ADAMS: Yes, Madam Chairman.
5 I beg the Board's indulgence. I'm just trying
6 to make a note here.

7 There is one -- well, I will ask
8 the Board whether or not you want to do this
9 after opening statements or before. The
10 parties discussed potential grounds for
11 stipulations for the present facts in support
12 of today's hearing. Would it be better that
13 the Board entertain them now or after opening
14 statements?

15 CHAIR MILLER: It is kind of hard
16 for me to judge really without knowing. Does
17 it affect the opening statement?

18 MR. ADAMS: It wouldn't
19 necessarily affect the opening statements,
20 just the facts.

21 CHAIR MILLER: Do you also have
22 copies of the stipulation or no?

1 MR. ADAMS: I do not because I
2 think it is a situation where we have to -- it
3 is not as it was drafted and we will probably
4 have to go through each one. There will be
5 comments, I believe on the side.

6 CHAIR MILLER: Okay, I think I
7 might be interested in the stipulation first,
8 then. Yes, Mr. Jones agrees.

9 MEMBER JONES: Can we get the
10 stipulations now?

11 CHAIR MILLER: Yes, okay.

12 MR. LeFANDE: It is the
13 Respondent's position, as the Attorney General
14 has indicated, that what was drafted and
15 proposed by the Attorney General is not
16 entirely what we had subsequently discussed.
17 And it may be best that we try to reach the
18 stipulations as we proceed and that if a parol
19 offer is made as to what evidence is about to
20 be offered, we may just concede that point and
21 try to move on, particularly with regards to
22 authentication of documents. There are a

1 couple authentication points I think we can
2 reach on now. But a great deal of this, I
3 think, since none of us want to be here until
4 eleven o'clock this evening, we will try to
5 ascertain what the evidence is intended to
6 elicit and try to see if we can reach a
7 concession on that point as we go forward and
8 try to expedite the proceeding in that manner
9 with authentication points I think we are
10 making right now.

11 MR. ADAMS: Well, okay. As I hear
12 it, I -- well, I think maybe that is a better
13 way. Because as I am hearing it, I guess
14 there really aren't stipulations to some of
15 the facts. I think because of that, I think
16 that will be an easier way to go at that
17 point.

18 CHAIR MILLER: Okay.

19 MR. ADAMS: But I think
20 preliminarily I would at least like to address
21 the authentication of documents and the
22 admission of exhibits.

1 CHAIR MILLER: Okay, do we have a
2 copy of your exhibits?

3 MR. ADAMS: You do not have a copy
4 of the exhibits that are in question. What we
5 would like to do, essentially, is to stipulate
6 to the admission of Investigator Peru's
7 investigative report from May 17th and also to
8 the authenticity of that, and also to -- I
9 apologize, I do not have this marked --
10 another investigative report, which is 14-CMP-
11 00155. That was completed by Investigator
12 John Suero.

13 MR. LeFANDE: For the Respondent,
14 speaking to the investigative reports, we have
15 always been of the opinion that these are
16 public records properly before this
17 administrative body and that we don't really
18 have a -- we are not really permitted to
19 challenge the authenticity of the report
20 itself. The report is a report and contains
21 the opinions and conclusions of a person.

22 And insofar as it is a record of

1 that, I don't think we are in a position to
2 make an objection to the entry thereof.

3 Now, we have received both of the
4 reports as described by the Attorney General
5 and they are before us now. So, beyond that,
6 I don't think -- they are what they are,
7 which is pieces of paper recording somebody's
8 observations.

9 CHAIR MILLER: Okay. Right, so
10 you are not contesting their admissibility in
11 the record.

12 MR. LeFANDE: I don't think we
13 have a basis to do so.

14 CHAIR MILLER: Right. Okay, good.
15 Okay.

16 MR. ADAMS: So, what I would like
17 to do is at least have those two exhibits
18 admitted now, at this point.

19 CHAIR MILLER: Okay.

20 MR. ADAMS: And for the record,
21 the May 17th report, which is Investigator
22 Number 14-251-00133, that will be the

1 District's Exhibit 1. And the April 5th
2 report would be Exhibit Number 2.

3 (Whereupon, the Documents Referred
4 to Were Marked as District
5 Exhibits 1 and 2 for
6 Identification.)

7 CHAIR MILLER: Okay.

8 MR. ADAMS: And we are marking
9 those currently and we will provide that to
10 you and I can provide you with what I have.

11 MR. LeFANDE: And again, for the
12 Respondent, if there is some particular item
13 exhibit within the exhibit that is being
14 offered for something other than being
15 incorporated into the report, we may make an
16 objection at that time if we find that there
17 is some basis. And we reserve on such
18 objections going forward.

19 CHAIR MILLER: Okay, any other
20 preliminary?

21 MR. ADAMS: Yes. As part of this
22 matter, and I think this will come up when

1 Investigator Peru testifies. The District
2 intends to provide video footage evidence to
3 be shown before the Board.

4 CHAIR MILLER: Right.

5 MR. ADAMS: And in this case, Mr.
6 Peru acquired such information through the
7 establishment. We would like to stipulate to
8 the authenticity of the video and also to have
9 that admitted into evidence.

10 MR. LeFANDE: For the Respondent,
11 I do believe I personally had the opportunity
12 to review at least some of the video footage
13 to which they refer. We have not been
14 independently video footage from the Attorney
15 General and I don't expect them to be able to
16 do that, given the summary nature and
17 expedited nature of this.

18 We fully expect that what is to be
19 produced by the Attorney General to be
20 authentic and accurate video recordings that
21 were produced by our client and absent any
22 inconsistency with that, we do not expect to

1 challenge the authenticity.

2 CHAIR MILLER: So, are you saying
3 you are not going to stipulate to the
4 authenticity at this moment? You are going to
5 wait until it is played or what are you
6 waiting for?

7 MR. LeFANDE: Again, if it appears
8 to be -- we haven't seen what they expect to
9 show. If it appears to be the video
10 recordings that were produced on the morning
11 of May 17th by the Respondent, we will not
12 challenge that. And we won't challenge the
13 admission. But at the moment, I don't know
14 what it is that they are going to show. I
15 have no expectation that they have made up
16 something that is inconsistent with what is in
17 the record.

18 CHAIR MILLER: Okay. Okay, you
19 just want to see it first. Okay.

20 MR. LeFANDE: But yes, we will
21 try, again -- on the fly, we will try to
22 address these and dispose of these issues as

1 quickly as possible so that we can get out of
2 here.

3 CHAIR MILLER: Okay. Great.
4 Okay, good. All right, anything else?

5 MR. ADAMS: I have no other issues
6 in terms of items. The only thing, obviously,
7 if you like, I could tell you how many
8 witnesses that we expect to have. The witness
9 intends to call five witnesses.

10 CHAIR MILLER: Okay.

11 MR. LeFANDE: Three witnesses for
12 the Respondent.

13 CHAIR MILLER: Okay. And I don't
14 know if you can answer this but how late do
15 you expect this to go?

16 MR. ADAMS: Yes, I'm not sure if I
17 can answer that question.

18 CHAIR MILLER: Right. I didn't
19 think so. Let's see how it goes then.

20 MR. ADAMS: Right. I will see.
21 We will see how things go.

22 CHAIR MILLER: Okay.

1 MR. ADAMS: Of course, the
2 District will try to make sure that things are
3 not overly repetitive.

4 CHAIR MILLER: Okay, good. All
5 right.

6 MR. ADAMS: So, the District is
7 ready to proceed with opening statements.

8 CHAIR MILLER: All right, opening
9 statements.

10 MR. ADAMS: Madam Chairman and
11 members of the Board, as we have stated for
12 the hearing, we are here regarding the current
13 summary suspension of the license for MPAC,
14 which is The Scene -- MPAC, LLC, which is The
15 Scene nightclub.

16 The reason that the summary
17 suspension has been put in place is based upon
18 a finding or upon the request of the
19 Metropolitan Police Department from Chief
20 Lanier.

21 And we believe that based on the
22 evidence that you hear today that it will be

1 appropriate for this Board to continue the
2 suspension of the license on the finding that
3 this establishment does present imminent
4 danger to the safety and health of the public,
5 based upon the incidents that occurred on May
6 17th and the incidents leading up to that
7 point.

8 Specifically on May 17th, the
9 evidence will show that at 2:48, a physical
10 altercation happened within the establishment
11 at that time. That on that night that the
12 establishment was open and operating, that on
13 that night that they had, the establishment
14 also had live entertainment, specifically two
15 bands, and they also had patrons within the
16 establishment.

17 The evidence will show that around
18 closing time that a physical altercation
19 occurred within the establishment between
20 several patrons. And the evidence will also
21 show the Board that at least two patrons were
22 escorted out of the establishment though the

1 same exit door. The evidence will also show
2 you that also a crowd of patrons followed the
3 people out.

4 The evidence will show that one of
5 the people who were involved within -- one of
6 the people who were escorted out, was not led
7 out of the full establishment, meaning through
8 the perimeter gate, that he remained at the
9 front of the main entrance. And the evidence
10 will show that that person re-engaged to an
11 altercation with patrons who were coming out
12 of the club, thus, resulting into a larger
13 altercation within the club's perimeter.

14 The evidence will also show that
15 this group was escorted out of the
16 establishment's perimeter gate and that
17 immediately after that, while they were in the
18 street in front of the establishment on Adams
19 Place Northeast, that a further altercation
20 continued between the persons in this group.

21 As a result, the evidence will
22 show that as this altercation continued, at

1 some point, an unidentified person shot a
2 firearm into the crowd of persons. As a
3 result, five people, who were all patrons of
4 the establishment, were injured.

5 The evidence will show that at the
6 time that this occurred, the establishment did
7 not have a reimbursable detail staffing the
8 front of the establishment and that the
9 establishment had not had such detail since I
10 think February 25th of this year.

11 The evidence will also show that
12 since the establishment has not had the detail
13 that there has been greater issues in terms of
14 safety in front of the establishment.

15 The evidence will also show that
16 the establishment failed to follow the terms
17 of their security plan, in terms of handling
18 the incident, in terms of handling the
19 altercation between the patrons.

20 And based upon that finding, the
21 Board will have sufficient evidence to
22 conclude that, based upon the circumstances,

1 the establishment does present imminent danger
2 to the safety and health of the public.

3 CHAIR MILLER: Okay, thank you
4 very much.

5 Do you want to make an opening
6 statement now?

7 MR. LeFANDE: Thank you. Again,
8 Matthew LeFande for the Respondent, MPAC, LLC.

9 On the evening of May 16th and
10 leading into the morning of May 17th at the
11 establishment, the establishment was hosting
12 a memorial event for two persons who had been
13 killed in an automobile accident. There were,
14 at times, during the evening, where persons
15 were overcome with emotions and that some
16 argument ensued.

17 The Chair has made a
18 characterization, made perhaps inadvertent, in
19 her opening remarks that there was an
20 altercation which led to a shooting. And the
21 Respondent takes particular exception to that
22 in there will be no evidence that plainly

1 demonstrate that the emotional excited
2 incidences between these person who were
3 overcome with regards to the deaths of these
4 two people was simply in no way related to a
5 shooting which occurs at the other end of the
6 street by persons who appeared to have not
7 been in the establishment. Simply by the fact
8 that if this person was in possession of a
9 large firearm, given the very effective
10 screening procedures of the establishment,
11 this would have been detected. And instead,
12 the persons who left as a group were, in fact,
13 a group, and were friendly and not
14 antagonistic to one another. And they were,
15 in fact, shot by a person acting illegally on
16 public space some distance from the front of
17 the club.

18 Now, we have mentioned, the
19 Attorney General has mentioned the absence of
20 an MPD detail at the establishment on this
21 night. The testimony today and the record
22 already before the Board in the prior

1 proceedings will demonstrate that the
2 Respondent has been a long-time proponent of
3 utilization of the MPD reimbursable detail,
4 has expended tens of thousands of dollars, if
5 not hundreds of thousands of dollars in the
6 employment of such details, has continued to
7 request such details on an ongoing basis from
8 the Police Department, but has encountered
9 considerable difficulties with the Police
10 Department with regards to first, an
11 accountability for officers appearing at the
12 detail for which the Respondent is paying for
13 their services and has had an ongoing conflict
14 with the Police Department as to this
15 accountability, where only a handful of the
16 officers who have been paid for actually have
17 showed up.

18 As a result, there has been some
19 long-time conflict leading up to the Police
20 Department inappropriately withholding these
21 services that the Respondent is paying for and
22 simply asks for an accounting of what he paid

1 for.

2 We also see a particular
3 antagonism from certain members of the Police
4 Department as a result of prior proceedings
5 involving this Respondent.

6 I will draw the Board's attention
7 to case number 12-251-00303, another summary
8 suspension proceeding, which this Board heard,
9 in which the Respondent tendered evidence to
10 the Board that the Police Officers who were
11 being paid for their presence, were not
12 performing their ordinary police duties and,
13 in fact, were responsible for some of the --
14 not intervening in altercations that were
15 occurring on public space.

16 We also see a civil lawsuit before
17 the Superior Court from 2011 in which a patron
18 of the establishment sues the establishment
19 and the District of Columbia for a
20 Metropolitan Police Officer working at the
21 establishment severely injuring the patron.

22 The evidence today will

1 demonstrate that certain members of the Police
2 Department perceive the Respondent to be
3 antagonistic to these police officers, first,
4 by blaming them for not doing their jobs in
5 the summary suspension hearing from 2012, and
6 for cooperating with the civil lawsuit of
7 2011.

8 Because of this perceived
9 antagonism towards the police of the
10 respondent, he has encountered even greater
11 difficulty in obtaining a reimbursable detail,
12 which he continues to request on an ongoing
13 basis.

14 We posit to the Board that if an
15 establishment, who is under no order, no
16 standing order at this time, requiring it to
17 maintain such a reimbursable detail, continues
18 to request that detail but it is improperly
19 withheld, they cannot be blamed for any lack
20 of that detail being present on the morning of
21 May 17th.

22 The evidence will demonstrate that

1 the security plan in place is appropriate,
2 that it provides for a safe environment inside
3 of the establishment and that it has been
4 followed on the morning of May 17th and that
5 the District of Columbia's Attorney General be
6 able to find no causal relationship between
7 any foreseen shortcoming in the implementation
8 of the security plan or the security plan
9 itself, and this illegal act that occurred
10 entirely on public space, to which the persons
11 that they claim were part of these
12 altercations, they can see were the victims of
13 this shooting.

14 For this reason, under standards
15 set forth in the Rumors case by the D.C. Court
16 of Appeals, there can be no showing of a fault
17 in the implementation of the existing security
18 plan by the Respondent and there can be now
19 showing that the establishment, in any way,
20 threatens the health, safety, or well-being of
21 the public by its operations.

22 We will, however, at the

1 conclusion of these proceedings, offer to the
2 Board a litany of proposed remedial measures,
3 which we have already discussed with the
4 Attorney General to further improve the
5 existing security plan and, perhaps, address
6 better the establishment's response to this
7 extraordinary event; whereas, it is outside of
8 the control of the establishment, itself, as
9 to the illegal conduct of persons not in the
10 establishment but on public space. And we
11 think that by addressing these proposed
12 remedial measures, we will further demonstrate
13 that the establishment's ongoing willingness
14 and efforts to make this a safe operation and
15 further convince the Board that there is no
16 cause for any further suspension of its
17 operations.

18 MR. ADAMS: Madam Chair?

19 CHAIR MILLER: Okay.

20 MR. ADAMS: Madam Chair, the
21 District has a motion. The District moves to
22 strike the portions of the opening statement

1 by the Respondent. Obviously, although we
2 believe it is appropriate they can have a
3 theory regarding perceived antagonism, there
4 is a reference to a prior summary suspension
5 case from 2012 to be brought into evidence and
6 also to a lawsuit regarding MPD, regarding the
7 Metropolitan Police Department and The Scene
8 as being some form of evidence of antagonism
9 against the establishment.

10 Although, obviously, there will be
11 some discussion regarding the presence of a
12 detail and the requirement of a detail, we
13 believe that such statements on the record
14 regarding the prior case or to this lawsuit is
15 inappropriate for this case and is not
16 relevant or will not be material in any way,
17 shape, or form to the issues that are before
18 the Board today.

19 CHAIR MILLER: Mr. LeFande, did
20 you want to respond as to why they are
21 relevant?

22 MR. LEFANDE: In 2010, the D.C.

1 Court of Appeals, in Drake v. McNair, made it
2 very clear that the public records of the
3 District of Columbia, including those of prior
4 litigation and of prior administrative
5 proceedings, are properly taken to judicial or
6 administrative notice in subsequent
7 proceedings.

8 There is a certainly an
9 explanation that is being tendered by the
10 proprietor of the establishment here as to why
11 the District of Columbia refuses to produce
12 the officers contracted for in this
13 reimbursable detail. If the Board is going to
14 fault the Respondent in the incidents that
15 occurred on May 17th for not having a
16 reimbursable detail, it is absolutely
17 appropriate probative and relevant evidence in
18 mitigation as to why that detail was not
19 present.

20 It is a frivolous proposition to
21 strike the statements of the Respondent's
22 counsel in opening argument as to what is

1 being proposed as evidence in a forthcoming
2 proceeding, when that evidence has not been
3 heard yet and the context as to its relevance,
4 its veracity, and its probativity has not been
5 heard.

6 CHAIR MILLER: Okay, I got it.

7 MR. ADAMS: I have no further
8 statements.

9 CHAIR MILLER: All right. I agree
10 and so I am not going to strike.

11 And I just want to make a
12 statement. However, whatever my remarks were
13 that I may have said or implied that I had
14 concluded some kind of a nexus between earlier
15 events and the shooting, that wasn't my
16 intent. I certainly have an open mind that
17 that is what we are going to hear about today.

18 MR. LeFANDE: We just simply did
19 not want to concede that point by not
20 addressing it.

21 CHAIR MILLER: Okay.

22 MR. LeFANDE: We appreciate that

1 the Board is doing its best to describe what
2 these proceedings may be, without having a
3 complete understanding of what transpired up
4 to this point.

5 CHAIR MILLER: Okay.

6 MR. LeFANDE: We do understand
7 that it is the Attorney General and the Chief
8 of Police's position that that in fact
9 happened and this is a very major point of
10 evidentiary contention today.

11 CHAIR MILLER: Okay, that's fine.
12 And I just want to make clear that I haven't
13 drawn any conclusions. Okay.

14 MR. ADAMS: Prior to beginning
15 testimony, there are two issues that I want to
16 bring up. I apologize for not bringing it up
17 prior.

18 CHAIR MILLER: Okay.

19 MR. ADAMS: Number one, I would
20 like the Board to take -- on the record, I
21 would the Board to take administrative notice
22 of the investigative history and the prior

1 history for this establishment that, based
2 upon the investigative history that is shown
3 since 2010, there have been six prior closures
4 by the Chief of Police beginning on July 6th
5 of 2010 to the present date, which would now
6 be the seventh instance that there has been a
7 notice of closure for the establishment within
8 a four-year period.

9 CHAIR MILLER: And that
10 investigative history is attached to the May
11 17th report?

12 MR. ADAMS: It is attached to the
13 District's Exhibit 1.

14 CHAIR MILLER: Okay.

15 MR. ADAMS: But I would just like
16 to have administrative notice of that.

17 CHAIR MILLER: Okay.

18 MR. ADAMS: The second thing,
19 well, I do think it is appropriate before we
20 do go on and do testimony is to discuss a bit
21 of a legal matter in terms of the requirement
22 for an overtime detail to be present with the

1 establishment.

2 It is the District's -- and I
3 believe that is a legal issue that can be --
4 I think it would be best to at least be
5 brought up to the Board at this time is the
6 District's contention -- it is the District's
7 position that this establishment is required
8 to have a reimbursable overtime detail present
9 whenever it has live entertainment. And this
10 is based upon the first summary suspension
11 hearing case, which is Case 10-251-00145 and
12 Case 10-251-00145(A) in which conditions --
13 there are three conditions that came out of
14 that summary suspension hearing, one being
15 termination of contractual relationship with
16 a band named TCB and the Poor Boys; two being
17 the licensee obtain MPD reimbursable detail
18 whenever there is live entertainment. And of
19 course, this really is not relevant in this
20 case, but their detailed documentation of
21 handling of disruptive patrons. But that
22 requirement was opposed back at that time.

1 And then furthermore, that in a
2 further proceeding that came after a closure,
3 and this is from 2011, there is two case
4 numbers. I will just use this one. This is
5 Case 11-251-00052 in which the Board issued
6 the requirement that the establishment have
7 eight reimbursable detail officers for
8 Saturday evenings as well.

9 So, it is our contention that, at
10 a minimum, the establishment, whenever there
11 is any live entertainment, must have a
12 reimbursable detail on-site.

13 CHAIR MILLER: Okay. I have a
14 question also. After Mr. LeFande's opening
15 statement, I think that he made reference to
16 an agreement with government with respect to
17 conditions. Is that accurate?

18 MR. LeFANDE: I think that
19 mischaracterizes my statement. If I may
20 restate it.

21 CHAIR MILLER: Okay.

22 MR. LeFANDE: I did discuss these

1 potential remedial measures with the Attorney
2 General. To further elaborate upon that, I
3 was informed that he doesn't have authority to
4 accept them.

5 We would like, in order to
6 expedite this process, to find somebody who
7 can accept them and see if we can get to a
8 point where we can reach an agreement without
9 --

10 MR. ADAMS: I apologize for
11 interrupting, Mr. LeFande.

12 CHAIR MILLER: Go ahead, Mr.
13 Adams.

14 MR. ADAMS: But again, any issues
15 regarding settlement, those are matters that
16 are outside of the Board's purview.

17 CHAIR MILLER: Okay. Right. I
18 just wanted to make sure. It sounded like he
19 was saying you agreed to conditions and then
20 you know, really, where are we at. Are we at
21 a suspension hearing?

22 MR. ADAMS: No, we're not.

1 MR. LeFANDE: Yes, we have
2 proposed provisional measures and would like
3 to find some mechanism that we can have those
4 considered by the proponent of the suspension.
5 And I have been told that the people who could
6 make that decision aren't present.

7 MR. ADAMS: Again, any details I
8 cannot --

9 CHAIR MILLER: All right. The
10 Government is saying there isn't any agreement
11 to the conditions. And then if you want to
12 offer them in your case, you can.

13 MR. LeFANDE: No, no, no. I may
14 offer them at the end --

15 CHAIR MILLER: Right.

16 MR. LeFANDE: -- as suggestions as
17 to what the Board might make as conditions for
18 the opening.

19 CHAIR MILLER: Okay.

20 MR. LeFANDE: And again, this was
21 to summarize what our presentation is today.

22 CHAIR MILLER: Okay.

1 MR. LeFANDE: I would like to
2 address the --

3 CHAIR MILLER: You know, I don't
4 --

5 MR. LeFANDE: -- matter brought up
6 by the Attorney General.

7 CHAIR MILLER: I think he was
8 responding to your matter, saying there was no
9 requirement for reimbursable detail. And then
10 he is arguing that there are these orders in
11 cases in which there is.

12 I mean I think we are kind of
13 slipping out of our process if we are going to
14 start having a legal argument about that. We
15 are well aware you have witnesses. Unless it
16 is going to settle the case up front, I mean
17 conclude the case up front, I think we need to
18 hear the witnesses and then you can make
19 arguments with respect to legal requirements.

20 MR. LeFANDE: If we are going -- I
21 think that we need a foundation, however, and
22 that if the government, and this goes to our

1 ability to expedite this process today and
2 make stipulations and perhaps concede
3 particular evidence, if the Government is
4 arguing that there is a violation of the order
5 by this Board, which is cause today for this
6 -- which they are going to offer evidence that
7 we violated the order, I think there needs to
8 be offered a foundation offered by the
9 proponent as the existence of that order.

10 CHAIR MILLER: Okay.

11 MR. LeFANDE: And if we are going
12 to hear hours and hours of testimony about the
13 violation of that order, under Title 2 Chapter
14 5 of the District of Columbia Code, the
15 Administrative Procedures Act, the proponent
16 of the rule has that burden.

17 So, I think necessarily if we are
18 going to proceed with an allegation that an
19 order was violated, we now ask before that
20 happens that the District of Columbia produce
21 the order or orders that they claim exist that
22 are being violated.

1 CHAIR MILLER: Okay.

2 MR. LeFANDE: I think that is a
3 very necessary thing to save us a lot of time
4 here.

5 CHAIR MILLER: Okay. I think that
6 is pretty basic.

7 MR. ADAMS: Yes, Madam Chair, I
8 think that is a little far afield. But the
9 bottom line, the District has laid that
10 foundation. We stated where those records
11 come from, specifically in this case, from
12 July 2009 it was an oral order. It was within
13 the transcript of that hearing, specifically
14 in reference to that. That would be found in
15 that transcript from July 9, 2010 from pages
16 418 through 425 of the hearing that we did
17 that requirement was done orally at the
18 hearing.

19 And in terms of the second case,
20 that was done via fact-finding disposition
21 from the 2011 case. I believe, I am not sure,
22 I have some copies of that transcript that I

1 can provide to the establishment. And
2 frankly, we can also add that in. There was
3 another hearing in July of 2010 in which the
4 requirement was from a summary suspension
5 hearing was repeated. That hearing was in --
6 actually, that was part of the District's
7 Exhibit 2.

8 So, frankly, that is, in terms of
9 these requirements, this is already part of
10 the public record and it is always part of
11 what that is already out here. But in terms
12 of any type of material that the establishment
13 may have -- and I do have additional copies
14 from the July 9, 2010 hearing. Again, that
15 has already been recorded.

16 But it is the District's position
17 that those fact disposition of the summary
18 suspension cases in both instances relate to
19 be requirements.

20 Furthermore, I would also the
21 Board to the establishment of a security plan
22 which makes multiple references that assumes

1 the presence of reimbursable detail in several
2 instances for the security plan to be
3 effective, such reimbursable detail must be
4 there.

5 So, that is the requirement. That
6 is the District's legal argument. The
7 District is prepared to go forward with
8 testimony.

9 MR. LeFANDE: The Respondent
10 vigorously asserts that the District of
11 Columbia has now amply demonstrated that there
12 is no extant order, written order.

13 CHAIR MILLER: No what order?

14 MR. LeFANDE: No written order of
15 the Court.

16 CHAIR MILLER: No written order.

17 MR. LeFANDE: And that essentially
18 of counsel, of the Attorney General, is that
19 the Respondent has violated a transcript. And
20 this is not the procedure of this Board. This
21 is not an order of the Board. But that this
22 Board has been quite prolific in making its

1 positions clear over many, many years by
2 written order, such as the one I am looking at
3 here, 2012-373, where it sets forth the
4 requirements for reopening the establishment.

5 There are no such orders in
6 existence that require this establishment,
7 unlike many, many other establishments, to
8 have a reimbursable detail and to have the
9 public, or a disinterested observer, or even
10 the Respondent, comb through hundreds of pages
11 of transcripts not in the public domain on the
12 Board's website, searching for some utterance
13 of the Board not reduced to writing is
14 absolutely antagonistic under the requirements
15 under the District of Columbia's
16 Administrative Procedures Act to which this
17 Board is indisputably beholden.

18 We assert there is no written
19 order making such a requirement and that if
20 the District of Columbia's case today is
21 premised upon a violation of such order, that
22 must be summarily disposed of upon the Board's

1 own notice to itself, it doesn't exist.

2 CHAIR MILLER: Okay, I am going to
3 stop it right here. Because I hear what you
4 are saying. It is a legal argument and I'm
5 not prepared to conclude or the Board is that
6 that is what his case is totally premised on.

7 We will hear your legal argument
8 when we come to the end of the case and we
9 will consider that.

10 MR. LeFANDE: Thank you.

11 MR. ADAMS: That's why I bring
12 that up.

13 CHAIR MILLER: Okay, I think at
14 this point, we would like to hear the
15 evidence.

16 MR. ADAMS: Madam Chairman, the
17 District's first witness is Officer Jose
18 Hernandez. And we are securing him right now.

19 CHAIR MILLER: Thank you. Okay.

20 [Pause.]

21 CHAIR MILLER: Officer Hernandez,
22 good morning.

1 WHEREUPON,

2 JOSE HERNANDEZ

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

7 DIRECT EXAMINATION

8 BY MR. ADAMS:

9 Q How you doing? Good morning,
10 Officer. How are you?

11 A Good. How are you?

12 Q Could you please state your name
13 and spell it for the record?

14 A Jose Hernandez, J-O-S-E, last name
15 is H-E-R-N-A-N-D-E-Z.

16 Q You are an officer for the
17 Metropolitan Police Department?

18 A Yes.

19 Q And how long have you been an
20 officer for the Metropolitan Police
21 Department?

22 A For two and a half years.

1 Q And Officer Hernandez, you are --
2 what is your current station or assignment
3 with MPD?

4 A I am assigned to the Fifth
5 District.

6 Q And what is your patrol service
7 area?

8 A My patrol service area is in PSA
9 506.

10 Q And the situated -- what is that
11 area?

12 A It composes of the Mount Olivet to
13 Florida, basically the Trinidad area and also
14 the Market, which is the Union Florida Market
15 and the business are known as the NoMa area,
16 which is First Street, Patterson, Third and M
17 up to New York and Florida.

18 Q Officer Hernandez, on the evening
19 of May 16 and early morning of May 17th, were
20 you on duty?

21 A Yes.

22 Q Okay. And can you explain how you

1 were on duty?

2 A Yes, I was assigned to work the
3 reimbursable club detail at The Stadium
4 nightclub.

5 Q And how long have you been a
6 member of the reimbursable detail?

7 A I work it off and on but, for the
8 most part, I work it every month, whenever I
9 sign up for it. And then I usually get
10 assigned to the clubs for about a year now,
11 year and a half.

12 Q About a year. All right. So,
13 Officer Hernandez, now you said that you were
14 working at the Stadium on May 16th going into
15 May 17th.

16 In the early morning hours of May
17 17th, can you describe any occurrences from
18 that evening?

19 A Yes. Around club closing, I want
20 to say between 2:45 and 2:55, something like
21 that, I heard sounds of gunshots coming from
22 the 2200 block of Adams Place. I immediately

1 got on the radio, called it out, saying that
2 there were sounds of gunshots in the area.

3 Myself and a few other officers
4 that were working The Stadium nightclub detail
5 responded over to where we heard the gunshots
6 at.

7 Q And now in terms of -- at the time
8 that you heard gunshots, where specifically
9 were you located?

10 A Directly in front of The Stadium
11 nightclub. They had their private parking but
12 across the street from it is a parking garage.
13 And that is usually where the officers will
14 post up.

15 Q All right. And so, and this is
16 about three o'clock. Is that correct?

17 A Roughly around that time, yes,
18 approximately.

19 Q So, specifically, you stated that
20 you responded. What did you do, specifically?

21 A Got out of the cruiser and kind of
22 ran down towards the location, slowed down as

1 I was getting close to it. I had my gun out,
2 just in case because of the sounds of
3 gunshots, at which point, I saw a crowd of
4 about 15 or 20 people running out of the area,
5 going to their cars.

6 I noticed a black in color Nissan
7 Murano leaving at a high rate of speed around
8 other vehicles, going north on Queens Chapel
9 Road. I immediately called out -- put out a
10 lookout for the vehicle, at which point then
11 I focused my attention towards the crowd that
12 was coming up on Adams Place. And as I
13 started to walk down into Adams Place, there
14 was an individual that was being brought up by
15 two other people that had a gunshot to his
16 torso.

17 Q I'm going to back up. You state
18 that as you got to the intersection of Queens
19 Chapel and Adams Place, that you began making
20 observations. Can you give a little more
21 detail about what exactly you observed, once
22 you approached the intersection?

1 A Yes. As I approached the
2 intersection, I noticed, like I said, 15 to 20
3 people running at a very fast pace, I mean
4 going every which way, direction, trying to
5 get into different vehicles. At the time, I
6 noticed about five or six cars leaving the
7 area.

8 Like I said, the one that
9 attracted my attention the most was the Nissan
10 Murano because of the way it was trying to get
11 out of the area.

12 At that point in time, it just
13 seemed, it was chaotic, where everybody was
14 trying to leave that street, which is
15 basically a dead end street. It is a one way
16 in and one way out.

17 Q Okay, so the area is pretty much
18 -- so, you said it is a dead end street. So,
19 everyone is trying to come out.

20 A Yes.

21 Q All right. So, once you -- okay,
22 so then at some point you state that you did

1 encounter someone who was involved. Can you
2 give a little bit of detail about what you
3 observed? Where exactly were you at that
4 point?

5 A At that point I was, I want to
6 say, on Adams Place, towards the top. The
7 individual was being brought up by two other
8 people that was with him. At that point, we
9 asked the two people that were carrying him to
10 put him down on the ground and we would assist
11 him with rendering aid and stuff like that.

12 They were already pretty much
13 applying pressure to the gun wound -- I mean
14 to the gunshot wound and one of my other
15 offices that was working with me, Officer Lee,
16 she put on some gloves and started to assist
17 with him.

18 I immediately got on the radio and
19 asked for an ambulance to respond to the
20 location because we had an individual that was
21 shot to the upper torso.

22 About I want to say within a

1 minute of that incident happening, we had
2 other patrons that apparently knew the victim.
3 And I guess they were trying to get him into
4 a vehicle to take him to the hospital. We
5 advised him that we had already had them, you
6 know an ambulance to the location for him.
7 They began to get rowdy and stuff. We had to,
8 myself and Officer Fogle had to push the
9 individuals back and stuff.

10 Q In terms of the group of friends,
11 so essentially how many people approached you
12 at that point?

13 A Roughly between 15 and 20 people.
14 They were all trying to like get him out of
15 the area, I guess.

16 Q Okay. So what did you and what
17 did the other officers do, at that point?

18 A We tried to basically let them
19 know listen, we already got the ambulance and
20 what not. They weren't trying to hear it.
21 They were very combative. They were fighting
22 us. We had to push a lot of the people back,

1 had to just try to maintain calm in that
2 situation. Like I said, kept pushing them
3 back, basically forcefully like removing them
4 from the area.

5 I again called for other units to
6 arrive and to assist. At this point, when
7 other units started to arrive, that is when a
8 lot of them started to back off. And then
9 there was another individual that was brought
10 up that was shot in the leg. I called for
11 another ambulance to respond to assist with
12 that individual.

13 But with another minute after
14 that, I was told that there was other
15 individuals that were shot that were further
16 down on Adams place, came down with Officer
17 Fogle. We went down to assist to see where we
18 could fully locate the other individuals. We
19 spotted a female about halfway down the block.
20 She was shot also in the leg. She was laying
21 in front of other vehicles.

22 Q I apologize. In terms of this --

1 now you already stated that someone was
2 brought forward. When you said that, he was
3 brought forward to a patron was brought
4 forward -- someone. A person was brought
5 forward. Was that person -- I mean what
6 location was that -- were you at the same
7 location where you had the chest wound victim?

8 A Yes, it was the same location.
9 They were carrying the person up towards us.
10 So, they are letting us know that the person
11 was shot, at which point, I called for an
12 ambulance to respond for that individual.

13 Q And now you were talking about the
14 female patron. Approximately where were you
15 when you spotted the female patron?

16 A I was still at the same location
17 from where the gunshot victim was.

18 Q All right.

19 A When I was told that there was
20 other people that were shot that were further
21 down the street, from my location to where the
22 female was shot, it was approximately 30 to 50

1 feet from where the other two individuals were
2 brought up to us.

3 Q And where approximately, on her
4 body was she shot?

5 A In her calf.

6 Q Okay. So from that point, what
7 did you observe?

8 A Well, at that point, I assisted
9 with rendering first aid to her until we can
10 get another ambulance to come up. I called
11 for another ambulance.

12 At this point, we had a lot of
13 cruisers that came up and assisted us with the
14 whole situation. It was pretty chaotic as far
15 as trying to get vehicles out of there,
16 patrons out of there. A lot of people were
17 still trying to watch, as far as like the
18 situation that was unfolding in front of them.

19 We were asking a lot of people to
20 like clear the block, clear the area so we can
21 get the cars out of there, so we can get the
22 EMS staff in there, so we can have these

1 individuals treated.

2 A lot of people weren't moving.
3 They were just standing around. So, we have
4 to kind of forcefully move them out of the
5 area so that we can get cars out and emergency
6 personnel in.

7 Q So you are saying that cruisers
8 were arriving. Where exactly were cruisers
9 arriving, to the actual victims or to
10 different locations?

11 A Well, they were kind of blocked at
12 the top of Adams Place, where it is at Queens
13 Chapel Road.

14 Q Why were they blocked?

15 A Well, you had fire apparatuses
16 there. You had people trying to leave the
17 club. You had people standing around. So and
18 the whole chaotic scene, there was no way of
19 actually brining the cruisers down into the
20 location because of everything that was going
21 on.

22 Q Okay. And at the time that you

1 were working with -- at that point, I mean
2 what were you doing? What was your role at
3 that point?

4 A At that point, I was assessing to
5 see how many victims we had and I was also
6 trying to assist with getting people out, also
7 assisting with clearing the block, getting
8 people to move along.

9 After find the third, the female
10 that was shot, a few of the patrons came up
11 and kind of made mention that there was
12 another individual that was further down. So,
13 I walked down to that individual, found that
14 individual close to the entrance of The Scene
15 Club. He was shot in the leg. So, we
16 requested for more EMS to let them know that
17 there was a fourth individual that was down,
18 further down on Adams Place that was shot.

19 Q Okay and so where exactly on that
20 person's body was there person shot?

21 A I believe it was a leg also that
22 the person was it.

1 Q And we said that -- okay, so
2 again, can you please repeat where the person
3 was found?

4 A Yes, the fourth one?

5 Q The fourth.

6 A Yes, that person was found --
7 there is a merchandising like warehouse or
8 something like that that when you walk out of
9 The Scene Club, it is the adjacent business,
10 basically but it is right at the mouth of the
11 entrance of The Scene Club.

12 Q Okay. And what else did you
13 observe at that point?

14 A A lot of the staff members from
15 the nightclub, they were around. I was
16 instructed to find the owner and to ask him a
17 series of questions. I walked up to one of
18 the staff members. I asked if he was around.
19 They told me that he was up the street on
20 Adams Place.

21 I then asked do you guys know what
22 happened. Nobody gave me an answer. So, I

1 went up the street.

2 Q I apologize. Now, you stated that
3 you -- who were you speaking with at this
4 point?

5 A Some of the bouncers that worked
6 at The Scene nightclub.

7 Q To the extent you can remember, I
8 now you stated that you were trying to locate
9 the owner but in terms of you stated that
10 there was a question regarding what occurred,
11 to you happen to remember exactly what was the
12 question that you posed to the members?

13 A Yes, I said -- well, first I asked
14 about where the owner was. When they answered
15 me that question, I asked do you guys know
16 what happened.

17 Q Okay, and what was the response?

18 A No response.

19 Q When you say no response, can you
20 clarify? Can you tell me whether it was
21 silence or did they give you an answer?

22 A They just looked at each other and

1 looked back at me. And they were like, well,
2 the owner is up the street.

3 Q Okay. And why were you asking
4 those members that question?

5 A Well, to see if there was
6 something that happened prior to the sounds of
7 gunshots. A lot of times, fights that occur
8 or stuff like that and somebody takes it above
9 and beyond. And we were just trying to
10 determine if we can basically find out if
11 there was an incident that took place inside
12 of the club that might have spilled outside of
13 the club that, in turn, we can get a suspect
14 or something to go off of, so that we can let
15 our detectives know, hey, this is what
16 happened between these two or whatever the
17 case may be.

18 Q And so, in terms of asking a
19 background question like that, I mean,
20 obviously, you are talking about the
21 identification of suspects. Why did you feel
22 that was an important question to ask?

1 A Well, a lot of times you know when
2 you have a situation that occurs like that, it
3 is, we know that the only people there are
4 coming from the club. Because I mean not to
5 speculate but all the victims came from the
6 club.

7 MR. LeFANDE: Objection.
8 Foundation.

9 THE WITNESS: And if --

10 MR. ADAMS: I apologize, Officer.
11 There is an objection in terms of foundation.

12 The Officer was giving his take on
13 it. We believe that it is relevant that, in
14 this case, a foundational challenge is not an
15 appropriate objection. So, I believe that we
16 should be allowed to continue that testimony.

17 CHAIR MILLER: Yes, I don't think
18 foundation is the appropriate --

19 MR. LeFANDE: Well, the Officer
20 has testified, as a matter of fact, that the
21 victims all came from the Respondent's
22 establishment. I understand that to be his

1 testimony. This is a very, very serious point
2 of evidentiary contention here.

3 CHAIR MILLER: Right. I don't --

4 MR. LeFANDE: And if he has a
5 basis for making --

6 CHAIR MILLER: Mr. LeFande, you
7 can ask him that on cross what the basis is.

8 MR. ADAMS: In fact, the District
9 will do that now.

10 CHAIR MILLER: Okay. All right.

11 BY MR. ADAMS:

12 Q You state that all victims came
13 from The Scene. How did you learn or how do
14 you know that?

15 A The first victim that was shot in
16 the torso, a lot of the people that were
17 around him kept making like remarks, basically
18 saying like kind of get back type deals, like
19 they knew who was involved in the altercation.
20 They probably saw who the shooter was. And so
21 on my end, like as far as the overhearing.
22 But when I went to ask them, can you give me

1 a description of the shooter, nobody would say
2 anything everybody would keep to themselves.

3 I asked them if there was a fight
4 that was involved. I heard a variation of
5 answers, yes, but then they wouldn't tell me
6 anything more as far as who was involved or
7 anything like that.

8 So, I knew that there was an
9 incident that took place that was a fight
10 prior to the shooting occurring. And --

11 MR. LeFANDE: Objection;
12 speculation.

13 CHAIR MILLER: Overruled. Go
14 ahead.

15 THE WITNESS: We later asked a lot
16 of the individuals if they had come from --
17 you know where they were coming from. And
18 they all stated that they were at The Scene.
19 They were all coming from The Scene Club.

20 BY MR. ADAMS:

21 Q Okay. So now, I think we were
22 talking about at some point you were asking

1 questions from security members. And
2 approximately how many members were you
3 speaking with?

4 A There was like three standing
5 around --

6 Q Okay.

7 A -- when I went and asked them.

8 Q All right. And so, at that point,
9 what did you observe after that point?

10 A At that point, we finally had an
11 EMS come down to where the victim was. I
12 stood around and made sure if you need
13 anything or the crowd was -- because had --
14 actually, we were directed to stand by to make
15 sure that the EMS staff were able to get to
16 each individual victim.

17 They came down, picked him up.
18 Put him on a gurney, took him up. At that
19 stage, I began to secure the crime scene, look
20 for shell casings, look for any evidence that
21 we can find that where the incident took
22 place.

1 Q And what did you find?

2 A We found multiple shell casings in
3 the middle of the block. Also, a live round
4 was found, blood from the middle of the block
5 all the way down to the front of The Scene
6 nightclub, all the way up towards Queens
7 Chapel.

8 Then, we also heard on the radio
9 that there was another individual that her car
10 was shot up but she had left the area. So,
11 she came back to report that. She was also
12 placed on the report for the destruction of
13 property for the gunshots that basically the
14 car took.

15 Q And so at this point, after you
16 made those identifications, was there any
17 other role or any other observations for that
18 evening?

19 A The only other thing I had to do
20 was go to each hospital and make sure that we
21 had everybody's information correctly for the
22 report and find out what the status is as far

1 as what happened with the shootings and stuff,
2 as far as like medical-wise what their status
3 was.

4 Q And in terms of -- so, did you in
5 fact go to each of these hospitals?

6 A Yes.

7 Q And what did you find?

8 A The male that was shot in the
9 torso, he was in the operating room when we
10 got there. So, he was critical but I didn't
11 find anything else out.

12 The young lady that was
13 transported to the Washington Hospital Center,
14 she was taken by a personal vehicle because
15 she was taken in by a friend's car and she was
16 escorted by a cruiser all the way out to that
17 location.

18 We didn't originally know that
19 there was a fifth victim until later on. We
20 found out that when she went to the hospital
21 and the officer called out saying that that
22 was a fifth victim that arrived at the

1 Hospital Center.

2 I went up, checked up on her
3 status, also got her information. She was
4 shot in the I want to say her pelvis area. I
5 found out what her status was. Apparently she
6 didn't go to the -- she was just in the Trauma
7 Center, so she was found to be in good
8 condition.

9 Then we responded over to Howard.
10 There were two gunshot victims. Both of them
11 were non-life threatening. They were both hit
12 in the legs. I got their information, made
13 sure we had everything that we needed from
14 them.

15 Then we responded over to George
16 Washington Hospital and the fifth victim was
17 there.

18 Q In terms of this -- could you
19 explain whether you conducted any interviews
20 of anyone at those hospitals?

21 A We did. We asked and verified if
22 they were -- where they had been that night.

1 They all stated that they came from The Scene.

2 Since we couldn't talk to the
3 first victim with the gunshot because he was
4 in the OR, the second young lady that we spoke
5 with, the second victim, she couldn't give us
6 anything. She said that all she heard was the
7 shots. And when she tried to run, she got hit
8 on the legs. So, at that point, she stated
9 she was picked up by one of her friends, put
10 in the car, and then she was taken out of the
11 area to the hospital center.

12 The individuals at Howard, one of
13 them could only tell me that it was a brief,
14 like very small description of the individual
15 that was doing the shooting. But he said that
16 it stemmed from some type of fight that
17 occurred.

18 Then we had the other male that
19 was shot. He was very uncooperative. And
20 then the female at GW was able to tell us she
21 didn't see the shooter. She knows that there
22 was a couple of fights that broke out at The

1 Scene as she was leaving. That is when she
2 was hit in the leg.

3 Q All right. And was -- after you
4 conducted those interviews, did that conclude
5 your tour of duty?

6 A Yes.

7 Q Okay. In terms of you working the
8 5D detail, well, can you tell us to what
9 extent are you familiar with Adams Place and
10 were The Scene is located? Like can you talk
11 about your familiarity with that block?

12 A Yes. Like I said, for the past
13 like year and a half, I have been working the
14 club details to whatever you kind of put in
15 the email and whatever you are scheduled by
16 the sergeant, then that is when you work it.

17 I have worked The Scene nightclub.
18 I have worked at the Echostage, which is up
19 the street on Queens Chapel Road, right at the
20 corner, basically, and The Stadium nightclub.

21 In terms of like Adams Place and
22 The Scene, whenever it is operating, there is

1 a multitude -- we all have responded to a
2 multitude of fights. We have had sounds of
3 gunshots down there, people arrested for
4 having a weapon. But a lot of the times, it
5 is mostly a lot of fights that happen out in
6 that area.

7 Q And you said fights. Like when do
8 these fights occur?

9 A Usually at club let-out.

10 Q Okay and is it strictly on the
11 block at Adams Place or where do these fights
12 occur?

13 A Most of the time they are on the
14 block of Adams Place, the 2200 block.
15 Sometimes, they spill onto Queens Chapel Road,
16 all the way out to the Northbound, the 2500
17 block, stuff like that. Wherever they are
18 parking. You know the groups will break it up
19 in the front lots and try to walk up to Queens
20 Chapel Road, Channing Place, stuff like that
21 and they will just fight at different
22 locations.

1 Q And what connection, if any, does
2 it have to operation of The Scene?

3 A They are just patrons out of
4 there. You know you have different
5 neighborhoods that come in and they just don't
6 like each other so they end up fighting each
7 other, whether they be on the block or --

8 MR. LeFANDE: Objection;
9 foundation.

10 CHAIR MILLER: Overruled.

11 THE WITNESS: -- whether they be
12 on the block or up the street from the club.

13 BY MR. ADAMS:

14 Q Okay and how do you ascertain
15 whether or not they are patrons of The Scene?

16 A Someone of them will say that they
17 come out the club. Others, you know the only
18 thing that is on Adams Place is MetroAccess
19 and the homeless shelter. So, you just kind
20 of assume that they are coming out of The
21 Scene nightclub.

22 MR. LeFANDE: Objection;

1 speculation.

2 CHAIR MILLER: Overruled.

3 BY MR. ADAMS:

4 Q You said that you have been
5 working the 5D detail. So, based on your
6 experience, have you had occasion to actually
7 work the overtime detail for The Scene
8 nightclub?

9 A Yes.

10 Q And when was the last time you
11 worked that detail?

12 A I want to say sometime in
13 December, maybe November.

14 Q And can you describe your
15 knowledge or awareness of -- or actually can
16 you describe why -- in this year, can you tell
17 us why you haven't been a member of the detail
18 for The Scene?

19 A There hasn't been any details for
20 The Scene for a few months now.

21 Q Okay. And so there has been no
22 reimbursable details there?

1 A No.

2 Q So, can you describe for the
3 Board, have you noticed any difference in
4 terms of issues like you were talking about
5 fights, as terms of issues of safety since
6 there has not been a detail?

7 A Yes, there is. You know from
8 working at The Echostage and Stadium, we have
9 had to respond down there for like fights and
10 stuff like that. So but whenever you have a
11 reimbursable detail down there, we kind of
12 minimized the traffic that comes down into
13 Adams Place and you have less situations that
14 occur, based on the fact that the officers are
15 there.

16 Yes, you still have your fights
17 but it is more so where the fights will happen
18 but nothing escalates from that situation
19 because the officers are located in the area.

20 Q Now you say that at some point, at
21 an earlier point that there was a response to
22 gunshots from the block of Adams Place

1 Northeast. Do you happen to recollect when
2 that was and what were the circumstances?

3 A Yes, it was -- I know it was in
4 May. I think it was May 16th or something
5 like that that it occurred.

6 There was the sounds of gunshots
7 that came out. Actually, I was working the
8 club, The Echostage that night and we heard
9 the gunshots. So, we immediately went to the
10 sounds of them.

11 Again, we had about 20 or 30
12 people running out of the area and that is
13 when we basically drew down on individuals
14 that were coming into -- going towards their
15 car like they had something in there. And
16 there was an arrest made on an individual that
17 had a weapon in the vehicle.

18 MR. ADAMS: The Board's
19 indulgence.

20 BY MR. ADAMS:

21 Q And Officer, are you sure of the
22 date?

1 A Not 100 percent, no.

2 MR. ADAMS: All right. I would
3 like to provide a document to the officer to
4 refresh recollection, merely for purposes of
5 refreshing his recollection.

6 MR. LeFANDE: No objection.

7 BY MR. ADAMS:

8 Q Officer Hernandez, has your memory
9 been refreshed?

10 A Yes.

11 Q And when was the date that that
12 occurred?

13 A March 29th.

14 Q And to what extent did it relate
15 to the operation of The Scene?

16 A Well, all the patrons were seen
17 coming out of the area, specifically, the
18 individuals that were locked up for the
19 carrying of the pistol.

20 MR. ADAMS: All right. And I
21 apologize, Officer Hernandez, I just want to
22 make one mention. Since the hearings started,

1 the attention of District's Counsel has been
2 forward and not looked behind me. I notice
3 that there are some persons who are within the
4 public gallery. I would like to ask the Board
5 to inquire whether or not those persons are
6 witnesses. And if they are, the District
7 would like to invoke the rule upon witnesses.

8 CHAIR MILLER: Okay, Mr. LeFande?

9 MR. LeFANDE: We had a discussion
10 of this at the onset of the case as to the
11 number of witnesses who would be present. I
12 don't think it is appropriate for the District
13 to enjoy a lack of that rule while it is
14 putting on its evidence and then wants later
15 on to belatedly bring it up.

16 So, I think that request is
17 untimely.

18 CHAIR MILLER: I don't think there
19 is a timeliness rule built into it that I know
20 of. I think the point is that they not hear
21 the testimony so that it won't influence their
22 testimony. And that still would be valid at

1 this point, if they are going to be testifying
2 to similar facts. But can you identify -- are
3 they your witnesses? Can you identify who
4 they are and what they are going to testify
5 to?

6 MR. LeFANDE: Well, we have some
7 witnesses here.

8 CHAIR MILLER: Are the gentlemen
9 behind you your witnesses?

10 MR. LeFANDE: Yes, those are our
11 witnesses.

12 CHAIR MILLER: Okay, then can you
13 address who they are and what they are going
14 to be testify to or if it is similar to this
15 testimony? I mean in the sense that the same
16 evening --

17 MR. LeFANDE: They will be
18 testifying to the events that occurred on the
19 morning of May 17th. They seem to be in very
20 different locations and they certainly are not
21 involved in the operations of the Police
22 Department's reimbursable detail in that

1 regard. These are employees of The Scene
2 nightclub, which is quite a distance from
3 where Officer Hernandez says that he was.

4 CHAIR MILLER: Okay.

5 MR. LeFANDE: Again, I just -- my
6 objection is --

7 CHAIR MILLER: Timeliness.

8 MR. LeFANDE: Well it is not that
9 there is a specific time limit as the Chair
10 properly points out, but that the Attorney
11 General is timing its request strategically so
12 as to afford itself an advantage and to put us
13 at a disadvantage. And for that reason, we
14 asserted that based in timeliness.

15 CHAIR MILLER: Mr. Jones?

16 MEMBER JONES: Madam Chair, I was
17 going to seek clarification. He indicated
18 that those are witnesses and I think he
19 indicated that they were employees of The
20 Scene. And I think there would be some
21 relevance if they are bouncers and/or
22 employees of The Scene, based on the testimony

1 that was being presented by the witness.

2 So, I think if we can just kind of
3 quickly nip this in the bud and address it, it
4 would be greatly appreciated.

5 CHAIR MILLER: Okay. Anything
6 else you have to say?

7 MR. ADAMS: My only comment is
8 that it is my understand and I think this is
9 in the interest of all parties, especially in
10 a major hearing like this to ensure that there
11 is no potential prejudice of witnesses.

12 CHAIR MILLER: I agree. So, I
13 will grant the Government's request and ask
14 that those individuals who will be testifying
15 step out of the hearing room and not hear
16 this, unless they are a party, which I don't
17 believe Mr. Blakeney is a party.

18 MR. LeFANDE: Mr. Blakeney, I
19 don't think anyone is objecting to Mr.
20 Blakeney's presence.

21 CHAIR MILLER: Exactly.

22 MR. LeFANDE: If we could have

1 just a brief recess so we can sort out how the
2 logistics of informing them when their
3 testimony will be required and figure out some
4 place for them to sit while they are waiting
5 for us, that sort of thing?

6 MR. ADAMS: No problem.

7 CHAIR MILLER: Okay, no. I think
8 that somebody on our staff will be happy to
9 help them find a place to wait. I would
10 rather continue with this case. It is already
11 eleven o'clock.

12 MR. LeFANDE: Okay.

13 CHAIR MILLER: And at their break,
14 before you call them to testify, you certainly
15 have a chance to talk with them.

16 MR. LeFANDE: Thank you Madam
17 Chair.

18 MR. ADAMS: All right, the
19 District has no further questions for Officer
20 Hernandez.

21 CHAIR MILLER: Is there any cross-
22 examination?

1 MR. LeFANDE: Yes, the Board's
2 indulgence.

3 CROSS-EXAMINATION

4 BY MR. LeFANDE:

5 Q Good morning, Officer Hernandez.

6 A Good morning.

7 Q How long have you been a member of
8 the Metropolitan Police Department?

9 A Two and a half years.

10 Q Two and a half years?

11 A Yes.

12 Q Okay. And you have been assigned
13 to the Fifth District all this time?

14 A Yes.

15 Q You stated that you are assigned
16 to PSA 506 and this, in fact, is an area that
17 is to the west of where we are --

18 A Correct.

19 Q -- discussing? So you are not
20 assigned to the PSA where Adams Place and
21 Queens Chapel area is at?

22 A I am not assigned to that place

1 but it is an overtime detail.

2 Q We got that. We will get to that
3 in a second.

4 Is it the same sector?

5 A No, it's not the same sector.

6 Q Okay, so it is a different sector
7 and a different PSA than you normally patrol.

8 A Correct.

9 Q Okay. Can you tell us which PSA
10 that is, where the intersection -- I don't
11 recall.

12 A It is 505.

13 Q PSA 505. Have you ever been
14 assigned to patrol 505 --

15 A Yes.

16 Q -- in your normal course of
17 duties?

18 A Yes.

19 Q Okay. You described briefly for
20 us sending an email to a supervisor with
21 regards to participating in these reimbursable
22 details. Did I understand that testimony

1 correctly?

2 A Yes.

3 Q Could you just briefly describe to
4 us what that entails?

5 A Yes, it is the admin officer, the
6 sergeant that is in charge of the club over
7 time will put out an email saying if you wish
8 to work, send an email requesting what days
9 you are available and they will try to put you
10 on the schedule.

11 Q So that is to say, then, that you
12 are not -- you say your days that you are
13 available. Do you mean that these are days
14 that you are not working your ordinary duties?

15 A No, this is to say that if -- the
16 clubs are usually open Fridays, Saturdays, and
17 occasional weekends that are holidays, they
18 will be Thursdays and Sundays. So, if you
19 wish to work them, you can sign up for them.

20 It is just basically on
21 availability of like what your schedule
22 permits.

1 If I am on leave, I am not going
2 to put in -- I am going to omit those dates
3 because I am not going to come in for it.

4 Q But you do not work the
5 reimbursable detail -- do you I understand you
6 to say then, that you do not work the
7 reimbursable detail while you are on your
8 ordinary --

9 A That is correct. It is an
10 overtime detail. My tour of duty ends at
11 10:30 and the club detail starts at midnight.

12 Q And when you make this email
13 notification to the supervisor, do you always
14 receive the dates that you request to work the
15 overtime detail?

16 MR. ADAMS: Objection; beyond the
17 scope and really, in this case, not relevant
18 to Officer Hernandez's testimony on direct.

19 CHAIR MILLER: Do you have a
20 response to that, Mr. LeFande?

21 MR. LeFANDE: I would like to
22 address this out of the presence of the

1 witness. Could you ask him to be excused for
2 a moment?

3 CHAIR MILLER: I never heard of
4 that.

5 MR. ADAMS: For purposes of being
6 clear on the record, I will voluntarily ask
7 Officer Hernandez to step out of the hearing
8 room.

9 CHAIR MILLER: Don't go too far
10 because we aren't going to take too long on
11 this.

12 MR. ADAMS: At the same time, I
13 will be very honest, I think this has to be
14 very narrow. We are going very far afield
15 this time.

16 CHAIR MILLER: Okay. So, repeat
17 the question.

18 MR. LeFANDE: We have --

19 CHAIR MILLER: What was the
20 question that is not supposed to be relevant?

21 MR. ADAMS: The question was --
22 sorry. You can repeat -- you need to -- the

1 question, as I recollect was, Officer
2 Hernandez, can you speak to what type of
3 response that you get from your supervisor
4 regarding the days you schedule for the
5 overtime detail.

6 MR. LeFANDE: We have a very, very
7 serious potential for a bias and the skewing
8 of this testimony based on the officer's
9 personal financial interest in the outcome of
10 this hearing. If this officer is vying with
11 multiple other officers for slots for
12 reimbursable details at Adams and Queens
13 Chapel and there is an insufficient number of
14 slots available and additional slots will be
15 generated by his testimony as to the need for
16 reimbursable detail at the establishment, this
17 is a very strong potential that he has a
18 direct financial interest in the outcome of
19 this hearing. And that goes to bias and it is
20 absolutely probative as to the veracity of his
21 testimony. And it is perfectly acceptable and
22 proper subject matter for cross-examination in

1 this instance.

2 MR. ADAMS: Whether they issue
3 biases is part of this discussion is one
4 thing. However, there seems to be -- within
5 the direct examination, the officer did
6 mention that he has sent an email for
7 assignment. He acknowledged that he is on an
8 overtime detail. I'm not sure where we are
9 going in terms of the full procedure.

10 But I am very concerned about the
11 statement that was made by Counsel to prove
12 that there is some -- by his testimony, I
13 believe that the officer did attest to make
14 true statements but I guess somehow the
15 purpose of all this is to prove that by
16 testifying that it will give him more slots,
17 he has an additional interest. I mean that
18 seems to be ridiculous.

19 CHAIR MILLER: Okay. It seems to
20 me that every police officer would have a
21 financial interest because they get paid. So,
22 I don't understand how you are going to say he

1 is biased because he wants to get the slot to
2 get paid.

3 MR. LeFANDE: That is the
4 distinction. Every officer gets paid to be
5 here when they are testifying as to events
6 that occur.

7 CHAIR MILLER: No, I was talking
8 about getting paid for reimbursable detail.
9 They all get paid for that.

10 MR. LeFANDE: But the outcome of
11 this case, if it is show that a reimbursable
12 detail, which we assert has not been yet
13 ordered by this Board at any time reduced to
14 writing, finds -- if this Board creates a
15 cognizable order requiring eight additional
16 officers to be at this location at a certain
17 time, that is going to create additional slots
18 for this officer to make additional money
19 above and beyond his salary as a police
20 officer.

21 And we assert that this creates a
22 potential for bias based on a strong financial

1 interest in the outcome of this proceeding.
2 And that bias is necessarily a proper subject
3 matter to be examined as to applied to the
4 veracity of his testimony.

5 And I think it is very important
6 right now to find out how much he is vying for
7 these slots, how much competition there is,
8 how many slots are going -- being gobbled up
9 and him not being made available to him and
10 how much this additional detail would affect
11 him personally financially.

12 CHAIR MILLER: Mr. Jones.

13 MEMBER JONES: Just a
14 clarification. Are you intending to put on
15 evidence that are a limited number of slots to
16 add credence to your theory?

17 MR. LeFANDE: I am eliciting that
18 testimony from this witness.

19 MEMBER JONES: Do you have
20 evidence or are you planning to put on
21 evidence to substantiate your claim?

22 MR. LeFANDE: Via this witness,

1 yes.

2 MEMBER JONES: So, you are fishing
3 with this witness because you don't know for
4 sure that here are a limited number of slots?

5 MR. LeFANDE: I think I have
6 already heard as much from the witness is that
7 he is putting in requests to the sergeant --
8 what I am hearing from his testimony up to
9 this point is that he is putting in requests,
10 email requests to the sergeant and trying to
11 obtain slots for these details and that
12 doesn't always -- I understand that that
13 doesn't always happen.

14 And that means that he is
15 competing for a limited number of slots and if
16 the number of slots increases, that he will be
17 directly enriched by the outcome of this
18 proceeding.

19 MEMBER JONES: I think that is a
20 fishing expedition that is far afield of the
21 case that we are here for. And I think if we
22 spent that kind of time fishing for an

1 unestablished, unfounded perceptions of bias,
2 based on what you are presenting here today,
3 I don't think that we are going to be able to
4 address the matters that are at hand in an
5 appropriate fashion.

6 So, I am concerned about your
7 methods at this point, based on what I am
8 hearing to be your intent. But I will leave
9 it to the Chair.

10 MR. ADAMS: And again, frankly,
11 the arguments have gone so far afield from
12 what the actual question is, I think we almost
13 forgot the basis. My basis is that this is
14 not relevant and beyond the scope of direct
15 examination.

16 MR. LeFANDE: And those positions,
17 I posit to you are absolutely antagonistic to
18 every authority on this point that I am
19 certainly aware as an attorney practicing for
20 more than a dozen years.

21 CHAIR MILLER: Okay, I am going to
22 uphold the objection. And I would say this,

1 is what I started to say before. We see it in
2 almost every case, whenever a police officer
3 talks about reimbursable detail, they all can
4 benefit from getting paid from reimbursable
5 detail equally. And you can make the argument
6 then that they are biased.

7 MR. ADAMS: So just for
8 clarification, are you sustaining my objection
9 in terms of the question that was asked?

10 CHAIR MILLER: Yes.

11 MR. ADAMS: Okay. So, can we
12 allow --

13 CHAIR MILLER: We are not going to
14 into that type of testimony. We are trying to
15 get to public safety here. We understand your
16 argument about bias and your objection, and
17 you can argue the argument of bias but we are
18 not going to spend time delving into those
19 kind of specific issues.

20 MEMBER JONES: Thank you Madam
21 Chair.

22 CHAIR MILLER: Thank you.

1 MR. LeFANDE: I apologize for
2 that, Officer Hernandez. Sometimes this
3 business of these hearings gets a little messy
4 and it is through no fault of the witness.

5 THE WITNESS: No problem.

6 BY MR. LeFANDE:

7 Q You testified that a vehicle
8 lookout was given for a Murano.

9 A Yes.

10 Q That is an SUV, I believe.

11 A Yes.

12 Q Okay. And that you did see, in
13 fact see this Murano yourself?

14 A Yes.

15 Q Okay. Could you tell me as best
16 you could -- let me get back to that question
17 in a second. Let me ask you a different
18 question very quickly.

19 You did in fact hear what you
20 perceived to be gunshots at this time, prior
21 to seeing the Murano. Is that correct?

22 A Yes.

1 Q Okay, thank you. So, establishing
2 that, could you tell me as best you could, as
3 you can now, the amount of time that would
4 have elapsed between the time that you heard
5 the gunshots and the time that you saw the
6 Murano?

7 A I couldn't precisely give you
8 exact like seconds or minutes or anything like
9 that.

10 Q And I certainly appreciate that.
11 Could I ask you was it more than ten seconds
12 between the time that you heard the gunshots
13 and the time that you saw the Murano?

14 A Yes.

15 Q Was it more than 20?

16 A Yes.

17 Q Was it more than 30 seconds?

18 A Roughly between 30 and 40 seconds.

19 Q Thank you very much. And what was
20 it that brought your attention to the Murano?

21 A The fact that there was people
22 running towards that area and that the way it

1 led, it sped off at a high rate, went around
2 the vehicles that were traveling also
3 northbound on Queens Chapel Road. It actually
4 went onto the opposite side of the road onto
5 oncoming traffic, went around that vehicle
6 that was actually going up the Queens Chapel
7 Bridge.

8 Q That is to the north of the
9 location --

10 A That is to the north.

11 Q -- where the events occurred?

12 A Yes.

13 Q Did you have an opportunity to see
14 any of the occupants of the Murano?

15 A I could not.

16 Q Could you discern how many
17 occupants were in the Murano?

18 A No, I couldn't.

19 Q Okay. Do you recall seeing the
20 Murano prior to hearing the gunshots?

21 A I did not.

22 Q Has there come a time that you are

1 aware of, that any additional information
2 about the Murano has been obtained by the
3 Police Department?

4 A At this point in time, no. Not
5 that I have heard. But again, I am not the
6 detective on the case.

7 Q Okay but you are unaware that that
8 has happened at any point.

9 A Yes.

10 Q You described that shell casings
11 were found somewhere at the scene of the
12 event. I am using the scene generically, not
13 the name of the place. Could you describe for
14 me where those shell casings were located?

15 A About I want to say the middle of
16 the block. I want to say about anywhere from
17 100 to 140 feet from the entrance of the
18 nightclub, roughly, and I am guesstimating.

19 Q And which nightclub to which do
20 you now refer?

21 A The Scene nightclub.

22 Q Were the shell casings found is

1 that on Adams Street now?

2 A Yes, Adams Place.

3 Q Adams Place, yes.

4 A Yes.

5 Q Okay. And did you have an
6 opportunity to observe those shell casings
7 yourself?

8 A Yes.

9 Q Okay. And could you tell me where
10 they on the north side of Adams Place or on
11 the south side of Adams Place, which side of
12 the street?

13 A They were on the south side of the
14 street.

15 Q And would you describe the shell
16 casings as being closer to The Scene nightclub
17 or close to the Stadium nightclub?

18 A Closer to The Scene nightclub.

19 Q Thank you.

20 A I'm getting my directions a little
21 bit mixed up.

22 Q It seems to me --

1 A Queens Chapel Road runs east to
2 west.

3 Q I apologize. You stated earlier
4 --

5 A Yes, I did.

6 Q And I was using that as a point of
7 reference.

8 A Right. And I am clarifying that.
9 Queens Chapel Road does run east and west.

10 Q Which side of Queens Chapel is the
11 bridge and the waste management station?

12 A It is on the --

13 Q Is that to the east or to the
14 west?

15 A To the west of Queens Chapel Road.
16 On the west side.

17 Q Now, using that point of
18 reference, to which side of Adams Place were
19 the shell casings found, to the east towards
20 the McDonalds in the Fifth District --

21 A It was on the east side.

22 Q -- or to the west or towards the

1 bridge and the waste transfer station?

2 A It was on the east side of it.

3 Q You stated that you, following
4 your activity at the crime scene, that you
5 went to different hospitals and interviewed
6 the victims. Is that correct?

7 A Brief.

8 Q Okay.

9 A Brief interview; name, address,
10 phone numbers, and if they could tell me
11 anything for my preliminary report.

12 Q And that preliminary report is, in
13 fact, a PD-251 with a report number of
14 14069674. Is that correct?

15 A I can't remember exactly.

16 MR. LeFANDE: May I approach the
17 witness to refresh his recollection?

18 CHAIR MILLER: Yes.

19 MR. ADAMS: Sure, go ahead.

20 BY MR. LeFANDE:

21 Q And that appears to be your
22 report?

1 A Yes.

2 MR. ADAMS: Just for the purposes
3 of counsel, the way it has been submitted into
4 evidence it has been redacted. I just wanted
5 to let you know that.

6 CHAIR MILLER: I don't understand
7 what you just said.

8 MR. ADAMS: I was just making a
9 point to Respondent's Counsel that this is
10 part of the District Exhibit 1 and some of the
11 personal information was redacted from that,
12 in terms of what has been submitted to the
13 Board.

14 CHAIR MILLER: Okay. What the
15 witness saw was with the redacted?

16 MR. LeFANDE: The unredacted copy.

17 CHAIR MILLER: The unredacted
18 copy. Okay.

19 MR. LeFANDE: For that reason, I
20 would like to confer with the Attorney General
21 for just a moment as to discussing the
22 identities of the victims and seeing what the

1 issues are with putting that on the record.
2 And if we could just confer for just a couple
3 of minutes on that point.

4 CHAIR MILLER: Okay.

5 MR. LeFANDE: Since they have
6 redacted what is in the record, I don't want
7 to unnecessarily unredact that by speaking
8 their names into the record.

9 CHAIR MILLER: Okay.

10 MR. LeFANDE: So, if we can just
11 discuss the mechanics of that for a moment, I
12 would like to sort that out.

13 MR. ADAMS: I can just state I
14 mean the things that are redacted are dates of
15 birth, home phone numbers, and home addresses.
16 The names remain unredacted.

17 MR. LeFANDE: Okay. Okay, because
18 I am not going to do anything other than --
19 now I realize that the redactions are only the
20 -- are not what I am going to speak to.

21 CHAIR MILLER: Okay, good.

22 MR. LeFANDE: Apparently those

1 things are already in the record.

2 CHAIR MILLER: Okay.

3 MR. LeFANDE: Can we get a copy of
4 that that we can give to the witness?

5 MR. ADAMS: Sure.

6 MR. LeFANDE: I am going to
7 approach the witness and let him follow along
8 here.

9 CHAIR MILLER: Do you have it?

10 MR. LeFANDE: Yes, it is a copy --
11 this is the Government's exhibit.

12 CHAIR MILLER: Okay, if there is
13 no objection by Mr. Adams.

14 MR. ADAMS: No objection.

15 CHAIR MILLER: All right.

16 BY MR. LeFANDE:

17 Q Now, here is your report. I will
18 just lean that way so that we can discuss
19 that.

20 Did you all have an opportunity to
21 interview a Brittany Covell in the course of
22 your investigation in preparing this report?

1 A Speaking with who?

2 Q Brittany Covell?

3 A Yes.

4 Q Okay. And where did you interview
5 Brittany Covell?

6 A MedStar.

7 Q At MedStar, okay. And did
8 Brittany Covell say to you, discuss with you
9 any of the events that occurred on the morning
10 of May 17th, prior to her leaving the event
11 location?

12 A No. All she stated was that she
13 didn't see anything. She was just leaving The
14 Scene nightclub when that was when she was
15 shot in the leg.

16 Q Okay, so did say that she was at
17 The Scene nightclub?

18 A Yes.

19 Q Okay, very good. Did you have an
20 opportunity to interview a Jamel Cariness
21 (phonetic) in furtherance of your
22 investigation for this 251?

1 A You said Jamal?

2 Q Jamel Cariness.

3 A Oh, Jamel. No, I did not. If I
4 am not mistaken, I believe he was the one that
5 was shot in the chest.

6 Q Okay and that was in surgery at
7 the time that you came.

8 A Yes.

9 Q Very good. Thank you.

10 Did you have an opportunity to
11 interview an Eli Morgan?

12 A I did speak to Eli Morgan. He was
13 very uncooperative, didn't want to answer any
14 questions. Basically, he didn't want to give
15 me his address, or phone number, or anything.
16 I had to get all that information his mother.

17 Q I see. And did you have any
18 indication that Mr. Morgan was present at The
19 Scene nightclub at the time of the shooting?

20 A His brother was there and his
21 brother made mention that they were at the
22 club, yes.

1 Q Okay. And when did you have the
2 opportunity to interview Mr. Morgan's mother?

3 A At the hospital.

4 Q And she was cooperative with you?

5 A Yes.

6 Q And drawing your attention to the
7 victim information, could you tell me the date
8 of birth of Mr. Morgan?

9 A Yes, it was a typo. He was put in
10 as 1919 but that was more of a typo than
11 anything else.

12 Q So, Mr. Morgan was not 94 years
13 old?

14 A No, he is not 94 years old.

15 Q Thank you. And Mr. Ricardo
16 Bullock, did you have an opportunity to
17 interview this person?

18 A Yes, briefly.

19 Q And what did this person say to
20 you that had happened?

21 A Basically, he was the one that let
22 me know that he gave me a brief, if I wanted

1 to say that at all, a description of the
2 shooter and that was it. A skinny black male
3 is what I was given. And then he said he
4 didn't see much.

5 Q We used to have this on the old
6 paper 251, was the suspect known to the
7 victim?

8 A He said he didn't see specifically
9 who it was, so he couldn't tell me anything.
10 A lot of times --

11 Q But he did give you a description.

12 A He gave me a brief description. I
13 mean he couldn't give me a complete
14 description or anything like that. He just
15 said skinny black male.

16 Q But he didn't state to you that he
17 did know who this person was.

18 A No.

19 Q And Thomas Harrison, you had an
20 opportunity to interview this person?

21 A Thomas Harrison?

22 Q Victim five on the same page.

1 A Yes, I don't recall.

2 Q You have no recollection?

3 A No, give me a second. I don't
4 recollect.

5 Q Did you have an opportunity to go
6 to Howard University Hospital --

7 A Yes.

8 Q -- to interview any persons? Do
9 you recall interviewing any persons at Howard
10 University Hospital?

11 A I did. And the brief what I was
12 able to give you is basically the two
13 individuals that I talked to. Mr. Eli Morgan
14 was very uncooperative, wouldn't give me
15 anything. The other individual stated that
16 what he was able to give me was what I had
17 stated previously that it was a skinny black
18 male but that he didn't see anything else out
19 of it.

20 As far as who was which, it is --
21 I can't recollect whether it was Thomas
22 Harrison that stated it.

1 Q You said that you interviewed two
2 victims at Howard Hospital?

3 A Yes.

4 Q Drawing your attention to pages on
5 to your narrative, can you please identify
6 which of the numbered complainants were in
7 fact at Howard?

8 A All the report actually says just
9 one was transported to Howard but that was a
10 mistake. There was two that went to Howard
11 University because I know that Eli Morgan was
12 there and, if I am not mistaken, I believe Mr.
13 Ricardo Bullock was also at Howard.

14 Q So the report with regards with
15 Mr. Morgan states not only that his date of
16 birth is incorrect but it also shows that it
17 has the wrong --

18 A Yes, it is human error. I mean we
19 had a lot of stuff going on.

20 Q I appreciate that.

21 You described some of the events
22 occurring following your hearing of the

1 gunshots and that you responded to the
2 location where you believed the gunshots to
3 have been originated. Is that correct?

4 A Yes.

5 Q You mentioned briefly that you
6 drew your firearms. Is that correct?

7 A Yes.

8 Q Okay. Did you in fact point your
9 firearm at anyone when you --

10 A I had no reason to point it at
11 anybody.

12 Q Okay. When you arrived there, you
13 said that the situation was, I believe, and if
14 I mischaracterize exactly what you said, but
15 I understood it to be a chaotic situation.

16 A Correct.

17 Q Okay. And that you said you
18 pushed a lot of people back.

19 A Yes.

20 Q And that you forcefully tried to
21 remove them. Is that correct?

22 A Yes.

1 Q Okay. Did you in fact complete a
2 PD 901-e following this incident?

3 MR. ADAMS: Objection; relevance
4 in terms of what type of administrative report
5 is.

6 CHAIR MILLER: Okay.

7 MR. LeFANDE: This goes to
8 existence of a documentary statement of the
9 officer with regards to the events that he
10 just testified to.

11 CHAIR MILLER: Why don't you say
12 what that report is, though.

13 MR. LeFANDE: A UFIR.

14 MR. ADAMS: I will withdraw my
15 objection to the question.

16 CHAIR MILLER: Okay.

17 THE WITNESS: There was no UFIR
18 completed, based on the fact that it wasn't a
19 pushback as far as engaging into a fight or
20 anything like that. I didn't harm anyone. It
21 was a show of force to basically get people to
22 get away from the area, clear the area and let

1 us assist with the individuals that were shot.

2 At that time, that was more
3 pertinent than anything else. This was saving
4 the individual's life that was shot in the
5 chest.

6 BY MR. LeFANDE:

7 Q For the benefit of the Board and
8 other persons here who haven't been
9 Metropolitan Police Officers, could you
10 explain what a UFIR is?

11 A Yes, it is a Use of Force --

12 Q Use of Force Report?

13 A Yes.

14 Q Okay. Are you familiar with
15 General Order 901.07?

16 MR. ADAMS: Objection; relevance.

17 CHAIR MILLER: What is the
18 relevance?

19 MR. LeFANDE: It is his
20 requirement to complete a UFIR under the
21 circumstances that he described.

22 MR. ADAMS: This hearing is not

1 regarding the --

2 CHAIR MILLER: But that was asked
3 and answered also. I thought it was asked and
4 answered in a different way.

5 MR. LeFANDE: It is as to his
6 obligation to produce this report.

7 MR. ADAMS: And I do not believe
8 that going through this is relevant to the
9 actions that occurred that night.

10 MR. LeFANDE: And yet I am
11 inquiring as to a documentary evidence, --

12 CHAIR MILLER: Okay.

13 MR. LeFANDE: -- a statement made
14 by this very witness as to the very events
15 that he now describes.

16 MR. ADAMS: And the District's
17 contention is answering no. It has already
18 been answered that no report was made.

19 In terms of whether that complies
20 with a policy, that is a legal argument and
21 therefore, in terms from a facts standpoint
22 for this case, it is not relevant.

1 CHAIR MILLER: Okay, I think he
2 has already asked why he didn't write that
3 report. So, I think you should move on.

4 MR. LeFANDE: And we can't compare
5 that to the rule that says he has to write
6 that report?

7 CHAIR MILLER: You can in your
8 closing argument. If you have a ruling you
9 want to argue that he should have.

10 MR. LeFANDE: I need to elicit
11 what his obligations to complete this report
12 are in his testimony.

13 MR. ADAMS: That would be a legal
14 argument, not a factual argument.

15 CHAIR MILLER: This is about the
16 imminent dangers and safety of the club. And
17 I think that we do not want to go -- this is
18 a special kind of hearing. It is a summary
19 suspension hearing and we don't want to get
20 too far off.

21 MR. LeFANDE: How is it that I am
22 going to introduce his regulations as to his

1 requirement to produce this document if he
2 doesn't testify to them? I can't testify to
3 them?

4 MR. ADAMS: Well and the
5 District's contention is that is not relevant.

6 CHAIR MILLER: You are crossing
7 him on his testimony. And it isn't his burden
8 to put forward regulations that you want to
9 argue.

10 MR. ADAMS: If Mr. LeFande wants
11 to make -- write legal briefs, that is on him.

12 BY MR. LeFANDE:

13 Q You testified that you last worked
14 at The Scene in December. Is that correct,
15 Officer Hernandez?

16 A Yes.

17 Q Has anyone informed -- and you
18 stated also that there has not been a
19 reimbursable detail since December at The
20 Scene. Is that correct?

21 A I didn't say since December.

22 Q Okay, since when would you say?

1 A I cannot recall.

2 Q Okay. Has any person discussed
3 with you as to why there has been no
4 reimbursable detail at The Scene for some
5 time?

6 A From what I have heard is money
7 owed to the Department. So, that is why there
8 has been no return detail at that location.

9 Q Do you know an Officer Marques
10 McRae?

11 A Yes.

12 Q Okay, are you aware of any
13 incident involving Officer McRae at The Scene?

14 A No.

15 Q Okay, thank you. Has anyone ever
16 told you that an incident involving Marques
17 McRae was reason that the reimbursable detail
18 was not being provided?

19 MR. ADAMS: Objection. Calls for
20 speculation. Witness is not qualified to
21 answer this question and it's not relevant.

22 MR. LeFANDE: Then it's not

1 speculation that they asked him if someone had
2 said that to him.

3 MR. ADAMS: Okay.

4 CHAIR MILLER: Why isn't it?

5 MR. ADAMS: Not relevant.

6 CHAIR MILLER: Why is it relevant?

7 MR. LeFANDE: Why is it relevant?

8 Because we are now asserting that the
9 reimbursable details being improperly withheld
10 in part because of the Respondent's
11 cooperation and the civil claim against
12 Marquis McCrae.

13 MR. ADAMS: And that's very
14 interesting, because what -- this has just
15 happened within the question. The question
16 became have you heard whether Austin McCrae
17 was involved in the incident, and that is the
18 reason that the -- that MPD reimbursed with
19 detail.

20 Okay, now that does two things.
21 It calls for speculation.

22 CHAIR MILLER: Well I've let in

1 things that call for speculation, so forget
2 that.

3 MR. ADAMS: Okay, but it's
4 certainly not relevant. And I just respond --

5 CHAIR MILLER: I can't -- I don't
6 know what -- you're going to show why it's
7 relevant.

8 MR. LeFANDE: It is relevant.
9 We're trying to illicit evidence as to why
10 this detail is being improperly withheld. Now
11 we've heard from the -- we've heard from the
12 witness --

13 CHAIR MILLER: Why it's being.

14 MR. LeFANDE: As to the bills not
15 being paid. And we are also trying to see if
16 there are any other reasons that this detail
17 is being withheld. And this is information
18 that we have, that the detail is being
19 withheld.

20 And we would like to hear from the
21 witness, if he has any information as to these
22 facts that we assert, or cause for what the

1 detail being withheld. The District of
2 Columbia's Attorney General is basing a very
3 large part of their case as I understand it,
4 on the establishments purported --

5 MR. ADAMS: I want to interrupt
6 you.

7 MR. LeFANDE: Well I would like
8 you not to interrupt me.

9 MR. ADAMS: I will because the
10 fact witness is on the stand, and this
11 possibly goes into that now, and talk about
12 the theory of the case, and talk about facts
13 that this witness has not addressed.

14 CHAIR MILLER: Okay, is part of
15 your defense -- your defense is that the
16 reimbursement detail is being improperly
17 withheld, is that part of your defense in this
18 case?

19 MR. LeFANDE: It's rebutting the
20 Government's defense that it was failed --
21 that they failed to obtain the detail.

22 MR. ADAMS: And the District's and

1 the reason this is beyond the scope, this had
2 -- Officer Hernandez, although he did answer
3 a question on cross examination about his
4 understanding, on direct he never spoke to why
5 his belief, or anything about the detail about
6 why detail was there or not there. So Officer
7 Hernandez is not qualified to discuss this.

8 MR. LeFANDE: And again, this was
9 the dirty laundry that I was trying to have
10 the witness not be privy to before, it's kind
11 of a hairy eyebrow that's unfortunately --

12 CHAIR MILLER: Let's just -- I
13 just -- let's just ask him if he has any other
14 information. Does he know why if it was
15 improperly withheld or something, and let's
16 move on. He said he hear something
17 previously. Do you want to ask him one more
18 question and then we should on. Because this
19 seems very peripheral as well.

20 MR. LeFANDE: Again, I apologize
21 Officer Hernandez for all of this. But the --
22 do you have any other information as to why a

1 detail other than the bills not being
2 purportedly paid, do you have any other
3 information as to why a detail is not being
4 provided to the Scene, the Respondent in this
5 case?

6 OFFICER HERNANDEZ: No.

7 BY MR. LefANDE:

8 Q Thank you. You stated -- going
9 back to briefly to the question about your
10 interviews at the hospital. You did use the
11 word we on a couple of occasions, you said we
12 questioned those individuals.

13 A Yes.

14 Q Who was present with you at that
15 time?

16 A Officer Fogle was also with me.
17 And there was two detectives that were on
18 scene at the hospital center. And at Howard,
19 but we actually beat them to GW and like I
20 said, when we said briefly, it's because they
21 were already doing the investigation, so.

22 Q Was Detective Parker one of those

1 detectives that was present at the hospital?

2 A Yes.

3 Q Do you remember the name of the
4 other one?

5 A I don't.

6 Q Do you know a Sergeant Fox?

7 A Yes.

8 Q Has Sergeant Fox ever spoke to you
9 about the Scene Nightclub?

10 MR. ADAMS: Objection. Beyond the
11 scope of direct and not relevant.

12 CHAIR MILLER: Do you have a more
13 specific question that goes to -- well I'm
14 going to sustain it right now. If you have a
15 more specific question that goes to his
16 testimony related to that, you can ask him.

17 MR. LeFANDE: I'll withdraw the
18 question. No further questions.

19 CHAIR MILLER: Okay, think you.
20 Board questions? Mr. Brooks.

21 MEMBER BROOKS: Yes, thank you
22 Madam Chair. Officer Hernandez, how many

1 officers were assigned to the Stadium
2 Nightclub for reimbursable detail that night?

3 OFFICER HERNANDEZ: Four.

4 MEMBER BROOKS: Four?

5 OFFICER HERNANDEZ: Yes.

6 MEMBER BROOKS: And what about
7 Echostage, any idea how many were there that
8 night?

9 OFFICER HERNANDEZ: No, the
10 Echostage was closed for that evening. So
11 they didn't have a detail for that night.

12 MEMBER BROOKS: Okay. And you
13 indicated that after the gun shots, you
14 encountered what you called bouncers from the
15 Scene?

16 OFFICER HERNANDEZ: Yes.

17 MEMBER BROOKS: And how did you
18 know they were bouncers?

19 OFFICER HERNANDEZ: Wearing a
20 black shirt that said security on it.

21 MEMBER BROOKS: Okay. And have
22 you ever served as a reimbursable detail unit

1 at the Scene in the past?

2 OFFICER HERNANDEZ: Yes.

3 MEMBER BROOKS: And how long ago
4 was that?

5 OFFICER HERNANDEZ: Sometime in
6 November, December.

7 MEMBER BROOKS: Okay. And when
8 you have sent an email stating your
9 availability for the reimbursable detail, have
10 you been able to be deployed when you have
11 requested?

12 OFFICER HERNANDEZ: Yes.

13 MEMBER BROOKS: So there was never
14 an occasion where it wasn't available for you
15 to be deployed at a reimbursable detail unit?

16 OFFICER HERNANDEZ: That's
17 correct.

18 MEMBER BROOKS: Okay. Thank you
19 Madam Chair.

20 CHAIR MILLER: Others? Mr. Short.

21 MEMBER SHORT: Good morning
22 Officer and thank you for your service.

1 OFFICER HERNANDEZ: Good morning.

2 MEMBER SHORT: It sounds like the
3 Scene was quite chaotic that night.

4 OFFICER HERNANDEZ: Yes.

5 MEMBER SHORT: Can you approximate
6 the number of people that were in the street
7 when that approximate number.

8 OFFICER HERNANDEZ: I want to say
9 if I had to guess about five, maybe smaller
10 than that, 500 people maybe. I mean but
11 that's my number I mean. I couldn't exactly
12 tell you because I just saw like a whole lot
13 of crowds and cars, and I was more focused on
14 the individuals that were shot.

15 MEMBER SHORT: Focused on your
16 duties.

17 OFFICER HERNANDEZ: Yes.

18 CHAIR MILLER: Mr. Short, did you
19 ask him how many people were in the street?

20 MEMBER SHORT: Approximately, I
21 was just trying to --

22 CHAIR MILLER: And you answered --

1 MEMBER SHORT: The size of the
2 crowd.

3 OFFICER HERNANDEZ: There was a
4 fairly large crowd that were coming you know,
5 from out of all around Adams Place and stuff.
6 I couldn't give you a specific number.

7 MEMBER SHORT: A very large crowd.

8 OFFICER HERNANDEZ: A very large
9 crowd, yes.

10 MEMBER SHORT: Okay. Well, and
11 you also testified that there was a fleeing
12 vehicle.

13 OFFICER HERNANDEZ: Yes.

14 MEMBER SHORT: So that created a
15 very, very dangerous situation for any crowd
16 that was in the street when this vehicle was
17 fleeing on the opposite side of the road.

18 OFFICER HERNANDEZ: Yes, but at
19 the time that the vehicle was fleeing, it was
20 fairly long before the crowd was on Adams
21 Place into Queens Chapel. So it was I want to
22 say, you know, there wasn't a lot of -- a

1 large crowd at that moment there.

2 But the crowd was more on Adams
3 Place then on Queens Chapel at that time. So
4 it was a fairly small number of people that
5 were there. But yes, had there been a crowd
6 there, a few people would have been hit --
7 would have been struck by the vehicles, yes.

8 MEMBER SHORT: Well again, thank
9 you for your service on that night, and every
10 night all of you officers out there trying to
11 keep us safe in the city.

12 OFFICER HERNANDEZ: Thank you sir.

13 MEMBER SHORT: The average age,
14 could you just -- were young people, very
15 young people?

16 OFFICER HERNANDEZ: Yes. It's
17 usually a younger crowd. Mid 20s. You get --
18 occasionally you have older folks and stuff.
19 But for the most part there, the younger crowd
20 that come up there.

21 MEMBER SHORT: The number of shots
22 that you heard before you responded down to

1 the -- approximate number.

2 OFFICER HERNANDEZ: Approximately
3 about nine.

4 MEMBER SHORT: You heard nine
5 shots.

6 OFFICER HERNANDEZ: Yes.

7 MEMBER SHORT: That's all I have
8 for him. Thank you.

9 CHAIR MILLER: Okay, Mr. Jones.

10 MEMBER JONES: Thank you Madam
11 Chair. You said you heard the -- sorry, you
12 said you encountered employees of the Scene
13 when you reported?

14 OFFICER HERNANDEZ: Yes. When I
15 went down to the Scene, yes.

16 MEMBER JONES: All right, roughly
17 how many employees did you encounter? When I
18 say encounter, that you actually had an
19 opportunity to just lay eyes on and speak to.

20 OFFICER HERNANDEZ: Well speak to
21 -- spoke to just, it was like three of them.
22 As far as seeing, there was -- I saw about

1 maybe six or seven of them.

2 MEMBER JONES: So of the three
3 that you spoke to, did you ask each of them
4 whether or not they could point you to where
5 the owner was?

6 OFFICER HERNANDEZ: Yes, I did ask
7 if anyone knew where the owner was. Only one
8 -- only one of them answered and said that he
9 was up the street on Adams Place.

10 MEMBER JONES: And just for
11 clarification, what was the purpose of you
12 asking, or trying to solicit that information?

13 OFFICER HERNANDEZ: I was given
14 the -- basically questions that I was to ask
15 the owner by one of my lieutenants. And he
16 wanted just to get that as far as for the
17 report that he has to --

18 MEMBER JONES: To complete?

19 OFFICER HERNANDEZ: Complete, yes.

20 MEMBER JONES: Okay, understood.

21 So you also indicated that you were working
22 RDO for the Stadium Club that evening, is that

1 correct?

2 OFFICER HERNANDEZ: Correct.

3 MEMBER JONES: Okay. And you were
4 one of four working?

5 OFFICER HERNANDEZ: Yes.

6 MEMBER JONES: Okay. And you
7 responded to the Scene based on the gunshots
8 that you heard, is that correct?

9 OFFICER HERNANDEZ: Yes.

10 MEMBER JONES: Is that the only
11 reason that you responded to the Scene?

12 OFFICER HERNANDEZ: Yes.

13 MEMBER JONES: Okay. So is it
14 safe to say that you were not dispatched there
15 by the result of a 911 call?

16 OFFICER HERNANDEZ: That's
17 correct.

18 MEMBER JONES: Okay. What is the
19 process by which you are dispatched in
20 response to a 911 call from a general sense.
21 I don't -- I'm not familiar with the process.
22 I'm trying to understand what that process is.

1 OFFICER HERNANDEZ: Generally, if
2 you have like say for instance, had there been
3 no reimbursable detail up there, a unit from
4 505 would have gotten the call for signs of
5 gunshots at that location.

6 At that point, CIC would have come
7 over saying shots fired, received, multiple
8 gunshots at this location.

9 MEMBER JONES: And you said a unit
10 from 505?

11 OFFICER HERNANDEZ: Yes.

12 MEMBER JONES: Okay. Are you
13 aware of whether or nor a unit from 505
14 arrived at the Scene as the result of a 911
15 call?

16 OFFICER HERNANDEZ: I am not aware
17 of that. I --

18 MEMBER JONES: It doesn't mean
19 that -- you're not aware of it?

20 OFFICER HERNANDEZ: No, because --

21 MEMBER JONES: Okay.

22 OFFICER HERNANDEZ: When

1 everything was going on, basically I was for
2 the most part pretty much the only person on
3 the radio trying to get EMS to come up. How
4 many you know, trying to let them know how
5 many gunshot people -- how many victims we
6 had. Stuff like that.

7 MEMBER JONES: Were you first on
8 the scene?

9 OFFICER HERNANDEZ: Yes.

10 MEMBER JONES: Okay. And you --
11 once you arrived on the scene, I think I
12 understood from your testimony that you called
13 for lack of a better expression, what I hear
14 on TV, you called for backup. I don't know if
15 that's the proper term or not.

16 OFFICER HERNANDEZ: No, the first
17 thing I called for was the board. I called
18 for the ambulance to come up because of a
19 gunshot individual.

20 Once we encountered the
21 individuals that were trying to take them into
22 the car I guess, and they were being kind of

1 combative with us, at that point is when I was
2 able to you know, to get my hand free enough
3 to say hey, send me more units up here.

4 That's when I called, and I was
5 probably the third transmission that came
6 over.

7 MEMBER JONES: When you said third
8 transmission?

9 OFFICER HERNANDEZ: Meaning sounds
10 of gunshots at the location, and then there
11 was silence, and then I said send me the
12 board, I got a black male with a gunshot wound
13 to his torso.

14 MEMBER JONES: Yes.

15 OFFICER HERNANDEZ: And then the
16 third one was can I have some more units
17 respond up.

18 MEMBER JONES: I understand. And
19 roughly how long did it take for the other
20 units to respond?

21 OFFICER HERNANDEZ: A couple of
22 minutes.

1 MEMBER JONES: A couple of
2 minutes?

3 OFFICER HERNANDEZ: Yes.

4 MEMBER JONES: Okay, and roughly
5 how many, you said -- I think you indicated
6 this earlier during your testimony, but I lost
7 track of the number of police units that were
8 on the scene, or police individuals that were
9 on the scene.

10 OFFICER HERNANDEZ: There was a
11 lot. I couldn't tell you a specifically
12 amount. But I -- yes, it was a fairly a good
13 amount.

14 MEMBER JONES: Okay, now when
15 you've worked -- this goes more to a
16 procedural type of question, if you don't know
17 the answer, that's fine. I'm just trying to
18 understand. So you get assigned an RDO
19 detail, or an assignment based on you putting
20 your name in a hat so to speak, quote,
21 unquote, as in volunteering for that service,
22 is that correct?

1 OFFICER HERNANDEZ: Yes.

2 MEMBER JONES: Okay. So when you
3 put your name in the hat to volunteer for that
4 service, you receive an assignment based on
5 your willingness to support that activity, is
6 that correct?

7 OFFICER HERNANDEZ: Yes.

8 MEMBER JONES: Okay. When you get
9 compensated, I don't care about the dollar
10 amount, I just want to understand. What is
11 the process for getting paid. So you show up
12 for this assignment, do you get paid before
13 you even show up? Do you get paid after you
14 show up? Do you have to log into a logbook?
15 What is that process that they know that you
16 actually fulfilled your duty?

17 OFFICER HERNANDEZ: There's a form
18 that we have, it's an ABC form I believe, it's
19 a 157.

20 MEMBER JONES: 157?

21 OFFICER HERNANDEZ: Yes, were
22 basically we sign it, put our name, CAD, what

1 club detail we're working. Then we go to the
2 ABRA managers and they'll sign it saying that
3 we were there.

4 Then we turn that into our club
5 coordinator and they give us the 1130s and
6 then that's how we get paid with our 1130s.

7 MEMBER JONES: Okay. So that
8 form, you said you give it to the ABRA
9 manager, that's the establishment?

10 OFFICER HERNANDEZ: Yes.

11 MEMBER JONES: Okay. So the
12 establishment would need to sign off on said
13 document in order for you to get paid.

14 OFFICER HERNANDEZ: Correct.

15 MEMBER JONES: If that document
16 isn't signed off appropriately by the ABRA
17 manager, then you're not going to get
18 compensated for the services that you rendered
19 whether you showed up there or not, is that
20 correct?

21 OFFICER HERNANDEZ: Right. In a
22 sense, I mean we still get paid, but they try

1 to figure out like okay, why wasn't this form
2 signed correctly? Then they'll just go back
3 to the establishment and say okay, why didn't
4 you sign this.

5 And that will go from there. But
6 I couldn't specifically tell you all the --
7 all the legalities as far as that goes.

8 MEMBER JONES: Understood.

9 OFFICER HERNANDEZ: The only thing
10 I know is that I've got to get my 157 signed,
11 and my 1130 is signed by my sergeant and then
12 I await the detail.

13 MEMBER JONES: Understood.

14 OFFICER HERNANDEZ: I return the
15 157 and that's.

16 MEMBER JONES: Okay. Whenever
17 you've worked an RDO or an reimbursable
18 detail, is it your -- do you feel like it's
19 your responsibility to ensure that you get the
20 document signed by the ABRA manager?

21 OFFICER HERNANDEZ: Yes.

22 MEMBER JONES: Okay. Have you

1 ever -- have you ever failed to get your
2 document signed by an ABRA manager?

3 OFFICER HERNANDEZ: No.

4 MEMBER JONES: When you worked the
5 RDO detail at the Scene, did you have any
6 issues getting your document signed by any
7 ABRA manager?

8 OFFICER HERNANDEZ: I never took
9 the forms inside to get them signed.

10 MEMBER JONES: Okay.

11 OFFICER HERNANDEZ: So I really
12 couldn't say.

13 MEMBER JONES: Fair enough. Thank
14 you. Thank you Madam Chair.

15 CHAIR MILLER: Okay. I just have
16 a few questions.

17 OFFICER HERNANDEZ: That's fine.

18 CHAIR MILLER: So I think you said
19 that you worked reimbursable detail at the
20 Scene previously.

21 OFFICER HERNANDEZ: Yes.

22 CHAIR MILLER: Did -- were you

1 ever working when there were incidents of
2 violence that you had to respond to or deal
3 with?

4 OFFICER HERNANDEZ: Yes. There's
5 been fights, but by the time you know, you get
6 down there and there's a large crowd, you know
7 you really don't know who was actually
8 involved. There's no really complaint or
9 anything like that. They just kind of go
10 about their business. Move on up the road,
11 stuff like that.

12 But in terms of like actually
13 seeing hey, this one and this one were
14 fighting, I mean it's it doesn't happen a lot.
15 A lot of times it will be a crowd. And then
16 they'll disperse as we start coming towards
17 their location.

18 CHAIR MILLER: So in those
19 instances, are you saying you don't know
20 whether they were patrons of which club? Or
21 can you always know patrons of the Scene when
22 you're working the Scene, or?

1 OFFICER HERNANDEZ: Because of the
2 age and the only thing you know, the only
3 reason why they would be there would be
4 because of the Scene Nightclub. A lot of
5 times we know that they're coming from the
6 nightclub.

7 CHAIR MILLER: Okay, so the other
8 nightclubs in the area, such as the Stadium
9 and whatever, are farther enough away so their
10 patrons wouldn't be a part of the crowd that's
11 found near the Scene?

12 OFFICER HERNANDEZ: Correct. Yes,
13 a lot of times you know, the people that come
14 to the Stadium Nightclub, they'll either park
15 on the lot, or they'll park across the street,
16 which is a parking garage. A few of them will
17 park down on Adams Place.

18 But a lot of those, it -- I want
19 to say it is a different crowd. I mean you
20 know, it's pretty pricy to go to the Stadium
21 Nightclub. So a lot of times they'll just get
22 in and get out, and that's that.

1 CHAIR MILLER: So you said that
2 other buildings that are in the area of where
3 the Scene is, is a homeless shelter, and what
4 was the other building?

5 OFFICER HERNANDEZ: There is a
6 homeless shelter and a Waste Management, Metro
7 Access is there.

8 CHAIR MILLER: Okay. You also
9 said that reimbursable detail prevents
10 escalation.

11 OFFICER HERNANDEZ: It helps.

12 CHAIR MILLER: Can you elaborate a
13 little bit on that with respect to the Scene
14 in particular, that location.

15 OFFICER HERNANDEZ: Usually -- you
16 occasionally have on occasion, a couple of
17 like you know, people that get into
18 disagreements or whatnot. But being that you
19 know, you see officers on there, it kind of
20 deters a lot of stuff to happen in front of
21 us.

22 So in that sense, it does help

1 because of the deterrence of a lot of like
2 especially your more violent crimes.

3 CHAIR MILLER: Okay. And then if
4 you are there, your closer if something
5 happens out there.

6 OFFICER HERNANDEZ: Correct. Not
7 only are we closer, but I mean where -- and I
8 don't want to go back and just the speculation
9 aspect of it, but had there been a
10 reimbursable detail, you know where we usually
11 park at, and where an officer sits at, the --
12 you know, the shooting may have not happened.

13 If it had happened, we probably
14 would have had an arrest with it, based on the
15 fact that somebody would have saw the shooter.
16 Especially I mean he shot nine times. After
17 the first one, it draws your attention, and
18 then from that point, you know we would
19 immediately you know converge on that suspect.

20 CHAIR MILLER: Okay. And then one
21 other quick -- one other thing I want to
22 follow up on was I think you made a statement

1 that reimbursable detail minimizes traffic.

2 Did you say something like that or no?

3 OFFICER HERNANDEZ: Not in -- no.

4 Not in that -- I mean there's going to be
5 traffic there because of the -- you have three
6 nightclubs that are located like in very close
7 proximity to each other.

8 So you know, the people that park
9 in that area, but once we have the -- when we
10 feel that the streets are pretty much, every
11 -- all the parking spaces are used. The
12 parking garages are already full, then we'll
13 stop all traffic from coming up Queens Chapel
14 road to make sure that all the patrons that
15 are getting out of the Echostage and the
16 Stadium Nightclub, and even the Scene, you
17 know, don't get hit by a car as they're
18 crossing the street or whatnot.

19 CHAIR MILLER: Okay. All right.
20 Thank you very much.

21 OFFICER HERNANDEZ: Thank you.

22 CHAIR MILLER: All right, are

1 there any questions based on the Board's
2 questions?

3 MR. ADAMS: The District has just
4 a couple of questions just for redirect
5 purposes.

6 CHAIR MILLER: Okay.

7 REDIRECT EXAMINATION

8 BY MR. ADAMS:

9 Q In terms of -- and this is in
10 response to some of the questions from the
11 Board from cross examination.

12 Can you provide the Board a
13 description of where the Scene is located
14 relative to the -- to I guess the intersection
15 of Queens Chapel and Adams Place. Can you
16 provide a description?

17 A About a block down on Adams Place.
18 It's closer towards the bottom of the hill.

19 Q And lastly, I mean I think is this
20 road open access, or is it dead end, I mean?

21 A Adams Place is actually a dead
22 end.

1 Q Okay.

2 A All you have is businesses there
3 and it's a dead end.

4 MR. ADAMS: No further questions.

5 CHAIR MILLER: Okay.

6 RECROSS EXAMINATION

7 BY MR. LeFANDE:

8 Q Officer Hernandez, you testified
9 that you thought a detail on -- at the Scene
10 would have helped. In the course of
11 responding to the shooting, wasn't there in
12 fact a special police officer present in that
13 block of Adams Place?

14 A I don't know. I didn't see one.
15 There could have been. But I'm not sure if --
16 I didn't see anyone that night.

17 Q You testified as to the
18 ShotSpotter. Could you please describe what
19 that is in fact.

20 A It's basically a system that
21 detects gunshots to that location.

22 Q And did you receive any, or are

1 you aware of any ShotSpotter information that
2 came as a result of the shooting on the
3 morning of May 17 near the intersection of
4 Queens Chapel and Adams Place.

5 A Yes. It came over the radio and
6 it was on the 2200 block of Adams Place.

7 Q And did at any time, anyone at
8 this -- does the ShotSpotter produce maps as
9 to the location?

10 A It does.

11 Q Did you receive such maps in this
12 instance?

13 A I did not see it. The only --

14 Q Were you aware of the existence of
15 such maps?

16 A Yes.

17 Q For this particular instance?

18 A No, the CIC -- well the radio
19 acknowledged that there was sounds of gunshots
20 in the 2200 block of Adams Place.

21 Q And if you were to -- if you
22 previously examined these sorts of maps

1 produced by the ShotSpotter in other
2 instances.

3 A Yes.

4 Q I'm sorry, I need to --

5 A Have I?

6 Q The court reporter cannot record a
7 head nod or an um-hum.

8 A Yes.

9 Q You did say yes, so. Do these
10 maps offer more specific locations than the
11 hundred block of a particular street?

12 A Close proximity, yes.

13 Q Do they show which side of the
14 street that the shooter would have been
15 standing?

16 A I can't recall whether it has, or
17 it does or it doesn't.

18 Q Would the map show which end of
19 the block the shooter may have been standing?

20 A Possibly, but I'm not a hundred
21 percent sure.

22 Q So that map in fact might give us

1 some information as to where that shooter was
2 in the 2200 block of Adams Place, had we had
3 that here today?

4 A Well I can tell you from where the
5 shell casings were found, they were on the
6 same side as the Scene Nightclub. On the same
7 side of the street.

8 Q I understand that to be your
9 testimony. Have you ever shot an automatic
10 handgun before?

11 MR. ADAMS: Objection.

12 MR. LeFANDE: No, this is very
13 important.

14 MR. ADAMS: I'm sorry, I'm
15 speaking my objection --

16 CHAIR MILLER: Let me hear the
17 objection first.

18 MR. ADAMS: Objection to
19 relevance. I think we've -- we've talked
20 about the ShotSpotter, we've talked about
21 technology. The officer's spoke about where
22 the shell casings were.

1 I think you know, he said where
2 the location of them has been. This is just
3 redirect question -- or redirect, or in this
4 case recross questions based upon what was
5 asked by the Board. He's been given a lot of
6 leeway. I think --

7 CHAIR MILLER: Right. Okay.

8 MR. ADAMS: A lot of leeway has
9 been given.

10 MR. LeFANDE: Madam Chair, the
11 Officer's testified that he's making a very
12 strong point here that shell casings having
13 been found on one side of the street speaks to
14 where the shooter was standing. And the
15 Officer is well aware that the shell casings
16 ejected from a 40 caliber handgun go quite a
17 considerable distance from where the shooter
18 is standing. And I would like him --

19 MR. ADAMS: I'm sorry, are we
20 talking about the testimony that he wants
21 Officer Hernandez to discuss?

22 MR. LeFANDE: Yes. Because I do

1 just suggest it to him.

2 MR. ADAMS: I'm sorry, there's a
3 speaking objection that's -- I mean he's
4 speaking argument in terms of the evidence
5 that should be coming out of my witness'
6 mouth. I have a problem.

7 CHAIR MILLER: That -- right. I'm
8 sorry, I thought -- right. No, that's not
9 appropriate. So he testified to his personal
10 knowledge as to where he saw the shells.

11 MR. LeFANDE: Right.

12 CHAIR MILLER: So how is it
13 relevant whether he has shot a certain kind of
14 gun before?

15 MR. LeFANDE: Because he's
16 familiar with how the shell casings are
17 ejected from the pistol. And therefore can
18 speak to the distance that the shooter would
19 be standing from where the shell casings would
20 be found. And that makes a big difference
21 from what the ShotSpotter is saying as to
22 where the shooting sound is coming from.

1 CHAIR MILLER: I didn't -- did you
2 -- did the witness testify as to where the
3 shooter would have been standing? Or just
4 where the shells were found?

5 OFFICER HERNANDEZ: Where the
6 shell casings were found.

7 CHAIR MILLER: Okay.

8 MR. LeFANDE: There's a very
9 strong inference there by stating that the
10 shell casings -- when I asked him about which
11 side of the street that the ShotSpotter might
12 have located the shooter, he's making -- he's
13 being very strongly asserting that the shell
14 casings are being found on the eastside of the
15 street.

16 And I am asking him to tell us
17 about why that might not be where the shooter
18 was.

19 CHAIR MILLER: Okay. Now --
20 that's overruled. He's just testified to his
21 personal knowledge as to where he saw. And
22 he's not testifying to as far as I heard, any

1 implications on that, or conclusions to be
2 drawn from that.

3 MR. LeFANDE: Thank you Madam
4 Chair.

5 CHAIR MILLER: Okay.

6 MR. LeFANDE: I have nothing
7 further.

8 MR. ADAMS: It was overruled, so
9 was the question asked?

10 CHAIR MILLER: He's finished.

11 MR. LeFANDE: I'm finished.

12 CHAIR MILLER: He's finished.

13 MR. ADAMS: Okay, fine. I have no
14 further questions.

15 CHAIR MILLER: Finished? Okay.
16 Your finished. Your finished. Thank you very
17 much.

18 OFFICER HERNANDEZ: Thank you.

19 MR. ADAMS: And I might need a
20 couple of minutes to deal with the officers
21 administratively. So I'd like to forestall
22 just -- but before I do that, actually I might

1 have a point to raise regarding the
2 proceedings here. Should I do that?

3 I would like to ask for a two or
4 three minute recess just for -- to do officers
5 and for a quick comfort break.

6 CHAIR MILLER: Okay.

7 MR. ADAMS: But I do want to raise
8 an issue regarding proceedings on motions.

9 CHAIR MILLER: Okay.

10 MR. ADAMS: Okay.

11 MR. LeFANDE: Can we have ten
12 since we've been at this for over two hours
13 now?

14 CHAIR MILLER: Okay. Ten minutes?

15 MR. ADAMS: Well let me raise the
16 issue then now. The issue that I'm having is
17 that --

18 CHAIR MILLER: Okay, we'll think
19 about this then.

20 MR. ADAMS: We have witnesses who
21 are on the stand, there's a -- there's more or
22 less, I'd like to have some type of ruling

1 from the Board so as to how we will deal with
2 these issues. And if it's inappropriate or if
3 it really messes with the timing of the
4 hearing, let me know.

5 CHAIR MILLER: All right.

6 MR. ADAMS: I'm having problem
7 here with the fact that when Respondents are
8 making or just a response, that they're
9 speaking into the record facts and
10 assumptions, I don't want into the record, and
11 also in the presence of witnesses.

12 I ask that we only speak about the
13 evidentiary basis, but not in terms of
14 hypothesis or any type of information that the
15 type of testimony that the person wants. I
16 feel that that taints the testimony very
17 harmfully.

18 It taints the record. Obviously,
19 it might -- I mean obviously we can't appeal
20 things. But they can. So I mean I really do
21 think that it's inappropriate for anything
22 above the evidentiary basis to be discussed

1 and any of those objections.

2 CHAIR MILLER: Right. Okay. Now
3 I would agree with you, especially based on
4 that last incident. I wasn't aware that he
5 actually was going off and that you were
6 actually saying things that the witness had
7 not said.

8 And this is a very special -- this
9 is a summary suspension hearing where we
10 should be focusing on safety and danger. And
11 I think we're getting a little far off in any
12 event.

13 So and you can make all the legal
14 conclusions that you want later on. But we're
15 talking about putting like Mr. Adams says,
16 like facts on the record. That as an attorney
17 that aren't on the record, that is not
18 appropriate.

19 And we don't always know -- I
20 don't always know where you're going if you're
21 doing that. But please don't do that.

22 MR. LeFANDE: I will refresh the

1 Board's recollection that the first time this
2 happened, I asked that the witness be excused.
3 I got a little bit of -- the Board indulged
4 me, but I got a little bit of push back in
5 that regard.

6 As learned counsel for the
7 Attorney General is well aware, that when we
8 do these sorts of matters before the Superior
9 Court, the attorneys do this out of the
10 presence of the witness. And when an issue as
11 to relevance arises, it necessarily must be
12 discussed, the parties theories of the case,
13 and where they intend to take and elicit the
14 witness's testimony.

15 It's what is done there, is that
16 the parties approach the bench. The
17 attorney's approach the bench and a thing
18 called a husher is turned on, where it
19 generates white noise over the PA system, such
20 that the witness and the other people in the
21 courtroom cannot hear what is being said. But
22 it is being preserved on the record

1 nevertheless.

2 I am trying to figure out some way
3 that I can address these issues as to
4 relevance, without tainting the witness's
5 testimony. And unfortunately, I felt kind of
6 uncomfortable when I first asked for the
7 witness to leave the room, the Chair said that
8 she'd never heard of such a thing.

9 And I was trying to not balance a
10 fine line here, where I can address this issue
11 without tainting the witness's testimony.

12 CHAIR MILLER: I say I haven't
13 heard of this before because we many times
14 there will be relevance objections, and you
15 can say what the relevance is to the subject
16 matter without putting out all these words as
17 to what you were trying to get the evidence
18 on. Or want the witness to say.

19 So if you could just be more --

20 MR. LeFANDE: I would ask that if
21 I ask the witness to be excused for a moment,
22 I probably have something that needs to be

1 said that shouldn't be heard by them.

2 CHAIR MILLER: If you need to do
3 that once in a while, we can do that.

4 MR. LeFANDE: Yes, I will try to
5 limit it, but I --

6 CHAIR MILLER: But it shouldn't be
7 the normal course of action. Because this
8 isn't a case that's so different from any
9 other case.

10 MR. LeFANDE: Well, again this is
11 a very ordinary thing that happens in
12 evidentiary hearings.

13 CHAIR MILLER: I'm very well aware
14 of other courts and administrative bodies and
15 hushers and what happens. But I'm also aware
16 of what happens here, and I don't see the need
17 that that should have to happen too often.

18 So I don't know if that answers
19 your question Mr. Adams, but for you to jump
20 up and object if --

21 MR. ADAMS: And in additional
22 would just like five minutes for us to do a

1 MR. LeFANDE: We would ask for ten
2 so I can get a cup of coffee and stay
3 sentient.

4 CHAIR MILLER: Okay. So let's
5 take ten, but we do not think that this case
6 should you know, go on into the evening. If
7 you all would focus on the question, the
8 immediate question that's before us, as I said
9 before, not on --

10 MR. LeFANDE: Well I will
11 certainly assert that the shooters
12 relationship both physically and socially to
13 the establishment is absolutely a major point
14 of contention here. And if we can establish
15 --

16 CHAIR MILLER: Well that -- you'll
17 have your case to make. You'll have your case
18 to make. But it's not through all of the
19 Governments' witnesses that way.

20 All right, ten minutes.

21 MR. ADAMS: So 12:25?

22 CHAIR MILLER: Yes.

1 (Whereupon, the foregoing matter
2 went off the record at 12:15 p.m.
3 and went back on at 12:31 p.m.)

4 CHAIR MILLER: Okay, we're back on
5 the record. Mr. Adams, are you --

6 MR. ADAMS: Yes, I'd like to call
7 Sergeant Kopp to the stand.

8 CHAIR MILLER: Good afternoon.
9 Thank you for coming down. Do you swear to
10 tell the truth, the whole truth, nothing but
11 the truth?

12 SERGEANT KOPP I do.

13 CHAIR MILLER: All right, thank
14 you. Have a seat.

15 WHEREUPON,

16 SERGEANT JEFFREY KOPP
17 was called for examination by Counsel for the
18 Government, having first been duly sworn,
19 assumed the witness stand, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ADAMS:

1 Q How you doing Sergeant Kopp?

2 A Very well, how are you?

3 Q Good. Can you please state your
4 name and spell it for the record.

5 A Yes, I'm Sergeant Jeffrey Kopp,
6 J-E-F-F-R-E-Y K-O-P-P.

7 Q All right. And Sergeant Kopp, you
8 are employed by the Metropolitan Police
9 Department, correct?

10 A That's correct.

11 Q All right. And how long have you
12 been an employee of the Department?

13 A Since September, 2007.

14 Q And you're currently assigned to
15 the 5th District, right?

16 A Yes.

17 Q Okay. And can you tell the Board
18 actually where you're assigned to, and what
19 your PSA is.

20 A Yes, I'm currently assigned to the
21 5th District in PSA 507.

22 Q Okay. And where is the 507 PSA

1 located?

2 A The 507 is located in the Benning
3 Road corridor, between Maryland Avenue and
4 Bladensburg Road. C Street NE.

5 Q And I apologize, I should have
6 asked you this, for how long have you been a
7 sergeant?

8 A Since January.

9 Q Okay. And as a sergeant, what's
10 your current role as sergeant, and -- yes,
11 what is your current role?

12 A I'm a patrol supervisor on the
13 midnight shift.

14 Q And for the midnight shift, and
15 what do you do I guess very briefly, you know,
16 what are your brief duties?

17 A Supervising the units in the
18 field, making sure they're handling their
19 assignments like they're supposed to.
20 Reviewing the reports, answering calls, that
21 kind of thing.

22 Q Are you familiar with an

1 establishment within the 5th District named
2 the Scene?

3 A Yes I am.

4 Q And how are you familiar with that
5 establishment?

6 A I'm familiar with it from the
7 radios I went and responded to there -- the
8 shooting that we had there a couple of weeks
9 ago.

10 Q Can you tell us more than --

11 CHAIR MILLER: Excuse me.

12 Sergeant can you either speak up a little
13 more, or speak nearer the microphone.

14 SERGEANT KOPP Sorry, yes.

15 Absolutely.

16 BY MR. ADAMS:

17 Q And can you tell us whether or not
18 you are a -- whether PSA 507, whether that is
19 the same PSA as the PSA where the Scene is
20 located?

21 A No it is not.

22 Q Okay, now turning to the night --

1 turning to May 17, you were on duty correct?

2 A Yes I was.

3 Q And did any -- to your
4 recollection, did any incidents occur as
5 relates to Adams Place NE on May 17?

6 A Yes it did. Responded to a
7 shooting at that location.

8 Q Okay. And you say that you
9 responded to a shooting. Approximately what
10 time did you respond to the shooting?

11 A I don't specifically recall. I
12 believe it was between 2:00 and 3:00 a.m.

13 Q Okay. And can you explain to --
14 describe for the Board, describe to them and
15 explain the circumstances, in terms of your
16 response to the shooting.

17 A Right. I originally responded to
18 that location because I heard another officer,
19 Officer Hernandez' voice on the radio, that he
20 had shots fired in that location. A short
21 time later he advised that he had at least two
22 individuals shot at the location.

1 When I arrived, I saw him just a
2 little -- a short distance from the corner of
3 Queens Chapel and Adams Place, tending to two
4 victims which were on the ground next to a
5 vehicle. It was parked in the 2200 block of
6 Adams Place. There was also a very large
7 number of people both on the sidewalk and in
8 the street. And a high volume of vehicle
9 traffic attempting to leave the area.

10 Q All right. And so once you
11 arrived, and, I guess, when you arrived up on
12 there, where specifically were you at that
13 point when you arrived upon the scene?

14 A I approached my vehicle on Queens
15 Chapel just to the -- I guess it would be the
16 east of Adams Place.

17 Q And what as your role?

18 A My role was to one, find out what
19 we actually had there, yo direct the other
20 units who were responding to the scene,
21 establish a crime scene and locate the crime
22 scene, and make other notifications to deploy

1 the assets that we needed to handle that
2 situation.

3 Q And why was that role necessary?

4 A The role is necessary because the
5 officers are tending to multiple different
6 locations, and frankly, it's not their
7 responsibility to make sure that that occurs.
8 It's mine to coordinate the response and
9 actions that happen after that.

10 Q Okay. And can you describe for
11 the Board what you observed once you arrived,
12 I guess, at Queens Chapel and Adams Place.

13 A Yes, the club zone units were
14 already there on Adams, attempting to assess
15 what they had. I observed, like I said, the
16 two victims closest to Queens Chapel next to
17 -- they were actually laying on the ground
18 next to a vehicle that was parked there.
19 Then, there was quite a large number of
20 people, like I said, in the street and on the
21 sidewalk. I noticed a couple of the other
22 club zone units were down about midway down

1 the block with another victim. And those are
2 the two that I saw, or I'm sorry, it would be
3 three. And then I witnessed the response from
4 everybody else that also responded.

5 Q And can you describe, in terms of
6 a number of people, I mean, what number are we
7 talking about? I mean, are we talking more
8 than 100 people or how many people were there?

9 A It was definitely more than 100.
10 The -- as I recall, the entire block and the
11 street was full of people, both in the street
12 and on the sidewalk.

13 Q Okay. And you said that -- so can
14 you describe -- you said that your task was
15 working with establishing a crime scene and
16 helping to coordinate traffic. Can you
17 describe how you were able to do that?

18 Q I'm sorry, how I was able to?

19 A To establish a crime scene at that
20 time.

21 Q It required me to call more units
22 to the scene, because we had a crowd that was

1 actually refusing to back up and let us work.
2 We had to have units, basically, stand
3 shoulder to shoulder and direct the crowd to
4 move back onto the sidewalk.

5 There were vehicles that I had to
6 have several officer direct traffic to get the
7 vehicle traffic out of the block, so that we
8 could get the ambulances and the fire
9 apparatus into the block. I also had other
10 units who were setting up crime scene tape as
11 they located shell casings, clothing, blood
12 trails, that type of thing.

13 Q Now, in terms of dealing with
14 traffic, I guess can you describe, I mean, I
15 guess was there -- were people -- was there
16 cars or people traveling in that area as well?

17 A Yes, the street was completely
18 gridlocked with vehicles trying to get off of
19 Adams Place onto Queens Chapel.

20 Q And to what extent, if any, was it
21 problematic to you dealing with the crime
22 scene, or the police's efforts at that time?

1 A It was problematic just trying to
2 get the emergency first responders in there.

3 We had no where to go. It was almost
4 impossible for the fire apparatus to get up
5 the street until we directed traffic to go
6 towards 22nd Street, I believe it is. We
7 couldn't even get the fire trucks and the
8 ambulances into the block.

9 Q All right. And in terms of -- can
10 you describe your ability -- the police's
11 ability to get compliance in terms of
12 cooperation with dealing with traffic
13 management.

14 A It was very hard to get it under
15 control. Orders were being -- orders to stop
16 vehicles or to clear out of the street were
17 being disregarded. And, basically, it was a
18 free for all that was very hard to get under
19 control.

20 Q All right. Now in terms of -- in
21 terms of being a sergeant, I guess normally
22 where -- when you work within a PSA, can you

1 tell us where the officers normally work.

2 A The patrol officers?

3 Q Yes.

4 A Every patrol officer is assigned
5 to a specific PSA which is a smaller portion
6 fo the Districts. Our District happens to be
7 broken into seven different smaller PSAs. And
8 all those officers are assigned to one of
9 those PSAs within the District.

10 Q And when, if any time, -- or when
11 -- are there any cases when officers deviate
12 from those PSA locations?

13 A Yes, they can be called out of
14 their PSA to handle assignments if there's if
15 the units that are assigned to that PSA are
16 already on an assignment. If somebody's
17 needed, we pull from another PSA to help cover
18 those assignment.

19 Q Now the speaking to -- now going
20 to the night of, or morning of May 17, can you
21 tell us -- can you tell us for the record,
22 whether there were only people from the local

1 PSA were there, or were other officers from
2 other PSAs there?

3 A There were officers from other
4 PSAs there.

5 Q And how did that occur?

6 A When a call of that nature goes
7 out, pretty much everybody that's available is
8 going to respond just because they know we're
9 going to have to follow ambulances to the
10 hospital. We're going to have to use people
11 to set up a perimeter. We're going to need
12 people to stand with the crime scene. So
13 normally, in that situation, the officers are
14 experienced enough, they know that if they're
15 available, they need to come, unless they're
16 told not to.

17 Q So how many officers responded on
18 -- approximately how many officers responded
19 on May 17?

20 A I don't have an exact number, I
21 know the three club zone units were definitely
22 there. And then I saw at least six or seven

1 other PSA units, in addition to myself, and
2 the three lieutenants who were on the scene.

3 Q Now you also -- now you state that
4 -- I guess, you stated at some point that the
5 officers have to go to hospitals. How does
6 that relate to May 17, in terms, of officers
7 going to the hospitals?

8 A Right. Anytime we have a victim
9 of a violent crime, in this case the shooting,
10 we send an officer with that individual victim
11 to the hospital. Whether it be following the
12 ambulance, or riding directly behind the
13 ambulance, just for their safety, until we can
14 debrief them and find out what happened. So
15 that night we had what ended up being four
16 victims on the scene on Adams Place. So we
17 had to send four individual officers with four
18 separate ambulances to different area
19 hospitals.

20 MR. LeFANDE: Madam Chair.

21 CHAIR MILLER: Do you have an
22 objection? You don't have to stand up.

1 MR. LeFANDE: Could we get a
2 proffer from the Attorney General as to what
3 this has to do with the establishment's
4 responsibility for any of the incidents that
5 occurred on May 17? We seem to be getting a
6 lot of details about police procedures here.

7 But this seems to have wandered
8 very far away from evidence as to who was
9 involved. And how the establishment in
10 question could possibly have mitigated the
11 events that occurred. And if we could just
12 simply have an explanation from the Attorney
13 General as to how this relates to those
14 things, I will withhold my objection.

15 CHAIR MILLER: Okay.

16 MR. ADAMS: Well, there really is
17 no question, but I'll be honest with you, if
18 the District is getting to where we're talking
19 about, we're having testimony regarding the
20 access, actually, that night. The issues that
21 are here are whether -- the issue for this
22 hearing is whether or not imminent danger was

1 presented. And so that the -- and the
2 testimony goes towards, is relevant in that
3 respect. So I would respectfully like to be
4 allowed to answer the rest of my questions to
5 the officer.

6 CHAIR MILLER: Okay.

7 MR. ADAMS: But there's no
8 question -- first of all I think at this point
9 it's improper, because it's really no question
10 in front of the Board.

11 MR. LeFANDE: I must take a strong
12 exception to the characterization as to what
13 is before the Board as being whether there was
14 a danger to the public on that evening. I
15 don't think that is a matter that there is any
16 kind of contention --

17 MR. ADAMS: I want to stop real
18 quick.

19 CHAIR MILLER: Okay.

20 MR. ADAMS: We have a witness on
21 the stand.

22 MR. LeFANDE: Regardless --

1 CHAIR MILLER: Don't talk.

2 MR. ADAMS: And again we're going

3 --

4 CHAIR MILLER: But you asked if it
5 was relevant. He said -- he described how it
6 is relevant. I see how it may not be relevant
7 to your exact issue, but that's not the sole
8 focus of the hearing. Public safety and
9 imminent danger, and what the dangers were
10 that night related to what happened, are
11 relevant, I would say. So that's what it is.
12 Go ahead.

13 BY MR. ADAMS:

14 Q Okay. In terms of the officers
15 that were -- that went to the hospitals, do
16 you know whether or not they were assigned to
17 the immediate PSA of, which I guess is 505,
18 for the scene?

19 A Correct. No they were not. Only
20 one of those units was a 505 unit.

21 Q So for emergency situation like
22 that this that occurred on May 17 where

1 officers were pulled in to deal with traffic,
2 to help with getting the emergency vehicles to
3 -- and also with coordination with ambulances,
4 can you describe to the Board the impact upon
5 the District, in terms of patrols, based upon
6 pulling resources.

7 A Well it definitely significantly
8 decreased our manpower for the rest of the
9 District. And took away units that should
10 have been handling assignments in their PSAs,
11 whatever all of those assignments may be. But
12 those individual officers were tied up on the
13 scene of Queens Chapel and Adams Place.

14 MR. ADAMS: There's no question at
15 this point, so I don't know where we're going
16 at this point.

17 MR. LeFANDE: I'm going to object
18 to the relevance, and I'm going to ask that
19 the witness be excused for a moment while we
20 discuss it.

21 CHAIR MILLER: I'm sorry, you're
22 objection was overruled. If you want to

1 discuss a stipulation that there was danger
2 that night, or things like that, that's one
3 thing. But other than that, --

4 MR. LeFANDE: Can we excuse the
5 witness, I want to discuss the stipulation.

6 CHAIR MILLER: No, I don't see a
7 reason, at this point, to excuse the witness.

8 BY MR. ADAMS:

9 Q To your knowledge and your
10 recollection, have there been other occasions
11 in which patrol officers from other PSAs have
12 had to respond to Adams Place and Queens
13 Chapel Road to deal with incidents?

14 A Yes. We typically help out with
15 the traffic posts around the club closing
16 times. So we do send units over there quite
17 frequently on the weekends. I know there have
18 been other instances over in that area. I'm
19 not specifically sure which units have gone
20 there. I don't typically go there.

21 Q And based upon your experience --
22 and now -- to you knowledge, there is -- and

1 I think you can answer this, there's two --
2 are you aware that there's two details in that
3 area, for Echostage and for Stadium?

4 A I know that there are details for
5 that area, yes.

6 Q And based on your knowledge, in
7 terms of traffic and controlling things of
8 that nature, what are the reimbursable
9 details, responsibilities in terms of that?

10 A I can't speak to that. I'm not
11 really sure. I don't work the club zone
12 details.

13 MR. ADAMS: Okay. All right, I
14 have no further questions. I apologize.

15 CHAIR MILLER: Okay. Cross.

16 MR. ADAMS: Or actually, --

17 CHAIR MILLER: Oh, wait a minute.

18 MR. ADAMS: No, no, go ahead. I
19 have no further questions for Sergeant Kopp.

20 CHAIR MILLER: Okay. Is there a
21 cross?

22 CROSS EXAMINATION

1 BY MR. LeFANDE:

2 Q Good afternoon Sergeant Kopp.

3 A Good afternoon.

4 Q Where were you assigned prior to
5 January and your promotion, Sergeant?

6 A I was assigned to the 1st
7 District.

8 Q So was there a time in your career
9 prior to January of this year that you were
10 other assigned to the 5th District?

11 A No, there was not.

12 Q That you were detailed to the 5th
13 District?

14 A We did work with, I forget their
15 unit's name. We did warrant squad type work
16 with the 5th District at one point, across the
17 border, back and forth.

18 Q Did that ever involve the
19 geographical areas surrounding Queens Chapel
20 and Adams Place NE?

21 A No it didn't.

22 Q But prior to January of this year

1 you don't have any experience with the
2 geographic area surrounding the intersection
3 of Queens Chapel and Adams Place NE?

4 A That's correct.

5 MR. LeFANDE: Thank you. I have
6 no further questions.

7 CHAIR MILLER: Board questions?
8 Mr. Short.

9 MEMBER SHORT: Good morning
10 Sergeant. Thank you for your service to our
11 community. On the morning in question, you
12 were the PSA sergeant for which PSA?

13 SERGEANT KOPP I was the PSA
14 sergeant for PSA 507.

15 MEMBER SHORT: 507, okay. And
16 when you got to the scene, can you just give
17 us a brief overview of what you observed
18 immediately, upon arriving.

19 SERGEANT KOPP Right, immediately
20 upon my arrival, I observed Officer Hernandez
21 was the first officer that I saw. And he was
22 attempting to give first aid to one of the

1 victims, who was on the ground. And then like
2 I said, I observed a large number of people in
3 the street, in the sidewalk areas and a lot of
4 traffic trying to leave the area as well

5 MEMBER SHORT: Okay. And as a
6 result, then you called for more assistance.

7 SERGEANT KOPP Yes. I personally
8 did not. One of the other supervisors on the
9 scene did.

10 MEMBER SHORT: Okay. And would
11 you say that kind of diminished the service
12 delivery for all the citizens, or other parts
13 of that area?

14 SERGEANT KOPP I believe so, yes.

15 MEMBER SHORT: That's all that I
16 have.

17 CHAIR MILLER: Okay, thank you.
18 Any other Board questions? Any questions on
19 Board questions?

20 MR. LeFANDE: Nothing.

21 CHAIR MILLER: Okay. Mr. Adams?

22 MR. ADAMS: I have no further

1 questions for Sergeant Kopp.

2 CHAIR MILLER: Okay, thank you
3 very much.

4 SERGEANT KOPP Thank you ma'am.

5 MR. ADAMS: And my fault, there
6 may be an interruption where I might have to
7 sign out officers. But I'll wait until that
8 occurs.

9 CHAIR MILLER: Okay.

10 MR. ADAMS: And so the District's
11 next witness will be Sergeant Rogers.

12 MR. LeFANDE: I'm sorry, can we
13 get a proffer as to what Sergeant Rogers is
14 going to say that's different?

15 CHAIR MILLER: Proffer?

16 MR. LeFANDE: A proffer from the
17 Attorney General as to what they're going to
18 say. This is what we talked about earlier
19 about stipulations. We just had the testimony
20 of an officer who has never had any experience
21 with this area, prior to January. He said he
22 had no experience with the club zone details.

1 And he's been a sergeant for --

2 CHAIR MILLER: Okay, we're not
3 going back to him. What you want a proffer on
4 the next witness?

5 MR. LeFANDE: Well what is it this
6 -- what's this next witness going to testify
7 about, and how is it different then the prior
8 witness?

9 MR. ADAMS: Well this is going to
10 be very different. This is -- this sergeant
11 is dealing with the overtime detail. So it
12 will not have anything, this will not repeat
13 any of the facts that has -- I apologize, as
14 I was emailing Chief Kerns. It has nothing to
15 do with any of the facts that are on that --
16 any of the witnesses that I've dealt with.

17 CHAIR MILLER: Okay.

18 MR. ADAMS: This is a bit out of
19 order.

20 MR. LeFANDE: Thank you.

21 CHAIR MILLER: Okay.

22 MR. ADAMS: Take a seat sir.

1 CHAIR MILLER: Good afternoon.

2 SERGEANT ROGERS: Good afternoon.

3 CHAIR MILLER: I'm just going to
4 swear you in. Okay. Do you swear to tell the
5 truth, the whole truth and nothing but the
6 truth?

7 SERGEANT ROGERS: Yes.

8 CHAIR MILLER: Okay, thank you.

9 WHEREUPON,

10 SERGEANT JAMES ROGERS

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

15 DIRECT EXAMINATION

16 BY MR. ADAMS:

17 Q Good afternoon Sergeant Rogers.

18 A Good afternoon.

19 Q Could you please state your name
20 and spell it for the record.

21 A Sergeant James Rogers. R-O-G-E-R-
22 S.

1 Q And Board's indulgence, I just
2 want to make sure I have the right information
3 here that's pertinent to this witness. And
4 Sergeant Rogers, you work, well obviously, by
5 your title, you are a Sergeant for the
6 Metropolitan Police Department.

7 A Yes sir.

8 Q And how long have you been
9 employed by the Metropolitan Police
10 Department?

11 A 15 years.

12 Q And how long have you been a
13 sergeant?

14 A Eight years.

15 Q All right. And Sergeant Rogers,
16 what is your current position? What's your
17 assignment?

18 A My current position, one of my
19 current positions, is I am the reimbursable
20 detail coordinator at the patrol services and
21 school security bureau.

22 Q And so can you briefly describe

1 what's the responsibilities of that position.

2 A Sure. All reimbursable details
3 from clubs that are sent in to MPD to handle,
4 they first come to me. What I do is I will
5 then schedule them on paper. Forward them to
6 the District in which the club is located.
7 Confirm that staffing will be available. Once
8 I know staffing is available, I will then
9 forward that schedule to the Office of the
10 Chief Financial Officer, to be invoiced.

11 Q Now I'm going to ask you a few
12 background questions. In terms of
13 reimbursable details, can you describe what
14 the reimbursable details program is, and how
15 it works.

16 A Sure. Reimbursable detail is
17 where an establishment, an ABC related
18 establishment, would want to hire police
19 officers, basically as security. It's not
20 like outside employment of course. They don't
21 work inside the establishment, they work on
22 the outside of the establishment. There's

1 certain rules, things they can and cannot do.
2 They have to -- they don't work the door, they
3 don't work inside. Of course if they're
4 called to go inside. But they're mainly for
5 the safety and security of the patrons coming
6 to and from the establishments.

7 Q And are there rules in place in
8 terms of how such details are procured?

9 A Yes. We actually have a
10 reimbursable detail agreement that is sent to
11 each establishment, which they have to agree
12 to and we receive back.

13 Q Approximately I mean, and -- I
14 mean how many establishments have such
15 employees in the city?

16 A Approximately 50.

17 Q Now when an establishment asks for
18 a detail to be done, I mean, how is that done?
19 To be assigned I should say. When an
20 establishment asks for a detail to be
21 assigned, what's the procedure for that?

22 A Well, what they'll do is they'll

1 give me the dates and times that they want the
2 members there. Typically 99 percent of what
3 I do is done by email. They email me the
4 schedule for the month. The request should be
5 submitted 30 days in advance. It's typically
6 not. But at least if we can get a week or so,
7 it works out fine. Now what I do is I take
8 their dates and times, put it onto what we all
9 a PD Form 157, which lists all the dates and
10 times. And then I forward that to the
11 affected District.

12 Q All right, now in terms of the
13 rule regarding -- I'm sorry, in terms of the
14 30 days in advance, is that a rule, or is that
15 --

16 A It's written in the reimbursable
17 detail agreement that they must submit their
18 detail request 30 days in advance.

19 Q And does that -- okay. In some
20 instances that's not always followed?

21 A No.

22 Q Okay. Now they say that 50

1 establishments use reimbursable details, in
2 some of those establishments, is it fair to
3 say that some establishments that they've had
4 them for over a year or so?

5 A Yes.

6 Q Okay. So are you saying at the
7 same time that -- can you describe how
8 frequently establishment must contact your
9 office in terms of having details assigned?

10 A Monthly. We -- the practice years
11 ago was that if a club wanted a certain
12 detail, it would be the same detail every
13 month. We changed that back in 2012, where we
14 wanted to hear from the club every month to
15 reaffirm to us that yes, we still want to
16 continue the detail. This is how many people
17 we want. So we required the request to come
18 in monthly.

19 Q And what part of your position, if
20 any, requires or has anything to deal with the
21 knowledge of whether establishment are, any
22 particular establishment is required to have

1 a detail or not required to have a detail?

2 A I frequently contact ABRA to get
3 the list of establishments that are required
4 to have a detail. I would say every other
5 month I check to see if there's an updated
6 list.

7 Q Okay. So you receive a list
8 regarding those regarding requirements?

9 A Yes.

10 Q Now in terms of -- in addition to
11 making requests, what obligations do the
12 establishments have, in terms of procuring a
13 detail?

14 A As far as requesting a detail?

15 Q Yes. What other requirements are
16 involved?

17 A Well once they request it, and I
18 complete my portion, it goes to the CFOs
19 office, an invoice is issued and is set to the
20 establishment.

21 Q All right, now, in terms of an
22 invoice, obviously invoices being of a

1 financial nature, what's your understanding
2 regarding the financial obligations of
3 establishments in reference to the procurement
4 of details?

5 A Well, according to the
6 reimbursable detail agreement, payment is
7 supposed to be made prior -- five days prior
8 to the detail occurring.

9 Q So, based upon policy, when the
10 CFO's office issues an invoice, based on
11 policy, should payments for -- to have
12 officers at an establishment be done in
13 advance, or after the fact?

14 A In advance.

15 Q So are you familiar with an
16 establishment that goes by the name of the
17 Scene?

18 A Yes.

19 Q And how are you familiar with that
20 establishment?

21 A I've been preparing their
22 reimbursable details for a few years.

1 MR. ADAMS: All right, with the
2 Board's indulgence, I'm going to -- I'm going
3 to hand to counsel what's marked for
4 identification purposes as the District's
5 Exhibit Number 3, and I'd like to approach the
6 witness.

7 (Whereupon, the above-
8 referred to document was
9 marked as District
10 Exhibit No. 3 for
11 identification.)

12 CHAIR MILLER: Okay. I was just
13 wondering if you would be giving me that a
14 copy as well?

15 MR. ADAMS: Oh, for your purposes
16 I can provide that.

17 CHAIR MILLER: Okay.

18 BY MR. ADAMS:

19 Q Sergeant Rogers, I hand you
20 document, do you recognize that document?

21 A I do.

22 Q All right, and how do you

1 recognize that document?

2 A The first, this cover page that's
3 on here was a page that we sent off to the
4 clubs, letting them know we're going to be
5 having an informational meeting to go over the
6 reimbursable details. Page two, three and
7 four is the actual reimbursable detail
8 agreement, which is signed by the Scene.

9 Q All right, and how -- and now you
10 said that there's a cover letter that's here.

11 A Yes.

12 Q Approximately when was this cover
13 letter issued?

14 A We sent this out in February,
15 2012.

16 Q And actually, when -- this
17 position, how long have you been in this
18 position?

19 A Since well, I began in February,
20 2012. Reimbursable -- ABC related
21 reimbursable details were handled by special
22 operations division. As we came -- entered

1 2012, they decided that they were going to
2 shift it over to patrol services to do it.
3 So that gave us, basically, the month of
4 February to put the program together, and
5 that's why we started issuing these cover
6 letters and agreements, and getting everything
7 in place. Because effective March 1 was when
8 we actually took over the reimbursable
9 details.

10 Q And now, this document is about
11 four pages long. And I guess in the first
12 three or four pages it has rules -- what's
13 there, what are the first three or four, five
14 pages of this agreement?

15 A Well, the major things are it
16 explains to the club how to submit their
17 details, it explains about the finances that
18 payment is due five days prior to the event.
19 It explains what officers can and cannot do.
20 It explains what to do if there are any no
21 shows. They're to contact MPD the night of
22 the detail. It informs them of credits, any

1 credits that they're owed if there is a no
2 show, that the credits will be applied to the
3 next billing cycle.

4 Cancellation policies, we require
5 72 hours to notice to cancel. The requesting
6 policy, of course, like I said earlier, is 30
7 days in advance. And then that's pretty much
8 it.

9 Q Okay. So now actually you
10 mentioned a requirement regarding credits.
11 What is -- based upon this program, what's the
12 policy regarding when credits are to be
13 addressed?

14 A Credits are issued once we've
15 become aware of a no show, which should be the
16 day of the no show. Those credits will be
17 forwarded to the CFO's office, to be placed on
18 the next billing cycle.

19 Q And -- I apologize to that. And
20 Sergeant had you completed your answer?

21 A That's it. They'll be applied to
22 next month's bill.

1 Q And are there any other
2 circumstances to which credits are applied?

3 A We find out about credits later
4 on. So I mean the credit may be applied a
5 month or two later. But they're typically
6 applied just on the very next, as soon as we
7 find it, it's applied to the next billing
8 cycle.

9 Q All right. Now at the end of the
10 last page, I guess there's a signature there.
11 Is that correct?

12 A Yes.

13 Q And who's signature is it, and how
14 does it apply in this matter?

15 A Willie Blakeney, III signed it, as
16 the manager of the Scene.

17 Q Okay. And what's your
18 understanding, once an establishment signs
19 these documents, what's your understanding
20 regarding the obligations, or the impact of
21 such a signing of these statements?

22 A That they understand and will

1 terms of establishments?

2 A Towards the end of January, 2014,
3 I was notified by our corporate support bureau
4 of a list of establishments that had overdue
5 accounts. That had not paid their invoices.
6 We were directed to reach out to these
7 establishments and let them know that they owe
8 X amount of dollars, and that we needed to
9 receive payment by a certain date or services
10 could be terminated.

11 Q And who issued this list? I'm
12 sorry, which office issued this?

13 A The Office of Corporate Support.

14 Q And what is their role?

15 A They basically oversee the public
16 cluster of the Chief Financial Officer within
17 MPD.

18 Q Okay. And why -- to you
19 knowledge, why was this list issued?

20 A Because the overdue --
21 reimbursable detail accounts that were
22 overdue.

1 Q And what was the purpose of
2 identifying these overdue accounts?

3 A Well one, to let them know that
4 they were overdue. And two, to let them know
5 that the details would be cancelled if not
6 rectified.

7 Q And was there any -- based upon
8 your knowledge, was there any reason why there
9 was a termination that details for overdue
10 accounts to be cancelled?

11 A Was there -- I'm sorry, could
12 repeat that?

13 Q Was there a reason why it was
14 stated that having overdue accounts -- if an
15 establishment has had overdue accounts that
16 their details would be cancelled?

17 A Because they were overdue.

18 Q Okay. In terms of -- now
19 explaining the finances, how -- so what funds
20 come into I guess the overdue -- the overtime
21 detail program? Where are those funds come
22 from?

1 A The way that the officers are
2 reimbursed?

3 Q Yes.

4 A Okay. The officers are paid when
5 the establishment pays their invoice in
6 accordance with the agreement, should be five
7 days prior to the event happening. That money
8 is set aside and it's given a code. And then
9 when the officers work the detail, their
10 authorization code is that same code, so that
11 money is drawn directly from the funds of that
12 the club has paid.

13 Q So what -- are there cases that
14 occur that establishments -- I mean obviously
15 we have overdue accounts. So that means that
16 -- on the cases where an officer works an
17 overtime detail, and funds are not paid,
18 financially what happens?

19 A The city pays for it.

20 Q Okay. And so -- okay, so
21 therefore in cases of the establishments that
22 were on the list, what were the implications

1 in terms of who had paid the officers at that
2 point?

3 A The city had paid.

4 Q Okay. All right, so based upon --
5 after you got this list, in terms of those who
6 had overdue -- I'm sorry, actually let me back
7 up. Once you got this list, I mean how many,
8 approximately how many establishments were on
9 this list?

10 A I think about a dozen.

11 Q About a dozen, all right. And so
12 what did you do at that point?

13 A I wanted to email out directly to
14 all of the establishments to let them know the
15 information that I had just received. In the
16 notification that I received was a list of how
17 much each club owed, so I put -- made sure
18 that was in there. It was just a reminder to
19 the club, you know. I'm being notified that
20 you are currently overdue, and you owe a
21 balance of whatever the dollar amount was.
22 Payment needs to be sent.

1 And of course I always direct them
2 to the Office of the Chief Financial Officer,
3 because MPD itself doesn't handle money
4 transactions.

5 Q And do you recollect providing any
6 correspondence with the Scene?

7 A Yes I do.

8 Q Okay. And what correspondence did
9 you send to the Scene?

10 A I sent to Mr. Blakeney of the
11 Scene that his outstanding balance of
12 \$15,000.00, just over that, was overdue, and
13 payment had to be made by Monday, February 3,
14 2014.

15 Q All right. And in terms of --
16 after that point, what then occurred?

17 A There was some correspondence
18 between myself and Mr. Blakeney. He
19 acknowledged receipt of the notification I
20 sent him of the monies owed. He had some
21 questions about some of the time sheets of the
22 officers that had worked. And I told him that

1 I would go back and check the time sheets to
2 verify that all of these officers worked.

3 It was odd to me at first, because
4 I had not received any notification that there
5 were any no shows up until the point that this
6 invoice was going to be dispute. So I had to
7 go back and I went through all the time sheets
8 and verified.

9 Q Okay, so you say you verified time
10 sheets, and once you had verified the time
11 sheets, what did you do with those time
12 sheets?

13 A I forwarded a copy of the time
14 sheets to Mr. Blakeney.

15 Q All right, so -- the Board's
16 indulgence. Did there come a time when any
17 other official communications were forwarded
18 to the establishment regarding the amount that
19 was owed?

20 A Yes.

21 Q And when did that occur?

22 A February 6. Mr. Blakeney was sent

1 a revised invoice for December, which was the
2 month that I reviewed the time sheets. He was
3 also sent a copy of his overdue invoice for
4 October, 2013, November, 2013, January and
5 February, 2014.

6 MR. ADAMS: Now I'm going to
7 provide to the witness, and I'll approach the
8 witness, with Exhibit Number 1, which already
9 is entered into evidence. And I'm going to
10 specifically turn to -- let me figure out how
11 to get these turns -- Exhibit 7 and 8 of
12 Exhibit 1, which appear to be -- I think it's
13 far to say are the invoices. So for February
14 6, 2014, you stated that you -- that invoices
15 were forwarded. Looking at those two things,
16 Exhibit 7 and 8 of Exhibit 1, what are those
17 invoices, and how are you familiar with them?

18 SERGEANT ROGERS: These are the
19 invoices for October, 2013 and November, 2013.

20 BY MR. ADAMS:

21 Q All right, and so --

22 A And this was for services rendered

1 months earlier.

2 Q So, essentially, the total that's
3 being listed there is that there was
4 outstanding balance of \$14,152.88?

5 A Yes.

6 Q And essentially, it states the
7 dates for which -- or what does it state here
8 in terms of content, in terms of the dates,
9 and what's the significance of the dates that
10 are listed on those documents?

11 A Well it lists the dates and times
12 that the members were -- that the members
13 worked, and the number of members that worked.

14 Q And after February 6, 2014, what
15 was the office's next action?

16 A I was notified on 2/25/2014 that
17 there was still an outstanding balance. And
18 I was directed to stop all details at the
19 Scene.

20 Q So that's -- and this is
21 essentially February 25, 2014?

22 A Yes.

1 Q And why did you -- why did that
2 occur?

3 A Because none of the invoices -- I
4 can't say none of the invoices, because the
5 total amount that was owed, had not been paid.

6 Q All right. And what's your
7 knowledge of the requirement in terms of, at
8 least on the police department, terms of the
9 reassignment of details, if there's an
10 outstanding balance?

11 A The direction from our corporate
12 support bureau is that no details will occur
13 until the total amount is paid.

14 Q And the Board's indulgence. To
15 you knowledge, where are we in the process of
16 -- do you have -- let me ask this. Do you
17 have to know why -- so do you know whether or
18 not if a detail has been reassigned to the
19 Scene?

20 A A detail has not been reassigned.

21 Q And why not?

22 A I have not been notified by the

1 Chief Financial Office that the invoices have
2 been paid.

3 MR. ADAMS: I have no further
4 questions for Sergeant Rogers.

5 CHAIR MILLER: Okay. Cross?

6 CROSS EXAMINATION

7 BY MR. LeFANDE:

8 Q Good afternoon Sergeant Rogers.
9 Turning your attention to what has been marked
10 as Exhibit 7 as part of the Government's
11 Exhibit 1, this is the same invoice number
12 2449 that your attention was referred to
13 during the direct examination of the Attorney
14 General. If you could track -- turning your
15 attention to a number of columns in the middle
16 of the page, one is entitled activity. Could
17 you recite to me what the last line written in
18 that column states?

19 A Revised 5/13/14.

20 Q And what does that mean to you
21 sir?

22 A It would imply that the invoice

1 was revised.

2 Q As of when sir?

3 A May 13, 2014.

4 Q Just last week or so? Is that
5 correct?

6 A Yes.

7 Q Okay. And what do you have any
8 familiarity with what their referring to by
9 the invoice being revised?

10 A Yes, this November invoice, Mr.
11 Blakeney had began to dispute the invoice six
12 months after it was issued. So we went back
13 and reviewed the numbers of officers that
14 worked to the number of officers he requested.
15 And realized that he was due a credit. So
16 that credit information was sent to the Office
17 of the Chief Financial Officer, and they were
18 kind enough to revise his invoice and forward
19 it out.

20 Q You state that he made a dispute
21 of the invoice some six months after the work
22 was performed, is that correct?

1 A Yes.

2 Q So this being November, ending in
3 December of -- to December 1, would that have
4 been 2013? That would be the third from the
5 bottom line there in that same area?

6 A Yes.

7 Q And so counting, that would be
8 January -- six months would be January,
9 February, March, April, May. That would be
10 June, 2001, is that correct?

11 A Well this --

12 Q Of 2014 --

13 A 2014.

14 Q Was the date that he disputed this
15 invoice?

16 A No, no, no. He disputed it in
17 early May, but this invoice for November
18 should have been paid prior to November.

19 Q Is there any provision -- turning
20 your attention to what's been marked as the
21 Government's Exhibit 3, the reimbursable
22 detail program agreement, which you have

1 discussed previously, is there a provision
2 within that agreement that delineates a
3 procedure if an invoice is to be disputed?

4 A I believe the -- I'm going to
5 refer to it. I don't believe it specifically
6 relates to an invoice being disputed. But
7 that if an establishment has issues with the
8 officers either arriving late or not showing
9 up at all, there is a process for that.

10 Q Now where is that set forth sir?

11 A That is on page 3 of 4. At the
12 top. Establishments are responsible for
13 notifying MPD of any no shows the night of the
14 detail.

15 Q And who -- to whom are they to
16 make that notification?

17 A Well it says that the
18 establishment should call or email the
19 District watch commander, and the number and
20 the email address is provided to them in the
21 agreement.

22 Q Is the District watch commander in

1 any manner involved in the preparation of the
2 invoices such as 2449?

3 A No. But what they would do then
4 is forward that information to me, which I
5 would have the next morning when I come in, to
6 forward that credit information to the Chief
7 Financial Officers.

8 Q Is there any other mechanism in
9 which you receive attendance information with
10 regards to a particular reimbursable detail on
11 a particular officer?

12 A We do weekly reports. The
13 districts themselves do weekly reports.

14 Q I'm trying to look for a more
15 front line document, kind of for instance a
16 roll call sheet, a time sheet, --

17 A The time sheet?

18 Q A time sheet, a roll call sheet
19 that is showing that the officer is actually
20 present there. Do you have something of that
21 sort?

22 A Yes. Every officer that responds

1 to a reimbursable detail has what we call a PD
2 157c. They're required to present that to the
3 on duty ABC manager. That manager will sign
4 the officer in at the beginning of their
5 shift. And he will sign them out at the end
6 of the shift.

7 Q And who, then, would receive that
8 report after it has been prepared in the
9 manner that you've described?

10 A Those are submitted to their
11 reimbursable detail official, who collects
12 them all, and then forwards them to me.

13 Q And what mechanism does your
14 office have in place for comparing the
15 attendance records of the individual details
16 on the 157 with what is being invoiced to the
17 establishment?

18 A Typically, what initiates a review
19 of those sheets is a notification from an
20 establishment that there was a no show.

21 Q Absent this notification, what
22 mechanism does your office employ to compare

1 the actual attendance of the officers with the
2 amount that's being invoiced?

3 A None.

4 Q None whatsoever?

5 A Um-hum.

6 Q And did there come a time in fact
7 that it was determined on invoice 2449, that
8 the amount invoiced did not reflect the amount
9 of hours on the 157s?

10 A Yes.

11 Q And was that in fact the case with
12 invoice 23 -- no I'm sorry, 2378 on the
13 following page?

14 A Well, that was for October?

15 Q I'm just looking at the next page
16 on this -- on Exhibit 1.

17 A Yes, October and November, after a
18 review of the sheets, I was notified of dates
19 that needed to be checked for no shows in May,
20 to go back and look at October and November,
21 which I did. And found out that he was due
22 some credits, which I then forwarded to the

1 Chief Financial Officer.

2 Q But your complaint seems to be
3 that he did not raise this with you for a
4 period of five months after the invoice was
5 received. But in fact, your office had the
6 information in it's possession almost
7 immediately after the services were performed.

8 A We did.

9 Q And that absent the watch
10 commander making some notification to you, you
11 simply wouldn't have compared the services
12 rendered with the services that were invoiced.

13 A No. That's why we request a
14 notification.

15 Q And absent that notification
16 occurring, there is no mechanism within the
17 agreement that the establishment signs,
18 telling them what to do.

19 A Other than making the
20 notification, none.

21 Q Okay. Do you believe that the
22 establishment should be liable for payment for

1 police services it does not receive?

2 A No they shouldn't.

3 Q Should that be a basis for
4 withholding further services if they have been
5 improperly and excessively billed for services
6 they didn't receive yet?

7 A Yes.

8 MR. ADAMS: Objection. I want to
9 object to the question. I believe that no one
10 that -- you know what, I withdraw the
11 objection.

12 CHAIR MILLER: Okay.

13 MR. ADAMS: I withdraw the
14 objection.

15 MR. LeFANDE: Thank you. You may
16 answer the question.

17 SERGEANT ROGERS: Yes.

18 CHAIR MILLER: He answered the
19 question.

20 BY MR. LeFANDE:

21 Q Are you -- this invoice is dated -
22 - was revised on -- you testified that this

1 invoice was revised last week. And could you
2 give us the account balance that would have
3 been due as of the revised invoice.

4 A If it's not the amount on the form
5 --

6 Q I draw your attention to what's
7 Exhibit 7 there.

8 A Okay. The account balance of
9 \$14,152.00.

10 Q Thank you. And does that
11 properly, do you believe that reflects the
12 account balance as it is today?

13 A I don't know. That's not
14 something I can answer.

15 Q So you don't know how much money
16 is owned to the District of Columbia
17 Government.

18 A At this point no, I do not.

19 MR. ADAMS: Is this my copy?

20 MR. LeFANDE: Yes. May I approach
21 the witness?

22 CHAIR MILLER: Yes. Mr. Adams you

1 don't have an objection do you? Just show him
2 the document.

3 MR. LeFANDE: I'm going to show
4 him the document. And I'm also going to --
5 sorry, I'm trying to get one for the Board as
6 well. But may I approach?

7 CHAIR MILLER: They're going to
8 come get it.

9 MR. LeFANDE: Do you recognize
10 this document sergeant?

11 SERGEANT ROGERS: I do not. I
12 mean it appears as a December invoice. I
13 didn't create this.

14 MR. LeFANDE: Okay.

15 CHAIR MILLER: I'm sorry, could
16 you speak into the microphone, I missed that.

17 SERGEANT ROGERS: Sure, I'm sorry.
18 It appears to be a December invoice.

19 CHAIR MILLER: Okay.

20 SERGEANT ROGERS: But I did not
21 create this.

22 BY MR. LeFANDE:

1 Q Okay, but is that something from
2 your office?

3 A No it's not.

4 Q From the office that produces
5 these invoices?

6 A This comes from the Office of the
7 Chief Financial Officer.

8 Q Okay. And however it is an
9 invoice that is produced in the same manner a
10 the one you just testified to in Exhibit 7 of
11 Exhibit 1?

12 A Yes.

13 Q And you ordinarily read these
14 invoices and interpret them?

15 A I do not receive these invoices.

16 Q You don't -- you've never seen
17 this before?

18 A I've seen invoices after reviewing
19 certain things. But these do not come to me
20 on a regular basis. And I don't review them.

21 Q Are you able to interpret this
22 invoice as to the amount of the account

1 balance at that date?

2 A Sure. The account balance on this
3 form states it's \$38,001.00.

4 Q And of what date would that
5 balance have been tabulated?

6 MR. ADAMS: I apologize Madam
7 Chair, I object. I believe that the witness
8 is not properly qualified. At this point the
9 witness says that he does not recognize this
10 document, that he has seen it before, and that
11 he -- that it comes from some office, but it's
12 not one of the invoices that has been dealt
13 with, that he has dealt with in the past and
14 is familiar with. And so he's just basically
15 being asked to read off of an invoice that he
16 has already established that he had not seen
17 before.

18 MR. LeFANDE: Madam Chair.

19 CHAIR MILLER: Okay, go ahead.

20 MR. LeFANDE: The Attorney General
21 has used the exact same invoice in a series
22 three months later to establish that there's

1 a balance due. They've enclosed this as an
2 Exhibit in two instances on Exhibit 1, Exhibit
3 7 and Exhibit 8.

4 And have used, -- had this person
5 testify as to balances due and other mechanics
6 within his office without -- you know, now
7 apparently without any personal knowledge.
8 And suddenly, when I use the same records from
9 the same office and the same mechanism that he
10 receives it, he says that suddenly, he's --

11 CHAIR MILLER: Okay, all right. I
12 heard it, I heard what he said. And I hear
13 what the witness said.

14 I mean I think that the witness
15 said it's not from his office, he hasn't seen
16 it before and he was answering some of your
17 questions based on that lack of knowledge of
18 the specific documents.

19 So if you want to ask him if he
20 knew about this balance, and so I'm going to
21 rule that if he has personal knowledge that he
22 can testify to, fine. If he doesn't, he can

1 say he doesn't.

2 MR. LeFANDE: Again, I he's

3 CHAIR MILLER: So I'm going to let
4 you ask the question.

5 MR. LeFANDE: I'm asking him to
6 interpret this invoice in the exact same
7 manner, exact same manner that he does, that
8 the Attorney General has just asked him to do.

9 CHAIR MILLER: Okay, it is --
10 they're not exactly, they're generated by
11 different offices, and he may have different
12 information with respect to each. I don't
13 know.

14 But all I'm saying is I'll let the
15 witness answer the question to the best of his
16 knowledge. If he has knowledge, fine, if he
17 doesn't, he doesn't.

18 BY MR. LeFANDE:

19 Q Sergeant, can you tell us the date
20 of this invoice.

21 A It's dated February 6, 2014.

22 Q And can you tell us as of that

1 date what the account balance would have been
2 for this account.

3 A The account balance on the form is
4 \$38,001.00.

5 Q And turning your attention back to
6 Exhibit 7, with a revision date that you
7 testified as May 13, what was the account
8 balance at that time?

9 MR. ADAMS: Objection. The Chair
10 just spoke to whether or not there's
11 knowledge. The counsel's completely ignoring
12 that and is just going on his line of
13 questioning.

14 CHAIR MILLER: Okay. I think
15 we're going to let the documents speak for
16 themselves. You know he's just reading off
17 what's on the documents.

18 MR. ADAMS: The District will
19 withdraw the objection.

20 CHAIR MILLER: Okay, so.

21 MR. LeFANDE: Well regarding this
22 interruption and this withdrawal, and the

1 Chair permitted him to answer the questions.

2 MR. ADAMS: No, the Chair spoke to
3 specific grounds that you ignored it.

4 MR. LeFANDE: I'm going back to
5 what he's already testified to.

6 CHAIR MILLER: At this point we
7 don't want to go back to -- and rehear what
8 he's testified to. What he is answering to,
9 is he is reading what is off the form. And
10 you're going from one form to the other form,
11 and I don't think that's helpful to the Board
12 at this point. So I mean, where are you
13 going?

14 MR. LeFANDE: Well I'm going to
15 there's a \$24,000.00 difference between the
16 balances over the course of three months.

17 CHAIR MILLER: Okay, that --

18 MR. ADAMS: This witness says he
19 didn't prepare -- he knows there is one
20 invoice. He doesn't know what this is, so --

21 CHAIR MILLER: He didn't prepare
22 either of these invoices.

1 MR. LeFANDE: Why was he
2 testifying to it then?

3 MR. ADAMS: He testified to state
4 that there is an account status of --

5 MR. LeFANDE: I'm doing the same
6 thing you're attempting.

7 CHAIR MILLER: Now you're both
8 talking at the same time. Nothing's going to
9 get there on the record.

10 MR. ADAMS: I'm not speaking to --
11 this isn't about an audit. We're not talking
12 about the exact amount of money owed. We're
13 saying that money's owed, and more than
14 \$1,000.00 is owed.

15 We're saying that that outstanding
16 amount is there -- there's an outstanding
17 amount, and that led to the cancellation of
18 the situation of it. Whether what amount it
19 is, you know, that's -- that's comparing
20 whether the amount was \$38,000.00 or
21 \$14,000.00.

22 MR. LeFANDE: This is absolutely a

1 critical argument from the Government.

2 CHAIR MILLER: Okay, what is it?

3 MR. LeFANDE: There is three --
4 over the period of three months, there is a
5 demonstrated difference of \$24,000.00. That's
6 \$24,000.00 demonstrated in payments on this
7 account by the establishment.

8 And for the Government to take the
9 almost identical document from the identical
10 source and allow this person to make this
11 testimony to their benefit, and then not
12 permit the Respondent to use the exact same
13 kind of evidence for the exact same purpose,
14 is absolutely inequity.

15 MR. ADAMS: Again, the witness has
16 a familiarity with one -- two documents, and
17 you're trying to introduce something that he
18 has no familiarity with. It's not a type of
19 document, it's what you -- there has to be a
20 qualification of witness when you're doing
21 this, and --

22 CHAIR MILLER: Okay. But I want

1 to know at this point, I don't want to go down
2 a long road on this. What is --

3 MR. LeFANDE: What long road is
4 this question is about --

5 CHAIR MILLER: Question -- what is
6 the information you want. Because we'll see
7 if this witness --

8 MR. LeFANDE: I would like to know
9 the difference between the account balance on
10 February 6 and the account balance on May 13.
11 I'd like to know the difference between them.
12 And that is looking at the bottom right corner
13 of the two documents.

14 CHAIR MILLER: We can all look at
15 the bottom right corner of the two documents.
16 So what is it that you want to ask this
17 witness other than reading off the bottom of
18 the two documents?

19 MR. LeFANDE: What was the account
20 balance on February 6? What was the account
21 balance on May 13?

22 MEMBER JONES: Why is this witness

1 uniquely qualified to read? The Board can
2 read.

3 MR. LeFANDE: This witness, this
4 is the records of the Metropolitan Police
5 Department that this witness was brought
6 forward to opine upon.

7 MR. ADAMS: No, I -- and again.

8 MR. LeFANDE: And now it's
9 inconvenient for the government's attorney --

10 CHAIR MILLER: We can't have two
11 talking at one time.

12 MR. ADAMS: You've spoken, Mr.
13 LeFande. There was -- the witness spoke to
14 knowing something about the account balance,
15 and then he spoke with the invoices that he
16 personally had knowledge of involved in this
17 case, and he spoke about the credits.

18 Now you give him something other
19 than this document that we don't have. We
20 don't know if it's authentic or not. It's
21 from around the same date that he's been
22 testifying for that has something different,

1 and he says he's not familiar with that.

2 I mean you know, it's something
3 that, there's only so much stuff that can be
4 gone into for someone who has no knowledge of
5 a document that's not authenticated.

6 CHAIR MILLER: Okay.

7 MR. LeFANDE: The Board's
8 indulgence please.

9 Sergeant Rogers, you made notice
10 to the -- testified that you made notice to
11 the establishment of a delinquent account.
12 And you further testified that the
13 establishment requested the time sheets and
14 verification. How much time elapsed between
15 the time that the request for the time sheets
16 was made and the time that they were provided
17 to the establishment?

18 SERGEANT ROGERS: Which time?
19 Because he asked for time sheets for several
20 months at different occasions.

21 BY MR. LeFANDE:

22 Q Okay, can you recite -- do you

1 recall what occasions the different times
2 were? When was the first time that the
3 establishment requested time sheets and
4 verification of these invoices?

5 A 2/5/2014 was when he asked me to
6 review December time sheets.

7 Q Okay. And do you recall having a
8 recollection or information as to any other
9 times that that was requesting?

10 A Yep. He requested it again I
11 believe around March 12, 2014, to look at
12 January and February. Which we did. And it
13 wasn't until April 9, 2014, that he wanted to
14 dispute October and November.

15 Q So at least one time in February,
16 March and April, the establishment is in
17 contact with you asking you questions about
18 these invoices.

19 A Yes.

20 Q Okay. Do you have any information
21 about the payment history on this account?

22 A I do not.

1 Q And who would have that
2 information?

3 A The Chief Financial Officer.

4 Q Did they forward that information
5 as to whether these --

6 A The only thing they were
7 instructed to forward to me is that if the
8 account was paid in full, to notify my office
9 so that the details could resume. That
10 notification was never received.

11 Q What information did you -- what
12 notifications would you make to the Chief
13 Financial Officer that the establishment was
14 disputing the invoices?

15 A The information that I provided to
16 them was after reviewing the time sheets, any
17 credits that were owed.

18 Q Again, at what point did you --
19 let me ask you this. At what point did you
20 first notify the Chief Financial Officer that
21 the --

22 A After each request.

1 Q So after the request in February
2 5, you responded back to the Chief Financial
3 Officer --

4 A Yes.

5 Q And told him that there was a
6 dispute.

7 A There was credits due.

8 Q Oh, you notified him of credits
9 due.

10 A Yes.

11 Q How long after that February 5 do
12 you think that would have been credited?

13 A The very next day, February 6.

14 Q And would that be the similar case
15 for the March 12?

16 A I would assume so. I mean I
17 reviewed these sheets pretty quick.

18 Q Did anyone from the Chief
19 Financial Officer respond back to you to --

20 A They don't respond back to me.

21 Q They do not say. They just say
22 pay it or cut them off, is that correct?

1 A Now that -- that instruction
2 doesn't come from them. That comes from the
3 corporate support bureau.

4 Q Corporate, I apologize.

5 A That's okay.

6 Q You're correct, that's what you
7 testified to.

8 A Once I send my notification to the
9 CFO's office, I typically do not hear anything
10 back.

11 Q Turning your attention back to
12 Exhibit 7, it says again that it was revised
13 on May 3. Do you know what the nature of the
14 revision -- May 13, do you know what the
15 revision, the nature of the revision was?

16 A That would have been the credits
17 due for October and November after I reviewed
18 the sheets and forwarded that information to
19 the CFO.

20 Q And do you know what the amount
21 was of that?

22 A I don't.

1 Q When was the last time that you
2 received a request from the Scene for a
3 reimbursable detail?

4 A For a detail? I believe it was in
5 January, and I believe the January request
6 included January, February and March.

7 Q And how -- what was the response
8 to those -- to that request?

9 A They were -- I scheduled them as
10 normal.

11 Q Okay.

12 A January was staffed, February was
13 staffed. February was staffed up until the
14 day we were instructed to stop the details.

15 Q Had the establishment made a
16 request for May 16 to have a reimbursable
17 detail, would that have been staffed?

18 A For May 16th?

19 Q For May 16th to 17th.

20 A I have not received notification
21 that they had paid, so I would not staff that.

22 Q You would have denied the request?

1 A Yes.

2 Q Okay. Thank you. Would you have
3 had, being aware of the -- being aware of the
4 discrepancies in the prior invoices, would you
5 have had any discretion in permitting a detail
6 to proceed, knowing what you knew about the
7 problems with the prior invoices?

8 A No.

9 Q So you were prohibited by the
10 orders that you had received from above from
11 letting them have a detail for May 16 and May
12 17.

13 A Correct.

14 Q And for what reason?

15 A Regardless of credits owed,
16 regardless of my opinion of those credits
17 being owed, those credits should be applied to
18 the next month's invoice. And that previous
19 invoice should have been already paid.

20 And until I received that
21 notification for the corporate support bureau,
22 no details were to be staffed.

1 MR. LeFANDE: I have no further
2 questions, thank you. I apologize, I've got
3 a lot of paper here I'm trying to sort
4 through.

5 CHAIR MILLER: Okay. I'm trying
6 to remind everyone that this should be
7 primarily focused on safety. Any Board
8 questions? Mr. Jones.

9 MEMBER JONES: Thank you Madam
10 Chair. Is it Lieutenant?

11 SERGEANT ROGERS: Sergeant.

12 MEMBER JONES: Sergeant, I'm
13 sorry. Sergeant, just for clarification
14 purposes, on -- you received notice in
15 February that RDO was not to be allowed or
16 permitted at the establishment going forward
17 due to the outstanding invoice?

18 SERGEANT ROGERS: Yes.

19 MEMBER JONES: Okay. At what
20 point did you receive the -- did you receive
21 the request for clarification regarding --
22 well excuse me, let me back up.

1 Did you receive the request from
2 the owner to clarify any discrepancies related
3 to any invoicing before or after that
4 notification that you received --

5 SERGEANT ROGERS: After.

6 MEMBER JONES: After. How far
7 after?

8 SERGEANT ROGERS: Immediately.

9 MEMBER JONES: Immediately after?
10 So you notified the licensee of the fact that
11 RDO would not be allowed because of
12 outstanding invoice and immediately after that
13 you received a challenge as to the invoiced
14 amount.

15 SERGEANT ROGERS: Yes.

16 MEMBER JONES: And when you said
17 immediately, is it the next day, within
18 minutes?

19 SERGEANT ROGERS: I can actually
20 tell you.

21 MEMBER JONES: Okay.

22 SERGEANT ROGERS: After the first

1 notification, he contacted me five days later.

2 MEMBER JONES: Five days later,
3 okay. So and please excuse me if this is an
4 area that is not in your domain, but I got a
5 little confused, so I apologize.

6 When you -- do you have any
7 knowledge as to whether or not a payment was
8 received for the January and/or February
9 assignments that were filled for RDO for the
10 Scene?

11 SERGEANT ROGERS: I don't know for
12 sure.

13 MEMBER JONES: You don't know for
14 sure. So you just know you received the
15 request, you filled the request, and that
16 individuals worked the request as you assigned
17 it, --

18 SERGEANT ROGERS: Correct.

19 MEMBER JONES: But you have no
20 idea whether or not payment was received for
21 that service.

22 SERGEANT ROGERS: Correct.

1 MEMBER JONES: Okay. The -- well
2 let me just make sure I put it. So you do not
3 know or have any insight into any dollars owed
4 specifically, correct? Okay.

5 You are clear in your
6 understanding of the agreement, the RDO
7 agreement, that you are to be notified by the
8 licensed establishment in the event that they
9 feel as though there's a no show, and that is
10 in large part, is -- what other discrepancies
11 would there be outside of a no show event,
12 that you are aware of, and that you would be
13 made aware of, excuse me.

14 SERGEANT ROGERS: Officers could
15 be late.

16 MEMBER JONES: Okay.

17 SERGEANT ROGERS: There could be
18 just a complaint against an officer that's
19 there. But typically it's the no shows.

20 MEMBER JONES: Okay.

21 SERGEANT ROGERS: And 99 percent
22 of the establishments that I do reimbursable

1 details for, they're either calling me,
2 they're calling the watch commander, they're
3 emailing me, hey, I didn't have all my guys
4 last night, I need a credit.

5 MEMBER JONES: Okay. And you kind
6 of answered my next question. In your
7 experience in this position, this role, you
8 are -- do you find that establishments are
9 able to follow through on providing you notice
10 in accordance with what is noted in the
11 agreement as to when there is a discrepancy
12 related to support -- service received, i.e.
13 whether they're late, they don't show up, et
14 cetera?

15 SERGEANT ROGERS: Absolutely.

16 MEMBER JONES: Do you typically
17 receive that notice in compliance with the
18 guidelines issued in the agreement?

19 SERGEANT ROGERS: Yes.

20 MEMBER JONES: Okay. So it's not
21 -- you would not -- it would be your
22 understanding that it is not something that

1 licensees generally have a one, hard time
2 following, or two, understanding?

3 SERGEANT ROGERS: No.

4 MEMBER JONES: Okay.

5 SERGEANT ROGERS: As long as we've
6 been doing this, since February, 2012, it's
7 actually worked pretty well.

8 MEMBER JONES: Worked pretty well.

9 SERGEANT ROGERS: Absolutely.

10 MEMBER JONES: Okay. All right,
11 thank you. Thank you Madam Chair.

12 CHAIR MILLER: Okay. Others? I
13 just have one clarifying question I guess from
14 me.

15 So basically, if an establishment
16 has a dispute with respect to an invoice, the
17 procedure is for them to continue to pay for
18 the reimbursable detail, and work out the
19 dispute after that and get a credit.

20 SERGEANT ROGERS: That's correct.

21 CHAIR MILLER: Get a credit.

22 That's so they can avoid cancellation of the

1 reimbursable detail.

2 SERGEANT ROGERS: That's correct.
3 The details will continue. If there's any
4 discrepancies that are noted once we go back
5 and do the review, those credits will be
6 applied to the following month.

7 CHAIR MILLER: Okay, and so in
8 this instance, the notice to the -- this
9 establishment, the Scene, does that date back
10 to February 6?

11 SERGEANT ROGERS: The original
12 notification of the detail's going to be
13 cancelled?

14 CHAIR MILLER: Yes, when is that?

15 SERGEANT ROGERS: My first
16 notification to the club was on January 29,
17 letting them know that they were past due and
18 that they were in danger of losing services.

19 CHAIR MILLER: So -- but prior to
20 January 29, would they have gotten -- but they
21 would have had the invoice and they're --

22 SERGEANT ROGERS: Correct.

1 CHAIR MILLER: And I don't know
2 how long of a date for an invoice to be -- for
3 them to be, you know --

4 SERGEANT ROGERS: I don't create
5 the invoices.

6 CHAIR MILLER: Right, okay.

7 SERGEANT ROGERS: The Chief
8 Financial Officer does.

9 CHAIR MILLER: You get the notice.

10 SERGEANT ROGERS: I also put a
11 time frame on that from the time that I
12 forward that information to them, for them to
13 send the invoice, it's less than a week.

14 CHAIR MILLER: So, when you send a
15 notice of cancellation, if they don't pay,
16 that's less than a week of what?

17 SERGEANT ROGERS: Yes.

18 CHAIR MILLER: Of the detail?

19 SERGEANT ROGERS: Yes.

20 CHAIR MILLER: And they have to
21 schedule a detail five days in advance of
22 those numbers?

1 SERGEANT ROGERS: Technically
2 they're supposed to pay five days in advance.
3 They're supposed to be scheduled 30 days in
4 advance.

5 CHAIR MILLER: Oh, okay. Okay,
6 got it. All right, thank you. Okay any
7 questions?

8 MEMBER JONES: Just a quick follow
9 up.

10 CHAIR MILLER: Yep.

11 MEMBER JONES: Just to be clear,
12 are you -- how do you know that the owner was
13 made aware of the January 29 notification
14 where he was warned that he was at risk of
15 losing his right, or the privilege to the RDO
16 detail due to lack of payment?

17 SERGEANT ROGERS: He replied.

18 MEMBER JONES: He replied to an
19 email?

20 SERGEANT ROGERS: He did. He
21 replied, acknowledged notification and asked
22 can we start reconciling paperwork, comparing

1 number of officers requested to the number of
2 officers that showed up.

3 MEMBER JONES: So you initiated
4 that based on the feedback you had received.
5 And so the -- from your understanding the
6 licensee had an opportunity to work with you
7 to reconcile that?

8 SERGEANT ROGERS: I was willing to
9 do that, yes.

10 MEMBER JONES: You were willing to
11 do that. Okay, and it had not been done by
12 the time you were told in February that RDO
13 would no longer be -- you were no longer
14 allowed to authorize an RDO for this
15 establishment.

16 SERGEANT ROGERS: By the time the
17 detail cancellation in February came about, we
18 had already resolved December's invoice by
19 reviewing the sheets.

20 MEMBER JONES: So you had worked
21 to resolve one of the issues for one of the
22 invoices.

1 SERGEANT ROGERS: Correct.

2 MEMBER JONES: And you were in the
3 process of working through others? Or how did
4 that process work after that?

5 SERGEANT ROGERS: Yeah, he had
6 asked -- I'll give you a date, I'm sorry.
7 Okay, he was -- Mr. Blakeney was sent out a
8 revised December invoice on February 6. On
9 February 25 I was notified to end all details.
10 It was after the ending of the details where
11 January and February were disputed. So then
12 we started after the actual cancellation, we
13 started the second reconciliation process.

14 MEMBER JONES: I understand. And
15 you, just to make sure, you have no knowledge
16 first hand as to whether or not any payments
17 were made.

18 SERGEANT ROGERS: I do not.

19 MEMBER JONES: Got it, thank you.
20 Thank you, Madam Chair.

21 CHAIR MILLER: I'm sorry, I just
22 want to clarify the chronology. Maybe because

1 it's past lunch hour, but. The January 29
2 notice of cancellation, do you send that, or
3 does somebody else send it?

4 SERGEANT ROGERS: I sent that.

5 CHAIR MILLER: You sent that. And
6 then in Feb -- around February 6 there's sent
7 -- wait, then you got a response from the
8 owner saying they wanted to get together and
9 go over the numbers.

10 SERGEANT ROGERS: Yes.

11 CHAIR MILLER: Okay. And then
12 February 6, what did you say happened?

13 SERGEANT ROGERS: February 6, Mr.
14 Blakeney was sent a revised invoice from the
15 Chief Financial Officer for December.

16 CHAIR MILLER: Okay.

17 SERGEANT ROGERS: Those were the
18 sheets he wanted to go over initially after
19 the first warning.

20 CHAIR MILLER: Okay.

21 SERGEANT ROGERS: Which we did.
22 He was given an updated invoice.

1 CHAIR MILLER: So did he pay that
2 updated invoice? Would you know?

3 SERGEANT ROGERS: I would not
4 know.

5 CHAIR MILLER: You would not know.
6 Okay. So you then got in February another
7 notice to cancel?

8 SERGEANT ROGERS: Yep. On 2/25/14
9 I was given the second notice to cancel the
10 details effective that day.

11 CHAIR MILLER: And then do you
12 send notice to the establishment as well?

13 SERGEANT ROGERS: I notified the
14 District to end the detail and the
15 establishment as well.

16 CHAIR MILLER: Okay. Is there any
17 other thing happened after that that we don't
18 have in the chronology, other than these
19 invoices?

20 SERGEANT ROGERS: No. There was -
21 - after that date we ended the details. There
22 was a few communications between Mr. Blakeney

1 and myself still trying, he wanted -- he was
2 disputing new invoices.

3 CHAIR MILLER: Right, okay.

4 SERGEANT ROGERS: For which I was
5 willing to go back and check and look. And
6 forward that information.

7 CHAIR MILLER: Okay. So the
8 detail ended February 26?

9 SERGEANT ROGERS: Yes.

10 CHAIR MILLER: Okay. All right,
11 anything else? Any questions on Board
12 questions?

13 MR. ADAMS: Yes. This is actually
14 a redirect from cross examination.

15 CHAIR MILLER: Okay.

16 REDIRECT EXAMINATION

17 BY MR. ADAMS:

18 Q During cross examination you were
19 asked regarding whether or not -- you were
20 asked questions regarding time sheets being
21 forwarded to the establishment. Can you --
22 and I you know, can you discuss how that

1 happened, and what was the obligation to
2 forward such time sheets.

3 A Well there is no obligation. Mr.
4 Blakeney I think was concerned with the
5 validity of some the signatures on the sheets,
6 and had asked for copies. So I scanned the
7 entire month time sheets for his establishment
8 and emailed them to him.

9 Q Now to speak in terms of specific
10 amounts now -- okay, so the clarification that
11 we've had here from 7 and 8 is that as of May
12 13 -- sorry, on January 29, your email stated
13 you owe \$15,000 some odd dollars.

14 A Correct.

15 Q And then as of last week you owe
16 \$14,000 and some odd dollars.

17 A I didn't create that number.

18 Q Okay. And did you review it?

19 A Nope.

20 Q Okay. All right. So okay, but in
21 terms of requests that you processed, in terms
22 of approximately, I mean is it -- would the

1 requests that you processed, to your knowledge
2 would it be over \$1,000, or would it be the
3 full \$14,000? I mean what would the impact
4 be?

5 A I'm not sure of the exact number.
6 It would be nowhere near \$14,000.00. It could
7 be upwards of a couple thousand dollars, as
8 far as credits, total credits due between
9 December and March, or February, I'm sorry.

10 Q Okay, and that was all based upon
11 the invoices for November and December, or the
12 first part of December and October.

13 A Okay.

14 MR. ADAMS: I'm sorry, just one
15 second. Okay, no further questions.

16 CHAIR MILLER: Any cross on
17 redirect?

18 RE CROSS EXAMINATION

19 BY MR. LefANDE:

20 Q Sergeant Rogers, you testified
21 that on January 29, you sent an email to Mr.
22 Blakeney about the amount due, \$15,000.00 and

1 that if it wasn't received by February 3, the
2 details would be discontinued, is that
3 correct?

4 A That is correct.

5 Q Did you receive a response to that
6 email?

7 A I did.

8 Q And what did it?

9 A My notes here, Mr. Blakeney
10 acknowledged receipt of the notification,
11 asked can we please start to reconcile
12 paperwork, i.e., the number of officers
13 requested with the number of officers that
14 showed up.

15 I replied to Mr. Blakeney that I could
16 confirm that information and asked what dates
17 in question did he want to know about. He
18 then replied that he couldn't narrow it down.
19 So I decided to do the entire month.

20 Q And how quickly after your January
21 29 email did he respond asking for this
22 reconciliation?

1 A That notification was immediate,
2 same day.

3 Q He responded to you?

4 A Yes.

5 Q Okay. So as of January 29, he is
6 asking for reconciliation because he's having
7 some issues.

8 A Yes.

9 MR. LeFANDE: Okay, thank you. No
10 further questions.

11 CHAIR MILLER: Okay, I think that
12 -- do you have another question?

13 MR. ADAMS: No, I have no further
14 questions, I was just --

15 CHAIR MILLER: Okay, thank you
16 very much.

17 SERGEANT ROGERS: Sure.

18 MR. ADAMS: And I'd like the
19 Board's indulgence, I'm going to dismiss
20 Sergeant Rogers. I'm going to call, well the
21 last police witness is going to be Sergeant
22 Ferretti, who's going to talk about the detail

1 again.

2 CHAIR MILLER: So, I'm just trying
3 to figure out, it's 1:59. Is he going to be
4 fairly quick witness?

5 MR. ADAMS: It will be brief.

6 CHAIR MILLER: Brief, okay good.

7 MR. ADAMS: A very brief witness.
8 It should. Well, at least in my direct very
9 brief.

10 CHAIR MILLER: Okay.

11 MR. ADAMS: Have a seat.

12 SERGEANT FERRETTI: Good morning.

13 CHAIR MILLER: Well good
14 afternoon. Do you swear to tell the truth,
15 the whole truth, and nothing but the truth?

16 SERGEANT FERRETTI: I do ma'am.

17 CHAIR MILLER: Thank you. Thanks
18 for coming down.

19 SERGEANT FERRETTI: No problem.

20 CHAIR MILLER: Okay.

21 WHEREUPON,

22 SERGEANT ROBERT FERRETTI

1 was called for examination by Counsel for the
2 Government, having first been duly sworn,
3 assumed the witness stand, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ADAMS:

7 Q And Sergeant Ferretti, can you
8 please state your name and spell it for the
9 record.

10 A It's Robert, R-O-B-E-R-T F-E-R-R-
11 E-T-T-I. Ferretti is the last name.

12 Q And now that you've been brought
13 in, first of all I want to thank you for your
14 patience. So far, I know it's been taking a
15 little bit longer than we expected, but.

16 A Yeah, no problem.

17 Q All right, Sergeant Ferretti, you
18 are -- you're with the Metropolitan Police
19 Department, and how long have you been with
20 the Police Department?

21 A 14 years.

22 Q 14 years, and how long have you

1 been a sergeant?

2 A About two and a half.

3 Q And in terms of working, what is
4 your current role?

5 A I oversee the reimbursable details
6 for the 5th District, which entails three
7 nightclubs in the 5th District.

8 Q And briefly, I mean what --

9 A Four nightclubs, I'm sorry.

10 Q That's all right, no problem.

11 What is -- very briefly, what are your
12 responsibilities in terms of dealing with the
13 overtime detail, the reimbursement detail for
14 5D?

15 A Basically I handle scheduling.
16 Officers placement of the details. It's
17 random. It's nothing, nothing in stone. But
18 I handle the scheduling and I get the invoices
19 for the nightclubs. And I go ahead and deploy
20 the officers to the certain nightclubs during
21 the working hours of the nightclub requests
22 for the invoices.

1 Q And during the times that there
2 are reimbursable details employed, I mean are
3 you actually on duty at that time as well?

4 A It's hit or miss, sometimes I'm
5 there and sometimes I'm not.

6 Q Okay.

7 A But there usually generally is
8 always a supervisor overseeing the club detail
9 for that evening for the 5th District.

10 Q All right. And so specifically,
11 are you familiar with the establishment known
12 as The Scene?

13 A Yes I am.

14 Q And how are you familiar with that
15 establishment?

16 A They're actually one of the
17 reimbursable details that we have. And it's
18 a nightclub in the 5th District.

19 Q And have you ever worked their
20 reimbursable detail?

21 A Yes, yes I have.

22 Q Okay. And in terms of when you

1 had a reimbursable detail working for the
2 establishment, for the Scene, can you describe
3 the relationship? How did things go?

4 A As far as?

5 Q Your relationship with the
6 establishment.

7 A With the establishment itself?

8 Q Yes.

9 A We've always had, in my opinion, a
10 great working you know, relationship with the
11 club. I mean my personality's pretty much, I
12 try to get along with just about anybody. And
13 I personally go up and meet the owners. Meet
14 the security staff.

15 And you know, I've never had a
16 poor working relationship. They've always
17 been onboard you know, for the time that they
18 had the detail. And never had an issue with
19 the security staff or anything, any of those
20 matters.

21 Q And what's your understanding
22 about whether or not a detail is assigned to

1 The Scene currently?

2 A My understanding now?

3 Q Yes.

4 A Is apparently there's some kind of
5 money issue. I don't get involved in the
6 money issue. Apparently some bills aren't
7 paid for reimbursable details that were
8 supposed to be covers, and credit issues.

9 I'm not a hundred percent sure,
10 that's just, I just know a little bit about
11 what's going on.

12 Q But you know what --

13 A I understand right now it's
14 cancelled.

15 Q All right.

16 A If that makes sense.

17 Q And how long has -- and so you're
18 familiar that's since about February or so?

19 A About February. February and
20 March, yes.

21 Q Okay. So in terms of -- and what
22 was your -- based on your knowledge, what was

1 your knowledge about why a detail was assigned
2 to The Scene in the first place?

3 A Well, there was a supervisor
4 before me that ran the nightclub overtime. I
5 took over the person no longer has that
6 responsibility. And I just was under the
7 assumption that nightclubs that generally have
8 issues, they are required to hire a detail to
9 staff hours of the night while they're
10 operating.

11 Q Okay. And in terms of -- and
12 less, last to you knowledge, I mean how --
13 what were there numbers for the detail for The
14 Scene the last time you worked on it?

15 A Eight. Eight members for four
16 hours. From midnight to 4:00.

17 Q And why was that number -- do you
18 have any knowledge of why that number was set
19 at eight?

20 A I have no idea. I just know that
21 it was a mandate from here. From ABRA, and
22 that was the number they gave me to staff.

1 Q All right. Now you say you also
2 were, you deal, you coordinate I guess the
3 details for 5D are for Echostage and for
4 Stadium. In terms of the dealing with -- well
5 actually let me get back to -- let me step
6 back for a second.

7 You state that in terms with
8 working relationship with the establishment,
9 things went well. But can you describe in
10 terms of how much work and effort is needed on
11 a regular basis in terms of dealing with the
12 patrons of The Scene?

13 A Well as with any nightclub,
14 there's good nights and bad nights. I mean
15 every once in a while the club will have a bad
16 night. Any club for that matter will have a
17 bad night or have a good night.

18 You know sometimes, you know
19 fights break out you know, up on Adams Street.
20 And we handle them, we deal with them. And
21 we've always never had an issue.

22 Q Who's we?

1 A As far as the officers on the
2 detail.

3 Q Okay.

4 A But in that corridor you know, I
5 do have you know, eight for Scene, eight for
6 Echostage, and four for Stadium Club. So I do
7 have the manpower of 20 people.

8 Q Okay.

9 A So we generally take care of the
10 issues at hand.

11 Q So since there hasn't -- there's
12 been I guess a cancellation of The Scene's
13 detail, to what extent has officers from other
14 details been, had to deal with issues with
15 patrons from The Scene?

16 A Okay. It's been grueling at
17 times. I mean The Scene does let out a crowd
18 that generally you know, has more of an apt to
19 fight.

20 They like to -- they fight up. If
21 fights break out, I don't know if it happens
22 from inside the club, or outside the club, but

1 sometimes in different neighborhoods, you know
2 meet it at the location, and all of a sudden
3 they want to take care of their neighborhood
4 problems outside on the street.

5 That's happened with Scene. I'm
6 not going to sugarcoat it and say it hasn't.
7 And the Echostage details, or even the section
8 personnel, would come over and handle those
9 situations.

10 Q And where -- in terms of these
11 fights, where do they typically take place?

12 A Very rarely do they happen outside
13 the Scene gate, other than that last incident.
14 Apparently something happened outside the
15 front gate.

16 But generally a little bit further
17 up Adam Street, up to Queens Chapel. And then
18 on that bridge going towards Channing Street.

19 Q All right. So when these fights
20 take place, and I guess detail officers
21 respond, and why do the detail officers
22 respond?

1 A That's because it's an obligation
2 as police officers to handle any issues that
3 arise.

4 Q And what's the impact upon those
5 details in terms of dealing with the details
6 that they're assigned to when they have to
7 respond to such instances?

8 A It takes away from the other
9 nightclubs and from the other activities.
10 Traffic issues, you know club let outs from
11 other nightclubs. I mean any given night
12 Echostage can have anywhere from 3,000 to
13 5,000 people in there.

14 And then you know, you've got the
15 traffic from Stadium Club, and traffic from
16 Echostage and traffic from Scene, and everyone
17 trying to leave. So it does get kind of
18 hectic.

19 So without the Scene detail, it
20 does get kind of hectic down there.

21 Q And since there's been a
22 cancellation of services at The Scene, based

1 upon your observations, and in terms of
2 dealing with your detail, has it created more
3 activity, or less activity since there's been
4 a lack of presence of detail there?

5 A I think it's -- generally I think
6 it's the same either way. I think, the
7 detail's there. I think that the patrons
8 don't see any police around, they're more apt
9 to fight probably. I'm not in their mind set.
10 I don't know what's going through their minds
11 at the time.

12 If the details there, I've noticed
13 that if the details there, we do have less
14 problems then we do when the detail's not
15 there.

16 MR. ADAMS: Okay. One second,
17 Board's giving my indulgence. Okay, I have no
18 further questions.

19 CROSS EXAMINATION

20 BY MR. LeFANDE:

21 Q Good afternoon Sergeant Ferretti,
22 good to see you.

1 A Good afternoon, good to see you
2 too.

3 Q Thank you. Do you know the
4 approximate capacity of The Scene?

5 A On any given night?

6 Q Of what their listed capacity is?

7 A I don't know what their capacity
8 of regulations are, no.

9 Q Oh, okay. How about Echostage, do
10 you know?

11 A I don't know the numbers per se,
12 no.

13 Q Oh.

14 A I mean I don't know what their
15 licenses say, no.

16 Q Okay.

17 A Probably something I should look
18 into.

19 Q You stated as the supervisor as
20 the reimbursable detail, that you're
21 responsible for filling reimbursable detail
22 slots that are requested by the nightclubs

1 with the officers available. Do you generally
2 have enough officers available to fill each of
3 the slots for the nightclubs' demand?

4 A 99 percent of the time I do have
5 the details completely staffed.

6 Q Do you ever have an -- do you have
7 instances where officers are available for the
8 details, but do not, that there isn't a slot
9 available for them to work?

10 MR. ADAMS: Objection. Beyond the
11 scope of direct.

12 CHAIR MILLER: Okay.

13 MR. LeFANDE: He's testifying
14 about --

15 CHAIR MILLER: The relevance?

16 MR. LeFANDE: This goes back to the
17 matter we discussed with the first witness,
18 and as to the -- how the demand for these --
19 again, I'm not going to get into the argument
20 again in the presence of the witness.

21 CHAIR MILLER: Okay.

22 MR. LeFANDE: But I'm making the

1 exact same statement with regards to what I
2 said when we asked the first witness to be
3 excused from the room. And we discussed the
4 -- as to the appropriate value as to the
5 demand.

6 CHAIR MILLER: Okay, yes, we went
7 through that then. It's overruled.

8 MR. ADAMS: Right, it's still
9 beyond the scope of direct.

10 CHAIR MILLER: Okay.

11 MR. LeFANDE: I'm sorry, I did not
12 hear you.

13 CHAIR MILLER: I said overruled
14 then.

15 MR. LeFANDE: Thank you.

16 CHAIR MILLER: I mean what am I
17 saying, sustained. I'm sorry, it's lunchtime.
18 You're objecting to his -- sorry sustained,
19 move on.

20 MR. LeFANDE: For some reason I
21 did hear what you meant to say. And I said.

22 CHAIR MILLER: Okay. Well let the

1 record be correct, thank you.

2 BY MR. LeFANDE:

3 Q You testified that you received
4 information as to the number of officers
5 required for The Scene's reimbursable detail
6 and the number of hours that those officers
7 were supposed to work. You mentioned ABRA
8 giving you this information?

9 A No, no, no. Like I said, maybe
10 the terminology was incorrect, but through
11 speaking with the ownership and the
12 management, and I was under the impression in
13 talking to other officers just through the
14 rumor mill, that that was some kind of
15 regulation that they were mandated to have
16 eight people on the detail.

17 Q But you have no independent
18 knowledge of this?

19 A Yes, no. No, no, no.

20 Q You stated that The Scene had
21 eight officers and that Echostage had eight
22 officers as well?

1 A Yes sir.

2 Q And in terms of just scale of the
3 two, would you say they're equal in size and
4 the number of patrons at them?

5 A No. No.

6 Q Is the Echostage large or smaller
7 than The Scene?

8 A I would say the Echostage has a
9 significant more than The Scene. As far as
10 patrons goes is that what you're asking?

11 Q Yes, yes.

12 A Yes, I would definitely, sure.

13 Q Twice as many?

14 A Well I don't know. It depends on
15 the show. I mean Echostage sometimes has --

16 Q But the overall capacity of the
17 club is what I'm referring to.

18 A I would say that Echostage is
19 about three times the size of The Scene
20 probably.

21 Q Three times the size.

22 A Maybe three or four times the

1 size.

2 Q So do you understand the reason
3 for the club having a third of the size as
4 Echostage have requiring the same number of
5 officers, is that correct?

6 A That's just mine, those are the
7 number that they gave me, and those are the
8 numbers I deal with.

9 Q Okay, all right. Do you think
10 that those numbers are justified based on your
11 observations?

12 MR. ADAMS: Objection, calls for
13 opinion.

14 MR. LeFANDE: He's the one out
15 there doing this.

16 MR. ADAMS: Objection, calls for
17 opinion.

18 CHAIR MILLER: Calls for opinion.

19 MR. ADAMS: I'm sorry, it calls
20 for opinion regarding the number staffing. At
21 this point, so it doesn't call for fact
22 testimony, it calls for opinion testimony in

1 terms of comparison, in terms of the man
2 hours.

3 And Sergeant Ferretti has already
4 testified that there's eight. He doesn't know
5 why eight were assigned.

6 CHAIR MILLER: Right. He doesn't
7 know.

8 MR. ADAMS: So, it calls for
9 opinion.

10 CHAIR MILLER: And why can't he
11 give his opinion whether he thinks that that's
12 an accurate amount?

13 MR. ADAMS: Well sorry, it's just
14 that I think that we -- sorry, in this case,
15 in terms of opinion, in this instance, it's
16 called to ask whether it's justified that an
17 establishment that's a third of the size of
18 another establishment is the same number.

19 CHAIR MILLER: Oh, justified,
20 okay.

21 MR. ADAMS: And so again, you're
22 asking a person to justify --

1 CHAIR MILLER: Right.

2 MR. ADAMS: The circumstances
3 between apples and oranges, so.

4 MR. LeFANDE: In each instance of
5 the police officer's, the prior police officer
6 witness testimony, we have heard a lot of
7 opinion testimony about what the manpower
8 requirements are for these reimbursable
9 details.

10 We've heard that from this
11 particular witness already.

12 CHAIR MILLER: Okay, I just -- I
13 don't think he's in a position --

14 MR. LeFANDE: And if he's going to
15 offer --

16 CHAIR MILLER: Wait a second, I
17 understand your point. I don't think he's not
18 in a position to justify the numbers. He
19 didn't create the numbers.

20 If you want to ask him whether
21 it's if for safety wise, whether he thinks
22 that's an adequate number or too many. But

1 he's not in a position to justify a number he
2 didn't --

3 MR. LeFANDE: Again, this is
4 exactly the opinion testimony I was --

5 CHAIR MILLER: Is that -- if
6 that's what you question is.

7 MR. LeFANDE: From the Attorney
8 General, throughout the morning today, from
9 the other witnesses. And now because it's
10 inconvenient for the Attorney General, they're
11 making the objection to the identical kind of
12 testimony that they've got previously without
13 objection.

14 MR. ADAMS: I'd like to state on
15 the record that I deny offering that type of
16 evidence.

17 CHAIR MILLER: Yes, Okay. I'm
18 going to sustain it based on what I just said,
19 if the question was to justify the number. So
20 next question.

21 MR. LeFANDE: Wait, based on your
22 -- so I'll rephrase the question.

1 Based on your experience with this
2 reimbursable detail for the establishments in
3 the vicinity of the intersection of Queens
4 Chapel Road and Adams Place NE, and given that
5 there are eight reimbursable detail officers
6 for Echostage and how many for Stadium?

7 SERGEANT FERRETTI: Four.

8 MR. LeFANDE: Four. Are eight
9 additional officers for The Scene necessary to
10 provide public safety services down there?

11 SERGEANT FERRETTI: Absolutely.

12 MR. LeFANDE: Thank you. I have
13 no further questions.

14 CHAIR MILLER: Okay. All right,
15 other Board questions? I just have one. I
16 thought you said that The Scene has a crowd
17 that's more apt to fight. And were you saying
18 that The Scene's patrons are more apt to fight
19 then Echostage and Stadium, is that what you
20 meant?

21 SERGEANT FERRETTI: Through my
22 experience, I would say that. Through my

1 experience. I mean anyone's apt to fight at
2 any given time.

3 But through my experience I've
4 noticed a couple more fights have occurred
5 from The Scene then it has from either of the
6 other nightclubs in the Queens Chapel Road
7 area.

8 CHAIR MILLER: Okay. Thank you.
9 That's all.

10 MR. LeFANDE: Nothing further.

11 CHAIR MILLER: Okay.

12 MR. ADAMS: I have no further
13 questions for Sergeant Ferretti.

14 CHAIR MILLER: Okay. Thank you
15 very much. Okay, we're thinking it's now
16 2:19. I'm wondering if -- I think we --

17 MR. ADAMS: The District only has
18 one witness. It will be substantial
19 testimony, so I'll leave it up to your
20 discretion.

21 CHAIR MILLER: Well that's what we
22 were figuring. And that we probably should

1 eat first before we continue. Even though it
2 would have been nice to break at the end of
3 your case.

4 But I think that's what we have to
5 do, because it's already 2:20. So we are
6 thinking of a half an hour break.

7 MR. ADAMS: The District has no
8 objections.

9 CHAIR MILLER: Okay. All right.
10 Sorry, I'm falling asleep. So okay, so we'll
11 see you back here at 10 to 3:00.

12 MR. ADAMS: Thank you very much.

13 CHAIR MILLER: Thank you.

14 MR. LeFANDE: Thank you.

15 (Whereupon, the above-entitled
16 matter went off the record at 2:20 p.m. and
17 resumed at 3:02 p.m.)

18 CHAIR MILLER: Okay, Mr. Adams.
19 When we left off, you have one more witness?

20 MR. ADAMS: Yes, we have one more
21 witness and this is Investigator Jason Peru.

22 WHEREUPON,

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JASON PERU

WAS CALLED FOR EXAMINATION BY COUNSEL FOR THE
DISTRICT OF COLUMBIA AND, HAVING FIRST BEEN
DULY SWORN, WAS EXAMINED AND TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. ADAMS:

Q Good afternoon, Investigator.

Will you please state your name and spell it
for the record?

A Jason Peru, P-E-R-U. First name,
Jason, J-A-S-O-N.

Q And Investigator Peru, you're an
investigator for the Alcoholic Beverage
Regulation Administration?

A Yes, I am.

Q How long have you been in that
position?

A For one year.

Q Prior to becoming an investigator,
what was your career before that?

A I was a police officer for ten

1 years in Las Vegas.

2 Q In terms of your services as an
3 investigator, first of all, were you on duty
4 on the day of May 16th going into May 17th,
5 2014?

6 A Yes, I was.

7 Q And did you have occasion on May
8 17th to be present upon the establishment
9 known as The Scene?

10 A Yes, I did.

11 Q And can you tell the Board how you
12 came to be -- how you became aware of the
13 necessity to be present at The Scene
14 nightclub?

15 A My supervisor received a call on
16 the ABRA hotline by MPD requesting that we
17 respond.

18 Q Approximately when was that?

19 A Approximately 3:25 a.m.

20 Q And so what happened then?

21 A We then -- myself, my supervisor
22 and other investigators responded to The

1 Scene.

2 Q And when you say The Scene, what
3 do you mean?

4 A I'm sorry, The Scene nightclub,
5 Adams Place.

6 Q And what did you learn once you
7 got to that location?

8 A Upon arrival, I met with MPD
9 Lieutenant Griffin and he advised us that two
10 females and three males were shot on Adams
11 Place.

12 Q Approximately when did you arrive?

13 A It was approximately maybe 3:35
14 a.m.

15 Q And so once you arrived at 3:35
16 a.m., you spoke with Lieutenant Griffin, so he
17 explained to you that people were wounded.
18 Did he tell you anything else?

19 A He said that there was currently
20 no suspects and that the wounded were leaving
21 The Scene nightclub.

22 Q Afterwards, what did you do

1 afterwards?

2 A Once we spoke with him, we then
3 contacted the owner of The Scene, Mr. William
4 Blakeney.

5 Q Can you describe your discussion
6 with him?

7 A Mr. Blakeney said that they had
8 two live music groups. They were doing a
9 fundraiser for a victim of a vehicle accident.
10 He stated that he knew about one altercation
11 that took place out of the establishment
12 earlier on and security personnel escorted the
13 individual out and up the street to Adams
14 Place.

15 He stated that he also witnessed a
16 guy running out of the club, towards Adams
17 Place, but wasn't sure why. He stated that
18 approximately 20 minutes later the shooting
19 occurred. The club was closing down and
20 patrons were leaving.

21

22 He stated that the event was 18

1 and over. Persons that were 21 and over had
2 green wrist bands. He said he had
3 approximately 15 security officers working,
4 approximately 367 total count of patrons, and
5 approximately 187 of those were under the age
6 of 21.

7 Q And what else did you address?

8 A He stated that security conducted
9 pat downs at the door and he stated that he
10 didn't have any MPD on detail because he was
11 trying to resolve past issues with invoice
12 payments.

13 Q And what was discussed regarding
14 that? What was part of that discussion?

15 A He provided me with two exhibits,
16 7 and 8, a copy of the invoices from MPD.

17 Q Exhibit 1 which is the
18 investigative report, dated May 17th and --
19 I'm sorry, May 20th. This is regarding the
20 incident on May 17th, was dated May 20th. Is
21 that your report?

22 A Correct.

1 Q Do you have a copy of the report
2 with you?

3 A Yes, I do.

4 Q Turning to Exhibits 7 and 8, it's
5 noted in your report that they're Exhibits 7
6 and 8. You stated that you were given
7 invoices?

8 A Yes, I was.

9 Q Who gave you those invoices?

10 A Mr. Blakeney.

11 Q And that's regarding the bill in
12 dispute?

13 A Yes, I believe so, yes.

14 Q Okay, so what did you do
15 afterwards in regards to conducting this
16 investigation?

17 A Mr. Blakeney stated that he would
18 provide me with video the following day, well,
19 actually it was the same day, the 17th, on
20 Saturday evening, which he did.

21 Q So specifically, what kind of
22 media did you receive from Mr. Blakeney?

1 A He provided me with three CD
2 disks.

3 Q So three disks?

4 A Yes.

5 Q Did you have an opportunity to
6 review the contents of those disks?

7 A Yes, I did.

8 Q And how did the review of the
9 disks, how does that factor into your
10 investigation?

11 A Reviewing the video to locate a
12 possible altercation that may have occurred.

13 Q Can you tell us whether or not you
14 were able to make any determinations about
15 what may or may not have occurred within the
16 establishment?

17 A Yes, I was able to find video
18 coverage of an altercation that did happen
19 inside the establishment.

20 Q And can you please walk the Board
21 through your findings in terms of what you
22 reviewed in terms of the video?

1 A Referencing my report, the camera
2 5 which was inside of the establishment that
3 shows the lights coming on at approximately
4 2:39 a.m. At approximately 2:48, I see
5 security usher an individual out from a crowd
6 and in the camera view it's hard to tell where
7 they got it. He was pulled out of a crowd and
8 ushered towards the door.

9 Q Before -- prior to this person
10 being escorted towards the door what, if
11 anything, did you observe at that point?

12 A It's a large group of people
13 dancing on the dance floor. That's all you
14 really see in the video.

15 Q Okay, then you see an individual
16 being ushered towards the door. So after that
17 what did you see?

18 A Then I see security then
19 approximately 20, 21 seconds later, usher out
20 more patrons and a crowd follows towards the
21 door.

22 Q And in this view is this just --

1 was it inside the establishment or outside the
2 establishment?

3 A Still camera 5. They were in the
4 -- same camera showing inside the
5 establishment. First you see one individual
6 being escorted out by security or ushered out.
7 Then you see a whole crowd and more people
8 being ushered out that follows. It's inside.

9 Q I apologize. I didn't mean to
10 interrupt.

11 A That's fine.

12 Q Describe generally what camera 5
13 shows in terms of what area of the
14 establishment it shows.

15 A Camera 5 is shooting towards the -
16 - you can see the stage and entire dance
17 floor. It's like a wide angle of the entire
18 club, a good snapshot of the establishment.

19 Q All right, now what else did you
20 observe in terms of footage?

21 A Then when I changed cameras, at
22 the same time camera 3 is located right inside

1 of the front door of The Scene. And camera 3
2 shows security escorting out patrons at
3 2:48:21. I kind of follow the video to be
4 systematic. The same group it appears to be
5 now inside the front door at 2:48:21.
6 Security escorts them out. A couple of
7 patrons appear to be combative. And then from
8 there I go outside the front door, camera 2.

9 Q Okay, what did you observe with
10 camera 2?

11 A Camera 2 outside the front door at
12 approximately 2:48:47 shows the individual
13 that was escorted out comes back to the front
14 door and tries to reenter the establishment.
15 At that point, security, the same camera, at
16 2:50 shows another fight starts at the door
17 between several patrons.

18 Q Okay.

19 A And continued on a different
20 camera view, camera 1, which is right outside
21 of the main area of the front door, out on the
22 steps. It kind of shows a wide angle of the

1 outside of The Scene. That shows
2 approximately 2:51:41, the same group or what
3 appears to be the same group of patrons from
4 the other camera angle begin to fight again
5 and it shows The Scene security dispersing the
6 crowd and kind of pushing everybody towards
7 Adams Place.

8 Q All right, and so did you review
9 any other information from the video footage
10 that you received from Mr. Blakeney?

11 A Yes. He also provided me with a
12 copy of video from the neighboring
13 establishment, General Merchandise.

14 Q Okay.

15 A There was a -- camera 3 is what is
16 labeled. The times on that camera appear to
17 be wrong.

18 Q And why do you believe that so?

19 A Based on the time of looking at
20 the previous video from The Scene and then
21 coinciding with a group of people leaving the
22 gates of The Scene to Adams Place. You then

1 -- and the time the actual shooting occurred,
2 according to MPD, I came to that conclusion,
3 that the time on the video was incorrect.

4 Q So when you saw that footage, what
5 did you observe?

6 A What appears to be the same crowd,
7 you see them have an altercation now on Adams
8 Place. And then it breaks up and they move up
9 the street on Adams Place towards Queens
10 Chapel Road.

11 Q Did you make any observations from
12 this camera?

13 A From this camera, you can see a
14 group at the top of the screen. It's in the
15 distance at this point and camera view, but at
16 2:15 -- well, according to this camera's
17 incorrect time, at 2:15:58 a.m., you can see
18 the crowd running and people ducking and
19 hiding behind vehicles and it appears that's
20 when the shooting had taken place.

21 Q So as you reviewed the video tape
22 footage, and I'm going to get back to that in

1 a second, but your investigative report has
2 several other elements I'd like to just kind
3 of address to the Board at this point. First
4 of all, there are several photographs and I'm
5 specifically referring to Exhibit 3, starting
6 with Exhibit 3.

7 This is Exhibit 3 of Exhibit 1, I
8 should say. And are you familiar with this
9 photograph?

10 A This is the crime scene, picture
11 of the crime scene area that's blocked off by
12 MPD when we arrived on scene in the morning
13 after we received the phone call. That's
14 facing down Adams Place.

15 Q When you say facing down Adams
16 Place, what do you mean?

17 A I'm standing with Queens Chapel
18 Road to my back and shooting down the street.
19 And so The Scene would be up the street to the
20 left.

21 Q And it looks like there's
22 something circled, do you happen to --

1 A That's the location where one of
2 the victims was located.

3 Q Turning towards -- Exhibit 4 of
4 Exhibit 1, there's another photograph. Do you
5 happen to know where that's located and what's
6 the content of that photo?

7 A Yes, that's on Adams Place as well
8 and that's just another area where a victim
9 was found. MPD crime scene was on scene and
10 they were kind of marking the crime scene at
11 the time.

12 Q Is that the same scene as was in
13 photograph 3? Is that the same thing or not?

14 A No, it is not.

15 Q Okay. And there's photograph 5.
16 What is depicted there?

17 A Photograph 5, that would be the
18 same as photograph 3, just up close.

19 Q Okay, so 3 and 5 are the same
20 thing?

21 A Correct.

22 Q Turning to 6, can you please

1 describe -- are you familiar with that
2 photograph?

3 A This is another location that MPD
4 said that a victim was located.

5 Q Are you familiar with the location
6 of what's depicted there?

7 A Yes. This is the stairway, this
8 is the corner. This building is located at
9 the corner of the same building or the same
10 structure that The Scene is located in.

11 Q In terms of just the geographical
12 reference to where The Scene is located, where
13 is The Scene located in reference to Queens
14 Chapel Road?

15 A I don't understand the question.

16 Q Where is it located? Is it at the
17 very corner of Queens Chapel Road?

18 A No, it is not. It is down the
19 street from Queens Chapel Road.

20 Q I'm going to have you turn to
21 photograph 13 of Exhibit 1.

22 A Yes.

1 Q Are you familiar with this
2 photograph?

3 A Yes.

4 Q When was this photograph taken?

5 A I took this Monday afternoon.

6 Q And so just for the record, can
7 you describe the content of this photograph?

8 A This is just showing the location
9 where Adams Place and Queens Chapel Road
10 intersects.

11 Q So looking at Exhibit 14, what is
12 the content of that photograph?

13 A That's now me standing at that
14 intersection of Adams Place and Queens Chapel,
15 taking a photo down the street of Adams Place.

16 Q And so you're saying Queens Chapel
17 is right there?

18 A Queens Chapel is behind my back.

19 Q Right behind your back, okay. For
20 the record, we're going to go to -- sorry,
21 note that you see some writing within that
22 photograph. Who put the writing there?

1 A I wrote just approximate location.
2 It's hard -- the depth of the picture is hard
3 to tell, but that's just so you get an idea of
4 where The Scene is located down the street.

5 Q So Exhibit 15, can you describe
6 what's the content of that photograph?

7 A That's just another photo of Adams
8 Place. I took these photos in the daytime to
9 get a better understanding. At nighttime,
10 it's difficult to see where the location that
11 the incidents took place.

12 Q Now how far from Queens Chapel are
13 you at that point?

14 A I'm walking down the street.
15 Maybe a third of the way down, not that far
16 down the street.

17 Q Now it appears that there's a
18 different orientation on this photo than with
19 photograph 13. Can you describe to any extent
20 why there's a different orientation there?

21 A I'm sorry, which photographs are
22 you referring to?

1 Q The difference between 14 and 15?

2 A Yes, I was walking up the street,
3 so as I walk up the street I was just snapping
4 photos kind of painting a picture of me coming
5 down Adams Place to where The Scene is
6 actually located.

7 Q Let me ask you very specifically.
8 Is this the same side of the street as in
9 Exhibit 14?

10 A Yes, it is.

11 Q Now does Exhibit 15 in any way
12 compare to any other prior photographs?

13 A Prior photographs?

14 Q Like in terms of -- okay, if we
15 were to look at -- let me withdraw the
16 question. In reference to Exhibit 3, sorry,
17 photo 3, how does Exhibit 15 and the contents
18 of Exhibit 15, sorry, photo 3, how do they
19 compare?

20 A Photo 3 is -- which exhibit are
21 you referring to?

22 Q This is --

1 A Okay, I'm sorry, 15 and 3, that's
2 the comparison that you're referring to?

3 Q Yes.

4 A Yes, so you can see in Exhibit 3
5 at nighttime, with the crime scene roped off.
6 If you're looking at the picture, both
7 pictures it's the same street, just in the
8 daytime and I'm a little further up the street
9 in Exhibit 3, but it's still within the crime
10 scene.

11 Q All right, I'll move to the next
12 photo, photo 16. Can you describe the content
13 of that photo?

14 A This is the entrance gate to The
15 Scene.

16 Q Now in this photograph, is there
17 anything that has already been previously
18 depicted in your photographs?

19 A This is the same stairs that a
20 victim was found on in a previous photo.

21 Q That's photograph 6?

22 A Correct, same as the other

1 photograph.

2 Q So that's the entrance and what's
3 your knowledge -- what's your reference to
4 what that entrance is?

5 A This is -- this gate leads down to
6 where you access The Scene. The Scene will
7 set up and people will be coming in through
8 that entrance.

9 Q So looking at photograph 17, can
10 you describe the contents of this?

11 A This is a follow-through from the
12 previous photograph. I'm now just taking a
13 picture of the driveway that leads up to The
14 Scene. It's the same fence.

15 Q Now I notice there's a building --
16 it seems like one building is red and one
17 building is white. What's the significance of
18 that in terms of whether or not -- is there
19 any demarcation between -- I mean is there any
20 demarcation in terms what's the boundary for
21 The Scene at this point or do you know?

22 A I think The Scene is painted a

1 different color. I think it's gray, in fact,
2 not white.

3 Q I'll withdraw that question.
4 Looking at photograph 18, let me ask you a
5 question. Are there other businesses within
6 that same driveway?

7 A Oh, yes, absolutely.

8 Q So I think that answers that
9 question. Eighteen, what is -- can you
10 explain what is depicted in 18?

11 A So now you can see, this is me in
12 that same driveway. The stairs at the very
13 end with the red door on the left and the
14 picture, that's The Scene entrance.

15 Q And now we're talking about
16 Exhibit 19 and what was depicted there for the
17 record?

18 A Nineteen is The Scene entrance.
19 The roll up gates are typically open when The
20 Scene is open.

21 Q Now the roll up gates, what's
22 behind those roll up gates?

1 A The inside of The Scene, like a
2 foyer area of The Scene.

3 Q In terms of the entryways for the
4 establishment for patrons, how is that related
5 to the roll up door?

6 A That's where patrons come in and
7 out from.

8 MR. ADAMS: I'd like to at this
9 point address the issue, Madam Chairman, of
10 the videotape. At the outset, we asked that
11 the video footage be allowed to be admitted
12 into evidence. I believe that we had some
13 agreement in terms of a stipulation that any
14 of the video footage that was submitted could
15 be -- was admitted into evidence, so I just
16 wanted to make sure that there's clarification
17 on that.

18 CHAIR MILLER: That was submitted
19 to Mr. Peru? Right, we have an agreement
20 about that, okay?

21 MR. LeFANDE: I don't know what
22 was submitted to him. Are they introducing a

1 part of the video now?

2 MR. ADAMS: That's what we're
3 doing.

4 MR. LeFANDE: If there's something
5 there that we will take exception to, we will
6 take exception to. We're going to say there's
7 a problem with it. But we said that if it
8 appears to be what was produced by the
9 cameras, we're not going to make any objection
10 to it.

11 CHAIR MILLER: Okay. At the
12 moment, you don't have any objection.

13 MR. LeFANDE: We don't know what
14 they're producing, so I can't speak to it. If
15 it appears to be what I've seen, then I'm not
16 going to make any objection.

17 MR. ADAMS: All right, so I guess
18 what we'll start with the exhibition of the
19 video footage.

20 CHAIR MILLER: Okay.

21 BY MR. ADAMS:

22 Q Mr. Peru, do we have video footage

1 available for this hearing?

2 A I believe it's on the laptop, yes.

3 Q Okay. And I would ask, if you
4 don't mind, the Board's indulgence, and I ask
5 the witness, who has been sworn, to come over
6 to this chair and I believe from there you can
7 manipulate the video tape, video footage.

8 (Video begins.)

9 BY MR. ADAMS:

10 Q So Mr. Peru, you put some images
11 on a screen. What are you doing? Can you
12 explain what you're doing?

13 A These are the different cameras of
14 the incident that I recorded, documented in my
15 incident report.

16 So I'll start off with camera 5.

17 Q Can you expand on that? What time
18 are we starting here in terms of the video
19 footage? It looks like there's a
20 representation at the bottom. Can you tell us
21 what that is?

22 A Yes. The camera's start time here

1 is 2:37:24, 25.

2 Q And what day is it for?

3 A 5/17/2014.

4 Q Camera 5, you state that it
5 generally is inside the establishment. So
6 tell us how that -- the system that we're
7 looking at.

8 A This is a corner camera shooting,
9 covering the whole inside of the
10 establishment. You can see the dance floor.
11 You can see the stages here. It's a good wide
12 shot of the entire club.

13 Q Now for the record, since this is
14 all going to go in the transcript, you state
15 there's a stage. When you say here, what
16 portion of the screen are you referring to?

17 A On the -- hard to point here. Do
18 you see where the pointer is at?

19 Q Is that the left side?

20 A Yes, left side, top. Yes.

21 Q In terms of just looking at the
22 lighting, is it lit or is it dark?

1 A The lights are turned on at
2 2:39:44.

3 Q And in terms of also describing
4 anything else in this scene, what else based
5 upon this can you describe?

6 A When you're watching the video,
7 just for reference because it kind of happens
8 quickly, on the -- in this top location here
9 in the video, you'll see this is where
10 security starts ushering people out. And they
11 usher them in this direction towards the door
12 which is here, so they grab people out of the
13 crowd and they usher them out towards the
14 front door.

15 Q So it's kind of like the center
16 top?

17 A Yes, somewhere in the center top
18 area. You can see it's a distant shot.

19 Q So let's go to -- can you move the
20 camera time to 2:39:44?

21 A It's skipping around. There we
22 go.

1 Q Okay. Now it's 2:39:40.

2 A So now you can see the lights come
3 on in the club.

4 Q And do you know -- do you have any
5 idea why that occurred, based on your
6 experience?

7 A I assume because they're closing
8 at 3. So they were just turning the lights on
9 to get everybody out.

10 Q So advance this camera to -- let's
11 see, to 2:48 a.m., if you don't mind,
12 Investigator Peru. Is that 2:46?

13 A It jumped back.

14 Q There you go. So we're playing
15 from 2:47:28 and any general description of
16 things at this point?

17 A No, just a crowd. The crowd is
18 dancing, the band is still playing.

19 Q 2:48:05, 06. So this is 2:48:12
20 and now we're at 13.

21 A So right here in the middle of the
22 screen, it's very difficult to see. The

1 security came from here and they're having the
2 visual that they're rushing out right there.
3 Right here.

4 Q So this is 2:48:17, we see
5 somebody rushed out.

6 A So he was grabbed at 2:48:14, he
7 was grabbed in the crowd and you can see him
8 being ushered out here.

9 Q Go ahead, continue playing. Any
10 other observations you have at this point?

11 A No, the crowd is just kind of
12 dispersing. Some people are leaving, filing
13 out already towards the exit. Then about
14 2:48:35 is when I see more security. You kind
15 of see it actually right here, 2:48:35.

16 Q So that's kind of towards the --

17 A Security and another guy who is
18 being brought from almost the same location,
19 it appears to be. And you can see him being
20 taken outside.

21 Q Okay. Let's continue the video.
22 Is that consistent with the description that

1 you used in the report?

2 A Yes.

3 Q Is it a true and accurate version
4 of the video coming from camera 5?

5 A Yes.

6 Q So I guess we'll go to camera 3.

7 A Yes.

8 Q I guess camera 3 at 2:48. And
9 let's pause this for a second. So for the
10 Board's description, what is this area here?

11 A This is inside of the front door.

12 Q So it's inside the front door.

13 A So it's like the foyer area.

14 Q And it's on the top side, it looks
15 like glass doors, glass double doors?

16 A The exits, yes.

17 Q That's like -- your photo, that's
18 what was behind the rolling door there?

19 A Yes, yes.

20 Q And let's go to 2:48 a.m.

21 A 2:48 and 35. We'll play it from
22 here.

1 Q So what time are we playing it
2 from?

3 A 2:48 exactly is where we're
4 playing it from.

5 Q And it looks like there's a couple
6 of individuals there. Are they to your
7 knowledge staffers?

8 A The guy in the security shirt,
9 he's a staffer, but you can see as people
10 start to flood out, you can see right here,
11 I'll pause it, this guy, this is so -- this is
12 the guy I believe based on video at 2:48:14 is
13 the first guy who was ushered out through the
14 crowd, based on his dress and his clothing,
15 looks to be the same guy. So this is just
16 from a different camera angle. So six seconds
17 later, on a different camera, the guy is being
18 ushered outside.

19 Q Is there anything else from this
20 camera view?

21 A There's security and people just
22 filing out, that's it.

1 Q In terms of significance that the
2 Board needs to look at. Let's continue to
3 play. I apologize.

4 A So it goes to 2:48:35, yes.

5 Q At this point, a description in
6 terms of the volume of people coming out at
7 this point?

8 A People seem to be ushered out,
9 maybe friends of the people that are being
10 ushered out. It's just hard to tell, but a
11 crowd does leave at the same time.

12 Q And do you refer to camera 3 again
13 at all in your report?

14 A No, not this camera 3, no.

15 Q Okay, so is the video footage that
16 we're seeing, is that a true and accurate
17 representation of the video footage that you
18 viewed?

19 A Yes, correct.

20 Q And in terms of how it's
21 represented in your report, is that the
22 footage that was used?

1 A Yes.

2 Q So let's go to camera 2, I guess
3 camera 2 for 2:48:30 if that's possible?
4 Maybe we should pause for a second. Now just
5 a general description now, this area, looking
6 at photo 18, is that sort of area, is that a
7 different view of the area that was depicted
8 on photo 18, what we're looking at here?

9 A If you look at -- that's fine. If
10 you look at photo 18, you can see the -- the
11 stairs coming down from photo 18 and the roll
12 up doors, this is the area.

13 Q It looks like there's also a
14 wooden plank area, what is that?

15 A Like a -- I don't know what you'd
16 call that, like a deck of sorts? Yes.

17 Q Never mind. I'll shut up. Go
18 ahead to 2:48:30. 2:48:25. What's going on
19 here?

20 A So this is the same guy you just
21 saw inside the door. You saw him inside being
22 pushed out. You saw him inside the door. And

1 now you see him outside. You can tell by his
2 clothing it's the same individual. So now
3 he's outside of the establishment with
4 security.

5 Q All right. At this time is he
6 still there, is he still within the parameters
7 of being let out?

8 A He's right here.

9 Q Is he being let out in any way,
10 shape, or form?

11 A No, he's not.

12 Q So we're at 2:48:49?

13 A Yes.

14 Q So what's happening?

15 A Another individual is being
16 ushered out by security. You see security at
17 the top of the stairs here and an individual
18 is being ushered out there.

19 Q Allow it to play. So it looks
20 like at 2:48:55, that first person has gone to
21 the bottom of the screen, out of view. The
22 other people, where are they? From the

1 standpoint of record, where are they standing
2 at this point and let's pause at this point.

3 A There's people coming outside.
4 There's security staff, you can see clearly in
5 the black shirt with Security on the back.
6 There's a group of individuals that were
7 ushered out are now out front of the
8 establishment.

9 Q Now before you play it, let's look
10 at this person who is not wearing a shirt.
11 Can you describe his manner? Is he calm or is
12 he agitated?

13 A He seems to be agitated.

14 Q Continue play.

15 (Lights are turned off.)

16 CHAIR MILLER: It is helpful.

17 Yes, thanks.

18 BY MR. ADAMS:

19 Q I also want to observe at 2:49:34,
20 there's a gentleman, looks like he has
21 something white on top of his head, is that
22 fair, in the middle of the screen?

1 A Yes, yes.

2 Q Now let's stop right here.

3 2:49:48, two people have come from the bottom
4 of the screen. Can you describe what that is
5 for the record?

6 A It appears to be the same
7 individual who was ushered out earlier.

8 Q Okay. Continue. So compared to
9 when he was first ejected, is he closer to the
10 establishment or further from the
11 establishment?

12 A Now he's back at the front door
13 where he was when he was first brought out.

14 Q Okay, continue. Now see 2:52:16.
15 Now where has the gentleman who was first
16 ejected, where is he in relation to the screen
17 at this time?

18 A He's headed back up the stairs.

19 Q All right, continue. I'm sorry,
20 2:50:26, and I apologize to keep interrupting.

21 A That's fine.

22 Q Where is that first gentleman who

1 was taken out and the gentleman with the white
2 shirt, the white thing on top of his head,
3 where is he now?

4 A Looks like they're back inside the
5 doors.

6 Q Let's continue. Now it's 2:54:16.
7 Can you stop it? It looks like -- it looks
8 like someone went back downstairs and went
9 back up, is that correct?

10 A Yes.

11 Q Based upon your viewing of this,
12 who is that person?

13 A Appears to be the same individual.

14 Q Now let's continue. Again, this
15 is all for the record.

16 A Based on my report and camera 2,
17 2:50:51, this is where I list the fight starts
18 at the front door again.

19 Q Okay.

20 A Or an altercation takes place
21 again.

22 Q Okay. I want to ask you to stop

1 at this point. Is this all we have for this
2 camera in terms of what --

3 A Yes. Next will be the next camera
4 just outside, camera 1.

5 Q Before you go to camera 1 in terms
6 of what -- unfortunately, I have to put this
7 on the record, in terms of what we just saw,
8 it looks like you stated an altercation, looks
9 like it restarted based upon your report. And
10 who did it look like it's involving at that
11 point?

12 A The same individual that was
13 ushered out.

14 Q All right, and how many other
15 persons have come the stairs approximately?

16 A Quite a few, 10, 15, maybe more.

17 Q Okay, so let's go to camera 1.
18 And let's go 2:51:30 maybe. In terms of
19 viewpoint for camera 1, what are we looking
20 at?

21 A So now we're looking, if we're
22 standing at the door, the front entrance which

1 is over here, we're looking down towards the
2 exit where the fence is at, at Adams Place.
3 This area here is where he has his security
4 set up for screening.

5 Q Okay, very well. So I guess let's
6 go 2:51. See where we are.

7 Actually, can you go back for one
8 second to 2:49? One more time. Actually,
9 never mind. Go to 2:49:15, okay, what are we
10 seeing at this point?

11 A Security, same guy that was having
12 problems earlier.

13 Q Okay, so let's continue. Looks
14 like someone ran out.

15 A Yes.

16 Q Is that part of your view?

17 A Do you want me to go to 2:51?

18 Q Yes.

19 A 2:51:41.

20 Q Actually, go back to 2:51:22. Now
21 can you describe at this point for 2:51:15,
22 what do you see here?

1 A Security, a whole bunch of people
2 being escorted out. A couple of guys look
3 like there's still an altercation happening,
4 a crowd of people, more patrons than security
5 officers, that's for sure.

6 Q So this is consistent to your
7 observations regarding 2:51:41 and 2:52?

8 A Yes, 2:52, I say they're all
9 walking towards Adams Place.

10 Q Now this is -- in terms of your --
11 is this a true and accurate representation of
12 what you received from the owner in terms of
13 the footage for camera 1?

14 A Yes, it is.

15 Q And this is what is reflected in
16 your report?

17 A Yes, it is.

18 Q So let's go to camera 3 for the
19 neighboring establishment. Looks like you
20 have four screens there. If it could be made
21 into a single screen for the record.

22 A No problem.

1 Q So what you're viewing now, is
2 that what was camera 3?

3 A This is camera 3 from the
4 neighboring business, once again, I point out
5 the times from this camera seem to be
6 incorrect.

7 Q Looks like there's some red
8 notation on the top left side. What does it
9 state there?

10 A Camera 3.

11 Q Yes. This is camera 3. Okay, so
12 can you describe for the Board for the record
13 what is depicted in this view?

14 A So if you're looking at this, this
15 is Adams Place. This is Adams Place street
16 heading towards at the top which is going to
17 be Queens Chapel Road.

18 Q And that's kind of like that right
19 hand corner up there?

20 A Correct.

21 Q The top right hand corner I should
22 say for the record. So I guess let's put this

1 back to like 2:14, 2:13:30.

2 A This camera has a time lapse, so
3 the scenes jump.

4 Q So that's 2:19.

5 A It doesn't flow smoothly.

6 Q Is that too late, 2:22, is that
7 too late?

8 A I'm sorry. 2:09.

9 Q Board's indulgence, it's taking us
10 a minute to get it. We're going to let it
11 play, if you don't mind, Board. It's going to
12 take a couple of minutes. Let's play it from
13 here. 2:12:24. At 2:29:30, I guess this
14 individual is walking across the screen, that
15 person is going up the street towards Queens
16 Chapel.

17 We're getting closer. It looks
18 like we're 2:13:15. 2:13:26, what did we just
19 see there?

20 A The individual running up the
21 street, you're referring to?

22 Q Yes.

1 Okay, and 2:13:54, what are we
2 observing at this point?

3 A Another individual, a female
4 running up the street as well.

5 Q Now we're at 2:14. We're at
6 2:14:16 at this point now. What are we
7 observing at this point?

8 A This is --

9 Q Do you mind pausing it?

10 A So it looks like a group, a group
11 that came out from the scene, a large group of
12 people, now seem to get into a second or third
13 or maybe a first altercation here on Adams
14 Place.

15 Q Please play. And actually just
16 pause it one second. I notice that there --
17 there's a gentleman -- in this depiction, is
18 there anyone in there with white material on
19 the top of their head?

20 A The individual right here.

21 Q Is that towards the left center-
22 ish area?

1 A Yes, the left of the screen, yes.

2 Q What's going on at this point?

3 A Another altercation looks like
4 it's happening.

5 Q Please play, continue. You wrote
6 2:14, 2:52, and your report says altercation
7 ends. So what's going on with the crowd at
8 this point?

9 A It looks like they're all headed
10 up the street towards Queens Chapel.

11 Q And the next point of significance
12 in your report was 2:15:30. I guess we'll get
13 to that point.

14 A You'll notice they're all gathered
15 at the top, top right of the screen right
16 here. The crowd seems to gather in this
17 corner.

18 Q And I think is that under the
19 third streetlight lamp there, the third street
20 lamp from Queens Chapel?

21 A I mean it's hard to tell in the
22 picture, second, third, yes. You can call it

1 the third lamp here.

2 Q Fine. So we're at 2:15:30. The
3 crowd is up there then. We're looking at
4 2:15:58, see what happens. Please press play.

5 A In my notes, I review 2:15:58 in
6 my report, the crowd is seen running and
7 hiding behind cars. The video skips. When
8 you get to
9 -- it's kind of a static video, you'll see
10 people start to disperse all of a sudden when
11 it gets around that time.

12 Q And there we go. So at 2:15,
13 2:16, and I guess the video speaks for itself.
14 Is this a true and accurate representation of
15 the view of the video that you received from
16 the owner representing camera 3 of the
17 neighboring establishment?

18 A Yes, it is.

19 Q Is this what is referenced in your
20 report?

21 A Yes, it is.

22 MR. ADAMS: Madam Chairman, I

1 would like to have the video footage that has
2 been viewed from all the cameras to be
3 admitted into evidence.

4 CHAIR MILLER: Any objection?

5 MR. LeFANDE: No objection.

6 CHAIR MILLER: And what exhibit is
7 this?

8 MR. ADAMS: This will be Exhibit
9 4. I'll have a label for that.

10 CHAIR MILLER: Okay, good.

11 (The video, having been marked
12 previously for identification as
13 Exhibit 4, was received in
14 evidence.)

15 MR. ADAMS: That's what I have in
16 terms of the video, but I do have some more
17 questions for Investigator Peru.

18 Madam Chairman, do you want him to
19 stay here or do you want him back on the
20 stand? Okay, let's put him back on the stand.

21 CHAIR MILLER: Thank you. If he's
22 not needed there anymore.

1 MR. ADAMS: No, he's not needed
2 there anymore. The video footage is no longer
3 needed.

4 BY MR. ADAMS:

5 Q So in terms of -- so that's what
6 you viewed in terms of video footage. Is
7 there any other aspect that you -- any other
8 material that you looked at in terms of your
9 review in your investigation for May 17th?

10 A I don't quite understand the
11 question.

12 Q Okay. Let me rephrase the
13 question. As part of your investigation, to
14 what extent -- what is the extent of routine
15 for you as an investigator, I mean do you look
16 at whether materials and conditions and
17 security plans apply to an establishment?

18 A Yes. Any time we have an
19 establishment, we look at if they have a
20 settlement agreement, security plan, any board
21 orders, yes.

22 Q What was your conclusions

1 regarding the existence of security plans or
2 settlement agreements in regards to The Scene?

3 A The Scene does have a security
4 plan.

5 Q And that's obviously Exhibit 10 of
6 -- sorry, yes, we'll say Exhibit 10 of Exhibit
7 1.

8 So is that correct?

9 A Yes, Exhibit 10.

10 Q Looking at Exhibit 10, what if
11 anything did you find significant regarding
12 the security plan, and how was it indicated?

13 A Well, going through it, I
14 basically highlighted just things that stuck
15 out in reference to the Police Department,
16 MPD.

17 Q I want to turn your attention to
18 page 3 and I guess this will be the first full
19 paragraph. I'll say it states, in the event
20 of an altercation among patrons, security
21 personnel are required to separate the patrons
22 and immediate -- it says immediate -- contact

1 MPD while attempting to contain the situation.
2 It seems like that's highlighted. Why did you
3 highlight that?

4 A Because MPD was not on scene and
5 patrons were not separated.

6 Q You also highlighted, I guess,
7 what is Roman numeral III. Why did you do so?

8 A Because it references in their
9 security plan the relationship they have with
10 the Fifth District MPD.

11 Q What else is specifically
12 referenced in terms of the Fifth District MPD?

13 A Would you like me to read it?

14 Q Sure. You can read it into the
15 record.

16 A The Scene has established a great
17 rapport with Fifth District MPD commander for
18 recommendations on obtaining a reimbursable
19 detail and the number of officers for some
20 scheduled events and will continue to consult
21 with the MPD commander on a regular basis.

22 Q And I'm going to go further into

1 the document. And you do this again -- looks
2 like again on page 5, and there's paragraph 6
3 and do you mind reading that into the record?

4 A It states never take a situation
5 personally, have someone from your security
6 team to notify the on-duty MPD officers of the
7 situation to assist in the removal of the
8 patron from the premises.

9 Q And why did you highlight that
10 area?

11 A Once again, there was not MPD on
12 scene to assist in that.

13 Q Now it looks like there's
14 highlighted areas on 6 and 8. Is that more of
15 the same tenor of what we were discussing
16 previously?

17 A Correct, it references MPD, yes.

18 Q Now lastly, and there is a last
19 part back on page 12, looks like the last
20 sentence, can you please read into the record?

21 A The last sentence says --

22 Q What section is that for?

1 A Exit procedures.

2 Q Okay. And so can you please read
3 that last sentence?

4 A At least two detailed MPD
5 personnel are stationed midway in the block to
6 assist the patrons leaving the area.

7 Q And why did you highlight that
8 portion?

9 A Once again, MPD was not present or
10 seen on the block.

11 Q I'm going to take you to portions
12 not highlighted. This is, and unfortunately,
13 I'm going to ask you to read it. This is the
14 portion with the headline of patron fights.
15 Could you please read that into the record?

16 A What page, sir?

17 Q Page 10, the heading is Patron
18 Fights. If you wouldn't mind reading that
19 portion, please.

20 A The correct method to remove
21 patrons that are involved in a physical
22 altercation is to delay the ejection of the

1 more passive offender, if possible, until the
2 more aggressive co-combatant has completely
3 vacated the property. The lesser of the
4 combatants will be required to use the rear
5 exist to avoid the reoccurrence of the
6 physical altercation. These situations will
7 likely require the police, who may have to
8 intervene once the patron has been removed
9 from the inside. Therefore, these patrons
10 should be walked directly and handed over to
11 the police that are part of the reimbursable
12 detail posted outside of the main entrance.

13 Q Now based upon -- obviously, we
14 already discussed, we reviewed the videotape.
15 Now based upon your observations, how does the
16 footage you see relate to the establishment's
17 compliance with that paragraph?

18 A Everyone was ushered out the same
19 entrance in the front door.

20 Q And to what extent, if any, based
21 upon your observations, was there separation?
22 Can you describe what separation, if any, that

1 was done, of patrons?

2 A It appears on video that security
3 had different individuals at different times
4 -- I don't know necessarily if people were
5 completely separated and escorted off
6 premises.

7 Q Now in terms of the person who was
8 the first person being escorted. In terms of
9 compliance with this provision, what would
10 your observation as an investigator be in
11 terms of compliance in terms -- it seems as --
12 based upon your own testimony, the person was
13 allowed to go back upstairs and up to the
14 entrance of the establishment after being
15 taken all the way out of the establishment.
16 Can you describe your conclusion in terms of
17 how that relates to security plan?

18 A According to the security plan,
19 procedures were not followed.

20 MR. ADAMS: I have no further
21 questions for Investigator Peru.

22 CHAIR MILLER: Okay, cross.

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CROSS EXAMINATION

BY MR. LefANDE:

Q Investigator Peru, did you attempt to obtain video footage from any other establishments in the area regarding this incident?

A Yes, I did.

Q Where was that?

A I spoke with -- I was working with the MPD detectives. They attempted -- I personally did not go to any other establishments in the area. I spoke with MPD who was attempting to retrieve video from neighboring businesses and they provided it to me if they were able to do so.

Q Was the Stadium Club open that night?

A Yes.

Q Does the Stadium Club have video cameras that point towards Adams Place?

MR. ADAMS: Objection, relevance.

MR. LefANDE: As to the relevance

1 of video cameras that work closely to capture
2 the video events that there's alleged to be
3 all the way at the other end of the street
4 here as to whether they have -- whether those
5 videos are in existence, whether that's
6 relevant?

7 CHAIR MILLER: Do you want to
8 answer the question whether the Stadium video
9 cameras are relevant to what this witness is
10 testifying to?

11 MR. LeFANDE: I think that it's
12 very relevant if there's existence of video
13 that's closer to Queens Chapel Road which
14 better depicts what's going on on that end of
15 Adams Place. I think that's very, very
16 relevant.

17 MR. ADAMS: I'll move to strike
18 the reference to better depicting what
19 happened on Queens Chapel.

20 MR. LeFANDE: I think --

21 MR. ADAMS: Excuse me, excuse me,
22 excuse me, excuse me. I was still talking.

1 He cannot speak to the quality of something he
2 hasn't even seen.

3 CHAIR MILLER: Are you saying that
4 those cameras might capture some footage of
5 what happened? Is that why you think it's
6 relevant?

7 MR. LeFANDE: It seems that this
8 happened closer to the Stadium Club than The
9 Scene. The Scene is around the corner and
10 down an alley, and the Stadium Club is much
11 closer to the intersection of Adams Place and
12 Queens Chapel and it may be a much better
13 position, as may be other establishments.

14 MR. ADAMS: In the interest of
15 time, I'll withdraw my objection.

16 CHAIR MILLER: Okay, fine. You
17 can answer the question.

18 THE WITNESS: I did not look at
19 video from Stadium Club.

20 BY MR. LeFANDE:

21 Q You didn't answer my question.
22 The question was does the Stadium Club have

1 cameras that would have pointed in the
2 direction where the shooting occurred?

3 A I am not sure of Stadium Club's
4 surveillance system.

5 Q You've never examined Stadium
6 Club's surveillance system?

7 A Actually, no, I have not.

8 Q And you made no inquiries to the
9 Stadium Club?

10 A I did not go to the Stadium, no.

11 Q Did you go to any other
12 establishments in that area that may have had
13 video equipment?

14 A No other alcohol establishments
15 were open on the evening of the incident.

16 Q You did not answer my question.
17 My question was did you go to any other
18 establishments that may have had video
19 equipment that may have recorded some of the
20 incidents that we're discussing at The Scene?

21 A I did not.

22 Q Are you aware of the presence of

1 an armed special police officer in the 2200
2 block of Adams Place at the time of this
3 incident?

4 A I am not aware.

5 Q In concurrence with this
6 investigation, did you conduct a regulatory
7 inspection of the establishment, The Scene?

8 A I'm sorry, the night of the
9 incident?

10 Q In concurrence with your
11 investigation with regards to the events that
12 occurred on the morning of the incident, did
13 you conduct a regulatory inspection of the
14 establishment?

15 A No, I did not.

16 Q I have no further questions.

17 CHAIR MILLER: Any Board
18 questions?

19 Okay, no Board questions.

20 MR. ADAMS: No Board questions?

21 CHAIR MILLER: No.

22 MR. ADAMS: I have no further

1 questions for Investigator Peru.

2 CHAIR MILLER: Thank you very
3 much.

4 (The witness was excused.)

5 MR. ADAMS: If I'm able to excuse
6 Investigator Peru, then therefore the District
7 has no further witnesses that it intends to
8 call and therefore it rests its case.

9 CHAIR MILLER: Okay, thank you.
10 Are you ready with your witnesses?

11 MR. LeFANDE: I'm sorry, I can't
12 hear what you're saying.

13 CHAIR MILLER: I'm sorry, Mr.
14 LeFande, are you ready to present your case?

15 MR. LeFANDE: I'd like to be
16 excused for a moment to go relieve myself.

17 CHAIR MILLER: You'd like a few
18 minutes' break? Okay. You may. Everyone can
19 take a break.

20 MR. ADAMS: Actually, Madam
21 Chairman, does the Board have any sense in
22 terms of schedule if you want to finish

1 everything today?

2 CHAIR MILLER: Do we have any
3 what?

4 MR. ADAMS: Is it the Board's
5 intent to finish everything today?

6 CHAIR MILLER: Well, I guess I'd
7 have to hear from all the parties if there's
8 a possibility of continuing it.

9 MR. ADAMS: I was just asking in
10 terms of whether the Board was going -- the
11 District is fine going forward. I just wanted
12 to make sure the Board --

13 CHAIR MILLER: This would be a
14 clean time to break, if in fact, I want to
15 know whether that was on the table on your
16 part. You asked for this hearing today. I
17 assumed we were going to finish.

18 MR. LeFANDE: May we have a few
19 minutes?

20 CHAIR MILLER: Why don't we take a
21 five-minute break.

22 (Whereupon, the above-entitled

1 matter went off the record at 4:07 p.m. and
2 resumed at 4:20 p.m.)

3 CHAIR MILLER: Okay, we're back on
4 the record. Do the parties have something
5 they want to say to the Board?

6 MR. LeFANDE: Matthew LeFande for
7 the respondent, MPAC LLC. We have conferred
8 with our client and we have conferred with Mr.
9 Moosally as to your schedule and the Attorney
10 General. We understand that Wednesday at
11 11:00 would be available to continue this
12 matter and here at that time?

13 CHAIR MILLER: That's correct. We
14 have an opening in our schedule next
15 Wednesday.

16 MR. LeFANDE: We are amenable to
17 that. We understand there's a lot of stuff
18 that still needs to be considered and we
19 appreciate it's the beginning of a three-day
20 weekend. So for those reasons we are -- I
21 don't know if we need to move to continue or
22 we are just making notice of our consent to

1 continue, but nevertheless if that's where the
2 Board is at right now, we are amenable to
3 that.

4 CHAIR MILLER: Mr. Adams?

5 MR. ADAMS: They've made their
6 notice of being amenable, so it's not the
7 District's motion, so --

8 CHAIR MILLER: Right, so there's
9 no objection?

10 MR. ADAMS: The District would not
11 object.

12 CHAIR MILLER: Okay, I think the
13 Board will grant that motion by consensus.

14 MR. LeFANDE: I hereby make the
15 motion.

16 CHAIR MILLER: Okay, so we can
17 then not have to go into the late evening and
18 hear the case during regular business hours.
19 And everyone can have a nice long weekend.

20 MR. LeFANDE: So may we be excused
21 then until Wednesday at 11:00?

22 CHAIR MILLER: Yes. This case

1 will be continued until Wednesday at 11:00.

2 MR. LeFANDE: I have no further
3 business before the Board.

4 CHAIR MILLER: You what?

5 MR. LeFANDE: I have no further
6 business before the Board.

7 CHAIR MILLER: Okay, good.

8 MR. ADAMS: Madam Chair, I assume
9 that affects any show cause hearings that are
10 scheduled for -- any other show cause hearings
11 are scheduled.

12 CHAIR MILLER: For that day?

13 MR. ADAMS: Yes.

14 CHAIR MILLER: Are there any?

15 MR. ADAMS: I think I have one for
16 Georgia Avenue Blue Barn that day or something
17 like that for that day.

18 CHAIR MILLER: So what are you
19 saying?

20 MR. ADAMS: I was just wondering
21 how it was going to impact any other --

22 CHAIR MILLER: Don't worry about

1 it, we have a great master at calendar
2 scheduling, so we'll work it out.

3 MR. ADAMS: Thank you very much.

4 CHAIR MILLER: And if there's an
5 issue that affects you, I'm sure we'll call
6 you.

7 MR. ADAMS: Thank you very much.

8 CHAIR MILLER: Okay, good. Okay,
9 great. Thank you very much then. That
10 concludes today's hearing and we'll continue
11 the case Wednesday. Have a good weekend.

12 MR. ADAMS: Thank you very much.

13 CHAIR MILLER: Okay.

14 (Whereupon, the above-entitled
15 matter went off the record at 4:23 p.m.)
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