September 18, 2001

VIA HAND DELIVERY

Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W
Second Floor
Washington, D.C. 20001

Re: BZA Application No. 16611, Edmund Burke School

Dear Chairperson Reid and Members of the Board:

This letter represents the Edmund Burke School's ("**School**") response, pursuant to instructions from the Board of Zoning Adjustment ("**BZA**") delivered at its regular scheduled meeting on September 4, 2001, to all post-hearing filings made by the parties in the above-captioned case. There have been a number of filings made by opponent parties to the application, and, in the interest of efficiency they can be categorized as: (1) fairness of the BZA procedure; (2) sufficiency of parking for the project; (3) vehicular traffic; (4) use of the Howard University Law School property by Burke; and (5) mediation. The School does not wish to perpetuate the "name-calling" that has occurred, but merely will present its position with regard to these issues. A copy of the School's response, previously filed in the record, is attached as Exhibit 1, for your convenience.

A. Fairness of the Procedure.

It is a shame that anyone would complain that the BZA's handling of this case has been unfair. We believe the BZA has demonstrated a tremendous tolerance and patience with all the parties in this case (the undersigned included) in order to develop a clear and sufficient record. To claim, as the ANC does, that the admission of evidence into the record on May 15, 2001 somehow prejudiced its position when, in fact, the ANC did not present its case to the BZA until July 10th (almost 2 months later) is a complaint with no credibility. Also, the ANC's claim that the Chairperson is somehow prejudiced by an alleged conversation she had with a third party who was not, and is not a party to this case, even if such a conversation occurred is, at best, groundless and, at worst, insulting to this forum and process. [1]

[1] Please note that none of the post-hearing ANC filings, contain any acknowledgement that the materials contained therein are the opinion of the full ANC, taken by vote after a duly noticed meeting. We believe these filings represent the views of the Commissioners who signed them and do not necessarily represent Advisory Neighborhood Commission 3F. As the Board is aware, the ANC vote to oppose this

BZA
Case No. 16611
Exhibit No. 243

Board of Zoning Adjustment
District of Columbia
CASE NO.16611
EXHIBIT NO.243

The process the BZA has administered in this case is completely within the rules of the BZA and its past practices and precedents. It has allowed the BZA to develop a complete and full record, one that contains everyone's respective views on all the material issues.

B. Parking

The School will not reiterate its detailed parking analysis nor the errors in the analysis provided to the BZA by Neighbors United for Livable Streets ("**NULS**"). We believe we have covered this issue extensively in our August 20th and August 27th filings with the BZA and we stand by those letters. We do point out, again, that our analysis is supported by the Zoning Administrator, the Office of Planning and the Department of Public Works.

C. Testimony with Regard to Traffic

The School reiterates its position with regard to vehicular traffic in the vicinity of the School. We firmly believe that with the improvements proposed as part of this project, that is, a sole vehicular entrance to the School from Connecticut Avenue, the extensive Transportation Management Plan ("**TMP**") with a strong Compliance Plan, the provision of fifty additional underground spaces that do not exist currently and the provision of 17-19 on-site queuing spaces will greatly improve existing traffic and circulation conditions.

D. Howard University Law School

To reiterate, there is nothing in the Howard University Law School BZA Orders that prohibits the use of the open space on the Howard campus by Burke's physical education classes. As was pointed out in our August 27th filing, the suggestion that the BZA should prohibit this use is counter intuitive to everything that the opponents have complained about. The Board is well aware that vehicular traffic is the biggest single issue raised by these opponents. If, in fact, the BZA prohibits use of the Howard fields, which are within easy walking distance of the School, the School will be forced to add

(..continued)
project was not unanimous, but 3-2 (with one abstention). There is no evidence in the record that suggest the pages of material filed by the ANC Commissioners Kogan and Perry, explaining their various positions is anything but their own personal opinions.

vehicular trips to the road system to take the students to a more remote location for gym classes. It just makes no sense to enforce this suggestion.

E. Mediation

From the beginning the School has done everything in its power to reach an accommodation with its neighbors. This is obviously evident in the fact that the School completely revised its plans in order to accommodate the community's concerns articulated to the ANC in a letter to the BZA dated November 7, 2000 (Exhibit No. 49 of the Record). In that letter the ANC stated that "the neighbors made suggestions for redesign of the Burke School project ... to achieve several key objectives ..." that (1) the School must provide 72 on site parking spaces, (2) remove the burden from Van Ness and Upton Streets and the alley by directing drop-off and pick-up activity to Connecticut Avenue side of the building and (3) maintain the landscaped buffer on the existing School's eastern property line. The School redesigned its entire project to accommodate these requests and put in place a Compliance Plan with a strong enforcement mechanism in order to minimize, and improve, its impact on the neighboring streets.

Edmund Burke School's continuing efforts to find a mechanism for reasonable discussions with our neighbors have extended over 2 years and have included numerous efforts to enter mediation. The initial meetings in July 1999 were with the neighbors from the south and north side of Upton, with ANC Commissioner Phil Kogan present. We also had a meeting with representatives of Van Ness South with ANC Commissioner Karen Perry present. We had a number of meetings with the principals of Sirrus, LLC and one meeting with the tenants of its building. In each case we listened carefully to the concerns from each perspective. It is ironic that the ANC characterizes the School's continuing willingness to meet with interested neighbors as "divide and conquer," particularly as Commissioners Kogan and Perry attended a number of those meetings and especially in light of the fact that the various neighborhood groups could come to no consensus about their desires until the end of 1999.

One might say that the only real "divide and conquer" efforts were made by some of the leading actors of the NULS group. Linda Jay, Milton Shinberg, Rob Vircella, Jody Smolnick and Don Vereen, principals in NULS, approached the School in the spring of 2000 and suggested that they would sell their houses as a unit so that the School could expand onto their property rather than on Connecticut Avenue. The School explored this suggestion, but rejected it.

In any case, in October 2000, the various neighborhood groups were finally able to come to agreement regarding their collective desires. In their January 8, 2001 letter and concept drawing (a copy of which is attached as Exhibit 2), the opponents explicitly identified what they call their "central concerns" and presented a plan that would positively address those concerns. In summary, the neighbors asked that the School: – direct traffic away from Upton Street and take maximum advantage of its Connecticut Avenue location -- remove Burke traffic from Van Ness Street and the public alley between Van Ness and Upton Streets – confine Burke traffic to the School's property and arterial streets – provide on-site parking for students and faculty –retain the landscaped buffer between the School and the residences immediately to its east. The plan that Edmund Burke School has pending in this application embraces the opponent's suggestions, and incorporates every one of their requests. Despite the revisions of Burke's proposed plan, NULS and ANC opposition continued.

In the last 6 months or so, the School has attempted to structure a mediated process for resolving these disputes.

Attempt #1:

Interestingly enough, the first attempt was made in the spring of 2001 at the suggestion of one of the ANC 3F Commissioners who spoke to Burke about the benefits of mediation and offered an individual who was well qualified and was willing to do this work pro bono. Burke thought that ANC3F sponsorship would provide the strongest and most appropriate encouragement for all parties to participate, but when the School made inquiry with ANC Commissioner Kogan about his willingness to sponsor mediation utilizing this pro bono mediator, Mr. Kogan stated very clearly that he did not see sponsoring mediation as a Commissioner's role. He stated that his role was to represent his constituency in this process and nothing more. Without the support of the ANC for this process, we felt that we were not in a position to go forward.

Attempt #2:

The second attempt at mediation was made in July 2001, through the efforts of David Julyan, a professional mediator who came highly recommended by the BZA administrative staff. The School met with Mr. Julyan and stated quite clearly that we were interested in entering into mediation. After his meeting with the opponents in this

case, some premediation terms were agreed upon, including that the School pay for the exploratory process (not the mediation itself – no agreement was reached on that point).

The undersigned had a telephone conversation with Julie Weissman, Esquire of NULS and was informed that the opponents would only discuss the potential of mediation with Mr. Julyan, if they had no financial obligation to reimburse him for his time. So we agreed to "pay" for the exploratory talks. Some early conversations were had with both parties, after which Mr. Julyan informed us that the opposing parties had decided not to enter into the mediation process. The opposition did not tell us the reasons that they had rejected mediation. At the July 10 BZA hearing, it came as a surprise to hear Jody Smolnick, a spokesperson for NULS, say that they had rejected mediation because they felt that the School's paying Mr. Julyan's fees placed the process in an awkward position, especially since the School agreed to pay Mr. Julyan's fees in response to the neighbors' request. At no time did NULS did suggest that an alternative mediator should be pursued.

Attempt #3

After two failed attempts at trying to work with all the parties to form a mediation process and following the BZA's urging that the parties revisit the question, we made yet another attempt at mediation. This time the School tried to work with NULS alone, hoping that this group possibly had some incentive to continue working with the School, particularly given the BZA's statements, at the public hearing, strongly encouraging mediation. Don Vereen was NULS contact person for this, due to vacation schedules and, as stated in Mr. Kogan's August 29th 2001 submission, the neighbors' focus on preparing their BZA responses. Copies of e-mails to Mr. Vereen are attached as Exhibit 3 and pretty much capture these attempts. Mr. Vereen did not respond to either of these emails.

The School has been frustrated throughout this process, first by the mixed and conflicting agendas that were presented by various neighbor groups and later by the group's continued opposition to a plan that was by that time, very much of their own making. It may be that the opponents in this case have one agenda only: to stop the School from expanding at all costs, perhaps in the hopes that the School will leave the neighborhood. Whatever their reasons, the opposition has repeatedly rejected opportunities to enter into mediation with the School, and to say otherwise flies in the face of the facts.

F. Conclusion

The School has addressed all of the concerns that have been raised by the opponent parties. It proposes to triple the amount of on site parking; provide an off street loading dock where none exists; eliminate pick up and drop off traffic in the public alley and on Van Ness and Upton Streets; establish on site queuing for 17-19 cars (there is no on-site queuing presently); abide by a Compliance Plan with severe financial penalties; and provide off site parking for "events". Further while it believes its optimal population, for programmatic and financial purposes, needs to be 360 students, the School is willing to begin the occupancy of this project with a cap of 340 students and provide for expansion for 360 only upon a showing of compliance with the TMP. The approval of this application will truly improve existing conditions for the School and the neighborhood.

Sincerely,

Phil T. Feola

Sarah E. Shaw

cc: David Shapiro
Marie Sansone, Esquire

Enclosures

Document #: 1162435 v.1

EDMUND BURKE SCHOOL'S RESPONSE
TO INFORMATION FILED IN THE RECORD AS OF AUGUST 27

I. Neighbors United for Livable Streets

Neighbors United for Livable Streets files a media release and a Shift Summary Report from the United States Park Police indicating that at a certain time on a particular date, i.e., 9:38 a.m. on November 9, 2000, a search for a criminal suspect was conducted in Rock Creek Park. These papers provide no proof to counter the information provided in the record through the testimony of Mr. Erwin Andres (Gorove-Slade) that he was told that Beach Drive was closed to vehicular traffic form 7:00 a.m. to 10:00 a.m. on November 9, 2000, by a person in the National Park Service who is responsible for having such knowledge. The NULS information merely shows that there may have been an additional incident in the Rock Creek Park corridor on that date and/or, as is more likely, the exact times of the incident were misreported as part of the Park Police's media release and/or shift summary. Attached hereto is a letter from Gorove-Slade Associates countering the charges made by NULS.

II. Loading Dock.

The ANC complains that the provision of a loading dock on the plans is somehow "new evidence." This is not the case. In fact, the loading area was shown, in conjunction with a trash "room," to the community in the exact same location over two years ago. While the loading dock was never explicitly shown on the BZA drawings, it was not needed to be shown because no BZA relief was sought for it. Further, it was never an issue before the BZA until it was raised at the very end of the hearing (on July 10) by an opponent. The School's submission showing the location of the loading dock was merely to show the BZA that it

addressed the opponent's concerns. There are many, many architectural details that are not included in plans before the BZA. However, as the BZA is aware, all zoning requirements must be met when a building permit application is filed with the Department of Consumer and Regulatory Affairs. Notwithstanding the above, the ANC has had an opportunity to note its position with regard to the loading dock and has done so.

III. Pedestrian Bridge Variance.

There was no request for a variance made for the pedestrian bridge because no variance is required. It is simply not within the jurisdiction of the Board of Zoning Adjustment to grant or deny the use of air space over a public alley. Thus, the School did not request the BZA to rule on it. The pedestrian bridge was shown in the School's posthearing submission as a potential solution to one of the issues raised at the public hearing. However, the School fully recognizes that it needs to seek that approval for the bridge from other District agencies, not the BZA, and the School specifically stated such in its filing on August 20.

IV. The Zoning Administrator.

The ANC requests "live" testimony from the Zoning Administrator on the parking issue. Testimony from the Zoning Administrator in special exception cases before the Board of Zoning Adjustment is extremely, extremely rare. The Zoning Administrator interprets and effectuates the Zoning Regulations as promulgated by the Zoning Commission and as might be adjusted by various Board of Zoning Adjustment Orders. His ruling occurs, officially, upon his review of a building permit application at which time he performs a detailed analysis

of the project in order to determine whether, or not, that project is consistent with the Zoning Regulations and any BZA Order that may affect the property.

The School's meeting with, and subsequent confirmation letter from, with the Zoning Administrator is the normal, ordinary way of doing business with the District of Columbia to ensure that property owners do not spend an extraordinary amount of time or money proceeding down the "wrong" path only to find out that that path is not how the Zoning Administrator interprets the Regulations. This ruling was issued almost a year ago, before the issue of size of parking spaces and location of parking spaces, was even raised by the opponents of this BZA application. Its only relevance is that it counters the claims made by the School's opponents and supports the School's understanding of the Zoning Regulations.

V. Procedural Errors.

The ANC's claim of procedural errors in this case is without merit. The claim that the ANC did not receive the School's revised Transportation Management Plan ("**TMP**") until shortly before the May 15 hearing session somehow was prejudicial to the ANC and opponents when, in fact, they did not make their presentation until July 10th is a ludicrous claim. The ANC and the community opponents had almost two months to evaluate the TMP and, in fact, did so at the public hearing.

Phil T. Feola

Sarah E. Shaw

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August 31, 2001

Ms. Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, 2nd Floor
Washington, DC

Dear Chairperson Reid:

On behalf of our firm and the Edmund Burke School, we take exception to the comments presented in the August 27, 2001 letters presented by the Neighbors United for Livable Streets (NULS) concerning the testimony of Louis Slade and Erwin Andres. The comments presented in the August 27 letters sent by NULS state that Louis Slade and Erwin Andres provided false testimony to the Board regarding traffic issues associated with the Burke School. In response, our testimony provided was based on the work that we had performed for the school that meet our profession's standards regarding traffic analysis and transportation planning.

Our firm is a professional transportation planning and traffic engineering consulting firm that has worked on over 20 private schools in the metropolitan DC area over the past 5 years. Based on our extensive experience, we have been able to apply our industry standards in identifying impacts associated with private schools and to develop sound transportation management plans that schools can feasibly implement, especially for schools located within the District. As a firm, we have not compromised and will not compromise the integrity of our work for the sake of any development project. The accusations of false testimony do not represent the level of extensive work our firm has done over the past two years on this project as we continuously modified the traffic plan time and time again to reflect the school's flexibility in trying to meet the community demands. As responsible engineers, we have looked at various circulation alternatives to address the issues that we identified and were raised by the community, as is evident in the various iterations of our transportation management plan.

In conclusion, our testimony in the Burke School hearings has been presented to address questions raised by the opposition. Additional information was submitted to answer questions about counts performed in the summer. Our firm did not perform traffic counts in the summer because it would obviously not reflect the impact of the school's operations. Additionally, questions were raised on our testimony regarding the closure of Beach Drive during which the NULS traffic engineer performed his only independent survey. Our firm was given information from the Park Service that Beach Drive was closed during the morning that would have affected the traffic operations and actually did affect traffic levels on Upton Street.

Thank you for consideration and attention to this matter.

Sincerely,

Louis J. Slade, P.E.
Principal



Neighbors United for Livable Streets

Upton Street Neighbors

Van Ness South Tenants' Association, Inc.

Van Ness East Condominium Association

2950 Van Ness Tenants Association

4007 Connecticut Avenue, NW Tenants' Association

4033 Connecticut Avenue, NW

4107 Connecticut Avenue, NW

January 8, 2000

Mr. Walter Ailes, Assistant Director BY HAND
The Edmund Burke School
2955 Upton Street, NW
Washington, DC 20008

Re: BZA Case 16611

Dear Walter:

This letter responds to the Edmund Burke School's revised building and traffic flow plan on behalf of Neighbors United for Livable Streets. The neighbors have examined the revised building and traffic flow plan submitted to the BZA and we are deeply discouraged and disappointed that the plan does not respond to neighborhood concerns that have been clearly articulated.

At our October 29, 2000 meeting, the Van Ness Street, Upton Street, and Connecticut Avenue neighbors of the Burke School requested that the school modify its plan for the addition to take maximum advantage of its Connecticut Avenue location. In doing so, the school would respond to the neighbors' central concern that the school's expansion plan should ensure that traffic generated by the school would be confined to the school's property and arterial-level streets. We also asked that on-site parking be provided that meets the school's real parking demands for both daytime and evening activities. The neighbors provided you with a concept plan to illustrate the majority of our goals and concerns that could be seen in that context, and to help move the discussion along. The general goals of that concept plan were largely not achieved in your revised plan.

We agreed to defer discussions on a number of other issues, which could include student off-site parking controls, event schedule controls, etc., until an overall framework for the revised design could be reviewed and, hopefully, be the basis for consensus. Unfortunately, the revised design left out crucial neighborhood needs.

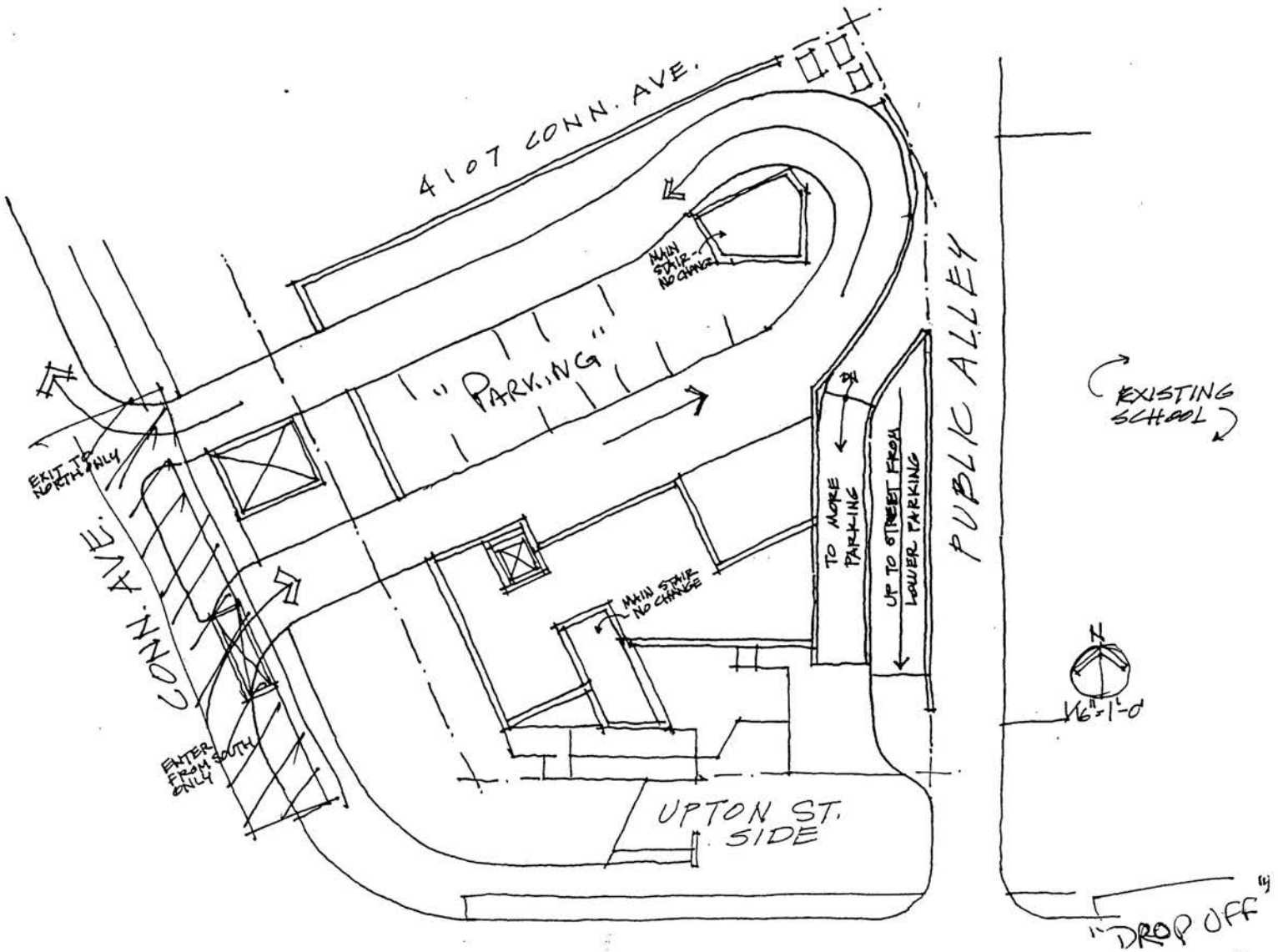
The revised design fails to absorb traffic generated by the school or to direct it away from the already overburdened residential neighborhood, for which the Edmund Burke School currently bears significant responsibility. The plan fails to provide adequate parking for the school.

Having examined the revised plan, based on the responses to the issues and concerns we have discussed for so long, we conclude that the plan does not meet neighborhood concerns.

Sincerely,

Milton Shinberg
2949 Upton Street, NW
Washington, DC 20008

✓ To reach 72 "spaces" -



CONCEPT PLAN of FIRST FLOOR

Monday, August 13, 2001 4:41:22 PM
Message

From: Walter Ailes

Subject: Mediation

To: Donald_R._Voreen@ondcp.eop.gov

Dear Don,

When you and I spoke the other day, you mentioned that the school should have learned from the last effort to initiate mediation that the neighborhood needs to be part of the process of choosing a mediator. The school would very much like to work with a mediator to explore the possibility of reaching a set of mutually agreed upon terms that would have the NULS group and The School approaching the BZA with acceptable conditions to both parties as the school moves forward. We believe there are a number of areas to explore more fully: phased enrollment as a condition (340 students first phase, moving to 360 if we meet our standards),
possible bridge between the two buildings to reduce pedestrian activity, and finally a mechanism that gives the neighborhood some sense of reliability that these impacts will be real and long lasting.

Twice we have put forth the concept of a mediator. The first time, this last spring, we hoped to work through an ANC sponsored mediator (who wanted to do this work pro bono) and Phil Kogan made it clear that he didn't feel this was an appropriate role for the ANC. The second time the Zoning administrator put forth a name with a strong recommendation that this individual did good work in another case, and the parties should explore this. The opposition group said that they wanted the school to pay for any pre-mediation expenses. $3,000's later we are told that the mediator was not a good fit. I have a list of five mediators that were put forth as possible mediators in the George Washington Univ. conflict with their neighbors. I will fax you that list this afternoon.

We don't believe there is much point in trying to bring together all of the opposition parties at this point in the process. This mediation process we are suggesting would only be with the NULS group.

Please let me know what the process could / should look like that brings all of us to the table untainted.

Respectfully,

Walter Ailes

Tuesday, August 14, 2001 4:05:38 PM
Message

From: Walter Ailes

Subject: Mediation information

To: Donald_R._Vereen@ondcp.eop.gov

Dear Don,

For the sake of full disclosure, I have found out today that our lawyer, Phil Feola, sits on the board of The Center for Dispute Resolution so Mr. Jerry Roscoe may be considered compromised. Secondly, Mr. Peter Maszack is a partner at Arnold and Porter which is the firm that is representing the Brown brothers and that carries with it a conflict of interest. This town is obviously too small.

I plan to call tomorrow to see how our possible timing could look. I think all of us are concerned that we will run out of time on this. If plan A is working with a mediator. Plan B may be that we share with each other our drafts of recommended conditions that must be submitted at the end of the month (27th?) and that if there are conditions that are mutually satisfactory to both NULS and the school they would carry more wait if both parties signed off on them. (just a thought)

Finally, I was slow to pick up yesterday the distinction that you may have been making about Linda Jay as a party and not a member of NULS. We would like to have Linda in the mix as we go into discussions, and I guess I have always considered her as a member of NULS.

best.....Walter

Certificate of Service

I hereby certify that on September 18, 2001, a copy of the foregoing materials was sent via first class mail to the following:

Jennifer Steingasser
Office of Planning
801 North Capitol Street, NW, 4th Floor
Washington, DC 20002

Mr. Kenneth Laden
Department of Public Works
2000 14th Street, NW, 5th Floor
Washington, DC 20009

ANC 3F c/o Phil Kogan
Health and Human Services
200 Independence Ave, SW, #503H
Washington, DC 20201

Linda Jay
2951 Upton Street, NW
Washington, DC 20008

And

3634 Veazey Street, NW
Washington, DC 20008-3135

Van Ness South Tenants Association
c/o Pat Brown
Greenstein, DeLorme & Luchs
1620 L Street, NW, Suite 900
Washington, DC 20036

NULS
c/o Jodie Smolik
2945 Upton Street, NW
Washington, DC 20008

Sirrus, LLC
c/o Cynthia Giordano, Esq.
Arnold & Porter
555 12th Street, NW
Washington, DC 20004

Sarah E. Shaw