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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

DC OFFICE OF ZONING

2006 NOV 28 AM 11:02

APPEAL OF  
J.M.M. CORPORATION

\*

Appellant

\* BZA Appeal No. 17504

\* (Hearing: December 5, 2006)

NOTICE OF FILING.

TO THE BZA:

Attached hereto are the following documents that Appellant JMM is filing for the December 5, 2006, hearing in this matter:

1. Transcript of the March 5-8, 2002, hearing before DCRA ALJ Simon, which is being appealed herein.
2. NOTE: The audiotape from the June 2006 hearing before DCRA ALJ McCoy is insufficiently audible to create a transcript.
3. May 23, 2000, testimony of then Zoning Administrator Michael Johnson, which was presented into evidence at one or both of the hearings listed in paragraphs 1 and 2 above.
4. Two floor plan drawings of Fun Fair Video, that were presented into evidence at both of the hearings listed in paragraphs 1 and 2 above.
5. Photographs of Fun Fair Video (numbered FF1-1 through 17) that were presented into evidence at both of the hearings listed in paragraphs 1 and 2 above.

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO.

17504

EXHIBIT NO.

33

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17504  
EXHIBIT NO. 33A1

6. Please note that the record from the DCRA of the hearings listed in paragraphs 1 and 2 above, originally went to the Board of Appeals where Appellant originally appealed. The District of Columbia Court of Appeals subsequently decided that the Board of Zoning Adjustment was the proper agency to hear the appeal, and Appellant subsequently filed its appeal with the BZA.

Respectfully submitted,

---

Jonathan L. Katz  
DC Bar No. 425-615  
MARKS & KATZ, L.L.C.  
1400 Spring Street  
Suite 410  
Silver Spring, MD 20910  
(301) 495-4300

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Notice of Filing was served by first-class mail on November 28, 2006, to:

Matthew Green, Esq.  
General Counsel  
DCRA  
941 North Capitol Street, N.E.  
Suite 9400  
Washington, DC 20002

---

Jonathan L. Katz

A



# *Certification*

FF1-1

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:00 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks:

Photographer:  
BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO.

17504

EXHIBIT NO.

33A

WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491



2004 NOV 28 AM 11:05

D.C. OFFICE OF ZONING

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*Certification*

FF1-2

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

*William D. Vain*  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





### *Certification*

FF1-3

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-4

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:   
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-5

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

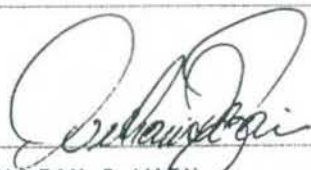
Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks:

Photographer:

  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





### *Certification*

FF1-6

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:04 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

*William D Vain*  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-7

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:04 PM

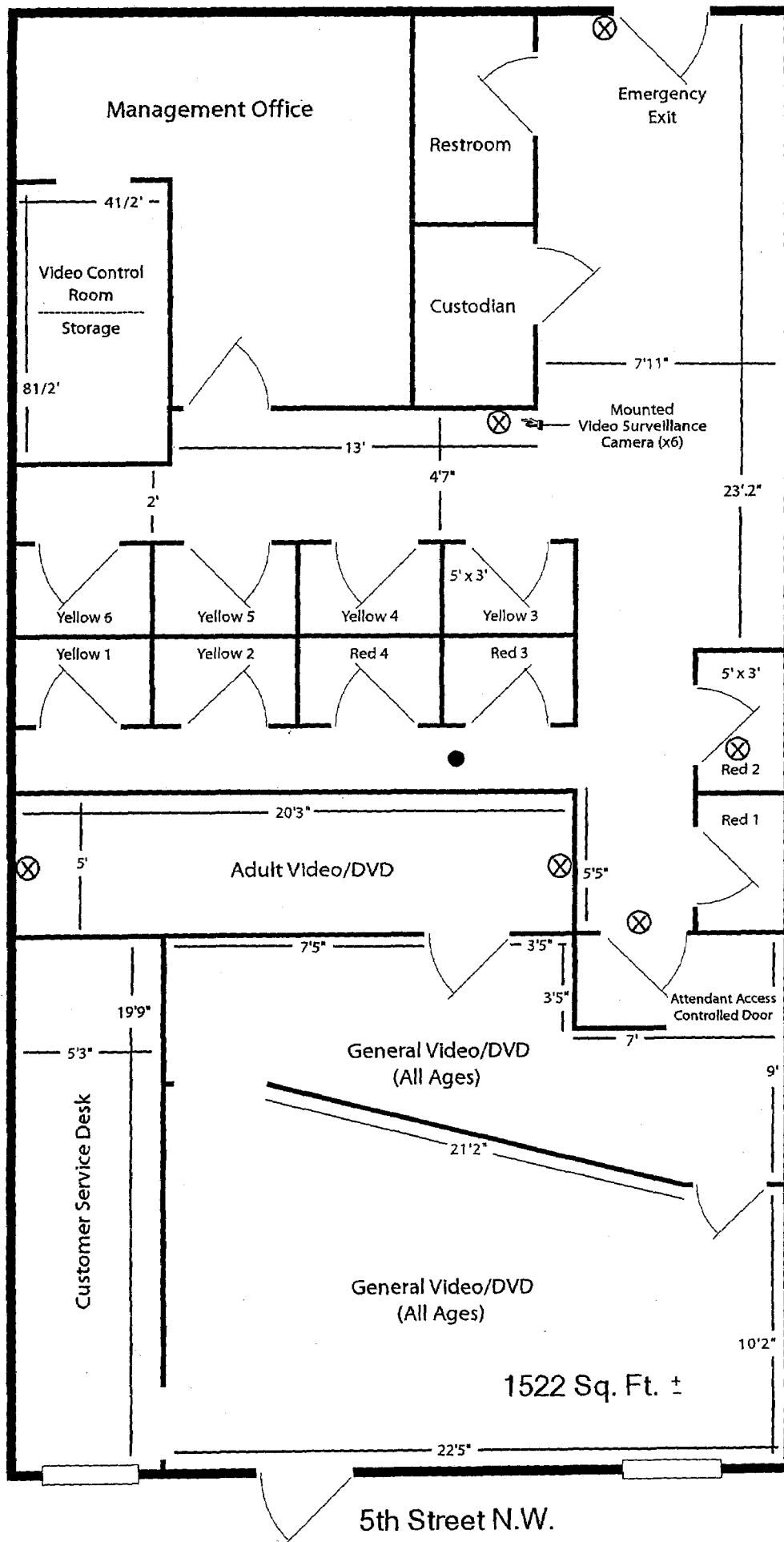
Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:   
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







Certification:

*William D. Vain*  
Det. William D. Vain

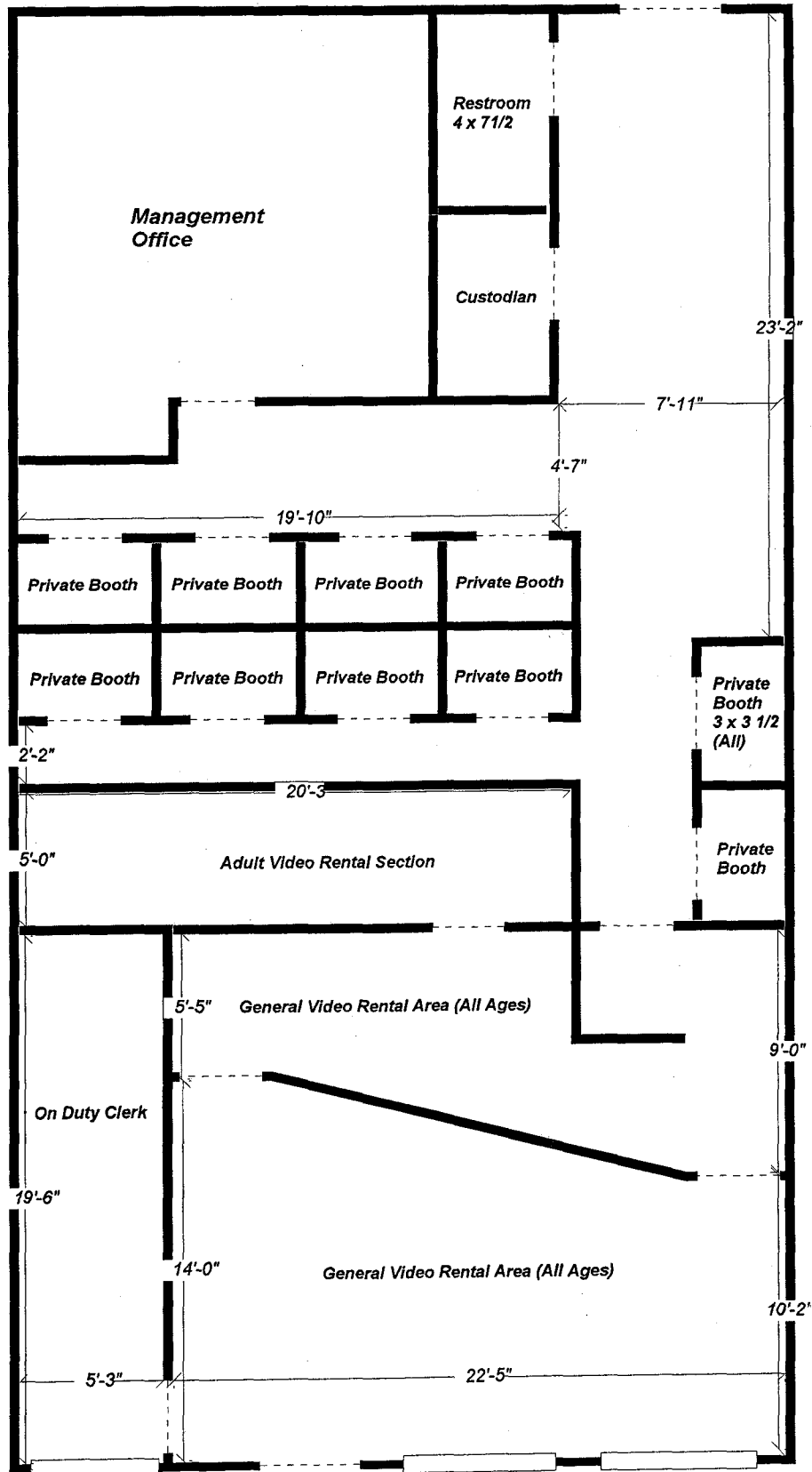
Haole & Kanaka and Associates  
PRIVATE DETECTIVE AGENCY  
Phone: (301) 429-1491



Case No: 01-QAD-2626E et al  
Respondant: JMM Corporation  
919 5th Street, NW  
Washington, DC 20001

Date: March 03, 2002

# LOADING DOCK AREA



Fun Fair Video  
919 5th Street, N.W.

Total Square Footage 1522 ±

5TH STREET N.W.





*Certification*

FF1-1

Number

Case Number: 01-0AD-2626E et al File: N/A

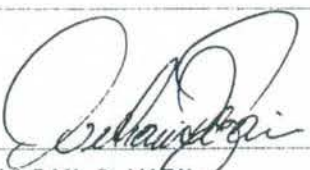
Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:00 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks:

  
Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-2

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

*William D. Vain*  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





### *Certification*

FF1-3

Number

Case Number: 01-0AD-2626E et al File: N/A

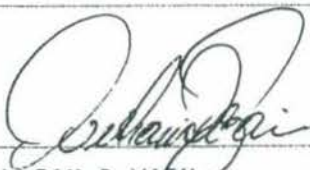
Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:   
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-4

Number

Case Number: 01-0AD-2626E et al File: N/A

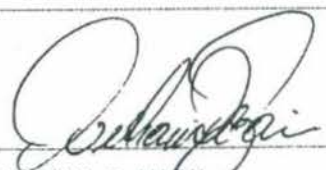
Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-5

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

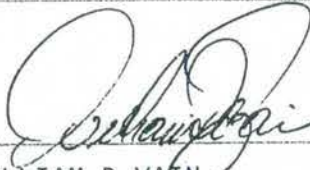
Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:03 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-6

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:04 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

*William D Vain*  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





### *Certification*

FF1-7

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:04 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







## *Certification*

FF1-8

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

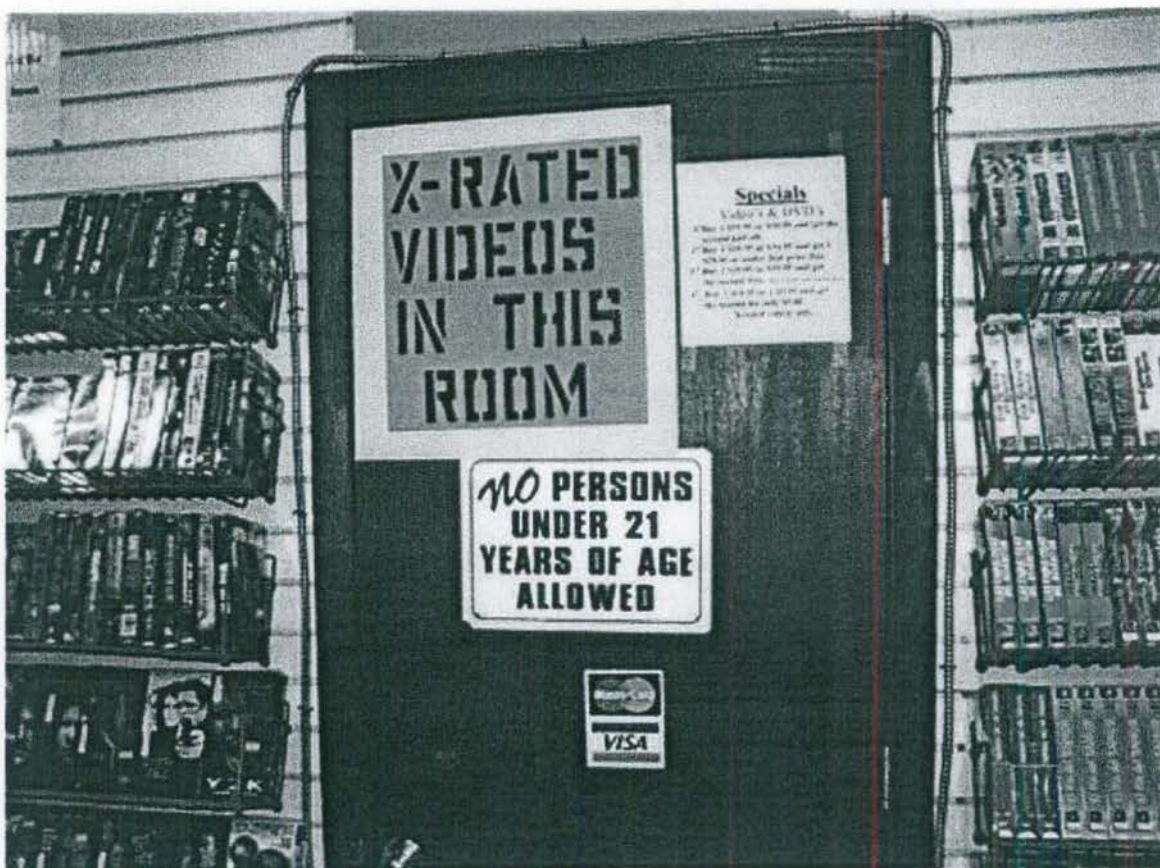
Photo Date: 02-26-2002 Time: 02:05 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





## *Certification*

FF1-9

Number

Case Number: 01-0AD-2626E et al      File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002      Time: 02:05 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:   
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-10

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:05 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:

  
WILLIAM D VAIN

HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-11

Number

Case Number: 01-0AD-2626E et al      File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002      Time: 02:06 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-12

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:06 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: \_\_\_\_\_

*William D. Vain*  
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





## *Certification*

FF1-13

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:08 PM

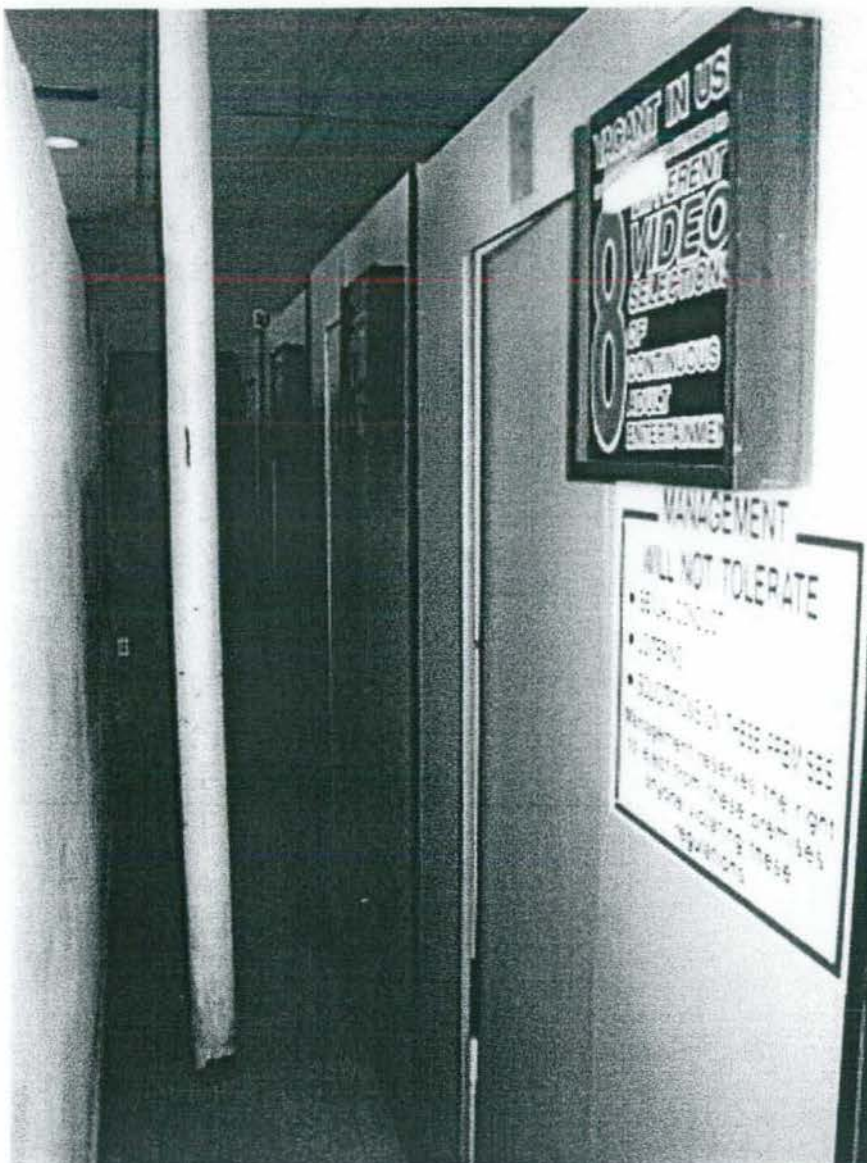
Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







## *Certification*

FF1-14

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:08 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks:

Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







### *Certification*

FF1-15

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:09 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:   
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491







## *Certification*

FF1-16

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:09 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer: WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





### *Certification*

FF1-17

Number

Case Number: 01-0AD-2626E et al File: N/A

Respondent: JMM CORPORATION

Date of Loss: N/A

Photo Date: 02-26-2002 Time: 02:10 PM

Location: 919 5TH ST NW  
WASHINGTON DC 20001

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Photographer:   
WILLIAM D VAIN  
HAOLE & KANAKA AND ASSOCIATES  
PRIVATE DETECTIVE AGENCY  
PHONE: 301-429-1491





**B**

**ORIGINAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF ADJUDICATION  
941 NORTH CAPITOL STREET, N.E., ROOM 9100  
P.O. BOX 37140  
WASHINGTON, DC 20002

-----X  
:  
Department of Consumer :  
and Regulatory Affairs :  
:  
:  
:  
:  
v. : 00-OAD-2524-G  
:  
:  
J.M.M. Corporation Re: 919 5th Street, N.W.  
: Washington, DC 20001  
T/A Fun Fair Video :  
:  
Respondent :  
:  
-----X

May 23, 2000  
Washington, D.C.

Recorded Proceedings:

MICHAEL JOHNSON

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO.

17504

EXHIBIT NO.

33B



**BRADFORD**  
ASSOCIATES



*Exceptional Service in Court Reporting and Litigation Support*

DC OFFICE OF ZONING

RECEIVED

2000 MAY 23 AM 11:04

WASHINGTON, DC:  
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Rockville, MD 20850  
TEL 301-762-1606

VIRGINIA:  
2111 Wilson Boulevard  
Suite 700  
Arlington, VA 22201

PLEASE RESPOND TO:  
2622 N. Fairfax Drive  
Arlington, VA 22201  
TEL 703-525-8251  
FAX 703-525-3212  
TOLL-FREE 1-877-718-1850  
E-MAIL bdr.assoc@aol.com



C O N T E N T S

Statement Taken By

Witness

MICHAEL JOHNSON

Mr. Green: 3

EXHIBITS

Exhibit No.

Page

-NONE-

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

THE COURT: We are now joined by a new witness.

Would you please state your name for the record?

THE WITNESS: Yes, Your Honor.  
Michael D. Johnson.

THE COURT: Would you raise your right hand?

(The witness is sworn.)

THE COURT: Mr. Green, you may proceed.

MR. GREEN: Thank you.

## TESTIMONY OF MICHAEL JOHNSON

## DIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Johnson, by whom are you employed?

A I am employed by the District of Columbia Government, the Department of Consumer Regulatory Affairs, Building Land -- Building and Land Regulation Administration,



1 Office of Zoning and I happen to serve as the  
2 Zoning Administrator.

3 Q Pray tell, sir, what is and what are  
4 the functions of a Zoning Administrator?

5 A Well, the Zoning Administrator is one  
6 of two positions that were created by  
7 Congress. That position, along with the  
8 Surveyor and in my respect, I am charged with  
9 enforcing and interpreting Chapter 11 -- I  
10 should say, "Title 11," of the Zoning  
11 Ordinance.

12 Q Now, if a business applied for a  
13 Certificate of Occupancy, what impact if any  
14 do you have on that application process?

15 A My office, either myself or my staff,  
16 who have been delegated the authority, does  
17 have the authority to approve -- I should  
18 say, review the application as part of our  
19 reviewing process and if the application  
20 comports with what the regulations are, we  
21 will result in issuing the Certificate of  
22 Occupancy.

1           Q     Now, if a business on its application  
2 indicates that it's applying for the opening  
3 of a Video Membership store, not sexually  
4 oriented, what does that mean?

5           A     It is pretty clear. It simply means  
6 that you or they would be operating a video  
7 store that would not entail the distribution  
8 allowing of review or sales of sexually  
9 oriented materials, which would include  
10 videos, magazines, cards, paraphernalia, etc.

11          Q     If the business sold paraphernalia,  
12 books, videos, disks and other sexually  
13 oriented items, would it be in violation of  
14 the Certificate of Occupancy issued if that  
15 Certificate of Occupancy said, not sexually  
16 oriented?

17          A     Well, the answer to both of your  
18 questions is, yes. It would be a violation,  
19 which would be grounds for a revocation of  
20 that Certificate of Occupancy.

21                 In addition, all of our Certificates  
22 of Occupancies have language that talks about



1 not related to sex or sexually exploitative,  
2 language of that nature.

3 Q Are there any Certificates of  
4 Occupancy issued in any quadrant of the City  
5 which allow sexually oriented presentations?

6 A Not to my knowledge.

7 Q Are you familiar with a J.M.M.  
8 Corporation?

9 A Yes; I am.

10 Q How are you familiar with them?

11 A I am familiar from the standpoint  
12 that one of our sister divisions -- I should  
13 say, several of our sister divisions have  
14 been in the process of investigating their  
15 conducting of business.

16 I believe it was brought to my  
17 attention a few weeks ago by, I believe, the  
18 Chief Investigator, Mr. Gladston James, who  
19 in addition to sharing the information with  
20 me as a point of information requested the  
21 assistance of my office with regards to this  
22 investigation.

1           Q     Did you make any specific findings as  
2     a result of this investigation, sir?

3           A     Based upon reports from my staff,  
4     they concluded that they were, in fact,  
5     operating outside the scope of the  
6     Certificate of Occupancy.

7           Q     And when a business operates outside  
8     the scope, what do you do?

9           A     Well, I have several options. One,  
10    of course, is to immediately revoke the  
11    Certificate of Occupancy. I know that I have  
12    that as an option, but what we try to do is  
13    in a sense, after the investigation in most  
14    cases we will try to provide an opportunity  
15    for the person who has the business -- excuse  
16    me, the Certificate of Occupancy -- to  
17    further explain.

18                If the evidence, which results from  
19    the investigation is pretty conclusive -- in  
20    other words, in a case where a business  
21    applies for a Certificate of Occupancy to  
22    operate a video store and in fact, it is very



1 clear, it's noted on the Certificate of  
2 Occupancy that they will not -- it is not  
3 sexually oriented and we find that be the  
4 case, then we will move most expeditiously to  
5 revoke that Certificate of Occupancy.

6 Q Is there any document other than 11  
7 DCMR, which you place any reliance on in  
8 determining whether the retail or wholesale  
9 video store is sexually oriented in its  
10 business operation?

11 A There is. There is one document that  
12 was prepared by my predecessor, who I might  
13 note was an Acting Zone Administrator, and I  
14 don't place reliance on it more so that I use  
15 that as -- in a sense of guidance or a  
16 baseline. As the new, permanent Zone  
17 Administrator, I obviously have the authority  
18 to differ from that and I do.

19 Q With regard to definitions, what if  
20 any consultation have you made to 11 DCMR,  
21 Section 199.1?

22 A If I can check my notes.

1           Well, basically, what that does is  
2     define sexually oriented businesses.

3           Q     Do you use this definition as  
4     guidance at all?

5           A     I do use it as guidance.

6           Q     Do you apply this to all video  
7     stores?

8           A     Yes.

9           Q     And how do you get most of your  
10    complaints relating to video stores; how do  
11    they come to your attention?

12          A     Well, they come several ways. They  
13    can either come from a sister division or  
14    agency that may have also been in the process  
15    of conducting an investigation. That's one  
16    route, the other route, which probably I  
17    would say is a preponderance of our service  
18    requests come in the form of citizens either  
19    directly to me or to my office.

20               MR. GREEN: I have no other  
21    questions, Your Honor.

22               THE COURT: Gentlemen, cross?

## 1 CROSS EXAMINATION

2 BY MR. WRIGHT:

3 Q Mr. Johnson, do I understand you to  
4 say that --5 THE COURT: Mr. Wright, if I can ask  
6 you, just pull that mike --

7 BY MR. WRIGHT:

8 Q I understand you to say that you only  
9 use the opinion previously expressed by your  
10 predecessor as a guideline; is that right?

11 A That's correct.

12 Q In other words, would it be safe to  
13 say that there is no specific opinion except  
14 that which you promulgate on the basis of  
15 case-by-case as it comes before you?

16 A No; that wouldn't be safe to say.

17 Q Would you tell me what it would be  
18 then?

19 A Yes; I would be happy to.

20 Basically, what I mean is that I use  
21 this as a baseline of guidance. As you  
22 probably have so noted, my predecessor



1 indicated a percentage of about 15-percent.  
2 You also will note that in that Zoning  
3 Administrator's interpretation, there are, I  
4 believe, about four citations where, I  
5 believe, a city in New York, a county in  
6 Maryland and another city, I believe -- in a  
7 sense, there was -- what this report is a  
8 study.

9 You might also note that in the  
10 study, the lowest percentage rate is between,  
11 I think, 5-percent, as high as 50-percent.  
12 So, that's what I mean by using it as a  
13 baseline. I believe, if my memory serves me  
14 correctly, my predecessor worked from the  
15 premise of approximately 15-percent.

16 Q Is it the present position of your  
17 office that there can be no division as  
18 delineated in the opinion of your predecessor  
19 at all?

20 A I'm not sure what you mean?

21 Q There is no division between sexual -  
22 - sexually oriented material and nonsexually

1 oriented material as described in this prior  
2 opinion, based on a percentage.

3 Are you saying now, that there is no  
4 such thing?

5 A If I could kind of paraphrase the  
6 Supreme Court, I think they said that you  
7 know it when you see it. In this case, and  
8 so to answer your question, no. I agree, no.

9 Q Do you plan to write another opinion  
10 as a guideline for the public somewhat  
11 similar to your predecessor's?

12 A Absolutely, being that I've only been  
13 here eight months, as you probably well know,  
14 there's lots on the Zoning Administrator's  
15 plate. That is just one piece of the pie  
16 that is -- soon will be consumed, but, yes, I  
17 do plan to.

18 I might also add that when businesses  
19 do come in for consultation purposes, either  
20 in the form of a plan to be submitted to as  
21 part of our BRA (ph) review, which includes  
22 reviews by all of the professional

1 disciplines, ie., plumbing, electrical, etc.,  
2 and zoning, at that time, we use the  
3 opportunity to convey to perspective clients  
4 that this is basically the precedent that is  
5 now being set.

6 Q Can you tell us, based upon what you  
7 may have learned about this particular case  
8 and assuming in your answer, there will come  
9 a time for the business to make a new  
10 application for the next year -- the next  
11 year being sometime after June 1, I take it,  
12 in this particular case?

13 A Yes, sir.

14 Q Is there any present disposition in  
15 your office as to what position you would  
16 take with reference to an issuance of another  
17 Certificate of Occupancy to this business?

18 A Well, if you are inferring whether or  
19 not we would have some prejudices as a result  
20 of this case and this present condition that  
21 the business is in, being that it's in  
22 violation, the answer is, no. We treat each



1 business as a -- on a first-time basis,  
2 irrespective of their past history, unless,  
3 of course, we've pursued a case from the  
4 standpoint of a nuisance.

5 But in answer, no, you wouldn't  
6 receive any prejudices, provided -- the  
7 caveat being that provided you would not  
8 intend to carry out the same or similar types  
9 of use, which brings us here today.

10 Q Now, you indicated that the business  
11 is in violation.

12 You -- your office of zoning, you  
13 didn't issue any notice of infraction of  
14 violation of a zoning ordinance; is that  
15 correct?

16 A That's correct.

17 MR. WRIGHT: Do we have to keep  
18 twisting this?

19 THE COURT: No. Can you -- if you  
20 leave it in the middle, it will be fine. I'm  
21 picking both of you gentlemen up.

22 BY MR. WRIGHT:

1           Q     So, I'm sorry, your office did not  
2     issue a notice -- any type of zoning  
3     violation; is that correct?

4           A     I'm not sure on that. I'd have to  
5     check the record --

6           Q     Okay.

7           A     -- but my memory doesn't --

8           Q     But if the Notice of Infraction came  
9     from the Office of Compliance -- I'd invite  
10    you to look at that?

11                   Is that from your office or the  
12    Office of Compliance?

13           A     It's from the Office of Judiciation,  
14    actually.

15           Q     Okay. Now, is that under your  
16    jurisdiction?

17           A     No; it is not.

18           Q     Okay. So, that's a separate office;  
19    is that correct? That is an independent  
20    jurisdiction?

21           A     That is what I would call a "Sister  
22    Division," under the same --

1           THE COURT: In the interest of time,  
2 he said, "The Office of Judiciation," which  
3 is this office.

4           MR. WRIGHT: Right.

5           THE COURT: That's not the ticket,  
6 that's just a statement that was rendered by  
7 this office.

8           MR. WRIGHT: Right. Okay.

9           THE COURT: The ticket, itself, is a  
10 different document.

11          BY MR. WRIGHT:

12          Q    Okay. Well, the ticket then, whoever  
13 issued the ticket wasn't from your office?

14          A    If you have a copy of it -- I'd have  
15 to look at it.

16          Q    This is one like it; this might not  
17 be it.

18          A    I'd like to see the actual one, if I  
19 could.

20          Q    Now, in terms of the regulations --

21          A    Let me have a look at this, please.

22          Q    The regulations -- is there anything



1 in the regulations that determine whether or  
2 not a business is sexually oriented or  
3 nonsexually oriented?

4 A Is there anything in the regulations?

5 Q Yes. The D.C. Municipal Regulations?

6 A Well, I believe that there is.

7 Q Okay.

8 A Do you want me to read that  
9 definition to you?

10 Q Could you tell me where you're  
11 reading -- what you are reading?

12 A I'm reading from Title 11, Subsection  
13 199.1, define sexually oriented business  
14 establishments as the following -- would you  
15 like me to read it?

16 Q You were telling me that's what you  
17 are relying on, that establishes what  
18 sexually oriented businesses are; is that  
19 correct?

20 A Yes.

21 Q Now, in the regulations, is there  
22 anything that determines what percentage or

1     whether or not a video store can have mixed  
2     or sexually and nonsexually oriented  
3     materials, to your knowledge?

4           A     Can we make a difference between the  
5     two; is that what you are saying?

6                   I'm not -- I don't understand what  
7     you --

8           Q     No. I am asking you -- since we, in  
9     the interest of time, we have an opinion by  
10    your predecessor, Ms. Hicks.

11                   You are familiar with that directive,  
12    that's what you are looking at; is that  
13    correct?

14           A     That's correct.

15           Q     Okay. Now, this is something that  
16    Ms. Hicks, having reviewed the regulations  
17    and whatever, she wrote this directive and  
18    based upon this directive, she says that she  
19    defines in here what she believes to be  
20    sexually oriented business establishments; is  
21    that correct?

22           A     That is correct.

1           Q     And she also indicates someplace in  
2     here that a business could have 15-percent --

3           A     I believe it's on the second to the  
4     last page.

5           Q     Okay. But this is a directive that  
6     she has written and compiled -- generated; is  
7     that correct?

8           A     Well, not really. It's not a  
9     directive -- what it is it's an opinion.

10          Q     It's an opinion?

11          A     Yes, sir.

12          Q     Okay. Of her interpretation of the  
13     zoning ordinances; would that be fair to say?

14          A     That would be fair to say.

15          Q     What I'm asking you, other than that  
16     opinion, is there anything specifically in  
17     the DCMR that takes a similar position of 15-  
18     percent and can be a business of video  
19     establishment of sexually oriented and  
20     nonsexually oriented materials?

21          A     Not to my knowledge.

22          Q     Is there anything in the regulations



1     that you could interpret or give us the  
2     citation to that says that a -- having a  
3     booth in a video store, coin-operated is  
4     sexually oriented?

5           A     No; not to my knowledge, aside from  
6     this, no.

7           Q     Or displaying sexual accessories or  
8     what's commonly called, "Toys," is prohibited  
9     or sexually oriented, in the regulations?

10          A     Not to my knowledge.

11          Q     Okay. Is there any case law that you  
12     are familiar with?

13          A     There are several cases.

14          Q     In the District of Columbia?

15          A     I don't know the answer to that  
16     question.

17          Q     Okay. So, this is basically, as you  
18     said, the guideline or baseline --

19          A     No. Baseline/opinion of my  
20     predecessor.

21          Q     Okay, of your predecessor?

22          A     Yes, sir.

1           Q     This was in affect on April 7, of  
2     2000?

3           A     Yes.

4           Q     You have not rescinded --

5           A     Oh, let me qualify that. It was in  
6     affect from the standpoint of existing  
7     businesses, but as I have given earlier  
8     testimony for new clients that are seeking to  
9     start similar businesses, they are advised  
10    that it is none.

11                So, I hope that answers your  
12    question?

13           Q     Okay. So, does that mean that  
14    businesses that have been in -- well, strike  
15    that.

16                Businesses that have been established  
17    -- they have been grandfathered in; is that -  
18    - would that be --

19           A     I wouldn't use the term,  
20    "Grandfather." I would just say that they  
21    work under the auspices of the 15-percent.

22           Q     Of the 15-percent?

1           A     Yes.

2           Q     Okay.  So, this particular business  
3     then falls within that jurisdiction or the  
4     parameters of the 15-percent?

5           A     They would benefit from that.

6           Q     As of April 7th?

7           A     Correct.

8           Q     Okay.  Now, there are other video  
9     stores in the District of Columbia that have  
10    sexually oriented material.

11                   Can you tell me if they have a  
12    different Certificate of Occupancy than the  
13    one that you have viewed, which is  
14    Petitioner's Exhibit Number 3?

15                   I think you're looking at it.

16                   Are there different Certificates of  
17    Occupancy other than this type?

18           A     I would guess not; I would presume  
19    not.

20           Q     So, are there Certificates of  
21    Occupancy for video stores to have 100-  
22    percent sexually oriented materials?



1           A.    I'm not aware; I'm not sure, quite  
2 honestly.

3           Q    Okay.

4           A    I mean, I state that from the  
5 standpoint, as I referenced, I've been here  
6 eight months and businesses have been in  
7 existence in many cases probably longer than  
8 I am older.

9           Q    Now, this particular Certificate of  
10 Occupancy indicates not sexually oriented?

11          A    That's true.

12          Q    And based upon your predecessor's  
13 opinion, even though this is not sexually  
14 oriented, does that give this business the  
15 privilege to have sexually oriented and  
16 nonsexually oriented materials as long as  
17 they stay within the 15-percent?

18          A    Honestly, I think that's where the  
19 part of the conflict comes in on the part of  
20 my predecessor's interpretation.

21                It is my opinion that the  
22 Certificates of Occupancy are pretty straight

1 forward with the language, not sexually  
2 oriented. However, not withstanding, there  
3 appears to be a conflict what my predecessor  
4 who's codified in the form of an opinion, and  
5 what our Certificates of Occupancies actually  
6 describe or prescribe.

7 It actually is the basis why, when I  
8 meet with new clients, I advise them, there's  
9 no -- it's zero tolerance, basically.

10 Q So, then you would acknowledge that  
11 there is some confusion or misunderstanding  
12 about the interpretation of her opinion?

13 A I wouldn't call it confusion, I'd say  
14 inconsistency.

15 Q Inconsistencies?

16 And you have permitted those or she -  
17 - under her administration or before you came  
18 onboard, business establishments were given  
19 the benefit of the 15-percent, even though it  
20 stated, "Not sexually oriented?" Would that  
21 be fair to say?

22 A I can only make that presumption.

1           Q     Okay. And that presumption then  
2 would, inure by inference to my client as of  
3 April 7th, 2000, even though his Occupancy  
4 Certificate says, not sexually oriented, he  
5 could have 15-percent sexually oriented  
6 materials based upon her --

7           A     Based upon my predecessor's --

8           Q     Then the inconsistencies of  
9 enforcement?

10          A     Well, I don't think we talked about  
11 inconsistencies of enforcement.

12          Q     Well, we'll strike enforcement.

13                Lets just say, based upon  
14 inconsistencies?

15          A     I would concur with that.

16          Q     Okay. Now, based upon those  
17 inconsistencies, the 15-percent -- does that  
18 apply to area or space or does it apply to  
19 merchandise?

20          A     If my memory serves me correctly, I  
21 believe it's on the 3rd or 4th to the last  
22 page of the -- I think, 6 or 9-page document

1       -- it talks about basically, three areas.

2               One, by square area or floor area,  
3       two, by percentage of the inventory, and I  
4       believe the third one was by percentage of  
5       gross sales, I do believe.

6               Q     Okay. Now, how -- gross sales.

7                       How do you determine what percentage  
8       of gross sales are sexually oriented  
9       generated and those that are nonsexually  
10      oriented generated?

11              A     I would think if that was the litmus  
12      test, then one being the business vendor  
13      would need to have some type of -- in a sense  
14      -- I guess, what I'm going to call a  
15      delineable computer cash register system that  
16      would actually break that out or in other  
17      words, how I -- at least in my mind,  
18      conceivably how it would work -- is that when  
19      a patron comes up to the counter and  
20      exchanges or tenders the cash for -- in  
21      exchange for the video, then the video store  
22      operator would theoretically have a separate



1 key.

2 You would punch that and then somehow  
3 make the distinction between sexually  
4 oriented videos versus nonsexually oriented  
5 videos.

6 Q So, now, has that distinction been  
7 made through your office or through the D.C.  
8 Government or the Regulatory Affairs Agency?

9 A I don't know.

10 Q Okay. Just like vendors are required  
11 to collect taxes, so, to your knowledge, you  
12 have no knowledge as to whether or not they  
13 are required to differentiate between income  
14 generated from sexually oriented as opposed  
15 to nonsexually oriented?

16 A No. I don't know, but I would  
17 suspect that if the vendor or the business  
18 person was aware -- and I'm making  
19 presumptions they are aware, because I know  
20 that they are explained in quite detail what  
21 the regulations are prior to the issuance of  
22 Certificate of Occupancy, that they would

1       have been knowledgeable of that and I  
2       believe, that it is their responsibility to  
3       determine in a sense what type of option --  
4       I'm using that term loosely --

5           Q     Okay.

6           A     -- that they would use --

7           Q     So, if none of --

8           A     -- to abide by the law.

9           Q     Right. So, if none of the vendors  
10       are using that, then obviously, that must not  
11       be in existence, based on your analysis of  
12       that?

13          A     I can't make a comment on that,  
14       because, honestly, I've not surveyed all of  
15       the businesses in this area, so I really  
16       couldn't say.

17          Q     Now, in terms of the booths, are the  
18       booths part of this 15-percent?

19          A     I would think so, if you were to  
20       apply --

21          Q     I didn't understand you, you said it  
22       quickly?

1           A     I'm sorry. I'm from Colorado. Let  
2 me slow down.

3           Q     That's okay.

4           A     I would presume so.

5           Q     Now, would the videos -- would they  
6 also consist of the 15-percent?

7           A     I believe so.

8           Q     Would the magazines consist of the  
9 15-percent?

10          A     To more directly answer your  
11 question, I think any materials related to  
12 sexual orientation, inclusive of cards, etc.,  
13 would be inclusive in that definition.

14          Q     So, in order -- we're not conceding,  
15 because that's what we're here for, to  
16 determine if my client is in violation as  
17 opposed to your comment that he was in  
18 violation?

19          A     I understand.

20          Q     But if my client used the booths, the  
21 videos, magazines, cards and whatever other  
22 paraphernalia, if he arranged that within 15-

1       percent merchandise -- would that put him in  
2       compliance?

3           A     That would make him in compliance  
4       with my predecessor's.

5           Q     Predecessor's?

6           A     Right.

7           Q     Okay, that's what I wanted to know.

8           MR. WRIGHT: I'm trying to wrap this  
9       up, because this -- lets see if I -- I think  
10      that that's all that I wanted to know.

11           Is there anything that -- did you  
12      understand what he just said?

13           That's basically what we wanted to  
14      know.

15           THE COURT: Anything on redirect, Mr.  
16      Green?

17           MR. GREEN: No, Your Honor.

18           I have no questions.

19           THE COURT: All right.

20                   --oo0oo--

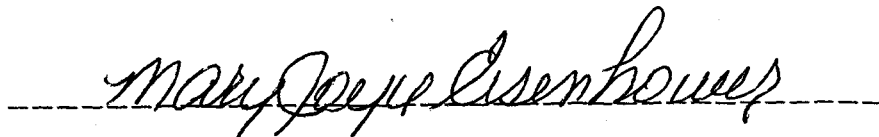
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## 1 CERTIFICATE OF TRANSCRIPTIONIST

2 I, Mary Joyce Eisenhower,  
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4 preceding is a verbatim transcript of the  
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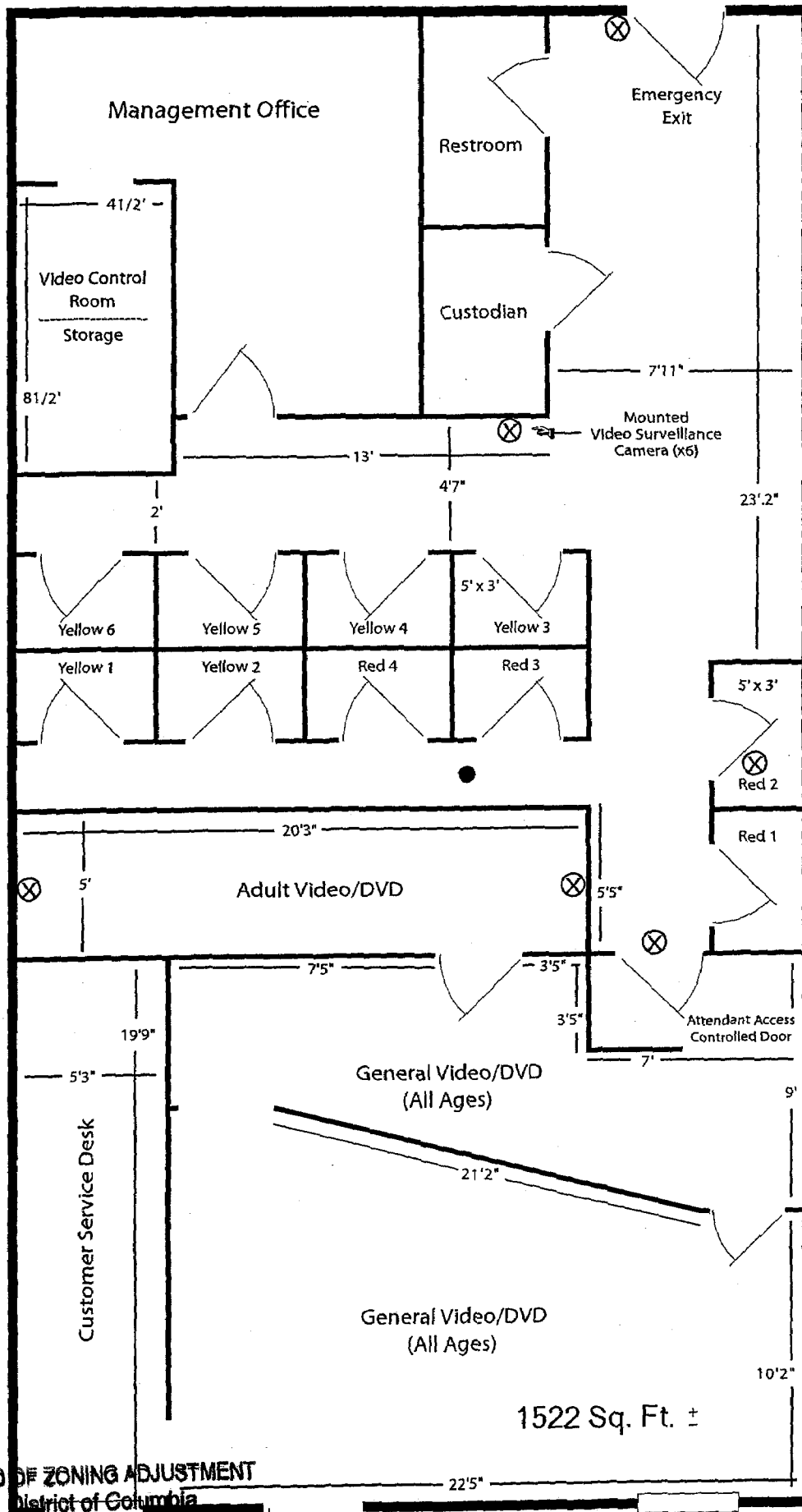
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C



BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO.

EXHIBIT NO.

17504  
33C

5th Street N.W.

Certification:

*Det. William D. Vain*

Det. William D. Vain

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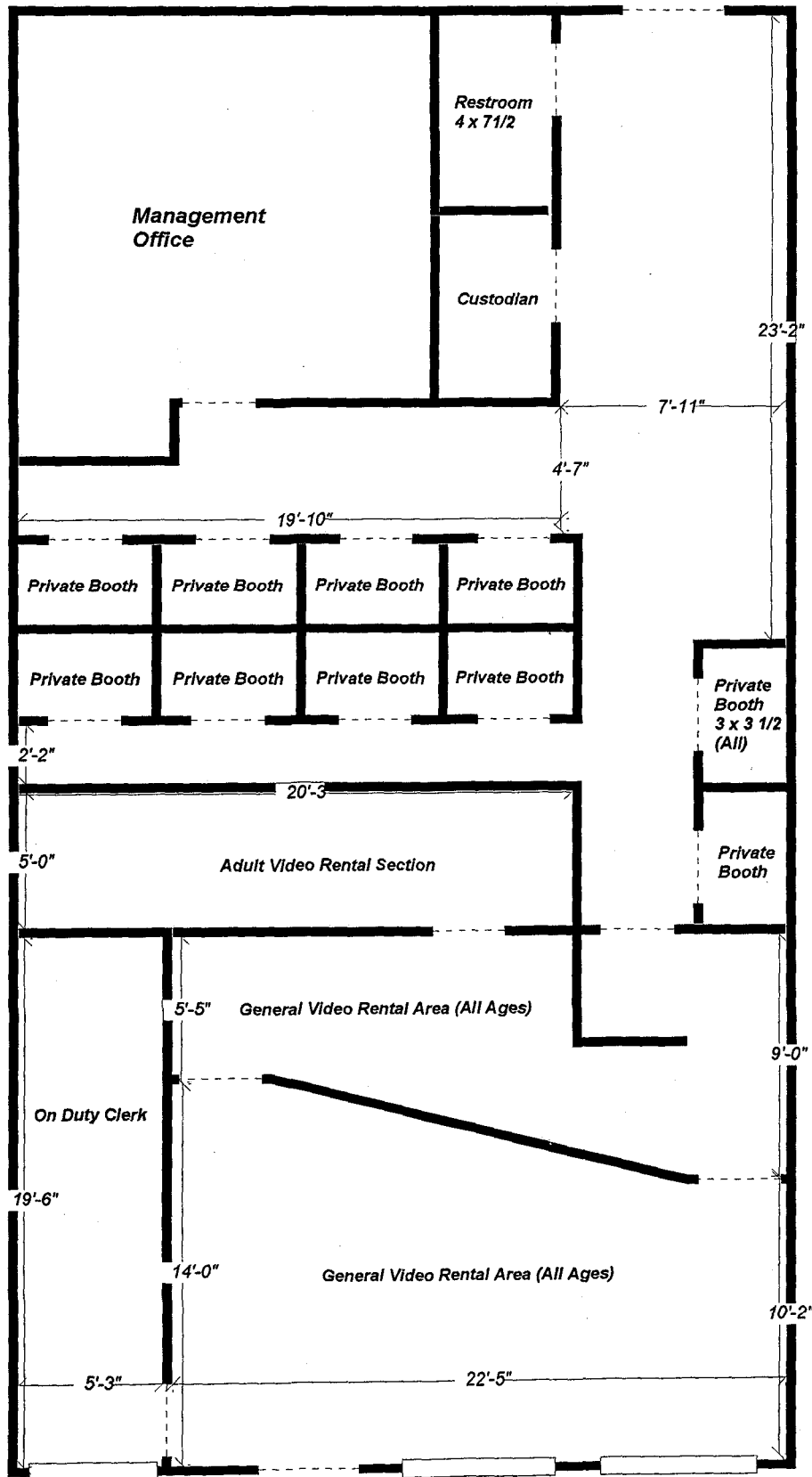
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Case No: 01-0AD-2626E et al

Respondent: JMM Corporation  
919 5th Street, NW  
Washington, DC 20001

Date: March 03, 2002

# LOADING DOCK AREA



Fun Fair Video  
919 5th Street, N.W.

Total Square Footage 1522 ±

5TH STREET N.W.



**D**

**ORIGINAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF ADJUDICATION  
941 NORTH CAPITOL STREET, N.E., ROOM 9100  
P.O. BOX 37140  
WASHINGTON, DC 20002

- - - - -X  
:  
Department of Consumer :  
And Regulatory Affairs :  
:  
:  
V. 01-OAD-2626-E, NOI#028120  
01-OAD-2541-G, NOI#035446  
:  
J.M.M. Corporation :  
T/A Fun Fair Video Re. 919 5th Street, N.W.  
Washington, DC 20001  
:  
Respondent :  
:  
- - - - -X

Tuesday, March 5, 2002

Recorded Proceedings:

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 17504

EXHIBIT NO. 33D



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APPEARANCES: (Statement Taken By)

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Washington, DC 2002

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JONATHAN L. KATZ, ESQ.  
Marks and Katz, LLC  
1400 Spring Street  
Suite #410  
Silver Spring, Maryland 20910

C O N T E N T S

Statement Taken By

Witness

EXHIBITS

Exhibit No.

Page

-NONE-



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

THE COURT: Good morning.

My name is Lennox Simon. I am the  
Administrative Law Judge residing.

This is the 5th day of March, 2002.  
The time is 10:11 a.m. Today's proceedings  
are being conducted in accordance with  
Infraction DC Code, Section 6-2701, 1987  
Supplement.

The matter before me is that of  
J.M.M. Corporation, trading as Fun Fair  
Video, located at 919 5th Street, N.W.,  
Washington, DC 20001.

Respondent is charged with two  
violations, the first one being Notice of  
Infraction 035446, operating a building  
without a Certificate of Occupancy which  
carries a fine of \$500.

The second Notice of Infraction  
028120, also operating a building without a  
Certificate of Occupancy.

1           Let the record reflect appearing  
2 today on behalf of the government, your name?

3           MR. GREEN: My name is Matthew J.  
4 Green, Jr., Your Honor, good morning.

5           THE COURT: Very well.

6           On behalf of the respondent, your  
7 name sir?

8           MR. KATZ: Good morning, Jonathan  
9 Katz, representing J.M.M.

10          THE COURT: Very well. Let me just  
11 go around the room and see if I can pick up  
12 the names of everyone, even though the sheets  
13 are being circulated. On my right, on your  
14 left...

15          MR. MONTIEL: My name is Jose Maria  
16 Montiel.

17          THE COURT: Very well.

18          MR. PARDIECK: Steve Pardieck (ph).  
19 I live at 469 Ridge (ph) Street, Northwest,  
20 with the Mt. Vernon Neighborhood Association.

21          MR. (inaudible): Paul (inaudible),

6

1 1230 4th Street, Northwest, also with Mt.  
2 Vernon Neighborhood Association.

3 MS. BORING: Lydia Boring (ph),  
4 (inaudible) Mt. Vernon Neighborhood  
5 Association.

6 MS. (inaudible): (inaudible) 11 17th  
7 Street, Northwest (inaudible).

8 THE COURT: On this side, please.

9 MR. WOODWARD: Scott Woodward (ph).

10 MR. HOOK: Anthony Hooks DCRA  
11 Investigator.

12 MR. DETRIECK: Curt Detriek,  
13 Investigator.

14 MR. STOKES: Curtis Stokes, (ph)  
15 Investigator, DPI.

16 MR. JAMES: James (inaudible),  
17 Inspector, DPI.

18 MR. ALLEN: Steve Allen,  
19 Investigator, DPI.

20 MS. DRISCOLL: Debra Driscoll (ph).  
21 I'm at 455 M Street, Northwest and I am

1 president of the Mt. Vernon Neighborhood  
2 Association.

3 MR. NAPPA: Larry Nappa, 428  
4 (inaudible) Street, Northwest.

5 MR. GILLFORD: Patrick Gillford,  
6 Metropolitan Police Department, Supervisor.

7 THE COURT: If I can get everyone  
8 with the exception of Mr. Green and Mr. Katz,  
9 would you please raise your right hand?

10 (Witnesses are sworn.)

11 THE COURT: Mr. Green, the  
12 government, any preliminary matters?

13 MR. GREEN: Yes, Your Honor. I have  
14 two.

15 The first is that this matter that is  
16 before the Court be considered as a  
17 recidivist matter in light of the fact that  
18 on the 20th of June, 2000, this Court  
19 rendered a decision relative to a Notice of  
20 Infraction regarding J.M.M. Corporation  
21 trading as Fun Fair Video and that case was

1 OAD Number 002524-G.

2 In that decision, the Court rendered  
3 an order that the respondent pay \$500 and  
4 that it was further ordered that J.M.M --

5 MR. KATZ: I'm sorry, Your Honor, I  
6 don't --

7 MR. GREEN: -- Corporation --

8 THE COURT: Just a minute.

9 MR. KATZ: We have witnesses in here  
10 and I think the first order of business is  
11 the sequestration order.

12 THE COURT: Well, I don't know if  
13 anyone is going to -- I don't generally make  
14 that suggestion. It comes from either you or  
15 Mr. Green.

16 MR. KATZ: Well, not all the  
17 witnesses are here.

18 THE COURT: Is that one of your  
19 motions, Mr. Green?

20 MR. GREEN: No, it isn't, Your Honor.

21 As a matter of fact, you know, I



1 think that he's premature is making his  
2 motion to sequester anybody. I was simply  
3 asking the Court to address certain  
4 preliminary matters of which one of them was  
5 that this matter be treated as recidivist.

6 Now, I think you ought to let me at  
7 least finish what I'm saying, relative to  
8 that, before we even get into other things.  
9 Now, at least I'm entitled to that kind of  
10 courtesy, Your Honor.

11 THE COURT: Mr. Katz?

12 MR. KATZ: In this administrative  
13 hearing you have to deal with due process and  
14 fairness. I've never been in a civil or  
15 criminal court where I don't get my  
16 sequestration order right at the front before  
17 we say anything.

18 We have my opposing Counsel talking  
19 about events that happened in prior  
20 litigation. I think we have tainted  
21 witnesses hear the question of it and I think

1 we should just clean that up right now and  
2 have the sequestration order go through.

3 THE COURT: I'm going to allow Mr. --  
4 your motion is -- your objection is noted,  
5 but I will allow Mr. Green, since it's just  
6 preliminary, I will allow Mr. Green to finish  
7 his preliminary matters, then I will then  
8 come to you and you have the same right to  
9 make whatever motion --

10 MR. GREEN: Thank you, Your Honor.

11 I would also point out that the order  
12 which was rendered, stated very specifically,  
13 "It is further ordered that J.M.M.  
14 Corporation, trading as Fun Fair Video, shall  
15 cease all business activity at 919 5th  
16 Street, Northwest, Washington, DC, until such  
17 time that he obtains a proper Certificate of  
18 Occupancy for his business."

19 I ask the Court to take judicial  
20 notice of that and I certainly have a copy  
21 that I'm willing to give Counsel. I think he

1 is familiar with this. If not, again, I will  
2 give it to the Court.

3 We have a document that is a public  
4 record. The respondent certainly is familiar  
5 with it. It's not a secret. He was here  
6 once before under these circumstances. He  
7 should be treated as a recidivist. That's my  
8 first preliminary matter.

9 THE COURT: Any response to that, Mr.  
10 Katz?

11 MR. KATZ: My experience is if  
12 someone wants to go along those routes, I get  
13 advance notice. These Notices of Infraction  
14 were issued in September.

15 I've been in discussions with Mr.  
16 Green since last October. This is the first  
17 time he is saying that. That plays -- that -  
18 - this is a reason why we are going to need a  
19 postponement today.

20 If he really wants to go with the  
21 recidivist claim, I didn't come in prepared

1 to argue the law of recidivism. This wasn't  
2 -- this wasn't presented to me before.

3 I suggest that his request to go as a  
4 recidivist claim -- please give me time to  
5 prepare for that. I don't want to be  
6 sandbagged, that's not fair.

7 THE COURT: Any response, Mr. Green?

8 MR. GREEN: Your Honor, in this  
9 particular instance, this respondent was in  
10 business, the business stopped for a very  
11 long period of time.

12 The business started back up after  
13 some six to nine months hiatus. Now, there  
14 has been no attempt at addressing this  
15 Court's order of getting a Certificate of  
16 Occupancy in conformity with the requirements  
17 that this Court established for this  
18 particular zone. That didn't happen.

19 Now, if he had made application or  
20 had gone to the Board of Zoning Adjustments,  
21 he would have exercised good judgement in

1 following the dictates of this Court. That  
2 did not happen.

3 What we have here is an individual  
4 who has flaunted the law, who has taken the  
5 whole process and said, we are not going to  
6 obey the dictates of the Department of  
7 Consumer and Regulatory Affairs  
8 Administrative Law Judge.

9 That's why we are seeking recidivism  
10 status in this particular instance.

11 I will say to the Court that to do  
12 otherwise is to (inaudible) the continuation  
13 of the disregard of this Court's order.  
14 That's why we are seeking a recidivism  
15 status.

16 MR. KATZ: You have to have fair  
17 notice, Your Honor. We have -- all we have  
18 with us today -- and we're going on the two  
19 Notices of Infraction with the maximum  
20 possible penalty of \$500.

21 I attended the meeting of the Mt.



1     Vernon Neighborhood Association last January  
2     where Mr. Green was. He insisted then that  
3     we'll see what happens today. He knew that I  
4     was there and what was going to happen today  
5     was \$500 per ticket, maybe doubling it at  
6     worst.

7             This is sandbagging, this is unfair  
8     notice to go further than the four corners of  
9     that today -- he just pays fines.

10    Furthermore, Your Honor, another problem that  
11    I've noticed. It didn't even come to me.  
12    You've seen that. I'm going to hand it to  
13    Your Honor. When my client gets two notices  
14    on Friday, no copy to me. Mr. Green knew  
15    about it.

16            It's lucky that my client was able to  
17    reach me so the government is now trying to  
18    close my client down.

19            THE COURT: Well, this is something  
20    separate and apart from what we are hearing  
21    about today.

1           This notice goes -- seems to be  
2           correctly addressed to the respondent,  
3           because this is not a matter before the Court  
4           as of yet and therefore, you have not had an  
5           opportunity to enter your appearance, so this  
6           -- this will not have any bearing on the  
7           hearing today, Mr. Katz.

8           MR. KATZ: Well, this connects to  
9           having fair notice and having fair -- and  
10          what you have in your hands relates to that,  
11          Your Honor.

12          THE COURT: That's a completely  
13          different matter. It has nothing to do with  
14          today's hearing. Today's hearing is based on  
15          the issuance of two Notices of Infraction.  
16          This is an Intent to Revoke and that comes  
17          under different law all together, not the  
18          civil infraction.

19          MR. KATZ: But where I want to tie  
20          that together is that --

21          THE COURT: We will not entertain

1 this today, Mr. Katz.

2 THE KATZ: I know it's not being  
3 entertained today but it does connect to the  
4 reason at the appropriate time, whether it is  
5 now or later, you are going to be having  
6 continuance motion from me and there are  
7 three or four grounds for it and --

8 THE COURT: Well, I'll wait until --  
9 I'll wait until I get to you with your  
10 preliminary matters.

11 With respect to Mr. Green's motion,  
12 the Court will take judicial notice of it's  
13 own order, dated June 20, 2001 and Mr.  
14 Green's motion to treat the respondent as a  
15 recidivist will be granted.

16 What that means is that the fines  
17 will now move from \$500 each citation to  
18 \$1,000 each. So, it will be \$2000 all  
19 together.

20 Lets move on. Mr. Green, you had  
21 another motion?

1 MR. GREEN: Yes, Your Honor.

2 I file a motion to quash two  
3 subpoenas that were served. One -- I should  
4 say, attempted to be served -- one on me and  
5 one on Mr. Anthony Hooks on the 1st of March  
6 of 2002.

7 First of all, the subpoenas that were  
8 served did not or were not served on either  
9 Mr. Hooks or myself. As a matter of fact,  
10 they weren't even served on the recipient --  
11 the proper recipient for the serve in the  
12 District -- in the Department of Consumer and  
13 Regulatory Affairs.

14 Third of all they could (inaudible)  
15 under the premises that I have (inaudible) in  
16 the brief that I filed. Counsel was given a  
17 copy of this.

18 There is no -- the general principal  
19 is that there is no right to discovery in an  
20 administrative proceeding. I direct the  
21 Court's attention to DC Code, Section 1-1509,

1 1990 edition.

2 I would also direct the Court's  
3 attention to the National Labor Relations  
4 Board versus Interborough (ph) Contractors,  
5 cited at 432, page Section 854, 857 to 858,  
6 was denied in the U.S. Court of -- Supreme  
7 Court at 5 U.S. 915.

8 I would point out that the Court  
9 stated that matters such as these are  
10 regulated by a statute of the rules and since  
11 the petition and statutory right to a  
12 pretrial discovery, new circumstances as  
13 requested should be denied.

14 More specifically, the District of  
15 Columbia Administrators Procedures Act makes  
16 no provision for discoveries in  
17 administrative proceedings and furthermore,  
18 (inaudible) of 1985, DC Code 6-2701. It says  
19 -- and the regulations thereunder don't make  
20 provisions for pretrial discovery.

21 I would also state that the same is



1 true in the classic case in the District of  
2 Columbia, cited as Inray Herndon (ph) 596,  
3 592, 595.

4 Furthermore, I would point out there  
5 is a question of professional responsibility  
6 that issues -- in effect, you call in the  
7 lawyer, which is what I am, to the witness  
8 stand. They have problems with that.

9 I would direct the Court's attention  
10 to (inaudible) responsibility to be 5105-B  
11 and the Model Rules of Professional Conduct  
12 cited at 3-7.

13 These rules prevent attorneys from  
14 running afoul of the advocacy witness rule.  
15 This rule simply states that a lawyer shall  
16 not accept employment in contemplation or  
17 pending litigation if he knows or it is  
18 obvious that he would be called to testify.

19 Well, that's not my role here. My  
20 role is to advocate on behalf of the  
21 government and not to be a professional

1 witness.

2 Now, there are certain exceptions, of  
3 course to everything, but most specifically,  
4 it would work a hardship on this operation,  
5 this office, if I am called as a witness. If  
6 I am called as a witness, then who will act  
7 in defense of the District of Columbia? I  
8 don't think anyone.

9 I think Your Honor is aware of the  
10 short staff situation we have in the  
11 Department of Consumer and Regulatory Affairs  
12 and the fact that there are only two lawyers  
13 who actually handle anything in this  
14 operation.

15 Consequently, to call me as a witness  
16 would work not only an undue hardship on the  
17 client, which in this case is the Department,  
18 but would also work as a matter of conflict  
19 with regard to my role here.

20 Now, I ask the Court to see Rust (ph)  
21 Enterprises Corporation, et al., versus

1 McGill A. Reveros (ph) et al. Cited again,  
2 846, Section 94.

3 Finally, Your Honor -- and you are  
4 going to hear a lot about this from the  
5 respondent. He is going to allude to  
6 something called, "A Gentlemen's Agreement."

7 Now, I want to point out that the  
8 discussions that took place -- if such an  
9 agreement were in effect, any discussions  
10 about it would do violence to the concept of  
11 settlement discussion.

12 So, what we have here is a situation  
13 that cries for the relief that I see, which  
14 is that neither Mr. Hook's nor myself be  
15 required by subpoena to produce any  
16 documentation prior to a hearing or to give  
17 testimony at that hearing.

18 Thank you.

19 THE COURT: Mr. Katz?

20 MR. KATZ: It is another situation  
21 where I gave Mr. Green plenty of advance

1 notice about what I was planning to do. I  
2 filed my motion for discovery on February  
3 14th, quite a while ago.

4 Mr. Green doesn't give me a response  
5 about how he is planning on working on my  
6 evidence request until yesterday, a Fax very  
7 late in the day. Everything I am looking for  
8 is to be able to support our side and what  
9 are some very important First Amendment and  
10 due process issues.

11 I'll go one-by-one, Your Honor. I  
12 went through the DC Code. Mr. Green may have  
13 these sections in front of him about  
14 discovery being freely available for these  
15 kinds of hearings.

16 As far as the motion for discovery, I  
17 cited my motion for discovery in the first  
18 paragraph, under Section 28-3905-F of the DC  
19 Code which provides for freely allowed  
20 reasonable discovery in the administrative  
21 stage.

1           What was the Freedom of Information  
2 Act all about? What was the Sunshine (ph)  
3 Act all about? I would expect this kind of  
4 resistance to pretrial discovery maybe from a  
5 private party, but this is the government.  
6 I'm a DC resident and I pay taxes here.

7           I'd like to see something better than  
8 that from the government than that kind of  
9 hedging. As far as being able to get  
10 testimony and documents through subpoena,  
11 well, we have DC Code, Section 28-3903.

12           I brought my subpoenas down, one of  
13 the Administrative Law Judges signed them, he  
14 stamped them. This isn't the time for me to  
15 hear, just late yesterday from Mr. Green that  
16 he is going to oppose them.

17           We're going to be sandbagged if we  
18 are not going to know in advance what the  
19 evidence is. Why is it the -- it's an  
20 Administrative Hearing, but we need fairness  
21 too. If we don't have fairness, then there

1 is no use being here.

2 Why is it in civil proceedings we  
3 have the discovery rules that allow  
4 interrogatories back-and-forth, depositions.

5 Are we going to create a huge gap  
6 between what happens here as far as being  
7 able not to be sandbagged by what information  
8 we are getting and having trial by fire,  
9 which is what we're going to have in a  
10 regular court? Is that what we really want?

11 My understanding from speaking to my  
12 predecessor counsel, from my client, is that  
13 there was a gentleman's agreement. When you  
14 have an offer of acceptance, it's got to be  
15 proven somehow.

16 Now, the best I have is that the  
17 gentleman's agreement was (inaudible) ago by  
18 the (inaudible) memo and apparently further  
19 to allow that at least some proof of my  
20 client's story.

21 Now, we have a situation where these



1 are the people I have subpoenaed to prove the  
2 agreement. My client was not there  
3 personally, so he can't prove it directly,  
4 only by hearsay at best.

5 We have Adjie O'Bryant (ph) and James  
6 Wright (ph) who were my client's predecessor  
7 counsel. We have Mr. Green, who I understand  
8 was in on some of the conversations about  
9 this.

10 We have predecessor, head of the  
11 Zoning Administration, that gentleman is Mr.  
12 Johnson, who could not be found and  
13 (inaudible) Hicks knew what the agreement  
14 was. We got a subpoena delivered to her just  
15 one or two business days ago, but not  
16 directly in her hands, but she's going to  
17 honor.

18 We have a problem with getting my  
19 client's two predecessor counsel. Adjie  
20 O'Bryant will make himself available by  
21 rearranging his schedule, by coming in Friday

1       afternoon. Mr. Green is available Friday  
2       afternoon. I am available Friday afternoon.

3               Even though I got a subpoena  
4       delivered over to him by our investigator, at  
5       least about 7 or 10 business days ago, he  
6       told me that he is in the middle of a death  
7       penalty trial in front of Judge Lambert (ph)  
8       and could not come today.

9               I asked him about the availability of  
10      his -- his co-counsel, who assisted my client  
11      at the last hearing, Mr. Wright, James  
12      Wright. He didn't know what Mr. Wright's  
13      availability was.

14              I haven't seen Mr. Wright today.  
15      I've been calling Mr. Wright about three or  
16      four times a week. I have not heard back  
17      from him, so, we need Mr. Green to prove the  
18      agreement.

19              Because, Your Honor, assuming for  
20      argument's sake that there was an agreement  
21      between my client and the government that

1       there was a certain amount of adult material  
2       that would be allowed in his store and assume  
3       for argument's sake that my client was  
4       complying with that at the time these Notices  
5       of Infraction were issued, then the Notices  
6       of Infraction thereby were premature in  
7       therefore should be quashed.

8               It's similar to having a crystal ball  
9       and knowing that my brother is going to steal  
10      some candy tomorrow and arresting him today.  
11      The arrest today of my brother for allegedly  
12      stealing gum tomorrow, that's got to be  
13      quashed. The same thing here.

14             Our argument is that all -- both  
15      Notices of Infraction were issued, they were  
16      issued two or three days apart. There was  
17      this gentlemen's agreement in force.

18             Now, if you go to the bigger issue,  
19      Your Honor --

20             THE COURT: Let me stop you there for  
21      a minute.

1           Is there a written document that  
2 memorialized this agreement?

3           MR. GREEN: No, there isn't, Your  
4 Honor, and that is the problem here.

5           The subpoena that he talks about was  
6 delivered to me -- or I should say, my  
7 office, on March 1st, as of 3:25 p.m., Your  
8 Honor.

9           MR. KATZ: Lets remember the position  
10 I am in. I didn't come to this case until  
11 last October or September, long after the  
12 agreement was made. If I was involved with  
13 this gentlemen's agreement, I would have  
14 pushed harder.

15           From my understanding, Your Honor,  
16 not one of the 20 plus or maybe even 30 plus  
17 stores in DC that have a large percentage of  
18 adult material -- not one of them as I  
19 understand have an adult -- I'm sorry -- an  
20 SOB License, a Sex Oriented Business  
21 Enterprise License.

1           My understanding is that we have this  
2           situation in the District of Columbia --  
3           works pretty much just a wink-and-a-nod and  
4           both sides -- sometimes (inaudible) words  
5           essentially hoping on the side of the stores  
6           that this (inaudible) they keep a low profile  
7           and don't have a lot of materials in the  
8           window and on the side of the government,  
9           they are just hoping that everything is  
10          (inaudible).

11           THE COURT: Mr. Katz, who attended  
12          this -- who took part in this gentlemen's  
13          agreement?

14           MR. KATZ: My understanding is based  
15          on information from Steven to Adjie O'Bryant,  
16          the president, to Counsel James Wright.

17           My understanding is that Adjie  
18          O'Bryant was present at all times of meetings  
19          with Mr. Johnson, the previous Zoning  
20          Administrator and/or Mr. Green at all times  
21          and that Mr. Wright was at some or most of

1 all of those meetings.

2 That's confirmed -- that's borne out  
3 -- that's backed up by the bills from Mr.  
4 O'Bryant to my client from that time period,  
5 which shows approximately 8 hours of meetings  
6 -- I think up to 4 or 8 hours of meetings or  
7 even 12 with the combination of Mr. Johnson  
8 and Mr. Green, subsequently to the time that  
9 it was in front of Your Honor.

10 Clearly, if you go that amount there  
11 was serious discussion going on by both sides  
12 to try to bring things (inaudible). My  
13 understanding is that the way that it  
14 happened was that my client apparently  
15 mistakenly felt he needed to close rather  
16 than doing something else to reopen. He  
17 didn't --

18 THE COURT: What gave him that  
19 impression?

20 MR. KATZ: That he had to close?

21 THE COURT: Yes.



1           MR. KATZ: My understanding is one of  
2 things was since his physical license had  
3 been seized, he didn't think that (inaudible)  
4 somebody and does that mean I can't just get  
5 a replacement license, because there had been  
6 a raid on his store -- my understanding is  
7 before he ever had the last hearing and  
8 that's when the police (inaudible).

9           In any event he had -- he did have  
10 right up until around the last time Mr.  
11 O'Bryant and Mr. Wright trying to help him  
12 getting back open and to open without the  
13 threat of an immediate Notice of Infraction  
14 again.

15          THE COURT: So, they applied for a  
16 license for him?

17          MR. KATZ: My understanding there was  
18 a license the whole time. My understanding  
19 is the only claim of no license, there is no  
20 Sex Oriented Business License and I am ready  
21 to argue that one.

1           He can only get a Sex Oriented  
2   Business Enterprise License in two zones,  
3   that's in the T-3 and T-4 zone, I believe.  
4   My client is not in that zone.

5           That is one of the First Amendment  
6   issue we are going to be arguing today.  
7   That's one of my issues.

8           THE COURT: Well, in all agreements,  
9   there should be some written document,  
10  memorializing what was agreed upon and you  
11  are saying there is nothing here.

12          MR. KATZ: I don't think -- I don't  
13  think the government would have been willing  
14  to put something down in writing.

15          I think that if I had an investigator  
16  take a survey of all the adult entertainment  
17  businesses we are probably going to find out  
18  this, that they have a discussion with  
19  members of the neighborhood and/or a  
20  discussion with the people at the DCRA about  
21  -- hey, you know, if I locate over here what

1 do I have to do for you not to come down  
2 heavy on me.

3 The problem about the government,  
4 anything in writing is, now there is a paper  
5 trail and everyone else saying, I want in  
6 too, I want to (inaudible) as well. But  
7 there is nothing under the (inaudible) to  
8 prevent that evidence from coming in. There  
9 is nothing under the law that prevents that  
10 from coming in.

11 It's bound to come in because if the  
12 agreement was enforced and if my client was  
13 following the agreement we shouldn't be here  
14 today. You can't issue a Notice of  
15 Infraction when you are following what their  
16 agreement said all along.

17 THE COURT: You know, there is a  
18 problem when you have an agreement or  
19 anything that is not in writing, then it  
20 becomes, he said, she said, they said, we  
21 thought, they thought. You know, I mean,

1       there is no -- there is nothing concrete.

2               MR. KATZ:   That's why we are here to  
3       try to agree.   That's why you have -- in  
4       assault and battery cases you can have one  
5       witness on one side, one on the other and  
6       judges make rulings all the time.   That's  
7       what we are here for.   You are a fact finder.

8               THE COURT:   Okay.

9               Any response, Mr. Green?

10              MR. GREEN:   Your Honor, it would  
11       appear that this case was still under Your  
12       Honor's jurisdiction at the time.

13              If any agreement were to have come to  
14       fruition, it would have been necessary to  
15       have been brought to Your Honor's attention.  
16       It would have been necessary to have Your  
17       Honor's infomata (ph) if you will, stamped  
18       on it.   That did not take place.

19              Now, I don't know about any 4 or 8  
20       hours discussions that he is making reference  
21       to.   I didn't sit down with anybody for 4 to

1 8 eight hours to talk about any kind of an  
2 agreement.

3 Your Honor, we stand by our previous  
4 position that the subpoenas -- that this  
5 whole question should not be dealt with in  
6 terms of putting lawyers on the witness  
7 stand.

8 We also, again, reiterate our  
9 position that -- for the sake of argument,  
10 lets assume there was discussion of an  
11 agreement. That violates the whole concept  
12 of discussions, if they took place.

13 People will not take part in any kind  
14 of discussions to settle anything if they  
15 know that they are going to be called in,  
16 that they are going to be subjected to cross-  
17 examination.

18 The whole idea is to prevent that  
19 chilling effect from taking place. I submit  
20 to you that there is no agreement as far as  
21 the government is concerned.

1           MR. KATZ: I'm hearing Mr. Green mix  
2 apples and oranges. There is a rule of law  
3 that -- lets say you have a slip-and-fall  
4 case -- if you can't bring evidence that --  
5 at trial that there was an offer of  
6 settlement or there was a repair of the  
7 sidewalk. That's not what we are dealing  
8 with here.

9           Once you have an offer and once you  
10 have acceptance, then the only way to prove -  
11 - the only way to prove that contract is  
12 evidence of what the agreement was.

13           Now, he's disputing whether there was  
14 an agreement. At first I heard a lot of  
15 hedging about me wanting to get to that  
16 point. All I want is my witnesses to show  
17 the agreement. For us not to be allowed to  
18 show that there is an oral agreement that  
19 would be very unfair.

20           Fact finders all the time have to  
21 decide who is telling the truth, who is not.



1 You know full well from DNA evidence in  
2 criminal cases, you never know 100 percent  
3 who's telling what right, who's telling what  
4 wrong.

5 If we eliminated all the testimony in  
6 court because of people's creditability, we'd  
7 have 10 percent of our criminal docket --  
8 we'd have 10 percent of our regular court  
9 docket.

10 This is America here where we have  
11 fact finders at the jury level or the judge  
12 level, deciding creditability in memory all  
13 the time. Most of life isn't written down.

14 MR. GREEN: Well, please, Your Honor,  
15 I just want to say one thing.

16 Even if there were such an agreement,  
17 it would be void because it would be what --  
18 offensive to public policy.

19 Keep in mind the Judge was in the  
20 process of issuing an order, the Judge made a  
21 determination. If you're going to get people

1 involved in agreements, particularly with a  
2 hearing going on, the Judge certainly has to  
3 be involved. I don't believe Your Honor was.

4 Thank you.

5 THE COURT: I will grant the  
6 government's motion to quash this subpoena,  
7 Mr. Katz.

8 We are operating under the Civil  
9 Infractions Act. The Civil Infractions Act  
10 does not give you the right to discovery.  
11 Also, I think the government would be at a  
12 disadvantage to have it's counsel and  
13 witnesses testify in this matter.

14 All right. Any other preliminary  
15 matters, Mr. Green?

16 MR. GREEN: No, Your Honor.

17 THE COURT: Mr. Katz?

18 MR. KATZ: Thank you, Your Honor.

19 I have already given my opponent a  
20 copy of my file memo. I'm going to give you  
21 the original of that now. I've got

1 (inaudible) witnesses.

2 THE COURT: Logistically, I would ask  
3 everyone -- what is the (inaudible) here, Mr.  
4 Green, first of all?

5 MR. GREEN: Your Honor, we don't have  
6 any secrets here, number one and number two,  
7 I don't intend to call but four people out of  
8 this mass of folk here, other than one person  
9 who is away.

10 I have no idea who he is going to  
11 call. I don't know who he is going to call.

12 THE COURT: Sir, let me see if I  
13 understand what you just said.

14 You have three witnesses present and  
15 one that will be coming, so that makes it  
16 four all together?

17 MR. GREEN: Well, five -- yes, four  
18 to five. No more than five for the  
19 government, Your Honor.

20 THE COURT: Okay.

21 Who are the individuals from this

1 side that will not be testifying?

2 MR. GREEN: I can tell you who will  
3 be testifying, that I know.

4 It is my intent to call on Mr.  
5 Anthony Hooks, Mr. Alan James, Mr. Clarence  
6 David, (inaudible) and Mr. Tory Bello (ph).  
7 Those are the people I intend to call.

8 Now, this doesn't preclude -- those  
9 are the individuals I intend to call for the  
10 presentation of the case, Your Honor.

11 THE COURT: Out of those names, would  
12 those individuals stand?

13 What I would ask you to do is to go  
14 back out into the Office of Adjudication and  
15 have a seat there. We will -- someone will  
16 come and get you as you are needed. The  
17 other individuals are just sitting in.

18 All right, Mr. Green?

19 MR. GREEN: That's correct, Your  
20 Honor.

21 THE COURT: On the other side, what -

1       - who do you have here?

2               MR. KATZ:  There is no one in the  
3 audience other than my client and he is going  
4 to stay.  We've got other people coming later  
5 in the day, I expect.

6               THE COURT:  How many witnesses are  
7 you expecting to call?

8               MR. KATZ:  Four to six, depending on  
9 how things play out.  It might be as little  
10 as two to three, depending on how things play  
11 out.

12              THE COURT:  Now, with the members of  
13 the Civic Association, what is the situation  
14 there?  Are you calling anyone from the Civic  
15 Association, Mr. Green?

16              MR. GREEN:  I -- you know.  One  
17 moment, Your Honor, please?

18              THE COURT:  All right.

19              MR. GREEN:  I have one person from  
20 the Civic Association who wants to represent  
21 their decision.

1           THE COURT:   Who would that  
2           spokesperson be?

3           MR. GREEN:   Her name is (inaudible).

4           THE COURT:   Okay.

5           So, I would ask you to go out and  
6           have a seat in the Office of Adjudication.  
7           Someone will come and get you when the time  
8           is right.

9           You were expecting one other person?

10          MR. GREEN:   Yes, Your Honor.

11          THE COURT:   And you are expecting how  
12          many persons, you said, and where are they  
13          now?

14          MR. KATZ:    I have three to four.  
15          We've got Adjie Green -- I'm sorry, Adjie  
16          O'Bryant, for any reason he gets out of court  
17          early today, which is probably not.   He's in  
18          federal court, he's got an appellant case  
19          right now.

20          We have James Wright.   I don't know  
21          where he is right now.   We have our

1 investigator, whose name is Bill Bain and  
2 he's on-call to come in at 2, unless he will  
3 come earlier.

4 THE COURT: Who told him to come in  
5 at 2?

6 MR. KATZ: I told him.

7 THE COURT: On what authority?

8 MR. KATZ: No authority, Your Honor.  
9 Based on my experience, having heard the tape  
10 of the last trial, my recollection was that  
11 there were no defense witnesses called until  
12 --

13 THE COURT: Well, my issue is not  
14 that you would have him come to testify, but  
15 to set the time.

16 MR. KATZ: Your Honor, he's totally  
17 available to change. I told him if he could  
18 be here earlier, I'd call him. He's totally  
19 on-call, he's fully alerted. I have his cell  
20 number, he will be here within -- wherever he  
21 is -- I think he's in Prince George's or



1 Howard County. He's not far away to come in.

2 THE COURT: All right.

3 MR. KATZ: Do you want me to finish  
4 the list?

5 THE COURT: We have the rule on  
6 witnesses, that has been taken care of.  
7 You're going to have at least three to four  
8 witnesses -- possibly three to four  
9 witnesses?

10 MR. KATZ: Up to six (inaudible).  
11 None of them are (inaudible). We'll also be  
12 having -- I didn't -- I didn't take the time  
13 to (inaudible) interpreter, so we have a  
14 private interpreter who is going to be coming  
15 in to interpret for my client.

16 THE COURT: When would that person be  
17 coming?

18 MR. KATZ: She's expected at 2  
19 o'clock. If it looks like things are moving  
20 more quickly, we'll have the interpreter come  
21 in earlier.

1           THE COURT: I don't -- I don't know  
2 how you just picked these times. I mean, I  
3 pick the time around here. I'm -- I don't  
4 understand that.

5           MR. KATZ: Your Honor, I don't plan  
6 to be an expert in front of you. My usual  
7 litigation experiences in court -- that's the  
8 way I usually do it there.

9           I am totally flexible for Your Honor  
10 --

11          THE COURT: When you stand before  
12 this agency, you have your witnesses come in  
13 and have a seat.

14          I know in some cases you may have  
15 someone -- they have a problem getting here  
16 at a certain time, but you work that out with  
17 the Court. You don't take it upon yourself  
18 and set times.

19          MR. KATZ: I understand. I can only  
20 -- there's always a first time to learn.  
21 This is the first time here, I haven't seen

1       it in the written rules and I have no  
2       disrespect meant for Your Honor.

3               THE COURT:   Very well.   All right.  
4       Do you have any other preliminary matters?

5               MR. KATZ:    Yes.   I've got two of  
6       them, Your Honor.

7               THE COURT:   All right.

8               MR. KATZ:    There needs to be a  
9       postponement in this case.

10              There is -- there are three reasons  
11     for this, one of which is there is  
12     irrelevance to this -- of this Notice of  
13     Intent to Revoke, this (inaudible) to revoke  
14     the mechanical use of license, which is that  
15     every factual issue that we are going to deal  
16     with today overlapped with what is going to  
17     happen at that hearing.

18              For us to go forward today, those two  
19     things, it gives the government two bites of  
20     the apple to try to win their issues and for  
21     us, we are paying our investigator on an

1 hourly basis. He's charging us right now to  
2 set aside his time.

3 We're paying the investigator. We're  
4 paying the interpreter. My client is paying  
5 me. We're spending our time here. It  
6 doesn't help judicial resources. That's the  
7 first ground for a postponement.

8 The second one is -- in our best  
9 (inaudible) we spent a lot of money, over  
10 \$400 on investigator, Harvey Carter (ph), the  
11 best I know of in D.C., to serve my client's  
12 predecessor, Woods.

13 After that, the best he got which was  
14 a combination -- I'm not sure what -- there  
15 was a paralegal coming to the door, refusing  
16 to accept service. I have the affidavit of  
17 service in the file and in having to forward  
18 it.

19 My process server had to throw the  
20 subpoenas at the paralegal. I spoke to the  
21 paralegal yesterday and she said she can't

1 accept service and she doesn't have an  
2 obligation to do it.

3 Having spoken to her and having  
4 smoothed things out yesterday, having spoken  
5 to Adjie O'Bryant, my predecessor counsel,  
6 and having smoothed things over with him, we  
7 need the postponement to finally get these  
8 witnesses in.

9 The two predecessor counsels --  
10 things were not smoothed over before today,  
11 apparently, with our investigator going down.

12 We'll put the money as necessary into  
13 serving them again. We need these witnesses  
14 and we need Adjie O'Bryant to help prove the  
15 gentlemen's agreement.

16 Your ruling on Mr. Green's motion was  
17 putting him out as a witness. We still have  
18 our witnesses to that. We need him, we need  
19 Mr. Wright.

20 I believe Mr. Green -- it was late at  
21 night yesterday, so I won't hold myself to

1       it, but I believe he said that he thought  
2       that Mr. Wright wasn't in the best of health.  
3       We need these two witnesses.

4               Now, if you deny a full postponement  
5       we need to have our case held open until  
6       Friday afternoon. That's the earliest that  
7       Mr. Wright and Adjie O'Bryant can come. He  
8       will be able to rearrange his schedule. He  
9       said he will have to rearrange some stuff and  
10      that's the earliest that he could come.

11             Now, I did not give him permission,  
12      Your Honor, to not come today. In fact, I  
13      had given him an insistent, but firm as  
14      possible phone calls, and even three Faxes  
15      saying, if you are planning on not being  
16      here, I need to know in advance so I can tell  
17      my opponent in advance and the Court.

18             They did not do that for me. They  
19      aren't cooperating. We need these witnesses.

20             The final thing, Your Honor, is you  
21      did grant -- you did grant the recidivist

1 status to my opponent without me even talking  
2 about the substance of that. So, I don't  
3 want to mix apples and oranges.

4 I would like Your Honor to let this  
5 issue be revisited about whether recidivism  
6 should be revisited. But, since you have  
7 accepted the Notice of Recidivism could be  
8 give today and since I have no notice before  
9 today, it is quite a fair principal of due  
10 process to allow time to prepare for that.

11 I came in here ready to argue two  
12 Notices of Infraction. That was the only  
13 notice we had today. That is not fair to  
14 force us to go forth today, being sandbagged  
15 today about being told only today about  
16 recidivism attempt.

17 Not being permitted to have  
18 sufficient time to get our own witnesses,  
19 because, Your Honor, I am quite frankly --  
20 whether or not you are agreeing with me with  
21 the statutory provisions, I gave them to you



1 to allow us to have witnesses.

2 I'm -- Your Honor, I'm looking  
3 through the DCRA's website yesterday.  
4 Everywhere you look it talks about procedural  
5 protection. It doesn't say you don't have  
6 procedural protection to subpoena  
7 (inaudible).

8 A ruling that we can't subpoenas even  
9 to opposing witnesses at a hearing like this  
10 is at logger heads against what is on this  
11 Agency's website. You get -- go beyond that.

12 We need our witnesses. We need Mr.  
13 Wright who is not here today and did not call  
14 me. We need Mr. O'Bryant and we need to have  
15 time to serve them properly. We need time to  
16 do it.

17 We cant' let the government have two  
18 bites of the apple and have a hearing for  
19 everything that is going on today is to be  
20 covered at that hearing you are having about  
21 trying to close my client down. This is not

1 fair to force us to go forward today under  
2 those circumstances.

3 THE COURT: Mr. Green?

4 MR. GREEN: Your Honor, this case  
5 today is about two Notices of Infraction.  
6 That's all it's about today. That is all  
7 that we are going to consider today.

8 With regard to the other issues that  
9 Counsel has alluded to, revocation of the  
10 Certificate of Occupancy, revocation of his  
11 Mechanical Amusement License -- that's a  
12 separate hearing process, separate law is  
13 involved.

14 We're here today strictly about a  
15 Notice of Infraction matter, which can be  
16 considered at this proceeding and it should  
17 be considered at this proceeding only. We're  
18 not here to talk about Certificate of  
19 Occupancy revocation.

20 We're not here to talk about  
21 Mechanical Amusement revocation. That is

1 something to be considered someplace else, if  
2 at all. We're here to talk about Notices of  
3 Infraction that were issued in this  
4 proceeding.

5 That's what we are here to talk about  
6 today and nothing else. I would therefore  
7 oppose any continuance.

8 MR. KATZ: I gave Mr. Green,  
9 yesterday, the courtesy -- it was even in the  
10 morning time and I was going to move to  
11 postpone today. I told him the grounds on  
12 which I would postpone.

13 Another reason to postpone, we have  
14 very hefty First Amendment issues here. The  
15 key ones are all in that memo I gave Your  
16 Honor.

17 I listened from start to finish, in-  
18 between, backwards and forwards, the tapes of  
19 the last hearing. No one said squat about  
20 the First Amendment. These are issues that  
21 have to be considered. We have very weighty

1 First Amendment issues.

2 I'll tell you some of them and that's  
3 why we can't be (inaudible) about tickets.  
4 The D.C. Sexually Oriented Business Law is  
5 unconstitutional for the following three main  
6 reasons. It's backed up by Supreme Court  
7 Case Law.

8 THE COURT: Let me -- don't go down  
9 the constitution line, Mr. Katz.

10 If it unconstitutional, this is not  
11 the forum to address it. You have to go to  
12 the Supreme Court, the D.C. Code of Appeals  
13 or wherever. I -- I can't do anything about  
14 that.

15 MR. KATZ: I thought that the rules  
16 for this Court said that we have an  
17 independent judiciary. If we have an  
18 independent judiciary --

19 THE COURT: But you are saying that  
20 the D.C. Law is unconstitutional. So, you  
21 want me to rule on whether or not it is

1 constitutional or unconstitutional. I have  
2 no authority to do that. The Supreme Court  
3 would have to do that.

4 MR. KATZ: If this is supposed to be  
5 an impartial and fair court, that means that  
6 Your Honor should be able to make any rule on  
7 the constitution that the D.C. Superior Court  
8 would be able to make. If D.C. Superior  
9 Court Judge --

10 THE COURT: This is the wrong forum  
11 for constitutional issues, Mr. Katz.

12 MR. KATZ: Here's what I suggest. I  
13 suggest that we dismiss the case here today  
14 and go to a court where the judge is going to  
15 decide constitutional issues, because if we  
16 are going to have a fair administrative  
17 hearing, we can't be hearing today that the  
18 judge is going to be bound to following all  
19 the laws that are in the books and not make  
20 an independent decision about what is  
21 constitutional and what is not.

1           That is what (inaudible) go home and  
2 dismiss the whole case.

3           THE COURT: Any thoughts, Mr. Green?

4           MR. GREEN: We are wasting the  
5 Court's time, Your Honor.

6           I just want to reemphasize that we're  
7 here about a simple Certificate of Occupancy  
8 question.

9           Now, as far as the Constitution of  
10 the United States is concerned, we're not  
11 here to deal with that aspect at all. The  
12 First Amendment is not an issue here today.  
13 Whether or not the respondent is in violation  
14 of a Notice of Infraction, that's what we are  
15 here to talk about and I would suggest to the  
16 Court that we get on with it.

17          THE COURT: Any comments, Mr. Katz?

18          MR. KATZ: We should at least be  
19 given the opportunity before things are  
20 finished today, preferably before we go  
21 further to read my memo, Your Honor.

1 (inaudible) --

2 THE COURT: I was about to say that.  
3 You can't submit something the day of the  
4 hearing and -- a 13-page memo and expect me  
5 to read -- to stop the hearing to read it.

6 MR. KATZ: That's fine. I just  
7 wanted to take two minutes on the three main  
8 points that are in this memo. I'd like to  
9 convince Your Honor to read this -- this is  
10 supposed to be an independent court  
11 considering all legal issues including  
12 constitutionality.

13 THE COURT: Let me -- first with  
14 respect to the recidivism, by operation of  
15 law -- the law tells you what a recidivist  
16 is. There is no additional research to be  
17 done.

18 There is a recidivist matter  
19 (inaudible), the Court will take judicial  
20 notice of that. There is nothing to prepare.

21 The constitutional issues, I will not



1 rule as to whether or not a D.C. statute is  
2 constitutional or unconstitutional. The  
3 Supreme Court, the D.C. Court of Appeals, I  
4 would allow them to do that. That is within  
5 their power.

6 In addition to that, I'm going to  
7 deny your motion to -- for postponement and  
8 we will proceed with the case on the matter.

9 Any other preliminary matters?

10 MR. KATZ: Yes, I do ask that -- I  
11 heard that my opponent -- when I spoke to him  
12 earlier, was available Friday afternoon.

13 I asked for the minimum that if Mr.  
14 O'Bryant is not available today, which he  
15 apparently is not, that we continue -- not  
16 continue, but that we not finish proceedings  
17 until -- picking up on Friday afternoon to  
18 get his testimony.

19 THE COURT: What I will do, I'll  
20 proceed with the hearing on the matters and  
21 then as we go along, I would reserve ruling

1 on that -- on that motion.

2 By the end of the day, we'll make a  
3 ruling as to whether or not to leave the  
4 record open for Mr. O'Bryant.

5 MR. KATZ: Thank you, Your Honor.

6 THE COURT: Any other preliminary  
7 matters?

8 MR. KATZ: Yes. Unless there's  
9 disagreement with -- all we have is two  
10 Notices of Infraction, one from September 10,  
11 2001, one from September 13, 2001, and I have  
12 heard Mr. Green to say that Mr. Steve  
13 Pardieck -- he's planning on having him  
14 testify.

15 THE COURT: Mister who?

16 MR. KATZ: Steven Pardieck is the man  
17 who was to be a member of the Association.

18 THE COURT: Oh, yes, yes. I'm sorry,  
19 yes. Okay..

20 MR. KATZ: Now, I ask you to at least  
21 make a motion in limine that anything Mr.

1 Pardieck talks about only goes to whether  
2 there was a violation on September 13th or  
3 September 3rd of the Certificate of  
4 Occupancy. That's all we were supposed to be  
5 here for today.

6 The concern I have about whether it's  
7 maybe going beyond that is that when I heard  
8 Mr. Green at the last neighborhood  
9 association meeting I was at, I heard him say  
10 he wanted to have as many people from the  
11 neighborhood association as possible and I  
12 didn't hear him put any limits on that.

13 THE COURT: Well, I was not privy --  
14 I did not attend that meeting, but what I  
15 would tell you, if it's the same association,  
16 we generally get a spokesperson who would  
17 speak on behalf of all the individuals.

18 So, we won't have 20 persons  
19 speaking, if that's a concern.

20 I don't know what the gentleman is  
21 going to testify to until he comes on the stand.

1           MR. KATZ: Right. I'm giving you a  
2 heads up, Your Honor, you can expect to hear  
3 me object if he goes beyond what's listed in  
4 the four corners of these two Notices of  
5 Infraction.

6           The second thing is, we've never  
7 gotten a clear, a clearly marked Notice of  
8 Infraction -- it's the lower number 028120.  
9 So, I move to quash.

10          I informed Mr. Green that we didn't  
11 have a clear copy. I was talking to him many  
12 weeks ago -- months ago I looked in the  
13 Court's jacket. There was so -- nothing much  
14 clearer than that. My client indicated that  
15 all he got was a copy.

16          Clearly, to have a fair hearing, you  
17 have to have a fair notice that we're going  
18 on. We can't even read who the witness is on  
19 there. I actually had -- I read the number  
20 on there as best I could. I couldn't even  
21 tell what agency he or she is with, so our

1 investigator couldn't even track down the  
2 person.

3 The best he got was, he said, well,  
4 look. We need to start with the MPD (ph)  
5 that we sent to personnel from the badge  
6 number you can see if this person wrote that  
7 ticket. The best he found out is that badge  
8 was retired, he was a retired person.

9 We can't be going forward with no  
10 legible ticket. There is no sufficient  
11 notice. We don't know what we are being  
12 charged with.

13 THE COURT: Mr. Green, with respect  
14 to Citation 028120, what is your response on  
15 that?

16 MR. GREEN: Your Honor, I don't --  
17 this is my first time hearing that they have  
18 been unable totally, to get a copy of it, but  
19 usually a clear copy of this is either served  
20 on the respondent and/or maintained in the  
21 file of DCRA.

1           Now, I do -- one these witnesses we  
2       intend to call can attest to the individual  
3       that he served and what copies, if any he  
4       made, of this particular citation.

5           Now --

6           THE COURT: Do you know how this  
7       citation was served?

8           MR. GREEN: No, I don't, Your Honor.  
9       I can only venture a guess. I don't want to  
10      do that. I'd rather have the witness explain  
11      the process.

12          THE COURT: Okay.

13          I'll reserve a ruling on that motion  
14      to dismiss, Mr. Katz. I'd like to hear from  
15      the inspector/investigator who issued the  
16      citation.

17          MR. KATZ: Can I at least know the  
18      name of the person who investigated?

19          THE COURT: Well, that person will be  
20      called as a witness, so we will all know in a  
21      few minutes.

1 Any other preliminary matters?

2 MR. KATZ: I'm sorry. I don't  
3 understand, unless I misheard something,  
4 unless the person who wrote the ticket that I  
5 gave Your Honor is the first witness, I need  
6 to know who the witness is --

7 THE COURT: Mr. Green, who --

8 MR. GREEN: It's going to be Mr. Alan  
9 James, Your Honor.

10 THE COURT: Okay.

11 Any other matters, Mr. Katz?

12 MR. KATZ: No, Your Honor, except I  
13 guess I'd like to get back at some point that  
14 I handed you. There should be a copy in the  
15 file.

16 THE COURT: I do have a better copy  
17 than that.

18 Mr. Green, is that it for preliminary  
19 matters?

20 MR. GREEN: Yes, Your Honor, thank  
21 you.

1 THE COURT: Okay.

2 Who would be your first witness?

3 MR. GREEN: Mr. Hooks.

4 THE COURT: Which citation did Mr.

5 Hooks --

6 MR. GREEN: The one that is legible,

7 Your Honor.

8 THE COURT: 035446?

9 MR. GREEN: Yes, that's it, Your

10 Honor.

11 Mr. Hooks, let me remind you, you've

12 been sworn in, you are under oath. You may

13 proceed.

14 MR. HOOKS: All right. Thank you.

15 TESTIMONY OF MR. ALAN HOOKS

16 DIRECT EXAMINATION BY COUNSEL

17 FOR THE GOVERNMENT

18 BY MR. GREEN:

19 Q For the record, sir, state your full

20 name.

21 A Anthony Hooks.



1 Q By whom are you employed?

2 A The Department of Consumer and  
3 Regulatory Affairs, Compliance and  
4 Investigation Division.

5 Q What is your function there, sir,  
6 what do you do?

7 A I'm a Compliance Investigator.

8 Q All right.

9 Sir are you familiar with J.M.M.  
10 Corporation?

11 A Yes.

12 Q Now, this organization is located  
13 where, sir?

14 MR. KATZ: I'm sorry, Your Honor.  
15 The witness has a report in front of him. If  
16 he is going to read from it, as a minimum,  
17 I'd like to go through the formalities of  
18 that and at least let the record reflect  
19 whether he is referring to a document. I'd  
20 like to see it if he is referring to a  
21 document.

1 THE COURT: Mr. Green.

2 BY MR. GREEN:

3 Q Yes. Mr. Hooks, can you tell us  
4 please, what you have before you?

5 A I have here a copy of my case that I  
6 have written up on Fun Fair Video.

7 Q And you say, a copy of your case. Is  
8 it a report of some kind?

9 A Yes, a report, yes.

10 Q All right.

11 Did you prepare it, sir?

12 A Yes, sir.

13 Q Was it the result of your  
14 investigative efforts, sir?

15 A Yes.

16 Q Was it prepared in the normal course  
17 of your business as an investigator, sir?

18 A Yes.

19 Q Was it ultimately taken to anyone for  
20 review?

21 A Yes.

1 Q To whom was it taken?

2 A Kevin Carter.

3 Q Who is Kevin Carter?

4 A A supervisor.

5 Q All right.

6 Now, going back to --

7 MR. KATZ: Your Honor, I ask to be  
8 able to -- two things. I want to ask to be  
9 able see the report. He's giving testimony  
10 from the report.

11 The second thing is, the formality --  
12 I know that it's evidence, but quite frankly,  
13 that doesn't make sense to me when you have  
14 such weighty issues here.

15 But if he's going to read from a  
16 report, under the -- if we apply the Rule of  
17 Evidence, he doesn't read from that report  
18 unless he shows -- he either has to have his  
19 recollection refreshed -- in this case, he  
20 has refreshment and puts it down or there is  
21 a --

1 THE COURT: All right, Counsel.

2 You've already said it.

3 Let's go, Mr. Green.

4 BY MR. GREEN:

5 Q Mr. Hooks, do you recall going at any  
6 time in August, to 919 5th Street, Northwest?

7 A Yes, sir.

8 Q For what purpose did you go there,  
9 sir?

10 A To conduct an investigation.

11 Q And during the course of conducting  
12 that investigation, what, if anything, did  
13 you see?

14 MR. KATZ: Objection, too general.  
15 All I hear is a question about August of what  
16 year I don't know, but (inaudible). Your  
17 Honor, these tickets are from September.

18 MR. GREEN: Your Honor, we can do it  
19 the easy way or we can do it the hard way.  
20 We are trying -- we understand this is an  
21 Administrative Proceeding. We are trying to

1 move this case along.

2 It's now 11:10. We've taken up so  
3 much time brought on by Counsel raising so  
4 many issues and I'm quite sure that there are  
5 other areas that -- and other things that  
6 have to be done this afternoon.

7 I know that I cannot sit here all day  
8 long on this case. I don't know what Counsel  
9 can do, but I know that I can't do it. I  
10 have something else to do later on this  
11 afternoon that is very, very important --  
12 equally important to the Agency.

13 Now, I'm trying to move this thing  
14 along so that we don't take the Court's time,  
15 we don't take Counsel's time and we don't  
16 cause this client additional money by just  
17 being here. That's why I'm trying to move it  
18 along. If Your Honor does not want me to  
19 move it along, I won't.

20 I'll treat it like we're in the U.S.  
21 District Court and we'll stay here all day

1 and all night. That will do no one any good.

2 THE COURT: Mr. Katz?

3 MR. KATZ: I'd like some fairness and  
4 due process today, Your Honor. I won't  
5 rehash how upset I am about the (inaudible)  
6 we have gotten so far and essentially is  
7 considered unconstitutional.

8 I came here expecting to have up to a  
9 full day of trial, because that is what  
10 happened last time this case came before Your  
11 Honor. I had no notice, once again,  
12 (inaudible). If he wants to postpone, fine,  
13 that's what I've been asking for the whole  
14 time.

15 Lets put some sort of formality here,  
16 Your Honor, to give justice today. Let's not  
17 dispute everything, just move it along.

18 I've been making a record here, Your  
19 Honor, particularly since Your Honor is not  
20 going to consider constitutional issues, it's  
21 all the more important that I make a full and

1 complete record here today so that I can  
2 raise my constitutional issues up if I lose  
3 today.

4 If Your Honor is going to give us  
5 short push after short push after short push,  
6 I have not made my appellate record, I'm not  
7 going to appeal (inaudible) is to have an  
8 order, to have a rehearing once again for  
9 following the Rules of Fairness.

10 THE COURT: What are you objecting to  
11 here, Mr. Katz?

12 MR. KATZ: I'm objecting to dealing  
13 without the four corners of the Notices of  
14 Infraction. My opponent wants to move them  
15 on, let him go directly to what happened in  
16 September of 2001, to cause a violation of  
17 the Notice of Infraction. That will really  
18 move it along.

19 He wants to start talking about  
20 August, August has nothing to do with the  
21 September Notices of Infraction. We're here

1       -- fair notice of what you are coming to  
2       court for is a bismarck of American justice.

3               Our fair notice was we are coming  
4       here to answer about what happened on  
5       September 10th and September 13th of 2001.

6               THE COURT: All right. Go ahead, Mr.  
7       Green.

8               MR. GREEN: All right, Your Honor.

9               BY MR. GREEN:

10              Q     Lets make him happy, Mr. Hooks.  
11                    What happened September 10th?

12              A     I conducted an investigation at 919  
13       5th Street, Northwest.

14              Q     What did you find out?

15              A     What I found --

16              Q     What was the result of it?

17              A     What I found out was that in the rear  
18       of the business they had video booths, what  
19       they call, "Buddy Booths." You put a dollar  
20       into them and you view X-rated movies.

21                    Once you come into the front of the



1 store they had maybe a small percentage of PG  
2 movies. Once you go through another door  
3 entrance they had -- in the middle store,  
4 they had another percent of X-rated movies.

5 Again, in the back of the store, I  
6 observed a guy leaving out --

7 MR. KATZ: Your testimony -- what  
8 percentage -- without getting a decision  
9 about numbers, Your Honor -- prejudicial  
10 otherwise.

11 THE COURT: Do you want to raise a  
12 question?

13 BY MR. GREEN:

14 Q During the course of this inspection,  
15 sir, did there come a time when you made a  
16 determination as to what percentage of the  
17 operation consisted of X-rated versus  
18 general?

19 MR. KATZ: Objection.

20 THE COURT: What is your objection?

21 MR. KATZ: That doesn't help us out,

1     what percentage of the operation (inaudible).  
2     What percentage unit per unit, what  
3     percentage of floor space. Better yet,  
4     before you look at percentages, what could  
5     you count?

6             We can do math, we all went to school  
7     far enough to do the percentages ourselves.  
8     Were there 500 videos and DVDs in the general  
9     room, were there 100 videos and DVDs in the  
10    adult room? That's a much more fair way to  
11    proceed. I'm trying to keep a clean record  
12    here, Your Honor.

13            MR. GREEN: Your Honor, if opposing  
14    Counsel will allow the witness to present his  
15    information, based on the questions that we  
16    ask him, his own way, I think it would become  
17    very clear what percentages, what count, what  
18    anything else took place with regard to what  
19    he did.

20            Now, if he's going to jump up every  
21    time a question is asked, what we're going to

1 have here is a delay and a delay and a delay  
2 and we'll never get an answer to the question  
3 in order for the Court to make a reasonable  
4 and valid determination about this either to  
5 the interest of the Government or to the  
6 interest of this client.

7 The Court will never get any  
8 information if we keep going like this. We  
9 won't get any information at all. Maybe  
10 that's what he wants.

11 THE COURT: All right. Objection is  
12 noted, Mr. Katz. We are going to move on.

13 Go ahead, Mr. Green, with your line  
14 of questioning.

15 MR. GREEN: Thank you.

16 BY MR. GREEN:

17 Q Mr. Hooks, when you conducted your  
18 inspection at this premises, did there come a  
19 time that you conducted any counts?

20 A Yes.

21 Q And when was that, sir?

1           A     In August of 2001.

2           Q     During the course of conducting this  
3 count in August of 2001, is that in your  
4 report?

5           A     Yes, sir.

6           Q     What did you determine when you made  
7 your count in terms of general viewing?

8           MR. KATZ:  Objection to testimony  
9 about August.  We are here on an Infraction  
10 from September.

11           THE COURT:  Objection is noted.

12                 Lets go, Mr. Green.

13           BY MR. GREEN:

14           Q     Go on, Mr. Hooks.

15           A     Will you repeat the question?

16           Q     Can you tell us what the count was  
17 with regard to the general viewing and the X-  
18 rated viewing materials?

19           A     Actually, no without looking at my  
20 report I couldn't say it to you right now,  
21 but I could tell you that there were more X-

1 rated movies -- there were more X-rated  
2 movies than PG movies.

3 Q All right, no --

4 MR. KATZ: Your Honor, I've got to --  
5 I've got to object to that. We have no good  
6 record if that's the kind of testimony.

7 I've been to the store plenty of  
8 times, just as this witness has -- you have a  
9 room that says --

10 THE COURT: I don't want you  
11 testifying, Mr. Katz. Mr. Katz --

12 MR. KATZ: I am not testifying.

13 THE COURT: Mr. Katz, Mr. Katz, I've  
14 heard your objection, it's noted, it's over.  
15 Lets --

16 MR. KATZ: You haven't heard the  
17 grounds of the objection, I haven't been  
18 given the words to do it, Your Honor. We  
19 have testimony here about more X-rated than  
20 PG.

21 That's not -- that's not of any help,

1 because now we don't have a sufficient  
2 foundation to make our record. The  
3 foundation needs to be what kind of movies --

4 THE COURT: Mr. Katz, let me run the  
5 hearing, please. Let me run the hearing.  
6 I've heard your objection. Please have a  
7 seat. It's noted, overruled.

8 Lets go, Mr. Green.

9 BY MR. GREEN:

10 Q Mr. Hooks, would it be helpful for  
11 you to review your record?

12 A Yes.

13 MR. GREEN: Your Honor, I'm going to  
14 ask that Mr. Hooks be given an opportunity to  
15 review his record. We intend to move this  
16 into admission. We didn't intend to do it at  
17 this particular point.

18 I would ask that it be marked as an  
19 Exhibit and I will certainly share it with  
20 opposing Counsel before we proceed. Thank  
21 you.

1 THE COURT: Government's one?

2 MR. GREEN: Yes, Your Honor.

3 BY MR. GREEN:

4 Q Mr. Hooks, you indicated that you  
5 conducted an inspection on several dates; is  
6 that right?

7 A Yes, sir.

8 Q Can you tell us all of the dates that  
9 you conducted an inspection, please?

10 A I conducted an inspection on August  
11 22nd, 2001.

12 Q What was the next date?

13 A September 1st, 2001.

14 Q Uh-huh.

15 A September the 10th, 2001, September  
16 21st, 2001.

17 Q Now, did there come a time, sir, when  
18 you actually did a count?

19 A Yes, sir.

20 Q What was the date that you did the  
21 count?

1           A     September 21st.

2           Q     And in the process --

3           A     2001.

4           Q     2001?

5                     In the process of conducting this  
6     count, what did you determine, sir?

7                     MR. KATZ: Your Honor, I've got to  
8     object. He made a count 11 days after he  
9     wrote the tickets. We're not within four  
10    corners of what we came here charged with.

11                    THE COURT: All right.

12                    Any response, Mr. Green?

13                    MR. GREEN: Your Honor, I point out  
14    that what we have here is a situation of a  
15    continual violation. Now, Mr. Hooks can  
16    certainly give testimony about this continual  
17    violation.

18                    He has a report; we have a problem in  
19    terms of a continual violation. Mr. Hooks'  
20    report reflects that. Mr. Hooks issued a  
21    citation. Mr. Katz's client did not receive



1 a citation beyond that.

2 Now, it just so happens that in  
3 theory we could have issued a citation  
4 everyday. We didn't do that, because this  
5 place continued to be in violation. That's  
6 the problem here.

7 Now, I don't have any other points to  
8 make other than that. Now, when you have a  
9 continuing violation, the only thing that we  
10 can do is to point out to the Court that it  
11 continues. That is what Mr. Hooks' testimony  
12 relates to.

13 Mr. Hooks is talking about a count  
14 that continued. I see no problem in his  
15 elucidating on that.

16 THE COURT: Mr. Katz?

17 MR. KATZ: First of all, Your Honor,  
18 my para -- my legal assistant is here,  
19 Saundra Casper (ph). She has helped me out  
20 with preparation -- she's bilingual. My  
21 client's first language is Spanish. Sorry to

1       cause the interruption. She is very good.

2               It's a notice problem. It's a  
3       variation on a theme, Your Honor, how many  
4       violations of fair notice are we going to  
5       have today without giving me some sort of a  
6       relief, either by giving me full relief or  
7       giving me full -- full time to prepare.

8               We have this report here. It talks  
9       about September 21st. I asked for the  
10      report. Your Honor wouldn't let me have the  
11      report before we started and now we have put  
12      the cart before the horse. You don't write a  
13      ticket for someone speeding their until they  
14      are speeding.

15              We have no notices in the four  
16      corners of this infraction as an ongoing  
17      violation. All we have is a claim, September  
18      13, 2001, violation of DCMR 3205.4.

19              That's not fair notice, Your Honor.

20              THE COURT: I'm not -- still am not  
21      following you, Mr. Katz. What are you

1 saying? I mean, help me out here.

2 MR. KATZ: Of course, thank you.

3 The Notice of Infraction written by  
4 Mr. Hooks is dated September 13, 2001.

5 THE COURT: Yes.

6 MR. KATZ: That is the last Notice of  
7 Infraction that was ever written for this  
8 case here today.

9 THE COURT: Right.

10 MR. KATZ: This one was written  
11 September 10th.

12 Mr. Green is now trying to elicit  
13 testimony from this witness about what this  
14 count was of movies on the premises eight  
15 days later, on September 21st. That has  
16 nothing to do -- that is irrelevant to what  
17 we are here for today.

18 Our notice today on the defense side,  
19 about what we are here for today is to defend  
20 what happened on September 13th and on  
21 September 10th, because we have no notice

1       that the opposition was going to try to field  
2       a continuing violation today. It's not  
3       within the four corners of the ticket. It's  
4       not within the four corner of anything  
5       opposition said.

6               Now, my opponent has -- well, not in  
7       the form of him, but the government has in  
8       that notice to try to revoke license,  
9       etcetera, they do have a more ongoing  
10      allegation.

11             So, if Mr. Green wants to present  
12      that testimony, at the future hearing we are  
13      going to have -- you are planning on making  
14      an appearance on that one, right -- my legal  
15      assistant, I'm in. I'm in that case now. We  
16      can deal with that -- that issue at the next  
17      case, but we're not here for that today.

18             THE COURT: All right.

19             Lets keep this case completely out of  
20      what we're doing today. Lets just stay with  
21      these two citations.

1                   MR. GREEN: Your Honor, if I might be  
2 heard?

3                   THE COURT: Uh-huh.

4                   MR. GREEN: You know, this Counsel is  
5 attempting to say that if there is a count  
6 here of X number of videos that are X and  
7 there's a count here of Y number of videos  
8 that are Y, that then, that's what the Court  
9 should consider.

10                  I submit to Your Honor, it's a  
11 question of stock and trade. That's what  
12 this hearing is all about.

13                  Our contention is simply that, yes,  
14 there might be X number of videos over here  
15 that are X-rated, and Y number that are G-  
16 rated and that the X might exceed the Y  
17 rated, but this case is about other things.

18                  We're talking about the entire  
19 aggregate of the stock and trade, which  
20 consists of more than just videos for rent on  
21 a shelf. We're talking about the fact that

1     75 percent -- and this basically, what I'm  
2     doing is an opening, I guess -- 75 percent of  
3     the stock and trade of this store is devoted  
4     to sexually oriented.

5             The problem is he has a Certificate  
6     of Occupancy that says, "Non-sexually  
7     oriented." That's the problem. That's the  
8     situation in a nut shell. Mr. Hooks, if he's  
9     allowed to testify will talk about what he  
10    observed that falls within the range of the  
11    75 percent sexually oriented that we are  
12    talking about.

13            He will tell us what he saw. It's  
14    said that the stock and trade at this  
15    establishment is sexually oriented and that  
16    the Certificate of Occupancy provides for  
17    non-sexually oriented.

18            That's the issue, that is the  
19    problem, Your Honor.

20            THE COURT: Mr. Katz:

21            MR. KATZ: If my opponent can't

1 present evidence, Your Honor, to show that on  
2 the date this ticket was written there was a  
3 violation of the law, the case has to be  
4 dismissed and we don't even get to what  
5 happened eight days later.

6 My opponent has not yet laid the  
7 foundation that he has a valid citation for  
8 September 13th. Until he can lay that  
9 foundation, we're really at the point where  
10 we need to have dismissal.

11 THE COURT: All right. Okay.

12 I will allow the witness to testify,  
13 Mr. Katz.

14 Proceed, Mr. Green.

15 I will make the determination as to  
16 what is relevant, what is not, keeping in  
17 mind this is an Administrative Hearing. The  
18 rules of evidence are completely relaxed. I  
19 will make that determination.

20 Go ahead, Mr. Green.

21 BY MR. GREEN:

1           Q     All right.

2                     Mr. Hooks, when you conducted your  
3 investigation, you indicated that you had an  
4 opportunity to do an assessment of the videos  
5 and DVDs of general viewing and sexually  
6 oriented; is that right?

7           A     Yes.

8           Q     And I know you also indicated that  
9 you made a report relative to that; is that  
10 again right?

11          A     Yes, sir.

12          Q     Now, you have before you what has  
13 been marked as Government's Exhibit number 1.  
14                     You've identified that as your  
15 report; is that right?

16          A     Yes.

17          Q     Now, can you tell us, please, when  
18 you conducted a count?

19          A     On September 21st, 2001.

20          Q     When you conducted that count, what  
21 determination did you make, sir?



1           A     I counted 19 -- myself, along with  
2     Investigator Steve Allen, counted 1966  
3     general video movies, VHS, DVDs, and 544 X-  
4     rated movies.

5           MR. KATZ:   I ask to have an  
6     objection, especially about what the hearsay  
7     is that came in.

8           I don't think there has been a proper  
9     foundation here on what is X-rated.   We need  
10    a definition.   Also, we don't have a  
11    reference point.

12           THE COURT:   All right, Mr. Green.

13           BY MR. GREEN:

14           Q     Mr. Hooks, can you tell us the  
15    distinction between X-rated and general  
16    viewing as you understand it?

17           Lets start with X-rated.   What is  
18    that?

19           A     X-rated -- X-rated movies are  
20    pornography.   General -- general viewing  
21    movies are rated PG for kids and things like

1 that, to my knowledge.

2 Q Okay.

3 And did you do a count of the videos?

4 MR. KATZ: I submit there's the base  
5 of my objection, Your Honor. We have a legal  
6 definition, as bad as it is in Section 199.1  
7 of Title 11 DCMR and our witness is no where  
8 near that. So, it's entirely prejudicial  
9 testimony.

10 Furthermore, we have this huge gap.  
11 He says, to him, X-rated is anything that's  
12 not PG. So, he's including R-rated movies in  
13 his definition. You don't see -- you don't  
14 see those words, "Pornography" in this legal  
15 definition of what a sex oriented business is  
16 in the DCMR.

17 I mean, for there to be a decision  
18 about whether DCMR was violated, we have to  
19 go by the definition that's in the DCMR.

20 THE COURT: Mr. Green.

21 BY MR. GREEN:

1           Q     Mr. Hooks, can you then give us, as  
2     you understand the definition based on DCMR,  
3     can you tell us what the X-rated movies  
4     depict or are not supposed to depict, sir?

5           A     I can't answer that question.

6           MR. GREEN:   One moment, Your Honor.

7           Your Honor, what we have here is an  
8     investigative instruction. It is to act  
9     under the general direction of someone who  
10    can give those types of definitions.

11          Now, we intended to call Mr. Tory  
12    Bello (ph) who is the Zoning Administrator.  
13    They'll set forth definitions.

14          I think that they are better equipped  
15    from the Zoning Office, as Mr. Bello, to get  
16    into that definition than Mr. Hooks. That is  
17    not Mr. Hooks function, nor is it in his job  
18    description. He only carries out the orders  
19    as he understands it, sir.

20          THE COURT:   Mr. Katz.

21          MR. KATZ:    That's one of the biggest

1 reasons why I'm trying to (inaudible)  
2 persuade by making them unreliable. They are  
3 totally unreliable.

4 Even on constitutionality, you have a  
5 totally unreliable definition of sex oriented  
6 business and there's no way to get around  
7 that, number one.

8 Number two, there are some ways to  
9 try to get closer to Israel, just like Moses  
10 did on the mountain and they are coming no  
11 where near it. I think Your Honor realized  
12 that we can close the gap a lot better  
13 between (inaudible) being more explicit than  
14 PG is X-rated.

15 You and I know, Your Honor, that this  
16 is not (inaudible) PG is X-rated and that's  
17 all I'm hearing from this witness.

18 THE COURT: The Government has other  
19 witness, I think, that would be in a better  
20 position to define the various categories of  
21 videos and materials in this store.

1           Based on that, I will move along with  
2 the testimony of Mr. Hooks.

3           Your objection is noted, but  
4 overruled.

5           MR. KATZ: May I please have a  
6 continuing objection?

7           THE COURT: Very well.

8           MR. KATZ: Thank you.

9           THE COURT: All right.

10          BY MR. GREEN:

11          Q   Mr. Hooks, can you tell us again, the  
12 count as you understood it? What did you  
13 come up with?

14          A   1,966 general viewing movies, VHS and  
15 DVDs, 544 X-rated VHS and DVDs.

16          Q   Were there any designations, as you  
17 recall, on the DVDs themselves or on the box?  
18 Did the box have anything on it?

19          A   Yes.

20          Q   What was the designation as you saw  
21 it, sir?

1           A     On the box the X-rated stated, "X-  
2     rated," it might be two or three Xs.

3           Q     Two or three Xs?

4           A     Yes.

5           Q     So -- and on the general viewing, how  
6     did you know that they differed from the X-  
7     rated?

8           A     It was like a (inaudible) on the  
9     cover. No Xs at all.

10          Q     No Xs at all?

11          A     No.

12          Q     But on the 544 DVDs and VHSS that you  
13     saw that day, is it fair to say that they  
14     have some designation, sir?

15          A     Yes.

16          Q     And what was that designation?

17          A     Sexual.

18          Q     You've indicated earlier --

19          A     Two or three Xs.

20          Q     Two or three Xs?

21          A     Yes, sir.

1 Q All right.

2 Now, during the course of this  
3 investigation, did you go anywhere else in  
4 the store?

5 A Yes.

6 Q Where was that, sir?

7 A In the rear.

8 Q Why did you go into the rear?

9 A While I there, everyone that came in  
10 came to the counter and they would get change  
11 and they were buzzed into the rear.

12 Q Did anybody go into the general  
13 viewing area that you just identified?

14 A Well, to my knowledge, they walked  
15 through the general viewing area to get to  
16 the back.

17 Q Did you ever get the opportunity to  
18 go to the back?

19 A Yes.

20 Q And when you went to the back, what  
21 if anything did you see?

1           A     When I went to the back I seen ten --  
2     ten booths that you could put dollars into to  
3     view the X-rated, one or two, three X-rated  
4     movies.

5           Q     And did you get an opportunity to  
6     operate any of these?

7           A     Yes, sir.

8           Q     And when you operated them, what if  
9     anything happened?

10          A     Put a dollar in there and you watched  
11     through -- you can pick from different scenes  
12     -- you can pick from different scenes and  
13     each booth that had, you know, sexual acts on  
14     the screen.

15          Q     Did any of these booths that you've  
16     talked about, did any of them have a general  
17     viewing movies?

18          A     No, they did not.

19                MR. GREEN:   We want this marked as  
20     Government's Exhibit 2.

21                BY MR. GREEN:



1           Q    I'm going to show you what has been  
2 marked as Government's Exhibit 2 and there  
3 are three pages to it.

4                   Tell me what it is please.

5           MR. KATZ:  Objection.

6           THE COURT:  Hold on, Mr. Hooks.

7                   What is the objection, Mr. Katz?

8           MR. KATZ:  He's not a custodian of  
9 records unless he's going to testify --

10           THE COURT:  I'm not sure what he's  
11 going to testify to yet.

12                   What is the objection based on?

13           MR. KATZ:  I know it's (inaudible)  
14 and this is an application for a Certificate  
15 of Occupancy.

16                   We haven't had this witness testify  
17 that he has anything to do with this  
18 Certificate of Occupancy.  We have a  
19 Certificate of Occupancy -- this isn't the  
20 right witness for that.

21           THE COURT:  Objection is noted,

1 overruled.

2 Proceed, Mr. Green.

3 BY MR. GREEN:

4 Q Mr. Hooks, you conduct investigations  
5 for the DCRA; is that right?

6 A Yes.

7 Q During the course of your conduct of  
8 investigations, isn't it a fact, sir, that  
9 you require certain documents?

10 A Yes.

11 Q During the course of this  
12 investigation, can you tell us what, if any,  
13 documents you required?

14 A I required a copy of the Certificate  
15 of Occupancy Permit, also a copy of the  
16 actual application itself and a copy of the  
17 (inaudible) corporation.

18 Q You prepared a report which was  
19 admitted -- which was identified for  
20 identification purposes; is that right?

21 A Yes, sir.

1           Q     Sir, isn't it a fact that you  
2 identified the documents that you now have in  
3 your hand in your report?

4           A     Yes, sir.

5           Q     Now, this particular document that  
6 you have before you, Government Certificate  
7 Number 2 on the application -- one moment,  
8 sir -- to whom was this -- who made this  
9 application, sir?

10          A     Fun Fair Video, J.M.M. Corporation.

11          Q     And is this the only Certificate of  
12 Occupancy that you have for them?

13          A     Yes.

14          Q     When you checked the records, did you  
15 find anything else, any other Certificates of  
16 Occupancy applications?

17          A     No.

18               MR. KATZ: May I just have a  
19 continuing objection to this line of  
20 questioning, Your Honor?

21               THE COURT: Very well.

1                   Proceed.

2                   BY MR. GREEN:

3           Q     Based on that application, sir, was  
4 the Certificate of Occupancy issued?

5           A     Yes.

6           Q     And I want you to look at the second  
7 page of this.

8                   Is this the document -- a copy of the  
9 document?

10          A     Yes.

11          Q     That Certificate of Occupancy that  
12 was issued, was it for a sexually oriented  
13 enterprise?

14          A     No.

15          Q     What kind of enterprise was it for,  
16 sir?

17          A     Non-sexual oriented.

18          Q     Based on how many review directives  
19 and based on your inspection, what if  
20 anything did you do regarding this business  
21 enterprise?

1           A     You mean?

2           Q     You reviewed the record and  
3     determined that the Certificate of Occupancy  
4     that was issued was not sexually oriented.  
5     You reviewed the application which says that  
6     they made application for a non-sexual  
7     oriented enterprise.  You conducted an  
8     inspection.

9                     Did you take any further action?

10          A     My further action was when I wrote  
11     the Notice of Infraction.

12          Q     You wrote a Notice of Infraction?

13          A     Yes.

14          Q     Is it the same document that the  
15     Court has in its records now?

16          A     Yes.

17                     MR. GREEN:  Thank you, Your Honor.

18                     I would ask that this be marked.

19     Thank you.

20                     BY MR. GREEN:

21          Q     I'm going to show you what has been

1 marked as Government's Exhibit number 3.

2 Sir, can you identify that?

3 A Yes.

4 Q What is it?

5 A A Notice of Infraction, written to  
6 J.M.M. Corporation.

7 Q And --

8 MR. GREEN: Your Honor, I think you  
9 picked the wrong one up there. Your Honor, I  
10 think I've got a copy of this thing.

11 THE COURT: This is 35546; is that  
12 the one?

13 MR. GREEN: Yes. Thank you.

14 BY MR. GREEN:

15 Q Sir, again I'm going to show you what  
16 has been marked as Government's Exhibit 3.

17 What is that?

18 A I know it's an Infraction written to  
19 J.M.M. Corporation.

20 Q When was it issued?

21 A 9-13-01.

1 Q Who signed it?

2 A Mr. Omontio.

3 Q No. No. I mean, who issued this  
4 one?

5 A I did.

6 Q You did?

7 A Yes, sir.

8 Q And I notice a signature down there  
9 and a badge number; is that you?

10 A Yes.

11 Q All right.

12 What was it for?

13 A Operating -- my ticket was written  
14 for not complying with the Certificate of  
15 Occupancy Permit.

16 Q Okay.

17 Can you explain the process as you  
18 understand it for the issuance of the Notices  
19 of Infraction? Where do you generally start?  
20 How does it work?

21 MR. KATZ: Objection. What's

1 relevant is did he sign -- did he issue the  
2 Notices of Infraction? What he has told,  
3 (inaudible) I object to on this one, fine.

4 It's still irrelevant. All we need  
5 to know is he wrote the Notices of  
6 Infraction.

7 THE COURT: I will allow the question  
8 in there, Mr. Katz.

9 BY MR. GREEN:

10 Q How does the process work as far as  
11 you understand it and as far as you are  
12 concerned? What do you do? You went out and  
13 you said you conducted an inspection?

14 A Right.

15 Q And you came in at some point and did  
16 what -- wrote up the ticket?

17 A Yes.

18 Q How does it work; what happens?

19 A The ticket was -- the ticket was  
20 written because in the rear of the building -  
21 - the ticket was written because in the rear



1 of the building they had to shut the booths  
2 in the back with the X-rated movies being  
3 shown.

4 His permit -- his Occupancy Permit  
5 states that his business is not sexually  
6 oriented, which it is sexually oriented  
7 because of what was going on in the rear of  
8 the building.

9 MR. KATZ: Objection.

10 THE COURT: Mr. Katz?

11 MR. KATZ: It's not within this  
12 witness's providence of saying whether  
13 something is sexually oriented. He's not  
14 even familiar with the definitions in the  
15 DCMR about a sexually oriented business.

16 I move to strike that.

17 THE COURT: Mr. Katz, this is an  
18 Administrative Hearing. The rules of  
19 evidence are relaxed. Hearsay is allowed.

20 Lets move on.

21 BY MR. GREEN:

1           Q     Mr. Hooks, during the course of the  
2           investigation, did you make any other  
3           observations?

4           A     Yes, sir.

5           Q     What did you see?

6           A     What I observed, along with Zoning  
7           Inspector, Alan James, it would appear to be  
8           semen on the floor at the -- the general area  
9           of the booth.

10           MR. KATZ:  Objection, Your Honor.

11           I really have to make my record.

12           THE COURT:  What is your objection  
13           this time, Mr. Katz?

14           MR. KATZ:  He doesn't know what it  
15           was.  The same thing that he testified to at  
16           the last hearing.  He saw something wet on  
17           the floor.  Let him say who sees what.  He's  
18           with someone now.

19           It's not relevant; it's prejudicial  
20           what he says who saw what, okay?  If he wants  
21           to have the other -- if my opponent wants to

1 have the other witness come down, fine. Let  
2 him do so.

3 Mr. Green hasn't said that the other  
4 witness is not available. I am -- I --

5 THE COURT: But he is a witness. He  
6 is a witness here. He's testifying from what  
7 he observed.

8 MR. KATZ: We don't know that,  
9 because he said he was with someone else and  
10 he hasn't made clear about what he saw or  
11 not. That's number one.

12 THE COURT: Maybe you ought to ask a  
13 question, Mr. Katz.

14 MR. KATZ: If I may, Your Honor, on a  
15 separate matter, if Your Honor is not going  
16 to handle First Amendment issues, if this has  
17 to go up on appeal at the higher level court,  
18 I'm going to have to present it to you.

19 So, as much as I regret that I'm  
20 making interruptions to preserve my record,  
21 that's what I have to do, because if our

1 First Amendment issues are going to come up  
2 on arguing a record, I've got to preserve my  
3 record here today.

4 That's why I'm asking Your Honor not  
5 to make it just limited to these ideas of  
6 whether we are paying a ticket or not.

7 The issues -- if that was the only  
8 issue today, Your Honor, if that was the  
9 issue to my client, the only issue here today  
10 is whether he's paying a ticket or not, he  
11 wouldn't have paid me to be here.

12 A cost benefit analysis on total  
13 dollars and cents is you are at a money loss  
14 (inaudible). He's got me here to protect his  
15 right to stay open unless and until the City  
16 Counsel does what they have to do to control  
17 what sexual oriented businesses do.

18 THE COURT: Well, my ruling today,  
19 Mr. Katz, would not -- all I'm ruling on is  
20 these two citations -- not to close him down  
21 or -- I mean, that's another issue for

1 another time.

2 MR. KATZ: Then maybe I can just  
3 clarify something which I think I have  
4 clarified, but it just wasn't clear on one --  
5 on one matter which is that when -- when I  
6 say, "We," when my client was last in front  
7 of you in May of 2000, Your Honor did then  
8 subsequently issue an order that said, pay  
9 the fine of \$500, plus \$40 cost, plus close  
10 until you get the proper license.

11 So, I'm hoping that if I have  
12 clarification, Your Honor, that when we're  
13 dealing with money that he is paying, it  
14 makes it a little easier for me to deal with  
15 where the line of objections goes to.

16 THE COURT: I'm not going to make  
17 such a ruling at this point, Mr. Katz.

18 But the issue before us is whether or  
19 not the respondent is in violation of DC Law,  
20 based on these two citations, not the  
21 proposed Notice to Revoke. That's separate

1 and apart.

2 MR. KATZ: That part I'm clear on. I  
3 just was (inaudible) maybe been a change  
4 somewhere between your ruling last time in  
5 the last case for my client where you said,  
6 "Close until you get the right license."

7 Now you seem to be saying you're only  
8 going to be ruling on -- the only reason that  
9 I think we are supposed to be here today.

10 THE COURT: I -- I -- whatever I did  
11 in the last hearing may not have any bearing  
12 on what I do here today. The facts, I  
13 suppose are different. I haven't heard the  
14 testimony as of yet.

15 So, what I did the last time I can't  
16 imply it here now. This is the first  
17 witness. I don't know how I will rule.

18 MR. KATZ: It's not (inaudible), come  
19 on. Lets at least have a fair foundation  
20 set. You know, you can't -- you have a huge  
21 gap between a totally informal hearing and a

1 fully formal hearing. Lets at least get to a  
2 fair hearing, okay. A fair hearing --

3 THE COURT: I think this is a fair  
4 hearing, Mr. Katz. I mean, you will have an  
5 opportunity to cross-examine, you will have  
6 an opportunity to put on your own witnesses.

7 I mean, isn't that fair, fundamental  
8 things?

9 MR. KATZ: No. The most dangerous  
10 cross-examination is the question to which  
11 you don't know the answer to, which it gets  
12 to back to why I always prefer to get as much  
13 discovery as I can before I walk into trial  
14 so I know where the land mines are and where  
15 the land mines aren't.

16 Even in a criminal case, which gives  
17 a lot less discovery than civil, at least  
18 there I can get more discovery than I was  
19 permitted to get here.

20 THE COURT: Well, as I ruled earlier,  
21 the Civil Infractions Act does not describe

1 any way of discovery. I mean, this case was  
2 continued three times at your request. You  
3 had ample opportunity to do all the research  
4 and whatever it is you needed to do.

5 So, I mean, don't -- I mean, it's  
6 unfair for you to come in here and claim foul  
7 now.

8 All right, lets move on, Mr. Green.

9 MR. GREEN: Your Honor, one other  
10 point I'd like to make too, if I might be  
11 heard. We seem to have forgotten that there  
12 is another entity that would have allowed the  
13 respondent to make adjustments and it's  
14 called a Board of Zoning Adjustments. To my  
15 knowledge and information, he hasn't gone  
16 there.

17 MR. KATZ: I object to that, Your  
18 Honor.

19 MR. GREEN: Well, Your Honor, what's  
20 good for the goose is good for the gander.  
21 If you can get up in here and talk about



1 fundamental unfairness, I can talk about what  
2 happens between --

3 MR. KATZ: This is all on the record.

4 MR. GREEN: -- June the 20th, 2000 up  
5 to today --

6 THE COURT: Mr. Green --

7 MR. GREEN: -- you should have gone to  
8 the Board of Zoning Adjustment and you didn't  
9 do it.

10 THE COURT: Mr. Green, Mr. Green --

11 MR. GREEN: You --

12 THE COURT: Mr. Green, keep your  
13 voice down, please. If you could have your  
14 seat.

15 MR. GREEN: Yes, Your Honor.

16 THE COURT: Mr. Katz.

17 MR. KATZ: Since my client is in a  
18 C2C zone, he is not eligible to get a Sex  
19 Oriented Business License.

20 THE COURT: So?

21 MR. KATZ: So, Mr. -- that's from

1 DCMR.

2 THE COURT: Yes. So --

3 MR. KATZ: So, Mr. Green should not  
4 be heard to be bringing up this issue about  
5 whether my client applied for what unless  
6 we're going to get into constitutional  
7 issues, Your Honor, because he can't neatly  
8 separate out whether he can get hold of a  
9 sexual oriented business license --

10 THE COURT: No. If the law does not  
11 allow for a Certificate of Occupancy in that  
12 zone, then you go and seek a variance.

13 MR. KATZ: Oh, yeah? Lets look at  
14 how hard it is to get a variance.

15 THE COURT: That's a different issue.

16 MR. GREEN: That's the problem. He  
17 didn't even try.

18 THE COURT: All right. Mr. Green --  
19 okay. Mr. Green, proceed with the witness,  
20 please.

21 BY MR. GREEN:

1           Q     Mr. Hooks you were indicating that  
2     you conducted further inspection and what you  
3     had seen in this locale.

4                     Did there come a time when other  
5     things were done relative to your  
6     investigation?

7           A     What do you mean by "Things?"

8           Q     Were other measurements taken, sir?

9           A     Yes, they were.

10          Q     Can you tell us about that?

11          A     Measurements were taken with myself  
12     along with Inspector Alan James.

13          Q     And who is Mr. Alan James?

14          A     He's a Zoning Inspector.

15          Q     I see. And you said measurements  
16     were taken?

17          A     Yes.

18          Q     Can you tell us about that, please?

19          A     Well, Mr. Alan James can get more  
20     into that.

21          Q     What was your role?

1           A     I was there to assist him in writing  
2     down the numbers.

3           Q     And what numbers did you write down?

4           MR. KATZ:   Objection.

5           THE COURT:   Mr. Katz.

6           MR. KATZ:   Mr. Alan James needs to  
7     testify to that.

8           THE COURT:   He said he wrote the  
9     numbers down.   He's asked him what numbers  
10    did he write down.   What is --

11          MR. KATZ:   This wasn't the man that -  
12    -

13          THE COURT:   He wrote the numbers  
14    down.

15          MR. GREEN:   They are in his report.  
16    They are in his report, man, read it.

17          THE COURT:   Mr. Katz.   Please,  
18    objection is noted.

19          Lets move on this Mr. Green, please.

20          BY MR. GREEN:

21          Q     Sir, when you wrote the numbers down,

1 can you tell us what you wrote down, please?

2 A Well, the numbers that I wrote down -  
3 - the numbers that I wrote down were 20 x 21.

4 Q What's that?

5 A That was located from the rear wall -  
6 - the rear wall in the room to the two doors.

7 Q Now, this 20 x 21 that you are  
8 talking about, what did that consist of?

9 What is in that area?

10 A That's the front of the store.

11 Q Well, what's there?

12 A DVD -- three X-rated -- three X-rated  
13 movies and PG movies.

14 Q Three X-rated movies and PG movies?

15 A Yes, sir.

16 Q All right?

17 A There were sex toys.

18 Q And sex toys?

19 A Yes.

20 Q All right.

21 Did you take further measurements or

1 were you involved in writing down further  
2 measurements?

3 A Yes.

4 Q What were they?

5 A 34 x 27.

6 Q 34 x 27?

7 A Yes, sir.

8 Q What did this area consist of, sir?

9 A That was in the rear of the  
10 establishment, where the booths were.

11 Q The booths?

12 A The video booths, yes.

13 MR. KATZ: I have a continuing  
14 objection. We're going to be having opposing  
15 testimony to this accuracy and I just ask for  
16 a continuing objection on it.

17 THE COURT: Very well, Mr. Katz.  
18 Proceed.

19 BY MR. GREEN:

20 Q Well, this is the area that you just  
21 previously described in terms of putting

1 coins in a receiver of some kind?

2 A Yes, dollar bills, yes.

3 Q Dollar bills?

4 And how many booths did you say there  
5 were?

6 A Ten.

7 Q Did they have a Mechanical Business  
8 License; did you check for that?

9 A Yes.

10 Q And did they have one?

11 A Yes.

12 Q Was it current?

13 A Yes.

14 Q Did you make any further observations  
15 in that area, sir?

16 A Yes. I observed -- I went and looked  
17 into the booths again and I viewed -- I put a  
18 dollar in and I viewed the movie. It had  
19 different selections; it had eight different  
20 selections.

21 Q Oh, I see.

1                    Were there any individuals back  
2 there?

3            A     Yes.

4            Q     What, if anything, did you observe  
5 relative to that?

6            A     The individuals were inside the  
7 booths at the time, but there was a guy back  
8 there. Whenever someone comes out of the  
9 booth, he goes in and he mops the booth.

10          Q     Every time somebody came out?

11          A     Yes.

12          Q     Did you observe this on more than one  
13 occasion?

14          A     Yes.

15          Q     When you made a repeated -- or did  
16 you -- you indicated in your report you made  
17 several visits to this establishment; is that  
18 right?

19          A     Yes, sir.

20          Q     When you made these visits, did you  
21 make these same observations?



1           A     Yes, sir.

2           Q     Was there someone who mops as some  
3 people came out?

4           A     Yes.

5           Q     On each of the times that you went  
6 there?

7           A     Yes.

8           Q     How many people could fit in a booth,  
9 sir?

10          A     Two at the most.

11          Q     Did you ever observe more than one or  
12 two people in the booth?

13          A     No.

14          Q     Did you ever observe two people in  
15 the booth?

16          A     No.

17          Q     When you were there, you observed  
18 what?

19          A     I observed one entering and one  
20 leaving.

21          Q     Followed by the man with the mop?

1           A     Yes, sir.

2           Q     All right.

3                 MR. GREEN:   One moment, Your Honor.

4                 Your Honor, I move into admission

5 Government's Exhibits 1, 2, 3.

6                 THE COURT:   Mr. Katz?

7                 MR. KATZ:    I have an objection to 1.

8 As you know, it's (inaudible) testified and I

9 properly object. As it goes along, fine, I

10 wasn't going to take up Your Honor's time and

11 take the time reading it.

12                 As far as 2 and 3 goes, you already

13 have my objection to 2. I already said that

14 this isn't the proper witness to testify

15 about the Certificate of Occupancy and a

16 Notice of Infraction does need to be moved

17 into evidence unless it's part of the Court

18 record that already --

19                 THE COURT:   I will admit the three

20 documents into evidence. Exhibit --

21 Government's Exhibit 1, 2 and 3, with

1 objections as noted. They have been  
2 admitted.

3 Lets go, Mr. Green.

4 (Government's Exhibits numbers 1,  
5 2 and 3 marked for admission.)

6 MR. GREEN: Your Honor, I have a  
7 technical problem.

8 As Your Honor might not be aware --  
9 could I approach the bench, please?

10 THE COURT: Mr. Katz.

11 MR. GREEN: Here's the problem I've  
12 got. I'm supposed to -- I'm involved in this  
13 Tyson thing. I'm supposed to meet with the  
14 Boxing Commission in about a half an hour.  
15 I'm supposed to do something with the  
16 Corporation Counsel's Office.

17 THE COURT: How long are you going to  
18 be?

19 MR. GREEN: I don't know; I really  
20 don't know and that's the problem I've got.  
21 They want me to meet with them in about a

1 half an hour.

2 What I was wondering, since he wants  
3 to do this thing on Friday, how's Your  
4 Honor's schedule?

5 MR. KATZ: Well, I don't know that I  
6 can get everyone here on Friday. I would  
7 just ask for a general continuance in the  
8 ordinary course to get my people subpoenaed.

9 I don't want to be waiting around  
10 indefinitely, because we've got interpreters  
11 on-call, we've got my investigator who is  
12 charging by the hour, because he can't do  
13 anything else right now.

14 So, I suggest that we just postpone  
15 the whole hearing in the ordinary course.

16 MR. GREEN: There's no way in God's  
17 green earth we're going to finish this thing  
18 today at the rate we're going. I mean, with  
19 his objections and with my witnesses and with  
20 his witnesses, I just don't see it happening.

21 MR. KATZ: I mean, I'll eat the cost

1 of our investigator, I'll eat the cost of our  
2 cancelling our interpreter. I do think that  
3 if it is postponed, I want to get an  
4 interpreter from the office here next time.  
5 If I can't get it, we'll just pay for the  
6 rental.

7 THE COURT: There is a provision  
8 under the law, but your client speaks good  
9 English.

10 MR. KATZ: No. We have a fully  
11 bilingual Spanish office, my partner who is  
12 fully spoken in Spanish since twelve years  
13 old and my assistant -- we know that he is  
14 not sufficiently bilingual.

15 I won't get bogged down in that, Your  
16 Honor. If we have to eat the expense, it's a  
17 minimum one hour of cancellation of the  
18 interpreter and the postpone --

19 THE COURT: Let me say this.

20 Could you check with the Board, Mr.  
21 Green, to get a feel as to --

1 MR. GREEN: How long and --

2 THE COURT: They may be making their  
3 ruling today on the fight?

4 MR. GREEN: I don't know or not.

5 THE COURT: (inaudible).

6 MR. GREEN: No; they're not making a  
7 ruling, but let me put it like this. We had  
8 -- can we turn the mike off, can we go off  
9 the record? I want to make a comment.

10 (Lunch break.)

11 THE COURT: Let the record reflect it  
12 is now 1:23 p.m. We're back on the record  
13 after lunch. We will continue with the  
14 testimony of Mr. Hooks.

15 Before I do that, I omitted to  
16 introduce my colleague who is joining me here  
17 today who is new, a new Administrative Law  
18 Judge, Rory Smith.

19 All right. You may proceed Mr.  
20 Green.

21 MR. GREEN: Thank you, Your Honor.

1                   CONTINUED DIRECT EXAMINATION  
2                   BY COUNSEL FOR THE GOVERNMENT  
3                   BY MR. GREEN:

4           Q     Mr. Hooks, you were indicating that -  
5                 - in your prior testimony the measurements  
6                 with your tape -- you wrote some down; is  
7                 that right?

8           A     Yes.

9           Q     Well, can you refresh us, please, and  
10                tell us what those measurements were?

11          A     The measurements were the front of  
12                the business was 20 x 21, that was located  
13                from the rear wall to the front door.

14          Q     The other measurements that you took  
15                were in the rear if I recall -- excuse me,  
16                recorded?

17          A     In the rear were 34 x 27.

18          Q     All right.

19                Now, during the course of you  
20                investigation, you indicated that you did a  
21                count of videos and DVDs; is that right?

1           A     Yes.

2           Q     You also indicated that there were  
3     ten booths?

4           A     Yes, sir.

5           Q     You made mention of something called,  
6     "Sex toys."   How many were there?

7           A     Sex toys -- actually, the number I  
8     don't have, but there were pictures taken.

9           Q     I see.

10           MR. KATZ:   Objection.   Unless there  
11     is a description of what these sex toys are,  
12     otherwise (inaudible).

13           BY MR. GREEN:

14           Q     All right.

15                     What were those sex toys, sir, that  
16     you observed?

17           A     Dildos, vibrators; they were dildos  
18     and vibrators.

19           Q     Okay.

20           MR. GREEN:   I don't have any other  
21     questions of this witness, Your Honor.



1 THE COURT: Very well.

2 Mr. Katz, cross-examination?

3 CROSS-EXAMINATION BY COUNSEL

4 FOR THE RESPONDENT

5 BY MR. KATZ:

6 Q You didn't take the measurements?

7 A I wrote down the measurements, yes.

8 Q Right, but you didn't -- someone had  
9 a measuring tape and you were writing down  
10 the measurements, right?

11 A I stated that earlier, who took down  
12 the measurements.

13 Q Okay and it wasn't you, right?

14 A Yes.

15 MR. GREEN: Your Honor, again. We  
16 have a question that has been asked and  
17 answered and I will pose an objection based  
18 on this line of questioning.

19 THE COURT: I will allow the  
20 question, but it's -- he has answered the  
21 question, I think, but proceed, Mr. Katz.

1 BY MR. KATZ:

2 Q You haven't been to the store since  
3 September?

4 A Have I been to the store since  
5 September?

6 Q Yes.

7 A Yes; I have.

8 THE COURT: That's a negative.

9 What is the question? Would you  
10 repeat that question again, for me.

11 BY MR. KATZ:

12 Q Have you been to the store since  
13 September?

14 A Yes.

15 Q Were you there last week?

16 A Yes.

17 Q Tell me if there are any dildos there  
18 anymore now?

19 MR. GREEN: Your Honor, I'm going to  
20 object. First of all -- and the reason I'm  
21 going to object --

1 THE WITNESS: The dildos -- they was  
2 --

3 THE COURT: Wait a minute, Mr. --

4 MR. GREEN: -- is because of the  
5 reason that Counsel keeps giving on this  
6 thing. We've got here a Notice of Infraction  
7 served on the 13th of September in the year  
8 of Our Lord, 2001 and this activity that took  
9 place prior to that.

10 Now, we're not talking about what  
11 happened in December. Therefore, this whole  
12 question should be stricken as irrelevant  
13 (inaudible).

14 MR. KATZ: I'm sorry, Your Honor.

15 Your Honor has, over my strenuous  
16 objection has let him give testimony about  
17 what happened after the last ticket was  
18 written. Your Honor's decision is going to  
19 be both for finding liability. If you find  
20 against us, you're going to find what the  
21 penalty is.

1           So, part of what I'm doing here is  
2   about liability, including whether there is  
3   recidivism and part of what I'm also doing  
4   here is about penalty if we lose. There are  
5   no dildos there anymore. He calls them  
6   "Buddy Booths." There are no holes between  
7   the booths for someone to stick an object  
8   between --

9           THE COURT: Wait. Hold on, Mr. Katz.

10          The question here is, what occurred  
11   on or about September the 13th.

12          Now, what relevance would anybody's  
13   observation have from December? How does  
14   that relate back to September 13th?

15          MR. KATZ: I just told you, Your  
16   Honor.

17          Unless I'm mistaken, if you find  
18   against us for liability, you are going to be  
19   deciding what the penalty is. I have to  
20   imagine that part of your consideration about  
21   what the penalty is going to be is what is

1 going on now, have things changed for the  
2 better.

3 Now, we have to bring that out, Your  
4 Honor.

5 THE COURT: And you --

6 MR. KATZ: If I've got to hold this  
7 person who is now a witness to bring that  
8 out, we will.

9 THE COURT: Are you referring to  
10 mitigation now?

11 MR. KATZ: Yes. Because I'm not --

12 THE COURT: The issue before me is  
13 what happened on that -- on or about that  
14 date.

15 Now, if there were mitral actions by  
16 the --

17 MR. GREEN: Your Honor, I will  
18 withdraw my objection if it will move this  
19 thing along. I'll withdraw my objection.

20 MR. KATZ: Fine.

21 THE COURT: All right.

1           But I would say, within reason -- and  
2           I don't want you going all over -- I mean,  
3           within reason.

4           Go ahead, Mr. Katz.

5           MR. KATZ: Well, you know, Your  
6           Honor, I'd be more than happy if you  
7           sustained my original objection then. The  
8           original objection having been, lets not have  
9           any testimony. Lets strike every piece of  
10          testimony from after the date of the Notice  
11          of Infraction was issued. But Your Honor  
12          wouldn't do that.

13          So, if you prohibit -- for you to  
14          prohibit me from putting on evidence of  
15          things that happen after, also attack this  
16          man's credibility of what was in the store,  
17          doesn't make sense and it's not fair.

18          MR. GREEN: I withdraw my objection,  
19          Your Honor. He can proceed.

20          THE COURT: All I'm saying, Mr. Katz,  
21          is my determination will be based on what

1 occurred on or about that date.

2 If you are driving on January 1 and  
3 you don't have driver's license and you are  
4 stopped by the police, and on June 15th you  
5 went out, you got a license, that does not  
6 change what occurred on January 1.

7 I just want to make that --

8 MR. KATZ: It goes to credibility,  
9 too, Your Honor.

10 THE COURT: Okay. Well, I would --  
11 proceed Mr. Katz.

12 MR. KATZ: Thank you.

13 BY MR. KATZ:

14 Q Do you know that there are no longer  
15 any dildos at the store on display in the  
16 retail areas?

17 A Yes.

18 Q You know that they are not on  
19 display?

20 A Yes.

21 Q Okay.

1                   And you went inside one or more of  
2                   the booths since September of 2001?

3                   A     Yes.

4                   Q     And you didn't see any holes  
5                   connecting one booth to the other, did you?

6                   A     At that time they were covered up.  
7                   The booths with the holes -- the hole was  
8                   covered up.

9                   Q     Right.

10                  There were no open holes connecting  
11                  one booth to the other when you went in  
12                  September of last year?

13                  A     The hole was covered up.

14                  Q     Right.

15                  You joined this Agency two years ago?

16                  A     No.

17                  Q     Less?

18                  A     No; two and a half years ago.

19                  MR. KATZ:  No further questions, Your  
20                  Honor.

21                  THE COURT:  Anything on redirect, Mr.



1 Green?

2 MR. GREEN: No, Your Honor.

3 I just have one question -- a couple  
4 of questions for Mr. Hooks.

5 REDIRECT EXAMINATION BY COUNSEL

6 FOR THE GOVERNMENT

7 BY MR. GREEN:

8 Q When you said, "Holes between the  
9 booths were covered up," how were they  
10 covered?

11 A They had a metal plate, like a thin  
12 metal plate on -- secured to the wall to  
13 cover up the hole that was there previously -  
14 - that was there before.

15 Q Okay.

16 Is that removable or is it screwed  
17 in, bolted in, welded in?

18 A It was screwed -- screwed in, but --

19 Q I see.

20 A -- it wasn't an actual -- like a  
21 phillips or a flat head, it was some other

1 type of method that they used, but it was --

2 Q Riveted in somehow?

3 A Yes.

4 Q When did you make this subsequent --

5 do you know the date of your subsequent

6 visit? I mean, after September 13th?

7 A Was it after September?

8 Q Right.

9 The question was asked whether or not  
10 you made a subsequent visit. You said,

11 "Yes."

12 What date was that, if you recall?

13 A I don't recall the date. (inaudible)  
14 of last week, when they came in there to  
15 serve a subpoena, but I did not --

16 THE COURT: Say that again.

17 THE WITNESS: I don't have an actual  
18 date for that, Your Honor.

19 THE COURT: You said something about  
20 last week.

21 THE WITNESS: Last week when I went

1 to serve a subpoena to Mr. Montiel.

2 THE COURT: Oh, I see.

3 And what date last week was that?

4 THE WITNESS: Friday, last Friday.

5 THE COURT: Friday, March the -- what  
6 is it, the 1st?

7 THE WITNESS: Yes; March the 1st.

8 THE COURT: Okay. All right.

9 No other questions.

10 Who is your next witness, Mr. Green?

11 MR. GREEN: Mr. Alan James.

12 THE COURT: All right.

13 Mr. -- would you please stand down.

14 MR. GREEN: I guess we (inaudible).

15 These are the exhibits, Your Honor.

16 We've moved them in.

17 THE COURT: 1, 2 and 3?

18 MR. GREEN: Yes.

19 THE COURT: After Mr. -- who was your  
20 first one?

21 MR. GREEN: Mr. Detriek.

1 THE COURT: Detrieck will be  
2 following?

3 MR. GREEN: Yes.

4 THE COURT: Okay.

5 Can I get you to sit here for me,  
6 please? Just a reminder, you have already  
7 been sworn in. You are under oath.

8 You may proceed, Mr. Green.

9 TESTIMONY OF ALAN JAMES

10 DIRECT EXAMINATION BY COUNSEL

11 FOR THE GOVERNMENT

12 BY MR. GREEN:

13 Q State your name, please.

14 A Alan James.

15 Q By whom are you employed?

16 A DCRA, Zoning Division.

17 Q And in what capacity, sir?

18 A Zoning Inspector.

19 Q Directing your attention to the 10th  
20 of September, 2001, did you have occasion to  
21 accompany Mr. Hooks to a particular place?

1           A     Yes; I did.

2           Q     Where did you go with Mr. Hooks?

3           A     919 5th Street, Northwest.

4           Q     What is 919 5th Street?

5           A     There's a business as a video  
6     (inaudible) store.

7           Q     The purpose of your visit was to do  
8     what, sir?

9           A     We were investigating the property --  
10    the video store. We was checking their  
11    licenses and Certificate of Occupancy and we  
12    were measuring the property -- measuring the  
13    space of the property.

14          Q     I see.

15                Did you have occasion to measure?

16          A     Yes; we did.

17          Q     And when you measured, exactly what  
18    did you do, sir?

19          A     Well, we measured the property from  
20    wall-to-wall, front and the rear of the store  
21    -- of the property -- the business.

1           Q     And when you conducted these  
2     measurements, what did you come up -- with  
3     the measurements, what were they?

4           A     The dimensions?

5                     Well, I can't recall right off-hand,  
6     but --

7                     MR. KATZ:  Objection.  He's referring  
8     to the notes without going through the proper  
9     foundation.

10                    BY MR. GREEN:

11           Q     Well, sir, did you --

12                    THE COURT:  Hold on.

13                    Go ahead, Mr. Green.

14                    BY MR. GREEN:

15           Q     Did you have an opportunity to do a  
16     report of any kind relative to this  
17     inspection?

18           A     Well, I did a verbal report on the  
19     property and also wrote a Notice of  
20     Infractions.

21           Q     You wrote a Notice of Infraction?

1           A     Yes, sir.

2           Q     Are you familiar with someone who did  
3 do a report?

4           A     Investigator Hooks did the report.

5           Q     He wrote a report?

6           A     Yes, sir.

7           Q     Have you had an opportunity to review  
8 his report or any aspects of it?

9           A     Yes.

10          Q     I'm going to show you what was  
11 admitted into evidence as Government's  
12 Exhibit 1.

13                 Can you find in that, please, any  
14 discussion that relates to measurements that  
15 you did?

16                 MR. KATZ: Your Honor. This is why I  
17 renew my objection to that, because this is  
18 just outrageous to have this witness  
19 reviewing the other witness's notes about  
20 measurements.

21                 THE COURT: Now, this is the

1 Inspector who did the measurements?

2 MR. GREEN: Yes, Your Honor.

3 THE COURT: So, he can testify to  
4 where he measured, what the dimensions were.

5 MR. KATZ: But the notes in front of  
6 this witness -- those are not his notes.  
7 These are the notes taken by Mr. Hooks.

8 THE COURT: And now there's --

9 MR. KATZ: That's why I'm renewing my  
10 objection to having that report in evidence.  
11 I object again.

12 THE COURT: Okay.

13 The document is already in evidence,  
14 so your objection is noted -- overruled.

15 Lets go ahead.

16 BY MR. GREEN:

17 Q Sir, you had an opportunity to take  
18 measurements; is that right?

19 A Yes.

20 Q And you indicated that the  
21 measurements were taken down by Mr. Hooks; is



1       that right?

2           A     Yes.

3           Q     Do you recall, having reviewed his  
4       notes what the dimensions were that you  
5       called out to him?

6           A     Yes.   Now, I do.

7                   The room -- the rear room, I believe  
8       it was -- was 20 x 21 and the --

9           MR. KATZ:   Objection.

10          THE COURT:   Mr. Katz.

11          MR. KATZ:   There was a qualifier  
12       there.

13                   What he believes doesn't -- isn't  
14       enough.   What he knows is all that can come  
15       into evidence, not what he believes.

16          THE COURT:   You want to rephrase the  
17       question, Mr. Green?

18          MR. GREEN:   All right.

19          BY MR. GREEN:

20          Q     When you conducted the inspection and  
21       when you took the measurements, what did you

1 determine, what did you see? What did the  
2 tape measure show?

3 A That the rear wall was 20 x 21.

4 Q 20 x 21?

5 A Yes.

6 Q And in is this area of 20 x 21, can  
7 you describe what else you observed?

8 A Well, there were video tapes, there  
9 were -- I don't know whether you call them  
10 sex toys or what the definition would be, but  
11 they were also on the wall and DVDs.

12 Q And these DVDs, did you have an  
13 opportunity to see what the title of them,  
14 perhaps was?

15 In other words, were they general  
16 viewing or something else?

17 A Well, they had -- there was general  
18 viewing ones in that area, where you can rent  
19 them or purchase them.

20 Q All right.

21 Did you have occasion to do other

1 measurements on this premises?

2 A We did measurements of the video  
3 booths that was also on the premises.

4 Q Where is that located, sir?

5 A They were in the rear.

6 Q And when you went to the rear to do  
7 this measurement, what did you determine?

8 A That there are ten booths and the  
9 measured area was 30 -- 34 x 27. That was  
10 the entire section.

11 Q I see.

12 And was this greater than the first  
13 area that you measured?

14 A Yes.

15 Q Once you made these measurements, did  
16 you make any other observations?

17 A Well, I proceeded -- after the  
18 measurements, I proceeded to walk through the  
19 entire business, the rear and even in the  
20 backyard.

21 There was a lot of files or

1 something. I asked one of the gentlemen  
2 about it, about the files.

3 Then I just basically just did walk-  
4 through. I just did a walk-through of the  
5 premises and I went to the counter and  
6 reviewed the Certificate of Occupancy also.

7 Q I see.

8 When you reviewed the Certificate of  
9 Occupancy, what, if anything, did you notice  
10 about it?

11 A That the Certificate of Occupancy was  
12 for a no-sex video store.

13 Q I'm going to show you what has been  
14 admitted into evidence as Government's  
15 Exhibit 2 (inaudible).

16 Can you tell me what that is, sir?

17 A This is a Certificate of Occupancy.

18 Q And to whom is it issued?

19 A J.J.M. Corporation.

20 Q Is there a special type of --

21 A I'm sorry. I'm sorry. J.M.M.

1 Corporation.

2 Q Are there any restrictions on it?

3 A Just that the business should not be  
4 sexually oriented.

5 Q And does that comport with what your  
6 inspection revealed?

7 MR. KATZ: Objection. Come on, Your  
8 Honor, there's a definition of what is sex-  
9 oriented business. They haven't laid the  
10 foundation of this witnesses being able to  
11 testify to that. They are so far away from  
12 that, they have so few specifics.

13 You know, we do have in the last  
14 hearing and my opponent's stuck with it,  
15 because he had the full chance to cross  
16 examine Mr. Johnson. The last Administrative  
17 confirms that he was letting people -- the  
18 Gladys Hicks Memo of 1998, they could use the  
19 Gladys Hicks Memo.

20 One of the things we'll be arguing  
21 today, Your Honor, is that they can't get

1 over the hump of the Gladys Hicks Memo, my  
2 guy is not in violation. We're just no where  
3 near -- we're just no where near there. I've  
4 got the transcript right here.

5 I'm happy to show it to you right now  
6 where Mr. Johnson said that everybody who is  
7 in business at the time the Gladys Hicks Memo  
8 came out, that they get the benefit of that  
9 memo.

10 So, we have definitions of sex-  
11 oriented business in the DCMR, we have the  
12 Gladys Hicks Memo. They are no where near  
13 having the man be able give this testimony as  
14 a (inaudible) knowledge, Your Honor.

15 At the appropriate time I am ready to  
16 give you -- to give Mr. Johnson a chance to -  
17 - it comes right from the other tape of the  
18 last hearing in 2000 of this case.

19 THE COURT: Mr. Green.

20 MR. GREEN: We've got an expert in  
21 giving definitions of sexually oriented or

1 non-sexually oriented.

2 His -- his role as an Inspector is to  
3 give facts of what he observes, what he sees.  
4 Now, he walked in there and took some  
5 measurements.

6 He certainly can give testimony about  
7 that and he certainly has. He observed that  
8 in his measurement, one area was bigger than  
9 the other. That happened to have been the  
10 sexually-oriented part that we've been  
11 talking about all morning and all afternoon.  
12 He talked about that. He certainly can give  
13 testimony on that area.

14 Now, in terms of what constitutes  
15 sexually and non-sexually oriented -- that's  
16 within the province of the Zoning  
17 Administration to give those type of  
18 definitions.

19 Now, we're not asking him to fix a  
20 definition. We're simply asking him to give  
21 us his observations.

1           I have said at the outset that the  
2           Zoning Administrator is a pretty busy man in  
3           this Agency. I think all of us would  
4           recognize that -- is willing to come. I've  
5           got him down as a witness, Mr. Tory Bello,  
6           the acting Zoning Administrator. He's going  
7           to come and he's going to talk about  
8           definitions if you want definitions.

9           We intend to call him. That's no  
10          secret. We intend to call him. Whether it's  
11          as far as this witness is concerned, he can  
12          give us testimony as to his observations.

13          THE COURT: Mr. Katz.

14          MR. KATZ: But that's not what the  
15          question went to. This lawyer wants to have  
16          a conclusion from this witness about whether  
17          this is a business that was in violation of  
18          the certificate.

19          That's totally disingenuous for Mr.  
20          Green to tell us that all he's looking for is  
21          facts from this man and then he'll ask for



1 his conclusion testimony. That's what Mr.  
2 Green is doing with this witness.

3 He's asked this witness to say, was  
4 this business operating within the confines  
5 of the Certificate of Occupancy. And this  
6 witness has not shown himself to have that  
7 ability. That's not a question that goes to  
8 fact, that's a question that goes to  
9 conclusions. This witness is not competent  
10 to testify to that.

11 What we have -- and we have Mr. Tony  
12 Bello here. You'll get my mouthful about  
13 that if you let me say about why that's  
14 unfair and unjust to hear him tell what his  
15 definition is, because as far as I  
16 understand, we've had at least three Zoning  
17 Administrators within the course of a three  
18 or four-year period.

19 If you're going to let each Zoning  
20 Administrator tell and hold it into their own  
21 mind and not even have it published and not

1 have notice in common and not have a fair  
2 definition of what this is, it's all a sham.

3 The only reason I bring up this Mr.  
4 Johnson testimony is that at minimum, you  
5 can't now have my opponent say that they can  
6 go anywhere below the standards set by Mr.  
7 Johnson for businesses that existed at the  
8 time that the Gladys Hicks Memo came out.

9 So, the worst (inaudible) my client,  
10 he's protected in the 15 percent safe harbor,  
11 which is what is in the Gladys Hicks Memo.

12 THE COURT: All right.

13 In the final analysis, I will make  
14 that decision, Mr. Katz, but I will allow the  
15 question into the procedure over your  
16 objections. Noted, overruled.

17 Lets go, Mr. Green.

18 BY MR. GREEN:

19 Q Mr. James, after you took your  
20 measurements, what did you do with them? You  
21 said you gave them to Mr. Hooks?

1           A     Yes.

2           Q     To put in his report?

3                     What did you do then, how did you  
4 proceed?

5           A     Well, are we talking the day that we  
6 were in the store?

7           Q     Yes; the day you were in the store?

8           A     Like I said, I did a walk-through  
9 through the premises and I observed the  
10 Certificate of Occupancy as well as the other  
11 paperwork that was behind the counter. My  
12 main concern was the Certificate of  
13 Occupancy.

14          Q     After observing the Certificate of  
15 Occupancy and noticing what it said and so  
16 forth, did you take any action?

17          A     At that -- at that point, no. I just  
18 jogged down what the information was and I  
19 referred it back to my supervisor, back to  
20 the Administrator, which is Mr. Bello, about  
21 the property itself.

1           Q     Do you recall then, how the office  
2     proceeded from that point?

3           A     Well, I told them what I observed and  
4     my main concern was the booths, because on  
5     the Certificate of Occupancy, it doesn't  
6     state anything about video booths.

7                     So, at that point, I spoke with him  
8     about the booths and he said, if there are  
9     booths --

10                  MR. KATZ:  Objection.

11                  THE COURT:  Mr. Katz.

12                  MR. KATZ:  You need at least  
13     fundamental fairness, maybe some hearsay  
14     comes in, but lets not have this hearsay come  
15     in.  We have Mr. Hooks' testimony.  He knew  
16     that there was license for booths, okay?  He  
17     --

18                  THE COURT:  He had what?

19                  MR. KATZ:  We have Mr. Hooks'  
20     testimony on direct evidence this morning,  
21     saying --

1 THE COURT: Saying what?

2 MR. KATZ: My client had the booth  
3 license. Lets not go down that route.

4 THE COURT: I don't think that came  
5 up in the hearing at all, Mr. Katz.

6 MR. KATZ: Of course it did and if I  
7 have to have my client plan his testimony, he  
8 will.

9 But lets not go having this testimony  
10 about what Mr. Bello was saying about this,  
11 where we seem to -- we seem to be getting in  
12 a policy statement being said by the head of  
13 this -- this Zoning Agency.

14 Your Honor, what sex-oriented  
15 business means is what is in the DCMR. This  
16 is totally unfair and unjust to say that each  
17 Zoning Administrator can make their own  
18 definition, especially when they don't have a  
19 Fair Notice and Comment period out in public  
20 about how to define that and when they are  
21 not on all fours with how the Court

1 (inaudible) to define it.

2 Your Honor, lets not weigh against me  
3 in both ways. If you are saying that you are  
4 not going to pay attention to -- to anything  
5 about whether this stuff is constitutional or  
6 not, lets not go the other route and say that  
7 a Zoning Administrator can define sex-  
8 oriented business any way they want to do it.

9 THE COURT: Well, I'm not saying  
10 that. I'm not even suggesting that at all.  
11 Have I suggested that?

12 MR. KATZ: Well, that's the route  
13 we're coming in --

14 THE COURT: No. I don't see it that  
15 way at all, Mr. Katz.

16 MR. KATZ: Because what I was  
17 objecting to was about hearsay testimony  
18 about what Mr. Bello said. Well, Mr. Bello  
19 is going to be testifying if that comes in  
20 over my objection today.

21 We don't need it from this man. Lets

1 hear it from Mr. Bello.

2 THE COURT: Well, again, keeping in  
3 mind this is an Administrative Hearing. The  
4 Rules of Evidence are relaxed.

5 MR. KATZ: It's relaxed. However,  
6 there is still discretion in the rule maker.  
7 Clearly, --

8 THE COURT: I'm exercising that  
9 discretion right now to allow him to continue  
10 his testimony. Your objection is noted.

11 Mr. Green.

12 BY MR. GREEN:

13 Q Yes.

14 When you got that, you indicated that  
15 Mr. Bello and you had a conversation.

16 What did you say to Mr. Bello.

17 MR. KATZ: Please, may I have a  
18 continuing objection?

19 THE COURT: Very well, noted.

20 THE WITNESS: I told Mr. Bello what I  
21 observed while I was at the video place about

1 the booths and I also -- well I missed  
2 something here, if I can revert back to my  
3 inspection of the property -- my walk-through  
4 the property.

5 BY MR. GREEN:

6 Q Please do.

7 A After reviewing the Certificate of  
8 Occupancy, I just continued to walk through  
9 the property. There was other doors, I was  
10 just, you know, I asked a gentleman -- I  
11 don't know if he was an employee there -- I'm  
12 showing he was -- you know, what was behind  
13 this door, what was here -- there was other  
14 doors.

15 Then I got a call from Mr. Hooks.  
16 When I say, "Call," I mean he, you know,  
17 asked me to come up front. So, I came up  
18 front and I observed a gentleman coming out  
19 of one of the booths.

20 Mr. Hooks asked me take a photograph  
21 of the booth which was pretty dark because it



1       -- it seemed to me, when the gentleman was  
2       walking out of the booth and he was adjusting  
3       his pants, belt or what have you -- I seen  
4       him from the rear -- the booth that he left -  
5       - it seems that it was what I would think  
6       would be semen on the floor.

7               MR. KATZ: I want to have a  
8       continuing objection, Your Honor.

9               THE COURT: Very well.

10              BY MR. GREEN:

11              Q     You saw semen on the floor?

12              A     What seemed to be.

13              Q     What appeared to be semen on the  
14       floor?

15              A     Uh-huh; yes.

16              Q     Did anything happen after that?

17              A     One of the employees, the same  
18       gentleman that I was asking what was behind -  
19       - what was in the doors, what did they lead  
20       to, he proceeded to grab a mop and he mopped  
21       the -- what seems to be semen off the floor.

1           Q     And was this in that area that you  
2     had just previously measured?

3           A     Yes; one of the booths there.

4           Q     Was it in the large or small area  
5     that you just previously measured?

6           A     Well, it was in the larger area, but  
7     there were like different booths. There were  
8     like ten booths, so he was -- he was coming  
9     out of the -- I'm not absolutely sure if it  
10    was the first or second booth that was the  
11    one nearest the door that takes you to the  
12    outside.

13          Q     Did you report this to Mr. Bello?

14          A     Yes; I did.

15          Q     Did there come a time, sir, when the  
16    violation notice was issued?

17          A     There was a Notice of Infraction  
18    issued.

19          Q     And when was that sent?

20          A     That was on the 21st -- 21st of  
21    September.

1                   MR. KATZ:  Objection.  Unless it's  
2                   personal knowledge.  I hear past-tense being  
3                   talked about.

4                   MR. GREEN:  Can we have -- this is  
5                   marked as evidence.

6                   BY MR. GREEN:

7                   Q     Sir, I'm going to show you what has  
8                   been marked as Government's Exhibit.

9                   Can you tell me what that is?

10                  A     That's a Notice of Infraction.

11                  Q     And what is it for?

12                  A     That was issued to the -- it's for  
13                  working outside of -- operating outside of  
14                  the scope of the Certificate of Occupancy.

15                  Q     I notice a badge number and a name.  
16                  Can you tell us who is that, please?

17                  A     That name is mine, Alan P. James,  
18                  Badge number 790.

19                  Q     Did you sign that then, sir?

20                  A     Yes; I did.

21                  Q     You did.

1                   Mr. Bello was involved in the  
2 approval of this?

3           A     Yes.

4                   He knows that I was writing it and I  
5 was taking it back down to have it -- to give  
6 it to the owner of the business.

7           Q     What does a Zoning Inspector normally  
8 do? What is your job function?

9           A     Well, we inspect properties, as  
10 needed (inaudible) complaints and we  
11 eventually oversee the Certificate of  
12 Occupancy, make like the final approval of  
13 the business as far as issuing a Certificate  
14 of Occupancy.

15          Q     What if any involvement does your  
16 office have in compliance of Certificates of  
17 Occupancy?

18          A     Well, if a business is operating  
19 outside the scope of the Certificate of  
20 Occupancy, you know, we do an inspection or a  
21 review of the documents and a walk-through of

1 the property to see in fact if it is, you  
2 know, working outside the scope of the  
3 Certificate of Occupancy. If that is the  
4 case, we can write a Notice of Infraction.

5 Q And your determination with respect  
6 to this property was what, sir?

7 A That they were working outside the  
8 scope of the Certificate of Occupancy.

9 Q Did there come a time when --

10 MR. KATZ: My continuing objection on  
11 that.

12 THE COURT: Very well.

13 BY MR. GREEN:

14 Q Did there come a time, sir, when you  
15 went back to this property after the initial  
16 date with Mr. Hooks?

17 A Yes; I went back on the 21st when I  
18 served the Notice of Infraction -- I mean,  
19 yes, Notice of Infraction, 21st of September.

20 Q What if anything did you observe on  
21 that day, sir?

1           A     What I observed that date that they  
2     were --

3           THE COURT:   Hold on, Mr. Katz.

4           MR. KATZ:    The ticket is from  
5     September 10th.

6           What happened on September 21st has  
7     nothing to do with this hearing.

8           MR. GREEN:   Your Honor, if I might be  
9     heard.

10          Counsel has made a comment about how  
11     his client has changed, how there are  
12     mitigating circumstances.   We've heard  
13     discussion all about that.   Now, there is no  
14     prohibition about him talking about how his  
15     client has changed.

16          It would seem to me that since there  
17     is no such prohibition on the table that it  
18     is permissible for this witness to certainly  
19     talk about what it is he has observed.  
20     Counsel can't have it both ways.

21          He objects to what we talk about at

1 one point and yet he says, my man is a good  
2 man and he's done all these wonderful things  
3 after this date.

4 Now, what are we talking about here?  
5 I think it's a perfectly legitimate question  
6 in light of what I just said.

7 THE COURT: Mr. Katz.

8 MR. KATZ: I don't hear my opponent  
9 saying that that is the reason that he is  
10 bringing in this testimony. I don't hear my  
11 opponent saying that he's bringing in this  
12 testimony just for mitigation.

13 I wouldn't have had to go outside  
14 beyond September 13th if it wasn't Your Honor  
15 who said earlier this morning you were going  
16 to let testimony beyond September 13th.

17 Now, I know I'm sounding like a  
18 broken record, but, Your Honor, maybe I'm  
19 just too much of an idealist. I've been in  
20 Administrative Hearings before; I've done it  
21 before.

1           I know the Rules of Evidence are  
2 sometimes relaxed and stuff, but I know there  
3 are fundamental rules of justice and  
4 fundamental ideas of fairness. I'm asking  
5 that as a minimum.

6           I've got my client here, born in  
7 another country, a place that didn't give  
8 them as much justice as they are supposed to  
9 get here. Lets at least show him a fair  
10 trial.

11           THE COURT: Objection noted,  
12 overruled.

13           Proceed, Mr. Green.

14           BY MR. GREEN:

15           Q    Tell us what you saw on that date,  
16 sir.

17           A    The day that I returned to serve the  
18 notice, there were -- I talked with, I  
19 believe Mr. Jose, I believe his name. I'm  
20 not absolutely sure.

21           MR. KATZ: An objection. He doesn't



1 know who he spoke to. How much guess work  
2 are we going to be doing today, Your Honor?

3 THE COURT: Objection noted,  
4 overruled. This is a witness who was present  
5 at the place of business.

6 Mr. Green, you want to rephrase that  
7 question?

8 MR. GREEN: Sure.

9 BY MR. GREEN:

10 Q I've forgotten what the question was  
11 now, after all this.

12 On the 21st, you indicated that you  
13 went back to the premises; is that right?

14 A Yes.

15 Q And during the course of serving this  
16 Notice of Infraction, did you make further  
17 observations?

18 MR. KATZ: May I please have a  
19 continuing objection, Your Honor?

20 THE COURT: Very well.

21 THE WITNESS: Yes.

1 BY MR. GREEN:

2 Q When you made these further  
3 observations, did you notice anything  
4 relative to the condition of the premises?

5 A Yes.

6 Q What did you notice?

7 A When the gentlemen here, that I  
8 forgot his name, was --

9 Q You said, "The gentleman here."  
10 Point to him.

11 A The gentleman here.

12 MR. GREEN: Let the record reflect  
13 that the witness is pointing to the  
14 respondent. I believe he is the respondent,  
15 Your Honor. He was so identified by the  
16 opposing Counsel.

17 BY MR. GREEN:

18 Q Continue, please.

19 A When I was explaining to him what the  
20 infraction was for, there were two gentlemen  
21 there who came into the video store. They

1       were speaking with one of the employees at  
2       the counter, saying that they wanted to go to  
3       one of the viewing booths. There were two  
4       gentlemen.

5               He, in fact told him -- you know --

6               MR. KATZ: Objection. Your Honor,  
7       hearsay by someone --

8               THE COURT: Mr. Katz, Mr. Katz, this  
9       is a witness who heard -- he was present, so,  
10      he's not justifying what someone else told  
11      him.

12              MR. KATZ: He's talking about --

13              THE COURT: It is proper. He was  
14      present.

15              MR. KATZ: So, you're letting in  
16      hearsay from any witnesses today --

17              THE COURT: He is saying it.

18              MR. KATZ: He is about to say that  
19      there were two gentlemen talking. He was  
20      about to start talking about what these two  
21      gentlemen said.

1 THE COURT: Mr. Katz, Mr. Katz, Mr.  
2 Katz, Mr. Katz, again, this is an  
3 Administrative Hearing. The Rules of  
4 Evidence are relaxed.

5 Please have a seat, Mr. Katz.

6 MR. KATZ: I hope you're not telling  
7 me, don't make objections to any hearsay --

8 THE COURT: No. I'm not, I'm not  
9 saying that at all.

10 MR. KATZ: -- if Your Honor doesn't  
11 let in simply any piece of hearsay.

12 THE COURT: Mr. Green.

13 BY MR. GREEN:

14 Q Continue, please, sir.

15 THE COURT: I note your continued  
16 objection, Mr. Katz.

17 THE WITNESS: There were two  
18 gentlemen that entered the establishment that  
19 was talking with one of the employees that  
20 was behind the booth -- behind the counter;  
21 I'm sorry.

1           They proceeded to ask him, you know,  
2   can they go to the -- to one of the booths to  
3   review, I believe, the movies. He was  
4   telling them what they would need as far as  
5   change and he proceeded to give them change.  
6   I don't know how much it was or how much  
7   change he was giving them.

8           Then one of -- one of the gentlemen  
9   gave him the money and then he gave them  
10   change. They was -- both was heading towards  
11   the back of the room and he asked -- the  
12   employee asked the other gentleman where was  
13   he going. He said he was going -- that he  
14   wanted to review the movies in the booth and  
15   they said, yes, they were going in the same  
16   booth.

17           Then the employee said, No, you all  
18   can't do that." So, they in turn got their  
19   money back. He gave them change back and  
20   they left.

21           At that time, the gentleman here had

1 the citation in his hand and he was  
 2 proceeding to sign that citation after I  
 3 explained to him what it was for. He signed  
 4 it. I took my copy and I gave him a copy of  
 5 the citation and I left.

6 Q All right.

7 MR. GREEN: I don't have any other  
 8 questions, Your Honor.

9 THE COURT: Mr. Katz.

10 MR. KATZ: I don't have any  
 11 questions.

12 THE COURT: I just have one, Mr.  
 13 James.

14 Upon whom did you serve the Notice of  
 15 Infraction?

16 THE WITNESS: The gentleman seated  
 17 here at this table.

18 THE COURT: By that you mean, the  
 19 respondent?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

1 I have no other questions.

2 Who is your next witness, Mr. Green?

3 MR. GREEN: One moment, Your Honor.

4 THE COURT: Who will be the next

5 witness, Mr. Green?

6 MR. GREEN: Sergeant Gilkey.

7 THE COURT: Somebody went to get him?

8 MR. GREEN: Yes; they went to get

9 him.

10 THE COURT: I'm going to suggest

11 something. Mr. Hooks, if you could sit

12 behind.

13 When the other person comes, let me  
14 see what his voice is like and maybe at least  
15 I can see -- see him when he testifies. So,  
16 get in the back.

17 If I can get you to sit right here  
18 next to Mr. Green.

19 SERGEANT GILKEY: Right here, sir?

20 THE COURT: Yes.

21 Just to remind you, sir, you have

1 already been sworn in and you are under oath.

2 You can proceed, Mr. Green.

3 MR. GREEN: Yes, sir.

4 THE COURT: If I can ask you to speak  
5 as loudly as possible, so that your voice can  
6 be picked up.

7 MR. GREEN: Are you having a problem  
8 with this mike?

9 THE COURT: No, but everybody's back  
10 is towards me. I can't --

11 MR. GREEN: Oh, I understand. Yes,  
12 Your Honor.

13 TESTIMONY OF SERGEANT MARK GILKEY

14 DIRECT EXAMINATION BY COUNSEL

15 FOR THE GOVERNMENT

16 BY MR. GREEN:

17 Q For the record, sir, can you state  
18 your name, please?

19 A Yes. My name is Mark Gilkey, G-i-l-  
20 k-e-y.

21 Q By whom are you employed?



1           A     I've been employed with the  
2     Metropolitan Police Department for 19 and a  
3     half years. I'm Detective on the Department  
4     and I'm currently the Supervisor of the  
5     Prostitution Enforcement Unit.

6           Q     Directing your attention to the  
7     premises known as, "Fun Fair Video," are you  
8     familiar with it?

9           A     Yes, sir; I am.

10          Q     Can you tell us how you are familiar  
11     with it?

12          A     During my tenure at the Police  
13     Department, I received several complaints  
14     about the Fun Fair Video.

15                 MR. KATZ: Objection.

16                 THE COURT: Mr. Katz.

17                 MR. KATZ: You said, "The  
18     Prostitution Unit." I thought this was a  
19     trial about whether he is in violation of  
20     non-sexual-oriented business conduct.

21                 If we are going to let hearsay in,

1       lets at least make sure there is some  
2       (inaudible) for liability.

3               Testimony about a complaint about the  
4       store without any identification of who it  
5       is, without an introduction of what he's  
6       going to say or what the complaint was, that  
7       really -- that doesn't put much limits on the  
8       fairness of what hearsay is let in and what  
9       is not let in.

10              THE COURT: I mean, I don't know what  
11       the Officer is going to testify about, but  
12       any -- I would suspect it's about  
13       investigations that he has conducted himself.

14              MR. KATZ: If he's conducted  
15       investigations, we don't need to know about  
16       the complaints about that.

17              Just like when I do a criminal trial,  
18       all the --

19              THE COURT: This is not the same as a  
20       criminal trial.

21              MR. KATZ: I know. This underlines

1 the point which is that just like in a  
 2 criminal trial, the police officers were able  
 3 to get in their information about -- they  
 4 went in to investigate without having to say  
 5 what the complaints were. Same thing here.

6 He is a police officer. He does know  
 7 how to testify I have to imagine having over  
 8 19 years of experience about the things he  
 9 did in investigative without having to give a  
 10 predicate of complaint by unknown people.

11 THE COURT: Rephrase the question,  
 12 Mr. Green.

13 BY MR. GREEN:

14 Q Again, directing your attention to  
 15 Fun Fair Video.

16 Did you have occasion to go there,  
 17 sir?

18 A Yes; I did.

19 Q During the course of going there,  
 20 what if anything, did you observe?

21 MR. KATZ: Objection without his

1 having a time frame.

2 BY MR. GREEN:

3 Q All right.

4 When did you go there?

5 MR. GREEN: He doesn't have any  
6 notes. This is a blank yellow piece of  
7 paper, let the record so reflect.

8 THE COURT: Go ahead.

9 THE WITNESS: Sir, I've been in that  
10 area several times. I've been inside the  
11 premises a few times during the week of  
12 December the 9th, during that week.

13 MR. KATZ: You've got my objection,  
14 Your Honor.

15 THE COURT: Of what year? December  
16 9th of what year?

17 BY MR. GREEN:

18 Q What year?

19 A This past year, sir, 2001.

20 THE COURT: 2001.

21 MR. KATZ: You have my objection.

1           They can put that into their hearing  
2   that we got -- for the new notice I got on  
3   Friday. This goes way beyond the pale of  
4   September Notices of Infraction. We've got  
5   accumulative issues as well.

6           THE COURT: All right, sir.

7           Mr. Green.

8           MR. GREEN: May I continue, Your  
9   Honor?

10          THE COURT: Well, in response to --

11          MR. GREEN: Oh, in response.

12          Well, I make my same point, Your  
13   Honor. Counsel has talked about the  
14   mitigation. Counsel has talked about how his  
15   client has now become a "Block Buster," I  
16   guess.

17          His client has -- he's trying to talk  
18   about how this man has -- has made some  
19   fundamental changes and he talked about it  
20   after the initial Notice of Infraction was  
21   served.

1           Now, we've had a lot of discussion  
2     after the initial Notice of Infraction was  
3     served. There is nothing wrong with having  
4     our discussion about what has taken place  
5     after the initial Notice of Infraction has  
6     been served.

7           If he doesn't want me to put this  
8     policeman on now, I'm still going to put him  
9     on. I'll call him as a rebuttal witness, but  
10    I'm going to put him on. It's still going to  
11    go to the fact that his client has not  
12    cleaned up his act.

13           The fact that his client is still a  
14    nuisance, the fact that his client is still a  
15    disturbance, the fact that his client does  
16    what -- he continues to market and trade in  
17    sexually oriented -- in degradation to the  
18    Certificate of Occupancy that was given to  
19    him which said, non-sexually oriented.  
20    That's what this case is all about.

21           Your Honor, you have to look at the

1 aggregate. The aggregate is sex, sex, sex,  
2 sex.

3 THE COURT: Keep your voice down, Mr.  
4 Green.

5 MR. KATZ: This would be a good time  
6 for us to visit two things.

7 Aside from what would have happened  
8 to me if I ever continually raised my voice  
9 as much as that in the courtroom, but I'll  
10 move beyond that.

11 I hear this continuously from Mr.  
12 Green. Mr. Green also gave a whole speel  
13 when I objected to getting testimony from the  
14 previous witness about what happened when  
15 there was some discussion going on.

16 As it turned out, it was testimony  
17 favorable to us. Mr. Green is trying to have  
18 you -- have --

19 THE COURT: But I did allow it in,  
20 Mr. Katz.

21 MR. KATZ: Yes. It came into our

1 benefit in the hind sight.

2 So, I don't throw a lot of credence  
3 to what Mr. Green tells you about what is  
4 going to come out from his witness. He  
5 apparently doesn't know or else he's just  
6 trying to get out -- the whole -- just see  
7 what comes out. That's number one.

8 Number two, this might be a good time  
9 perhaps for us to -- for us to talk about  
10 what the legal requirements really are  
11 because, you know, I give a -- when I give a  
12 straight forward response to what my  
13 objection is, Mr. Green keeps trying to slip  
14 in sex, sex, sex.

15 What this is about, Your Honor is how  
16 is a lay person supposed to know what a non-  
17 sexually-oriented business license is,  
18 especially when you have to go through  
19 mountains, valleys, fires, forest fires,  
20 planets, other planetary systems to get to  
21 have a sex-oriented-business license.



1           Your Honor knows what it says. It's  
2 right here in the DCMR. These are groups  
3 after groups -- it's totally within the  
4 discretion of the rule makers and then we  
5 have Gladys Hicks at least keeping some --  
6 some safe harbor.

7           I don't like what the safe harbor is,  
8 but she put in a safe harbor in 1998. If  
9 it's 15 percent, no more than 15 percent  
10 adult and Mr. Johnson agreed with that, too,  
11 then that's what is so.

12           This case is not about whether he's  
13 got any -- whether he's got any sex-oriented  
14 materials or there is semen on the ground. I  
15 mean, what are people going into a video  
16 booth for when they are watching an adult  
17 piece of material. Are they going in to be  
18 aroused or not?

19           I mean, I don't know of many people  
20 who specifically are going to go into a video  
21 booth and watch an adult oriented movie and

1 not expect to be aroused.

2 I mean, you know, so we're having all  
3 this smoke in the air issue. Whether there  
4 is semen on the ground, whether there is  
5 people calling about complaints, whether  
6 there claims about nuisances, that is for  
7 another day.

8 We are here for two Notices of  
9 Infraction, period and we have this  
10 fundamental question on what the heck is a  
11 sexually-oriented-business in D.C., because  
12 no one has bothered to give us a D.C.  
13 definition about it yet.

14 They've had all the opportunity in  
15 the world to do so, they haven't done it. We  
16 have just this vague definition -- describes  
17 -- relates to all that. There are many ways  
18 to define it much better. It hasn't been  
19 done yet.

20 It's been defined as well as two  
21 people having sexual intercourse, two people

1     having oral intercourse. No one wants to  
2     touch that. Everyone dances around the issue  
3     who makes these rules and makes the  
4     interpretations.

5             So, lets not be doing that smoke and  
6     mirrors. If Mr. Green is intending on just  
7     having this witness talk about sex, sex, sex,  
8     that goes beyond what we are beyond what we  
9     are here about today. We are here about were  
10    the Notices of Infraction correctly issued.  
11    Do they show there was a violation on those  
12    days of what's in the DCMR?

13            THE COURT: Keep one thing in mind,  
14    Mr. Katz. I can allow in any testimony and  
15    give it the appropriate weight. I could  
16    choose not to give someone's testimony any  
17    weight at all. Again, this is an  
18    Administrative Hearing.

19            MR. KATZ: And you want me to --

20            THE COURT: I have that discretion.

21            MR. KATZ: And that brings in a very

1     important point, which is even if that is so,  
2     I just ask myself, what am I going to do to  
3     properly argue my client's case?

4             THE COURT:   Well, you will have an  
5     opportunity to do that.

6             MR. KATZ:    This is not -- it's just  
7     not enough.   We're getting all this  
8     prejudicial stuff in here, we know nothing  
9     about what the Constitutional Law says is  
10    being brought in.

11            I'm really -- it's like my hand are  
12    tied behind my back and we're all humans.  
13    Once the cat is out of the bag, the cat is  
14    out of the bag.   No matter how good we are.

15            Maybe we're a little more inoculated  
16    by being lawyers and the judge having taken  
17    note, but we're still all humans and that's  
18    why -- that's why we have mistrials with  
19    juries, because juries can't just  
20    automatically eliminate it from their mind.  
21    We are human.

1 I'm just trying to -- I'm trying to  
2 have a clean record of sorts at least.

3 THE COURT: What I will do here, Mr.  
4 Katz, I would allow the testimony in. I will  
5 give it the appropriate weight. Your  
6 standing objection is noted.

7 MR. KATZ: Thank you.

8 THE COURT: Lets go, Mr. Green.

9 MR. GREEN: All right, Your Honor,  
10 thank you.

11 BY MR. GREEN:

12 Q Mr. -- Sergeant Gilkey, when you  
13 conducted your investigation, you indicated  
14 it was several days in which you went there?

15 A Yes, sir.

16 Q Was that right?

17 Can you tell us what specifically  
18 what happened in December, the 6th, I  
19 believe?

20 A During that week, December 9th, I  
21 believe started on a Sunday, my unit was to

1 give special attention in that immediate area  
2 due to the nature of the high volume of  
3 prostitution complaints --

4 MR. KATZ: Objection, Your Honor.

5 THE COURT: Mr. Katz.

6 MR. KATZ: One way to make this case  
7 move along is, you know, lets stick to the  
8 point. This case is not about prostitution,  
9 etcetera.

10 I know what some of the accusations  
11 are about prostitution, because they are in  
12 that latest filing by the government that my  
13 client received on March 1st, where they are  
14 talking about that.

15 THE COURT: Mr. Katz, I will give the  
16 testimony the appropriate weight. I will --  
17 your continuing objection is noted. I will  
18 allow the witness to testify. I will  
19 determine what is relevant and what is not.

20 Mr. Green.

21 MR. GREEN: Yes.

1 BY MR. GREEN:

2 Q Sergeant Gilkey, when you walked  
3 there on that day, what if anything did you  
4 observe, sir?

5 A Myself and another member of my unit  
6 went into the video store in an undercover  
7 capacity and causal clothes and I observed  
8 back in the booth area, a gentleman back  
9 there watching a pornographic movie with the  
10 door partially cracked -- cracked open,  
11 masturbating.

12 I observed the majority of the  
13 booths, (inaudible) with a couple of the  
14 booths had two individuals in them and, you  
15 know, noted the shuffling of the feet and --  
16 you know, I couldn't tell what was going on  
17 in the booth.

18 I could only, you know assume what  
19 was taking place, but I did not observe  
20 anything. Upon -- the individual -- once,  
21 you know, he observed somebody watching him,

1 he shut the door. During that course of  
2 time, he exited after he was done.

3 I observed a cleaning personnel going  
4 in, cleaning the booth. A lot of traffic in-  
5 and-out -- that's basically what I observed  
6 on that occasion.

7 Q Can you tell us, if you know, how the  
8 cleaning people were attired -- how were they  
9 dressed?

10 A Oh, I mean -- I mean, normal dress.  
11 I mean, they were very -- protection -- I  
12 mean, the gentleman had rubber gloves, he had  
13 goggles on, he had three or four different  
14 kinds of disinfectants, a mop on a portable  
15 mop bucket with a squeegee-type -- the -- his  
16 -- I was there probably about, I don't know,  
17 maybe two minutes watching him clean a booth.

18 He seemed, you know, very detailed,  
19 cleaning, spraying everything down, cleaning  
20 the area.

21 Q Did you make any other observations?



1           A     Just that one incident. I noticed,  
2     like I mentioned, several of the -- a few of  
3     booths was with two people in it, shuffling  
4     of feet, the heavy traffic -- that was the  
5     only -- really, I believe, the only thing I  
6     noted inside.

7                 Outside, immediately in front of the  
8     location, we made several -- over that period  
9     of time we made several arrests for  
10    solicitation of the impersonators engaging in  
11    that area.

12                MR. KATZ: I'm sorry, Your Honor.  
13    Not relevant. It's outside his store.

14                BY MR. GREEN:

15                Q     How close?

16                THE COURT: Objection noted, Mr.  
17    Katz.

18                BY MR. GREEN:

19                Q     How close were they to the store,  
20    sir?

21                MR. KATZ: Please, may I have a

1 continuing objection?

2 THE COURT: Okay.

3 THE WITNESS: In some instances, sir,  
4 they were within five feet of the door.

5 BY MR. GREEN:

6 Q Did you make any arrests on that day?

7 A Not inside the premises, no.

8 Q How about outside?

9 A We were in there -- I was in there  
10 two times during that week and the one day I  
11 was in there, yes, I did make an arrest. I -  
12 - I did not make an arrest. Members of my  
13 unit made the arrest.

14 Q I see.

15 MR. KATZ: Objection. Not responsive  
16 -- not the properly (inaudible) testimony.

17 THE COURT: Continue, Mr. Green.

18 BY MR. GREEN:

19 Q As a result of these arrests, did you  
20 have occasion to make any kind of a written  
21 report to anyone?

1           A     I made a -- two written reports and  
2     Faxed them both to Investigator Carter,  
3     (inaudible).

4           Q     I see.

5           MR. GREEN:   Your Honor, I wish to  
6     have these documents marked as Government's  
7     Exhibits.

8           THE COURT:   Very well.   5 and --

9           MR. GREEN:   5 and 6.

10          MR. KATZ:    I'm sorry.

11                 I mean, there is a certain unfairness  
12     about not letting me have discovery.   I asked  
13     for discovery, made a motion for discovery  
14     and then have me be involved in having to  
15     take quick looks at these reports.

16                 You know, when an opposing counsel  
17     asks me, even if there are no rules, can I  
18     see the exhibits you're going to show, I show  
19     them to the typically.

20                 I asked Mr. Green before we started  
21     today, would you show me -- would you let me

1 see the exhibits you are planning on showing?  
 2 No, I won't even do that. Can I have a new  
 3 ruling on this? I mean, that's not fair,  
 4 Your Honor.

5 THE COURT: Mr. Katz, under the Civil  
 6 Infractions Acts, it does not provide for  
 7 Interrogatories or any form of discovery.

8 MR. KATZ: I can hardly imagine the  
 9 Civil Infractions Act says that we can  
 10 suspend fairness and suspend the  
 11 Administrative Law Judge from imposing  
 12 fairness.

13 THE COURT: Those arguments, you need  
 14 to make them at the City Council level. I --  
 15 I mean, my hands are tied behind my back as  
 16 well. They are the ones that propagate laws,  
 17 regulations -- I mean, that's the way it is  
 18 done, not here.

19 MR. KATZ: If every judge refused to  
 20 review the legality for fairness of propriety  
 21 of legislation, we'd never have -- we'd never

1 have court decisions that overturn unfair,  
2 improper and unlawful laws.

3 THE COURT: Well, again, I cannot  
4 speak for the other judges. All I can tell  
5 you is that at this level, I have no  
6 authority to rule a statute. I need law on  
7 constitutional.

8 MR. KATZ: Well, I'll try with this  
9 as quick as I can, Your Honor. It's the very  
10 reason why I asked my opponents to show me  
11 their exhibits in advance and why I tried to  
12 give them (inaudible).

13 I object. We've got one item here --  
14 it's a January 16, 2000 memo, talking about  
15 events going as far back as even 2002. How  
16 far are we going to beyond the four corners  
17 of the date of the Notice of Infraction?

18 We have another document here which  
19 is a February, 2002 memo, talking about an  
20 unspecified arrest is seems, with a charge --  
21 that is charge -- a category, I don't know

1     what they mean -- with dates of arrests  
2     running from September 5th, 2001, but also on  
3     December 15 and February 5th, 2002.

4             I mean, if you want grounds to  
5     overturn a decision of an Administrative  
6     Court sometimes is when an Administrative  
7     Court is not going to enforce fairness.

8             THE COURT:   Well, again, Mr. Katz,  
9     you have that right to appeal any decision  
10    that comes out of this office.

11            THE KATZ:    I know.

12            THE COURT:   All right.

13            Mr. Green.

14            BY MR. GREEN:

15            Q     Sergeant Gilkey, I'm going to show  
16    you what has been marked as Government's  
17    Exhibit 5.   Can you tell me what that is,  
18    please?

19            A     It's a -- it's a memo I prepared  
20    through my Lieutenant for Mr. -- for  
21    Investigator Carter.   This memo was --

1           MR. KATZ: May I please have a  
2 continuing objection, Your Honor?

3           THE COURT: Noted.

4           THE WITNESS: It's basically of the  
5 arrest status, notice when the complaints  
6 started coming back to my office, which was  
7 late August to the present -- the memo, which  
8 was February 5th.

9           You know, I had additional 50 arrests  
10 in that immediate corridor, Your Honor, and  
11 due to conversation with Kevin -- I mean,  
12 Investigator Carter, he wanted me to  
13 breakdown things described like, a half a  
14 block away or in the immediate or in front of  
15 the premises and basically, there was six  
16 arrests -- 2, 4, 6 arrests in the immediate  
17 premises.

18           It gives a location, the charge --  
19 the charge is either soliciting for elude and  
20 immoral purposes. FTO is failure to obey a  
21 statute. Since Counsel brought it up, I was

201

1 just -- do you want me to describe the  
2 charges, sir?

3 BY MR. GREEN:

4 Q Yes. Why don't you tell us?

5 A It's failure to obey statute.

6 Basically, it's individuals engaging in the  
7 acts of prostitution activity or  
8 solicitation. They are asked to move on.

9 It's documented that they do not move  
10 on in a reasonable amount of time, which is  
11 probably -- we give them a good 15, 20  
12 minutes to move on. We come back, they are  
13 still engaged in the same activity, they are  
14 locked up for failure to obey a police  
15 officer.

16 The only other charges here is in  
17 Section B, it's a misdemeanor bench warrant.  
18 Basically, that's an individual that was  
19 engaged in prostitution activity and had been  
20 arrested for a sexual solicitation crime and  
21 who did not (inaudible) back up the courts.



1 It gives the time of the offense, the time of  
2 the arrest and the date of the -- the date of  
3 the arrest, sir. That's the memo on February  
4 the 5th.

5 Q I'll show you what has been marked at  
6 Exhibit 6. What is that?

7 A That's a memo that I prepared for the  
8 Chief of Police. This comes as a response of  
9 Council Member Evan's meeting.

10 It's basically -- is a detailed  
11 outline of what the police involvement has  
12 been with Fun Fair Video from the first time  
13 that we were down there in April of 2000 and  
14 the place was -- more materials was  
15 confiscated where a 61-B was issued and then  
16 it talks about the Administrative Hearing in  
17 front of yourself, Honorably, in May of 20 --  
18 May the 23rd and then it talks about what was  
19 the decision in June.

20 It talks about the summer months of  
21 the Police Department's involvement in that

1 immediate area that had been the best it had  
2 been during that period of closure of the Fun  
3 Fair and that area for the community in quite  
4 some time.

5 Then it talks about my observations  
6 on the week of December the 9th, what I  
7 testified to earlier and then it says that,  
8 you know, the Metropolitan Police Department  
9 and the Prostitution Enforcement Unit that  
10 we'd continue to work with DCRA in any  
11 matters that possibly they needed any  
12 assistance in.

13 Q Sergeant, how long have you been  
14 involved with Fun Fair Video in terms of  
15 investigation? How many months or how many  
16 years?

17 A It's -- it's been -- it's been at  
18 least over two years now.

19 Q And during that time frame, was there  
20 a time frame or a period, I should say when  
21 there was no problem as you saw it -- no

1 police problem?

2 MR. KATZ: I just want to make sure  
3 my continuing objection is still applying to  
4 this line here?

5 THE COURT: It is.

6 THE WITNESS: Absolutely and that is  
7 one of part of the memo I talked about during  
8 the closure of Fun Fair Video.

9 I mean, I've been the Supervisor of  
10 the Prostitution Unit or working in the  
11 Prostitution Unit over the past 15 years, and  
12 that area is notorious for this activity and  
13 that period they were closed was the best for  
14 the District and the quality of life in that  
15 immediate area that I've ever seen it, sir.

16 MR. GREEN: All right. I don't have  
17 any other questions, Your Honor.

18 I move admission of 5 and 6.

19 MR. KATZ: You have my objection.

20 THE COURT: Mr. Katz, objection will  
21 be admitted and given the appropriate weight.

1 MR. KATZ: My interpreter is here.

2 MR. GREEN: You marked 6 and that was  
3 Mr. Katz's counsel.

4 THE COURT: Cross examination.

5 CROSS-EXAMINATION BY COUNSEL

6 FOR THE RESPONDENT

7 BY MR. KATZ:

8 Q Officer, you're from --

9 MR. GREEN: I believe he is a  
10 Sergeant, Your Honor.

11 THE COURT: Sergeant.

12 MR. GREEN: You know, we ought to at  
13 least give him his proper title.

14 BY MR. KATZ:

15 Q Sergeant, whatever name you prefer.

16 MR. GREEN: No. No. No. No. No.  
17 No. We -- no --

18 THE COURT: Sergeant Gilkey. Please  
19 address him as Sergeant Gilkey.

20 THE WITNESS: Actually, I'm a  
21 Supervisor, I'm a Detective, I'm the acting

1 Sergeant of the unit.

2 MR. KATZ: I thought I was being  
3 nice. I was ready to call this witness what  
4 he wanted me to call him.

5 MR. GREEN: Yes, but Counsel did it  
6 in a way in which we consider it  
7 disrespectful. We would never do that to  
8 Counsel. We would refer to him as an  
9 Esquire, which is what he is and he worked  
10 hard to get it. Didn't you, Counsel, I know  
11 you did.

12 MR. KATZ: Actually, (inaudible) I  
13 wouldn't be using it (inaudible) that's for  
14 another day. If you prefer I call him --  
15 we're going to be -- well, let's research.

16 BY MR. KATZ:

17 Q Do you prefer that I call you  
18 Sergeant?

19 A That's fine, sir.

20 Q Sergeant, you are familiar with the  
21 business named Lewis Road (ph)?

1           A     Yes, I am.

2           THE COURT:   I didn't get that.

3           MR. KATZ:   Lewis Road.

4           THE COURT:   Okay.

5           BY MR. KATZ:

6           Q     Lewis Road is on K Street, right?

7           A     Yes, sir.

8           Q     Northwest, between 5th and 4th,

9     Northwest?

10          A     Absolutely.

11          Q     On this road there is a strip club?

12          A     Absolutely.

13          Q     And it is a strip club where some or

14     all the dancers eventually go to a full-state

15     of nudity, correct?

16          A     That's correct.

17          Q     Lewis Road has been in it's current

18     location on K Street --

19                 MR. GREEN:   Your Honor, I've got to -

20     - I've got to object.   I mean, who is testify

21     up in here, the lawyer or the witness?

1           THE COURT: Mr. Katz, try to keep  
2           your cross examination based on what he has  
3           testified to. This is the first time I'm  
4           hearing -- that's why I had to ask again,  
5           what was Lewis Road.

6           MR. KATZ: That's just fine.

7           THE COURT: Just stay with the --

8           BY MR. KATZ:

9           Q    Is Lewis Road within one block from  
10          Fun Fair Video?

11          A    Yes, sir.

12          Q    Okay. And has Lewis Road been in a  
13          crime location that it's in for at least five  
14          years?

15          A    I would say that's probably correct,  
16          but I --

17          MR. GREEN: Your Honor, I'm going to  
18          object. First of all, Counsel is going after  
19          proffer. Where is he going with this?

20                It appears to me that it's not  
21          relevant or material or related to what we

1 have here unless he can show that there is a  
2 tie-in between Lewis Road and this Fun Fair  
3 Video. I mean, maybe the two guys own the  
4 same club, I don't, but maybe we need -- we  
5 need to get some kind of a --

6 THE COURT: Keep your voice down, Mr.  
7 Green.

8 Mr. Katz, please stay with the direct  
9 testimony. That did not come up on direct.

10 MR. KATZ: It goes to -- it goes --

11 THE COURT: It's beyond the scope of  
12 direct.

13 MR. KATZ: Because this witness is  
14 alleging, oh, everything is honky-dory when  
15 Fun Fair Video closes. It ain't honky-dory,  
16 Your Honor, this is a full-nudity night club  
17 --

18 THE COURT: You can bring that in  
19 through your witness or someone else, but I  
20 mean --

21 MR. KATZ: It goes to his credibility



1 and that's exactly what cross examination --

2 THE COURT: This is cross examination  
3 on direct. That did not come up on direct.

4 MR. KATZ: You admitted into evidence  
5 these memos talking about oh, how everything  
6 is improving with Fun Fair isn't there.

7 This is a totally unclaimed part of  
8 direct. He's trying to say that Fun Fair  
9 closes and everything is fine. I'm showing  
10 you it ain't fine, Your Honor. You've got  
11 people going around --

12 THE COURT: Yes. But you can bring  
13 that up through one of your witnesses.

14 MR. KATZ: I don't need to, Your  
15 Honor, this is a proper subject of cross  
16 exam.

17 THE COURT: Wait a minute, now.

18 MR. GREEN: He's going far afield,  
19 Your Honor. He's going beyond the scope of  
20 direct.

21 THE COURT: I would ask him to --

1 MR. GREEN: We don't even know who --

2 THE COURT: -- stay within the scope  
3 of direct. That's why I had to ask, "What  
4 did you say," because I never heard about it.  
5 Please stay with the direct, within the scope  
6 of direct, Mr. Katz.

7 THE KATZ: Well, you and I have a  
8 good agreement, Your Honor, but you are the  
9 one who calls direct free points. I'll make  
10 the point with my client.

11 No further questions.

12 THE COURT: No questions.

13 MR. GREEN: I have no other  
14 questions, either.

15 THE COURT: Let me just ask you this.  
16 Sergeant --

17 MR. GREEN: Gilkey.

18 THE COURT: Gilkey. How many times  
19 have you been into Fun Fair Video?

20 THE WITNESS: Two times, sir.

21 THE COURT: And that was in December?

1           THE WITNESS: That was during the  
2 course of the week of December the 9th --  
3 starting December the 9th, that week.

4           THE COURT: Prior to that, you have  
5 never been in the establishment?

6           THE WITNESS: No, I haven't, sir.  
7 Well -- okay. I was at the doorway on arrest  
8 where a subject that I arrested was trying to  
9 get away from us and I locked him up in the  
10 doorway. So, if that is considered --

11          THE COURT: But you had never been in  
12 --

13          THE WITNESS: I was never in the back  
14 of there, I was probably no more than two  
15 feet in the doorway and that was probably --  
16 actually, that was when the first incident  
17 took place -- that was back in March of 2000,  
18 sir.

19          THE COURT: Uh-huh. All right.  
20 Anything on redirect?

21          MR. GREEN: Yes.

1 REDIRECT EXAMINATION BY COUNSEL

2 FOR THE GOVERNMENT

3 BY MR. GREEN:

4 Q Isn't it a fact, sir, that some of  
5 your people have been inside there?

6 A Yes, sir.

7 Q All right. On numerous occasions; is  
8 that right?

9 A Yes, sir.

10 Q All right. Thank you.

11 MR. GREEN: No further questions.

12 THE COURT: Your next witness, Mr.  
13 Green.

14 MR. GREEN: Thank you.

15 THE WITNESS: Your Honor, I have  
16 another commitment. May I be excused for the  
17 day, sir?

18 THE COURT: Yes.

19 MR. GREEN: Your Honor, I have to  
20 check on my other witness.

21 THE COURT: Wait. Wait. Wait. Who

1 is the next witness, Mr. Green?

2 MR. GREEN: Mr. Tory Bello, Zoning  
3 Administrator.

4 THE COURT: Have you put a call in?

5 MR. GREEN: I put a call in and --

6 THE COURT: If you can get Mr. Carter  
7 to just go and check it out, please.

8 MR. GREEN: Please.

9 I have another witness I can  
10 substitute if we can't get Mr. Bello in right  
11 away and that would be Mr. Detrieck, Mr.  
12 Cliff Detrieck.

13 THE COURT: Why don't we go with Mr.  
14 Detrieck, while Mr. Carter is trying to get  
15 Mr. Bello?

16 MR. GREEN: Yes. Your Honor, can I -  
17 - I mean --

18 THE COURT: I would say, no. Get one  
19 of the witnesses to get Mr. -- what's his  
20 name -- Detrieck?

21 MR. GREEN: Detrieck.

1           THE COURT: He should be in the  
2 waiting room -- seated. In the meantime, we  
3 can get Mr. Bello seated outside, so we can  
4 proceed.

5           If you can just sit at the table  
6 there, sir.

7           All right, let the record reflect we  
8 are now joined by another witness. I don't  
9 know -- was Mr. Detriek in this morning?

10          Did I swear you in?

11          MR. DETRIECK: Yes, you did.

12          THE COURT: Okay. You've been sworn  
13 in. You are under oath. You may proceed.

14          MR. GREEN: (inaudible) Exhibits 7, 8  
15 and --

16          THE COURT: Could you give that to  
17 me? Just on the top -- the Government's --

18          MR. GREEN: 7, 8 through whatever.

19          THE COURT: Yes. A, B, C, I think  
20 would be better.

21          MR. GREEN: (inaudible) the alphabets

1 and then we get into double A, B and on.

2 THE COURT: Mr. Carter, do we have  
3 Mr. Bello?

4 MR. CARTER: Mr. Bello is (inaudible)  
5 and should be coming back soon.

6 THE COURT: Okay.

7 So, where would he call if he calls  
8 back?

9 MR. CARTER: Oh, he's got the -- he's  
10 got the message and where he should call.

11 THE COURT: Okay. All right. Lets  
12 proceed with Mr. Detrieck.

13 TESTIMONY OF CLIFF DETRIECK

14 DIRECT EXAMINATION BY COUNSEL

15 FOR THE GOVERNMENT

16 BY MR. GREEN:

17 Q Sir, for the record, state your name.

18 A My name is Cliff Detrieck.

19 Q By whom are you employed?

20 A By Consumer and Regulatory Affairs.

21 Q In what capacity?

1           A     I'm an Investigator.

2           Q     All right.  Sir, are you familiar  
3 with Fun Fair Videos?

4           A     Yes, sir.

5           Q     Did there come a time that you  
6 conducted an inspection of Fun Fair Videos?

7           A     Yes, sir.

8           Q     During the course of that inspection,  
9 did you take pictures?

10          A     Yes, sir.

11          Q     Did you -- did you process the  
12 pictures?

13          A     Yes; I did.

14          Q     I'm going to show you something.  
15 This is Government's Exhibit 7-A through --  
16 as a group what does it represent, what is  
17 this?

18               MR. KATZ:  Objection.  Unless we have  
19 a time frame, Your Honor.

20               BY MR. GREEN:

21          Q     All right.  Let me -- when did you go



1 to the Fun Fair Video?

2 A September of 2001.

3 Q All right. In the course of going  
4 there September, 2001, did you take pictures?

5 A Yes, sir.

6 Q And I'm going to show you what has  
7 been marked as Government's Exhibit number 7.  
8 What is this?

9 A This is a photo of a booth inside the  
10 Fun Fair location with retail items for sale.

11 Q Can you tell me what this first  
12 picture represents?

13 A Those are boxes of condoms and  
14 different gels in a case.

15 Q And what is 7-A?

16 A 7-A is the same.

17 Q B?

18 A The same photo, the gels and the  
19 condoms.

20 Q Let's return to B (inaudible)?

21 A (inaudible).

1 Q What is 7-C?

2 A 7-C is in the back room of the Fun  
3 Fair, with sex toys, dildos and a variety of  
4 other things inside the case.

5 Q I'll tell you what. When you come  
6 across an item that is a duplicate --

7 A Yes, sir.

8 Q Set it aside. We'll hand it to  
9 Counsel.

10 A Okay.

11 Q Lets just take these first. Give  
12 Counsel a duplicate.

13 MR. KATZ: Thank you.

14 BY MR. GREEN:

15 Q All right, sir. Now, you were  
16 describing this; what is this?

17 A This -- this last photo described as  
18 a case in the back room of Fun Fair where the  
19 X-rated videos were. Up against the wall  
20 were the sex toys, dildos and other assorted  
21 items.

1 Q All right. What is this?

2 A This is another shot, looking at the  
3 same wall showing videos on each side of the  
4 sex toys.

5 Q What is 7-I?

6 A 7-I is the display case of the X-rate  
7 videos that were showing in the booths.

8 The next one, 7-M is marked, sign  
9 posted inside advertising the hours that they  
10 are open.

11 Q What is this?

12 A This next one, 7-P, I'm looking at is  
13 the video booths in the back of the store --  
14 the video portion.

15 Q What is this?

16 A This next photo is another sign  
17 inside advertising the amount to enter the  
18 rear of the store where the video booths are.

19 Q What is this?

20 A This is also inside -- it's a sign on  
21 the door to enter in the back, indicating X-

1 rated videos in that particular room.

2 We did that one, we did that one.

3 Q All right, Mr. Detrieck. Thank you  
4 very much.

5 MR. GREEN: I move in 7-A through --

6 THE COURT: I did have a problem with  
7 those in that when we numbered them, we went  
8 from 8 to whatever --

9 MR. GREEN: Yes.

10 THE COURT: -- including the  
11 duplicates. So, let me get them all back and  
12 we'll take out the duplicates and renumber  
13 them. They will still be 7, but --

14 MR. GREEN: Yes, certainly, Your  
15 Honor.

16 THE COURT: If we could proceed while  
17 -- so, you're finished with --

18 MR. GREEN: Yes.

19 THE COURT: Mr. Katz:

20 MR. KATZ: I have no questions, Your  
21 Honor.

1           THE COURT: I just have one or two  
2           for you, Mr. Detrieck. You took these  
3           photographs yourself?

4           THE WITNESS: Yes; I did.

5           THE COURT: When exactly did you take  
6           them, what date?

7           THE WITNESS: September the 6th.  
8           September the 6th.

9           THE COURT: And this is subsequent to  
10          an investigation or inspection you conducted?

11          THE WITNESS: Yes, sir.

12          THE COURT: Okay. No other  
13          questions.

14          Do -- did Mr. -- have we heard from  
15          Mr. Bello yet?

16          MR. GREEN: No, Your Honor.

17          THE COURT: And he would be the last  
18          witness for the Government?

19          MR. GREEN: Well, we'll -- Mr.  
20          (inaudible) the witness.

21          THE COURT: Okay. So, lets bring the

1 gentleman in and lets try again. So, Mr.  
2 Bello -- we can wrap up with Mr. Bello.

3 So, you'll put 7-A, B, C, D for the  
4 Government and the same to them.

5 Can I ask you to sit in that chair,  
6 please? Right there.

7 THE COURT: Mr. Katz.

8 MR. KATZ: If I may, I just need to  
9 incorporate the objections I made earlier to  
10 have this witness testify, I'd be happy to be  
11 more precise to remind you what they were if  
12 you would like. (inaudible) a proffer.

13 THE COURT: Any response, Mr. Green?

14 MR. GREEN: Why doesn't he state what  
15 he's objection is, because I've forgotten,  
16 truthfully.

17 THE COURT: Go ahead, Mr. Katz.

18 MR. KATZ: May I approach, please?

19 THE COURT: Yes.

20 MR. KATZ: If you don't have a  
21 proffer, if this witness is going to testify

1 about anything relevant to the dates of these  
2 two infractions, then the only purpose for  
3 these hearings is (inaudible) that the  
4 Government has given to the community  
5 (inaudible). That's not the right thing to  
6 be doing.

7 MR. GREEN: Well, you know, you've  
8 been running around -- you're talking about  
9 being fair and -- I hear it, but I mean,  
10 you've been talking about fundamental  
11 fairness and all that kind of stuff. These  
12 people live up in the place. If they can't -  
13 -

14 MR. KATZ: (inaudible) telling you to  
15 come down and testify to, and you know --

16 MR. GREEN: But wait a minute. Wait  
17 a minute.

18 THE COURT: Mr. Katz, come here.

19 MR. GREEN: The man lives up in here.  
20 If he can't talk about what his neighborhood  
21 is and how it has changed and all that kind

1 of stuff, I mean, you know, that goes to your  
2 whole thing about fundamental fairness.

3 MR. KATZ: That goes to (inaudible)  
4 testimony, it goes in front of City Council.  
5 Your witness would not have a right in a  
6 court of law (inaudible). Lets have some  
7 sort of harmony with the former courts of the  
8 law.

9 MR GREEN: How are you going to tell  
10 a man that lives up in there that he can't  
11 talk about his neighborhood?

12 THE COURT: I can't think of any  
13 reason why he shouldn't.

14 MR. GREEN: This guy lives up in  
15 there. How come he can't talk about his  
16 neighborhood.

17 THE COURT: There isn't any reason  
18 why --

19 All right. I said, you have one  
20 spokesperson.

21 MR. GREEN: I could have had 20



1 people in here.

2 MR. KATZ: (inaudible) in a Supreme  
3 Court case (inaudible) where, you know, all  
4 (inaudible) five to four position (inaudible)  
5 about always letting victims get to talk to  
6 the death sentence, reminding everyone that -  
7 - reminding everyone that we have the court  
8 of law and we have the court of public  
9 opinion.

10 So, unless I hear any other proffer  
11 (inaudible) I walk in here right now as a  
12 member of the court of public opinion. And  
13 that's --

14 THE COURT: I will be able to make  
15 that decision. I can listen to everything.  
16 Some things may have credence, some may not.  
17 I --

18 MR. KATZ: You are here to make a  
19 decision. I'm just trying to -- I'm here to  
20 try to persuade you --

21 THE COURT: But also, trust me with

1     that ability to deferential relevance and  
2     irrelevance.

3             MR. KATZ:   But you know, I can  
4     understand that (inaudible) I've been trying  
5     bench trials for years, not just  
6     Administratively -- I don't do many of those,  
7     but, you know, Maryland District Court.

8             The thing about the public perception  
9     too, it's not as easy for the public to  
10    recognize that, you know, that every judge  
11    that does a bench trial is able to  
12    differentiate.   I mean, lets look at the  
13    ripple effect of that.

14            MR. GREEN:   The ripple effect is  
15    this.   If you deny this --

16            THE COURT:   You are beyond this now,  
17    Mr. Katz.   Mr. Green has a powerful voice on  
18    a regular --

19            MR. KATZ:   Well, I've got my match  
20    with him.   If he (inaudible) --

21            THE COURT:   (inaudible).

1           MR. KATZ: When my voice carries, I  
2 have a modulating problem.

3           THE COURT: Well, you know,  
4 (inaudible).

5           MR. GREEN: Here we got -- here we  
6 got a guy who lives in the neighborhood  
7 effected by your client and what you are  
8 going to do is in effect tell him he can't be  
9 heard.

10           That ain't going to work in American  
11 where there is wrong, where there is a  
12 violation of some fundamental administrative  
13 process or not, you can't -- it's hard to do  
14 that.

15           MR. KATZ: I will open up my deck of  
16 cards now. I have met this man before. I  
17 know the venom in him. I know the venom he  
18 speaks. You have night and day all the time,  
19 okay. Right now you're seeing day. I just  
20 don't think we're doing anything --

21           MR. GREEN: I'm showing you my good

1 side right now.

2 THE COURT: I'm inclined to let him  
3 testify. I will give it the appropriate  
4 weight that it deserves.

5 MR. KATZ: Thank you for hearing me.  
6 One thing I have to thank you for is -- I'm  
7 just -- at every objection I've made, you  
8 have let me give my basis and that is not a  
9 common thing for me, so I'd just like to  
10 thank you.

11 THE COURT: (inaudible), Mr. Katz.

12 MR. KATZ: Well, I know that and even  
13 if it was, I mean, I developed too thick a  
14 skin to be worried about that too much.  
15 Twelve years ago it might have been a big  
16 deal when I started doing trials.

17 MR. GREEN: Okay. All right. Thank  
18 you.

19 THE COURT: All right. Let the  
20 record reflect we are now joined by -- your  
21 name, sir?

1 MR. PARDIECK: Steve Pardieck.

2 THE COURT: Spell the last name for  
3 me.

4 MR. PARDIECK: P-a-r-d, as in David,  
5 i-e-c-k.

6 THE COURT: Okay. And you were in  
7 the courtroom earlier this morning and have  
8 been sworn in?

9 MR. PARDIECK: Yes, sir.

10 THE COURT: Okay. You are under  
11 oath. You may proceed, Mr. Green.

12 MR. GREEN: Thank you, sir.

13 TESTIMONY OF STEVE PARDIECK

14 DIRECT EXAMINATION BY COUNSEL

15 FOR THE GOVERNMENT

16 BY MR. GREEN:

17 Q Sir, can you tell us, please, where  
18 to you live in relationship to 919 5th  
19 Street, Northwest?

20 A I live a little over two blocks  
21 north, right off the corner of 5th and Ridge

1 Street, I'm at 469 Bridge Street, Northwest.

2 Q Can you tell us --

3 THE COURT: Did you say, "Ridge?"

4 THE WITNESS: Ridge, R-i-d-g-e,

5 Ridge.

6 BY MR. GREEN:

7 Q And how long have you lived up there,  
8 sir?

9 A I've lived in the neighborhood since  
10 October 10, 1985. I've lived at this address  
11 since November, '99.

12 MR. KATZ: Your Honor, may I please  
13 just have a continuing objection.

14 THE COURT: Okay, Mr. Katz.

15 BY MR. GREEN:

16 Q You are a representative of the Civic  
17 Association; is that right?

18 A I'm not an elected officer. When I -  
19 - I was asked to take on this project of Fun  
20 Fair Video back in August of last year.

21 Q When you say, "Take on this project,"

1     what do you mean by that?

2           A     Well, we've had a history with this  
3     place of business. We noticed a significant  
4     decrease in crime and robberies and muggings  
5     in our neighborhood when they were closed.

6           And then when they reopened, either  
7     in May or June of last year, we saw a  
8     dramatic increase again of muggings of people  
9     on the street and breaking of car windows,  
10    etcetera, a tremendous rash of crime in our  
11    neighborhood.

12           So, we decided we needed to try to  
13    get it closed down again, because it's a  
14    public safety issue.

15           Q     With regard to that, what if any  
16    (inaudible) activities there?

17           A     For the past two Friday nights, we've  
18    had (inaudible) patrols, between 10:30 and  
19    around 12 at night in the Fun Fair Video  
20    vicinity.

21           We have not just right in front of

1 the store, but we walk around the blocks and  
2 then we come back up to our neighborhood and  
3 walk into the alleys and the streets where  
4 the prostitutes from Fun Fair Video bring  
5 their customers for sexual acts in our  
6 neighborhood and leave their condoms.

7 Q What other activities have you  
8 observed?

9 A Well, I paid a personal visit to Fun  
10 Fair Video on January 18th, which is a Friday  
11 night. It was between 11:30 and 12:30 at  
12 night.

13 THE COURT: What year are we talking  
14 about, sir?

15 THE WITNESS: This year, 2002.

16 Because I had heard information from  
17 other people about what went on in the book  
18 store, but I wanted to experience it myself.

19 THE COURT: Objection noted. Go  
20 ahead, sir.

21 THE WITNESS: So, I went in the book



1 store and I paid my \$3 and by paying your \$3  
2 you are allowed access to the back where the  
3 video booths are.

4 And this is why this business is so  
5 different from any other video book store,  
6 because they have the video booths, which  
7 attracts the prostitution. Once I entered  
8 the back, very soon I noticed a man with a  
9 crack in his door and he waved me in.

10 I went inside the booth -- excuse me  
11 -- and he started discussing sexual favors  
12 and said, "Can you help a brother out." I  
13 said, "No, I don't pay like that. I don't  
14 pay for sex." Let them have a good time. I  
15 went in there to gather information first  
16 hand.

17 When I told him I didn't pay for sex,  
18 he said, here it's pay for sex and you know  
19 what's going on and he blocked my exit from  
20 the booth door and I had to give him \$20 to  
21 exit safely.

1           Q     Is that your only encounter in that  
2 particular store, sir?

3           A     I was in the store with some of my  
4 neighbors this past Friday night. The owners  
5 of the store allowed us access to the back  
6 without charge, because they had fixed it up,  
7 painted it, cleaned it up and I think they  
8 wanted to show us that.

9           Q     I see.

10          A     But that's the same activity that  
11 goes on in there. The difference between  
12 this book store and every other book store is  
13 the video booths which attracts prostitution  
14 inside the store, draws the johns for the  
15 prostitutes outside the store. And they  
16 bring their customers into our neighborhood.  
17 We've had a series of muggings, we've had six  
18 in the past two months --

19               MR. KATZ: Objection.

20               THE COURT: Mr. Katz.

21               MR. KATZ: This goes again to what we

1 too. At least by telephone (inaudible)  
2 objections.

3 THE COURT: It's problematic, but  
4 we'll get to that some how, when we get to  
5 that.

6 All right. Let me go off the record  
7 for three minutes, Mr. Katz, and then I would  
8 expect you to be back in so we can continue  
9 and we're off the record at 3:14.

10 MR. KATZ: Do I have permission to  
11 talk to my witness for that limited time?

12 THE COURT: Yes.

13 MR. KATZ: Thank you.

14 (Brief break.)

15 THE COURT: It is 3:23. We're back  
16 on the record. We are now joined by a new  
17 witness. Would you please state your name  
18 for the record? You can be seated.

19 MR. BAIN: William Bain, B-a-i-n.

20 THE COURT: Okay. And can I ask you  
21 to raise your right hand?

1 (Witness is sworn.)

2 Very well, you may proceed, Mr. Katz.

3 TESTIMONY OF WILLIAM BAIN

4 DIRECT EXAMINATION BY COUNSEL

5 FOR THE RESPONDENT

6 BY MR. KATZ:

7 Q Mr. Bain, where do you work?

8 A I am a Private Investigator with  
9 Holly Enternet (ph) and Associates.

10 Q What is your position with them?

11 A I am the President of the company.

12 Q Where did you work before your  
13 current position?

14 A I am a retired Metropolitan Police  
15 Officer.

16 Q When did you retire?

17 A In May of 2000.

18 Q What was your rank?

19 A Officer.

20 Q Doing what kind of work?

21 A Street Patrol Undercover.

1           Q     How many years were you with the  
2     Metropolitan Police Department?

3           A     Ten years.

4           Q     Are you familiar with Fun Fair Video?

5           A     Yes, I am.

6           Q     Do you know about the Fun Fair Video  
7     before this year?

8           A     No.

9           Q     You first knew about it from this  
10    year?

11          A     That's correct.

12          Q     Have you ever seen this store before  
13    this year?

14          A     Never.

15          Q     Have you made any visits this year to  
16    Fun Fair Video?

17          A     Yes; I have.

18          Q     How many?

19          A     Two.

20          Q     Were any of them of appointments?

21          A     No.

1           Q     You just went -- you went whenever  
2     you wanted to go?

3           A     That's correct.

4           Q     Did you have some sort of arrangement  
5     for how you would be able to be allowed into  
6     the store though?

7           A     Yes; (inaudible).

8           Q     What was your (inaudible)?

9           A     There was someone (inaudible) at the  
10    store if I had any problem to contact either  
11    the owner or yourself.

12          Q     Did you have any problems when you  
13    went?

14          A     None whatsoever.

15          Q     Okay. Why don't you tell the Judge  
16    what you were going there for and what you  
17    did when you went? When did you go?

18          A     The first visit I made to Fun Fair  
19    Video was on the 28th of February. At that  
20    time --

21                THE COURT: What year is that, sir?

1 THE WITNESS: 2002, this year.

2 THE COURT: Okay.

3 MR. GREEN: Let the record reflect  
4 that he's referring to notes of some sort.  
5 You obviously made those notations on that  
6 calendar; is that right?

7 MR. KATZ: Don't respond; don't  
8 respond. The Judge will decide objections.

9 THE COURT: What notations did he  
10 use?

11 MR. GREEN: Well, he made some  
12 reference to a notation or something in his  
13 folder and I think that, you know, at least  
14 he ought to tell us what it is and if in fact  
15 --

16 MR. KATZ: I have no problem with  
17 that, I mean --

18 MR. GREEN: Well, good. Lets hear  
19 it.

20 THE COURT: All right.

21 MR. KATZ: This is not -- this is not

1 cross exam time.

2 MR. GREEN: No; it's not cross exam  
3 time, but the man made reference to --

4 THE COURT: Mr. Green, will you keep  
5 your voice down for me, please?

6 MR. GREEN: Yes, Your Honor.

7 THE COURT: Mr. Katz.

8 MR. KATZ: Do you have any objection  
9 to opposing Counsel seeing those notes you  
10 referred to? Show it to him.

11 THE WITNESS: I was referring to a  
12 calendar for March and February, (inaudible).

13 MR. KATZ: Please hand them to  
14 opposing Counsel.

15 THE COURT: Just show him. All  
16 right.

17 Please proceed, Mr. Katz.

18 MR. KATZ: Thank you.

19 BY MR. KATZ:

20 Q The first time, sir, you went to Fun  
21 Fair Video was when?



1           A     That was on, I believe the 28th,  
2     February, 2002.

3           Q     And the second time was when?

4           A     That was this past Sunday.

5           Q     And what was your purpose in going  
6     both of those times?

7           A     The first time I went to Fun Fair was  
8     to take an initial drawing -- a schematic of  
9     the building itself, measurements of the  
10    customer area, the private areas, and  
11    actually photograph the interior of the  
12    building.

13          Q     Okay. And is that what you did?

14          A     That is what I did.

15          Q     Okay. And how about the second time?

16          A     The second time, when I returned, I  
17    took an inventory of the store's contents.

18          Q     Did anyone help you when you were  
19    doing the measurements?

20          A     I had -- I had a helper with me, but  
21    he was holding the tape from one end of the

1 room to the other.

2 Q Okay. How much experience do you  
3 have in doing measurement of rooms?

4 A Twenty-eight years.

5 Q In what kind of context?

6 A Construction, you know, general  
7 contracting.

8 Q Did you put together a diagram of  
9 your measurements?

10 A I did.

11 Q What -- did you use a computer  
12 program or something or are you just  
13 unusually neat?

14 A No; I didn't use a computer to  
15 calculate.

16 Q Did you have a computer --

17 A (inaudible).

18 Q A drawing? Okay. And that's the  
19 diagram that's in front of you now?

20 A It's a scale -- a scale diagram.

21 MR. KATZ: Please get that marked,

1 Respondent's 1. Thank you.

2 BY MR. KATZ:

3 Q Do you have an opinion about whether  
4 this diagram number one for identification --  
5 it is a true and accurate representation of  
6 the measurements you took?

7 A Yes; it is.

8 Q If you have an -- (inaudible)?

9 A It is true.

10 Q Do you have an opinion about how  
11 accurate the measurements were that you took?

12 A They are true to the best of my  
13 knowledge, yes.

14 Q Okay. You just walk the Judge -- I  
15 don't think the Judge really got much of a  
16 flavor today of what you see when you go into  
17 this store.

18 So, let me just start with your  
19 coming down the street and parking your car  
20 wherever it is and lets just take the Judge  
21 to the front of the store and take him inside

1 the store. If you have an extra, what we can  
2 maybe do so the Judge can be looking at the  
3 diagram as we're going along?

4 Just tell us in your own words.

5 A When you first go into Fun Fair, the  
6 first thing you notice is that it's a very  
7 clean establishment. It's not dirty at all.  
8 I was very surprised when I walked in,  
9 compared to the outside of the neighborhood,  
10 to find such a clean business -- doing  
11 business in that area.

12 The floors are clean, the walls are  
13 clean, the merchandise was nicely on the  
14 racks. There was no -- nothing that would be  
15 shocking out in public view of any X-rated  
16 material, no nothing. It looked like a  
17 regular video store.

18 Q The Judge has the map in front of  
19 him, so lets set the stage for what we see.  
20 You walk in, what's on your left, what's on  
21 your right?

1           A     You walk in the door --

2           Q     We haven't walked in yet.  Lets start  
3     from the outside.  What are you seeing  
4     outside?  The Judge might be familiar with  
5     the block, he might not.

6           A     The first thing -- when you approach  
7     the store you see a large, yellow building  
8     that stands out.  The exterior has a color  
9     that is not obviously missed, it's not hard  
10    to miss.

11                   The streets are pretty vacant at that  
12    time, day or night.  It's not like a high  
13    bunch of traffic that goes through that area.  
14    What used to be the old Traffic Squad is  
15    approximately two blocks up, Traffic Division  
16    for the Metropolitan Police, approximately  
17    two blocks up from the video stores.

18                   Just a lot of commuter traffic that  
19    goes by the place.  There's really not foot  
20    traffic in this area.  Other than that,  
21    there's really not too much that sticks out

1 of the area.

2 Q You are talking about vacant  
3 something. Did you get a chance to walk  
4 around the block while you there?

5 A There is -- with new construction,  
6 there's parking lots that are being put up  
7 there, accommodating, I guess, the expansion  
8 of the area.

9 Q Were you seeing any vacant lots  
10 there?

11 A There was lots that were available in  
12 parking spaces, but I -- there was cars in  
13 the parking lot, actually there was spaces  
14 that were empty. Nothing that was just an  
15 empty lot.

16 Q So, you go inside and -- so, this  
17 thing sticking out into 5th Street, is that  
18 the front door?

19 A That is correct.

20 Q Okay. So, you walk in and what's on  
21 your left?

1           A     When you first walk into the left is  
2     approximately five and a half foot counter  
3     top which stretches the entire interior of  
4     the store.

5           Q     Is it raised up off the ground?

6           A     Yes; it is.

7           Q     About how much?

8           A     About five and a half feet.

9           Q     So, this first room you are in is the  
10    general video and DVD area?

11          A     The initial area -- the main area, is  
12    where all of the suspense movies -- anything  
13    you would find in a Block Buster. I mean,  
14    children's movies, they have Walt Disney  
15    movies there, pretty much a large variety  
16    (inaudible).

17          Q     What is this divider, this line  
18    that's between one area of the part where you  
19    say general video DVD and the back area that  
20    says general video DVD -- is that divided by  
21    a shelf or --

1           A     That's a 7-foot -- that's a 7-foot  
2     high divider.

3           Q     Okay.

4           A     It's just for storage for display and  
5     extra materials.

6           Q     So, when you go to the other side of  
7     that display area you see some more general  
8     videos and DVDs?

9           A     Correct -- or action, action movies.

10          Q     Did you see any in the general DVD  
11     area, did you see any items that looked like  
12     they were X-rated?

13          A     No; there was multi-cultural, Spanish  
14     movies over by the second door in the back  
15     area. That whole wall, that was for Spanish  
16     and other types of -- in different languages.

17          Q     Right. And then you walk in -- did  
18     you go into the adult video DVD area?

19          A     I did.

20          Q     As you walk into the video DVD area  
21     for adults, did you see a sign as you are



1 walking in?

2 A Yes.

3 Q What does the sign say?

4 A No one under 21 permitted, I believe.  
5 It's a giant sign right over the door.

6 Q Did you also walk into the area here  
7 where you are talking about -- we're talking  
8 about yellow, red mounted video surveillance.  
9 What's this, the (inaudible) area?

10 THE COURT: What are you talking  
11 about?

12 MR. KATZ: From the back of the  
13 photo, we said, yellow, red, yellow --

14 THE WITNESS: Those were some -- I  
15 guess individual identifiers for each one of  
16 the booths.

17 BY MR. KATZ:

18 Q Okay.

19 A Perhaps for showing different types  
20 of X-rated videos for whatever the client --  
21 or whoever wanted to view them.

1           Q     So, you sent to the back room as  
2     well, with the booths area?

3           A     I went through the entire building.

4           Q     Did you remember seeing a sign as you  
5     were going into the booth area?

6           A     Yes. There were a lot of signs back  
7     there.

8           Q     Well, the first door that goes into  
9     the booth area?

10          A     Uh-huh.

11          Q     Do you remember a sign on that door?

12          A     There was a sign that said, "No  
13     Loitering" or "Management will not tolerate  
14     lewd behavior," and I can't recall right off-  
15     hand exactly what the sign said. I wasn't --  
16     it says to get (inaudible) the booths.

17          Q     And you took pictures of the store?

18          A     Interior -- yes, I did.

19          Q     Okay.

20                 MR. KATZ: (inaudible) certificates.  
21     There are about 15 of them, Your Honor.

1 THE COURT: Lets count them out.

2 BY MR. KATZ:

3 Q So, you had an opportunity to measure  
4 the entire store?

5 A I did.

6 Q Do you have any doubts about the  
7 accuracy of your measurements?

8 A No.

9 Q Do you have any doubts about whether  
10 we're mistaking the management office with  
11 the video control room, for instance?

12 A No; none whatsoever.

13 Q Lets make sure the Judge understands.  
14 I know he's counting the photos now, but when  
15 he gets a chance to look at the map more,  
16 when you are doing the measurements, I guess  
17 you're showing it section by section  
18 (inaudible) what the measurements are?

19 A That's correct. I put (inaudible)  
20 there for reference points.

21 Q Okay. So, sometimes, if you want to

1       -- if you want to know, for instance, what  
2       the length of the front of the store from the  
3       customer service desk is to the back wall of  
4       the adult video DVD is, I guess, you have to  
5       add two numbers together?

6           A     Correct.

7           Q     Well, I'll wait for the Judge to mark  
8       the photos as far as asking that further.  
9       These photographs that I'm marking into  
10      evidence now, did you take all of those  
11      photographs yourself?

12          A     Yes; I did.

13          Q     Were those taken on your first visit  
14      to the store?

15          A     Yes; they were.

16          Q     You didn't see any dildos in the  
17      whole store?

18          A     No; there was no type of material  
19      like that.

20          Q     Condoms, yes?

21          A     There were some condoms; they were

1 packaged away.

2 Q Anything else?

3 A They were in the glass display  
4 container.

5 Q Did you see any other sexual aides in  
6 terms of aides people use when having sexual  
7 acts?

8 A Not in the general review of  
9 anything, no.

10 Q Okay. When you went to the back  
11 room, did you see any from the booth area?  
12 Did you see anybody in the booth area?

13 A The entire time I was there, no more  
14 than three people that came in and out of the  
15 booth area.

16 Q When you saw people coming to the  
17 booth area, what did you see them do?

18 A Nothing. They -- I was taking  
19 measurements and they were watching the  
20 movies.

21 Q Okay. Did you see any employees of

1 the business in the booth area?

2 A Yes; there was an employee who  
3 appeared to -- he was based in the back room,  
4 that's what he took care of.

5 Q Did you see what he was doing?

6 A He was cleaning the back room  
7 constantly.

8 Q In what way was he doing it, with a  
9 mop or what?

10 A Yes; he always had a mop with him.  
11 It appeared when anybody left one of the  
12 booths, he was always going right behind --  
13 within 20 seconds, and mopping up or whatever  
14 he was doing.

15 Q Did you have an opportunity to count  
16 all the videos that were in the retail area  
17 of the store?

18 A Yes.

19 Q Do you have a list of that with you?

20 A I do.

21 Q Please take that out. Do you have

1 that?

2 A Yes.

3 Q May I see it? That's a list that --

4 A There's two of them.

5 Q Will this list have the count of --

6 A Uh-huh.

7 Q -- how many videos you counted?

8 A Yes.

9 MR. KATZ: I want to show both of  
10 these to opposing Counsel, okay?

11 THE COURT: Yes.

12 MR. KATZ: Thank you, Your Honor.

13 I'd like to do a switch. I'll show  
14 the originals to the witness and these are  
15 certified duplicates, unless Your Honor has  
16 an objection. The only difference is that  
17 certificate (inaudible) is smaller.

18 BY MR. KATZ:

19 Q Lets go to the photos now and take a  
20 look at all of them and just verify to the  
21 Judge that those are the photos you took?

1           A     Yes.

2           Q     Yes? And then you also took -- made  
3 a duplicate print that had your certificate  
4 on it?

5           A     A duplicate set, yes.

6           Q     In other words, I just handed the --  
7 that's what I just handed the Judge, right?

8           A     I would say, yes.

9           MR. KATZ: Your Honor, I offer into  
10 evidence the photos, that's Exhibits number  
11 2-A through Q2a and I'll offer into evidence a  
12 diagram -- I think it's with, Your Honor, and  
13 I think that was Exhibit 1, if I'm not  
14 mistaken.

15          MR. GREEN: Your Honor.

16          THE COURT: Mr. Green.

17          MR. GREEN: Yes. With regard to the  
18 pictures, I -- I have no objection to the  
19 pictures depicting what they depict at the  
20 date and time they were taken. They were  
21 taken, I believe, in March or thereabouts.



1           I don't have them before me right  
2           now, but I mean, they certainly show what  
3           they show at the time they were taken. I  
4           would have objection to the diagrams until  
5           such time as I've had an opportunity to cross  
6           examine the witness.

7           THE COURT: Anything, Mr. Katz?

8           MR. KATZ: Your Honor, cross  
9           examination of the witness goes to the weight  
10          of the testimony.

11          MR. GREEN: Well, Your Honor, we've  
12          got some diagrams here. I think that under  
13          normal circumstances, at least be given an  
14          opportunity to voir dire this witness with  
15          regard to certain expectations.

16          Now, these things are being presented  
17          as a document prepared by somebody who has a  
18          certain degree or level of expertise. I  
19          haven't had a chance to voir dire this man  
20          with regard to that.

21          There are a couple of questions I'd

1 just like to ask him before they are even  
2 addressed. I have no problem with the  
3 pictures, again, being admitted depicting  
4 what they show on the dates that they  
5 specified.

6 THE COURT: Anything, Mr. Katz?

7 MR. KATZ: Your Honor, we are going  
8 to give further information, so I have no  
9 problem with --

10 THE COURT: I -- I would admit the  
11 documents and I will give it the appropriate  
12 weight.

13 (Respondent's Exhibit numbers 1 and  
14 2-A through 2-Q marked for  
15 admission.)

16 Anything else?

17 MR. KATZ: Yes. Okay.

18 MR. GREEN: Excuse me, Your Honor.  
19 You ruled -- you're going to let in the --

20 THE COURT: I'm going to admit the  
21 Exhibit 1, Respondent's Exhibit 1 and 2-A to

270

1 2-Q.

2 MR. GREEN: Your Honor. Let the  
3 record reflect that I have an objection, a  
4 continuing objection, if you will, with  
5 regard to these two.

6 THE COURT: Very well.

7 MR. KATZ: Well, what's in front of  
8 Mr. Green, those haven't been marked yet.  
9 So, those haven't been marked for  
10 identification, so, these aren't in evidence.  
11 The witness wanted --

12 THE COURT: It is the same document,  
13 isn't it not?

14 MR. GREEN: Well, just on a reduced  
15 size --

16 MR. KATZ: Well, no. The  
17 significance of what I have in my hands here,  
18 this is the witnesses notes about the counts  
19 he took of the videos about action films  
20 versus what he found in the adult area. That  
21 I haven't gotten to yet and that's why -- but

1 I haven't offered that into evidence yet.

2 THE COURT: All right.

3 MR. KATZ: The witness seemed to want  
4 to tell me something.

5 THE WITNESS: No. These are just  
6 your figures for what you were talking about  
7 (inaudible).

8 BY MR. KATZ:

9 Q Very good, I want to go over that,  
10 Mr. Bain.

11 On which occasion -- on one of these  
12 two occasions you took the opportunity to  
13 count all the merchandise that was in the  
14 retail area as well as in the booth area?

15 A That is correct.

16 Q And what type of categories did you  
17 use to count these items?

18 A The categories were broken up within  
19 the store themselves.

20 Q Okay.

21 A It would have been thrillers, in

1 Spanish, several I'd define as adventure,  
2 children's different categories.

3 Q So, you checked in the categories  
4 when they were represented and I guess we  
5 already understand you didn't find any items  
6 in the general area that you felt were X-  
7 rated and that seemed to have (inaudible).  
8 You didn't see anything in the adult area  
9 that you felt was G-rated?

10 A That is correct.

11 Q And you have notes here about the  
12 counts you took of all these items?

13 A Yes.

14 Q Are you able to tell the Judge about  
15 what you counted without referring to your  
16 notes or do you need the notes?

17 A Well, approximately, yes. I mean,  
18 what was in the --

19 MR. GREEN: Oh, let him look at the  
20 notes.

21 BY MR. KATZ:

1           Q     Okay. So, please look at the notes  
2     and please --

3                 Well, I want to ask you something  
4     else. Here's something that you do know --  
5     and I had to cut-and-paste, because I  
6     couldn't read the color. That document that  
7     I'm giving you there, is that -- is that the  
8     same figures that is in your handwriting. I  
9     want to show it to --

10            A     Yes. This would be a more --

11           Q     This would be more. I want the Judge  
12     to be able to understand that thing. Did you  
13     count anything in addition to videos? What  
14     else was there that you counted?

15            A     There were some miscellaneous things  
16     behind the counter in the booth area. There  
17     were batteries, type of batteries, some  
18     incense, sticks of incense, some condoms --

19           Q     Okay.

20            A     -- and a few jars of musk. I think  
21     there was probably 4 or 5 of those, maybe 10.

1           Q     You haven't brought us into the  
2     modern -- the modern century yet. What I  
3     understand, it makes this more modern --  
4     DVDs?

5           A     Uh-huh; yes.

6           Q     Do you remember seeing DVDs around?

7           A     There were DVDs, yes.

8           Q     You didn't miss that? Please tell  
9     the Judge the counts you took of each  
10    category.

11                     Instead of doing actuals, please tell  
12    the Judge what did you count for general --

13           A     Well, the items behind the counter,  
14    there was 1,620 --

15           Q     I'm not on the count yet. I want to  
16    go onto the areas first where the -- where  
17    customers have access to. Do you have counts  
18    of that?

19           A     The total 4,213 in the general area.

20           Q     Okay. (inaudible)?

21           A     G-rated, R-rated, PG.

1 Q Okay.

2 A And 553 that is in the area that's  
3 not accessible by the general public.

4 Q Is that the adult --

5 A That is the adult.

6 Q Okay. So, what's the total --  
7 totaling all of those up, the adult plus the  
8 non-adult, what percentage do you get for the  
9 adult out of all those videos and DVDs total?

10 A About ten percent, maybe a little  
11 less.

12 Q Have you had an opportunity to --  
13 lets get this --

14 MR. KATZ: I apologize, Your Honor.  
15 I don't have a stapler with me for this one  
16 exhibit.

17 THE COURT: So, that's going to be  
18 Exhibit 3?

19 MR. KATZ: Yes.

20 Actually, I can leave it there.

21 THE COURT: All right.



1 BY MR. KATZ:

2 Q You still have a copy of your diagram  
3 of the store?

4 A Yes.

5 MR. KATZ: Everyone has a diagram,  
6 Your Honor has one, you have one.

7 MR. GREEN: I don't have one, why  
8 don't you just give it to me?

9 MR. KATZ: Well, I don't have an  
10 extra. So, I'm going to have to (inaudible).

11 Go ahead. I'll look over at my  
12 witness's.

13 BY MR. KATZ:

14 Q Now, let's hold it vertical, as if  
15 you are walking in, okay?

16 I want to know if we add up the front  
17 room and put in the general video and the  
18 counter and the adult video, okay?

19 A Uh-huh.

20 Q If we add all that up together,  
21 there's the denominator. If you have a

1 fraction, the denominator is the number on  
2 the bottom, right?

3 A Uh-huh.

4 Q We put the adult video section as the  
5 enumerator, okay? Approximately, what  
6 percentage do you have as the result, where  
7 the adult video is the numerator and the  
8 adult video plus general and the counter is  
9 the denominator?

10 A The adult section would be  
11 approximately 11 percent.

12 Q Now, why do you say that?

13 A Well, based on the math that was  
14 done, if I recall correctly -- I don't have  
15 the figures in front of me, they are on the  
16 computer --

17 Q Okay.

18 A -- there was approximately 11 percent  
19 of the total volume of the space.

20 Q And since you have the numbers and  
21 that's in evidence, the Judge will be able to

1 run those numbers through if he wishes to?

2 A Yes.

3 Q Now, lets add in the booths, the  
4 floor space that is taken by the booths, not  
5 the -- you know, the floor space is covered  
6 by the booths, not the part that you walk on  
7 in the booth area, but just add the floor  
8 space that is covered up by the booths in the  
9 denominator, okay?

10 Are you with me?

11 A Yes.

12 Q We're going to take the booths,  
13 themselves, the part of the booths that  
14 covers the floor. We're going to add that to  
15 the denominator. We are also now add the  
16 booths themselves, plus the adult video  
17 section as the numerator.

18 Are you with me?

19 A (inaudible).

20 Q Okay. And what percentage do you get  
21 there?

1           A     Approximately 28 percent.

2           Q     Just if you are doing the --

3           A     Just the floor under the booths.

4           Q     Just the floor of the booths? Okay.

5                     Now, lets add the entire section  
6 where and of the adult customers can go,  
7 okay?

8                     You now have the enumerator as the  
9 booths and the video section and the  
10 denominator is now the general video section,  
11 adult section and the entire area in the back  
12 that includes the booths, including the free  
13 floor space.

14                    Are you with me?

15           A     Uh-huh.

16           Q     How did we get the result? What  
17 result do we get now percentage-wise?

18           A     Approximately, 18 percent.

19           Q     Approximately, 18 percent? Okay.

20                    Now, what District did you work in when you  
21 were with the Police Department?

1           A     Fourth.

2           Q     District Four?   What part of city is  
3   District Four?

4           A     Mt. Pleasant.

5           Q     Okay.   Mt. Pleasant?   Do you have any  
6   familiarity with the nightclub Lewis Road?

7           A     No; I don't recall that.

8                     MR. KATZ:   I believe I marked in  
9   the list of videos and DVDs, but I didn't  
10   offer them into evidence yet.   I offer  
11   Exhibit 3 into evidence.   That's the list of  
12   videos and DVDs.

13                    THE COURT:   Say that again.

14                    MR. KATZ:   I offer Exhibit 3 into  
15   evidence.   I don't think I had moved it into  
16   evidence already, so, I am going to make sure  
17   it's in.

18                    THE COURT:   All right.

19                    Mr. Green.

20                    MR. GREEN:   Well, I would object.   I  
21   would object mainly because it's not related

1 to the Civil Infractions, the matter we're  
 2 here regarding. I would say that at best  
 3 shows and demonstrates about count, if you  
 4 will, on a date that is effective of -- in  
 5 the year -- what is it -- 2002.

6 THE COURT: Very well.

7 MR. GREEN: It doesn't reflect back  
 8 to when the Notice of Infraction was served,  
 9 nor when it was issued. It reflects only the  
 10 time frame in which it is listed and that's  
 11 2002 -- March, 2002. So, yes, it's accurate  
 12 as to the date it was submitted and that's  
 13 all it's good for, as to when it was  
 14 submitted and when the count was taken.

15 THE COURT: Very well. I would admit  
 16 it and give it the appropriate weight.

17 MR. GREEN: Fine.

18 (Respondent's Exhibit number 3,  
 19 marked for admission.)

20 BY MR. KATZ:

21 Q In the booth room, the booth area,

1 did you see any booths that had two people  
2 enter the same booth or two people exit the  
3 same booth?

4 A No.

5 Q In the booth area, did you see anyone  
6 who looked under 21?

7 A No.

8 Q In the adult video and DVD room, did  
9 you see anyone who looked under 21 years old?

10 A No.

11 Q Did you see anyone who looked under  
12 21 years old trying to get into the adult  
13 room --

14 A No.

15 Q -- or into the booth room?

16 A No.

17 MR. KATZ: The Court's indulgence,  
18 please, Your Honor. That's all the questions  
19 I have.

20 THE COURT: Very well.

21 Mr. Green, cross?

1 MR. GREEN: Yes, Your Honor. All  
2 right. Thank you.

3 CROSS EXAMINATION BY COUNSEL  
4 FOR THE GOVERNMENT

5 BY MR. GREEN:

6 Q Signor, (inaudible)?

7 A (inaudible).

8 Q You do speak Spanish?

9 A I used to, many years ago.

10 Q You used to many years ago. About  
11 the Spanish DVDs, how many were X-rated?

12 A Of the Spanish DVDs?

13 Q Yes.

14 A None that were in the general public  
15 areas -- in the general area where the DVDs -  
16 -

17 Q Based on what?

18 A Based on the contents. I mean, I  
19 never sat there and watched all the DVDs.

20 Q Well, did you read the titles?

21 A I looked at pictures on the covers,



1       yes.

2           Q     You looked at the pictures, but you  
3       did not read the titles?

4           A     No.

5           Q     So, you don't know if the pictures  
6       and the titles were the same?

7           A     No; that's correct.

8           Q     Sir, you indicated that you are a  
9       retired Police Officer in the District of  
10      Columbia; is that right?

11          A     Yes, sir.

12          Q     Are you also an architect?

13          A     No, sir.

14          Q     Are you AIA certified?

15          A     No, sir.

16          Q     How about a draftsman?

17          A     I'm a regular builder, I mean, in my  
18      house, yes.

19          Q     Regular building your house? I've  
20      got one in my house, too.

21                Do you hire out as a contractor?

1           A     In what respect?

2           Q     Building?

3           A     Building?

4           Q     Yes?

5           A     Sure, yes.

6           Q     You do?   How long you been doing this  
7     -- hiring out as a contractor?

8           A     When I need something done to my  
9     house.   I mean, something major, I don't have  
10    the tools to do it with, like a crane.

11          Q     So, if Judge Simon needed an addition  
12    put on his house, he would not come to you;  
13    is that right?

14          A     I don't think he would.   If he needs  
15    an investigator, he would.

16          Q     You indicated this drawing was done  
17    on a CADD program; is that correct?

18          A     That's correct.

19          Q     The drawing was done March the 3rd,  
20    2002; is that correct?

21          A     That's when I certified it, yes.

1           Q     When were you last in the business at  
2     919 5th Street; when were you last personally  
3     inside there?

4           A     This past Sunday, which I think was  
5     the 3rd.

6           Q     And how many times had you been in  
7     there prior to that?

8           A     Just one other time.

9           Q     And when was that?

10          A     That was Wednesday -- the previous  
11     Wednesday, which was the 28th or something.

12          Q     Were you there in September of 2001?

13          A     No.

14          Q     Had you been there in August of 2001?

15          A     No.

16          Q     How about October of 2001?

17          A     As I stated, I was only there --

18          Q     The only time? So, you don't know if  
19     this drawing you did is an accurate  
20     reflection of the condition that existed  
21     there in September of 2001, do you?

1           A     No; that's just how it was when I got  
2     there. I mean, what is was before then, I  
3     don't know.

4           Q     You have no idea. This is how it was  
5     when you got there. Did you have an  
6     opportunity to view the videos in the booths?

7           A     No; I was too busy working.

8           Q     Working doing what, sir?

9           A     Taking measurements, counting the  
10    videos.

11          Q     Do you normally count videos and take  
12    measurements in adult book stores?

13          A     No, sir.

14          Q     You are a private detective; what is  
15    your general duty assignment area?

16          A     The entire State of Maryland,  
17    Washington, DC and in as of next month, I'll  
18    be in the entire State of Virginia.

19          Q     What do you do; what kind of --

20          A     Conduct investigations -- robbery,  
21    computer forensics, corporate theft, pretty

1 much (inaudible).

2 Q When you were there, did you notice  
3 any activity in the rest rooms by people?

4 A No, sir.

5 Q How about the custodian area?

6 A No, sir.

7 Q Well, how about the booths?

8 A The entire time I was there, when I  
9 was taking measurements, as far as two people  
10 -- the entire time I was there that came in  
11 the back.

12 Q I'm looking at this thing here. I  
13 see a little thing that says, "North." Are  
14 you saying that 5th Street is the southern  
15 part of this establishment?

16 A Yes. I mean, this is 5th Street, to  
17 the Traffic Division -- New York Avenue  
18 (inaudible).

19 MR. GREEN: One moment, Your Honor.

20 Your Honor, I don't have any other  
21 questions of this witness, but I do want to

1 note for the record that he is not AIA  
2 certified, he's not an architect, he's not a  
3 draftsman.

4 The contracting that he does is on  
5 his own property, kind of like what you and I  
6 do. You wouldn't hire him and neither would  
7 I, but then again, you wouldn't hire me to  
8 build your addition to your house, either.

9 I submit that the documents that have  
10 been submitted and held out to be exacting  
11 measurements by a man who is a professional  
12 investigator -- he probably is a very good  
13 detective and a cop and we probably would  
14 hire him as a very good detective and a cop,  
15 no doubt about it.

16 But I would not hire him as an  
17 architect nor a draftsman in light of his  
18 non-training in those areas. Again, for the  
19 record, I would like to note my objection to  
20 all references to these drawings done by him.

21 I think the Court needs to take note

1 of that. I think the record needs to reflect  
 2 that -- and I would ask that the Court, since  
 3 you have already taken it in over my  
 4 objections -- but I ask you give it the  
 5 appropriate weight that it deserves in light  
 6 of what he has said. Thank you.

7 THE COURT: Very well.

8 MR. GREEN: I don't have further  
 9 questions.

10 THE COURT: Anything redirect?

11 MR. KATZ: Unless Your Honor has  
 12 something.

13 THE COURT: I just have two questions  
 14 for you, sir. On those visits to Fun Fair  
 15 Video, how long were these visits?

16 THE WITNESS: Three and a half hours.

17 THE COURT: Each time?

18 THE WITNESS: Yes.

19 THE COURT: Did you go to the  
 20 management office in the back of the building  
 21 -- of the business?

1 THE WITNESS: Yes.

2 THE COURT: What was behind there?

3 THE WITNESS: In what area, sir?

4 THE COURT: All the way to the back,  
5 the management's office -- what was in the  
6 office?

7 THE WITNESS: In the management  
8 office -- well, on the outer wall -- this was  
9 VCR equipment, video equipment that was -- I  
10 guess, from the booths. The other side were  
11 tapes -- video tapes from -- they were  
12 regular movies that would be put into the  
13 general public area. There were no X-rated  
14 tapes back there.

15 THE COURT: Very well. No other  
16 questions.

17 MR. KATZ: Your Honor, this will be  
18 brief.

19 REDIRECT EXAMINATION BY COUNSEL

20 FOR THE RESPONDENT

21 BY MR. KATZ:



1           Q     Well, help us out here, you know,  
2     with anything else you can tell about your  
3     accuracy as a measurer. I mean, you are not  
4     AIA certified or whatever. What do you got,  
5     give us a little more detail about what --

6           A     Well, I took a measuring tape. It  
7     says 10 feet, 2 inches. That's -- the tape  
8     doesn't lie. I mean, that's what I marked  
9     out as to what (inaudible).

10          Q     Tell the Judge, please, a little bit  
11     more about the history you got with  
12     measuring. I mean you still have 20 years of  
13     --

14          A     Well, I've -- I've done quite a bit  
15     of measurement working with computers and  
16     CADD drawings. I mean, I have a number of  
17     years experience in graphics design using a  
18     lot of measurements, especially when you have  
19     (inaudible) in millimeters and so on and so  
20     on. A General Contractor's license, no, but  
21     as far as a good measurement, I stand by

1       these measurements.

2           Q     What about CADD, you've been doing  
3       CADD how long?

4           A     CADD, 8, 9 years.

5           Q     Okay. So, I guess we're at a much  
6       newer version of CADD today than we were 8 or  
7       9 years ago?

8           A     Sure; I mean, it's a lot more  
9       accurate than 8 to 10 years ago.

10          Q     What do you do to make sure that you  
11       are taking accurate floor measurements in  
12       terms of just making sure you're getting a  
13       straight line or whatever. I mean, I know  
14       what I do.

15          A     Being sure that the measuring tape is  
16       not kinked anywhere, make sure it's not  
17       obstructed in any way, that it's a direct  
18       path from one end of the tape to the other.  
19       You lock it in place once you get the  
20       measurements and you record it accordingly.

21          Q     And that's what you did here?

1           A     That's what I did for each one of the  
2     measurements.

3           Q     Thank you very much.

4           THE COURT:   Recross?

5           MR. GREEN:   Thank you.

6           RE-CROSS EXAMINATION BY COUNSEL

7                     FOR THE GOVERNMENT

8           BY MR. GREEN:

9           Q     Did you take any -- do you have at  
10    this point any certification from CADD?

11          A     With CADD there is no certification,  
12    Board Certification in CADD.   CADD is a  
13    general description of an industry that  
14    (inaudible).

15          Q     But you received no special training  
16    or certification from it other than reading  
17    some books?

18          A     No.   I've had probably, approximately  
19    eight and a half years of design work.   I  
20    mean professional design work.   This isn't --  
21    I've developed drawings for Verizon and for

1 many other companies.

2 Q You are primarily a detective; is  
3 that right?

4 A That's correct.

5 MR. GREEN: I don't have any other  
6 questions for this witness, Your Honor.

7 THE COURT: All right. No other  
8 questions here either.

9 MR. KATZ: Nor do I.

10 THE COURT: Who will be your next  
11 witness?

12 MR. KATZ: My next witness is Jose  
13 Montiel. I offer two things. I am  
14 preferring first to let the interpreter come  
15 back from making sure his meter didn't run  
16 out.

17 If Your Honor does not want to wait  
18 that long, my assistant is bilingual, but I  
19 think you find that it goes much smoother  
20 with the interpreter, just because -- no  
21 offense to her, but I think he's going to be

1 back in about five minutes and, you know,  
2 when you are an interpreter you are more into  
3 the groove of all that, you know --

4 THE COURT: Mr. Green.

5 MR. GREEN: Your Honor. All due  
6 respect to his interpreter, is he certified  
7 by the Court system?

8 MR. KATZ: He is certified in  
9 Maryland and/or Virginia.

10 MR. GREEN: But not the District of  
11 Columbia.

12 MR. KATZ: He's with -- I don't know  
13 if D.C. does certification for --

14 MR. GREEN: Yes; they do.

15 MR. KATZ: Lets just ask him. The  
16 D.C. Superior Court requires Federal Law  
17 Certification, which is a huge help. So,  
18 lets just wait for him to come back. He's  
19 with the Magavis. Magavis has been pretty  
20 much anointed by other interpreters that I've  
21 worked with and (inaudible). My suggestion

1 is --

2 THE COURT: Where is he parked, Mr. -  
3 -

4 MR. KATZ: He said that he will be  
5 back in ten minutes and that was five minutes  
6 ago. I didn't want to be an ogre. I know  
7 that I have to be sensitive to Your Honor,  
8 but I didn't want him to be towed either,  
9 because I wasn't sure if he was (inaudible).

10 It's the last witness of mine today.  
11 I mean, I even want to talk to you now --  
12 we'll wait for him about -- I need a witness,  
13 Adjie O'Bryant. I mean, I want to be as  
14 flexible as --

15 THE COURT: I don't want to deal with  
16 again.

17 MR. KATZ: I'm sorry. We'll go  
18 faster if he just (inaudible).

19 THE COURT: Mr. Checko (ph) could you  
20 be so kind enough to just check in the  
21 waiting room in the front and see if the

1 interpreter is --

2 Mr. William Bain, you can step down.  
3 You can have a seat in the back there.

4 THE WITNESS: Thank you.

5 MR. KATZ: I appreciate you coming  
6 in. He's on the injured list. I don't want  
7 to -- I just want to get him out of here.

8 THE COURT: Okay.

9 THE WITNESS: That's what it's like  
10 being beat up on the street.

11 MR. GREEN: Mr. Bello is still in  
12 that situation, Your Honor, so...

13 MR. KATZ: You want to go off the  
14 record for about 10, 15 minutes?

15 MR. GREEN: Normally the disk is good  
16 for what?

17 MR. KATZ: Seven hours, I think.

18 MR. GREEN: Oh.

19 MR. KATZ: Maybe eight hours.

20 MR. CHECKO: Nobody, Your Honor,  
21 nobody.

1           MR. KATZ: Your Honor, I'm sorry for  
2 causing a disturbance. Maybe I should have  
3 just taken the option of paying his parking  
4 ticket if he got it, but I do expect him to  
5 be back soon. I've known this man for a few  
6 years and I expect he's coming right back.

7           THE COURT: Well, wait a minute. He  
8 may have a problem getting back -- no, it's  
9 still -- it's 4 o'clock.

10          MR. KATZ: 4:30 is when they...

11          MR. GREEN: Your Honor, I mean, you  
12 know, we have to see what he's got in terms  
13 of certification when he comes back in here,  
14 but I'm troubled by a non-court certified  
15 and/or appointed -- or at least knowing them  
16 to be such interpreters.

17                I've had some experience with it and  
18 I've had some problems with people who don't  
19 fall in that category. And I don't want this  
20 to be one of those circumstances, Your Honor.

21          MR. KATZ: Lets not put the cart



1 before the horse.

2 THE COURT: Let me just give the  
3 interpreter a few moments. What is his name,  
4 Mr. Katz?

5 MR. KATZ: I forget, because he hired  
6 him through -- we hired through the Magavis  
7 (ph) outfit, which is in Northern Virginia  
8 and they choose a very high quality  
9 interpreters. We've dealt with several of  
10 them.

11 I'm supposed to remember his name,  
12 because he -- we've seen him so many times in  
13 the Courthouse and other places. I don't  
14 want him to know I forget his name.

15 MR. GREEN: Well, while we're here,  
16 Your Honor, I mean, there is one other point  
17 I would like to make.

18 I ask the Court to take some basic  
19 notes -- 5th Street runs north and runs  
20 south, not east and west. Again, I direct  
21 your attention to this document, this copy of

1     this -- that's been admitted and it does not  
2     show 5th Street running north and south.

3             As a matter of fact, it shows north  
4     being someplace else. So, if it -- if the  
5     document says that 5th Street runs, I guess,  
6     east and west, versus north and south and  
7     there is something else on here that shows  
8     north, the other street -- it doesn't name  
9     the other street and then this -- every  
10    measurement on here is suspect.

11            I just want the Court to take that  
12    into consideration.

13            MR. KATZ: Why are we getting ahead  
14    of ourselves to cross examine? When you look  
15    at a map of the District of Columbia, we see  
16    that there are very few streets that go  
17    straight north and south. They are all on a  
18    diagonal. If you look at it on a compass --  
19    I don't know why we're getting into closing  
20    arguments at this stage.

21            MR. GREEN: But, Your Honor, if we

1 look at this thing -- I mean, if it's a  
2 diagonal, then we can all kind of say, well,  
3 maybe it's north by northwest or east by  
4 southeast or something. But that's not the  
5 case. It very clearly show north and south  
6 and it shows 5th Street.

7 So if it's -- by logical extension --  
8 if something is running north and south, by  
9 logical extension, that other something is  
10 running east and west. That's what we have  
11 here.

12 So, I submit, Your Honor, that if the  
13 north and south aspect of 5th Street is off  
14 that much, then the dimensions are what --  
15 off, or at least they are suspect and they  
16 cannot be given the weight that my opposition  
17 wants there to be given.

18 Your Honor, it's getting close to  
19 closing time. What is the plan as far as --  
20 I mean, I'm trying to get Mr. Bello. I'm  
21 trying hard to get him and he's trying to get

1 his man from the parking situation, so, you  
2 know.

3 THE COURT: I want to see what -- how  
4 long the -- how long do you think Mr. Jose --

5 MR. KATZ: Montiel.

6 THE COURT: Montiel --

7 MR. KATZ: I don't think direct will  
8 take more than 20, 25 minutes, if even that  
9 much.

10 MR. GREEN: Come on now, you know you  
11 talk more than that.

12 THE COURT: So, lets go ahead with  
13 that testimony and then we'll see if anybody  
14 shows up. If Mr. -- what's the attorney's  
15 name?

16 MR. KATZ: The attorney, Adjie  
17 O'Bryant, he's not -- I can't imagine he's  
18 going to show up if he's in a death penalty  
19 case. I can't imagine they just say, hey,  
20 break early for that.

21 When my assistant comes back, I will

1 ask her to call up his office to -- she'll  
2 probably (inaudible). I'm going to ask my  
3 assistant to call up Mr. O'Bryant's office.

4 THE COURT: Sir, do you have a card,  
5 a business card?

6 MR. ABAKA: Yes, Your Honor.

7 MR. KATZ: Just one second, Your  
8 Honor, I just want to ask my assistant to see  
9 if Mr. O'Bryant is (inaudible).

10 I'd like to -- unless, Your Honor  
11 prefers to -- I'm asking you to qualify him  
12 as an interpreter.

13 THE COURT: All right. Abaka (ph)?

14 MR. ABAKA: Yes, sir.

15 THE COURT: All right. Ricardo (ph)  
16 Abaka. Sir, your card says, Court  
17 Interpreter, Certified Translator. Where are  
18 you certified?

19 MR. ABAKA: I'm certified in the  
20 State of Virginia and Maryland, Your Honor.

21 THE COURT: And what about the

1 District of Columbia.

2 MR. ABAKA: The Certification --  
3 there's a consortium of states that are in  
4 the consortium and we can practice anywhere  
5 really.

6 It's just that there is just a group  
7 of states that are in the consortium,  
8 including, I believe, North Carolina and  
9 other states.

10 THE COURT: Let me see if I  
11 understand what you are saying then. You are  
12 saying that if you are certified in the State  
13 of Virginia and the State of Maryland, those  
14 two certifications allow you to operate in a  
15 consortium of states?

16 MR. ABAKA: Correct, Your Honor.

17 THE COURT: What states are those?

18 MR. ABAKA: New Jersey, Delaware,  
19 Florida and some states out west.

20 THE COURT: What about the District  
21 of Columbia?