Ms. Howard is in the latter category of inmate. To avoid the common connotation associated with the term "halfway house," the court will refer to these penal institutions as "community confinement centers" or "CCCs."

FN14. 18 U.S.C. § 3553(b).

FN15. 18 U.S.C. § 3621(b).

FN16. U.S. Department of Justice, Federal Bureau of Prisons, *Judicial Resource Guide to the Federal Bureau of Prisons,* 16 (2000). *See also,* Federal Bureau of Prisons, Policy Statement 7310.04, *Community Corrections Center (CCC) Utilization and Transfer Procedure,* ¶ 5.

FN17. 18 U.S.C. § 3553(b).

FN18. UNITED STATES SENTENCING GUIDELINES MANUAL § 5C1.1(f).

FN19. UNITED STATES SENTENCING GUIDELINES MANUAL § 5C1.1(d).

FN20. *See United States v. Serafini,* 233 F.3d 758, 777 (3d Cir.2000) ("it is true that under section § 5C1.1 of the Guidelines, "community confinement" cannot constitute "imprisonment" for purposes of fulfilling the requirement that one-half of a split sentence be satisfied by imprisonment"); *United States v. Adler,* 52 F.3d 20,21 (2d Cir.1995) ("We agree with the government that the district court's interpretation of Sections 5C2.1(d) and (e) is erroneous. 'Imprisonment' and 'community confinement' are not synonyms"); *United States v. Swigert,* 18 F.3d 443, 445 (7th Cir.1994) ("Section 5C1.1 plainly draws a distinction between 'imprisonment' and either community confinement or home detention").

FN21. *See United States v. Jalili,* 925 F.2d 889, 892 (6th Cir.1991) ("[W]e read Guideline § 5C1.1(d), which states that 'the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that *includes a term of supervised release with a condition* that substitutes community confinement or home detention according to the schedule of § 5C1.1(3),' to mean that community confinement may be included as a condition during the term of supervised release") (emphasis in opinion).

FN22. *See* 18 U.S.C. § 3621(a).

FN23. *See* 18 U.S.C. § 3621(b).

FN24. *See* Memorandum Opinion for the Deputy Attorney General, *Bureau of Prisons Practice of Placing in Community Confinement Certain Offenders who have Received Sentences of Imprisonment,* (hereinafter "OLC Memo") available at < *http://www.usdoj.gov/olc/bopimprisonment2.htm*> (visited February, 10, 2003).

FN25. That the "policy" also applies to Zone B felons is particularly important for any persons who commit a felony that does not allow for probation. Otherwise, courts may sentence to Zone B felons, along with Zone A felons to "a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention." Under the Government's latest reading of 18 U.S.C. § 3621(b), those Zone B felons whose crimes do not permit probation as a sentence will serve the vast majority of their terms in a federal prison, even those terms drawn in weeks rather than months.

FN26. Briefs from the Government indicate that the line is drawn at convicts

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 20A3

who had 150 days or more remaining on their sentences out of a concern that the Bureau not be forced to move convicts from CCCs to prisons, only to have to return them in very short order. That may or may not be the case. It is axiomatic that assertions in legal briefs are not evidence. But, in this case, the Government would not be under any burden to produce evidence that it has a rational basis for its action even if its action were challenged on equal protection grounds. That burden is upon Ms. Howard. It bears noting, however, that the purported rationale for distinguishing among CCC-committed convicts based on the time left on their sentences has absolutely no bearing whatsoever on the reasonableness of applying the new "policy" retroactively in the first instance. No one has offered any explanation of that decision.

FN27. Howard's Exhibit B.

FN28. *Id.*

FN29. In fact, were it not for this court's immediate intervention at 3:30pm on Friday, February 21, 2003-Ms. Howard would have been transferred on Monday, February 24, 2003. Despite the entry of a TRO and the Bureau's notice thereof, someone issued a transfer order for Ms. Howard in violation of the TRO and unbeknownst to counsel for the Government in this case. Fortunately, the matter resolved itself upon the court's issuance of a Minute Entry and numerous phone calls by counsel for both sides. However, the court hopes that its orders are complied with in the future, as failure by the Bureau, the Department of Justice, their agents, assigns, designees, officers, servants, employees, or officials, to do so will very likely result in a contempt proceeding.

FN30. The court cannot accept that it has jurisdiction under either 18 U.S.C. § 3582 or Rule 35. Section 3582 specifically allows the district courts to modify sentences of imprisonment that have already been entered. But, it limits the availability of this remedy to instances in which either (1) the Sentencing Commission has reduced the sentencing range for the crime of which a defendant has been convicted; or (2) the Director of Prisons makes a motion to reduce a sentence. Neither of those circumstances is present in this case. The problem here is that the Bureau, after exercising its discretion in setting the parameters of Ms. Howard's sentence, has changed course and imposed harsher terms for no particularized reason. The Director of Prisons has made no representations to this court whatsoever.
Similarly, Rule 35 of the Federal Rules of Criminal Procedure does not afford the court the power to change Ms. Howard's sentence. That Rule allows courts to correct clear sentencing errors on their own motions within seven days of the entry of the sentence. It also provides that the government may make a motion to reduce an inmate's sentence for "substantial assistance" in convicting other malfeasors. *See* FED. R. CRIM. PRO. 35. This court entered Ms. Howard's sentence in August of 2002. The time has clearly passed to find clear error, and the Government has made no additional motion to reduce her sentence.

FN31. *See* OLC Memo, *supra* note 24.

FN32. As it turns out, she has filed such a claim with that court.

FN33. *See Pack v. Yusuff,* 218 F.3d 448, 451 (5th Cir.2000); *see also United States v. Jordan,* 915 F.2d 622, 629 (11th Cir.1990); *Doganiere v. United States,* 914 F.2d 165, 169 (9th Cir.1990); *United States v. Long,* 787 F.2d 538, 539 (10th Cir.1986); *Higdon v. United States,* 627

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

F.2d 893, 897 (9th Cir.1980); *Grimes v. United States,* 607 F.2d 6, 9-10 (2d Cir.1979).

FN34. 28 U.S.C. § 2255.

FN35. 442 U.S. 178, 99 S.Ct. 2235, 60 L.Ed.2d 805 (1979).

FN36. *Addonizio,* 442 U.S. at 180.

FN37. *Id.* at 181 n. 3.

FN38. *Id.*

FN39. *Id.* at 182 n. 4.

FN40. *Id.* at 182.

FN41. *Id.* at 190.

FN42. *Id.* at 184-85.

FN43. *Id.* at 185-86.

FN44. PS 7310.04, *Community Corrections Center(CCC) Utilization and Transfer Procedure,* ¶ 5 (12/16//1998) ("[T]he Bureau is not restricted by § 3624(c) in designating a CCC or an inmate and may place an inmate in a CCC for more than the 'last ten percentum of the term,' or more than six months, if appropriate.")

FN45. U.S. Department of Justice, Federal Bureau of Prisons, *Judicial Resource Guide to the Federal Bureau of Prisons* at 15-16 (2000) ("The Bureau may designate an offender directly to a community based facility to serve his or her sentence, but ordinarily this is done only with the concurrence of the sentencing court."). That same publication informs members of the judiciary of the kinds of convicts who might get assigned to CCCs:
Protecting public safety is the first priority when an inmate is considered for participation in community programs. The following is the profile of a typical offender designated directly to a CCC.
-- Ordinarily sentenced to 6 months or less.
-- Not involved in large-scale drug or property offenses.
-- Has no detainers or pending charges.
-- Has no history of serious violent behavior or firearms offenses.
-- Has no history of sex crimes.
-- No medical or mental disorder requiring ongoing treatment.
-- Is not a deportable alien.
-- Has no history of threats against government officials.
-- Has no known memberships with disruptive groups or affiliations with major organized criminal enterprises.
Id. at 16.

FN46. *See Addonizio,* 442 U.S. at 185 (emphasis added).

FN47. *Id.*

FN48. *Addonizio,* 442 U.S. at 185-87; *United States v. Dragna,* 746 F.2d 457, 458 (9th Cir.1984); *Jalili,* 925 F.2d at 892-93.

FN49. *United States v. Schild,* 2003 U.S. Dist. 1703 (D.Kan.2003); *United States v. Herron,* 2003 U.S. Dist. LEXIS 1932; *United States v. Andrews,* 2003 WL 142492 (E.D.Mich.2003).

FN50. *See Schild,* at *4 (D.Kan.2003)("[E]ven if the court had known that defendant would not qualify

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

for work release, the court would have issued the same sentence. In other words, the alleged 'misinformation' was not 'material" '); *Herron* at *5 ("This court would render the same sentence even knowing the change in interpretation of the guidelines"); *Andrews,* at *2 ("Whether the B.O.P. would accept the court's recommendation was not material, nor even a factor, to the court's sentence of 7 months imprisonment").

FN51. *Walker v. Washington,* 627 F.2d 541, 545 (D.C.Cir.1980); *see also Pickus v. Bd. of Parole,* 507 F.2d 1107, 286-88 (D.C.Cir.1974) (holding that prisoners can challenge agency actions directly under the APA); *Brown,* 528 F.2d at 1054.

FN52. Docket No. 116.

FN53. *Rourke v. Thompson,* 11 F.3d 47, 50 (5th Cir.1993).

FN54. 5 U.S.C. § 704.

FN55. 28 C.F.R. § 542.14(a).

FN56. 28 C.F.R. § 542.18.

FN57. 28 C.F.R. § 542.15(a).

FN58. 28 C.F.R. § 542.18.

FN59. 28 C.F.R. § 542.14(a).

FN60. 28 C.F.R. § 542.18.

FN61. *Patsy v. Florida Int'l University,* 634 F.2d 900, 904 (5th Cir.1981), *reversed on other grounds by Patsy v. Board of Regents,* 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172; *see also DCP Farms v. Yeutter,* 957 F.2d 1183, 1189 (5th Cir.1992).

FN62. *See Tasby v. Pratt,* 2002 WL 1160071 at *2 (N.D.Tex.2002) ("[W]here, as here, the Bureau has adopted the policy and instructed its staff in the form of a Program Statement that inmates are ineligible for early release under the circumstances of this case, the court finds that presentation of Tasby's claimsto the Bureau at the regional and national levels would, in fact, be futile").

FN63. 42 U.S.C. § 1997e(a).

FN64. *See Johnson v. True,* 125 F.Supp.2d 186 (W.D.Va.2000).

FN65. *Booth v. Churner,* 532 U.S. 731, 736 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001).

FN66. *Id.*

FN67. *See Walgreen v. Hood,* 275 F.3d 475, 477 (5th Cir.2001) (citing *Sierra Club v. FDIC,* 992 F.2d 545, 551 (5th Cir.1993)).

FN68. *See* Dan Eggen, *White Collar Crime Now Gets Real Time,* WASHINGTON POST, January 7, 2003, at A6. This place seems as good as any that will come to ask the question that must hound any of the hundreds of people who now find themselves spending hours out of their days supporting, fighting, or evaluating this new policy: What is the point? The question has a special force in cases where the Government seeks to apply the policy retroactively. For, as the Supreme Court remarked in another context in *Addonizio,*

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

"inroads on the concept of finality tend to undermine confidence in the integrity of our procedures. Moreover, increased volume of judicial work [...] inevitably impairs and delays the orderly administration of justice." *Addonizio,* 442 U.S. at 185 n. 11. And indeed, that is what the courts see today. The court is told that 132 people are threatened with the recoil of bureaucratic activism. And each judge is surrounded by a bevy of lawyers, mainly busy people from the United States Attorney's Office and the Federal Public Defender's Office who would gladly, the court imagines, not re-fight old sentencing battles. So again the question: What is the point? In response, the Government states that the Bureau's former practice-a practice that apparently dates back half a century uninterrupted--was "unlawful." Oh, what a blunt instrument that remark! If explanation the court has sought, exasperation it has surely found. For even beyond the lack of fairness and even beyond the waste of time and resources, the court still must ask-what comes of this new "policy?" If it were upheld, are judges really expected to march along unaffected by their awareness of it? No. As Judge Huevelle remarked in her opinion in a similar case, *Culter v.. United States,* 2003 WL 184022 (D.D.C.2003), judges know full well how all these provisions work together and fashion their judgments accordingly. If the motivation of the Department of Justice was to grab headlines about longer sentences for minor white-collar criminals while in fact ensuring that in the long run their sentences are shorter, then congratulations are in order. This "policy" is just the trick. Otherwise, if the court may presume, perhaps the next time the Department of Justice or the Bureau decide that it's time to get religion, they will seek comment from without.

FN69. *See Harris v. Mut. of Omaha Cos.,* 992 F.2d 706, 712 (7th Cir.1993).

FN70. *See* S. REP. 98-225, 149, 1984 U.S.C.C.A.N. 3182, 332; *Martin v. Gerlinski,* 133 F.3d 1076, 1079 (8th Cir.1998).

FN71. *See Venegas v. Henman,* 126 F.3d 760, 763 (5th Cir.1997).

FN72. *See Shell Oil Offshore, Inc. v. Babbitt,* 238 F.3d 622, 630 (5th Cir.2001).

FN73. As noted above, though the OLC Memo addresses only Class C and Class D felons, the Bureau "policy" and its rationale would, at least theoretically, apply equally to Class B felons.

FN74. 18 U.S.C. § 4001. The court notes that the Supreme Court has approved the Bureau as an interpreter of portions of the statute it administers. *See Reno v. Koray,* 515 U.S. 50, 60, 115 S.Ct. 2021, 132 L.Ed.2d 46 (1995) (approving the Bureau as the proper agency to interpret the Bail Reform Act).

FN75. *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel,* 467 U.S. 837, 842, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

FN76. *Id.* at 842-43.

FN77. *Id.* at 843.

FN78. *See Koray,* 515 U.S. at 60 ("But BOP's internal agency guideline, which is akin to an 'interpretive rule' that 'do[es] not require notice and comment is still entitled to some deference, since it is a 'permissible construction of the statute" ') (internal citations omitted).

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

FN79. 18 U.S.C. § 3621(a) & (b).

FN80. There are other apparent limitations in 18 U.S.C. § 3621(b) that the court will discuss later. None of these are proposed as evidence that the Bureau lacks discretion to make direct CCC designations.

FN81. OXFORD ENGLISH DICTIONARY. (J.A. Simpson and E.S.C. Weiner.2d ed., 1989) *available at* < *http://www.oed.com*> (visited Feb. 19, 2003).

FN82. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, (Houghton Mifflin Co. 4th Ed.2000).

FN83. OXFORD ENGLISH DICTIONARY, *supra* note 82.

FN84. THE AMERICAN HERITAGE DICTIONARY OF THEENGLISH LANGUAGE, *supra* note 83.

FN85. *See, e.g.,* Program Statement No. 7310.01 (deeming CCCs "penal or correctional" facilities).

FN86. Joint Report to Congress, United States Sentencing Commission and Federal Bureau of Prisons, *Maximum Utilization of Prisons Resources,* at 9-10 (June 30, 1994)(hereinafter "Joint Report").

FN87. 42 U.S.C. § 1997e(a).

FN88. *Dmytryszyn v. Hickox,* 172 F.3d 62, 1999 WL 59622 (10th Cir.1999) (unpublished disposition).

FN89. *See* 18 U.S.C. § 3621(a).

FN90. 18 U.S.C. § 3621(b).

FN91. 18 U.S.C. § 3621(b).

FN92. It is very common for persons who reside in the southeastern portions of the United States to refer to all kinds of soda-pop as simply "Coke," in the same way that persons from other regions use more generic terms such as "soda-pop," "soda," or just "pop."

FN93. Joint Report *supra* note 87 at 10.

FN94. As Blackstone wrote, "Every confinement of the person is an imprisonment, whether it be in a common prison, or a private house, or even by forcibly detaining one in the public streets."

FN95. 18 U.S.C. § 3551(b).

FN96. 18 U.S.C. § 3553(c) ("The court *shall* impose a sentence of the kind, and within the range, referred to in subsection (a)(4) [referring to the kinds of sentence and sentencing range established by the Sentencing Commission] unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission").

FN97. 28 U.S.C. § 994(a)(emphasis added).

FN98. *See* 28 U.S.C. § 994(q) ("The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

utilization of resources to deal effectively with the Federal prison population.").

FN99. S. SENTENCING GUIDELINE § 5C1.1(d).

FN100. U.S. SENTENCING GUIDELINE § 5C1.1, Application Note 4.

FN101. *See Serafini,* 233 F.3d at 777 ("It is true that *under section § 5C1.1* of the Guidelines, "community confinement" cannot constitute "imprisonment" for purposes of fulfilling the requirement that one-half of a split sentence be satisfied by imprisonment"); *Adler,* 52 F.3d at 21 ("We agree with the government that the district court's *interpretation of Sections 5C2.1(d) and (e)* is erroneous."); *Swigert,* 18 F.3d at 445 ("*Section 5C1.1 plainly draws a distinction* between 'imprisonment' and either community confinement or home detention"); *Jalili,* 925 F.2d at 892 ("[W]e *read Guideline § 5C1.1(d),* which states that 'the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention *according to the schedule of § 5C1.1(3),*' to mean that community confinement may be included as a condition during the term of supervised release") (emphases added).

FN102. 18 U.S.C. § 3624(c).

FN103. *Prows v. Federal Bureau of Prisons,* 981 F.2d 466, 470 (10th Cir.1992) ; *see also U.S. v. Morales-Morales,* 985 F.Supp. 229, 231 (D.P.R.1997).

FN104. *See Gale v. Dep't of Justice,* 628 F.2d 224, 229 (D.C.Cir.1980).

FN105. Act of May 14, 1930, Pub.L. No. 71-218, 46 Stat. 325.

FN106. S. REP. NO. 98-225, at 141-42 (1983), *reprinted in* 1984 U . S.C.C.A.N. 3183, 3324.

FN107. *See Bowen v. Hood,* 202 F.3d 1211, 1220-21 (9th Cir.2000); *Cort v. Crabtree,* 113 F.3d 1081, 1084 (9th Cir.1997).

FN108. *See, e.g., Cutler,* 2003 U.S. Dist. LEXIS 1076 at *9- 10(altering sentence because such alteration was permissible under case facts); *James,* 2003 U.S. Dist. LEXIS 2045 at *5 (E.D.Mich.2003)(refusing to alter sentence because imprisonment was required under case facts); *Herron,* 2003 U.S. Dist. LEXIS 1932 (E.D.Mich.2003)(same).

FN109. This is because once the Government submitted its § 5.K.1.1. motion, the court was free to reduce Ms. Howard's offense level as it saw fit based on the particular circumstances of her case. *See United States v. Hashimoto,* 193 F.3d 840, 843 (5th Cir.1999)(stating that "[d]istrict courts have almost complete discretion to determine the extent of a departure under § 5K.1.1" and that the only ground that the extent of a departure is appealable is if the departure was in violation of the law.) (internal citations omitted).

FN110. *See* 28 U.S.C. § 846; 28 U.S.C. § 841(b)(1)(A).

2003 WL 1191098, 2003 WL 1191098 (M.D.La.)

END OF DOCUMENT

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

FLAGSTAFF POLICE DEPARTMENT

120 NORTH BEAVER • FLAGSTAFF, ARIZONA 86001 • (520) 779-3646
FAX (520) 779-2703
TDD 1-800-842-4681

Chief of Police
E.P. (PAT) MADDEN
99-121-01

MEMORANDUM

TO: Steve Lere, Community Development Director

FROM: Robert P. White, Captain, Flagstaff Police Department

DATE: April 26, 1999

SUBJ: C.U.P. Federal Offender Residential Facility
Tracking # PD-99-05-07-01-C

I contacted all police agencies in those communities where Bannum, Inc., has a facility. For the most part, these facilities are a non-issue and do not require an inordinate amount of police service. Typically, the police employees I spoke with did not express any negative comments about these facilities. I spoke with the investigation section of the following police agencies:

Wilmington, NC
Montogmery, AL
Charleston, WV
Fayetteville, NC
Clarksburg, WV
Tupelo, MS
Savannah, GA
Jackson, MS
Beaumont, TX
Laredo, TX
Corpus Christi, TX
Florence, SC
Reno, NV
Greensboro, NC
Tallahassee, FL

REGINA M JAMES
ADVISORY NEIGHBORHOOD COMMISSIONER 5B03
1363 ADAMS STREET, NORTHEAST
WASHINGTON, D C 20018

CHAIRPERSON, 5B ADVISORY NEIGHBORHOOD COMMISSION
COMMITTEE ON THE JUDICIARY
PRESIDENT, BROOKLAND NEIGHBORHOOD CIVIC ASSOCIATION

JANUARY 25, 2001

MR CHARLES M REYNOLDS JR
1430 G STREET NORTHEAST
WASHINGTON D C 20002

RE DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISON AT CENTER 4
RFP -- 2000705MA

GREETINGS MR REYNOLDS.

I SUPPORT YOU AND YOUR ASSOCIATES BID ON THE RFP -- 2000706MA CENTER 4 LOCATED AT 1355--57 NEW YORK AVENUE, NE, WASHINGTON, D. C 20002. I KNOW OF THE REPUTATION AND CHARACTER OF YOU AND YOUR VICE-PRESIDENT, MR. SAMUEL S. HOWLETTE. I KNOW THAT YOU AND YOUR ORGANIZATION STRIVE FOR EXCELLENCE.

WITH THAT YOUR ORGANIZATION HAS TEAM UP WITH MS. DENNIS M SHELTON WHOSE INTEGRITY IS IMPECCABLE. SHE IS DEFINITELY AN ASSET AS YOUR PARTNER. SHE BRINGS ENERGY AND EXCITEMENT AND IS NOT ONLY, COMMITTED TO THE WELFARE AND THE QUALITY OF LIFE OF THE INMATES BUT TO THE COMMUNITY THAT SHE SERVES SHE HAS MY UNADULTERATED SUPPORT AS YOUR DIRECTOR OF THE FACILITY AT CENTER 4

WITH THIS QUALITY OF LEADERSHIP WITHIN THE COMMUNITY, IT IS MY PLEASURE AND PRIVILEGE TO ENDORSE AND SUPPORT YOUR BID ON THE RFP -- 2000706MA.

RESPECTFULLY,

REGINA M JAMES

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF PINELLAS) ss:

I, DAVID LOWRY, being over the age of majority and otherwise competent to make this affidavit state as follows:

1. I am over the age of eighteen (18) and am a resident of Pinellas County, Florida.

2. I am employed as the Executive Director of Bannum, Incorporated ("Bannum") headquartered in Clearwater, Florida.

3. Bannum is in the business of operating Community Corrections Centers ("CCC"s) pursuant to contracts awarded through competitive bidding by the United States Department of Justice, Federal Bureau of Prisons ("BOP") located in Washington, D.C. Bannum has CCCs currently operating in Florida, Alabama, North Carolina, South Carolina, West Virginia, Mississippi, Georgia, Nevada, and Texas.

4. Over the past nearly twenty (20) years, Bannum has successfully performed and completed dozens of CCC contracts for the BOP. More importantly, Bannum has spent countless business resources, and indeed the essence of its business operations and policy-making activities on the development of its business reputation and goodwill. This has been accomplished through Bannum's history of performance in operating current BOP programs and in preparing proposals for current and outstanding BOP solicitations for CCCs that are in the process of being awarded by the BOP.

5. Bannum is solely in the business of operating CCCs and the BOP is its only customer. Over the past almost twenty years, the BOP has awarded Bannum its

CCC program contracts through competitive negotiated procurements after the issuance of requests for proposals ("RFP"s). In each of Bannum's CCC programs, it as the contractor is solely responsible for all operational aspects of the program, including but not limited to the following: personnel hiring and management; real estate acquisition/leasing, renovations and build-out; the provision of food service for the residents; and the provision of all equipment and services necessary for the operation of the CCC.

6. In formulating its proposal for the RFP for CCC services in Washington, D.C., Bannum had to locate a property sufficient to house the program pursuant to BOP standards. Proof of the ability to use at least one proposed property for the program must be submitted to the BOP as part of Bannum's final proposal. In general, once the BOP awards a contract to Bannum, its proposal becomes the contract between Bannum and the BOP. Accordingly, the proof of Bannum's legal right to use the property Bannum submits as part of its bid, including proof of appropriate zoning, then becomes part of Bannum's contractual obligations to the BOP. In other words, the BOP and Bannum, Inc. rely upon the City's representation of zoning and use for a particular property.

7. On or about March 24, 2000 and April 3, 2000, respectively, Bannum received RFP Number 200-0593-MA and RFP Number 200-06-04-MA, from the BOP for CCC services in the Washington, D.C. area. Ultimately, Bannum found a suitable property for lease at 2210 Adams Place, NE, Washington, D.C. ("2210 Adams Place"), and on November 16, 2000 obtained an option to lease the property subject to zoning verification, Bannum's ability to use the property as a CCC, and Bannum's award of the CCC contract.

8. In addition, Bannum began to meet with local officials in an effort to obtain zoning approval from the District of Columbia for the operation of a CCC. Specifically, Bannum representatives made several contacts, or attempts to contact, various D.C. officials and community leaders in the process of attempting to obtain the needed zoning approval. The following is a list of some of Bannum's efforts in this regard:

- November 30, 2000: Bannum notified Mayor Williams, Chief of Staff Omer and Police Chief Ramsey of its intention to locate a CCC at the subject property;
- December 11, 2000: Bannum obtained zoning approval from Michael Johnson, Zoning Administrator, District of Columbia;
- March 12, 2001: Bannum notified Councilman Orange of its plans to locate a CCC at the subject property;
- April 10, 2001: Bannum notified Mayor Williams, Councilman Orange, and Police Chief Ramsey of its intention to locate a CCC at the subject property;
- October 31, 2002: Bannum met with Wholistic Services, the business leasing the space next to Bannum at the subject property, and advised of its intention to locate the CCC at the subject property;
- November 26, 2001: Bannum obtained zoning approval from Olutoye Bello, Zoning Administrator for the District of Columbia;
- In or about February, 2002, Bannum, Inc. engaged the services of a community organizer for the purpose of providing information to the public and the immediate community about Bannum, Inc.'s proposed federal BOP program. One activity our community organizer undertook was to physically walk the neighborhoods and communities surrounding, 2210 Adams Place, NE, talking to the public.
- April 18, 2002: Bannum met with area senior citizens at Model Cities Wellness Center after issuance of a public announcement;
- April 18, 2002: Bannum met with ANC three leaders and Mr. Jenkins representing the Mayor at Washington Center for Aging Services (BOP representatives were also in attendance);

- April 18, 2002: Bannum met with PTA and parents at Langdon Elementary School after issuance of a public announcement (BOP representatives were also in attendance);

- April 18, 2002: Bannum met with the general community at Harbor Light Center after issuance of a public announcement (BOP representatives were also in attendance as well as some ANC leaders);

- April 19, 2002: Bannum met with area business owners at Washington Center for Aging Services to discuss the opening of the CCC;

- June 11, 2002: Bannum transported ANC leaders Chappelle and Bowser to Orlando, Florida to review Bannum's program operations at its CCC there;

- October 5-6, 2002: Bannum advertised in the Washington Post for all positions at the CCC;

- January 2, 2003: Bannum attempted to meet with Councilman Orange;

- January 2, 2003: Bannum met with Councilman Orange's Legislative Assistant;

- January 2, 2003: Bannum attempted to meet with Councilmember Patterson, Chairperson, Committee on the Judiciary;

- January 3, 2003: Bannum met with three persons representing what I was lead to believe was the Bryant Street Homeowners Association;

- January 21,2003: Bannum met with "Citizens For A Safe Ward 5" after issuance of a public announcement (BOP representatives were also in attendance);

- February 11, 2003: BOP representatives met with "Citizens For A Safe Ward 5";

- Date Unknown: Bannum met with Councilman Orange's Chief of Staff;

- Date Unknown: Bannum met with Rhonda Chappelle, ANC leader of Ward 5 on two separate occasions; and

- Date Unknown: A Community Organizer with the D.C. Prisoners' Legal Services Project, Inc. was assigned in February, 2001 to assist Bannum in obtaining community support.

9. Ultimately, based in large part upon the representation from the District of Columbia of valid zoning for Bannum's proposed use of 2210 Adams Place as a CCC,

the BOP awarded Bannum the CCC contract on November 16, 2001. Bannum's contract with the BOP calls for Bannum to operate a CCC for one hundred fifty (150) male offenders per day at 2210 Adams Place. The rate to which Bannum is entitled under the contract from the BOP is $80.00 per-man, per-day. Bannum is set to commence performance of the CCC contract on or about, but no later than May 1, 2003. Both the BOP and Bannum heavily and detrimentally relied upon the District of Columbia's representations confirming zoning approval for Bannum's operation of a CCC at 2210 Adams Place. In fact, not only did the BOP award the contract to Bannum on the basis of the District of Columbia's zoning approval, but, upon information and belief, all other bidders were excluded from contract award for failure to provide verification of zoning.

10. In fact, once the District of Columbia provided verification of proper "by-right" zoning Bannum, Inc., specifically relying upon that representation, took the following actions:

a. Signed a lease with the land owner of 2210 Adams Place, N.E. that runs concurrently with Bannum, Inc.'s BOP contract. Bannum, Inc. is currently obligated to pay rent, common area and maintenance fees to the landlord;

b. Entered into a contract with the U.S. Department of Justice, Bureau of Prisons;

c. Entered into a contract for, and paid for, architectural and engineering plans for the renovation of 2210 Adams Place, N.E. for use in the Federal BOP contract;

d. Entered into a contract for construction and renovations at the property.

e. Entered into agreements and contractual obligations with local utilities for the appropriate upgrades of water, sewer, and electricity at the property.

f. Purchased equipment necessary for the operation of a federal BOP CCC at the property. Such property includes, among other things, beds, mattresses, desks, chairs, telephone equipment, office equipment, and fire alarm systems.

To date, Bannum, Inc. has expended in excess of four hundred fifty thousand dollars ($450,000.00) for such items. From this date through May 1, 2003, Bannum, Inc. must obligate another approximately one hundred sixty-four thousand dollars ($164,000.00) in order to be ready to operate its federal BOP contract and in reliance upon the District of Columbia's representations that 2210 Adams Place, N.E. is properly zoned for the said use.

11. In addition, Bannum, Inc. projects cost overruns on the construction contract of as much as seventy thousand dollars ($70,000.00).

12. Currently, without any incoming revenue whatsoever from the federal BOP contract, Bannum, Inc.'s minimum daily fixed operational costs is four thousand one hundred fifty dollars ($4,150.00).

13. The BOP conducted a "pre-site inspection" of Bannum's proposed property at 2210 Adams Place on or about December 12, 2000. The purpose of this BOP "pre-site inspection" was to evaluate the proposed property in accordance with BOP standards for the CCC services contract. In furtherance of the lease agreement with 2210 Adams Place, a representative from Bannum attended said "pre-site inspection," as did

2210 Adams Place agents and three (3) representatives from the BOP. Based in part on this inspection and the representations of the District of Columbia that is it properly zoned therefor, the BOP found that the site acceptable and ultimately awarded Bannum, Inc. a contract on that basis.

14. It is my belief from twenty-four years of experience in contracting with the BOP for CCC services that this program will be an asset to the community in which it is located. It is my further belief that the program will not adversely affect, but rather will promote, public safety in the community.

15. However, it is my further belief from my years of experience contracting with the federal BOP that if Bannum, Inc. cannot begin performance of its contract for CCC services, then the BOP will terminate the contract for default. A termination for default has a very strong adverse effect upon the ability of any contractor to obtain future contracts with the BOP and may well cause Bannum, Inc. to be debarred or in the very least put Bannum, Inc. at a significant competitive disadvantage, which may well lead to the demise of Bannum, Inc.'s business with its only customer, the federal Bureau of Prisons.

David A. Lowry

Sworn to before me this
17th day of April, 2003.

Notary Public

JOHN D. RICH
MY COMMISSION # DD 030003
EXPIRES: September 29, 2005
Bonded Thru Notary Public Underwriters