

1 the fights, listening to the cars screeching, listening
2 and watching the cars going up and down the street doing
3 wheelies in the corners, the bikes doing wheelies, the
4 bikes illegally parked. They were able to, at that very
5 moment, simultaneously e-mail the alderman, and that all
6 came into the record. And those were the basis of the
7 complaints and those were the basis of the findings of
8 fact. And they testified to those things.

9 So the question becomes, was there any evidence
10 upon which the Common Council could come to the conclu-
11 sion that this tavern was operating just plain as a
12 problem to the neighborhood, whether or not it was an
13 improper house, which is the statutory standard, or
14 whether or not it was creating neighborhood problems,
15 which is the standard under the ordinances of the City
16 of Milwaukee, such that its license to operate should
17 be stopped.

18 None of those facts were ever challenged by
19 this licensee or by counsel who was representing him
20 at the time. We have here a bar that was literally
21 operating out of control at closing time and its patrons
22 and what they were doing to the neighbors.

23 Now the record also before the Utilities and
24 Licenses Committee, and that's the same record that
25 was before the Common Council, demonstrates that the

1 neighbors just didn't one day decide they had it with
2 Mr. DeSautel and they were going to shut the place down.
3 They put up with this for a period of three years.
4 Various things were tried.

5 For example, at one point the live music
6 portion of his cabaret license was taken away in the
7 belief that that was going to solve the problem.
8 Mr. DeSautel tried to get it back. And at one point, I
9 think the Common Council may have given it back to him,
10 but the problems continued. And at closing time --

11 MR. ARENA: Judge, I -- I really have to object
12 to arguments of counsel. I thought the prehearing
13 discussion was that we were going to talk about the legal
14 issues. And, very skillfully, Mr. Schrimpf wants to have
15 you hear about all these dirty little details that were
16 testified to, which is, quite frankly, the issue that
17 will be determined by this Court on review and is
18 irrelevant at this point.

19 THE COURT: Well, his argument is, there is
20 also an argument of whether or not the plaintiff is --
21 the evidence is -- likelihood is that the plaintiff will
22 strongly -- strong likelihood that the plaintiff will
23 prevail on the merits of the case when it goes forward.

24 And so it's relevant. But I will let you know
25 I'm at this point more interested in the procedure of how

1 the decision was made because even if there is a basis to
2 support it and the hearing was not a fair hearing, then I
3 don't even get to the likelihood of prevailing on a basis
4 to suspend or revoke. And the question is, is -- I'm
5 more focused on at the moment is the likelihood of
6 prevailing that the hearing itself was not a fair and
7 impartial hearing.

8 MR. SCHRIMPF: Okay. Your Honor, I don't think
9 counsel has demonstrated that there was any bias in this
10 hearing. For example, at Page 126 of what would be
11 Exhibit 10C to the affidavit of Copeland and sometimes
12 referred to as Volume One, something came up with one of
13 the witnesses who was testifying about having underaged
14 people within the bar.

15 And at Page 126, starting at Line 5 and going
16 through Line 13, I specifically cautioned the committee
17 that nothing with respect to underage people was part of
18 the complaint and, in any event, under State law, one
19 episode of an underage individual in the bar would not
20 be enough to take any action.

21 So I, in my role at that point, am cautioning
22 the committee that, look, this is not something which
23 is part of the complaint and even though, yes, it was
24 brought in by some of the people who are here testifying,
25 you do not consider that.

1 I don't know that a subpoena to a police
2 officer who doesn't show up in response to the subpoena
3 and, by the way, Mr. Arena had a similar problem. He
4 subpoenaed some police officers who didn't show up --
5 I don't know that that is the basis of any finding.

6 MR. ARENA: My cop did show up.

7 MR. SCHRIMPF: Well, he didn't testify, did
8 he?

9 MR. ARENA: Yeah, he did.

10 MR. SCHRIMPF: Oh. Anyway, I don't know that
11 that's a basis of a finding that there was any kind of
12 bias in this case. With respect to other taverns --

13 THE COURT: Well, let's stay in the beginning
14 with why, if the ordinance provides that the city
15 attorney shall present the evidence, didn't the city
16 attorney's office present the evidence before the
17 Utilities Committee?

18 MR. SCHRIMPF: By tradition, we do not present
19 the evidence. By tradition, we just let the people
20 testify because -- and it's -- it's done for the very
21 practical reason that there is -- that we don't want to
22 get into the problem of showing some sort of bias at the
23 committee hearing because we are cast in the role of both
24 advising the committee as well as, according to the -- to
25 the ordinance, presenting evidence.

1 THE COURT: All right. Then let's move on to
2 the second issue. If that's not the -- although the
3 ordinance would say that you do, and there is an argument
4 or interpretation as to whether or not you're required to
5 do it, and you're saying, traditionally, the city
6 attorney does not. It's the public is left to --

7 MR. SCHRIMPF: That's right.

8 THE COURT: -- their own straits to make that
9 presentation. Why then is there a role for Alderman
10 Pawlinski's aide in this hearing?

11 MR. SCHRIMPF: Alderman --

12 THE COURT: Is that -- Miss Hawks is his aide?

13 MR. SCHRIMPF: Oh, Miss Hawks is his aide and
14 Miss Hawks did testify. Again, this is something that
15 traditionally is done. The Common Council members do
16 have their aides testify before the committee.

17 It seems to me, your Honor, that if, in fact,
18 the statute, and I'm talking about Chapter 125 -- would
19 prohibit an alderman from sitting in decision-making
20 roles, then that should be something that should be
21 specified within Chapter 125.

22 THE COURT: No, but you -- at some point during
23 the hearing, Alderman Pawlinski starts to testify. And
24 you cut him off and say, you're not in a position to be
25 testifying.

1 MR. SCHRIMPF: That is correct.

2 THE COURT: And in that setting, the question
3 is how is the aide not an extension of the alderman under
4 those specific circumstances?

5 MR. SCHRIMPF: I don't think the aide for that
6 purpose -- well, I don't think the aide for that purpose
7 is an extension of the alderman. The aide has -- what
8 will normally happen in these cases is that the aide is
9 handling the e-mails that are going back and forth and
10 the correspondence that's going in and out. And
11 sometimes the aide is the individual that has the most
12 direct and personal knowledge of what is transpiring.

13 THE COURT: All right, what's troubling me is
14 the reference before that was made of, "we'll call our
15 first witness." And it's Miss Hawks making that
16 statement. It seems to be, I'm not just here as a
17 witness. I have a more active role to play that I am
18 prosecuting this case.

19 MR. SCHRIMPF: Well, but, your Honor, if you
20 will -- if you will check the transcript, you will find
21 out that Miss Hawks after that when she called the first
22 witness, if that's what you want to call it, thereafter,
23 did not actually examine the witnesses. They just
24 testified. She was in the role of coordinating who was
25 going first.

1 There is no indication that she in any way was
2 conforming the testimony, that she was advising, or that
3 she was in any way controlling the testimony. In fact,
4 if you read the transcript, and I'm sure you will, you
5 will find out that the aldermen are asking questions left
6 and right of various witnesses and occasionally out of
7 order. Occasionally, they will ask other witnesses who
8 have previously testified about something, or in the
9 middle of proceedings -- and I know this happened in
10 this case -- they ask counsel something or Mr. DeSautel
11 himself something. There is no evidence that somehow or
12 other, the -- the alderman was biased in this particular
13 case, certainly not within the realm of the City of
14 Cedarburg case.

15 THE COURT: All right. You can continue.

16 MR. SCHRIMPF: Okay. Thank you, your Honor.

17 Well, in summation, all I want to point out --
18 I made, basically, my arguments in the briefs. All I
19 want to point out is that I don't think there is any
20 evidence that there was any bias in this case.

21 I think if there were evidence that there were
22 bias in this case, you would have a decision that did not
23 comport to the facts that were before the committee.

24 And on that point, I would like to point out
25 the statements of two individuals at the Common Council

1 meeting. I might note that all of the individuals who
2 Mr. Arena identified as speaking before the Common
3 Council are themselves, I believe, first term alderman.

4 MR. ARENA: I'll object. That's irrelevant.

5 MR. SCHRIMPF: The suggestion being --

6 THE COURT: I'll overrule the objection, but --

7 MR. SCHRIMPF: Thank you. The suggestion
8 being, your Honor, that no injustice to them, but they
9 don't have a whole lot of history with the Milwaukee
10 Common Council. But two individuals spoke who have a
11 great deal of history with the Milwaukee Common Council.
12 At Page 53 of that proceeding, one was Alderwoman Breier.

13 THE COURT: I'm sorry, what page?

14 MR. SCHRIMPF: Alderman Breier at Page 53,
15 starting at Line 12:

16 Thank you very much, Mr. Chair. First of all,
17 I'd like to say that I have about 100 licenses in my
18 district. I sat on U&L for four years, and I agree with
19 Alderman Pawlinski and others who have said that I don't
20 believe we should have to wait until something escalates,
21 until there's shootings and knifings and whatever else
22 going on.

23 I had the misfortune in my district a number of
24 years ago when I sat on the committee of a bar on Howell
25 that didn't take three years to escalate to that point,

1 but there was a shooting with blood dripping from the
2 front steps, and the place did close down. And maybe
3 this is an unfit location in a neighborhood that's pretty
4 residential all around it. I know where it is. I've
5 been by it. I can tell you this is not what I would want
6 for my district. Therefore, I -- or for my immediate
7 neighborhood, and, therefore, I am supporting Alderman
8 Pawlinski today. Thank you.

9 And Alderman Pawlinski had made a motion before
10 the Common Council to substitute the recommendation of
11 the committee of a 20-day suspension which, incidentally,
12 was recommended by counsel himself at the conclusion of
13 the U&L meeting, to a revocation.

14 The other individual that I think is
15 interesting is Alderman D'Amato. On Page 66, Alderman
16 D'Amato represents, and the Court can take official
17 notice that Alderman D'Amato represents the east side of
18 Milwaukee where there are many, many taverns. Thank you
19 Mr. President -- Page 66, starting at Line 5:

20 Thank you, Mr. President, for the opportunity
21 to comment. I want to begin by first taking exception,
22 there was something -- something that was said by
23 Mr. DeSautel's attorney, that the items included in the
24 findings of fact should be accepted by the people who
25 live in the city as, quote, "city living," close quote.

1 I have the opportunity to represent two of the
2 most vibrant entertainment districts in the city, and I
3 will tell you that I have not seen as I quote from the
4 findings of fact, "five or six other officers walking
5 around with handguns and shotguns out, several people
6 handcuffed and put in police cars," close quote. I've
7 never seen that happen. And, in fact, that isn't city
8 living. That's what gives city living a bad name.
9 That's what people think the city is, and the city is
10 not that.

11 It seems to me when we approve a license, and
12 especially a license that has live music or a cabaret, we
13 make a deal not only with the owner of that and operator
14 of that bar, we make a deal with the neighbors. And that
15 deal is that as long as the establishment is run right,
16 and as long as it's not a disturbance and adds value to
17 the neighborhood, doesn't detract from it, then they can
18 continue to operate.

19 And with what -- the neighbors, we say, and we
20 always say this, it's almost in every U&L meeting, if
21 you have a problem, observe. Take down license plate
22 numbers. Do your homework. Make sure you document
23 everything that happens.

24 It's a very strange thing about this Council
25 and the committee; it seems that we penalize those who do

1 that. Those -- these people have gone on for the last
2 year, if not three years, documenting what they've seen.
3 They've done their homework. They've done what we asked
4 of them. Yet, we're not going to give them the ability
5 to control the destiny of their own neighborhood. They
6 have investments there. They deserve that.

7 And I think that the best comment on the floor
8 was made by Alderman Breier that perhaps this is an unfit
9 location.

10 It seems to me, Mr. President, your account
11 about Spice Island and some others, every time we have
12 revocation hearings, it comes with the old corner bars,
13 in this case, an old bowling alley that served the
14 neighborhood, that had become a kind of a regional dance
15 club or regional attractions. They're unfit, not because
16 they have a license, but they're unfit because they now
17 run an operation that's not conducive to the
18 neighborhood.

19 If you think back to those -- at those places,
20 what we've done is we've taken these neighborhood bars
21 and have escalated them to something that's much bigger
22 than the neighborhood can handle now. I do think that we
23 should stand behind these neighbors because we made a
24 promise to them that this place was not going to be a
25 disturbance. But it is a disturbance. And one of them

1 has to go. And I would hope that it's not the 44
2 neighbors that have to go.

3 And then, finally, Alderman Nardelli, who was
4 chairman of the Utilities and Licenses Committee, also
5 on Page 68, starting at Line 20:

6 Thank you very much, Mr. Chairman. You know,
7 one of the principles of, having served on the Utilities
8 and Licenses Committee, one of the principles we should
9 always try to adhere to, and we as council obviously have
10 to as well, and that's consistency -- one of the issues
11 raised by Mr. Arena. I can't control it, and then there
12 was a problem with people hearing him. Dropping down to
13 Line 8:

14 The fact that I will take you back just a
15 little bit to history that took place when I first came
16 on the council, it's longer -- more than half of your
17 lives. But at that time -- some of you, anyway -- and at
18 that time there was a license problem on the east side
19 which had, I think, three or four different hearings.
20 And it was only after the residents, who were the
21 complainants in all of the prior hearings, only after
22 they had formally documented all of the incidents, that
23 the license, in fact, was revoked. And there were no
24 police complaints. It was strictly citizen complaints.
25 The license was revoked, and the judge at that time,

1 Circuit Judge Janine Geske, did not issue a temporary
2 restraining order. In the end the license location was
3 closed. It was closed because the constituents came
4 together and brought three, and only three people to
5 testify, and they testified extremely well to having
6 witnessed people going into this location, coming out,
7 publicly urinating, throwing up in the mailboxes, and
8 then goes on and on.

9 Your Honor, I don't think there's been any bias
10 shown on the part of Alderman Pawlinski. There has been
11 no bias shown on the part of myself. There has been no
12 bias shown that this decision was prejudged.

13 What has been shown is that you had a concerned
14 alderman who was getting a lot of information about this
15 location from his constituents, and he was doing what
16 aldermen are supposed to do. He was holding meetings
17 and he was telling the neighbors what has to get done.

18 And if the neighbors have trouble forming
19 things into a complaint, yeah, the City Attorney's Office
20 assisted them in forming the complaint. But that doesn't
21 mean we were testifying. That doesn't mean we were
22 biased. That doesn't mean we were coming to some sort
23 of a decision in this case. I'm not a voter on that
24 committee, and I never advised -- you check this
25 transcript and I'll tell for the record, I never advised

1 this committee what the result should be, whether it
2 should be a suspension or anything else. In fact, I
3 routinely tell the Council members that what punishment
4 they hand out is reposed to their sound discretion. And
5 I don't care if that's a 10-day suspension, a zero, or a
6 revocation. That's up to them.

7 I will assist people in getting their com-
8 plaints in the proper form, make sure that they allege
9 the stuff that's got to get alleged if such facts exist.
10 And I will assist the committee in rulings on evidence,
11 and that's what I was doing here. But there was no bias
12 shown. And I wasn't a decision-maker, and you check this
13 transcript. They never asked me for any kind of
14 decision. They never asked me whether or not something
15 should be received into the record or not.

16 The only time that I interjected myself is at
17 one point where I said, you're not supposed to testify,
18 and the other point when I came along and said that there
19 was some evidence that was received into the record that
20 I told them specifically they could not use in their
21 deliberations. That's hardly bias. And even if it is
22 bias, it certainly isn't bias towards Mr. DeSautel.

23 I think, your Honor, that the record that's
24 before you, one, does not show bias, certainly not under
25 the standards as set forth in the Cedarburg case that

1 counsel has introduced; two, is ample evidence of why the
2 Common Council should have exercised its discretion in
3 the manner it did.

4 And I didn't care personally if it -- if it
5 would have dismissed the case or if it would have
6 sustained a 20-day suspension, which counsel himself
7 agreed to at the committee meeting, suggested, in fact,
8 to the committee.

9 And I don't care if it ultimately would have
10 wound up as a revocation or Alderman Bohl's suggestion,
11 if you read the transcript, by the way, just before
12 that part where Alderman Bohl takes off after Alderman
13 Pawlinski, he himself recommended -- or recommended a
14 75-day suspension. I believe that's on the preceding
15 page or two.

16 So it seems to me, your Honor, that counsel
17 has not demonstrated, one, that there is likelihood
18 of success; and, two, that there is any bias in this
19 record. And it seems to me that the decision of the
20 Common Council must be affirmed.

21 THE COURT: You didn't address the allegation
22 of the discriminatory enforcement.

23 MR. SCHRIMPF: Your Honor, I was thinking of
24 introducing an affidavit in this proceeding, and I didn't
25 know if this issue was going to come up or not, so I did

1 not. But I chuckled when I read that allegation. I'll
2 tell you why I chuckled -- because there is a proceeding
3 before Judge Flanagan involving Mr. Stanley Gordon, doing
4 business as Spice Island, which is -- was mentioned by
5 counsel this morning and comes up in a couple of
6 transcripts.

7 And, basically, what happened in the case of
8 Spice Island located at 60th and North, if you want to
9 know where the location is, is that the recommendation
10 of the Utilities and Licenses Committee was -- and that
11 was a nonrenewal or it was up for renewal -- it was a
12 recommendation of renewal with a 45-day suspension --
13 strike that -- renewal with a 30-day suspension, the
14 taking away of all of its entertainment licenses, and the
15 restriction of the Class B tavern to serve this bar only,
16 meaning that patrons can come in after the period of
17 suspension and have a drink, but only if they're seated
18 at a table, not standing up at a bar.

19 And Mr. Gordon in that proceeding specifically
20 requested the information regarding Daddios because he
21 thought the recommendation of a 20-day suspension on
22 Daddios demonstrated that his punishment, if you want to
23 use that word, by the Common Council was far too severe.

24 Your Honor, I get this all the time from
25 licensees who will compare one aspect of what happened

1 with their license with what happened with another
2 license and argue that this is somehow or other
3 inconsistent, that it's somehow or other a violation
4 of due process.

5 Your Honor, the Common Council takes each one
6 of these licenses on their own merits and they look at
7 the problems and the depth of the problems.

8 Now, quite frankly, in the case of Spice
9 Island, there was one episode that happened late in
10 summer, I believe in August sometime, where there was,
11 apparently, some gunfire from patrons exiting at or
12 around closing time. And it was videotaped by some
13 of the neighbors, not the gunfire itself, but the -- the
14 congregation of patrons after they poured out of the
15 place and the noise that was taking place. There was one
16 episode of that involving Spice Island. And that was the
17 recommendation of the Utilities and Licenses Committee.

18 There was a good deal of debate, once again,
19 not unlike the kind of debate that has been demonstrated
20 here this morning between the Council members as to what
21 to do about it. And, ultimately, the Council adopted the
22 committee recommendation.

23 Your Honor, the fact that there are these sorts
24 of differences, I suggest to the Court, precludes any
25 intelligent suggestion that so many of one kind of

1 violation equals this kind of a punishment. There is no
2 such thing. It's kind of like, and I think one of the
3 judges I was before in this circuit or in this county,
4 stated one day to somebody who was making that kind of an
5 argument, it's somewhat akin to what happens when a judge
6 sits down and evaluates a sentence to be imposed upon
7 somebody. There is all sorts of factors that you take
8 into account that do not necessarily transfer from one
9 case to another.

10 - Some of it, quite frankly, is the contrition
11 shown by the licensee before the committee at the time
12 that the hearing is taking place. Some of it relates to
13 the seriousness of some of the police objections. Some
14 of it relates to the length of time the problem has been
15 going on. Some of it relates to the time that the
16 licensee has been in business. If the licensee has been
17 in business a very, very long time and you have one kind
18 of a record, it's looked at one way. If the licensee has
19 only been in business for one year and we have 10 -- 15
20 serious police objections, it's viewed quite another way,
21 to be quite honest with you.

22 In this particular case, I'll be the first one
23 to admit, there were no police objections. The police
24 had not observed any of this stuff. And I don't think
25 that's necessarily the fault of the Police Department.

1 It was the -- simply the fact that when this stuff
2 occurs, it happens rather quickly. It's enough to
3 disturb the neighbors, and by the time a busy police
4 department is able to get to the scene, the problem is
5 gone, literally gone. The people have left.

6 But, in the meantime, the neighbors are stood
7 up; they're disturbed. Their sleep has been disturbed
8 and they've witnessed the conduct. The problem is now
9 the Police Department doesn't have anybody to nab because
10 the person who did it is gone. So how do you deal with
11 these kinds of problems.

12 In this particular case, we have a licensee
13 who did have a track record. We have a licensee whose
14 problems resulted in the alteration of his entertainment
15 license in the hope that that was going to solve the
16 problem. Well, these facts would suggest it didn't.
17 And so the Council and the committee had to take other
18 action.

19 THE COURT: All right. Mr. Arena, any brief
20 reply?

21 MR. ARENA: Yes, I would just like to point out
22 Page 17 of Volume One, which I think directly goes to the
23 bias. I specifically asked her on Page 17, I
24 specifically asked Miss Hawks:

25 You're here in your capacity as working for

1 Alderman Pawlinski, correct?

2 Her answer was: Yes.

3 You are his legislative assistant?

4 Yes.

5 This is exactly one of our points, your Honor.

6 She was -- she had no other reason to be there, to do
7 what she did, except in her capacity as an extension of
8 the alderman's office.

9 In that capacity, she supplied documentation
10 and maps, all in a way that was contrary to any interest
11 of Mr. DeSautel, which can only be seen as one of showing
12 a complete, or showing complete bias by her in her
13 position as working for the alderman and by the alderman
14 himself.

15 We have the testimony of the witness today.
16 I'll leave it stand for itself. I think there is a
17 demonstration there that there was some bias. I'll allow
18 the rest of the transcript to stand for itself, as you
19 can review many of the things that were said and done.

20 In regards to Mr. Schrimpf at the hearing, it's
21 never been accused by us that he advised or voted. The
22 question is, what is he doing there. Is he advising or
23 is he prosecuting. At times, he does it all. Of course,
24 he doesn't vote or make a decision, but he has a large
25 impact on what can happen there, and don't let him kid

1 you that he doesn't.

2 Secondly, he brings up Alderman D'Amato, and
3 I will direct you to our brief. Attached to it are the
4 records of Judges, which is a bar on North Avenue in one
5 of the entertainment districts. And in that record, you
6 will find a letter from Judge D'Amato (sic) that I think
7 directly impeaches the statement that was made on his
8 behalf through this transcript today.

9 You will find letters from neighbors to that
10 location that are complaining, neighbors complaining of
11 public urination, noise, people arguing, people fighting
12 when they leave the location. And you will also find
13 that that location has been renewed despite those
14 objections every year.

15 If you want, I'll attempt to direct you more
16 specifically where that is.

17 THE COURT: No, I'll find it.

18 MR. ARENA: In regards to the findings of fact,
19 I just want to be brief on this, the conclusions of law.
20 Those are signed by Alderman Pawlinski and they're
21 debated in committee by members of the committee, and not
22 each one is specifically looked at and determined to be
23 whether or not it's been found to be true or not. I
24 think a general recitation of the affidavits is basically
25 done and submitted as the findings and the conclusions.

1 We did object to those findings and conclusions
2 in writing. And I will note at the Common Council
3 hearing, the neighbors appeared without doing a written
4 objection, which is also required by Chapter 125 and
5 the procedure, I think it's 125 -- 2(b), yet another
6 violation of my client's due process rights.

7 My client had no idea or very little idea if
8 there was going to be an objection, and he has the right
9 to have those objections done in writing prior to that
10 Common Council hearing.

11 Mr. Plain, who testified here today, was
12 allowed to, I guess, just show up and make a statement,
13 which is contrary to any rights that I've ever been
14 provided at the Council. The procedure and the
15 procedures in 125, you have to do written objections
16 to findings of fact. Now --

17 THE COURT: Where is that reference?

18 MR. SCHRIMPF: Your Honor --

19 MR. BISHOP: It's actually in 90, your Honor,
20 90-12-b.

21 MR. SCHRIMPF: Counsel is -- I think if you
22 check the ordinances and the statutes, you'll find
23 that it is up to the discretion of the chairman of the
24 committee if someone has not filed written objections, if
25 they may also speak.

1 The statute allows the filing of written
2 objections; that's 125.

3 The ordinance allows the council member or the
4 chairman of the council to determine if someone can also
5 speak within their sound discretion. And I can tell you
6 that in every instance that I am personally familiar
7 with, the chairman of the council or the president of
8 the Milwaukee Common Council, when an interested party
9 appears, has allowed them to speak.

10 MR. BISHOP: I'm sorry, your Honor. That's
11 c-2, c-3, and also into "d" concerning written
12 objections.

13 MR. SCHRIMPF: And Mr. Leonard advises me 90-12
14 specifically allows the complainant, and Mr. Plain was a
15 complainant, I think it was -- carefully made that
16 record -- to speak before the council, whether or not
17 they have filed objections.

18 MR. ARENA: Well, I believe that Chapter 125
19 requires it, and I believe that as the city is the
20 drafters of Chapter 90, that Chapter 125 actually
21 should control in this instance.

22 MR. SCHRIMPF: Your Honor, section 125.10(1)
23 allows the council to control the liquor licensing
24 process if they do it by ordinance. And so long as what
25 they do is not inconsistent with Chapter 125, 125.10(1)

1 by ordinance allows the council to do what they did in
2 section 90-12.

3 THE COURT: 125.12(2)(b)3 provides that either
4 the complainant or the licensee may file an objection
5 to the report and shall have the opportunity to present
6 arguments supporting the objection to the city council.
7 The city council shall determine whether the arguments
8 should be presented orally, in writing, or both. I
9 don't see anything in there that's mandatory.

10 MR. BISHOP: In 90-12, c-2, it requires written
11 objections to be filed by the licensee. If you're saying
12 that the licensee has to file written objections, if
13 there is no -- there would be no requirement for the
14 other party to file written objections, that would be a
15 violation. There is no notice of someone showing up at
16 the hearing to object to the findings of fact if you were
17 not even objecting to the findings of fact.

18 There is no notice for the opportunity for
19 someone to make a speech for the five minutes that
20 the Common Council allows based upon filing written
21 objections. They draft their own ordinances, the City of
22 Milwaukee does. The argument that we're making here is
23 they're simply not following it. And the only argument
24 that they've said is that, traditionally, we've done
25 this. They drafted these ordinances.

1 In addition --

2 THE COURT: Subsection "d" says: Oral argument
3 in support of the report and recommendation presented
4 by the city attorney, oral argument on behalf of the
5 licensee in opposition to the report and recommendation,
6 and oral argument by the complainant objecting to the
7 report and recommendation shall be permitted only at
8 the discretion of the chair.

9 In other words, the ordinance says the chair
10 can exercise discretion and do what the chair would like.

11 MR. BISHOP: But it does require us to file
12 written objections and --

13 THE COURT: And if you don't, the chair can
14 exercise discretion, allow you to make oral argument.

15 MR. BISHOP: But there is still a notice
16 requirement, and I guess that would be the issue in
17 particular. If the -- if there is no written
18 documentation filed objecting to the conclusions of the
19 U&L, how is a licensee to know that someone is going to
20 appear at council and speak for five minutes against the
21 situation.

22 THE COURT: He's not going to know because they
23 showed up at the Utilities Commission and said, we oppose
24 this and this is what we want?

25 MR. BISHOP: Correct, that --

1 THE COURT: I mean, that doesn't -- what's the
2 form of the notice -- "We object."

3 MR. BISHOP: No, the notice comes from actually
4 Mr. Leonard. He can testify to what the notice said.

5 THE COURT: No, no. You tell me in the
6 ordinance, what does the ordinance have to say. It
7 merely says there has to be a written objection. I
8 object; I want a revocation. What more? What's the
9 undue surprise to your client that a bunch of citizens
10 are going to show up and talk for five minutes, basically
11 saying what they said at the Utilities Commission?

12 MR. BISHOP: Because if there are no written
13 objections filed, how is a licensee to know if he doesn't
14 dispute the recommendation of the U&L to show up to argue
15 against them trying to overturn the committee's report.

16 THE COURT: What in the ordinance requires the
17 full council to accept the recommendation of the
18 committee and not reject it on its own motion.

19 MR. BISHOP: Nothing; there is nothing in that
20 insofar as this particular ordinance, you are correct.

21 What I'm saying, though, is that the ordinance
22 does say that the licensee has to file written
23 objections. Now it does also say later on that it's
24 at the discretion of the Common Council President,
25 essentially, as to whether or not, or how oral argument

1 is going to be heard. All I'm saying is that there is a
2 notice issue there.

3 I -- I agree with you that you have nothing in
4 there that specifically says that a complainant has to
5 file a written objection.

6 THE COURT: All right. All right.

7 MR. SCHRIMPF: Your Honor, just very briefly,
8 first of all, I'd like to point out that if one checks
9 the transcripts, you'll see that Miss Hawks took no
10 position with respect to what should happen with this
11 license. And so far as Miss Hawks is concerned, counsel
12 read you a cutting from Page 17 of the transcript.

13 THE COURT: Oh, I'm going to read the entire
14 transcript.

15 MR. SCHRIMPF: All right. I would strongly
16 recommend the remainder of that page and the top of
17 Page 18 because several specific questions were asked
18 about her involvement, and she indicated basically that
19 she had no involvement.

20 And then, finally -- I guess that's it. That's
21 what I have.

22 THE COURT: Mr. Arena, you get last kick at the
23 cat.

24 MR. ARENA: I'll rely on my brief, Judge. I
25 think we made our points and it's clear.

1 THE COURT: All right. I'll put this over
2 until 2:30 this afternoon and render a decision at that
3 point.

4 MR. SCHRIMPF: Thank you very much.

5 MR. ARENA: I do have an appearance at 1:30,
6 which it's in misdemeanor court. I'm sure I can be here
7 at 2:30, but I may be late or whatever, just to let you
8 know. I'll be in Judge Kahn's Court.

9 THE COURT: Prefer 3:00 o'clock? Is that
10 safer?

11 MR. ARENA: 3:00 o'clock probably as Judge
12 Kahn, he tends to take -- give due diligence to
13 sentencing argument, to sentencing clients -- people.

14 THE COURT: All right.

15 MR. SCHRIMPF: Is it 3:00 o'clock then, your
16 Honor?

17 THE COURT: Adjourn to 3:00 o'clock.

18 MR. SCHRIMPF: Thank you very much.

19 (WHEREUPON, the noon recess was had.)

20 THE COURT: We'll recall Mr. Entertainment,
21 Inc., et al, versus City of Milwaukee; Case No.
22 01CV010580. Why don't you restate appearances for the
23 record.

24 MR. ARENA: Michael DeSautel, registered agent
25 of Mr. Entertainment, Inc. appears in person and by

1 counsel, Andrew Arena, of Kopp, Arena and Bishop.

2 MR. SCHRIMPF: City of Milwaukee appears by
3 Grant F. Langley, Milwaukee City Attorney, and Bruce D.
4 Schrimpf, Assistant City Attorney, Bruce D. Schrimpf in
5 court.

6 THE COURT: All right, the Court has reviewed
7 the memoranda that have been submitted and the tran-
8 scripts, which make for delightful reading over the lunch
9 hour, and is prepared to render a decision. There are
10 several issues that are to be addressed.

11 And the standard to be applied and the issue
12 regarding the issuance of a temporary injunction under
13 813.02 requires that the plaintiff has the burden of
14 proof to demonstrate a strong likelihood of prevailing
15 on the merits and irreparable harm if the injunction is
16 not granted during the course of the hearing.

17 The first question is whether or not the Court
18 has authority to issue an injunction. I don't think
19 that's seriously being disputed in this case. It's not
20 a situation in which -- even the distinct situation where
21 this might be an application for a new license or even
22 nonrenewal. This is a license that's being revoked
23 during the period of the license itself, and certainly
24 there is a property interest in the license. And if --
25 under both constitutional and common law guidelines,

1 standards, the Court would have authority to issue a
2 temporary injunction.

3 The first challenge that's raised by the
4 plaintiff is that the city violated the plaintiff's due
5 process rights in failing to follow its own ordinance in
6 Chapter 90-12-b-3 of the city ordinances, which require
7 the city attorney to prosecute complaints before the
8 Utilities and Licensing Committee.

9 The Court, in reading that ordinance, concludes
10 that the ordinance does not, in fact, require the city
11 attorney to actually present evidence and represent
12 the complainants.

13 If the city attorney is choosing to represent
14 and prosecute, it sets forth a standard in which the city
15 would go forward presenting its evidence and having the
16 burden of proof. However, in many circumstances and,
17 historically, the city has chosen not to prosecute those
18 complaints and leaves the complainants to present their
19 own case.

20 So the Court finds that there -- the plaintiff
21 has not met its burden of proof to establish the city
22 violated the plaintiff's due process rights in that
23 manner.

24 Secondly, to an extent, I guess not under the
25 constitutional claims, the plaintiff argues that issue

1 preclusion should result from Judge Moroney's decision
2 in the action in which the city commenced a proceeding
3 seeking to have the Daddios bar declared a public
4 nuisance, and the matter came on for hearing before Judge
5 Moroney on a hearing for temporary restraining order.

6 The transcript reflects that Judge Moroney
7 concluded that the case was not a proper circumstance for
8 a temporary restraining order, that the matter should
9 both be addressed administratively through the
10 ordinances, but under the circumstances, would not rise
11 to the level of warranting a temporary restraining order
12 to shut down the business while the action was
13 proceeding. Ultimately, that action was dismissed.
14 There was no final determination, no final conclusions
15 by Judge Moroney. Therefore, issue preclusion would not
16 arise from that particular case.

17 The next avenue that the plaintiff raises is
18 the argument of the -- whether or not the hearing before
19 the Utilities and Licensing Commission was a fair and
20 impartial hearing, making two arguments:

21 The first argument -- that Alderman Pawlinski
22 should have recused himself because he had prejudged the
23 circumstance and yet was a -- not only a member of the
24 committee, but chairman of that committee;

25 Secondly, that Mr. Schrimpff played a dual role

1 on behalf of the city during that hearing in both
2 prosecuting and advising the board, the committee at the
3 time that it was rendering its decision.

4 The Court is going to conclude that the
5 plaintiff did not -- there was strong evidence and
6 plaintiff has met its burden at this injunction hearing
7 to demonstrate strong likelihood of prevailing that the
8 hearing was not a fair and impartial hearing.

9 The circumstances that give rise to that
10 conclusion are -- begin with the standards that are set
11 forth in Marris v. the City of Cedarburg. And in that
12 particular case, the court explained that a fair and
13 impartial hearing under common law concepts of due
14 process and fair play include the right to have matters
15 decided by an impartial board. The due process violation
16 occurs when there is bias or unfairness, in fact, or when
17 the risk of bias is impermissibly high.

18 And in determining whether a person is afforded
19 due process and fair play, the court in that case
20 recognized that zoning decisions, similar to licensing
21 decisions, implicate important private and public
22 interests that significantly affect individual property
23 ownership rights as well as community interests in the
24 use and enjoyment of land.

25 It also noted that zoning decisions and,

1 similarly, licensing decisions, are especially vulnerable
2 to problems of bias and conflicts of interests because
3 of the localized nature of the decisions, the fact that
4 members of the boards are drawn from the immediate
5 geographical area, and the adjudicative, legislative and
6 political nature of the zoning or licensing process. And
7 since biases may distort judgment, impartial decision-
8 makers are needed to ensure both sound fact-finding and
9 rational decision-making as well as to ensure public
10 confidence in the decision-making process.

11 The court went on to explain, however,
12 nevertheless, a board member's opinions on land use
13 and preferences regarding land development -- here,
14 for general opinions on licensing or general opinions
15 regarding taverns -- that those general opinions should
16 not necessarily disqualify the member from hearing that
17 matter. Since they are purposefully selected from the
18 local area and reflect community values and preferences
19 regarding, in that case, land use and, here, licensing,
20 the members will be familiar with local conditions and
21 the people of the community and can be expected to have
22 opinions about local licensing or zoning issues.

23 The question then is whether or not, and
24 as indicated in the Marris case, a clear statement
25 suggesting that a decision has already been reached or

1 prejudged should suffice to invalidate a decision. And
2 we have to examine the specific facts in this case.

3 The starting fact is that Mr. Pawlinski,
4 Alderman Pawlinski's legislative aide made an opening
5 statement in front of the committee. It wasn't a mere
6 summary of contacts with Alderman Pawlinski's office. It
7 wasn't a mere presentation of documents that had been in
8 the files of Mr. -- Alderman Pawlinski's office, but it
9 was really an impassioned plea in support of revocation.

10 For example, beginning on Page 10, she thanks
11 the committee members for convening to hear the
12 revocation that the neighbors have brought forward, that
13 she could assure the committee members that the neighbors
14 are prepared to give direct and germane testimony.

15 She goes on to state that throughout the
16 hearing, you will be presented with evidence of how the
17 neighbors have been forced to compromise their quality
18 of life. Today you will hear the neighbors' detailed
19 accounts of vandalism, loud music, other conduct that
20 she identifies.

21 She goes on to say that they as well as
22 Alderman Pawlinski's office have kept accurate and
23 complete records of these incidents, highlighting
24 Alderman Pawlinski's very direct involvement in this
25 case.

1 She handed out a general complaint sheet.
2 She described that over the last three years, Alderman
3 Pawlinski has called six face-to-face meetings with the
4 plaintiff to specifically counsel him on the serious
5 neighborhood issues; that the plaintiff had numerous
6 chances to improve his business and eliminate this
7 intolerable behavior.

8 She states that you will also hear from very
9 patient neighbors who have also given the plaintiff
10 endless chances to correct illicit behavior. She goes on
11 and again describes the neighbors as patient, that they
12 could have requested nonrenewal of the license, and
13 argues that they were giving him ample opportunity to
14 make changes.

15 She describes and states that the plaintiff
16 makes many promises, but never fulfills them, and that
17 the problems have gotten worse. She describes that they
18 have gone beyond quality of life nuisance complaints, and
19 that the neighbors fear for their safety and well-being
20 of their families.

21 She anticipates a defense by the plaintiff,
22 who may argue that unruly patrons come from other bars,
23 and argues that that's not the case and points out
24 information or evidence that will refute that. She
25 states that Alderman Pawlinski's office has documented

1 just three complaints in total over the past five years
2 from those other establishments.

3 She goes on to note that, again, highlighting
4 that there have been six face-to-face meetings with the
5 plaintiff, five written warning letters, and over three
6 dozen phone calls. She notes 104 complaints in the form
7 of e-mails, phone calls, et cetera.

8 Mr. Schrimpf interjects at that point and asks
9 that she repeat how many face-to-face meetings there
10 were, letters, et cetera, and she reemphasizes those.

11 She goes on to state that the neighbors have
12 been extraordinarily patient. They supported him in his
13 first effort to obtain his liquor license in 1996, and
14 that he made promises and those promises went
15 unfulfilled, but this time it's different.

16 She ends by arguing the neighbors deserve
17 peace, and the time has come for action. The neighbors'
18 deserve -- the neighbors' desire for revocation is
19 strong, unified, and uncompromising.

20 She's making a very clear opening statement,
21 arguing in favor of revocation as a representative of
22 Alderman Pawlinski's office.

23 She then goes on to say, "At this time I will
24 call our first witness." It is as if she were making the
25 opening statement of a case being argued to this Court.

1 So she was a strong advocate, and she was an advocate and
2 an arm of Alderman Pawlinski.

3 Later at Page 47 of the first transcript, after
4 Mr. Plain has testified, Miss Hawks interjects and says:

5 Mr. Chairman, I'd like to clarify something.

6 And Mr. Pawlinski, Alderman Pawlinski said:

7 Go ahead.

8 Mr. Arena objected. Mr. Schrimpf interjected
9 and said the objection was well taken, at which point
10 Chairman Pawlinski states:

11 That's fine. Sarah, hold off on that.

12 And then on Page 84, Miss Hawks was asked by
13 Mr. Schrimpf:

14 Miss Hawks, earlier you wanted recognition.
15 Do you still want to say something?

16 Miss Hawks answers: Yes.

17 There was an objection, and Chairman Pawlinski
18 then says:

19 Then I'll ask a question. How's that,
20 Mr. Arena?

21 And Mr. Arena said: Fine. You have a right
22 to do that.

23 And on Page 85, after asking some questions,
24 Chairman Pawlinski goes on to say:

25 Well, I can tell you I've driven up and down

1 that street thousands of times, and it's my testimony
2 here that it is, in fact, the Howell Avenue side of the
3 building.

4 Mr. Schrimpf interjects: Mr. Chairman, you are
5 not in the position of testifying.

6 Chairman Pawlinski responds: I'm telling
7 you that I've driven that street thousands of times.
8 Mr. Plain, this is your picture. Why don't you tell us.

9 Reading through the remaining parts of the
10 transcript, Alderman Pawlinski asks some questions during
11 the course of the hearing. They aren't necessarily
12 pointed questions while the complainants are presenting
13 their testimony. However, when the plaintiff calls
14 witnesses, Mr. -- rather, Alderman Pawlinski becomes
15 very active in asking questions.

16 And then, ultimately, at the time of the
17 vote, he steps down as chair of the meeting and makes
18 comments. He states: I could never support a 20-day
19 suspension in this situation. I think revocation is
20 warranted, strongly.

21 He states: I think this case is tight. And in
22 reading that, it gives the impression it was his case,
23 that his legislative aide was presenting the case, and
24 it is his position the case is tight and it's sound and
25 irrefutable.

1 He goes on on Page 267:

2 I don't know what more a person can do in my
3 situation or in the situation of the neighbors. I don't
4 know how many more meetings I have to have. I don't know
5 how many more phone calls we have to place. I don't know
6 how much more documentation individuals in the neighbor-
7 hood need to provide to this body. I've had six meetings
8 with the plaintiff in the last three years. I've had --
9 I've written him five letters. We have placed three
10 dozen phone calls, and we have logged 104 separate
11 complaints. Even if there was no incident of police --
12 of a police nature that took place on the 30th of
13 September, this still would warrant a revocation, in
14 my opinion.

15 He goes on to say that he wrote to the
16 plaintiff and stated: "Michael, my frustration level
17 is at its peak. I cannot have this kind of activity
18 continue any longer. . . ." He states, "I have no
19 tolerance for even one more neighborhood complaint in
20 the year 2001. . . ."

21 Unfortunately, those statements and the active
22 role of his legislative assistant, I think, strongly
23 indicate and rise to the level that the plaintiff has to
24 meet, that the strong likelihood is that the plaintiff
25 will prevail in ultimately obtaining a ruling that there

1 was not a fair hearing.

2 I think under those circumstances, Alderman
3 Pawlinski and, understandably, he's the alderman for
4 this district -- he has constituents who have complained
5 strongly to him. He has engaged in a several year
6 attempts to resolve complaints with this particular
7 individual, problems that have been described by his
8 constituents, through his attempts to resolve them and,
9 as he described it, his frustration was at a peak. It
10 was time to act and he favored revocation. But I think
11 he favored revocation before the hearing began.

12 Under those circumstances, he should have
13 recused himself. And in the language of Marris, that
14 fact warrants the invalidation of the decision of the
15 committee. It should be clear at this point, and the
16 language of that case is if the evidence suggests that
17 a decision has already been reached or prejudged, that
18 should suffice to invalidate the decision.

19 I'm not getting to the merits of this decision
20 under any circumstance whatsoever. What the committee
21 decided, it may ultimately decide again in the end. What
22 I'm concluding is that the hearing itself was not fair
23 and impartial under the circumstances of this case.

24 I'm also concerned of the role Mr. Schrimpf
25 played during the course of the hearing. The fact that

1 he represented the city in the independent action before
2 Judge Moroney is a different proceeding, and I'm not
3 prepared to rule that that automatically prevents him
4 from representing the board.

5 However, during the course of the hearing,
6 Mr. Schrimpf as the city attorney and advisor to the
7 board played more than a passive role of advising
8 the board. In numerous circumstances, he questioned
9 witnesses. There is a statement at Page 8 that he
10 assisted the neighbors in framing their complaint, which
11 certainly, although not prosecuting or representing them,
12 did assist them in preparing the complaints for the
13 committee.

14 At various times he played the role of a
15 neutral advisor to the board, making sure that exhibits
16 were individually marked, that there was a proper
17 foundation for exhibits being admitted, for example,
18 pictures, asking questions of who took the pictures, are
19 they accurate -- just to make sure they should fit the
20 record, which may be appropriate and is appropriate for
21 an advisor to the board, and at times clarified some
22 factual disputes. For example, when Miss Hawks said
23 that the plaintiff's live music license was revoked, he
24 indicated that, factually, it was nonrenewed, which is
25 a significant question.

1 However, for example, on Page 53 through 59,
2 six pages of the transcript, Mr. Schrimpf is asking
3 questions of Mr. Plain. He was clarifying dates and
4 times to explain when certain incidents occurred. He
5 asked him to explain how he knew that the plaintiff had
6 security. He was asking him was he asleep at the time
7 the incident occurred or was he awakened by the conduct,
8 certainly significant in whether -- the nature of the
9 disturbance. He questioned him about what the security
10 did. He questioned and brought out information about
11 whether patrons regularly or frequently set off car
12 alarms through certain activity. He brought out other
13 incidents of disturbances from Mr. Plain.

14 That wasn't done at the request of a board
15 member asking -- who might be struggling to get
16 information. It was Mr. Schrimpf asking the Chairman
17 to be able to ask questions to solicit information.

18 On Page 76, he was asking questions about
19 activities of the security personnel leaving cigarette
20 butts on Mr. Plain's lawn, again, clarifying whether
21 testimony -- certain incidents occurred in the early
22 morning hours or evening hours, and questioned and
23 brought out information about an individual who was
24 wrapping a T-shirt around his arm and clarifying that he
25 saw blood coming from him.

1 And, again, I would point out he did play the
2 role of a neutral in a variety of circumstances, advising
3 Alderman Pawlinski that at one time when he was bringing
4 out information on Page 126 about underage drinking,
5 Mr. Schrimpf quickly stepped in and said, that's not
6 in the complaint. You can't consider it.

7 In another circumstance, Page 160, there were
8 questions coming forth from aldermen as to why didn't the
9 neighbors complain at the time of the renewal of the
10 license in May of 2001, and Mr. Schrimpf brought out the
11 questions about -- to one of the witnesses about whether
12 or not he knew when the license was being renewed.

13 And on Page 26 of the second transcript,
14 Exhibit 10A, brought out questions about whether that
15 specific individual had any problems with any of the
16 other bars in the area.

17 So in reviewing the transcript, I find
18 Mr. Schrimpf was -- had a blended role of assisting the
19 prosecution of the case as well as impartially advising
20 the board. And certainly in an administrative hearing,
21 one attorney cannot represent both the neutral board and
22 the prosecution.

23 So I think under that circumstance, the
24 plaintiff has met its burden to prove a strong likelihood
25 of prevailing on the merits that the hearing was not fair

1 and impartial.

2 On the issue of a violation, due process
3 violation because there was -- the revocation did not
4 involve progressive discipline, I've read the three cases
5 that were cited. Thompson v. Village of Hales Corners,
6 there is no discipline involved in that case whatsoever.
7 It involved the situation of minors in a single
8 establishment under a local ordinance that prohibited
9 minors from playing video games, and there was no
10 prosecution or no citations issued. There was a finding
11 of a violation of due process, however, under the
12 circumstances as a discriminatory enforcement, but there
13 was no issue of progressive discipline.

14 In Tavern League v. City of Madison, there was
15 an ordinance that allowed withholding of a license if
16 there were outstanding tax liens. There is no issue
17 regarding progressive discipline at all.

18 And in Menomonee Falls v. Michelson, it dealt
19 with an ordinance requiring disconnecting any drain that
20 discharged into the sewer. Again, it had nothing to do
21 with progressive discipline. And so there -- the Court
22 finds there is no case law to support the requirement
23 under the due process clause that there be progressive
24 discipline and that the plaintiff has failed to meet its
25 burden of proof in that area.

1 As to the discriminatory enforcement
2 allegation, the Court finds the plaintiff has failed to
3 prove, or meet its burden that it would likely succeed on
4 the merits of a discriminatory enforcement. In Thompson
5 v. Village of Hales Corners, which was cited, it notes
6 that in order to prevail, the plaintiff must prove the
7 defendant, acting under color of state authority,
8 deprived the plaintiff of rights, and they alleged
9 intentional discriminatory enforcement.

10 The court noted that in order to prevail, the
11 plaintiff must further prove that the ordinance was
12 enforced with an evil eye and an unequal hand. There
13 must be a showing of an intentional and systematic
14 discrimination.

15 Also, in the Village of Menomonee Falls v.
16 Michelson, that court stated that:

17 The equal protection clause of the fourteenth
18 amendment is violated if an ordinance is administered
19 "with an evil eye and an unequal hand, so as practically
20 to make unjust and illegal discriminations between
21 persons in similar circumstances, material to the
22 rights." Nevertheless, evidence that a municipality has
23 enforced an ordinance in one instance and not in others
24 would not in itself establish a violation of the equal
25 protection clause. There must be a showing of an

1 intentional, systematic and arbitrary discrimination.

2 Here, the plaintiff has failed to prove that
3 the city has discriminated in the enforcement of the
4 ordinance. There are several examples of other taverns,
5 bars whose licenses have not been revoked under facts,
6 some of which are similar to the facts that were
7 presented to the committee in this case. However, the
8 totality of the circumstances of each case has to be
9 considered. The period of time and how many licenses the
10 city has and has issued, how many suspensions, how many
11 revocations, none of that is indicated.

12 Rather, the discussion of the committee and the
13 Council regarding revocations have discussed the fact
14 that there are ongoing situations of licenses being
15 revoked, suspensions imposed, licenses not being renewed,
16 and that the city takes those situations seriously and
17 attempts to address them in a nondiscriminatory manner.
18 And the mere fact that there are other situations that
19 have some similar facts does not rise to the level of
20 discrimination.

21 Lastly, the question of whether or not there
22 is irreparable harm. I am convinced by the language in
23 Bruno v. City of Kenosha, 333 F. Supp. 726, although it
24 was reversed on other grounds, that of jurisdiction,
25 there the district court explained that plaintiffs are

1 tavernkeepers. Their livelihood and their investments
2 are hinged upon their ability to sell liquor, and this
3 ability in turn depends upon processing -- possessing
4 a liquor license. And were I to fail to continue the
5 outstanding temporary restraining orders, plaintiffs
6 would be left without means to earn their living. Nor
7 are these actions of such a nature that if the temporary
8 restraining orders were not continued and plaintiffs are
9 ultimately successful in the main action that they might
10 then be able to calculate the damage done and sue for
11 monetary relief.

12 So I think under the circumstances as the
13 record has been presented, the Court does find, as
14 I've indicated, that the plaintiff has proven a strong
15 likelihood of prevailing on the merits, that the
16 action -- the hearing held before the Utilities and
17 Licensing Commission was -- did not constitute a fair and
18 impartial hearing, thereby violating the due process
19 rights of the plaintiff in the manner as I described,
20 and that the plaintiff has also proven irreparable harm;

21 That for those reasons, the Court is going to
22 grant the motion for a temporary injunction enjoining
23 the city from revoking the license, liquor license or
24 licenses held by the plaintiff. That will continue until
25 a hearing in this case, which I'm open to suggestion on

1 how you want to proceed with that.

2 MR. SCHRIMPF: Your Honor, I have a couple of
3 questions.

4 THE COURT: Okay.

5 MR. SCHRIMPF: Thank you. First of all, in
6 light of the Court's decision, it seems to me that an
7 appropriate order would be an order of remand to the
8 Common Council for purposes of correcting these
9 deficiencies. In connection with that, I have a couple
10 of questions that flow from that.

11 First of all, with respect to the involvement
12 of Alderman Pawlinski at the committee level, I hope --
13 I hope everyone bears in mind that that resulted in a
14 recommendation for a 20-day suspension.

15 THE COURT: I do.

16 MR. SCHRIMPF: It wasn't until it got to the
17 Common Council that we got a revocation. And as a result
18 of that, I am wondering if the Court has any directions
19 on Alderman Pawlinski's further involvement, when and if
20 it comes back to the Common Council and for that matter,
21 I suppose, my own involvement on those -- on those
22 issues. That's point number one.

23 And point number two is that is the Court now
24 vacating the judgment of the Common Council?

25 THE COURT: At this point, I have continued the

1 injunction.

2 MR. SCHRIMPF: Okay.

3 THE COURT: The avenues -- the likelihood
4 of the city introducing additional evidence is not
5 necessarily pretty strong in this case, and we have a
6 record that we're going to have, and it's likely the
7 plaintiff is going to prevail under the circumstance.

8 A quick resolution under the circumstance would
9 be to vacate the revocation by the Council, remand the
10 matter to the Utilities Commission to hold an appropriate
11 hearing before a fair and impartial committee.

12 MR. SCHRIMPF: Your Honor, on that point, my
13 only point is this. I don't think because of the posture
14 of this case, you can remand it back to the Utilities and
15 Licenses Committee. I think you can remand it back to
16 the Milwaukee Common Council. The Milwaukee Common
17 Council can, in turn, either take the case on its own or
18 remand it back to U&L with the directions as to who might
19 serve on that committee.

20 THE COURT: So you'd be satisfied -- asking
21 both of you -- if I granted a judgment vacating the
22 revocation and remanding it to the Common Council?

23 MR. SCHRIMPF: That's right.

24 THE COURT: With directions to proceed with an
25 appropriate hearing.

1 MR. SCHRIMPF: That's correct.

2 MR. ARENA: If I could be heard on that?

3 THE COURT: Sure.

4 MR. ARENA: I think Marris would require that
5 you remand it back to the Utilities and Licenses
6 Committee. Under the rules that were promulgated by the
7 Council and the President of the Council, they determine
8 who the U&L committee is.

9 I also believe that Alderman Pawlinski would
10 have to be recused from the committee and recused from
11 the Council in that he's the one that made the motion for
12 a suspension despite the recommendation for a 20-day
13 suspension.

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

18 MR. SCHRIMPF: For purposes of this case.

19 THE COURT: For the purposes of this case.

20 MR. SCHRIMPF: Correct.

21 MR. ARENA: No, kick him off for good --
22 I mean, nobody is arguing that.

23 THE COURT: Oh, I'm not sure what the role of
24 any alderman would be and whether or not an alderman who,
25 or in any municipality, who takes a position regarding

1 the revocation of a license once it gets to the
2 legislative body, could or couldn't vote.

3 I mean, certainly watered down at the level
4 that it's at, I don't know and I'm not ready to rule on
5 whether or not, and I don't have to rule on whether or
6 not at the Common Council level, what an alderman --
7 what position the alderman has to take.

8 MR. SCHRIMPF: Your Honor, in -- in that
9 connection, and I don't know where this is ultimately
10 going to go, but in that connection, I would recommend
11 or urge the Court to consider a case called Boroo,
12 B-o-r-o-o, v. Town Board of Barnes cited at 10 Wis. 2d
13 153. The part that I'm interested in is at Page 162;
14 102 N.W. 2d 238, the part I am interested in is at 242
15 and 243, as well as a well-known treatise on the subject,
16 McQuillin, Municipal Corporations. I have a cite in the
17 case to McQuillin, and I'm sure it's been updated since
18 then, Page 660, section 10.35, basically speaking, that
19 the mere fact that one of the board members or one of the
20 members of the council may be animated by animus towards
21 an applicant does not render the entire decision
22 unlawful.

23 THE COURT: Well, that gets back to what
24 happens at the Common Council level. At this point,
25 I'm finding that the committee hearing is invalidated

1 and void.

2 MR. SCHRIMPF: Sure.

3 THE COURT: And so I'm not sure the distinction
4 between remanding it back -- my remanding it to the
5 committee versus remanding it to the Common Council and
6 if it makes a significant effect one way or another.

7 MR. SCHRIMPF: Oh, I think it does because what
8 you have right here is a decision of the Milwaukee Common
9 Council which, under Chapter 125, was appealed to the
10 circuit court. And if you check 125.12(2)(d)
11 specifically, it points out that it is the decision of
12 the governing body which is appealed to circuit court.
13 Therefore circuit court, it seems to me, remands it back
14 to the governing body. The governing body has to figure
15 out what to do with it from that point.

16 THE COURT: Mr. Arena? If they try and go
17 ahead and do something without sending it back to the
18 committee, that's another legal issue that you have and
19 I can't address with them, but I don't think they --

20 MR. ARENA: To me, it's almost like a criminal
21 case where there is a mistrial. You got to start all
22 over. So it's got to go back, it's got to be remanded
23 back to the committee.

24 MR. SCHRIMPF: Well, then I would suggest that
25 the Court remand it back to the Council with directions

1 that it be remanded to the Utilities and Licenses
2 Committee for a new hearing.

3 THE COURT: Okay, that's -- my reaction as to
4 Mr. Arena's response was, well, really what it is, is
5 the Court of Appeals reversing the trial court on a
6 certiorari review of a parole or probation revocation
7 and with the direction to send it back to probation and
8 parole.

9 MR. SCHRIMPF: Right.

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

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

20 MR. SCHRIMPF: Thank you. Shall I draft the
21 order, your Honor?

22 THE COURT: You want to fight about it or you
23 want to delegate that. Mr. Arena, you prevailed; you
24 could have the option, but Mr. Schrimpf is volunteering.

25 MR. ARENA: I think that I prefer to draft it.

1 THE COURT: All right.

2 MR. ARENA: Or give it a shot.

3 MR. SCHRIMPF: Under the five-day rule.

4 THE COURT: Under the five-day rule, and let me
5 suggest that all I want to see in that order is that it
6 came on for hearing today; I heard testimony, argument,
7 and for the reasons stated on the record, and then
8 indicate what my ruling is.

9 MR. ARENA: Okay.

10 MR. SCHRIMPF: And that is remand to the Common
11 Council with directions to remand to the Utilities and
12 Licenses Committee for a new hearing.

13 THE COURT: Right, and that's all it should
14 say. You don't have to make the -- the findings and
15 conclusions about the constitutional issues are stated
16 on the record. They don't have to be put in the written
17 order.

18 MR. ARENA: Okay.

19 THE COURT: So -- and note that -- I guess I
20 would add, ask you to add that the jurisdiction of this
21 Court ceases because we've had some circumstances where
22 I've remanded to administrative bodies with a question of
23 whether or not I was looking for it to come back to me
24 for further review.

25 In this case, I'm not looking for further

1 review. And if there is a dissatisfactory result by
2 either party, they have to start a new action, rather
3 than merely bring this one back.

4 MR. SCHRIMPF: I think I know the case to which
5 the Court refers.

6 THE COURT: It's only one, only one.

7 All right, thank you very much. Good luck.

8 You want the exhibit to remain or can it be
9 withdrawn, the video? Is somebody appealing this
10 decision?

11 MR. SCHRIMPF: I don't think so.

12 THE COURT: Thinking about it?

13 MR. ARENA: I don't think we are.

14 THE COURT: All right.

15 MR. SCHRIMPF: I don't think the city will.

16 THE COURT: If there is no objection, we'll
17 return Exhibit 1 to the city to retain it during any
18 period of appeal.

19 (WHEREUPON, Exhibit No. 1 was returned to
20 counsel for the city.)

21 MR. SCHRIMPF: Sure. Thank you very much.

22 (WHEREUPON, the foregoing proceedings were
23 concluded.)

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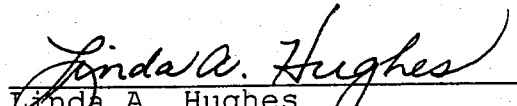
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State of Wisconsin)
(SS:
County of Milwaukee)

I, Linda A. Hughes, do hereby certify that I am the Official Reporter for the Circuit Court, Branch 10, in and for the County of Milwaukee, Wisconsin, and that the above and foregoing is a true, correct, and complete transcript of the proceedings had on the dates indicated herein, as contained in my stenographic notes.

Dated at Milwaukee, Wisconsin this 19th day of November, 2001.



Linda A. Hughes
Official Reporter, Br. 10