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**MEMORANDUM  
OFFICE OF THE CITY ATTORNEY  
ROOM 800 - CITY HALL**

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**TO:** Ronald D. Leonhardt, City Clerk  
Alderman Jeffrey Pawlinski

**FROM:** Bruce D. Schrimpf, Assistant City Attorney *BDS*

**DATE:** November 29, 2001

**RE:** Michael DeSautel, d/b/a "Daddios"

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Enclosed please find the following:

1. A copy of the proposed order submitted by myself to the court.
2. A copy of the proposed order submitted by Mr. Arena.
3. A copy of my objections to Mr. Arena's proposed order.
4. A copy of the transcriptions of the proceedings before Judge Dugan of November 13, 2001.

BDS:wt  
Enclosures  
47774/1033-2001-3357

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State ex rel. MICHAEL DESAUTEL,  
as agent for Mr. Entertainment, Inc.,  
d/b/a "DADDIOS",

Plaintiff,

v.

Case No. 01-CV-010580

Code No. 30704

CITY OF MILWAUKEE,

Defendant.

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**ORDER**

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The above-captioned matter came on for hearing before the court on November 13, 2001. The plaintiff appeared by Attorney Andrew M. Arena, Kopp, Arena & Bishop, S.C., 1110 North Old World Third Street, Suite 515, Milwaukee, Wisconsin. The defendant, City of Milwaukee, appeared by Grant F. Langley, City Attorney, by Bruce D. Schrimpf, Assistant City Attorney, Bruce D. Schrimpf in court.

After hearing oral argument, and reviewing the submissions of the parties, the court hereby:

**ORDERS**

1. That the action of the Milwaukee Common Council of November 6, 2001, revoking the Class "B" tavern license of the plaintiff is vacated.

2. The matter is remanded to the Milwaukee Common Council with directions to remand the matter to the Utilities and License Committee for further proceedings.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2000.

---

HONORABLE TIMOTHY DUGAN  
Circuit Court Judge

1033-2001-3357

286-8550

LAW OFFICES OF  
**KOPP, ARENA & BISHOP, S.C.**

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November 20<sup>th</sup>, 2001

The Honorable Timothy G. Dugan  
Milwaukee County Courthouse  
Branch 10  
901 North Ninth Street  
Milwaukee, WI 53233

Re: Mr. Entertainment, Inc., and Michael Desautel d/b/a Daddio's v. City of Milwaukee

Dear Judge Dugan:

Enclosed please find the Summons and Order for the above mentioned case. I am submitting it to be signed under the five (5) day rule.

Please return the order to my office, once it has been sign, in the self-addressed stamped envelope provided.

Please contact me at my office if you have any further questions. Thank You.

Sincerely,

**COPY**

Andrew P. Arena  
Attorney at Law

APA/mlg

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 10

MILWAUKEE COUNTY

Mr. Entertainment, Inc.,  
and  
MICHAEL DESAUTEL  
d/b/a DADDIO'S,  
4177 South Howell Avenue

**ORDER**

Plaintiff/Petitioner

Case No. 01-CV-010580  
Case Code:30703, 30704

v.

CITY OF MILWAUKEE,  
200 East Wells Street  
Milwaukee, WI 53202

Defendants/Respondent.

The Honorable Timothy G. Dugan

The above captioned matter having come before the Court on November 13, 2001 and the Plaintiff having appeared in person and by Counsel Kopp, Arena, and Bishop, S.C., by Andrew P. Arena and Michael F. Bishop and the City appeared by Assistant City Attorney Bruce Schrimpf and the City Clerk Ronald D. Leonhardt. After having heard testimony and the arguments of Counsel the Court hereby grants the request of the Plaintiff and enters a temporary restraining order in favor of the Plaintiff by finding that the Plaintiff will suffer irreparable harm and has demonstrated a likelihood of success on the merits. The Court hereby enters an order as follows:

**ORDER**

1. The City of Milwaukee is enjoined from taking action to suspend or revoke the Class B Liquor License and Cabaret License of the Plaintiff to operate the establishment known as DADDIO's which is located at 4177 S. Howell Av., in the City of Milwaukee.

2. The Court finds that the hearing before the Common Counsel Utilities and License Committee of the Common Council violated the due process rights of the Plaintiff and that the Plaintiff is entitled to have a new hearing before the Utilities and License Committee and the Common Council.

3. The Court hereby remands the summons and complaint for the License revocation of the Plaintiffs Class B License back to the President of the Common Council with instructions to provide the Plaintiff with a new hearing before the Utilities and License Committee without Alderman Pawlinski participating as the Chairman of the Committee or a voting member of the Committee or the Common Council. Additionally, the Assistant City Attorney is barred as acting as a prosecutor in the matter and advisor to the Committee.

4. Having disposed of all other matters before the Court, the Court hereby finds for reasons stated on the record that the Jurisdiction of the Court ceases and the Plaintiff may operate Daddio's pursuant to this injunction until the remand back to the Counsel is completed.

Dated at Milwaukee, Wisconsin this \_\_\_\_\_ day of November, 2001.

BY THE COURT

---

Hon. Timothy G. Dugan  
Milwaukee County Circuit Court, Br. 10

Drafted by: Attorney Andrew P. Arena

1110 N. Old World Third St.  
Riverfront Plaza Suite 515  
Milwaukee, WI 53203  
Phone: (414) 225-0788  
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# CITY OF MILWAUKEE

Form CA-43

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Assistant City Attorneys

November 28, 2001

Hon. Timothy G. Dugan  
Circuit Court Judge, Branch 10  
Milwaukee County Courthouse  
901 North 9<sup>th</sup> Street  
Milwaukee, WI 53233

Re: **Mr. Entertainment, Inc., et al. v. City of Milwaukee**  
**Case No. 01-CV-010580; City Attorney No. 1033-2001-3357**

Dear Judge Dugan:

The defendant/respondent hereby objects to the proposed order submitted by Mr. Arena under cover of November 20, 2001.

The reasons for objection are as follows:

First, a copy of the proposed order was not sent to the undersigned until the afternoon of November 28, 2001 when I called Mr. Arena and specifically requested a copy of the order. By that time I had already sent a proposed order to the court, believing that Mr. Arena had not provided the court with a proposed order.

The remainder of the objections of the defendants/respondents are premised on the fact that the proposed order is not what the court determined.

As to item number one, it is clear that the court never ordered the City of Milwaukee from taking any action to suspend or revoke the Class "B" liquor license or cabaret license of the plaintiff. It has simply enjoined the City of Milwaukee from closing the establishment based upon the proceedings before the Utilities and Licenses Committee of October 16, 2001, and the Milwaukee Common Council of November 6, 2001.



As to item number three, the court remanded the matter to the Milwaukee Common Council not the president of the Common Council [who was never made a party to these proceedings] with instructions to remand the matter to the Utilities and Licenses Committee for further proceedings. With respect to the participation of individuals, as recited in paragraph three, the court made no such dispositions. In fact, the court in relevant portion on these issues stated at page 108 of the transcript:

THE COURT: All right, then what I'm going to do is I'll grant judgment vacating the revocation by the city, remand the matter to the Common Council to – with direction to remand the matter to the Utilities and Licensing Committee for further proceedings.

I think it should also be understood that this case is over and done with. I'm not remanding it with directions to come to some conclusion and bring it back before this case – this Court. It is a remand, and the jurisdiction of this Court now ceases.

Further, with respect to any involvement of particular individuals either before the Common Council or the Utilities and Licenses Committee, the court specifically found at page 106, line 25, that the court that the committee hearing was invalidated and void. The court obviously, made no findings with respect to the Common Council. With respect to the involvement of Alderman Pawlinski or the Assistant City Attorney, at page 105 of the transcript, the court specifically stated [after Mr. Arena argued that Alderman Pawlinski should not be involved in the committee or council action] as follows:

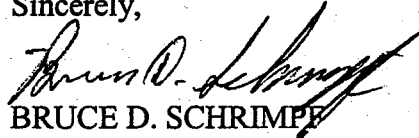
THE COURT: Well, I'm not going to rule one way or another whether or not he has to recuse himself. Certainly my ruling says he can't be on the Utilities Commission.

The court made no determination as to the further involvement of the undersigned.

Since, the court vacated the revocation of the Class "B" tavern license of the plaintiff/petitioner, it is obvious, under Chapter 125, Wis. Stats., that the plaintiff/petitioner may continue to operate this tavern until, unless, and if the Milwaukee Common Council once again revokes this license at any further proceeding. Thus, there is no need to "enjoin" the City from closing the premises.

In light of the gross errors of counsel in its proposed order, I would respectfully request that the court enter the order as drafted by the undersigned and sent under separate cover this day.

Sincerely,



BRUCE D. SCHRIMPE  
Assistant City Attorney

BDS:wt:47760

cc: Andrew Arena, Esq.

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
BRANCH 10

State ex rel. MICHAEL DESAUTEL, as agent for  
Mr. Entertainment, Inc., d/b/a "DADDIOS",

Plaintiff,

vs.

Case No. 01CV010580

CITY OF MILWAUKEE,

Defendant.

November 13, 2001

BEFORE THE  
HON. TIMOTHY G. DUGAN,  
Circuit Judge, Br. 10.

TRANSCRIPT OF PROCEEDINGS

A-P-P-E-A-R-A-N-C-E-S:

ANDREW P. ARENA  
MICHAEL F. BISHOP  
Kopp, Arena & Bishop, S.C.  
1110 N. Old World Third St.--Ste. 515  
Milwaukee, WI 53203-1117  
For the Plaintiff.

Grant F. Langley, City Attorney,  
By BRUCE D. SCHRIMPF  
Assistant City Attorney  
800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202  
For the Defendant.

**COPY**

\* \* \* \* \*

Linda A. Hughes,  
Official Reporter, Br. 10.

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

THE CLERK: Case 01CV010580, Mr. Entertainment, also known as Daddios, versus the City of Milwaukee.

Please state your names for the record.

MR. ARENA: Michael DeSautel, agent for Mr. Entertainment, Inc., doing business as Daddios, appears by in person and by counsel, Andrew Arena and Michael F. Bishop.

MR. SCHRIMPF: The City of Milwaukee appears by Grant F. Langley, Milwaukee City Attorney, and Bruce D. Schrimpf, Assistant City Attorney, and Bruce D. Schrimpf in court, and I appear with Mr. Ronald G. Leonard, the city clerk.

THE COURT: All right, we're here following the grant of a temporary restraining order by Judge Sullivan on Friday afternoon scheduling this matter before this Court for a hearing on a temporary injunction.

The matter involves the revocation by the City of Milwaukee of a liquor license for the plaintiff. And the question as before this Court at this time is whether or not the temporary restraining order should be converted to a temporary injunction until a hearing is held under Chapter 125 of the statutes.

Both parties have submitted substantial documentation regarding their positions. I understand

1 that the complaint asserts both a claim of constitutional  
2 violation of due process rights and requesting a  
3 certiorari review under Chapter 125 of the statutes.  
4 And the temporary restraining order relates to both of  
5 those claims.

6 It's my understanding that the parties believe  
7 that mostly, the arguments that would be made are based  
8 upon the record that's being submitted, although the  
9 plaintiff wishes to introduce some limited brief  
10 testimony regarding its assertion that Alderman Pawlinski  
11 had a bias prior to the committee hearing and should have  
12 recused himself from participating in that committee,  
13 and that the defense wants to introduce limited brief  
14 testimony regarding additional violations following the  
15 city's revocation proceeding, but before the paper work  
16 was actually served on the plaintiff.

17 Is that a fairly accurate description of the  
18 positions of the parties at this point?

19 MR. ARENA: Yes.

20 MR. SCHRIMPF: Yes.

21 THE COURT: All right, the plaintiff wants to  
22 call its witness?

23 MR. ARENA: Plaintiff would call Patty  
24 D'Acquisto.

25 THE COURT: Right up here, please, ma'am.

1 Would you raise your right hand, please.

2 **PATRICIA D'ACQUISTO**, being first duly sworn on  
3 oath to tell the truth, the whole truth, and nothing but  
4 the truth, testified as follows:

5 THE COURT: Thank you. Please be seated. Make  
6 yourself comfortable. You have to be real close to the  
7 microphone. It doesn't work real well. And would you  
8 tell us your first and last name and spell both for our  
9 court reporter, please.

10 THE WITNESS: Patricia D'Acquisto,  
11 P-a-t-r-i-c-i-a, D-'-A-c-q-u-i-s-t-o.

12 THE COURT: Thank you. You do have to be a  
13 little closer than that, unfortunately. Go ahead.

14 DIRECT EXAMINATION

15 BY MR. ARENA:

16 Q. Could you please state where you're employed.

17 A. I'm the owner of Studio 42 Hair Designs.

18 MR. SCHRIMPF: I'm sorry, your Honor. I did  
19 not hear that.

20 A. I'm the owner of Studio 42 Hair Designs.

21 MR. SCHRIMPF: Oh.

22 MR. ARENA:

23 Q. And can you tell us where Studio 42 Hair Designs is  
24 located?

25 A. It's located at 4242 South Howell.

1 Q. And do you know who your alderman is?

2 A. Mr. Jeff Pawlinski.

3 Q. And do you know who Mike DeSautel is?

4 A. Yes, I do.

5 Q. And do you know where and what Daddios is?

6 A. Yes, I do.

7 Q. And what is Daddios?

8 A. It is a bar kitty-corner from my business.

9 Q. And what type of contacts have you had with Alderman  
10 Pawlinski in the past?

11 A. I'm in the Howell Avenue Business Association and he's on  
12 a couple of committees, and I've needed to call him for  
13 certain things and he's come and talked to our -- our  
14 Howell Avenue Business Association. And I'm also on the  
15 Home and School Board at St. Veronica's Church, and he  
16 came and talked to our school.

17 Q. And prior to October 16, which was the Utilities and  
18 License Committee hearing, did you have an opportunity to  
19 talk to Mr. Pawlinski?

20 A. Could you repeat that? I'm sorry.

21 Q. Prior to October 16, the date of the Utilities and  
22 License Committee hearing, prior to that date, did  
23 you have an opportunity to talk to Mr. Pawlinski?

24 A. Yes, he was at our home and school meeting at  
25 St. Veronica's Church on October 9.



1 Q. And what was the purpose of that meeting?

2 A. The Home and School Board wanted to -- we have -- four  
3 times a year, we invite people to come in and speak to  
4 our school. And we asked Mr. Pawlinski to come to talk  
5 about neighborhood concerns.

6 Q. And in regards to that meeting and what had occurred, I  
7 had contacted you; correct?

8 A. Correct.

9 Q. And what were the issues that were to be discussed at  
10 that meeting at St. Veronica's?

11 A. We wanted him to talk about -- because of the incident  
12 on September 11, we wanted him to talk about trick or  
13 treating. We wanted him to talk about, basically,  
14 neighborhood concerns, the traffic on Whitnall Avenue.  
15 We asked him to talk about Daddios, just the neighborhood  
16 concerns, what was happening in our neighborhood, around  
17 our -- in our community.

18 Q. And do you recall the date of that meeting?

19 A. October 9. It was on a Tuesday, I'm pretty sure.

20 Q. October 9, 2001?

21 A. Yes.

22 Q. And what did Mr. Pawlinski state in regards to Daddios at  
23 that meeting?

24 A. He was discussing that the neighbors were concerned and  
25 that they were going to be going to court or whatever it

1 was on October 16 and that we could watch them on the  
2 court channel if we wanted to. He said it would probably  
3 be a lengthy thing and that he was going there to help  
4 the, you know, going there in regard to the neighbors.

5 Q. And did he say anything about Mr. DeSautel?

6 A. About Michael himself?

7 Q. Yes.

8 A. He brought up the -- he brought up that he was the head  
9 of the licensing department and that, you know, that that  
10 bar has been a thorn in his side for three years, and  
11 that being that he didn't -- he told us that he did --  
12 he said to the people that I don't know if you all know  
13 this, but I'm in charge of licensing, liquor licensings  
14 or something, and you would think that a man like that  
15 would bow down or lay down. He made a comment, like he  
16 should bow down to him or some sort of comment like  
17 that. I can't tell you his exact words.

18 And then I made the comment back, do you mean  
19 like sit pretty? And then that was the end of it.  
20 Everybody kind of just gave up and it was over.

21 Q. Based on his demeanor and he what he stated, what was  
22 your interpretation of what Mr. Pawlinski--

23 MR. SCHRIMPF: Objection. We are not here for  
24 her interpretation. We're here for the facts.

25 THE COURT: I'll -- I'll sustain the

1 objection. It's calling for her to speculate as to what  
2 he was doing.

3 MR. ARENA:

4 Q. Did Mr. Pawlinski state that he was going to stand with  
5 the neighbors in the revocation of the license?

6 A. Stand meaning -- stand?

7 Q. Stand with the neighbors, be on their side. You said  
8 earlier in your testimony that you believed he said that  
9 the neighbors were unhappy and he would stand with them.  
10 Is that what he said?

11 A. Well, in my viewpoint, yeah, that -- I mean, it sounded  
12 like he was with the neighbors, yes.

13 MR. ARENA: I have no further questions.

14 THE COURT: Mr. Schrimpf?

15 MR. SCHRIMPF: Thank you very much, your Honor.

16 CROSS-EXAMINATION

17 BY MR. SCHRIMPF:

18 Q. Is it Miss D'Acquisto?

19 A. Yes.

20 Q. You indicated that the home and school meeting was going  
21 to be called for the purposes of discussing a number of  
22 issues, one of which was Daddios. Did I hear your  
23 testimony correct on that?

24 A. Yes, you did.

25 Q. Are you in a position to know -- well, strike that.

1 Did you have any particular concern about Daddios?  
2 A. No, I don't.  
3 Q. Do you know whether or not the Home and School  
4 Association had any concern about Daddios?  
5 A. The reason why they wanted to bring it up is because that  
6 the meeting was on neighborhood concerns, and I think  
7 Sarah had called and asked that day like what more --  
8 like what we really wanted them to talk more on. And  
9 Daddios has been -- was on the news, and so then Linda  
10 Yanazak (phonetically) that was running it said, yeah,  
11 she wanted to, since it was on the news and it is in our  
12 neighborhood that she wanted Mr. Pawlinski to touch on  
13 that subject.  
14 Q. I'm sorry.  
15 A. That wasn't the reason for our meeting.  
16 Q. I understand.  
17 A. It wasn't just all about Daddios and we didn't really,  
18 you know, it was more about the traffic and stuff like  
19 that.  
20 Q. Okay. So you indicated that there was a woman by the  
21 name of Sarah that had called you. Do you know that  
22 woman's full name?  
23 A. No -- Sarah Hawks maybe, I think.  
24 Q. Sarah Hawks. Have you ever met Sarah Hawks?  
25 A. Yes, I have.

1 Q. And is she the lady seated to my left?

2 A. Yes.

3 Q. And Sarah had called you the day of the meeting?

4 A. She didn't call me. She called Linda back that was  
5 running the meeting and asked exactly what -- she wanted  
6 more detail, I think, what she wanted Jeff to hit on that  
7 day.

8 Q. Okay. And one of those topics was Daddios because of the  
9 news coverage of Daddios?

10 A. Yes, I believe that's where Linda got it from.

11 Q. All right. Now during the course of the meeting, do you  
12 recollect Alderman Pawlinski using words to the effect  
13 that he was chairman of the Utilities and Licenses  
14 Committee?

15 A. Yes.

16 Q. Okay, and that's what you meant when you said that he was  
17 sort of the head of the licensing department?

18 A. Yeah.

19 Q. Okay. And as I understood Alderman Pawlinski's comments  
20 to the group that you heard, it was to the effect that  
21 he, after all, was chairman of the Utilities and Licenses  
22 Committee and also alderman for the district. Is that  
23 right?

24 A. Couldn't tell you exactly.

25 Q. Okay.

1 A. I know he said that he was the head of the licensing, you  
2 know, liquor licensings or whatever it was, is what I got  
3 from it and that you would think a man like that would,  
4 you know, bow down or some kind of comment like that.

5 Q. Perhaps be more careful?

6 A. No, it was bow down because I made the comment back like,  
7 do you mean sit pretty. So it was more -- it wasn't --  
8 it was bow down.

9 Q. All right. Now did Alderman Pawlinski indicate that he  
10 was going to get the license or revoke the license or  
11 take the license of Mr. DeSautel?

12 A. Did he use those words, are you asking me?

13 Q. That's correct. Did he use those words?

14 A. I can't recall that to be -- be said.

15 Q. Okay. So did he indicate that if the matter was going  
16 to come up that he was going to vote in favor of  
17 revocation? Did he use those words?

18 A. No.

19 MR. SCHRIMPF: That's all I have, your Honor.

20 THE COURT: Any other questions?

21 MR. ARENA: Yes, please.

22 REDIRECT EXAMINATION

23 BY MR. ARENA:

24 Q. Miss D'Acquisto, do you know if the alderman had met with  
25 anybody else concerning Daddios prior to the October 16

1 utilities and licensing hearing?

2 A. Do I know what?

3 Q. Do you know if Mr. Pawlinski met with anybody else or had  
4 a neighborhood meeting concerning Daddios prior to the  
5 October 16 utilities --

6 A. I got a letter in the mail saying that they were having  
7 a neighborhood meeting. I don't know if Pawlinski was  
8 going to be there or not.

9 Q. Were you ever contacted by his office in regards to the  
10 hearing on October 16?

11 A. No.

12 MR. ARENA: I have nothing further.

13 MR. SCHRIMPF: Nothing further, your Honor.

14 THE COURT: Thank you, ma'am. You may step  
15 down. Any objection to excusing the witness from further  
16 testimony?

17 MR. ARENA: No objection.

18 THE COURT: You're also free to leave if you'd  
19 like, ma'am. That's the testimony from the plaintiff,  
20 correct?

21 MR. ARENA: That's correct, your Honor.

22 MR. SCHRIMPF: Your Honor, I would call  
23 Mr. Craig Plain.

24 THE COURT: Right up here, please, sir. Raise  
25 your right hand, please.

1                   **CRAIG PLAIN**, being first duly sworn on oath to  
2 tell the truth, the whole truth, and nothing but the  
3 truth, testified as follows.

4                   THE COURT: Thank you. Please be seated. Make  
5 yourself comfortable. As you've heard, it doesn't work  
6 well, so you have to speak directly into it.

7                   THE WITNESS: Okay.

8                   THE COURT: And would you tell us your first  
9 and last name and spell both for our court reporter,  
10 please.

11                   THE WITNESS: My name is Craig Plain,  
12 C-r-a-i-g, P-l-a-i-n.

13                   THE COURT: Thank you.

14   DIRECT EXAMINATION

15 BY MR. SCHRIMPF:

16 Q. Your address, Mr. Plain?

17 A. 4178 South First Street.

18 Q. Does that make you a neighbor of an entity known as  
19 Daddios?

20 A. Yes, my property joins his on the backside.

21 Q. Okay. Are you, in fact, one of the individuals who filed  
22 a complaint before the Milwaukee Common Council seeking  
23 revocation of the Class B liquor license of Mr. Michael  
24 DeSautel as agent for Mr. Entertainment?

25 A. Along with my neighbors, yes.



1 Q. And did you testify at a proceeding before the Utilities  
2 and Licenses Committee on October 16 in which you were  
3 seeking the revocation of the license?

4 A. Yes, I did.

5 Q. And following the hearing of October 16, 2000 (sic),  
6 do you recollect what the Common Council, or what  
7 the Utilities and Licenses Committee recommended?

8 MR. ARENA: Objection, irrelevant. This has  
9 nothing to do with what he offered as proof as to --

10 MR. SCHRIMPF: Fine, I will withdraw the  
11 question.

12 Q. Did you also address the Milwaukee Common Council on the  
13 date of the proceeding before the Milwaukee Common  
14 Council?

15 A. Yes, I did.

16 Q. And were you present in the chamber of the Milwaukee  
17 Common Council when the Common Council as a body voted to  
18 revoke the Class B tavern license?

19 A. Yes, I was.

20 MR. ARENA: I would object. The record is  
21 clear on all of this, your Honor.

22 THE COURT: Let's -- let's get to the point.

23 MR. SCHRIMPF: Okay.

24 THE COURT: You've got him having been there.  
25 I know from what's been submitted what the Council did,

1           so --

2                           MR. SCHRIMPF: All right.

3 Q.    On the evening of November the 6th, were you at your  
4        home?

5 A.    Yes, I was.

6 Q.    And was that Daddios still operating?

7 A.    Yes, they were.

8 Q.    What, if anything, did you observe with respect to  
9        patrons of Daddios at closing time?

10 A.   Well, later in the evening, about 11:00 -- 11:30, there  
11        had been a car that had been revving its engine  
12        repeatedly in the parking lot, pulling back and forth,  
13        back and forth, and we didn't call that in at that time.

14                    But a little bit later, 12:30 or so, we heard a  
15        loud boom box stereo, loud car stereo. We looked out.  
16        We saw a van in Daddios' parking lot with its rear doors  
17        open and the stereo playing quite loudly, several men  
18        gathered around talking quite loudly. We did call the  
19        police on that one.

20                    The van left before the police could respond.  
21        And then shortly thereafter, shortly after that, after  
22        the van left, a red car pulled out of Daddios' parking  
23        lot, stopped at First and Plainfield in front of my  
24        household, sat there revving its engine loudly, and then  
25        went screaming off westbound on Plainfield, blaring its

1 horn all the way down the -- down the neighborhood.

2 Q. And did this disturb you, sir?

3 A. Oh, yes, it woke my children up.

4 Q. Did you videotape it, sir?

5 A. Yes, I did.

6 Q. And at my request, did you make copies of the videotape?

7 A. Yes, I did.

8 Q. And are these true and correct copies of the videotape?

9 A. Yes, they are.

10 Q. Now, as I understand it, you were dealing with a new  
11 video camera?

12 A. Yes.

13 Q. And you misset the time on the video camera?

14 A. The time is one hour fast. So you have to subtract an  
15 hour from the screen time.

16 Q. So the time that appears at the bottom of the screen is  
17 one hour ahead of what it should be?

18 A. Correct.

19 THE COURT: The reporter actually marks the  
20 exhibits.

21 MR. SCHRIMPF: Oh, I'm sorry.

22 MR. ARENA: Well, this is on a videotape. Why  
23 don't we just leave it to the Court to review the video-  
24 tape. The Court can make its own judgment as to what it  
25 sees.

1 MR. SCHRIMPF: That's just fine. I just wanted  
2 to get it marked and lay a foundation.

3 MR. ARENA: For purposes of the record, I will  
4 object, though, that the videotape is hearsay.

5 MR. SCHRIMPF:

6 Q. You are the person who made the videotape?

7 A. Yes, sir, I am.

8 Q. And it accurately and truthfully records the matters  
9 therein at the times and dates indicated, except for the  
10 one hour difference that you've testified to?

11 A. Yes, it does.

12 MR. SCHRIMPF: Your Honor, I'm sorry. I don't  
13 understand the nature of the objection.

14 THE COURT: I'll overrule the objection.

15 MR. SCHRIMPF: Thank you.

16 THE COURT: Let's mark it as Exhibit 1.

17 MR. SCHRIMPF: That's all I have at this time,  
18 your Honor.

19 THE COURT: And we have to let the reporter  
20 mark the exhibit before we can continue talking.

21 (Exhibit 1 marked for identification.)

22 THE COURT: All right. Mr. Arena?

23 CROSS-EXAMINATION

24 BY MR. ARENA:

25 Q. Now, Mr. Plain, at the utilities and licensing hearing on

1 October 16, you also submitted a videotape; correct?

2 A. Yes, I did.

3 Q. And you're aware at the conclusion of that hearing, it  
4 was determined that those videotapes really didn't show  
5 anything that you thought they were attempting to  
6 depict. Correct?

7 MR. SCHRIMPF: Objection. I don't think that's  
8 an accurate summation of the committee's views of those  
9 videotapes. And I would suggest that the Court read the  
10 transcript as to what the committee determined with  
11 respect to those tapes.

12 THE COURT: All right, I'll overrule the  
13 objection. You should answer if you can.

14 THE WITNESS: Could you repeat the question,  
15 please?

16 MR. ARENA:

17 Q. Isn't it true that Alderman Herron disagreed with what  
18 you believed those videotapes showed at the conclusion of  
19 that hearing?

20 A. To be -- I can't recall his objection. He may have. I  
21 don't recall.

22 Q. Now you did not go into Daddios on November 6, did you?

23 A. No, I did not.

24 Q. And that is a Tuesday night, I believe?

25 A. I don't have a calendar in front of me. Yes.

1 Q. And it's your testimony that you saw a car revving its  
2 engine, going back and forth in the parking lot. Which  
3 parking lot are you talking about?

4 A. The Daddios' parking lot just south of the building.

5 Q. And what kind of car was that?

6 A. It was an older -- it looked like maybe a Toyota Supra  
7 type small sports car.

8 Q. When you say revving its engine, what do you mean?

9 A. I mean about 10:30, he pulled into the lot, 10:00 --  
10 10:30, I can't quite recollect the specific time --  
11 pulled into the lot and then he was pulling forward,  
12 pulling back, pulling forward, pulling back, stopping,  
13 gunning his engine loudly. His muffler was in horrible  
14 repair; then again pulling forward and pulling back.  
15 He then got out of his car and walked into Daddios.

16 Approximately half an hour later, he came back  
17 and got into his car and he spent several hours sitting  
18 in car and every once in a while, he'd rev the engine up.

19 MR. ARENA: I'll object. It was not responsive  
20 to my question.

21 THE COURT: Sure, it is. What do you mean by  
22 revving.

23 MR. ARENA: Well, I didn't ask him what  
24 happened an hour later.

25 THE COURT: That's what he meant by revving.

1 I'll overrule the objection.

2 MR. ARENA:

3 Q. Was this red car looking for a place to park in the  
4 parking lot?

5 A. That wasn't the red car. This is -- this is a separate  
6 car. The red car had been parked in the Daddios' parking  
7 lot, or I didn't -- I didn't see that, what time that  
8 person parked.

9 Q. It's quite true that you've been very vocal in opposition  
10 to Mr. DeSautel's liquor license; correct?

11 A. I've responded to court hearings and done what my part --  
12 what I think is my part to help my neighborhood.

13 Q. And it's certainly your position that you would like to  
14 see the license of Mr. DeSautel revoked; correct?

15 A. Due to the things that happened in our neighborhood, yes.

16 Q. And to that end, you've organized neighborhood meetings  
17 and had discussions wherein it was decided that you would  
18 document every and any little thing that occurred in the  
19 vicinity of Daddios; correct?

20 A. Under direction of the Milwaukee Police Department giving  
21 us that advice, yes.

22 Q. And you have documented such things as where motorcycles  
23 had parked; correct?

24 A. Because they were illegally parked, yes.

25 Q. And you've documented such things as trash with three

1 pictures, each of which contains one bottle here, maybe a  
2 can there; correct?

3 A. We only started taking pictures in about September. So  
4 a lot of times we didn't get the, you know, the empty  
5 12-pack that other neighbors have testified to or the --

6 Q. That's not my question.

7 A. Well, then, yes, we've taken pictures of single bottles  
8 here and there.

9 Q. And you've taken pictures of water flowing underneath the  
10 dumpster of Mr. DeSautel's?

11 A. The empty beer that came flowing out of the dumpster,  
12 yes.

13 Q. You don't know whether that was beer or not?

14 A. Yes, I do. I was there. I saw them dump the bottles  
15 in. The beer started flowing out of the dumpster, went  
16 down the street, across the sidewalk into the gutter. I  
17 smelled it. The guys helping me do the roofing smelled  
18 it. It was beer.

19 Q. And your garage roof also flows water onto that same  
20 area, doesn't it?

21 A. I sorry?

22 Q. Your garage roof on your property, water flows off of  
23 that garage roof into the driveway of Mr. DeSautel,  
24 doesn't it?

25 A. No, my gutters empty into my driveway.



1 Q. Did you attend a meeting with Alderman Pawlinski in  
2 regard to the revocation of this license?

3 A. We -- the neighborhood, the neighbors have gotten  
4 together with Alderman Pawlinski to voice our concerns.  
5 We never once held a meeting specifically to go forward  
6 with revocation. We went; we gathered. We wanted to  
7 find out what we could do, what our options was -- were.  
8 And, I mean, the alderman is part of the process. We  
9 invited him there.

10 Q. And you have, in fact, met with members of the City  
11 Attorney's Office for the City of Milwaukee; correct?

12 A. I've talked -- like Mr. Schrimpf, or --

13 Q. Yes.

14 A. -- who? Yeah.

15 Q. Did you not meet with him and Mr. Halbrooks and, I  
16 believe, Genevieve, Genevieve Crowley-O'Sullivan in  
17 regards to drafting the affidavits for a nuisance action  
18 before Judge Moroney that was filed by the city on your  
19 behalf?

20 A. The first time I met them was at the hearing with Judge  
21 Moroney.

22 Q. Who drafted the affidavits that have been supplied to the  
23 courts and the Utilities and License Committee?

24 A. I did and by -- via e-mail with Willie Taylor, who I  
25 believe is a clerk at the City Attorney's Office.

1 Q. Are you saying that you never had any assistance in what  
2 to put in those affidavits from any city attorney?

3 A. I drafted an affidavit. I e-mailed it to Willie Taylor.  
4 She -- she put it in the proper formatting, and then she  
5 mailed it back for my -- my review.

6 Q. So that somebody from the city, who was employed by the  
7 city, assisted you by putting your affidavit in the  
8 proper format?

9 A. Yes.

10 MR. ARENA: I have no further questions, your  
11 Honor.

12 MR. SCHRIMPF: I have nothing further, your  
13 Honor.

14 THE COURT: Thank you, sir. You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: All right, that's the evidence  
17 that's intended to be introduced at -- the oral testimony  
18 evidence that would be introduced today. Is that  
19 correct?

20 MR. SCHRIMPF: That is correct, your Honor.

21 THE COURT: Mr. Arena, correct?

22 MR. ARENA: That's correct.

23 THE COURT: All right. The plaintiff want to  
24 make your argument as to why the injunction should be  
25 granted.

1 MR. ARENA: Yes, I do, Judge. First of all,  
2 I'd like to state that we believe that the Court has  
3 authority to grant this injunction. We've given that  
4 authority in our brief. Clearly, there is case law in  
5 Bruno v. City of Kenosha.

6 Chapter 125.12(d) talks about a writ of review  
7 on certiorari and talks that this is a civil action,  
8 and it is well established law and well grounded in  
9 Chapter 813, specifically 813.02, that the court has the  
10 authority to issue such an injunction. We're asking the  
11 court to do so pending the completion of this action,  
12 which there are certain time limits in the statute which  
13 would limit the length of time that this -- that the city  
14 would be enjoined.

15 Specifically, excuse me -- specifically, one of  
16 the things that is at issue here is due process, whether  
17 or not the Common Council had jurisdiction to act over  
18 the matter in which they did. To that regard, it is  
19 well stated in our brief that Chapter 90 -- I think it's  
20 Chapter 90-1-d -- states the procedure in which a hearing  
21 such as this should take place.

22 I want to point out to the Court at this time  
23 that this matter concerned the liquor license of Daddios  
24 which was issued in May of 2001 without police objection  
25 and without neighborhood objection, without appearance

1 before the Common Council.

2 Approximately in the beginning of October,  
3 there was a summons and complaint filed pursuant to  
4 the procedures of Chapter 90 by citizens. Chapter 90  
5 gives specific rules in which that complaint can go  
6 forward. One of those rules is that the city attorney  
7 must prosecute the matter.

8 And in this particular case, it is clear from  
9 the transcripts that Mr. Schrimpf did not prosecute  
10 the matter, but a staff member of the alderman who was  
11 presiding over the district and presiding over the  
12 Utilities and License Committee.

13 THE COURT: All right, you want to cite me to  
14 the ordinance section?

15 MR. SCHRIMPF: Chapter 90, your Honor, appears  
16 as an exhibit to --

17 THE COURT: Right, I have -- I'm at that  
18 location.

19 MR. SCHRIMPF: Okay.

20 MR. ARENA: 90-12-b-4.

21 THE COURT: --b-4?

22 MR. ARENA: And b-3.

23 THE COURT: All right, it says b-3: The city  
24 attorney shall first present evidence in support of  
25 the complaint. And after the city attorney rests,

1 the licensee shall present evidence.

2 MR. ARENA: Correct. Now a well-known tenet of  
3 administrative law is that a body that promulgates rules  
4 must follow its own rules. Otherwise, that alone can be  
5 considered a due process violation. That is one thing,  
6 that did not occur here.

7 But what's more troubling is, and what I think  
8 it shows is some of the underhandedness by the city and  
9 total disregard for due process rights of my client.  
10 What is that underhandedness.

11 First of all, the city on behalf of the  
12 neighbors, represented by Assistant City Attorney  
13 Halbrooks, an assistant of his, and Bruce Schrimpf  
14 brought a nuisance action, and they attempted to obtain  
15 the issuance of a temporary injunction to bring about the  
16 closing and the revocation of the license prior to its  
17 own proceedings in Chapter 90 take place. They lost at  
18 that hearing and they lost on a motion for directed  
19 verdict.

20 They then immediately went into the issue of  
21 seeking to file a motion to dismiss their own nuisance  
22 action. And part of the reason, I believe, that had to  
23 occur is that they were filing a nuisance action pursuant  
24 to Chapter 90, wherein the same witnesses, the same  
25 complaints, and the same affidavits were supplied with

1 the summons and complaint. I believe that's a pure case  
2 of issue preclusion, which is covered in the brief and  
3 I'll probably go into a little bit more lengthy.

4 THE COURT: Well, how can it be issue  
5 preclusion if there is no final decision by the court?  
6 And if the hearing was just a temporary issue, a question  
7 of issuing a temporary restraining order, there are a  
8 variety of reasons why the court does not grant a  
9 temporary restraining order.

10 It does not finally decide the case. So I  
11 don't see how issue preclusion would apply.

12 MR. ARENA: That is a valid point, but there  
13 are five fundamental fairness tests that the Court is  
14 required to go through on issue preclusion, which do  
15 appear in our brief at Page 5. I won't go into them at  
16 length, but I think that there is an argument for every  
17 issue that the court must determine at issue preclusion,  
18 as issue preclusion.

19 THE COURT: But the issue has to have been  
20 determined at some point for it to be precluded. And  
21 what you've described to me is that Judge Moroney never  
22 made those decisions.

23 MR. ARENA: Well, one of the things that Judge  
24 Moroney has to decide at that hearing is whether or not  
25 there is going to be a likelihood of success on the

1 merits.

2 THE COURT: Right, but hold on. Judge Sullivan  
3 may have made that finding, but it's before me anew and  
4 afresh. And if I conclude -- I'm not bound by Judge  
5 Sullivan concluding that there is a likelihood of  
6 prevailing on the merits at the time of the issuance of  
7 a temporary restraining order. So how can I be bound by  
8 Judge Moroney and whatever finding he may have made.

9 MR. ARENA: I'm saying you're -- I believe that  
10 it may be possible you're bound by that finding, so that  
11 there is a contradictory finding by two different courts.

12 THE COURT: Then why are we having a hearing  
13 today. If I'm bound by Judge Sullivan, why are we having  
14 a hearing today? Why isn't this just a temporary  
15 injunction?

16 MR. ARENA: Because Judge Sullivan merely  
17 maintained the status quo until the matter could be heard  
18 further today.

19 THE COURT: Isn't that what Judge Moroney  
20 decided not to do under those circumstances?

21 MR. ARENA: That is true. That is what he also  
22 did.

23 THE COURT: Okay. Go ahead.

24 MR. ARENA: In going back more clearly to the  
25 crux of one of our due process arguments, and that is --

1 concerns the matter of Marris v. City of Cedarburg, which  
2 is a case that -- would you like the cite of that case?

3 THE COURT: Sure; 176 Wis. 2d 14.

4 MR. ARENA: Thank you.

5 THE COURT: Okay.

6 MR. ARENA: Now Marris stands for the long  
7 proposition that you cannot act from a position or bias  
8 or advise an administrative decision-making body in the  
9 capacity once you're an advocate, and I believe that's  
10 partially what Mr. Schrimpf did.

11 And, more importantly, I think that Alderman  
12 Pawlinski clearly engaged in that prehearing bias. We've  
13 presented a witness today, and I think more strongly what  
14 verifies that is in the transcript itself.

15 Now Alderman Pawlinski had his legislative  
16 assistant basically prosecute the case. If you look  
17 at the transcript, she gives a lengthy, lengthy  
18 opening statement where she makes such statements as:  
19 Mr. DeSautel has had plenty of chances to improve his  
20 business, and I'm at Page 11, Line 13 -- to improve his  
21 business and eliminate this intolerable behavior. You  
22 will also hear from very patient neighbors who have also  
23 given Mr. DeSautel endless chances to correct illicit  
24 behavior.

25 Page 12, Line 1: Ultimately, the fact is that



1 Mr. DeSautel has had ample opportunity to make change.  
2 He makes many promises, but as you will see, never  
3 fulfills them.

4 Line 15, Page 12: During the hearing,  
5 Mr. DeSautel may claim that the unruly patrons parking  
6 in front of the neighbors' home are not from his  
7 establishment, Daddios, but rather from other local  
8 taverns. However, I attest to the committee that this is  
9 not the case. Of the 12 other liquor licensed establish-  
10 ments within one square mile of Daddios -- and I have a  
11 map that I will be sending around, also -- Alderman  
12 Pawlinski's office has documented just three complaints  
13 in total over the past five years.

14 Page 16, Line 23: The neighbors deserve peace,  
15 and the time has come for action. The neighbors' desire  
16 for revocation is strong, unified, and uncompromising.

17 At this time I will call our first witness,  
18 Mr. Craig Plain.

19 She actually uses the words, "our first  
20 witness." That's followed by strong summation remarks  
21 that it is time for revocation. That is the legislative  
22 assistant to the alderman acting in that position.

23 The alderman then presides over the hearing  
24 wherein that legislative assistant goes through numerous,  
25 numerous attempts and satisfactory, successful attempts

1 at putting into the record evidence collected by her in  
2 support of the neighbors, evidence collected by her in  
3 her duties, evidence that was rehabilitated by  
4 Mr. Schrimpf in his cross-examination or advisory role --  
5 I don't know which.

6 And in regards to that, I'll refer you to  
7 Page 31 and Page 32. I won't go through them at length  
8 because the Court does have a transcript. There are  
9 numerous, numerous examples in the transcript of  
10 Mr. Pawlinski's bias.

11 THE COURT: Why don't you point out a couple  
12 while you're on 31 and 32.

13 MR. ARENA: Page 27 of Volume One, the October  
14 16 hearing.

15 MR. SCHRIMPF: Can I just ask for a second  
16 while I get that out. Page 37?

17 MR. ARENA: Page 27.

18 MR. SCHRIMPF: Twenty-seven.

19 MR. ARENA: Line 11, here it is:

20 I think to clear that up, though, the e-mails  
21 that Mr. Arena is referring to are e-mails that  
22 Mr. DeSautel e-mailed to my office, and the chronology  
23 that you see are actions that the office took to contact  
24 Mr. DeSautel as opposed to the other way around.

25 He constantly circumvented and supplanted the

1 record in the matter whenever it was necessary to fit  
2 what he wanted to have his position prevail to be. And  
3 it's just a clear example of the bias.

4 If you go to Page 29, Line 19, Mr. Pawlinski  
5 questions his own legislative assistant to rehabilitate  
6 and clarify her testimony as to what his office policy  
7 and position is in regards to Mr. Pawlinski. Line 19.

8 MR. SCHRIMPF: Page 29?

9 MR. ARENA: Yes.

10 MR. SCHRIMPF: There is no such thing there.

11 MR. ARENA: Well --

12 MR. SCHRIMPF: Are you in Volume One?

13 MR. ARENA: I'm in Volume One. Go to Line 11,  
14 counsel.

15 MR. SCHRIMPF: Oh.

16 THE COURT: At least my copy, the numbers are  
17 blocked out on the photocopy, but it begins:

18 Chairman Pawlinski: Before we call up  
19 Mr. Plain, I have a couple questions, is that --  
20 quick questions. Is that what you're referring to?

21 MR. ARENA: Yes, that's what I'm referring to.

22 THE COURT: All right, and from that line down  
23 through?

24 MR. ARENA: If you go through 24 and even  
25 beyond, I'm not -- I don't want to sit here and read the

1 transcript to the Court.

2 THE COURT: Right. No, I appreciate having  
3 references to what you're relying on specifically. It's  
4 a broad transcript.

5 MR. ARENA: That's on Page 29, continues  
6 through Page 30.

7 On Page 34, Line 13, Miss Hawks is introducing  
8 evidence and verification to go along with these  
9 complaints of Mr. Plain and Mr. Vlies, the people known  
10 as the Breitzmans.

11 THE COURT: I'm sorry. Which page was that?

12 MR. ARENA: Page 34.

13 THE COURT: Okay.

14 MR. ARENA: On Page 37, Mr. Plain actually  
15 brings additional photos and has Sarah Hawks introduce  
16 them into the record on his behalf.

17 On Page 75 --

18 THE COURT: That I don't have.

19 MR. ARENA: Don't you have a copy -- the  
20 original copy of the transcript? I don't have that as  
21 my --

22 MR. SCHRIMPF: They should be Exhibits 10A, 10B  
23 and 10C to the affidavit of Copeland.

24 THE COURT: All right.

25 MR. SCHRIMPF: And you're at Page 75 now?

1 MR. ARENA: Page 75, which is what was known as  
2 Volume One in the transcripts that were provided to me.  
3 MR. SCHRIMPF: All right.  
4 THE COURT: All right, which is Exhibit 10A.  
5 MR. ARENA: At this point at Line 1, Alderman  
6 Pawlinski interjects his interpretation of some  
7 videotapes supplied by a witness. And he's asking the  
8 witness about the videotape and where it was taken from  
9 and all this sorts of stuff.  
10 THE COURT: I'm sorry. This is Page 75?  
11 MR. ARENA: Page 75.  
12 MR. SCHRIMPF: It starts out, Chairman  
13 Pawlinski: At what vantage point are you videotaping  
14 this from? Is that --  
15 MR. ARENA: That's the line, correct.  
16 THE COURT: I must be in the wrong one then.  
17 MR. ARENA: You might not be in Volume One.  
18 MR. SCHRIMPF: Your Honor, look at Exhibit  
19 No. 10C.  
20 THE COURT: All right, 10C.  
21 MR. SCHRIMPF: 10C, Page 75, starting from the  
22 top.  
23 THE COURT: All right, that begins:  
24 Chairman Pawlinski: At what vantage point  
25 are you videotaping -- okay, so this is actually 10C of

1 Mr. Copeland's affidavit.

2 MR. ARENA: Which I believe what 10C is, is a  
3 photocopy of the transcripts. I believe the Court should  
4 be supplied the original copies from the city, that those  
5 transcripts are in control of the city or the city  
6 clerk. I don't know who holds them or maintains them,  
7 just --

8 THE COURT: Well, unless there is some dispute,  
9 a copy should be sufficient. All right, on Page 75?

10 MR. ARENA: Correct. My point there is it's  
11 just more videotaping and investigation of the issue by  
12 the chairman, Mr. Pawlinski.

13 On Page 85, the chairman, Alderman Pawlinski,  
14 attempts to testify as to a factual issue that came up  
15 and give his input on what the facts were. And, in fact,  
16 at Line 2 on Page 86, Mr. Schrimpf advises him:

17 Mr. Chairman, you're not in the position of  
18 testifying.

19 On Page 87, Line 25, Mr. Pawlinski then makes a  
20 record about the issue and a record on a meeting that he  
21 had with Mr. DeSautel and then goes on to cross-examine  
22 Mr. DeSautel in an adversarial manner, which to me just  
23 reeks of bias, and I will leave the Court to review that.

24 MR. SCHRIMPF: What page was that, counsel?

25 MR. ARENA: That is Page 87, Line 25, Page 88,

1 line -- well, it goes on through most of Page 88.

2 I direct the Court generally to Page 126, 127,  
3 and 128 where, again, Mr. Pawlinski goes on a cross-  
4 examination of Mr. DeSautel in what I consider to be  
5 an adversarial manner.

6 On Page 141, the Chairman Pawlinski makes a  
7 record as to actually subpoenaing a witness, a police  
8 officer, to appear at the hearing and testify as to some  
9 alleged events that occurred on a particular date. Those  
10 are just some of the clear examples in regards to that  
11 issue that I point out.

12 In regards to Mr. Schrimpf, you will see  
13 countless examples of him acting in an advisory way and  
14 cross-examining witnesses in a prosecutorial way. And my  
15 favorite example of this is on Page 55, which I refer to  
16 as the National Guard statements made. Mr. Schrimpf, in  
17 attempting to rehabilitate and make a case, questions one  
18 of the witnesses in regards to what his activities would  
19 be. And I'm on Page 55, Line 13, where Mr. Schrimpf  
20 states:

21 You reference the fact that you're a member of  
22 the National Guard. Does that mean that you have weekend  
23 drills?

24 Yes, sir.

25 And was that a weekend drill?

1 I don't recall.

2 If you have a weekend drill, what time are you  
3 required to report for the drill in the morning?

4 I'm required to report at 6:30 in the morning.  
5 As an officer in charge of a section, I get there usually  
6 at 6:00 o'clock, sometimes 5:30 to prepare the unit.

7 Now here's an example of the person who is  
8 there to advise the committee on legal issues actually  
9 bringing stuff into the record and fleshing out a record  
10 in an adversarial way against the person for which the  
11 hearing is convened. I find that directly contrary to  
12 the City of Cedarburg case.

13 If we go back to the beginning of that  
14 transcript, your Honor, there is one other thing I'd like  
15 to point out in regards to Mr. Schrimpf. I made an  
16 objection and I brought this issue up. If you go to  
17 Page 9 at Line 11, Mr. Pawlinski had Mr. Schrimpf  
18 determine whether or not he was satisfied with the issue  
19 of whether or not he should be advising the committee.

20 At 11, the chairman says that:

21 Your objection is duly noted. Mr. Schrimpf,  
22 you're satisfied with the answers you've given?

23 Mr. Schrimpf: Yes.

24 These transcripts are replete with such  
25 examples, your Honor. And I think that what we're



1 talking about here is a citizen who has been granted a  
2 license, has had that license for a period of six years,  
3 has never had a disciplinary action taken on a Class B  
4 liquor license, now being judged and prosecuted by the  
5 city itself, the people who granted the license, in a  
6 very biased and unfair, underhanded way. That, to me,  
7 is -- clearly shows a lack of due process.

8 The fact that he would have his legislative  
9 assistant prosecute that action would be like if you had  
10 a law clerk develop a case in your office and walk into  
11 your courtroom, appeared in front of you and put forth  
12 the prosecution. It would be like, also, in addition to  
13 that, if you were the decision-maker or sat on the jury  
14 of such a case. I think that it's an obvious due process  
15 issue.

16 I just want to point out that we're not asking  
17 you to put yourself in the position of the City Common  
18 Council and issue a liquor license. What I am pointing  
19 out is that we're asking you to acknowledge that they  
20 issued a license and that they tried to take that license  
21 away and they did take that license away, and they did it  
22 contrary to the rights of my client, contrary to his due  
23 process rights.

24 They also did it with -- arbitrary and  
25 capriciously. I believe that they've treated

1 Mr. DeSautel different than other similarly situated  
2 persons, and I can direct you to specific examples of  
3 that. I have attached the records of several bars.  
4 I've started an exhaustive search through every Class B  
5 license file that the city holds.

6 You will find attached to our brief the records  
7 of the Yellow Rose tavern, one that just weeks before had  
8 issues of drugs and gun violence. And in that particular  
9 case, the alderman and chairman of the committee,  
10 Mr. Pawlinski, recommended for a nonrevocation or  
11 nonsuspension of the license.

12 There is another place that I think is similar  
13 in that the complaints are similar and the records were  
14 supplied and attached to my brief, and that would be a  
15 place called "Judges" on North Avenue. There is specific  
16 letters and complaints of neighbors of "Judges," many of  
17 the same types of complaints that appear here in the case  
18 with Mr. DeSautel. And in that case, there has never  
19 been a suspension or a revocation. That license  
20 continues to be issued.

21 This was brought up as a matter of concern by  
22 many aldermen throughout the process. And I'd like to  
23 point some of these out because it speaks, I think,  
24 directly to what some of the aldermen were keen enough  
25 to pick up on.

1           One issue is that the case law is clear that  
2 progressive discipline is required. Alderman Pratt  
3 specifically brought this point up and said, we are going  
4 to have a problem defending this in court. This is  
5 arbitrary.

6           I would direct you to Page 59 of Volume Three  
7 of the October 16 utilities and license hearing. At  
8 Line 16, he says:

9           I think we should have the same standards  
10 throughout the city. If it was in my aldermanic  
11 district, I would say to you I wouldn't be supportive  
12 of a revocation.

13           THE COURT: All right, where -- what authority  
14 do you have when you say case law says there has to be  
15 progressive discipline?

16           MR. ARENA: Menomonee Falls v. Michelson,  
17 specifically, Thompson v. Village of Hales Corners at  
18 115 Wis. 2d 289, and I refer you to Tavern League v. City  
19 of Madison, 131 Wis. 2d 477; and Bell v. Burson, 402 U.S.  
20 535.

21           THE COURT: That's Page 9 of your brief.

22           MR. ARENA: Yes.

23           THE COURT: And you're saying in those cases,  
24 the court stands for the proposition -- each of those  
25 decisions, that there is no incident in which you can on

1 a first violation, revoke the license. There has to be  
2 a history of progressive discipline.

3 MR. ARENA: I'm saying some or all of those  
4 cases say that, and if you read those cases in concert,  
5 which are all cited within each other, you would, of  
6 course, come to that conclusion. And I also believe  
7 that that's recognized as the manner in which the Council  
8 actually proceeds, as is mentioned in the transcript by  
9 Alderman Pratt.

10 THE COURT: All right, go ahead.

11 MR. ARENA: At Page 46, Alderman Herron talks  
12 about a different standard.

13 MR. SCHRIMPF: Which volume are we in now?

14 MR. ARENA: Volume Three.

15 THE COURT: Which exhibit is that?

16 MR. SCHRIMPF: I think it's 10 -- believe it or  
17 not, your Honor, I think it's 10A.

18 MR. ARENA: Believe it or not, I think I've  
19 just referred you to the wrong volume.

20 MR. SCHRIMPF: Well, Alderman Herron is  
21 talking.

22 THE COURT: And page what is that?

23 MR. SCHRIMPF: Forty-six.

24 THE COURT: Forty-six.

25 MR. ARENA: In Volume Three of the October 16

1 hearing, which is, in fact, is the previous one, at  
2 Page 276, Line 23, where Alderman Pratt specifically  
3 mentions that you should be dealing with progressive  
4 discipline: If, in fact, this license -- and this is  
5 Page 277, Line 1:

6 If, in fact, this license had never -- has  
7 never even been suspended. Now, I don't know -- I'm  
8 not doing any finger pointing here. In other words, the  
9 neighbors haven't even testified against him before --  
10 testified against -- the music license, but it has never  
11 been suspended. And I would think if you're going to do  
12 progressive discipline, that's where you start, at a  
13 suspension.

14 At 282, Alderman Bohl discusses, at Line 17:

15 When it's taken in the same vein, we have to  
16 take this testimony. We have to support it before a  
17 court of law. There is a certain measure of consistency  
18 that we have to maintain here, and the actions that we do  
19 take must stand up in a court. I'll be the first to say  
20 that whenever it is taking place in your district, it is  
21 obviously more serious.

22 I'll refer you forward to Page 287, Line 4:

23 There are numerous times when there are other  
24 aldermen on this committee who sit frustrated at your  
25 motions and your votes in which they think there needs to

1 be more stern discipline. In fact, there was one just in  
2 the Common Council here last week where Alderman Sanchez  
3 and three members of this body voted to give him a  
4 suspension where you stood up and said we don't have  
5 enough. It happens time and time again. So for you to  
6 point the finger at us, I think is absolutely  
7 hypocritical and wrong.

8 Line 18: I will tell you my personal feeling  
9 your vote on this matter is inconsistent. I understand  
10 it's in your district. I understand your frustration.  
11 I will tell you I think it's absolutely wrong, and I will  
12 tell you that right here firmly.

13 That was Alderman Bohl addressing Alderman  
14 Pawlinski's position that he was taking for revocation,  
15 which, in fact, demonstrates that Alderman Pawlinski did,  
16 in fact, show an actual bias towards my client. It was  
17 recognized by Alderman Bohl in his statements that I  
18 think you're being emotional. To say this is your  
19 district, I can understand that, but this is inconsistent  
20 with what you'd do yourself in other districts.

21 I'm going to quickly just direct you to a  
22 couple other things that I think that you should look at  
23 in regards to this. In the transcript of the Common  
24 Council meeting for November 6, Page 46, Alderman Herron  
25 takes an extremely strong position.

1 THE COURT: All right, before you go on, let  
2 me find that one first.

3 MR. SCHRIMPF: This, I believe, is in the  
-4 supplemental of Mr. Copeland because we didn't get this  
5 in time. Actually, we got it in time from the standpoint  
6 of the court reporter's contract, but not in time for the  
7 purposes of getting it into Mr. Copeland's affidavit. So  
8 it had to be supplemented.

9 Actually, your Honor, it occurs to me that the  
10 typists were changing this thing around. It might be  
11 Exhibit 13 to Mr. Copeland's main affidavit. And I stand  
12 corrected on that.

13 THE COURT: All right, recommendation of a  
14 20-day suspension in lieu of revocation.

15 MR. SCHRIMPF: That's correct.

16 THE COURT: Proceedings had on November 6.

17 MR. SCHRIMPF: That's correct.

18 THE COURT: Okay.

19 MR. ARENA: I'm referring you to Page 46, your  
20 Honor, Line 18. Alderman Herron is speaking and his  
21 concern is that their standard is extremely high in this  
22 particular neighborhood, and it is not the standard that  
23 we hold throughout the rest of the city.

24 I go to Page 47 at Line 9:

25 Each witness said they had never witnessed a

1 fight. They had never saw a gun. They had never heard a  
2 gunshot. They had never seen anything to give them any  
3 indication that their lives, other than the one instance  
4 where the police drew a weapon, and what turned out to  
5 be they drew a weapon in an instance where there was no  
6 reason to draw a weapon. There was no other weapon to  
7 support them drawing their weapon. So that was the only  
8 time a weapon had ever been seen in the area.

9 I'm going to direct you forward to Page 60.  
10 Alderman Herron goes on further at this point in stating  
11 that, at Line 10:

12 In the instance of the evidence that was  
13 presented to us at this committee if it was in a  
14 nonrenewal process, it would have probably risen to a  
15 five to ten-day suspension at the most. And I have been  
16 extremely tough on licensees, extremely tough.

17 Line 13: This is nothing like we experienced  
18 at Spice Island, not even close. At Spice Island we had  
19 multiple instances where there were fights, where there  
20 had been stabbings, where there had been brandishing of  
21 weapons. None of that stuff occurred at this location.  
22 There was no excessive noise. There was no people coming  
23 outside of the bar with their stereos playing loud and  
24 leaving the place. None of that stuff was occurring. I  
25 remember I fought to get a revo -- going to Page 61 --



1 for nonrenewal on a license in my district called  
2 Tiffany's Club 74. These people had to have gunshots.  
3 A baby had to almost get hurt with a gunshot. They had  
4 to have video of them outside playing loud music and all  
5 this other, harassing people and everything else. Still  
6 the chairman of that committee didn't want to vote for a  
7 revocation.

8 I refer you to Line 25, Page 61. At this point  
9 it is Mr. Herron's concern:

10 Now, any good lawyer could just pick out five  
11 cases that we had where we did a revocation and would be  
12 able to say, these two are nowhere near being the same.  
13 Now, as a committee member, I stand up for what we voted  
14 for.

15 I will refer you to Page 58 where Alderman  
16 Pratt reiterated some of the earlier statements I made  
17 and attributed to Alderman Pratt.

18 The last statement that I want to point out is  
19 on Page 73, Alderwoman Cameron, Line 7:

20 And it's sad that we have double standards  
21 for different sides of town. And that's what we have.  
22 Because I know I've been in this -- in front of the  
23 committee with less -- and more of a problem than what we  
24 have here. And my request fell on deaf ears. I can list  
25 a case on Burleigh where there was drug dealing in front

1 of the location. It wasn't even -- I quote, the Chairman  
2 said, "It's not warranted." I asked for suspension. If  
3 we're going to have a rule for one side of town, we  
4 should have it across the board.

5 Line 21: So now we're setting standards  
6 according to the neighborhood or according to what  
7 district you're in. And I think that's not fair.  
8 Because what is brought here in front of that committee  
9 was not warranted, even of a 20-day suspension.

10 That's the top of Page 74. That's just part  
11 and parcel, some of what has happened, Judge.

12 Now one other thing I would like to point out  
13 in regard to Attorney Schrimpf's bias in this matter  
14 can be found in the transcript of the hearing held on  
15 October 5 before Dennis Moroney. And I'll refer you to  
16 Page 154 and that is attached to my brief, I believe.  
17 Attorney Bishop tells me we don't have 154. So I don't  
18 know where it appears as part of Mr. Copeland's  
19 affidavit, but I'm sure that it does.

20 THE COURT: Mr. Schrimpf?

21 MR. SCHRIMPF: I have Page 154, your Honor.

22 THE COURT: On part of -- do you have it as  
23 part of Mr. Copeland's affidavit?

24 MR. SCHRIMPF: No, but I have a copy of the  
25 transcription of the proceedings before the Court on

1 October the 5th, and I'm showing Page 154 to counsel.

2 MR. ARENA: That's the copy, that's the page  
3 that I have.

4 MR. SCHRIMPF: I thought you said you don't  
5 have 154.

6 THE COURT: Oh, he didn't attach it --

7 MR. ARENA: I didn't attach it.

8 THE COURT: -- when he filed it with the Court  
9 here, so I don't have it.

10 MR. SCHRIMPF: I was planning on using part of  
11 this transcript anyway, Judge.

12 THE COURT: Okay.

13 MR. SCHRIMPF: So I'll let you have the City's  
14 copy for the time being.

15 THE COURT: All right, Page 54?

16 MR. ARENA: One fifty-four.

17 THE COURT: Page 154.

18 MR. ARENA: Line 9: In the meantime, these  
19 neighbors -- and this is Mr. Schrimpf speaking to the  
20 Court -- quite frankly, I was impressed with the  
21 testimony. These neighbors are putting up with a great  
22 deal of disruption in their personal lives. This is  
23 going to have to go on for three weeks presumably until  
24 the Utilities and License Committee and Common Council  
25 can deal with it.

1 I believe that that statement is rife with  
2 bias. On October 16, Mr. Schrimpf himself stated to  
3 the chairman that he had assisted the complainants in  
4 drafting their complaints. And that is on Page 7 and 8,  
5 Volume One, and I think I forgot to point this out  
6 earlier because I was going to point it out quickly to  
7 the Court. Page 8, Line 3, Mr. Schrimpf talking:

8 With respect to my involvement in this matter,  
9 I can tell you that the information that I developed with  
10 respect to the complaints came from information that was  
11 gotten from the neighbors. I assisted them, it is  
12 certainly true, in helping to frame their complaints;  
13 however, I did not participate.

14 Mr. Schrimpf, in fact, participated on behalf  
15 of the city and the complainants who testified by  
16 affidavit and in person on October 5 and on October 16,  
17 admitting into the assistance of drafting of affidavits  
18 and whatever else he did, the summons and complaint. And  
19 I think that that, part and parcel, in and of itself, is  
20 a glaring example of a violation of the holding in the  
21 Marris v. City of Cedarburg case talked about at length.

22 In conclusion, I think it's clear that the  
23 Court has plenty of legal authority to extend this  
24 injunction through the pending of this case. I think  
25 it's clear that we've met a preliminary burden that

1 there's been some arbitrary and capricious behaviors on  
2 behalf of the administrative ruling body herein.

3 And I think it's clear that the due process  
4 rights of my client were extremely violated when the  
5 things that occurred at the Utilities and License  
6 Committee fell basically upon deaf ears, when the  
7 alderman of the district himself made a motion that was  
8 rejected by the committee and then went forward and all  
9 things that happened before the Council flowed from what  
10 happened at the committee, then went forward and made the  
11 same motion.

12 Now it is true, that is a political body that  
13 has been given the right under Chapter 125 to promulgate  
14 rules and manage liquor licenses. But also under  
15 Chapter 125, when it disciplines those licenses, the city  
16 and the Common Council and Mr. Pawlinski act in a quasi-  
17 judicial fashion, and in so doing, are held to the rules  
18 set forth and common sense statements of the constitution  
19 and of the rights of regular citizens to have their  
20 matter handled fairly, openly, and up front.

21 So, in conclusion, I will state that I believe  
22 this Court should extend the injunction for the time  
23 period that have been discussed prior to the hearing  
24 today, and I'll end on that note.

25 THE COURT: All right. Mr. Schrimp?

1 MR. SCHRIMPF: Thank you, your Honor. First of  
2 all, could I have the transcript back that I loaned the  
3 Court?

4 THE COURT: Sure.

5 MR. SCHRIMPF: Just double check something.  
6 Thank you.

7 MR. ARENA: I'll now let you use mine.

8 MR. SCHRIMPF: Let me just dispose of, your  
9 Honor, the whole issue of what came up before Judge  
10 Moroney, which has had a couple of different references  
11 in this morning's proceeding. But on Page 160, Judge  
12 Moroney, as he was delivering his ruling, which was  
13 essentially not to grant the TR-- or not to grant the  
14 nuisance TRO, on Page 160, starting at Line 20, he says:

15 But I think, you know, the city attorney and  
16 the powers that can be, pushed more -- that can be, put  
17 more concentration on this level, and I think that they  
18 probably will. I put you on notice, sir -- he was  
19 referring to Mr. DeSautel -- that they will. So if you  
20 don't think you have to control your guys that come in or  
21 go out of there or cut them off, if you will, it's not a  
22 dram shop law in the state. Understand that, too,  
23 people. We don't hold barkeeps accountable for the  
24 subsequent accidents or causes of their barkeep or their  
25 patrons, some states do. But we did have -- well, then

1 it goes on.

2 Basically, what he's saying is, look, I think  
3 that the city is going to be going for a revocation  
4 proceeding in this matter. That was on October the 5th,  
5 and I think that really summed up what Judge Moroney was  
6 doing and dealing with in this case. He did not think it  
7 was a nuisance action. He thought that it was properly a  
8 revocation action.

9 Now let me go to the case that counsel cites  
10 and some paragraphs that he didn't cite to the Court.  
11 And I'm referring to Marris v. City of Cedarburg, 176  
12 Wis. 2d at 14. First of all, and I'm sorry, but I don't  
13 have a page number, but there is a couple of paragraphs  
14 that I think are important. One of them says:

15 Nevertheless, a board member's opinions on land  
16 use and preferences regarding land development should not  
17 necessarily disqualify the member from hearing a zoning  
18 matter. Since they were purposely selected from the  
19 local area and reflect community values and preferences  
20 regarding land use law, and there was a citation to  
21 Footnote 10 -- zoning board members will be familiar  
22 with the local conditions and the people of the community  
23 and can be expected to have opinions about local zoning  
24 issues.

25 At the top of the next page, they're talking

1 about what constitutes bias. It says you have to have  
2 evidence that there was prejudgment as a matter of law.  
3 And prejudgment requires an examination of the facts of  
4 the individual case. In this case we look to the  
5 statements made by the chairperson, a person by the name  
6 of Kuerschner. Clearly, a statement "suggesting that a  
7 decision has already been reached, or prejudged, should  
8 suffice to invalidate a decision."

9 And then one more page over, there was a  
10 reference in this case to a remark about the now famous  
11 case of Leona Helmsley:

12 While it is true that Leona Helmsley's  
13 remodeling expenditures were in the news during the time  
14 the Board decided Marris's case, the fact -- that fact  
15 alone does not explain why the chairperson would suggest  
16 to Board members and the assistant city attorney that  
17 they, quote, "get her under the Leona Helmsley rule,"  
18 close quote. The phrase, quote, "get her," close quote,  
19 indicates prejudgment and a desire to prosecute.  
20 Impartial decision-makers do not, quote, "get," close  
21 quote, the parties before them. Rather, they objectively  
22 apply the law to the facts of each case.

23 I think for all of counsel's citations to  
24 various portions of the record, there is no evidence  
25 that there was any desire to "get" Mr. DeSautel or this



1        tavern. What was evident was that there was a huge  
2        problem being generated by the patrons leaving this place  
3        at closing time and it was disturbing the neighbors.

4                And under our statutory scheme for handling  
5        licensing in Wisconsin, these decisions are placed in the  
6        hands of Common Council members. And I think they're put  
7        into the hands of Common Council members for a very  
8        obvious reason -- because the Common Council members know  
9        full well what's going on in their various districts.

10               Now that doesn't mean it can be prejudged. I  
11        think what's so very interesting about this case is that  
12        for all of the bias shown by Alderman Pawlinski, when it  
13        is before him at the Utilities and Licenses Committee,  
14        the decision is a recommendation for a 20-day  
15        suspension. But when it is before the full Common  
16        Council, remember, your Honor, at the committee, he's one  
17        of five. In the Council, he's one of 17. And when it's  
18        at the full Council, what we have is a decision to revoke  
19        the license.

20               And there has been no showing that Alderman  
21        Pawlinski in any way, somehow or other, biased that  
22        body. And there's been no showing that that body was  
23        operating outside of the evidence.

24               Now counsel has shown all sorts of arguments  
25        going on between the Common Council members and

1 statements that they were making, but whether or not  
2 those statements were true or not true, the fact of the  
3 matter is, is that the Court has to look to the facts  
4 that were developed in the record that was before the  
5 Milwaukee Common Council.

6 Those facts demonstrate and, quite frankly,  
7 they were never really -- at no point were they  
8 objectively, one on one, challenged by this license  
9 holder. He had a couple of witnesses in conclusory  
10 fashion at the end of the Utilities and Licenses  
11 Committee hearing that said, look, I've been in there  
12 and I've been in there at closing time, and I've never  
13 observed this kind of conduct.

14 But we had case after case after case of  
15 documented instance after documented instance for a  
16 period of time stretching from March of 2001 through  
17 September 30 of 2001, basically, a six-month period of  
18 time, where the neighbors were able to e-mail the Council  
19 member, namely, Mr. Pawlinski, in some cases while the  
20 events were transpiring.

21 And all those were received into the record at  
22 the proceeding, and they were received into the record of  
23 the proceeding through the testimony of Miss Hawks -- who  
24 were able to sit there and type the e-mail, watching the  
25 public urination, listening to the noise, listening to