

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 8, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS, Chairperson
CURTIS L. ETHERLY, JR., Board Member
DAVID A. ZAIDAN, Board Member (NCPC)
RUTHANNE G. MILLER, Board Member

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS, Commissioner

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APPEARANCES (Continued)

COMMISSION STAFF PRESENT:

BEVERLEY BAILEY, Office of Zoning
CLIFFORD MOY, Office of Zoning
JOHN K.A. NYARKU, Office of Zoning

OTHER AGENCY STAFF PRESENT:

DAVID McGETTIGAN, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

MARY NAGELHOUT, Esquire

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<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>APPLICATION OF JAMES MILLWARD</u>	
<u>AND MADHULIKA SIKKA:</u>	
<u>17031 ANC-3C</u>	9
CHRIS SNOWBER	10
Hamilton Snowber Architects	
2741 Woodley Place, N.W.	
Washington, D.C. 20008	
(202) 332-5416	
<u>APPLICATION OF EMBASSY TRUST:</u>	
<u>17032 ANC-2D</u>	24
ED GRANDIS, Esq.	25
1735 20th Street, N.W.	
Washington, D.C. 20009	
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<u>WITNESSES</u>	
GARY ZUERCHER	34
ROBERT SCHWARTZ	36
<u>APPLICATION OF WASHINGTON DRAMA SOCIETY,</u>	
<u>INC., DBA THE ARENA STAGE</u>	
<u>17033 ANC-6D</u>	52
NORMAN M. GLASGOW, JR., Esq.	53
DENNIS HUGHES, Esq.	
Holland & Knight LLP	
2099 Pennsylvania Avenue, N.W.	
Washington, D.C. 20006	
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<u>WITNESSES</u>	
STEPHEN RICHARD	56
MICHAEL HEENEY	59
STEVEN E. SHER	68
<u>REPORT FROM THE OFFICE OF PLANNING</u>	
DAVID McGETTIGAN	73

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<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>APPLICATION OF HOWARD UNIVERSITY HOSPITAL</u>	
<u>17035 ANC-2C</u>	90
EDWARD M. JOHNSON	91
TIA ASHTON-SCOTT	
Johnson & Associates	
Architects and Planners	
3612 12th Street, N.E.	
Washington, D.C. 20011	
(202) 526-3610	
<u>APPLICATION OF STEPHEN AND</u>	
<u>MEREDITH PETERSON</u>	
<u>17036 ANC-2E</u>	109
STEVEN PETERSON	115
MEREDITH PETERSON	
1247 35th Street, N.W.	
Washington, D.C. 20007	
(202) 342-0795	
<u>APPEAL OF ANC-5B, CASE NUMBER 16998</u>	127
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PAGE

PRESENTATION BY COUNSEL ON BEHALF OF APPELLEE, DCRA	193
OPENING STATEMENT BY COUNSEL ON BEHALF OF INTERVENOR, BANNUM	254

VOIRWITNESSDIRECT CROSS REDIRECT RECROSSDIRE

David Lowry	166	171 172 187	189	
Hulon Willis	272	303 314	318	
William Willingham		332		368
338		380 395		

EXHIBITSINTERVENOR'SIDENTIFIEDRECEIVED

No. 1	353	355

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

[10:00 a.m.]

CHAIRPERSON GRIFFIS: I will call to order the 8th of July, 2003, public hearing of the Board of Zoning Adjustment in the District of Columbia. My name is Jeff Griffis, I am Chairperson. Joining me today is Mr. Etherly on my right, Ms. Miller on my left. Representing the National Capital Planning Commission is Mr. Zaidan, and representing the Zoning Commission is Mr. Parsons. Also with us this morning and a very good morning to Office of Zoning staff Ms. Bailey, also Mr. Moy, Mr. Nyarku, who is also ably assisting the Board today and all week, and representing Corporation Counsel representative here Ms. Nagelhout.

Copies of today's hearing agenda are available to you. They are located at the door where you entered into the hearing room. Please pick up an agenda if you wonder where you are as we will rip through our morning schedule.

Please be aware that all proceedings before the Board of Zoning Adjustment are being recorded, so there are several things attendant to that.

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1 First of all, I would ask that
2 everybody turn off any cell phones or beepers at
3 this time so we don't disrupt any of the
4 proceedings. Also I would ask that people refrain
5 from any disruptive noises or actions in the
6 hearing room also so we don't have any undue
7 disruptions of our proceedings.

8 Additionally, as all public hearings
9 are being recorded, anything you say must be said
10 into a microphone and that microphone should be on.

11 Otherwise, it is not part of the record and
12 therefore could be or will not be deliberated on.

13 When coming forward, please fill out
14 two witness cards. Witness cards are located at
15 the table where you entered, they are also located
16 at the table in front of us. Those two witness
17 cards go to the recorder. The recorder is sitting
18 to my right. That will make sure that your
19 statements, as substantive and important as they
20 are, will actually have your name attached to them.

21 When coming forward, have a seat, and you will
22 need to turn a microphone on and speak into the
23 microphone.

24 I would ask that the first time when
25 you address the Board, if you would give your name

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1 and your address, and that way, the recorder will
2 have a good record of who is speaking.

3 The order of procedure for special
4 exception and variances is, first of all, we have
5 statement and witnesses of an applicant. Second,
6 we have government reports attendant to the
7 application. Those include such reports from the
8 Office of Planning, Department of Transportation
9 and any other submissions that would be required
10 are in the record. Third, we will have the report
11 from the Advisory Neighborhood Commission. Fourth,
12 we would have persons or parties in support. Fifth
13 will be persons or parties in opposition to the
14 application. Sixth, finally we will have closing
15 remarks by the applicant.

16 Cross-examination is permitted by the
17 applicant and parties involved in the case. The
18 ANC within which the property is located is
19 automatically a party in the case.

20 The record will be closed at the
21 conclusion of each public hearing except for any
22 material that is specifically requested by the
23 Board and the Board will be very specific on what
24 is to be submitted and when it is to be submitted
25 into the Office of Zoning. After that material is

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1 received, it should go without saying that the
2 record would finally be closed and no other
3 information would be accepted into the record.

4 The Sunshine Act requires that this
5 Board hold all its cases in a public hearing forum,
6 and that would mean they should be held in the open
7 and before the public. This Board may, however,
8 consistent with its rules of procedure and the
9 Sunshine Act, enter into executive session. That
10 would be for the purposes of reviewing the record
11 or deliberating on cases.

12 The decision of this Board in contested
13 cases must be based exclusively on the record that
14 is created in our public hearings; therefore, we
15 ask for people present today not to engage Board
16 members in conversation, as that may lend itself to
17 the impression that we are gathering additional
18 information outside the record.

19 The Board will consider any preliminary
20 matters at this time. Preliminary matters are
21 those which relate to whether a case will or should
22 be heard today, such as requests for postponements,
23 continuances or withdrawal, or whether proper and
24 adequate notice of a case has been provided.

25 If you have a preliminary matter or you

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1 believe that there is an issue that would keep this
2 Board from hearing a case today, I would ask that
3 you approach and have a seat in front of us as an
4 indication of having a preliminary matter. I will
5 ask if staff has any preliminary matters at this
6 time for the Board to discuss.

7 MS. BAILEY: Mr. Chairman, there aren't
8 any that staff has at this time.

9 CHAIRPERSON GRIFFIS: Very well.
10 Having no indication that people here today have
11 any preliminary matters for the Board, let us call
12 our first case in the morning.

13 APPLICATION OF JAMES MILLWARD

14 AND MADHULIKA SIKKA

15 17031 ANC-3C

16 MS. BAILEY: That is Application Number
17 17031 of James Millward and M. Sikka pursuant to 11
18 DCMR 3103.2 for a variance from the lot occupancy
19 requirement under Section 403, and a variance from
20 the rear yard requirement under Section 404, to
21 allow the construction of a deck at the rear of a
22 single-family row dwelling in the R-4 District at
23 premises 2767 Woodley Place, Northwest, Square
24 2206, Lot 124.

25 Would you please stand to take the

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1 oath? Is there anyone else in the audience who
2 will be testifying on this application?

3 [Witnesses sworn.]

4 CHAIRPERSON GRIFFIS: Good morning.

5 MR. SNOWBER: Good morning.

6 CHAIRPERSON GRIFFIS: I will turn it
7 over to you.

8 MR. SNOWBER: Okay. Good morning, Mr.
9 Chairman.

10 CHAIRPERSON GRIFFIS: I'm just going to
11 ask you to turn your microphone on. You just touch
12 the base of it. There it is.

13 MR. SNOWBER: Thank you.

14 Good morning, Mr. Chairman, and members
15 of the BZA. My name is Chris Snowber of Hamilton
16 Snowber Architects. I'm here representing my
17 client, Madhulika Sikka, who is sitting next to me,
18 and her husband, Jim Millward, and their two
19 children.

20 I assume that you have the documents in
21 front of you that outline the project, so I will
22 quickly walk through what the aspects of the site
23 and the issues are.

24 CHAIRPERSON GRIFFIS: Good. We do have
25 that in front of us as we have the entire record.

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1 MR. SNOWBER: Okay.

2 Calling your attention to Sheet A1, in
3 the upper right-hand corner, there is a site plan
4 of the block of Woodley Place on which this house
5 sits. It is a 20-foot-wide attached row house, it
6 is the last house within the block before you hit a
7 public alley, and then there are more houses to the
8 north of it as well.

9 It faces onto Woodley Place. The rear
10 of it faces onto an alley that faces onto houses
11 that are on Cathedral Avenue, Northwest, so the
12 backs of them are facing onto the alley as well.

13 The site is indicated -- the house plan
14 is indicated on the far left where it says
15 "Existing First Floor Plan." It shows the house
16 with a covered front porch. It has a rear yard
17 which is -- the lot itself is actually -- the
18 dimensions are shown there. It is a lot of about
19 1,460 square feet and has a rear yard averaging --
20 or varying depth from 12 and a half to 9 and a half
21 feet. So it is a non-conforming lot within the
22 zone of R-4, which requires a minimum of 1,800
23 square feet and a minimum rear yard of 20 feet.

24 The photographs on the cover sheet
25 there show both front and rear views of the

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1 property as well as some other rear views of other
2 properties along Woodley Place, Northwest.

3 CHAIRPERSON GRIFFIS: You stated and
4 actually in the information it obviously is not --
5 it's an existing non-conformity to lot occupancy;
6 is that correct?

7 MR. SNOWBER: Correct.

8 CHAIRPERSON GRIFFIS: Okay. Which
9 brings up an issue for us in terms of Section
10 2001.3, which reads, and it's under Chapter 20,
11 Section 2001 is non-conforming structure devoted to
12 conforming uses, of which this is applicable,
13 specifically 2001.3, which says, "Enlargements or
14 additions may be made to the structure provided,"
15 and I will skip to (b) -- no, actually, I will skip
16 to (a), "The structure shall conform to percentage
17 of lot occupancy requirements," and also (b)(2)
18 under 2001.3, which reads, "neither increase or
19 extend any existing non-conforming aspect of the
20 structure nor create any new non-conformity of the
21 structure." So it looks like it's increasing or
22 extending a non-conformity and it's also not
23 conforming to percentage of lot occupancy.

24 I don't see any difficulty in amending
25 -- this Board can amend the application as it stays

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1 within the variances and it's obviously as -- what
2 would be of great concern if it was not correctly
3 advertised as some different animal. It certainly
4 is. So unless there is any objection on your part
5 or the Board's, I would amend the application to
6 include the variance for 2001.3, and we can let you
7 continue.

8 MR. SNOWBER: Thank you very much.

9 So the proposal before you to is to
10 place a deck on the rear of the structure that
11 would be at the level of the first floor of the
12 house, which is at the rear line of the property
13 approximately eight feet off the ground.

14 Given the size of the rear yard, we're
15 trying to place a deck that has minimum impact on
16 the alley but provides some use to the occupants.
17 We're proposing a deck that varies in depth from
18 two feet, two inches, to twelve feet in depth, and
19 yet -- so it has a curving shape, so it sort of
20 follows the shape of some vehicles that actually
21 pass by the corner of the lot in the alley. It's a
22 very tight corner there.

23 We have lined up the corner of the deck
24 with an existing light pole that you see in the
25 plan, on the sheet that says, "First Floor Plan,

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1 Proposed First Floor Plan." There is an existing
2 light pole which is the city's light pole, and we
3 are lining the corner of the deck up with that so
4 that we were sure that if any truck can pass by
5 that light pole, it can then be able to pass by the
6 deck. There is a problem there of large vehicles
7 when they make that corner being a little tight, so
8 we pulled the deck back so we avoid any problem
9 with that.

10 The proposed deck is consistent with
11 other properties on the street. There are a number
12 of other houses on the street that have decks. The
13 main problem that this lot has is that, because of
14 its inadequate size due to the curving of the alley
15 at the top of the block, we have a less than full
16 size lot, which I will address in a moment.

17 Regarding the deck, it will be a wooden
18 structure with several posts underneath, and then
19 the deck itself will cantilever out beyond the
20 posts, again providing a way for there to be --
21 have a minimum impact on the alley, and it has been
22 reviewed by Tim Dinay of HPRB, who has indicated
23 his support pending your support or contingent on
24 your support of the application.

25 It has been presented before the ANC in

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1 the neighborhood and was placed on the consent
2 calendar, so it had their unanimous support, which
3 I believe you have in the record as well.

4 It also has had the support of several
5 of the neighbors, including the two -- we have a
6 letter of support with signatures from the
7 neighbors, two immediately to the south and the two
8 immediately to the north. The three neighbors
9 across from the house on the alley have been
10 contacted but we don't have any record of their
11 support, but there was no opposition from any of
12 them, and one of them indicated their support, one
13 of them was a renter, and the third one we got no
14 response from. We attempted to reach them. But
15 they have all been notified of course, through the
16 public mailings.

17 Specifically regarding the test that
18 the BZA requires us to meet, the lot is smaller
19 than is allowed in the zone and smaller than others
20 in the neighborhood. A typical lot in the
21 neighborhood is approximately 20 by 100, a
22 2000-square-foot lot, which is over the minimum,
23 but this lot, again due to the curving of the
24 alley, is much shorter than that, and yet the same
25 row house was placed on this lot as was placed on

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1 all the rest of them, so that the current lot
2 occupancy, including the covered front porch on the
3 house, is 73 percent.

4 The rear yard currently averages eleven
5 foot six, which is under the requirement of 20
6 feet, and yet, while a rear deck is a common
7 amenity of this neighborhood, this house would not
8 be able to have it due to the unusual shape of the
9 lot.

10 The proposed deck we're putting before
11 you is not a large deck, it will not have a
12 negative impact on the public. The only house that
13 we're attached to, the immediate neighbor to the
14 south, is to the south, and therefore there's not a
15 light problem, and that neighbor has indicated her
16 full support for the project. We are building it
17 in an attractive way so it will be a positive
18 addition to the neighborhood.

19 Then finally regarding the intended
20 purpose of the zone, this is a residential zone
21 with rear decks on many of the houses, and we are
22 -- it's consistent with that and will complement
23 the existing character of the neighborhood.

24 That's the extent of our presentation.

25 Thank you.

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1 CHAIRPERSON GRIFFIS: Thank you very
2 much.

3 Questions from the Board?

4 [No response.]

5 CHAIRPERSON GRIFFIS: If I understand
6 you correctly, clearly you established that there
7 is a uniqueness to this -- this site is smaller
8 than that in the exact proximity. It also is the
9 only lot that is defined by two portions of the
10 public alley, its back corner is somewhat clipped,
11 and there's the unique aspect of this that the cars
12 need to turn in a radius that's fairly tight to
13 that.

14 The other uniqueness that arises is
15 obviously taking the portion of that rear yard has
16 been impeded upon for this alley and the practical
17 difficulty is the -- and to make sure the
18 utilization of the exterior space in the rear.
19 This is a conforming use for single family, and I
20 believe you mentioned kids also in the house?

21 MR. SNOWBER: Yes.

22 CHAIRPERSON GRIFFIS: Which obviously
23 would require exterior space as is in other zones a
24 requirement of residential -- units for residential
25 recreation space, 50 percent, of course, being

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1 required to be outside. It shows in the photograph
2 and the evidence that you presented the front yard
3 may not serve for that type of purpose and has a
4 covered porch, which obviously is more public and
5 not private in terms of exterior space.

6 The practical difficulty, of course, is
7 the garage is interior to this structure and that
8 cars, therefore, have to have access across that,
9 so that you couldn't utilize on grade for that type
10 of activity. That all seems fairly clear to me.

11 Other comments? Questions?

12 [No response.]

13 CHAIRPERSON GRIFFIS: Then why don't we
14 continue on. I note that Office of Planning did
15 not file a report on this. Did you meet with
16 Office of Planning at all? Were you contacted by
17 anybody?

18 MR. SNOWBER: We were not.

19 CHAIRPERSON GRIFFIS: Okay. ANC-3C.
20 Is there a representative from ANC-3C here today?

21 [No response.]

22 CHAIRPERSON GRIFFIS: Not seeing any
23 indication that there is, they are on record in
24 Exhibit Number 21, which is recommending approval.
25 I believe that it does meet the requirements for

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1 giving great weight by this Board.

2 Unless there are any other comments or
3 questions from the Board, I don't believe there is
4 any additional testimony needed on that. You did
5 present to the ANC and present the project; is that
6 correct?

7 MR. SNOWBER: Yes. We met with a sort
8 of subcommittee of them, --

9 CHAIRPERSON GRIFFIS: Right.

10 MR. SNOWBER: -- of the ANC, and then
11 they brought that to the full ANC and it was placed
12 on the consent calendar.

13 CHAIRPERSON GRIFFIS: Okay. Excellent.
14 Very well.

15 I don't have any other reports
16 attendant to this application. Are you aware of
17 any other government agencies that reported that
18 should be in the record or missed? Very well.

19 Ms. Miller?

20 MEMBER MILLER: I just want to note, in
21 my review of the ANC report, it doesn't seem to say
22 what the vote was or that there was a quorum, so
23 I'm not sure that it's entitled to great weight.

24 CHAIRPERSON GRIFFIS: Whoops.

25 MEMBER MILLER: But we still note that

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1 --

2 CHAIRPERSON GRIFFIS: All right. Maybe
3 I should read it.

4 [Pause.]

5 CHAIRPERSON GRIFFIS: Well, your
6 concern was the actual vote wasn't given?

7 MEMBER MILLER: It wasn't represented
8 in the report.

9 CHAIRPERSON GRIFFIS: Do they need --
10 is that a --

11 MEMBER MILLER: 3115.1(d) says that
12 it's supposed to reflect the number of members of
13 the ANC that constitutes a quorum, --

14 CHAIRPERSON GRIFFIS: Oh. Indeed.

15 MEMBER MILLER: -- and the number of
16 members present at the meeting, and (g) the vote on
17 the motion to adopt the report to the Board.

18 CHAIRPERSON GRIFFIS: And this is
19 ANC-3. We would expect that from them. Very well.

20 Certainly the intent of the ANC is there, although
21 it will not be afforded great weight of which it
22 could have been if properly addressed to the Board.

23 Other than that, I don't see anything
24 else in terms of government agencies. Is there
25 anyone here present today to testify as persons

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1 either in support or in opposition to Application
2 17031, if you would come forward at this time.

3 [No response.]

4 CHAIRPERSON GRIFFIS: Not seeing any
5 movement or rush to the table, we can continue and
6 give you closing remarks if you have any summation.

7 MR. SNOWBER: I appreciate your
8 additions to my comments and clarifying some of the
9 points of the application, but other than that,
10 thank you very much. Nothing else.

11 CHAIRPERSON GRIFFIS: Very well.

12 Any other questions from the Board to
13 the applicant? Clarifications?

14 [No response.]

15 CHAIRPERSON GRIFFIS: Then I would move
16 approval of Application 17031 for the variance of
17 lot occupancy, variance from the rear yard under
18 403 and 404, and also a variance as amended by the
19 Board under 2001.3 -- this would, of course, allow
20 the construction of a deck at the rear of a
21 single-family row dwelling at 2726 Woodley Place,
22 Northwest -- and ask for a second.

23 MEMBER MILLER: Second.

24 CHAIRPERSON GRIFFIS: Thank you, Ms.
25 Miller.

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1 I think it has been clearly laid out
2 and established, the uniqueness of this particular
3 lot, and also out of that arising the practical
4 difficulty to it. As there has been no evidence or
5 witnesses forward speaking of any harm to the zone
6 plan map or the public good, our review also has
7 indicated that this would not or does not evidence
8 itself as creating that, I believe it meets the
9 test for the variances of which it applied and
10 would ask for everyone's support.

11 MR. SNOWBER: Mr. Griffis, I think when
12 you were -- just a moment ago, you said 2726
13 Woodley Place. The address is 2767 Woodley Place.
14 I'm sure you intended to -- we don't want to get
15 the wrong house.

16 CHAIRPERSON GRIFFIS: My mind is not
17 wandering too far, believe me, but you are
18 absolutely right. Twenty-seven-sixty-seven Woodley
19 Place; is that correct?

20 MR. SNOWBER: Yes.

21 CHAIRPERSON GRIFFIS: Believe me,
22 Office of Planning will get it correct when they
23 write the order.

24 MR. SNOWBER: Okay.

25 CHAIRPERSON GRIFFIS: Okay. Very well.

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1 Any other deliberations on the motion at this
2 time?

3 [No response.]

4 CHAIRPERSON GRIFFIS: If there are no
5 further comments, I would ask for all in favor of
6 the motion signify by saying aye.

7 [Chorus of ayes.]

8 CHAIRPERSON GRIFFIS: Opposed?

9 [No response.]

10 CHAIRPERSON GRIFFIS: Very well. Why
11 don't we record the vote on that.

12 MS. BAILEY: The Board has voted to
13 approve the application that's 17031 as amended.
14 The motion was made by Mr. Griffis, seconded by Ms.
15 Miller. Mr. Etherly, Mr. Parsons and Mr. Zaidan
16 are in support of the application.

17 Are we doing a summary order, Mr.
18 Chairman?

19 CHAIRPERSON GRIFFIS: I don't think
20 there is any need for a full order on that unless
21 the applicant would like a full order. We will get
22 the address right on either one, I can assure you.

23 MR. SNOWBER: I don't understand the
24 distinction.

25 CHAIRPERSON GRIFFIS: Okay. Summary

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1 order basically does not -- it's a summation of our
2 action. It will just say who is present, what was
3 presented, and the vote. A full order will go into
4 findings of fact, conclusions of law. You may get
5 that sometime in December.

6 MR. SNOWBER: I think we will stick
7 with the summary.

8 CHAIRPERSON GRIFFIS: Probably a good
9 idea. Very well. Summary order it is.

10 Ms. Bailey, anything else attendant to
11 this?

12 MS. BAILEY: No, Mr. Chairman, not this
13 case.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much. When you are ready, we can move on
16 to the next.

17 I thank you all very much, appreciate
18 your participation.

19 MR. SNOWBER: I just wanted to say one
20 thing. I want to sincerely thank everybody who
21 serves on the Board of Zoning. I am always
22 impressed with the level of effort that you put
23 into this and the amount of intelligence and good
24 thoughts. So thank you.

25 CHAIRPERSON GRIFFIS: Good. Thank you

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1 very much. We appreciate that. I think that
2 extends to the staff also --

3 MR. SNOWBER: Yes.

4 CHAIRPERSON GRIFFIS: -- of the Office
5 of Zoning, which I don't think this Board would
6 function as well without such able staff.

7 MR. SNOWBER: Thank you.

8 CHAIRPERSON GRIFFIS: Thank you very
9 much.

10 Let's move on, then, when we are ready.

11 APPLICATION OF EMBASSY TRUST

12 17032 ANC-2D

13 MS. BAILEY: The second case is
14 Application Number 17032 of Embassy Trust pursuant
15 to 11 DCMR 3104.1 for a special exception under
16 Section 223, to allow the construction of a deck,
17 elevator penthouse, and a one-story rear addition
18 to a single-family dwelling, not meeting the lot
19 occupancy requirements, and a special exception
20 from the roof structure setback provisions under
21 Subsection 400.7. The property is located in the
22 R-3 District at premises 2124 Leroy Place,
23 Northwest, Square 2531, Lot 22.

24 Please stand to take the oath. Is
25 there anyone else in the audience who will be

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1 testifying on this application?

2 [Witnesses sworn.]

3 CHAIRPERSON GRIFFIS: Very well. When
4 you are ready.

5 MR. GRANDIS: Good morning.

6 CHAIRPERSON GRIFFIS: Good morning.

7 MR. GRANDIS: My name is Ed Grandis,
8 and I would like, with the permission of the Board,
9 to introduce two additional materials at this time
10 so you all would have it for the hearing. One is
11 the letter from the ANC that has been referenced in
12 the report. That is available and I would like to
13 be able to submit that, and also Mr. Zuercher is
14 here, he is going to be doing a one-page testimony
15 on the history of the home, and we have that
16 one-page handout.

17 May I submit those?

18 CHAIRPERSON GRIFFIS: Okay. Yes. If
19 you have copies, you can give it to staff who is
20 sitting obviously to the right. Ms. Bailey will
21 take that for you.

22 MR. GRANDIS: I have the original
23 letter from the ANC plus some copies, okay? Thank
24 you.

25 Let me just say hello to Mr. Parsons.

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1 I haven't seen Mr. Parsons in years. Good morning,
2 sir.

3 CHAIRPERSON GRIFFIS: Do we have a
4 disclosure we need to make? Let's continue on.

5 COMMISSIONER PARSONS: Mr. Grandis and
6 I served together on the National Capital Planning
7 Commission longer ago than we both like to
8 remember.

9 MR. GRANDIS: Not in this century,
10 even.

11 CHAIRPERSON GRIFFIS: Very well. Let's
12 get into the substance.

13 MR. GRANDIS: Thank you. Thank you.

14 My name is Ed Grandis. I'm a
15 D.C.-licensed attorney with offices in the Dupont
16 Circle neighborhood of the District of Columbia.
17 It is my pleasure to be here today before the Board
18 of Zoning Adjustment on behalf of the applicant,
19 Embassy Trust, regarding Application Number 17032.

20 This application is pursuant to 11 DCMR
21 Section 3104.1 for a special exception to allow
22 construction of a deck, elevator penthouse and
23 one-story rear addition to a single-family dwelling
24 under Section 223, that does not meet the lot
25 occupancy requirements under Section 403, and a

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1 special exception from the roof structure setback
2 provisions under Section 400.7 and 411 11 in an R-3
3 District at premises located at 2124 Leroy Place,
4 Northwest, which is Square 2531, Lot 22, in the
5 Sheraton Kalorama neighborhood of the District.

6 With me this morning are Gary Zuercher,
7 a representative on behalf of the Embassy Trust,
8 and Robert Schwartz, FAIA, a principal with the
9 firm of Schwartz & Peoples Architects.

10 Gary will speak briefly on the
11 historical significance of the dwelling,
12 highlighting its illustrious past. Bob will
13 present to the Board a brief overview of the
14 additions the applicant desires in keeping with the
15 historical integrity of its grand architecture and
16 update the elements in keeping with the ambiance of
17 the neighborhood.

18 We ask that the Board review our
19 burden-of-proof statement. It is our position that
20 we have met the burden as required in the various
21 sections of Title 11 of the DCMR allowing the Board
22 to grant the relief sought. In addition, we ask
23 that the Board accept the Office of Planning's
24 recommendation of approval and give great weight to
25 the ANC-2D recommendation of approval.

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1 The panel is prepared to go forward
2 with our presentation and to answer questions that
3 the Board may have in reviewing our request.

4 At this time, I would like to welcome
5 Gary to make a statement regarding the history of
6 the property.

7 CHAIRPERSON GRIFFIS: I am going to
8 interrupt you just very briefly on two points.

9 MR. GRANDIS: Yes.

10 CHAIRPERSON GRIFFIS: First of all, I
11 think we need to clarify part of the application,
12 as, if I am not mistaken in my memory, OP is
13 indicating that actually 400.7 requires an area
14 variance, of which this hasn't been advertised for;
15 and then additionally, as this is a special
16 exception, I think we can stand on the record of an
17 awful lot that you have and move through this
18 fairly quickly, but let's address the 400.7.

19 It is my understanding in reading the
20 application that -- 407 reads, "If housing for
21 mechanical equipment or stairway, elevator
22 penthouse is provided on the roof of building
23 structure, it shall be erected or enlarged as
24 follows," and (a) says it shall meet the
25 requirements of 411; (b) says it shall be set back

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1 from all exterior walls a distance of at least
2 equal to the height above the roof upon which it is
3 located.

4 It seems to me that 400.7(a) begins
5 that paragraph and regulates that paragraph.
6 Moving you to 411, 411 is the special exception,
7 the special exception dealing with rooftop
8 structures. Four-eleven, as outlined and directed
9 to the Board, has given the jurisdiction to
10 exercise reasonable degree of architectural control
11 upon roof structures in all districts. That would
12 be for housing mechanical equipment, stairway,
13 elevator penthouses and whatnot in conflict with
14 the act to regulate the height of the buildings.
15 Penthouses for storage, toilets, incidentals, on
16 accessory roofs shall be subject to conditions in
17 -- basically it's giving us total control of what
18 these are, what they look like, and where they are
19 located. I think 400.7 is a special exception and
20 should be maintained as the applicant has put in
21 and advertised, but I would hear from others from
22 the Board if they have differing opinions.

23 MEMBER ZAIDAN: So you're saying that,
24 to make sure I follow the discussion, the 411
25 allows not only all the provisions of 411, but also

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1 the provisions of 400.7 to be varied through a
2 special exception process.

3 CHAIRPERSON GRIFFIS: Right. I guess,
4 loosely stated, reading 400.7, if I was designing a
5 penthouse, I would say that the mechanical
6 equipment, stairway, elevator penthouse provided on
7 the roof structure shall be erected or enlarged as
8 follows, and it says shall meet the requirements of
9 411.

10 When I need to change something that is
11 required, that instructs me to go to 411, and 411
12 says this is what you can do, and if you can't,
13 it's a special exception before the Board of Zoning
14 Adjustment. Therefore, all of 400.7 I find falls
15 under 411.

16 MEMBER ZAIDAN: Well, 411 only applies
17 for residential; is that correct?

18 CHAIRPERSON GRIFFIS: No. Four-eleven
19 actually is invoked in all of the zoning
20 classifications. In fact, if we went to -- let's
21 go to 70.6, which is a commercial zone, which
22 reads, "If housing for mechanical equipment or
23 stairway or elevator penthouse provided on the roof
24 of the building structure, it shall be erected or
25 enlarged as follows. It shall meet the

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1 requirements of 411." So although 411 starts in
2 the residential zone, it actually regulates
3 penthouse structures throughout.

4 Let's hear from Corporation Counsel
5 while other Board members deliberate and digest --

6 MEMBER ZAIDAN: Well, I understand. It
7 makes me wonder why there's even a need for 400.7,
8 then.

9 CHAIRPERSON GRIFFIS: Or why 400.7
10 isn't included in 411.

11 MEMBER ZAIDAN: Exactly.

12 CHAIRPERSON GRIFFIS: But that's for
13 the Commission to figure out.

14 MEMBER ZAIDAN: I agree.

15 CHAIRPERSON GRIFFIS: Corporation
16 Counsel have an opinion on this?

17 MS. NAGELHOUT: I would agree with what
18 you said so far. I think you can get special
19 exception relief from 400.7 through Section 411.11.

20 CHAIRPERSON GRIFFIS: And wouldn't it
21 be your opinion also, then, as you went to other
22 zone classifications -- in fact, 770 -- that it
23 would also apply for commercial?

24 MS. NAGELHOUT: Yes. You will see that
25 400.7 and 770.6 are among the sections listed in

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1 411.11.

2 CHAIRPERSON GRIFFIS: Indeed. Okay.

3 So is the Board prepared to move
4 forward as it was advertised as special exception
5 relief? I take that as a consensus unless there is
6 any opposition noted at this time. Let's move
7 ahead.

8 Now, I have something else attendant to
9 the penthouse relief as I view this, and perhaps we
10 will get into it, but it seems to me that 400.7(b)
11 states that it shall be set back -- that is, the
12 penthouse structure -- from all exterior walls a
13 distance at least equal to its height above the
14 roof upon without it is located.

15 You're coming for relief from the party
16 wall; is that correct? Because it's not set back
17 from that party wall.

18 MR. GRANDIS: May I refer to the
19 architect --

20 CHAIRPERSON GRIFFIS: Sure.

21 MR. GRANDIS: -- for the exact
22 location?

23 CHAIRPERSON GRIFFIS: Good. Why don't
24 you introduce yourself and we'll have a brief
25 discussion.

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1 MR. SCHWARTZ: Bob Schwartz.

2 I will point out on the plans where the
3 setback is in relation to the existing walls.

4 CHAIRPERSON GRIFFIS: Okay. You just
5 need to be careful, you need to speak fairly
6 closely into a microphone so you can pick that up.

7 MR. SCHWARTZ: This is the plan of the
8 roof.

9 CHAIRPERSON GRIFFIS: Oh, I see.

10 MR. SCHWARTZ: And this, there's a
11 rectangular that is the present townhouse. Now,
12 there's a little complexity here because the roof
13 steps back at the second floor, so the third floor
14 is actually next to our penthouse while the second
15 floor is far away from it.

16 The other thing is that we are right on
17 the party wall.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. SCHWARTZ: So there is a question
20 in my mind whether a party wall is an exterior
21 wall, but there are these two situations.

22 CHAIRPERSON GRIFFIS: And clearly you
23 will need a setback from the rear exterior wall
24 because that is an exterior wall which --

25 MR. SCHWARTZ: Right. Right.

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1 CHAIRPERSON GRIFFIS: Okay. But just
2 for clarification on the party wall, this Board has
3 previously decided that, in fact, that is not, as
4 required in the regulations, required to be set
5 back from as it is not an exterior wall.

6 So that's all my interruptions. I
7 think we're absolutely clear what we're looking at
8 and where we're going with that.

9 MEMBER ZAIDAN: I actually have a
10 question before we do that.

11 CHAIRPERSON GRIFFIS: Yes.

12 MEMBER ZAIDAN: Just to make sure I am
13 clear on the issue, what is before us is the
14 setback from all exterior walls, 400.7(b).

15 CHAIRPERSON GRIFFIS: Right, of which
16 it is meeting one -- or it has one exterior wall
17 which it is not set back from.

18 MEMBER ZAIDAN: Okay. And from the
19 discussion prior -- I guess I'm still -- I mean, I
20 felt comfortable with where we were going with the
21 411 issue, but we're proceeding with this as a
22 special exception?

23 CHAIRPERSON GRIFFIS: That's correct.

24 MEMBER ZAIDAN: For the setback?

25 CHAIRPERSON GRIFFIS: That's correct.

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1 MEMBER ZAIDAN: Okay. Well, I don't
2 want to hold up the presentation. Go ahead. I am
3 going to keep looking through this.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. GRANDIS: Thank you.

6 Gary.

7 TESTIMONY BY GARY ZUERCHER

8 MR. ZUERCHER: Thank you, Ed.

9 My name is Gary Zuercher, and I would
10 like to give you just a very brief history on the
11 building. Ed called it the illustrious history.
12 I'm not quite sure I would categorize it as
13 illustrious, but it's interesting.

14 Leroy Place is a one-block street
15 located just off Connecticut Avenue across from the
16 Washington Hilton Hotel. On May 14th, 1912, the
17 architect Clark Waggaman applied for a building
18 permit to build the house at 2124 Leroy Place. He
19 listed \$26,000 as the estimated construction cost
20 at that time. That was a tidy sum in 1912.

21 Waggaman was a highly regarded
22 Washington, D.C. architect born in 1877. He
23 designed quite a few well regarded homes and
24 buildings in the District. He died at the young
25 age of 42 in 1919 at the height of his success.

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1 The house was originally built for
2 George Putnam, who was the first commissioner of
3 the Federal Bureau of Lighthouses. In 1910, the
4 lighthouse board, which was governed by a committee
5 of men of diverse backgrounds, was replaced by the
6 Bureau of Lighthouses with Putnam at the helm. He
7 headed the bureau for 27 of its 29 years of
8 existence.

9 In 1920, Putnam sold the house to
10 Timothy Asbury, who was a congressman from the
11 Fifth District of Ohio and a judge on the Ohio
12 Court of Appeals.

13 Dr. Logan S. Owens bought the house
14 from Asbury in 1924 and lived there until his death
15 in 1949. His widow continued to live in the house
16 until her death in 1960. The Owens owned the house
17 for 34 years, and also I found that Logan Owens
18 played on the 1898 Georgetown University football
19 team.

20 We're only the seventh owner since the
21 house was built in 1912, and it is a traditional
22 Waggaman design with ten-foot-high ceilings,
23 beautiful crown moldings, period chair rail,
24 mahogany staircases, and other excellent
25 architectural details of note. It is our intention

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1 to conserve the history and integrity of the design
2 of the house.

3 Thank you for your time.

4 CHAIRPERSON GRIFFIS: Thank you very
5 much. All very interesting, and maybe the
6 commissioner will incorporate that type of history
7 requirement in special exceptions, or at least
8 playing on a university football team.

9 Very well. Let's continue on. Maybe
10 we can make it soccer, too, make it a little bit
11 more contemporary. Don't let me interrupt. Keep
12 rolling.

13 TESTIMONY BY ROBERT SCHWARTZ

14 MR. SCHWARTZ: First let me say this
15 residence is sort of in the center of the block.
16 This is Leroy Place and if you can see this little
17 orange rectangle, that locates the house, and these
18 are some photographs taken in the back of the
19 house, so this is in the alley which is where we're
20 doing the addition and where both the deck and the
21 penthouse might be visible from. So this first
22 shot is looking down the alley.

23 This is a neighbor, this white addition
24 here, and this is two houses down and, you know,
25 this is the house we're interested in. So you can

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1 see that they both project out quite a bit.

2 This is standing in the alley looking
3 straight back at the house in question. That's
4 this part of the photograph. And then this is
5 looking diagonally at the house, so you can see
6 this same white gutter. The addition is going to
7 be down below this and wouldn't be visible, but the
8 penthouse will be visible from the alley.

9 This is standing in the back yard,
10 which is on the roof of -- should I pick this up a
11 little bit?

12 CHAIRPERSON GRIFFIS: That's all right.

13 MR. SCHWARTZ: The first photo is
14 standing on the roof of the garage, which is a
15 level down from the entry level because the alley
16 slopes down, so it's looking at the white addition
17 that we were looking at as the first picture on one
18 side, then there is a picture straight back of the
19 house, and then there is a picture looking in the
20 other direction in the alley showing the house that
21 projects out quite a bit, and then an addition
22 which was done by a neighbor. That's a wooden
23 addition.

24 These are the plans. There is an
25 existing garage which is below the first level of

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1 the house, and this would be foundations for the
2 work being done above.

3 At present, there is a deck on the
4 back, it's a wood deck. We would be taking that
5 down. This is the breakfast area which we want to
6 add on, and colored in are the surrounding houses,
7 so this house -- from this point to this point is
8 that white addition I was pointing at in the
9 photograph. On this side, this is the wooden
10 addition, and then this is the neighboring house,
11 how far out it comes. So you can see that the
12 projection of this one-story addition is much less
13 than those. And this deck has probably
14 approximately the same area as the previous deck.
15 The previous deck was a little narrower but went
16 all the way across.

17 Now, just to show you a little bit
18 about the structure of the house, it's very formal.

19 As Gary said, it's beautiful inside. You come in,
20 there's a nice stair going up. You come up a
21 couple of steps, go into a living room, hall and
22 dining room, and then there's this small existing
23 kitchen which they are trying to expand a little
24 bit.

25 This is where the elevator is located,

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1 and you can see by the nature of the plan there is
2 really no other place to put this elevator. You
3 couldn't put it anywhere in any one of these rooms
4 without totally ruining the appearance of the
5 rooms. They are classical, they have, you know,
6 moldings that go all way around them, and they are
7 very symmetrical, and you certainly can't put it --
8 there's no room in the stair to put it in the
9 stair, so we're taking out the back part of the
10 kitchen and putting it there.

11 CHAIRPERSON GRIFFIS: Okay. Let me
12 just make sure that the Board understands what the
13 addition is and the elevator addition and where
14 it's located. Any questions on that?

15 [No response.]

16 CHAIRPERSON GRIFFIS: Okay. In which
17 case what I would like to do is just focus --
18 you're actually making a great variance case, which
19 is a higher test, which you don't need to, so let's
20 stick to the special exception and talk just
21 briefly whether the addition would substantially or
22 adversely affect the use or enjoyment of abutting
23 adjacent properties. I think that was established
24 in your site plan showing the adjacent buildings.

25 MR. SCHWARTZ: Okay.

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1 CHAIRPERSON GRIFFIS: Also in terms of
2 privacy and use or enjoyment, there's no evidence
3 of that at this time. Are you aware of any issues
4 that would arise that would create a difficulty in
5 the privacy or use of the adjacent properties?

6 MR. SCHWARTZ: No. And it was
7 presented to the neighbors and at the ANC and
8 everybody seemed to be in support and no one had
9 any problems with it. I already showed where the
10 elevator is on this.

11 MR. GRANDIS: One second, sir. If I
12 could just point out in the record that when you
13 brought up the privacy issue, the neighbors on both
14 sides have submitted letters that are in the
15 record.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. GRANDIS: Just for your attention.

18 CHAIRPERSON GRIFFIS: Indeed.

19 And then as the architect on the
20 project, are you testifying today that this would
21 not substantially and visually intrude upon the
22 character of this building?

23 MR. SCHWARTZ: Yes, that's what I'm
24 testifying, and these elevations are meant to show
25 that, and this has been approved by the Historic

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1 Review. It wasn't even a conceptual review; I
2 mean, they looked at it and they said, yes, this is
3 approved; and it was on the consent calendar.

4 CHAIRPERSON GRIFFIS: Excellent. Which
5 answers the last question of 223.2(d) in
6 demonstrating the compliance of the above, of which
7 you have now answered that you would present
8 graphical representations such as plans and
9 photographs.

10 That takes us through the special
11 exception case. Anything else you want to
12 highlight for the Board at this time?

13 MR. SCHWARTZ: The only other thing
14 that I have are a whole series of photographs of
15 the rooftop just showing the nature of the
16 surrounding roofs. This is taken from the fourth
17 story of the house across the street, and this is
18 where the property in question is, and you can see
19 all these penthouses and all of the -- this is
20 standing on the roof looking in one direction and
21 standing on the roof looking in the other
22 direction.

23 CHAIRPERSON GRIFFIS: What is the
24 penthouse in 2124?

25 MR. SCHWARTZ: This one?

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1 CHAIRPERSON GRIFFIS: Yes.

2 MR. SCHWARTZ: 2122.

3 CHAIRPERSON GRIFFIS: It's labeled
4 Exhibit 10, 2124.

5 MR. SCHWARTZ: Oh. No. Well, that's
6 our --

7 CHAIRPERSON GRIFFIS: Oh, I see. 2122
8 has that --

9 MR. SCHWARTZ: Penthouse.

10 CHAIRPERSON GRIFFIS: What is it for?

11 MR. SCHWARTZ: When you look in it,
12 there's like a lounge and --

13 CHAIRPERSON GRIFFIS: That looks like a
14 big party room up there.

15 MR. SCHWARTZ: Yes. That's what it is.
16 And there is a deck with it.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SCHWARTZ: At any rate --

19 CHAIRPERSON GRIFFIS: Well, the Board
20 will be by next year. If we're not on this Board,
21 we expect to be asked, invited there.

22 Wait a minute? Is that on the record.
23 Okay. Let's continue.

24 MR. SCHWARTZ: So at any rate, I think
25 this series of photographs is just meant to present

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1 that even if you get up on the fourth story of a
2 neighboring house or if you were on the roof of
3 adjacent houses looking at this, it's not anything
4 dissimilar or that's going to be a negative impact
5 on the roofscape in the neighborhood, and the
6 neighbors -- this was all presented to the ANC,
7 this was presented to the neighbors and the
8 Historic Review Board and they all agreed that this
9 is not a problem in terms of having a negative
10 effect.

11 CHAIRPERSON GRIFFIS: Well, I think the
12 other evidence that actually some of those
13 photographs show and some of the previous ones is
14 what it would take to actually see the penthouse,
15 let alone being any sort of visual intrusion.

16 MR. SCHWARTZ: Right.

17 CHAIRPERSON GRIFFIS: I mean, you're on
18 the top of -- it looks to be a higher structure
19 across the street that would actually get a full
20 view of that penthouse.

21 MR. SCHWARTZ: Right. And in fact, we
22 have this diagram which shows that standing on the
23 sidewalk looking at this house, you won't be able
24 to see the penthouse.

25 CHAIRPERSON GRIFFIS: Indeed. Indeed.

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1 And that -- was that on the section that was
2 provided? No. One clarification. Of course,
3 anything presented today will need to be put into
4 the record, so we will allow that to be submitted
5 and you can have reduced copies or sizes, you know,
6 of course. But that will be a critical diagram,
7 the section with the sight line from across Leroy
8 Place, Northwest, as part of the evidence that went
9 to the Board.

10 Any question of the Board of the
11 applicant? Yes.

12 COMMISSIONER PARSONS: On that drawing
13 that's right behind you, there's a label that says,
14 "Neighboring Penthouse Beyond." It's off to the
15 right of the proposed penthouse.

16 MR. SCHWARTZ: Yes.

17 COMMISSIONER PARSONS: How tall is that
18 in comparison to the penthouse that you're
19 proposing?

20 MR. SCHWARTZ: It's about the same
21 height. You can see there may be like an inch or
22 two difference, but --

23 COMMISSIONER PARSONS: So that arrow is
24 pointing to a -- not a measuring line, but a
25 physical roofline.

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1 MR. SCHWARTZ: Yes. The measuring line
2 is, you know, a couple of inches above it. I don't
3 know if it's visible on the reduced copy.

4 COMMISSIONER PARSONS: And that then
5 would be abutting your --

6 MR. SCHWARTZ: They don't actually --

7 COMMISSIONER PARSONS: Your penthouse
8 would be abutting?

9 MR. SCHWARTZ: Well, they don't
10 actually touch. That one is I don't know how many
11 feet in, but it's not actually on the party wall.

12 COMMISSIONER PARSONS: I see. All
13 right. Thank you.

14 MR. SCHWARTZ: Okay.

15 CHAIRPERSON GRIFFIS: Any other
16 questions of the architect at this time?
17 Clarifications?

18 [No response.]

19 CHAIRPERSON GRIFFIS: Very well.

20 Anything else to present as part of
21 your case?

22 MR. GRANDIS: Well, sir, all we would
23 like to do is in summation, we want to thank you --

24 CHAIRPERSON GRIFFIS: I will give you a
25 chance for a summation.

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1 Let's go to Office of Planning, which I
2 don't see a representative here today. Of course,
3 they did provide an Exhibit Number 24, their
4 report, which does recommend approval. Do you have
5 that?

6 MR. GRANDIS: Yes.

7 CHAIRPERSON GRIFFIS: Okay. And you
8 have reviewed it and worked with the Office of
9 Planning. Obviously you don't have any objections
10 to that, do you?

11 MR. GRANDIS: No, sir.

12 CHAIRPERSON GRIFFIS: Okay.

13 Any questions, clarifications of the
14 Board? You have highlights of the Office of
15 Planning? We have addressed one of the big issues
16 that I think was important in terms of the variance
17 case under 400.7. I think their report outlines
18 the case very well and succinctly.

19 I do not have anything although was
20 submitted the ANC; is that correct?

21 [Pause.]

22 CHAIRPERSON GRIFFIS: Okay. The letter
23 speaks to the Board of the ANC's action, which was
24 a duly called meeting and was -- a motion was
25 adopted to support the application and the motion

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1 was adopted unanimously. Lacking in this is the
2 actual vote, how many make a quorum, and that a
3 quorum was present, but --

4 MR. GRANDIS: Sir?

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. GRANDIS: At the top of the letter,
7 they have the names of both of the commissioners.
8 This ANC only has two commissioners, so it would --

9 CHAIRPERSON GRIFFIS: They better have
10 a quorum or they don't have anyone in attendance.

11 MR. GRANDIS: And it would also -- it
12 was unanimous. They both voted, they both were in
13 attendance. So I think you do have a number.

14 CHAIRPERSON GRIFFIS: Through our own
15 extrapolation?

16 Ms. Miller, we will make you the
17 arbiter judge of that. Great weight or not great
18 weight?

19 MEMBER MILLER: I would like to
20 disclose that I was an ANC chair in another life,
21 so I am a stickler for these types of things and I
22 would say they should have represented in the
23 letter that they only have two commissioners and
24 that was what the vote was. So I would not give it
25 great weight.

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1 CHAIRPERSON GRIFFIS: Simple. Next
2 time you talk to them, you can say boilerplate
3 sentence, it ought to be in there, and in order to
4 strictly come up to our requirements, it would not
5 be granted great weight. Of course, it is part of
6 the evidence and it is noted what their actions
7 were and the participants in that, and so I think
8 we can move forward with the report from ANC-2D
9 with it standing as submission of fact.

10 I don't have any other attendant
11 government agencies or reports to this application.

12 Are you aware of any? Okay. I don't believe I
13 have overlooked any. We do have letters of support
14 which are listed under Exhibit Number 23 and you
15 had mentioned we have several of those and these
16 are the adjacent neighbors.

17 MR. GRANDIS: Correct.

18 CHAIRPERSON GRIFFIS: The letter is
19 attached that was sent out, if I'm correct. Right.
20 Okay.

21 Anything else, submissions that should
22 be noted or evidence into the record at this time?
23 If not, we can go to closing remarks.

24 MR. GRANDIS: Thank you. I want to
25 thank this Board for the time and consideration and

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1 actually the depth that we have had in this
2 discussion. It has been very enlightening and we
3 appreciate that.

4 We appreciate the opportunity to be
5 here today. We believe that we have met the burden
6 of proof required to allow the Board to grant us
7 the relief we seek.

8 In addition, we ask that the Board
9 adopt as part of the record our entire submittal,
10 including the oral presentation made today. We ask
11 that the Board follow the recommendations of the
12 Office of Planning and the ANC-2D.

13 Noting that there were no adverse
14 parties in this proceeding, we respectfully request
15 that the Board issue today a summary order that the
16 relief sought by the application be granted, and we
17 want to thank you again for the opportunity to be
18 here.

19 CHAIRPERSON GRIFFIS: Thank you very
20 much for your brevity and completeness.

21 I would move approval of Application
22 17032 -- Hold on a second, let me get all my
23 correct stuff in front of me that I would like --
24 for the special exception under 223 to allow the
25 construction of a deck, elevator penthouse and

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1 one-story rear addition to a single-family dwelling
2 which has not met the lot occupancy requirements
3 under 403, and a special exception from the roof
4 structure setback provision under Section 400.7,
5 also attendant to 411.11 at the premises 2124 Leroy
6 Place, Northwest. I would ask for a second.

7 MEMBER ZAIDAN: That was for
8 Application 17032, correct? I don't think you
9 finished your sentence there. But I will be more
10 than happy to second that.

11 CHAIRPERSON GRIFFIS: All these decks
12 this morning, I'm getting a little confused. Yes,
13 it was. Thank you very much for the second.

14 I think, first of all, the testimony in
15 the record that has been put in, also the Office of
16 Planning I think has laid out very well the
17 requirements for the special exception and how this
18 application meets the special exception, and so I
19 would, as asked by the attorney -- of course, all
20 their testimony today has been incorporated into
21 the record, but I think we can rely on the Office
22 of Planning's report with the other additional
23 information that was provided today.

24 Others? Any other comment,
25 deliberations on the motion?

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1 [No response.]

2 CHAIRPERSON GRIFFIS: Very well. Then
3 I ask that all in favor signify by saying aye.

4 [Chorus of ayes.]

5 CHAIRPERSON GRIFFIS: Opposed? Any
6 abstaining?

7 [No response.]

8 CHAIRPERSON GRIFFIS: Very well. If we
9 could record the vote.

10 MS. BAILEY: The Board has voted to
11 approve Application Number 17032 of Embassy Trust.

12 The motion was made by Mr. Griffis, seconded by
13 Mr. Zaidan. Ms. Miller, Mr. Parsons and Mr.
14 Etherly are in support.

15 CHAIRPERSON GRIFFIS: Excellent. Thank
16 you very much. I don't have any objection and I
17 don't think the Board has any objection to making
18 this a summary order. If there are no objections,
19 we can issue a summary order on this.

20 Have an excellent day. I appreciate
21 your being here. Please don't forget to submit
22 those documents into the record so that the record
23 is full, and thank you very much.

24 We're going to take five minutes, let
25 this applicant leave and the next applicant set up,

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1 and we will return.

2 MR. GRANDIS: Sir? We have a draft
3 summary order. Would that be of help to the staff?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. GRANDIS: Thank you.

6 [Recess.]

7 APPLICATION OF WASHINGTON DRAMA SOCIETY, INC.

8 DBA THE ARENA STAGE

9 17033 ANC-6D

10 MS. BAILEY: The third case of the
11 morning, Mr. Chairman, is Application Number 17033
12 of the Washington Drama Society, Inc., also known
13 as The Arena Stage, and it's pursuant to 11 DCMR
14 3103.2, for a variance from the building height
15 requirements under Section 930 to permit the
16 redevelopment of an existing theater in the W-1
17 District at premises 1101 6th Street, Southwest.

18 The applicant requests modification to
19 the height variance approved in BZA Order Number
20 16933-A. The property is located in Square 472 on
21 Lots 123 and 126.

22 Please stand, all those persons who
23 will be testifying, to take the oath.

24 [Witnesses sworn.]

25 MR. GLASGOW: Good morning.

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1 CHAIRPERSON GRIFFIS: Good morning. I
2 think as this is a modification and most of the
3 Board sat on that case -- you did not sit on it.

4 MEMBER MILLER: I did not.

5 CHAIRPERSON GRIFFIS: Okay. Well,
6 attendant to that, of course, the Board that sat is
7 well aware of what went before, so we can kind of
8 highlight some of those notes.

9 Ms. Miller, I know, as the rest of the
10 Board, has read the entire record that is before us
11 now, so it's complete. But I think we can, as I
12 say, perhaps get through some of the more
13 cumbersome detail and just to the specific points
14 needed to be addressed with this.

15 MR. GLASGOW: All right. Thank you.
16 Then I will have a very brief opening statement and
17 then proceed with the testimony of the witnesses.

18 This case, as the Board is well aware
19 other than Ms. Miller, who didn't sit on it the
20 first time, was for The Arena Stage. We were
21 granted a height variance and other variances. We
22 have come back through further modification of the
23 plans and, in fact, the Board's order indicated
24 that -- this is the order of the Board in
25 Application 16933-A -- that the applicant may

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1 modify the design of the building by the Historic
2 Preservation Review Board and/or the Commission of
3 Fine Arts provided that those changes do not
4 increase any of the areas of relief granted by the
5 Board of Zoning Adjustment. So we have an increase
6 in that area, in the height area. The rest of the
7 project continues to follow the guidance that the
8 Board gave when we received approval previously.

9 The zoning height of the building
10 before was 75 feet. It's now rising to a little
11 bit over 89 feet, and it does that in one
12 particular area off of 6th Street through a
13 redesign of what was the cradle area. That has
14 increased in height, and the architect will
15 describe that. That is just a very small area of
16 the site.

17 Also, there has been some area of the
18 roof which has been strengthened. As there has
19 been a redesign of part of the roof, it tapers in
20 some areas, so it's thinner, then it gets thicker
21 in some other areas as is shown on the model, and
22 part of the roof at its edges is actually lower
23 than it was before, and then where it's been
24 strengthened, it's actually a little bit thicker or
25 taller than it was previously.

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1 If there are no preliminary questions
2 -- and we have been to the Commission of Fine Arts,
3 they have seen this new model and the new design,
4 the plans for the new design. That has been
5 unanimously approved by Commission of Fine Arts.
6 We have been to the Advisory Neighborhood
7 Commission, who voted their approval to it. We
8 have also received the approval of the Office of
9 Planning.

10 If there are no preliminary questions
11 -- and I think I declined to identify myself for
12 the record. My name is Norman M. Glasgow, Jr.,
13 with the law firm of Holland & Knight, and seated
14 with me is Mr. Stephen Richard, who is the
15 executive director of Arena Stage. Mr. Brian
16 Heller of Arena is also in the audience. Mr.
17 Michael Heeney of the architectural firm of Bing
18 Thom Associates is also seated at the table, and
19 Mr. Stephen Sher is also in attendance as is Mr.
20 Dennis Hughes of Holland & Knight.

21 Once again, I would like to turn to any
22 preliminary questions or issues before turning to
23 the testimony of the witnesses, and I understand
24 the Board does have a copy of the statement of
25 applicant in the record.

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1 CHAIRPERSON GRIFFIS: That's correct.

2 Am I mistaken or did I see somewhere in
3 the submissions of this that this went to the
4 Mayor's agent?

5 MR. GLASGOW: Yes, it went to the
6 Mayor's agent originally. Originally went to the
7 Mayor's agent. We have been in contact with the
8 staff of the Historic Preservation Review Board and
9 they are relying on the judgment of the Commission
10 of Fine Arts for the exterior design.

11 CHAIRPERSON GRIFFIS: Okay. And what,
12 briefly, brought it to the Mayor's agent?

13 MR. GLASGOW: The Mayor's agent was --
14 because their -- the entire site was designated a
15 historic landmark, and there were some of the
16 administrative buildings on the north end of the
17 site that were being demolished.

18 CHAIRPERSON GRIFFIS: I see. Okay.

19 MR. GLASGOW: And so it technically
20 went to the Mayor's agent for that. While the
21 important structures were being retained.

22 CHAIRPERSON GRIFFIS: Right.
23 Understandable.

24 MR. GLASGOW: Okay.

25 CHAIRPERSON GRIFFIS: Any other

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1 preliminary questions at this time?

2 [No response.]

3 CHAIRPERSON GRIFFIS: Good. Let's move
4 ahead.

5 MR. GLASGOW: All right.

6 With that, please, I would like to
7 proceed with the first witness. Please identify
8 yourself for the record, Mr. Richard, and proceed
9 with your testimony.

10 TESTIMONY OF STEPHEN RICHARD

11 MR. RICHARD: I'm Stephen Richard,
12 Executive Director of Arena Stage, and I'm going to
13 be very brief because all but one of you have heard
14 the history of Arena deciding to remain in
15 Southwest, Washington. We contemplated relocation
16 out of the area, as you know, and one of the main
17 reasons that we -- one of the several reasons that
18 we chose to stay is that we believe, working with
19 Bing Thom Architects, that we were able to achieve
20 the function necessary at our current site, despite
21 several bites at that apple in which we were not
22 successful in trying to get all of the program on
23 site.

24 One of the critical issues for us is
25 putting apartment units on site. As you may recall

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1 when we were here last, we are anticipating about
2 -- now definitely 21 units on site. We rent in the
3 neighborhood, don't control our destiny very
4 successfully in that regard, and we can't always
5 provide adequate housing for our visiting artists
6 from New York and elsewhere, and it's an important
7 part of who we want to be in our next stage of
8 development.

9 When we were here during the schematic
10 design phase, we believed that we could get those
11 21 units in the size that we showed you, and
12 Michael Heeney, our architect, will talk about this
13 more. We concluded that those units could not fit
14 in that size space. They are on top of the cradle,
15 the cradle being the new theater being added, a
16 roughly 220-seat space at below grade and at grade,
17 and above that are these 21 apartment units. They
18 were both too small, the access to them was too
19 narrow, and therefore the additional height is
20 principally the result of expanding those
21 residential units to be more adequately sized.

22 In addition, our accoustician persuaded
23 us that the separation between the apartment units
24 and the theater needed to be wider to create the
25 sound separation necessary to run a theater.

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1 We are very pleased at Arena that the
2 program needs have been able to be adjusted between
3 the schematic phase and this design development
4 phase without substantially changing the mass of
5 the building, and actually we believe improving the
6 overall aesthetic of the design.

7 Thank you.

8 CHAIRPERSON GRIFFIS: Thank you very
9 much.

10 MR. GLASGOW: I would like to now
11 proceed with the testimony of the next witness, Mr.
12 Michael Heeney, of the architectural firm Bing Thom
13 & Associates.

14 Mr. Heeney, would you please identify
15 yourself for the record and proceed with your
16 testimony.

17 TESTIMONY OF MICHAEL HEENEY

18 MR. HEENEY: Hello. I'm Michael Heeney
19 from Bing Thom Architects in Vancouver, and we're
20 the architects for Arena Stage.

21 These sort of refinements that we have
22 been talking about, while in some respects there
23 are technical reasons that generated them, it's
24 very much the sort of natural evolution of the
25 building, and they are completely consistent with

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1 the original design concept and, indeed, as Stephen
2 said, we believe that they are an improvement of
3 the building. So in that light, what I would like
4 to do is just review quickly the concept and then
5 at the same time highlight some of these
6 refinements.

7 When we first started working on this
8 project, we were very interested in how Arena Stage
9 fits into the city and then how it can play a role
10 in the ongoing development of the city. So here is
11 the site in Southwest, but what was very
12 interesting was that, in fact, it has quite close
13 proximity to a number of important monuments in the
14 city, notably the Capitol, the Jefferson Memorial,
15 and then the Washington Monument, and in fact there
16 is a relationship with the Washington Monument that
17 we found quite interesting. There's sort almost an
18 axial relationship along Maine Avenue to the
19 Monument which was something we deemed to be quite
20 important.

21 Also, the site is very much a sort of
22 gateway site to M Street, which is a very important
23 street in Southwest, and so the site has sort of
24 responsibility to deal with that intersection.

25 As we studied it, of course, we

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1 discovered the problems that have occurred since
2 the building of the highway. As I mentioned, this
3 intersection is quite important between M and Maine
4 Avenue, but the highway has cut off a lot of the
5 streets to the greater part of the city. The red
6 ones coming up now are the ones that were all cut
7 off. But there's a lot happening in Southwest.
8 There's a lot of new redevelopment opportunities
9 surfacing in the Navy Yards, the Waterside Mall
10 along the riverfront on the water side, and we
11 believe that there is going to be a real
12 opportunity to see quite an animated and excited
13 waterfront develop in Washington here.

14 If we look quite closely at the
15 existing site here, as I think was mentioned in the
16 report, it's listed as a historic structure.
17 Currently, the Arena Stage has two theaters.
18 There's the Arena itself, where they get their
19 name; the Fichandler, which is certainly the most
20 iconic of the buildings on the south part of the
21 site; and then there is the Kreeger Theater, which
22 is slightly smaller, up here to the north.

23 The brief that we are given essentially
24 doubles the size of the institution. We were asked
25 to maintain and refurbish the two existing

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1 theaters, but essentially replace and expand all of
2 the front of house and back of house space; in
3 addition add a third theater which is called the
4 Cradle, which is actually a smaller theater which
5 is being built to support new playwrights and new
6 work being written, but for the most part a lot of
7 the area is for the front of house and back of
8 house areas.

9 In terms of the refurbishment of the
10 two theaters, one of the big challenges is that the
11 neighborhood has got a lot noisier since 1960 when
12 the Fich opened, and as a result, we had to find a
13 way to provide acoustic isolation from the
14 neighborhood, at the same time dealing with the
15 sort of sensitivities of the existing buildings
16 being listed.

17 So this is a conceptual model of the
18 site, but you can see this is the Fichandler and
19 this is the Kreeger, and then the building that
20 sort of glues them together is what is currently
21 their back of house and front of house spaces, all
22 of their scene shops, administration spaces,
23 lobbies, that sort of thing.

24 So when we approached the problem, the
25 first thing we did was we actually excavated the

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1 site, leaving the two theaters, of course, and one
2 of the first elements that we wanted to institute
3 right at the very beginning in the project is the
4 idea of water, that we saw this very much as a site
5 that was going to sort of help act as a catalyst to
6 get the waterfront development going and we really
7 wanted to introduce water in a major way, and so we
8 used that as a way of sort of encircling the site.

9 So this is the new elements, then,
10 added to that. Along the north end of the site are
11 the new sort of back of house spaces, rehearsal
12 rooms, scene shops, that sort of thing. This is
13 the new theater, the Cradle, and as Stephen
14 mentioned, we've got the apartments, artists'
15 apartments on top of the Cradle. And then what we
16 have done is to provide the acoustic isolation to
17 the two existing theaters. We have introduced this
18 idea of a large, quite high laminated glass wall
19 which goes around the site, and that provides the
20 acoustic isolation to the old theaters, but also
21 the space in between now becomes the new public
22 spaces, the new lobbies, foyers, that type of
23 thing.

24 The idea is that each theater has its
25 own identity. The existing ones obviously have

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1 their own identity and then the new Cradle has its
2 identity. We have referred to them often as sort
3 of the three temples in the project.

4 Then, of course, to provide the
5 complete acoustic separation, we have to have a
6 roof, and so we have developed this roof to cap the
7 space, but at the same time we're using it as an
8 opportunity to make sort of a grander gesture to
9 the city and we have this sort of compass needle on
10 the front which is a large cantilever which points
11 to the Washington Monument. So this is all the
12 pieces of the puzzle put together.

13 Now, this is a view of the model from
14 Maine Avenue, one of the two sort of principal
15 public faces of the building, and here you can
16 start to see some of the refinements we've been
17 making in the last little while.

18 As Chip mentioned, we spent a fair bit
19 of time looking at the roof, and there have
20 certainly been some structural challenges in
21 dealing with this cantilever to the north. It's
22 about a 165-foot cantilever. We believe when it's
23 done, it will probably be the largest cantilever on
24 any building on the continent.

25 In order to achieve that, though, we

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1 had to thicken the structure here and actually thin
2 it out on the end so that we're, in fact, a little
3 bit lower than we were out here, but we're higher
4 at this point, and this end is being supported by
5 these cables you can just sort of see going up to
6 that point.

7 When we sort of -- we started to solve
8 this, we realized that to make the proportions of
9 the building work, we also had to sort of elongate
10 the roof a little bit on this side as well.

11 So this is a view of what that roof
12 would look like from Maine Avenue, so this is the
13 sort of public terrace underneath this cantilever
14 that Arena can use for special functions. You can
15 sort of see the silhouette of the Fichandler down
16 here at the end.

17 And then what is really exciting, I
18 think, is that a lot of the sort of activities, all
19 the things that sort of make Arena tick day to day,
20 are exposed on Maine Avenue, that you can actually
21 see the -- you can certainly see all the lobbies
22 and the foyers and things, but you can also see
23 when sets are being moved into the theaters, you
24 can see the administration space, that sort of
25 thing.

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1 Then as they move around the site
2 towards the corner, again, these are the lobbies
3 looking out, this is the Fichandler. Coming around
4 the site, we had to introduce a new emergency exit
5 from the Fichandler, which is what this element is
6 here, and this picks up on that access which we
7 have developed with the roof towards the Washington
8 Monument, and it will be clearer in another slide
9 further up, but we have taken this access quite
10 serious in the planning of the project.

11 This is the other principal public face
12 of the building, which is the 6th Street elevation.

13 Again, you can see the Fichandler here. This is
14 the Cradle building, which is the one that has the
15 housing on top that Stephen was referring to.

16 When we started looking at the housing
17 in a bit more detail, we found that there were some
18 concerns about the sort of livability of the
19 suites, and they were sort of twofold. One is that
20 the suites were a bit too small, as Stephen
21 referred to, and the other thing is we were
22 concerned that we wanted to get a bit more light
23 into the suites.

24 Previously, this wall here, which is
25 kind of the outer wrap of the Cradle, we had raised

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1 it up a bit higher than it is now. Partly that's
2 structural because it acts as a brace for the big
3 roof, but partly at that time we wanted to express
4 it. But what we found is that if -- is we lowered
5 that a bit to improve getting light into the
6 apartments.

7 As Stephen mentioned, there were some
8 acoustic issues and theater equipment issues which
9 were sort of forcing the apartments up, which also
10 helped us from that point of view, and then to
11 increase the size of the apartments, what we did
12 was the roof previously had been flat and we tipped
13 it up so that we could get some two-story
14 apartments down at this end and get some larger
15 apartments that way and sort of reshuffle the
16 space. So we were able to increase the apartments
17 by about 15 percent each. So that way, we believe
18 we have made the apartments substantially more
19 livable, but I think that still acts as very much a
20 visual anchor for the building as well as being a
21 structural anchor for the big roof.

22 Then it's below the other roofs, but
23 also here in the back of house shop space, we
24 increased that roof just a little bit to improve
25 the clearances underneath.

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1 So again, looking more from the street
2 end on 6th Street, this is looking back towards --
3 there's the Fichandler there, and then looking into
4 the entrance, this is where you would get your
5 tickets and then you would go up to this big common
6 lobby between the three theaters.

7 This is what it looks like with the
8 roof off, so again you get a sense of the three
9 temples here, the Fichandler, the Kreeger and the
10 Cradle, and this diagonal that we talked about,
11 this access to the Washington Monument, it turns
12 out that the stage-house, the existing stage-house,
13 the Kreeger, lines up with that perfectly as well
14 as this diagonal through the Fichandler, and so
15 that's what we have expressed when we had to add
16 this emergency exit down at this end, and so that
17 is picked up all the way through the site.

18 I should mention one other thing, which
19 doesn't show up in the model because it's
20 underground, but we also added an additional level
21 of underground parking underneath the north
22 component of the building.

23 That really summarizes the changes.

24 MR. GLASGOW: No questions? I would
25 like to call the last witness, Mr. Stephen Sher.

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1 CHAIRPERSON GRIFFIS: Let me just say
2 that's obviously an impressive modeling and
3 representation of the project. I don't think we
4 could add other adjectives that probably haven't
5 already been explained or given to you by the other
6 boards in reviews and I would imagine the client
7 themselves.

8 But I think OP, and we will get to
9 that, but sums it up well when they say it's not
10 only exceptional, but it's an impressive solution
11 to a very complicated problem. So I know before we
12 had mentioned in this application that we were
13 looking forward to seeing that completed and
14 actually attending the performances there and
15 taking a swim in the pool around --

16 [Laughter.]

17 CHAIRPERSON GRIFFIS: We will get to
18 that. But thank you. It is very illuminating and
19 exciting just to see.

20 MR. GLASGOW: Mr. Sher, would you
21 please identify yourself for the record and proceed
22 with your testimony.

23 TESTIMONY OF STEVEN E. SHER

24 MR. SHER: Good morning, Mr. Chairman,
25 members of the Board. For the record, my name is

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1 Steven E. Sher, the Director of Zoning and Land Use
2 Services with the law firm of Holland & Knight.

3 You have my outline to the Board as the
4 last item in your prehearing statement and I'm
5 going to be just very brief in terms of what you
6 have already heard.

7 The Board granted four variances for
8 this case once before in November of 2002. One of
9 those was for height wherein we had asked for 75
10 feet where the W-1 District allows 40.

11 What we're here for now is an overall
12 height of 89.77 feet, but, as has been indicated
13 before, it's only for that limited part of the site
14 which is to the top of the Cradle. The cantilever
15 roof at its edge is at 56 feet and at the high
16 point it's at 71 feet, but it's only that limited
17 part of the site that gets to that higher
18 additional height.

19 As we talked before in the last hearing
20 and I will just summarize quickly again, what
21 creates the extraordinary condition here is the
22 combination of the size of the site, the dimensions
23 of the site, the shape of the site, the presence of
24 the historic landmark buildings to be preserved,
25 and the program requirements for the nature of the

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1 use that goes here.

2 If this were an office building, if
3 this were an apartment house, you wouldn't be doing
4 the same kind of thing you're doing here. But
5 because this is a theater, you need to have the
6 acoustical separation between the outside and the
7 inside, you need to be able to separate the upper
8 level from what's going on below it, and so that
9 leads to the design solution which Mr. Heeney has
10 presented to you.

11 The practical difficulty, of course, is
12 if you can't get the height, then you reduce the
13 efficiency of the acoustical separation, you don't
14 get the amount of space that the theater needs to
15 operate the programs that it needs to have on the
16 site, and you raise the question about what can be
17 done on the site in its overall entirety.

18 In terms of the detriment to the public
19 good, as was pointed out before, you have 90-foot
20 buildings both to the north and to the east across
21 6th Street, you have a fairly wide street going to
22 the south and to the south west, and so there is no
23 detriment by virtue of the higher height being
24 concentrated again only at that one location.

25 I conclude that as before, what you

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1 have before you meets all of the tests of the
2 Zoning Act and the zoning regulations for the
3 granting of the one additional variance that we
4 need, and I believe that the Board should approve
5 that variance.

6 CHAIRPERSON GRIFFIS: Good. Thank you
7 very much.

8 In addition, some of the submissions
9 also went to the structure and how that is changing
10 in terms of the height, which I think is an
11 important aspect of some of what was anticipated in
12 terms of the flexibility and the refinement of the
13 design that was presented early on.

14 Secondly in terms of detriment to the
15 zone plan and map, yes, the adjacent areas -- of
16 course, those are zoned differently; am I correct?

17 MR. SHER: Yes, but they are also
18 improved with buildings that were built under the
19 Urban Renewal Plan and not --

20 CHAIRPERSON GRIFFIS: Right.

21 MR. SHER: -- necessarily under the
22 zoning.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. SHER: The waterside wall, which
25 Mr. Parsons is familiar with because there's a case

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1 pending before the Zoning Commission, goes to a
2 height of 130 feet in places.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. SHER: The Waterside Towers
5 Apartments are 90 feet and zoned R-5-D, if memory
6 serves correctly, and then there's a lower-rise
7 element of that as well.

8 CHAIRPERSON GRIFFIS: Okay. And I
9 don't disagree with your statement. I think in
10 addition, and I believe it came up in the previous,
11 which is pertinent to this, but this occupies
12 almost a stand-alone site. It's difficult to say
13 it's adjacent to a lot of contacts, but creates
14 it's own contacts based on what you have said, one,
15 the uniqueness of its shape, the widening of the
16 avenue, but it stands independently at the base of
17 that square, which I think also goes to its
18 lessened or non-detriment to the zone plan and map.

19 That being said, any other questions?
20 Clarifications?

21 [No response.]

22 CHAIRPERSON GRIFFIS: Very well. Thank
23 you very much.

24 MR. GLASGOW: This concludes the
25 applicant's direct presentation.

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1 CHAIRPERSON GRIFFIS: Okay. Then let's
2 move on to Office of Planning, which has submitted
3 and has actually put together the great graphics in
4 their own report so that we can be refreshed as we
5 go through and had attached their previous report,
6 which I think was very helpful, to review again.

7 So let me go to Mr. McGettigan, who is
8 with us, to summarize his report for us.

9 REPORT FROM THE OFFICE OF PLANNING

10 MR. MCGETTIGAN: Thank you, Mr. Chair.
11 My name is David McGettigan from the Office of
12 Planning, and I was thinking of other words, since
13 you had given me that challenge, and I think that
14 we can say safely that even though there is a moat
15 around this, this is not a thespian fortress,
16 which, as I recall, some other theaters in the area
17 the Office of Planning did call thespian
18 fortresses.

19 I think that it's important -- I'll
20 just be very brief -- to express that the Office of
21 Planning is doing a major planning in this area.
22 We feel that Arena Stage is an important anchor to
23 this effort and to the revitalization of the
24 waterfront, and we strongly encourage the Board to
25 support Arena in its efforts to redevelop this area

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1 and revitalize our waterfront, which is an
2 important goal of the city which the Office of
3 Planning has working diligently to further.

4 I want to note that these are
5 historical landmark structures, and that the
6 solution is unique, provides a greater interface of
7 pedestrian environment to the theater and is going
8 to be an important part of the future of the
9 Southwest waterfront.

10 CHAIRPERSON GRIFFIS: Good. Thank you
11 very much. And we appreciate that brief
12 reminiscence of a previous case.

13 Any questions of the Office of Planning
14 by the Board?

15 [No response.]

16 CHAIRPERSON GRIFFIS: Any
17 cross-examination by the applicant?

18 [No response.]

19 CHAIRPERSON GRIFFIS: Very well. Again
20 we thank you very much for a very comprehensive
21 first report, and then attached, the addition for
22 the modification.

23 We can go to -- of course, it has been
24 discussed, it is in the record -- the Commission of
25 Fine Arts, which is Exhibit Number 25, and also is

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1 attached at Tab E from the applicant's submission,
2 and that was reviewed by the Board and we note
3 their support of the project.

4 ANC-6D. Is there a representative of
5 the ANC here today?

6 [No response.]

7 CHAIRPERSON GRIFFIS: Not seeing any
8 present. They did submit their report timely,
9 although mistitled to the Chairperson Carol J.
10 Mitten, which may throw it out all together just on
11 that.

12 [Laughter.]

13 CHAIRPERSON GRIFFIS: I believe that --
14 does this rise to the level, Ms. Miller? What is
15 up with the ANCs?

16 MEMBER MILLER: I need to look at it
17 again. I didn't realize it was that because it was
18 addressed to Ms. Mitten.

19 CHAIRPERSON GRIFFIS: Yes. Thank you
20 very much. We appreciate that.

21 The Advisory Neighborhood Commission 6D
22 at its regularly scheduled meeting on 9 June 2003
23 voted 3 to 2, one abstention, to support
24 application and modification. The Commission
25 continues to support the project as being a benefit

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1 to the community; therefore, ANC-6D -- it does not
2 directly outline what is a quorum for that ANC.
3 Oh, I'm sorry. It does.

4 MR. GLASGOW: I think it does at the
5 end of the first paragraph.

6 CHAIRPERSON GRIFFIS: That's what I
7 looked right by. It looks like it can be granted
8 great weight, but we will ask them to resubmit for
9 the proper address and move on from there. Of
10 course, that is a bit of humor for the record.

11 Anything else? We do have a letter
12 from the council member of Ward 6 -- a lot of
13 misinformation out there -- also addressed to Ms.
14 Mitten, but is in support of the -- and I'm sorry I
15 skipped over that first, which was Exhibit Number
16 23 -- in support of the project.

17 Okay. That is from my notes to Ms.
18 Mitten or myself all the submissions from
19 government agencies. Are you aware of any other?

20 MR. GLASGOW: No, I'm not aware of any
21 other.

22 CHAIRPERSON GRIFFIS: Okay. Very good.
23 There is no request for party status. I think at
24 this time, we can ask for anyone present as persons
25 to give testimony can come forward either in

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1 support or in opposition.

2 [No response.]

3 CHAIRPERSON GRIFFIS: Not seeing anyone
4 present today wanting to give testimony, we can
5 move on to the last question of the Board, if there
6 are any closing remarks.

7 MR. GLASGOW: Mr. Chairman, because of
8 the timeframes that we're operating under and an
9 upcoming board of directors meeting for the Arena
10 Stage, we would like to get a bench decision and a
11 summary order if that's possible. We believe that
12 we have fully met the burden of proof and have gone
13 out, reached out to the community and to the
14 council members and worked with the Office of
15 Planning, the Commission of Fine Arts on this
16 project.

17 That concludes my closing statement.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much.

20 I think it best to deliberate under a
21 motion for application, and I would so move
22 approval of 17033 of the Washington Drama Society,
23 Inc., and that is for a modification under a
24 variance from the building height requirements that
25 are listed in Section 930 which would permit the

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1 redevelopment of the existing theater at premises
2 1101 6th Street, Southwest, and I would ask for a
3 second.

4 MEMBER ETHERLY: I second that, Mr.
5 Chair.

6 CHAIRPERSON GRIFFIS: Thanks very much,
7 Mr. Etherly.

8 Of course, as documented, this is a
9 modification to a previous order, 16933-A. I think
10 the test was obviously met and the burden of proof
11 for the variances first, and I think we can rely
12 and have referred back to the tests that created
13 its uniqueness or practical difficulty and
14 established that there was no critical impairment
15 to the zone plan and map.

16 I find in this case bringing the
17 modification for the height also to fall within
18 that with the addition of the practical
19 difficulties of making this pursuant to the design
20 as presented a reality of a development project,
21 and that meaning there are several aspects that
22 have changed -- one, the addition of space and
23 capacity for the acoustical separation vertical
24 from one of the new proposed theaters and the
25 residential portion; also the fact that there is a

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1 -- the structural design development coming to what
2 it is has increased some of the requirements of the
3 height itself, and also granted on the testimony
4 that we have heard today in terms of the
5 livability/useability of the residential units, in
6 order to increase their function and also the
7 function in terms of the square footage space,
8 light and air, I think is an important criterion
9 for any residential unit. I think the test and
10 burden has been proven.

11 I also noted in the application that
12 the essence of the increase of height that goes to
13 the residential does not increase the density, but
14 rather just increases the utilization of space for
15 the residential. I think it's an important
16 component to factor into the deliberations as we
17 would look at impacts or -- well, impacts and what
18 it would bring out.

19 It is, in fact, essentially the same
20 animal as we saw before regarding the units
21 themselves and the count, and it has been testified
22 today that they are pursuing the 21 units, which
23 obviously, in this neighborhood, in the area, would
24 not impair the zone plan or map.

25 That being said, other comments? Yes,

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1 Mr. Zaidan.

2 MEMBER ZAIDAN: I will say that as I
3 was beginning to read through this last night, I
4 had some initial concern because of this Board's
5 kind of struggle to work through variance cases
6 where the project is trying to provide better
7 quality apartments and those are tied to the
8 variances. I think we have been struggling with
9 those issues as of late.

10 But again, as I read through the
11 materials, I think this is one of those variance
12 cases where it turns on a confluence of factors,
13 that being the historic preservation issues, the
14 acoustic requirements stemming from the program of
15 the project, and I think we would be remiss not to
16 consider the benefits of this project to the
17 redevelopment of the Southwest waterfront. So I
18 would be happy to vote in favor of the motion.

19 CHAIRPERSON GRIFFIS: Excellent.

20 That brings to mind also what Mr. Sher
21 brought up -- I believe it was his testimony --
22 that talked about the constraints and, as you say,
23 the confluences of the practical difficulties
24 actually at a point could have rendered this
25 non-useable for the existing use, which goes

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1 directly to the tests for zoning relief.

2 MEMBER ZAIDAN: Well, or the
3 combination of the theater use and the residential
4 use.

5 CHAIRPERSON GRIFFIS: Right. Right.
6 Which was established first, and then today as
7 attendant to --

8 MEMBER ZAIDAN: Right.

9 CHAIRPERSON GRIFFIS: Very well.

10 Others?

11 MEMBER ETHERLY: Mr. Chair?

12 CHAIRPERSON GRIFFIS: Yes.

13 MEMBER ETHERLY: I will just note very
14 briefly on the issue of FAR, I mean, once again,
15 just a wonderful job to the entire team. As a
16 former resident of that part of the city, the
17 effort to maintain integration between the theater
18 structure and the surrounding community is really
19 to be commended because we have a structure that I
20 think is going to invite people in, not only as
21 patrons of the theater and the productions there,
22 but also just from a visual standpoint, and I think
23 that's very, very important.

24 I will also note, as we talk about the
25 lot occupancy issue as it relates to the

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1 residential component, once again as a former
2 resident of that community, I used to live in a
3 residential property near the theater that was
4 housed -- used to house actors affiliated with
5 productions at the theater and oftentimes we forget
6 that those people are for a short period of time
7 going to be members of the community as well, and
8 to have them integrated into the project as you
9 have done I think is absolutely a wonderful step
10 forward because it continues that tradition of
11 bringing that residential component to the District
12 even if it's only for a temporary time. It's just
13 a wonderful project all around, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Good. Thank you
15 very much, Mr. Etherly.

16 Very well. Any other comments?

17 MR. GLASGOW: Mr. Chairman, I just
18 wanted to make sure that we continue to have the
19 flexibility that we had in the prior order, that
20 that's part of this motion for the -- the design of
21 the buildings may be approved by HPR or Commission
22 of Fine Arts. Just reiterate that.

23 CHAIRPERSON GRIFFIS: I think that
24 would stand. I mean, my assumption is that this is
25 a modification of the previous and that which is

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1 attendant to the previous order would go with this.
2 If that is the understanding of the Board, that's,
3 in fact, what we will deliberate in the motion that
4 is before us.

5 So if there are no other comments to
6 deliberation of the motion, I would ask for all in
7 favor signify by saying aye.

8 [Chorus of ayes.]

9 CHAIRPERSON GRIFFIS: And opposed?
10 Abstain?

11 [No response.]

12 CHAIRPERSON GRIFFIS: Very well. We
13 can record the vote when Ms. Bailey is ready.

14 MS. BAILEY: The vote is recorded as
15 five, zero, zero to approve the application.
16 Motion made by Mr. Griffis, seconded by Mr.
17 Etherly. Mr. Zaidan, Mr. Parsons and Ms. Miller
18 are in support. That is, in addition, to continue
19 the flexibility as previously granted in the
20 previous order.

21 Did we say a summary order, Mr.
22 Chairman, or have we gotten to that point?

23 CHAIRPERSON GRIFFIS: I have no
24 objection to making the modification order a
25 summary order unless other Board members feel

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1 differently.

2 [No response.]

3 CHAIRPERSON GRIFFIS: Very well. I
4 guess we can issue a summary order on this.

5 Anything else, then?

6 MS. BAILEY: No, sir.

7 CHAIRPERSON GRIFFIS: Good. Thank you
8 all very much. Thank you all very much. Of
9 course, it goes without saying the model has to say
10 here for the record and it will animate our
11 executive board room quite well. Thank you all
12 very much. Enjoy the afternoon.

13 If there is no other business for the
14 morning?

15 MS. BAILEY: The slide presentation,
16 did we want a copy of that, Mr. Chairman?

17 CHAIRPERSON GRIFFIS: Would you have a
18 hard copy of the PowerPoint?

19 MR. GLASGOW: We will make that
20 available.

21 CHAIRPERSON GRIFFIS: Excellent. We
22 can bring that in the record, which is an excellent
23 point.

24 Anything else?

25 [No response.]

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1 CHAIRPERSON GRIFFIS: Very well. Then
2 we can conclude the morning session of the 8th of
3 July, 2003.

4 [Whereupon, at 11:45 a.m., the hearing
5 recessed and reconvened at 1:15 p.m.]
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

[1:15 p.m.]

CHAIRPERSON GRIFFIS: Okay. I would ask that the hearing please come to order, and with that, this is the 8th of July, 2003, and I bid everyone good afternoon. This is the public hearing before the Board of Zoning Adjustment. My name is Jeff Griffis, Chairperson. With me today is Mr. Etherly, also Ms. Miller. Representing the National Capital Planning Commission is Mr. Zaidan, and representing the Zoning Commission with us this afternoon is Mr. Parsons.

Copies of today's agenda are available for you. They are located close to the door where you entered into the hearing room.

There are several things that I just need to run through very quickly briefly. First of all, all hearings before the Board of Zoning Adjustment are being recorded; therefore, we ask several things of you. If you would, fill out two witness cards before coming forward to speak to the Board. Those witness cards go to the recorder sitting on the floor to my right, and I would ask that people introduce themselves for the record with their name and also their address.

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1 The order of procedure this afternoon
2 for the special exception and variances will be
3 first the witnesses and testimony of the applicant;
4 second will be government reports attendant to the
5 application; third would be the ANC reports; fourth
6 will be persons or parties in support of the
7 application; fifth will be persons or parties in
8 opposition; and sixth, finally we will have closing
9 remarks by the applicant. Cross-examination of
10 witnesses is permitted by the applicant or parties
11 in the case. The ANC within which the property is
12 located is automatically a party in the case.
13 Please pick up an agenda if you wonder where you
14 are as we will rip through our morning schedule.

15 Please be aware that all proceedings
16 before the Board of Zoning Adjustment are being
17 recorded, so there are several things attendant to
18 that.

19 First of all, I would ask that
20 everybody turn off any cell phones or beepers at
21 this time so we don't disrupt any of the
22 proceedings. Also I would ask that people refrain
23 from any disruptive noises or actions in the
24 hearing room also so we don't have any undue
25 disruptions of our proceedings.

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1 Additionally, as all public hearings
2 are being recorded, anything you say must be said
3 into a microphone and that microphone should be on.

4 Otherwise, it is not part of the record and
5 therefore could be or will not be deliberated on.

6 When coming forward, please fill out
7 two witness cards. Witness cards are located at
8 the table where you entered, they are also located
9 at the table in front of us. Those two witness
10 cards go to the recorder. The recorder is sitting
11 to my right. That will make sure that your
12 statements, as substantive and important as they
13 are, will actually have your name attached to them.

14 When coming forward, have a seat, and you will
15 need to turn a microphone on and speak into the
16 microphone.

17 I would ask that the first time when
18 you address the Board, if you would give your name
19 and your address, and that way, the recorder will
20 have a good record of who is speaking.

21 The order of procedure for special
22 exception and variances is, first of all, we have
23 statement and witnesses of an applicant. Second,
24 we have government reports attendant to the
25 application. Those include such reports from the

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1 Office of Planning, Department of Transportation
2 and any other submissions that would be required
3 are in the record. Third, we will have the report
4 from the Advisory Neighborhood Commission. Fourth,
5 we would have persons or parties in support. Fifth
6 will be persons or parties in opposition to the
7 application. Sixth, finally we will have closing
8 remarks by the applicant.

9 Cross-examination is permitted by the
10 applicant and parties involved in the case. The
11 ANC within which the property is located is
12 automatically a party in the case.

13 The record will be closed at the
14 conclusion of each case except for any material
15 that is specifically requested by the Board, and we
16 will be specific as to what is to be submitted and
17 when it is to be submitted into the Office of
18 Zoning, upon which receipt has been verified, the
19 record would then be permanently closed and no
20 other information would be accepted into the
21 record.

22 The Sunshine Act requires that this
23 Board conduct all cases in the public and open to
24 the public. The Board may, however, consistent
25 with its rules of procedure and the Sunshine Act,

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1 enter into executive session. That would be for
2 purposes of reviewing the record or deliberating on
3 a case.

4 The decision of this Board in contested
5 cases must be based exclusively on the record which
6 is created in our public hearings, and therefore we
7 ask people present today not engage Board members
8 in conversation so the appearance of not basing our
9 deliberations on the record is not made.

10 We will make every effort -- let me
11 also ask people present if they would turn off all
12 their cell phones and beepers so we don't have any
13 disruptions as we proceed.

14 We will make every effort to conclude
15 the first cases in a timely manner. The second
16 case, we have stated that we may need to go beyond
17 six o'clock, but I will update the schedule as we
18 get close to the six o'clock level.

19 At this time, that Board will entertain
20 any preliminary matters. Preliminary matters are
21 those which relate to whether a case will or should
22 be heard today, such as request for continuance,
23 postponements, or withdrawal of cases, and whether
24 proper and adequate notice of a case has been
25 provided. If you are not prepared to go forward

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1 with a case today or you believe that the Board
2 should not proceed with one of the cases on our
3 agenda, now is the time to bring that to the
4 attention of the Board and you can do so by coming
5 forward and having a seat in front of us.

6 If there is no indication of that, I
7 would ask staff if they have any preliminary
8 matters for the Board at this time.

9 MS. BAILEY: Members of the Board, Mr.
10 Chairman, good afternoon.

11 CHAIRPERSON GRIFFIS: Good afternoon.

12 MS. BAILEY: There are preliminary
13 matters; however, they are case-specific and the
14 parties are not here at this time, Mr. Chairman, so
15 the preliminary matters would be dealt with better
16 at the time the case is called.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you very much. And a very good afternoon to the
19 Office of Zoning staff with us today, Ms. Bailey
20 and also Mr. Moy.

21 With that, then, why don't we call the
22 first case in the afternoon.

23 APPLICATION OF HOWARD UNIVERSITY HOSPITAL

24 17035 ANC-2C

25 MS. BAILEY: And that is of Howard

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1 University Hospital, Application Number 17035,
2 pursuant to 11 DCMR 3103.2 for a variance from the
3 lot area requirements under Subsection 401.3, to
4 allow the conversion of a vacant building formerly
5 used as a clinic into an eleven-unit apartment
6 house. The property is located in the R-4 District
7 at premises 915 Rhode Island Avenue, Northwest,
8 Square 364, Lot 839.

9 Please stand to take the oath.

10 [Witnesses sworn.]

11 CHAIRPERSON GRIFFIS: Good afternoon.

12 MR. JOHNSON: Good afternoon.

13 CHAIRPERSON GRIFFIS: First, if you
14 would, just touch the base. There's a button
15 there. Perfect. If you wouldn't mind just
16 introducing yourself.

17 MR. JOHNSON: Mr. Chairman, members of
18 the Board, my name is Edward Johnson. I am
19 president of Edward M. Johnson & Associates
20 Architects and Planners located at 3612 12th
21 Street, Northeast, Washington, D.C., representing
22 Howard University Hospital.

23 MS. ASHTON-SCOTT: My name is Tia
24 Ashton-Scott, I'm one of the architects at Edward
25 M. Johnson & Associates.

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1 CHAIRPERSON GRIFFIS: Okay. Very quick
2 but a preliminary matter that's of some import, you
3 are before us and as advertised properly for the
4 correct amount of time a variance from the lot
5 occupancy requirements under 401.3 which would
6 allow the vacant building to be converted into the
7 number of units apartment building that you are
8 proposing, which is eleven.

9 What came up in our review and also
10 with Corporation Counsel's input is Section 330 and
11 Section 330.5 that indicates that the following
12 uses shall be permitted as a matter of right in the
13 R-4 District, and that's Section 330.5(c) indicates
14 that the conversion of a building or other
15 structure existing before May 12th, 1958, to an
16 apartment house as limited by 350.4(c), which goes
17 to the lot area and 900 units -- or 900 square feet
18 per unit. We're fully understanding the 900 square
19 feet, but the issue is, is it your ability today to
20 indicate that the building or structure existed
21 before May 12th, 1958?

22 MR. JOHNSON: Mr. Chairman, we've got
23 some confusion associated with the site. We have
24 pursued the review of records provided to us by the
25 hospital and the university, and we find drawings

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1 that were developed '57, '58. We have an occupancy
2 permit for '59. The District has not been able to
3 provide us with a copy of the record showing that a
4 building permit was granted in '58 or '59.

5 CHAIRPERSON GRIFFIS: What drawings do
6 you have from '57?

7 MR. JOHNSON: I'm sorry. Fifty-eight.
8 We've got drawings and not even a full set of
9 construction drawings, but we were given some bits
10 and pieces of drawings by the university. We've
11 never been able to solicit a document from the
12 hospital, the university or from the District
13 Government that identifies specifically that it was
14 actually finished in '58. We believe it was, but
15 we're not sure, and the District is still
16 searching. As a matter of fact, the most recent
17 attempt has been to pursue a storage facility in
18 Suitland, Maryland, to identify potentially when
19 this building was built.

20 There is another complication
21 associated with this site as well, this 4,857
22 square-foot site, and that is at the northwest
23 corner of the existing parking lot is a piece of
24 land that was shown to be outside of the hospital's
25 ownership, so we approached Public Space, and

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1 Public Space said that's not true, it belongs to
2 the hospital. We approached the Department of
3 Housing & Community Development, and they said,
4 yes, it does, it belongs to the hospital. And for
5 months prior to our hearing today, we have been
6 under the impression that this land was -- that
7 small triangle, which is about 25 feet -- I might
8 point -- it's indicated in the 8-1/2 by 11
9 documents that you have.

10 We have been told on numerous occasions
11 by DHCD personnel that that was owned by the
12 hospital, and most recently we found it isn't, so
13 now we've turned over the request from DHCD to the
14 university's lawyers to go and lease it and work
15 out the details of this ownership with that piece
16 of land.

17 So we've got two issues here. We have
18 never been able to solicit and secure from the
19 government a factual building permit when this
20 building was built, even though we believe it was
21 built in '58, and we're still trying to resolve
22 that corner that the university has -- the hospital
23 has used from its inception of the ownership of
24 this building as its parking lot, and until we
25 began to do our own research, we --

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1 CHAIRPERSON GRIFFIS: And that portion
2 was part of the calculations of the square footage
3 of the lot?

4 MR. JOHNSON: Yes.

5 CHAIRPERSON GRIFFIS: Okay. And what
6 was the date on the certificate of occupancy, do
7 you know?

8 MR. JOHNSON: Fifty-nine. I don't
9 remember the exact date, but '59. We provided a
10 copy of that with our submittal. So they had an
11 original document approved in '59. The hospital
12 secured a second certificate of occupancy in 1983.
13 So there have been two, basically for the same
14 uses, a community medical facility.

15 CHAIRPERSON GRIFFIS: The trepidation,
16 I think, of the Board -- we don't look for these
17 things to happen, but the trepidation for us, if it
18 was a section which just created another area
19 variance, frankly the Board would amend the
20 application and move on. The difficulty arises out
21 of the fact of if you don't come in compliance with
22 330.5, then it changes the nature of the relief
23 sought to a use variance. A use variance, of
24 course, is the highest threshold to prove before
25 the Board, and frankly I don't wish that on

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1 anybody. But nonetheless, that is what we would be
2 bound in hearing.

3 So let me hear from Board and
4 Corporation Counsel how they would like to proceed
5 on this.

6 MEMBER ZAIDAN: Well, I was just going
7 to state -- well, it seems like we have kind of
8 inconclusive evidence, although what evidence we do
9 have is leading us to building being established
10 after '58, which puts us in an unfortunate
11 situation where the applicant. So I don't know if
12 -- unless Mr. Parsons has a different take.

13 COMMISSIONER PARSONS: Mr. Johnson, in
14 your experience, how long would it take to
15 construct a building of this size in 1958?

16 MR. JOHNSON: Probably about nine
17 months.

18 COMMISSIONER PARSONS: And the
19 certificate of occupancy is dated what month?

20 MS. ASHTON-SCOTT: The date was
21 January.

22 COMMISSIONER PARSONS: January. So
23 could we conclude from that that the building
24 permit may have been issued prior to May 1958?

25 MR. JOHNSON: I think that's --

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1 possibly, yes. I mean, it's possible, but I can't
2 say factually. Yes, it's possible.

3 COMMISSIONER PARSONS: Well, it would
4 seem to me if that was the case, that the drawings,
5 the design of this building was based on
6 regulations that may or may not have existed prior
7 to May 1958.

8 MR. JOHNSON: Right.

9 COMMISSIONER PARSONS: And I would be
10 persuaded, then, if there was a building permit
11 issued prior to that time, that it was based on
12 those regulations and not the regulations that
13 followed.

14 MR. JOHNSON: Well, one thing I find
15 very interesting about this building, even though
16 it was built prior to the implementation of the
17 zoning regulations, there were some visionary
18 decisions made about this building, one of which
19 was to provide handicap access, which obviously
20 wasn't required in 1958. You can walk directly
21 into the building from the ground floor with a
22 slight handicap ramp. I'm sorry -- it wasn't
23 called a handicap ramp then; it's just a matter of
24 having a slight ramp carrying you into the ground
25 floor.

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1 In addition to that, this three-story
2 building had an elevator at the south end. In
3 addition, it has two fire stairs, one at the
4 northwest corner and one at the southwest corner
5 directly adjacent to the entrance to the building.

6 So there were some visionary decisions made in the
7 original design of this building, and obviously,
8 although it exists now in an R-4 zone, it does not
9 follow the configuration of single-family row-type
10 structures because it's approximately 40 feet wide
11 and 80 feet deep, which is several times the size
12 of a conventional row house or townhouse as we
13 characterize them today, and a number of parking
14 spaces were provided directly to the rear, and
15 parking was provided adjacent to the west exterior
16 wall of the building which we even show in our
17 rendering.

18 However, having subsequent discussions
19 with Mr. McGettigan in Office of Planning, that
20 area to the right of the -- to the west of our
21 building adjacent to the current public alley is
22 now a planted area, so parking cannot be provided
23 along that plane.

24 So ironically, a lot of decisions were
25 made about the configuration of this building that

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1 predated zoning that really do conform to not only
2 zoning, we believe the current relief sought, but
3 also to current building code regulations. It's
4 basically a twelve-inch exterior skin building with
5 a brick face and an eight-inch block, the floors
6 are concrete supported on steel joist.

7 So it obviously does not conform
8 typically to what is done in single-family row-type
9 structures, but does conform to what is being
10 developed as a community health facility.

11 It is also very unique in the sense
12 that when you consider an R-4 zone, this is a very
13 unusual square in the sense that you have four
14 buildings on two entire square city blocks, you
15 have four buildings, five land uses, a church, Shaw
16 Junior High School, the YWCA, which is primarily a
17 117-unit apartment building, efficiencies and
18 single bedrooms with baths, and two large open
19 space areas directly to the west of shaw, which is
20 --

21 CHAIRPERSON GRIFFIS: Okay. Before we
22 go too far into the merits of the case, let's
23 figure out what you are actually proposing to
24 defend or present.

25 Ms. Miller.

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1 MEMBER MILLER: I just want to suggest
2 that maybe we ought to continue the case because
3 we've heard that D.C. is still looking for the
4 building permit and it may be in Suitland, and if
5 we got the building permit, we wouldn't need to
6 speculate about the date and the application of the
7 regulation.

8 CHAIRPERSON GRIFFIS: Okay. There is
9 another vehicle, too, is to briefly employ, for
10 instance, an architectural historian that might do
11 that kind of research.

12 But Mr. Parsons brings up an
13 interesting point. If we're looking at the
14 beginning of 1959 where a certificate of occupancy
15 was granted, then if we, as I think the Board would
16 be so inclined to do, is look at what the permit
17 date is as the substantiation of an existence of
18 this project before the May 12th, 1958, which goes
19 to how one might vest the project, too, if there
20 were currently zoning changes coming, it would be
21 pulling a permit under current conditions and you
22 would be vested under current, so as the new
23 regulations came through, you would not be under
24 those regulations, if we looked at that, it seems
25 to have some pertinence to an eight-or nine-month

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1 construction period that would put it within the
2 realm of complying with 330.5.

3 Let's see if Corporation Counsel has a
4 brief opinion on that. Two options.

5 MS. NAGELHOUT: Well, I agree with what
6 I've heard the Board say so far, both Mr. Zaidan
7 and Ms. Miller. The reg is fairly clear. It says
8 the conversion of a building existing before May
9 12th, 1958. So whatever the Board finds as
10 substantial evidence of that is what the applicant
11 would need to provide.

12 I would note, too, that I think you
13 have a parking issue given that the ownership of
14 this triangle is in doubt. They will not be able
15 to provide the required parking as well. So that's
16 another reason they might want to postpone, to
17 clarify that issue.

18 MR. JOHNSON: Can I address that?

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. JOHNSON: I might want to mention
21 -- no, not might -- I would like to mention that
22 there has never been a question about the use of
23 the parking at the rear of the building by the
24 government before the hospital. It only became an
25 issue because, in doing our research, we brought it

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1 up. And even now, it's not an issue with the
2 Department of Housing and Community Development;
3 they have only suggested, well, since we can't find
4 anything in the records, let's create something
5 official in the records. So it's really an unusual
6 set of circumstances that are influencing this
7 project.

8 I have a question, especially about
9 this issue of the permit. Suppose we can't find
10 it? Suppose the city can't find it, rather. Then
11 what? All we have as a matter of record is the
12 certificate of occupancy.

13 CHAIRPERSON GRIFFIS: I think that's a
14 good question. I think that what I understand some
15 Board members' opinion is there needs to be a few
16 more avenues exhausted to try and establish that,
17 and I think it's being done for your benefit, and
18 that is so, one, the Board can be absolutely clear
19 that you do come under 330, and also that you are
20 not to be before us for a use variance.

21 I think the issue with parking,
22 although we understand the uniqueness and the
23 particular aspects of that, it still, as our
24 attorney has just noted, would still be an issue
25 that we would have to address as that parking would

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1 be essentially provided off site unless there was
2 an ownership or you were able to acquire that part
3 as part of your understanding with whoever has
4 actual title to it.

5 MR. JOHNSON: Let me make sure I
6 understand. If the university moves forward and
7 enters some legal agreement with the Department of
8 Housing associated with the parking, does that then
9 become a non-issue? Because that's where they are
10 now, working on an agreement with the use of that
11 triangular space.

12 CHAIRPERSON GRIFFIS: Yes. It would be
13 my understanding if there was a lease agreement for
14 the use of that for the parking, yes. But that
15 would be -- if we went forward now, we would have
16 to ask for that and we wouldn't have that.

17 MR. JOHNSON: Right. I understand. I
18 understand.

19 CHAIRPERSON GRIFFIS: Because that's
20 just going to be -- if my memory serves, it's a
21 special exception to provide accessory parking, is
22 that correct, in the R-4?

23 MS. NAGELHOUT: I think so. I would
24 have to check the --

25 CHAIRPERSON GRIFFIS: Yes. I mean, the

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1 burden is not there and I think the test goes
2 mostly that it's provided and it's adequate, leased
3 with a binding agreement.

4 Let me hear from other Board members.
5 Let's wrap this up so we give clear, firm direction
6 on what we're doing.

7 MEMBER ZAIDAN: Well, I agree with Mr.
8 Parsons in the sense that if we could get
9 substantial evidence that the permit was pulled
10 before '58, we would be fine, but we don't have
11 conclusive evidence of that right now, and the only
12 conclusive evidence we have is a C of O in '59, and
13 that would put them into a use variance process.
14 So I think it would really help the applicant out
15 if they could exhaust that search for the permit
16 and see if we could establish it before '58. Do
17 you understand the position we're in?

18 MR. JOHNSON: Okay. If we find it --

19 MEMBER ZAIDAN: I mean, the only
20 substantial evidence we have right now is a C of O
21 in '59.

22 MR. JOHNSON: Right. Okay.

23 MEMBER ZAIDAN: The threshold is May
24 12, '58. So if we said, okay, well, we'll go ahead
25 and just accept the C of O as the date of when the

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1 permit was -- or the date of when the building was
2 occupied or built, then we're stuck in the use
3 variance process. I mean, that's kind of my view
4 on it.

5 MEMBER ETHERLY: Let me ask -- I'll ask
6 my colleagues first, and then I may come to Mr.
7 Johnson.

8 Did any of my colleagues find the C of
9 O in their folder?

10 MEMBER ZAIDAN: I think it was
11 referenced in the report.

12 MEMBER ETHERLY: Just referenced in the
13 report?

14 Mr. Johnson, are you aware of a C of O
15 -- I'm sorry. Do you yourself have a copy of that
16 C of O that we've talked a little bit about or that
17 was referenced in the Office of Planning report?

18 MR. JOHNSON: Yes, we do.

19 MEMBER ETHERLY: Okay. That might be
20 helpful to provide.

21 Mr. Chair, I was inquiring of the
22 applicant's representative if they could provide a
23 copy of the certificate of occupancy --

24 CHAIRPERSON GRIFFIS: Right.

25 MEMBER ETHERLY: -- that we have been

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1 referencing because it doesn't appear to be in our
2 file and they indicated they do have it in their
3 office.

4 MEMBER ZAIDAN: On C of O's, is it
5 referenced when the permit was issued or any kind
6 of back reference like that?

7 MEMBER ETHERLY: No.

8 MEMBER ZAIDAN: No? That's
9 unfortunate.

10 CHAIRPERSON GRIFFIS: I'm sorry. I was
11 looking for the actual case file to see if it was
12 in here.

13 Okay. Others?

14 MR. JOHNSON: May I ask a question? I
15 want to be sure I'm moving in the right direction
16 when I leave here.

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. JOHNSON: If we find it, then we
19 come back with our case as currently structured?
20 That's assuming we have an agreement with the
21 District for the corner triangle.

22 MEMBER ZAIDAN: That's also assuming
23 that the permit shows that you pulled the permit
24 before May 12th, 1958.

25 MR. JOHNSON: Okay. Now, suppose we

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1 don't find it? How do we then -- how should we
2 proceed?

3 CHAIRPERSON GRIFFIS: We're going to do
4 this. We're going to set this for a new date and
5 we're going to give you a certain amount of time to
6 get that in.

7 MR. JOHNSON: Okay.

8 CHAIRPERSON GRIFFIS: And then if it's
9 not found, we're just going to suggest a brief memo
10 for the record of what you have done to exhaust
11 those. I would suggest that if they don't find it
12 in Suitland, that, in fact, there's a couple other
13 resources in the city where you can find things,
14 and perhaps even a call just to one of the
15 architectural historians that does that kind of
16 research for their references, and see, if you have
17 a good summer intern in your office and send them
18 down for a day to plow through all of those fun and
19 fascinating documents.

20 Of that nature, just a memo that it
21 wasn't found, we can proceed. I don't think we
22 have a huge difference of moving ahead with this,
23 but this affirmative substantiation would be
24 appreciated.

25 MR. JOHNSON: Sure.

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1 CHAIRPERSON GRIFFIS: So what I would
2 like to do is look at the schedule for this. Ms.
3 Bailey, what does the afternoon of the 22nd look
4 like to you?

5 MS. BAILEY: The 22nd of July, Mr.
6 Chairman?

7 CHAIRPERSON GRIFFIS: Yes.

8 MS. BAILEY: Do you want to add the
9 case there, Mr. Chairman? It would be the third
10 case in the afternoon.

11 CHAIRPERSON GRIFFIS: That's one
12 proposal, or we put it the first case in the
13 afternoon of the 29th just to liven up that day.

14 MR. JOHNSON: That would be helpful to
15 me. I'm supposed to be here all day on the 29th.

16 CHAIRPERSON GRIFFIS: On the 29th.
17 Then there it is. Nothing wrong with setting the
18 appeal a little bit later in the afternoon.

19 MS. BAILEY: Mr. Johnson, do you
20 believe you can get the information by that time?

21 MR. JOHNSON: Which date?

22 MS. BAILEY: The Board has suggested
23 July 29th, but we would need it at least a week
24 before then, or at least a couple of days before
25 the 29th.

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1 MR. JOHNSON: Yes. Yes.

2 CHAIRPERSON GRIFFIS: In which case
3 what we would ask -- well, as soon as you find
4 something out, put it in the record and then we'll
5 be ready to go.

6 MR. JOHNSON: Right.

7 CHAIRPERSON GRIFFIS: Otherwise, the
8 other aspect is to update timely enough before the
9 29th, that you will have an opportunity to speak to
10 the Office of Zoning staff and can run through some
11 scenarios so that -- I mean, I'm not predicting
12 what might or might not happen, but if there are
13 any peculiarities, they are very well versed in
14 reviewing all of the applications and what will
15 need to be taken care of, in which case when we see
16 you on the 29th, we'll be ready to go and not waste
17 your time, frankly, having to deal with other
18 issues of this nature, which we absolutely
19 apologize for, but our hands are very tied with
20 this one.

21 So is that clear?

22 MR. JOHNSON: Sure.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. JOHNSON: Understand. Yes, sir.
25 Time. Time for the 29th?

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1 CHAIRPERSON GRIFFIS: We're putting you
2 on the first in the afternoon. We call our
3 afternoon session at one o'clock, so I would
4 anticipate being close to that. I guarantee you
5 it's not before that, but it will be sometime close
6 to it.

7 MS. BAILEY: If it's possible, may we
8 please have the submission prior to that date so we
9 can send it to the Board, Mr. Chairman?

10 MR. JOHNSON: Absolutely. Absolutely.

11 CHAIRPERSON GRIFFIS: Yes. Can we hold
12 that to the Wednesday before? So it would be the
13 Wednesday before, which is, Ms. Bailey?

14 MS. BAILEY: The 23rd, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: The 23rd. So at
16 minimum on the 23rd, if you would put into the
17 Office of Zoning, hopefully by midday, an
18 indication of where you are and what you have
19 found, just an update if there is nothing
20 substantive. That's important because Board
21 packages go out and Wednesday, so the Board will
22 not see it if it doesn't get into the Office of
23 Zoning by then, in which case it will be another
24 very working lunch session trying to figure out
25 what we're doing in the afternoon, which doesn't

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1 help you or us.

2 So the 23rd, and then we will see you
3 on the 29th. Very well?

4 MR. JOHNSON: Thank you, sir.

5 CHAIRPERSON GRIFFIS: Thank you very
6 much. We apologize for this small glitch.

7 Ms. Bailey, anything else attendant to
8 this case?

9 MS. BAILEY: No, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Thank you very
11 much.

12 Let's call the next case in the
13 afternoon.

14 APPLICATION OF STEPHEN AND MEREDITH PETERSON

15 17036 ANC-2E

16 MS. BAILEY: That is Application Number
17 17036 of Stephen and Meredith Peterson, pursuant
18 to 11 DCMR 3104.1, for a special exception to allow
19 an addition to a single-family row dwelling under
20 Section 223, not meeting the lot area and lot width
21 requirements, the lot occupancy requirements and
22 the rear yard requirements. The property is
23 located in the R-3 District at premises 1247 35th
24 Street, Northwest. It's also located in Square
25 1221 on Lot 73.

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1 Would you please stand to take the
2 oath. Is there anyone else in the audience
3 associated with this case?

4 [Witnesses sworn.]

5 CHAIRPERSON GRIFFIS: Good afternoon.
6 How are you? If you wouldn't mind just introducing
7 yourselves and giving me your name and address.

8 MR. PETERSON: I'm Steve Peterson, 1247
9 35th Street, Northwest.

10 MS. PETERSON: And I am Meredith
11 Peterson, 1247 35th Street, Northwest.

12 CHAIRPERSON GRIFFIS: Indeed. That was
13 somewhat predictable.

14 We have one preliminary matter on this.
15 The affidavit of posting the submission to the
16 Office of Zoning and to this Board was that it was
17 posted on July 1, which is seven days prior to the
18 public hearing, and it should have been posted by
19 June 23rd, 15 days prior to July 8 hearing date.
20 Is there any reason that that happened?

21 MS. PETERSON: Forgot.

22 MR. PETERSON: Kind of forgot, very
23 simply.

24 CHAIRPERSON GRIFFIS: Okay. It was
25 prominently posted on the 1st?

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1 MR. PETERSON: Yes.

2 MS. PETERSON: Yes.

3 MR. PETERSON: Right on the front of
4 the house.

5 CHAIRPERSON GRIFFIS: The issue -- and
6 I can tell you, this is a day for small
7 peculiarities in our regulations, I think, but
8 nonetheless, we have one here now also. That's a
9 very important regulation for the Board and to
10 present any case. As you know or perhaps listened
11 to the opening statements, it's very important that
12 all these hearings happen in the open before the
13 public. Well, we need the public here if it's
14 going to be that.

15 The aspect of notification comes in two
16 forms. One is the letters that are written out to
17 neighbors and property owners within a 200-foot
18 radius, and the second, which we found the most
19 substantial, is that of posting the property,
20 because oftentimes people don't read their mail as
21 it often comes with a great amount of junk, which
22 is understandable; however, a big orange placard
23 seems to grab people's attention.

24 I am going to hear from my Board on how
25 we would like to proceed with that. In not

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1 complying with that regulation, we basically need
2 to set this off for proper notification and
3 reposting; however, on the other side, I think this
4 Board often sides with the idea if it's a very
5 contentious case and we have people showing up in
6 opposition, that there may not have been the
7 opportunity for all those in opposition or support
8 to have known. It seems we have a fairly heavily
9 weighed supported application, and I should also
10 state we don't deliberate and decide based on
11 popularity contests and counting votes, but it's an
12 indication of how much of the word got out. I also
13 note that you did present to the ANC and have done
14 some also community communication around the area.

15 So let me hear from others if they
16 would like to proceed with waiving the requirement
17 for the 15-day posting and accepting the seven days
18 prior.

19 MEMBER ETHERLY: Mr. Chair, I would
20 definitely echo your statement of concern about the
21 failure to post for the adequate amount of time.
22 It is a very important requirement.

23 I would be somewhat amenable, however,
24 to still moving forward as the Chair did reference
25 Exhibit Number 22, which we would conceivably get

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1 to if we were to move forward in this case. The
2 Advisory Neighborhood report of ANC-2E did note in
3 the text of its letter that the Petersons, and I'm
4 paraphrasing, but that the Petersons should be
5 applauded for working closely with their neighbors
6 and acquiring letters of support from them, of
7 which I believe we have two in the record.

8 CHAIRPERSON GRIFFIS: Three.

9 MEMBER ETHERLY: Three. Which
10 indicates that there was indeed some affirmative
11 activity on the part of the Petersons to get the
12 word out, and especially, of course, to communicate
13 and interact with the ANC. That would give me some
14 comfort here, Mr. Chair, with moving forward. I
15 think in the absence of language to that extent, I
16 probably would be otherwise amenable to postponing
17 action, but I think, given that language, I would
18 be comfortable moving forward.

19 CHAIRPERSON GRIFFIS: Very well.

20 MEMBER ETHERLY: Thank you, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Thank you. Very
22 well said.

23 Is there any opposition to waiving
24 rules of procedure for the posting at this time?

25 MEMBER ZAIDAN: No.

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1 CHAIRPERSON GRIFFIS: If there is no
2 opposition from the Board, I take it as a consensus
3 and waive the posting requirements needed for this
4 and let's proceed into this.

5 This is a special exception under
6 Section 223 for the proposed addition to the
7 single-family home at 1247 35th Street, Northwest,
8 which is an R-3 residential zoned district. Let me
9 just ask the Petersons.

10 You're aware of what the special
11 exception requirements are?

12 MR. PETERSON: It has to do with the
13 lot coverage, the amount of area that our house
14 covers on the property that we own.

15 CHAIRPERSON GRIFFIS: Yes, somewhat.
16 All right. I'm going to walk you through.

17 MR. PETERSON: Okay.

18 CHAIRPERSON GRIFFIS: Let me let you
19 have additional opening statement if you want to
20 describe briefly what you're doing and then I'm
21 going to ask you a lot of questions so that we can
22 move this along.

23 MR. PETERSON: That's fine.

24 Basically we have a small row house
25 that doesn't meet a lot of the zoning requirements

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1 as they are written out. The house was built
2 pre-1900 based upon tax records, and the lot itself
3 is only eleven feet eight inches wide by 38 feet
4 deep.

5 Right now, our coverage is over 60
6 percent as it was built. What we are seeking to do
7 is a small in-fill addition in the back. There's a
8 walkway that goes through our backyard. The
9 in-fill addition itself would be three and a half,
10 three feet -- what's the math? -- four inches by
11 ten feet long, and that's what we're seeking to do
12 as far as the work.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much.

15 You brought up an interesting point in
16 your submissions about Section 404, and I will
17 paraphrase it, but you said, "Why do we need to
18 come down here?", which is always good to hear,
19 and, believe me, we investigate that very quickly,
20 too, because if we can free up our schedule, so be
21 it.

22 I believe it was 404.4, in the case of
23 a building existing on or before May 12, 1958, an
24 extension or addition may be made to the building
25 into a required rear yard provided that the

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1 extension or addition shall not be limited to a
2 portion of the rear yard included in the building
3 area on May 12, 1958.

4 You do come in under that 404.4;
5 however, you have other non-conformities in Section
6 223, which is, I think, in my opinion, one of the
7 best sections of the zoning regulation as currently
8 done, allows for non-conforming single-family
9 residences to put additions and alterations on
10 their property without having to come in for a
11 variance, meaning you have to establish a practical
12 difficulty, but rather coming in under a special
13 exception. So we actually spent some time looking
14 at that and feel that you are correctly here and
15 correctly advertising the special exception.

16 Now, the special exception goes to
17 several things and they are fairly straightforward,
18 but in viewing your addition and also in any sort
19 of conversations or submissions from the adjacent
20 properties, are you aware of anything that the
21 addition will do to substantially adverse or affect
22 the use or enjoyment of abutting or adjacent
23 properties?

24 MR. PETERSON: No.

25 CHAIRPERSON GRIFFIS: Any of the light

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1 or air --

2 MR. PETERSON: The two properties that
3 are most affected are 1249 and our neighbor --

4 MS. PETERSON: Twelve-forty-five.

5 MR. PETERSON: Well, no --

6 MS. PETERSON: Nancy?

7 MR. PETERSON: Nancy's. On N Street.

8 MS. PETERSON: 422 N Street.

9 MR. PETERSON: She's on N Street. I
10 have her letter right here.

11 Both of them have no -- and they're the
12 letters I'm sure that you have and that you guys
13 have received, Nancy McKeon and David Casira. Both
14 -- we have sat down with them, they have looked at
15 the plans. They have no objections whatsoever.

16 CHAIRPERSON GRIFFIS: And which is the
17 one on that is on the addition side?
18 Twelve-forty-seven is Nancy?

19 MR. PETERSON: That's 1249 35th Street.
20 David Casira.

21 CHAIRPERSON GRIFFIS: That's David
22 Casira.

23 MR. PETERSON: Yes.

24 CHAIRPERSON GRIFFIS: Okay. And he
25 reviewed your plans with you, he saw what is

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1 actually coming forward.

2 MR. PETERSON: Yes.

3 CHAIRPERSON GRIFFIS: And he didn't
4 indicate or you are not aware of anything that
5 would curtail or adversely affect the privacy, use
6 or enjoyment of the neighboring properties?

7 MR. PETERSON: No.

8 CHAIRPERSON GRIFFIS: And is it your
9 testimony that the addition won't substantially
10 visually intrude on the character of this palatial
11 estate in Georgetown?

12 MR. PETERSON: No.

13 CHAIRPERSON GRIFFIS: That's my
14 characterization. That's not in the record, is it?

15 MR. PETERSON: No. I mean, we are
16 trying to make it fit. We met with the -- or went
17 to the Old Georgetown Board --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. PETERSON: -- and went to them and
20 they were fine with the concept and everything
21 else.

22 CHAIRPERSON GRIFFIS: Okay. Also that
23 section goes to whether, you know, frankly if you
24 can see it from the street, if it's a huge visual
25 intrusion, which is an interesting open-ended word

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1 for us to interpret. In demonstrating the
2 compliance of this, the record shows some of that,
3 and there were submissions for our review of plans,
4 elevations, and that should be sufficient. There's
5 a plat also in.

6 Are there any questions of the Board at
7 this time for the applicant regarding their
8 submission?

9 MEMBER ETHERLY: Yes, Mr. Chair, just
10 very briefly.

11 Taking a look at both the first-floor
12 plan and the second-floor plan, if I'm reading it
13 correctly, there will be one window on the second
14 floor bedroom facing out, straight out over the
15 back patio, so to speak, correct, towards the
16 alley?

17 MR. PETERSON: Correct.

18 MEMBER ETHERLY: Okay. And no windows
19 on that side portion that would be facing towards
20 1249?

21 MR. PETERSON: No.

22 MEMBER ETHERLY: Okay. And then the
23 same for the first floor. There will be a window
24 into the kitchen, of course --

25 MR. PETERSON: Well, there will be a

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1 door to the kitchen.

2 MEMBER ETHERLY: Door to the kitchen.
3 Okay.

4 MR. PETERSON: Correct.

5 MEMBER ETHERLY: Okay. But no windows
6 on that side facing --

7 MR. PETERSON: No.

8 MEMBER ETHERLY: -- facing towards
9 1249. Okay. Thank you.

10 Thank you, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Is there
12 fenestration on the adjacent building, 1249?

13 MR. PETERSON: Is there what?

14 CHAIRPERSON GRIFFIS: Windows on that
15 building?

16 MR. PETERSON: No.

17 CHAIRPERSON GRIFFIS: Okay.

18 Any other questions?

19 [No response.]

20 CHAIRPERSON GRIFFIS: If not, let's go
21 to the Office of Planning, which is Exhibit Number
22 23 in the record. It is recommending approval.

23 You met with the Office of Planning,
24 showed them the plans?

25 MS. PETERSON: No.

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1 CHAIRPERSON GRIFFIS: No?

2 MS. PETERSON: No. Not that I know of.

3 CHAIRPERSON GRIFFIS: They recommended
4 approval anyway. Have you seen the Office of
5 Planning's memo?

6 MS. PETERSON: No.

7 MR. PETERSON: No.

8 CHAIRPERSON GRIFFIS: Well, not a
9 requirement for us, but let's provide them with a
10 copy. It's well worth you taking a look at to
11 understand.

12 MR. PETERSON: Okay.

13 CHAIRPERSON GRIFFIS: What they have
14 done is they have gone through and they look at the
15 application, they look at an area description, they
16 have existing zoning relief that's sought, then
17 they do an analysis, they actually do your
18 calculations, and those were provided by the Zoning
19 Administrator. It goes into lot area, lot
20 occupancy, rear yard, side yard, and courts. And
21 then they go through the tests for relief, of which
22 their summation recommendation is that you, in
23 fact, meet the test for special exception under
24 223, and I think -- I know I concur and I think the
25 Board -- I know the Board has also reviewed it.

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1 Are there any statements or
2 clarifications, discussion on the Office of
3 Planning's report for the Board?

4 [No response.]

5 CHAIRPERSON GRIFFIS: Okay. I'm not
6 going to avail you time to read it and review it
7 because it's in support. If it was not, I might
8 give you that -- I would give you that time.

9 ANC-2E. Is there a representative from
10 ANC-2E here?

11 [No response.]

12 CHAIRPERSON GRIFFIS: Not seeing any
13 indication that there is, ANC-2 also recommends
14 approval of the application, Exhibit Number 22. I
15 note that they didn't establish what a quorum is,
16 but all seven commissioners were present, so we
17 assume that there was a quorum -- it was a long
18 morning with these this morning -- in support, and
19 as Mr. Etherly before read, they were very
20 impressed with the amount of outreach and
21 communication you had with your neighbors, which is
22 of substantial import.

23 Any other comments on the ANC?

24 MEMBER MILLER: I just want to say that
25 this one I think does deserve the great weight.

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1 Congratulations to Georgetown.

2 [Laughter.]

3 CHAIRPERSON GRIFFIS: That is one big
4 hurdle.

5 [Laughter.]

6 CHAIRPERSON GRIFFIS: That being done,
7 we will afford the report from the ANC the great
8 weight which it deserves.

9 I have no other notes or understanding
10 that there are government agencies reporting on
11 this application. Are you aware of any other
12 agencies that reported on this application?

13 MS. PETERSON: No.

14 CHAIRPERSON GRIFFIS: Very well. Is
15 there anyone else here today to testify as persons
16 either in support or in opposition for Application
17 17036 of the Petersons, the Peterson addition?

18 [No response.]

19 CHAIRPERSON GRIFFIS: Not seeing any
20 indication that people are here, I will turn to you
21 for any closing remarks you might have. None are
22 required.

23 MR. PETERSON: No.

24 MS. PETERSON: No.

25 CHAIRPERSON GRIFFIS: Very well. We

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1 appreciate it. Thank you very much.

2 I will take any other discussion from
3 the Board at this time. I think it would be
4 appropriate to do that under a motion for the
5 application and deliberate on that. I would move
6 for approval of Application 17036 of the Petersons
7 for a special exception to allow the addition to a
8 single-family row dwelling under Section 223. This
9 is non-conforming in terms of lot area and lot
10 width and lot occupancy requirements, and also the
11 rear yard requirements. It's hard to believe with
12 such a huge plot of land; however, that's what it
13 is, and it is for the premises at 1247 35th Street,
14 Northwest.

15 I would ask for a second of the motion.

16 COMMISSIONER PARSONS: Second.

17 CHAIRPERSON GRIFFIS: Thank you very
18 much.

19 Just for the clarification of the
20 record, of course I'm making great fun of the small
21 size of this, which is -- it's interesting, you
22 didn't need to give an address for this to know it
23 was in Georgetown.

24 But nonetheless, I think we have
25 fleshed out quite a bit the test of the special

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1 exception. As I see it, Section 223 is an
2 excellent relief for buildings that were built well
3 before the zoning regulations were enacted and, in
4 fact, most of the buildings that are in existence
5 today in neighborhoods that we like to walk through
6 and say are some of the best in the District are
7 not allowed to be built today because of our own
8 current zoning regulations.

9 That being said, 223 gives the relief
10 for special exception of which this application is
11 strongly made and I would ask for the support of
12 the Board for this motion.

13 Other deliberation?

14 [No response.]

15 CHAIRPERSON GRIFFIS: Nothing else
16 being said, I would ask for all those in favor to
17 signify by saying aye.

18 [Chorus of ayes.]

19 CHAIRPERSON GRIFFIS: And opposed?
20 Abstaining?

21 [No response.]

22 MS. BAILEY: The vote, Mr. Chairman?

23 CHAIRPERSON GRIFFIS: Yes. Thank you,
24 Ms. Bailey.

25 MS. BAILEY: The vote is five, zero,

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1 zero, to approve Application Number 17036. Mr.
2 Griffis made the motion, Mr. Parsons seconded, Mr.
3 Zaidan, Mr. Etherly and Ms. Miller are in
4 agreement.

5 CHAIRPERSON GRIFFIS: Good. Thank you
6 very much, Ms. Bailey, and I would suggest that we
7 issue a summary order on this case also.

8 MS. BAILEY: Thank you, sir.

9 CHAIRPERSON GRIFFIS: Very well.
10 Thank you all very much.

11 MS. PETERSON: Thank you.

12 CHAIRPERSON GRIFFIS: Clear on what
13 just happened?

14 MS. PETERSON: I think we got it.

15 CHAIRPERSON GRIFFIS: Okay. Yes.
16 We've actually passed and approved the special
17 exception. Good luck with you. Hopefully it will
18 be done before the summer so it's enjoyable in the
19 fall. Have a great afternoon.

20 Our next case in the afternoon, I
21 believe, if I recall correctly, we had indicated
22 that we would probably call at about 2:30. What I'm
23 going to do is just take a quick break at this
24 point. I'm going to have staff see if everyone
25 involved is actually here. If so, we're going to

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1 call it as soon as everyone is assembled.

2 [Whereupon, at 2:04 p.m., the hearing
3 recessed until 2:25 p.m.]

4 CHAIRPERSON GRIFFIS: Let's reconvene
5 the afternoon session. I understand that everyone
6 participating in the last case of the day, Appeal
7 Number 16998, is here and ready to proceed.

8 Ms. Bailey.

9 MS. BAILEY: Mr. Chairman, my apologies
10 to the Board for the delay.

11 Appeal Number 16998 of Advisory
12 Neighborhood Commission 5B, pursuant to 11 DCMR
13 3100 and 3101, from the administrative decision of
14 David Clark, Director, Department of Consumer and
15 Regulatory Affairs, for the issuance of Building
16 Permit Number B425438 for the renovation of a
17 warehouse for use by a community corrections
18 center.

19 Appellant alleges that DCRA erred by
20 issuing the building permit as the proposed use
21 will allegedly be operated as a community based
22 residential facility -- a halfway house -- and
23 therefore in violation of the prohibition of new
24 residential use in a C-M District pursuant to
25 Section 801.

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1 The property is located in the C-M-2
2 District at premises 2210 Adams Place, Northeast,
3 Square 4259, also known as Parcel 154/81.

4 Mr. Chairman, all the witnesses were
5 sworn in previously. The Board last heard this
6 case on June 17th, 2002. I don't believe the
7 witnesses need to be sworn in at this time again,
8 Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Thank you very
10 much, Ms. Bailey.

11 Is there anyone here that's going to
12 participate in this case that has not been sworn in
13 previously, if you would just stand? Very well.
14 Not seeing any, let's get into this case.

15 First of all, I would like to take up
16 the motions that are before us. There are perhaps
17 five or six preliminary issues for the Board to
18 entertain.

19 First of all, there is a motion from
20 Intervenor Bannum for a continuance of this, and
21 the Board has reviewed that, and in light of the
22 fact of -- actually two facts -- first of all, the
23 ability to have received a transcript in time we
24 believe was ample but was not facilitated; secondly
25 and most importantly, we have a submission of the

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1 motion which seems to render the motion to continue
2 fairly moot. So unless there is any other
3 discussion from the Board at this time, then I
4 would move denial of the motion for a continuance
5 and ask for a second.

6 MEMBER ZAIDAN: Second, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Thank you very
8 much.

9 Is there any other deliberation on the
10 motion?

11 [No response.]

12 CHAIRPERSON GRIFFIS: If not, I can ask
13 for all those in favor signify by saying aye.

14 [Chorus of ayes.]

15 CHAIRPERSON GRIFFIS: Those opposed?
16 Any opposed? Abstain?

17 [No response.]

18 CHAIRPERSON GRIFFIS: We have two
19 motions from -- one, DCRA, and also the Intervenor,
20 both the Appellee and the Intervenor in this case,
21 motions to -- let me get them all in front of me.

22 The motions for affirmation of the
23 decision and conclusions of the Appellant's case --
24 I know the Board has viewed these, would like some
25 discussion on this as we go forward. We also have

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1 a motion in opposition from the ANC with regard to
2 this motion for affirmation.

3 Obviously the basis of the motion is
4 that the case was not made and therefore can be
5 rendered -- and decision be rendered by this Board
6 immediately and expeditiously, and perhaps as an
7 enticing element that is to the Board, I do believe
8 and know full well that we need to get into the
9 merits of this.

10 I believe in terms of this motion for
11 affirmation, first of all, that the case presented
12 by the ANC, although there were some outside
13 factors that were brought into evidence that may
14 not go directly to the case and therefore not to
15 the deliberation, I found a substantial amount of
16 evidence that at its minimum raises questions that
17 are appropriate for this Board to deliberate on
18 under this appeal.

19 I think, just to be succinct, I think
20 it would, in fact, prejudice the other participants
21 in this case if we closed the hearing now, and I do
22 not believe that it rises to the level of
23 dismissing the appeal at this point.

24 In the motion and disagreement with the
25 motion for affirmation from the ANC, it is a fairly

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1 articulate outline of what was presented, of which
2 I believe all was, in fact, done, and, of course,
3 it is in the record and the Board is well aware of
4 it. So I would not support the motion to affirm at
5 this point, but I can hear from others.

6 COMMISSIONER PARSONS: I concur with
7 you, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Thank you very
9 much.

10 Is there any opposition to denying the
11 motions for affirmation at this point?

12 [No response.]

13 CHAIRPERSON GRIFFIS: Not hearing any
14 discussion of opposition, I can take it as a
15 consensus of the Board, then, and move on to the
16 next.

17 I think the next would be, there is a
18 motion for the addition of the certificate of
19 occupancy into the record, and if I'm not mistaken
20 -- that's not what I want.

21 [Pause.]

22 CHAIRPERSON GRIFFIS: Okay. In order
23 to be very logical so the Board follows where I'm
24 going, let us reference the exhibit numbers of the
25 motions themselves, and that's the official record

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1 exhibit numbers, which means it's even all that
2 more important that I find them in some logical
3 order, which -- I just had that one. What is the
4 exhibit number on the submission of the certificate
5 of occupancy?

6 MS. BAILEY: Sixty-two, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Yes, 62 is the
8 exhibit number. If we can pull that out and
9 briefly review it. The motion sets forth the
10 linkage between the certificate of occupancy which
11 was obtained and its linkage to the permit.

12 One statement on the first page, of
13 course, says Bannum's obtaining a permit here was a
14 necessary prerequisite to obtaining a certificate
15 of occupancy, linking and tying those two together,
16 which argues the appropriateness of bringing them
17 all under a single appeal.

18 Both actions pertain directly to its
19 use of facility and the legality of its zoning.
20 The ANC representative is making the statement that
21 these issues are both ripe for the Board's
22 consideration.

23 We did not have submissions from the
24 other participants in this case, so I would like to
25 take just brief and I would like to see if we can

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1 limit it to a five-minute response to the motions
2 themselves.

3 First of all, we can start with DCRA's
4 representative.

5 Can you indicate that you have a copy
6 of this motion?

7 MR. RUSHKOFF: Yes, I do, Mr. Chair.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. RUSHKOFF: DCRA doesn't have a
10 problem with the certificate of occupancy being
11 part of the record in this case in order to make a
12 more complete picture. We think that bringing in
13 now an appeal as to the certificate of occupancy
14 may lead to the case drifting out from under us,
15 and that we may need to focus more on that issue in
16 order to make sure we get that one right. I'm just
17 concerned that we started with an appeal from the
18 building permit.

19 I don't have any problem with including
20 some things in the record that occurred after the
21 issuance of the building permit if it will help
22 everyone understand all of the circumstances, but
23 I'm concerned that, as events proceed, that if we
24 amend the appeal to include subsequent events,
25 that we're just going to make a mistake, because at

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1 this point, the whole focus of the case has been on
2 the issuance of the building permit and those
3 issues, which do overlap with the certificate of
4 occupancy issues, but I'm concerned that there may
5 be other issues raised by the certificate of
6 occupancy issuance that we just haven't had a
7 chance to prepare on.

8 CHAIRPERSON GRIFFIS: Well said. And I
9 think I would concur. If I understand what you are
10 saying, is you would advise the Board to accept the
11 certificate of occupancy as factual evidence but
12 not under appeal.

13 MR. RUSHKOFF: That's right, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. CAMARDO: Well, first of all, I
16 would like to say that once again, we haven't been
17 provided with copies of these filings. We weren't
18 provided with a copy of the opposition to our
19 motion to dismiss. I'm just hearing this for the
20 first time again, and it's quite typical throughout
21 this whole proceeding.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. CAMARDO: We haven't seen a --

24 CHAIRPERSON GRIFFIS: Let's get to the
25 bottom of that, first of all.

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1 Is there a reason why this wasn't
2 served?

3 MR. TEMPLE: First of all, they are
4 being mailed to New York. I don't know why he
5 doesn't get them. Secondly, there was no
6 opposition to his motion to dismiss, so I don't
7 know -- that's not accurate. There was an
8 opposition to the District's motion for affirmance,
9 but --

10 CHAIRPERSON GRIFFIS: Right.

11 MR. TEMPLE: That's the record. But
12 everything is being mailed directly to his office
13 in New York, the office that's on the document.

14 CHAIRPERSON GRIFFIS: Okay. And you
15 have the correct address?

16 MR. TEMPLE: I presume so. It's the --

17 MR. CAMARDO: Mr. Chair, I think last
18 time you indicated to us for the parties to
19 cooperate and for me to fax them down a copy of our
20 brief, our motion to dismiss. I agreed to do that.

21 And, you know, courtesy would have it that prior
22 to the proceeding, you at least give us a courtesy
23 copy of what he's doing, those who are traveling
24 down here. In the event of any surprise, you know,
25 we need ample time and opportunity to --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. CAMARDO: -- even see what's being
3 filed before I can even comment on it.

4 CHAIRPERSON GRIFFIS: I would
5 absolutely agree with that. I think if there are
6 further submissions if this goes beyond today or if
7 there are submissions that need to be put in, that
8 I would ask that we do it as timely as possible,
9 because frankly it wastes everybody's time getting
10 down here and having to deal with this.

11 Do you have a copy of this now?

12 MR. TEMPLE: Mr. Griffis, I can make
13 things easy. I can withdraw that motion. The only
14 reason we filed it is because when we filed the
15 appeal on the certificate of occupancy, this office
16 said that the issue was presently before the Board,
17 and so I wanted to make sure the record was clear.

18 But since the certificate of occupancy is a
19 separate and distinct issue, then the appeal that
20 we filed is on record, and so we can withdraw it on
21 that basis. I have no problem with that.

22 CHAIRPERSON GRIFFIS: Okay.

23 MEMBER ZAIDAN: I have a question,
24 actually. Were you told that you could not appeal
25 the C of O?

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1 MR. TEMPLE: It was docketed, but we
2 were told we could not appeal it because it was
3 presently before the BZA, and that's what led to
4 this particular motion.

5 CHAIRPERSON GRIFFIS: That's a matter
6 of timing, then; is that correct? You weren't told
7 you couldn't appeal it.

8 MR. TEMPLE: No.

9 MEMBER ZAIDAN: And when you say it was
10 docketed, that means it was accepted, but the case
11 would not be heard until this proceeding was --

12 MR. TEMPLE: Actually, I don't know
13 that that's exactly it. We were told that it was
14 docketed, I think, to show that we filed it, but
15 that we were told that essentially we couldn't
16 appeal it, and I may be wrong, but we were told we
17 couldn't appeal it because it was presently before
18 you, and so that motion was filed to protect the
19 community's interest in appealing the certificate
20 of occupancy.

21 CHAIRPERSON GRIFFIS: Okay. Before we
22 go too far down it, who gave you that indication?

23 MR. TEMPLE: When my office came here
24 to file it, whoever --

25 CHAIRPERSON GRIFFIS: The Office of

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1 Zoning indicated that.

2 MR. TEMPLE: Yes. Correct.

3 CHAIRPERSON GRIFFIS: Ms. Monroe,
4 Corporation Counsel of the Board, if you would just
5 give a quick, very quick opinion on this issue.

6 MS. MONROE: It sounds like the Office
7 of Zoning was confused. I mean, that's my take on
8 it. The certificate of occupancy is a separate
9 issue, obviously, a separate document from the
10 building permit. I don't know whether or not you
11 guys want to add that into this appeal, but you can
12 appeal that separately.

13 I mean, I don't know what they mean by
14 docketing. I think what they were trying to do was
15 preserve your time window, the 60-day window, by
16 accepting it, but if they accept the appeal, it's a
17 separate appeal. I don't know what they meant.
18 It's not before the Board at this point. Until
19 they make this decision right now, it's not before
20 the Board, understand that. I mean, don't lose
21 your timing. I mean, if you want to appeal that
22 separately, if it's not included here, it must be
23 appealed separately, and you can.

24 MR. TEMPLE: I mean, given that, we
25 will withdraw the motion.

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1 CHAIRPERSON GRIFFIS: Okay. Very well.

2 In which case we do have the representative from
3 DCRA that submitted this to you, though; is that
4 correct? Isn't that what I'm looking at, Exhibit
5 59?

6 MR. RUSHKOFF: I don't think we
7 submitted the certificate of occupancy. I think we
8 --

9 CHAIRPERSON GRIFFIS: Okay. That's the
10 building permit.

11 MR. RUSHKOFF: Yes. We submitted the
12 building permit.

13 CHAIRPERSON GRIFFIS: Right. Okay.

14 Well, with that motion withdrawn, I
15 think we can continue, in which case we have a
16 motion to amend Exhibit Number 3; is that correct?
17 From the ANC? Which is Exhibit Number 64.

18 MR. TEMPLE: That is correct. If I can
19 just offer a two-minute context for that, at our
20 last hearing, you mentioned that there were tapes,
21 but only one tape was mentioned, and that was the
22 two-hour tape.

23 In the interest of facilitating the
24 hearing, I withdrew the tape, but Exhibit 3 is only
25 a five-minute tape, and I thought it was

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1 instructive, not the two-hour tape, because I
2 didn't want to play it and lose our hour's time.

3 So we submitted that exhibit, which was
4 submitted to all parties. Again, that was mailed
5 and certainly could have been faxed to New York,
6 but it was mailed to New York, and we provided,
7 pursuant to your instructions, 20 copies.

8 On that and for your convenience in
9 terms of ruling on that, I also had my office just
10 type out a brief excerpt of why that's important.
11 So to the extent that you would like that, I have a
12 copy of that.

13 CHAIRPERSON GRIFFIS: Well, I think we
14 will establish if and why it's important.

15 We have a motion to strike the improper
16 submission of evidence from the representative of
17 Bannum, Exhibit Number 66. I would ask the Board
18 just to focus their attention on that. This goes
19 to the video and the contract, the gist of what is
20 relevant; is that correct?

21 MR. CAMARDO: And the issue of the
22 tape. We believe that he withdrew the tapes last
23 time. I think he tried to get the tapes back in
24 again. Ms. Monroe said once it's withdrawn, it's
25 withdrawn, and now we're trying to get the tapes

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1 introduced again through some sort of doctored
2 segment of the tape. So --

3 CHAIRPERSON GRIFFIS: Okay. Item
4 Number 4: "The foregoing submission is ex parte
5 communication by Mr. Temple with the Board and
6 highly inappropriate." What do you mean by that?

7 MR. CAMARDO: Well, once again, I've
8 got documentation being faxed over to me on July
9 3rd late in the day, just before the holiday, I was
10 faxed over a letter, not on any letterhead, without
11 the attachments and without the tape. I wish, if
12 he is just filing things with the Board, if he's
13 going to fax things over, that he fax all documents
14 over, and he's not doing that.

15 CHAIRPERSON GRIFFIS: Okay. But does
16 that rise to ex parte communication?

17 MR. CAMARDO: Well, any time there is a
18 communication without the other side being given a
19 copy of -- I mean, it's typically what they call a
20 one-sided communication. If the documentation is
21 not being submitted, it's not being submitted, it's
22 some sort of --

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. CAMARDO: I mean, I could write a
25 letter and attach all kinds of exhibits to it and

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1 not provide the other side with a copy of it, and
2 the Board seeing that without the other side having
3 a chance to comment on it and --

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. CAMARDO: Typically -- I'm not
6 saying he did anything inappropriate; I'm just
7 saying it's just a one-sided communication.

8 CHAIRPERSON GRIFFIS: Well, you did say
9 he did something highly inappropriate. I just want
10 to clear --

11 MR. CAMARDO: Well, I think we're
12 referring --

13 CHAIRPERSON GRIFFIS: I just want it
14 cleared up because I don't want it lingering.

15 MR. CAMARDO: I think more or less
16 we're referring to the tapes.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. CAMARDO: Okay.

19 CHAIRPERSON GRIFFIS: And I understand
20 that. Anything that the Board will review will be
21 in the official record, and obviously and we
22 recommend that anybody participating in any case
23 review the official record periodically, especially
24 if there is a continuance, to make sure that you
25 have everything that is in.

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1 I think we make great effort to
2 actually bring to acknowledgement in the public
3 hearings anything that we have received, and
4 forgive me for my disorganization, but we received
5 an awful lot today and have been scrambling to make
6 sure that we have reviewed that sufficiently so
7 that we can speak to it.

8 But with that, I take a little bit of
9 issue -- just that I believe we can quash the issue
10 of ex parte communication because we will bring to
11 everyone's attention what we have looked at and
12 make sure that copies are available.

13 Now, in terms of the tape, I want to
14 tackle that one right now. I think we could spend
15 an awful lot of time bantering back and forth on
16 the tape. The Board has spent an awful lot of time
17 wondering whether we take it in or not.

18 There's a substantial amount of issue
19 with the tape because, first of all, it's difficult
20 to substantiate context, it's difficult to
21 substantiate the real substantive nature of it and
22 any nature of what's being said.

23 But this is what I would like to do. I
24 want to play it. We're going to play it here. I'm
25 going to have it introduced as -- I'm understanding

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1 it as some basis of factual evidence into the case.

2 It will be analogous, in my mind, to a letter
3 written by somebody that is in the community, a
4 participant or something of that nature.

5 A letter, of course, would not avail
6 itself to cross-examination, but we all can see it,
7 view it, we will all see the same tape, and then
8 what I am going to ask is that the Appellee and the
9 Intervenor incorporate any information that they
10 want to address in their case presentation.

11 I am not going to entertain a lot of
12 cross-examination of each of the attorneys and
13 speculation on what and who it is or why it was
14 said but take it on face and move from there, and
15 if it can be -- however you want to deal with it,
16 I'm going to ask that you deal with it within your
17 case.

18 So if that's not -- I would ask the
19 participants to tell me if I have not taken on all
20 of the submissions that are before us at this
21 point. Is anyone aware of anything that has not
22 been addressed yet?

23 Issue?

24 MR. CAMARDO: The only issue I have, if
25 you made a decision to play the tapes, what date

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1 was this tape --

2 MR. TEMPLE: January 21st.

3 CHAIRPERSON GRIFFIS: Okay. Hold on
4 just a second. Let's clear up the first issue.
5 There are no other motions before us; am I
6 correct? Very well. We have dispensed with --

7 MR. TEMPLE: There is.

8 CHAIRPERSON GRIFFIS: -- the
9 preliminary matters.

10 MR. TEMPLE: There was another motion,
11 and it was essentially the ANC asking that the BZA
12 rule expeditiously, and was part of the motion that
13 we submitted to amend the claim.

14 CHAIRPERSON GRIFFIS: Okay. I think
15 you will get 100 percent concurrence with everyone
16 here, we will do this expeditiously.

17 Any objections? All right. That's a
18 bit of humor. However, I think we all -- there's
19 no one benefiting by dragging this out. I mean, I
20 don't think Bannum, you, me, and anyone here this
21 afternoon wants this to go longer than it should.
22 So we will take that under advisement and we
23 appreciate that everyone will participate with that
24 in mind, also, making this expeditious.

25 Yes, Ms. Miller.

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1 MEMBER MILLER: Just to keep things
2 straight, don't we need to vote on the motion to
3 strike the improper submission of evidence? I know
4 we voted on the motion for affirmance and the
5 motion to continue.

6 CHAIRPERSON GRIFFIS: That would be
7 fine with me.

8 MEMBER ZAIDAN: Before we get to that,
9 actually, because my issue was related to that, and
10 again trying to shuffle through all this paperwork,
11 but I think part of the -- well, first of all,
12 Exhibit 64 is the amendment to Exhibit 3, which
13 talks about the RFP and the scope of work, which is
14 also part of the motion to strike, --

15 CHAIRPERSON GRIFFIS: Right.

16 MEMBER ZAIDAN: -- if you look at Point
17 Number 2. So I think we need to address that.

18 CHAIRPERSON GRIFFIS: That's an
19 excellent point.

20 MEMBER ZAIDAN: I think, personally,
21 while I have the microphone on the issue, I think
22 that the RFP and the scope of work is something we
23 really need to look at in the issue, so I would
24 support keeping those within the record.

25 CHAIRPERSON GRIFFIS: Okay. Very good,

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1 Mr. Zaidan. I appreciate your reminding me of that
2 fact because it is something that we needed to
3 address.

4 The motion to strike the improper
5 submission of the evidence by Bannum states also at
6 the bottom of page 1 the boilerplate terms and
7 conditions bearing absolutely no relevance to the
8 instant appeal, and I think it is the Board's
9 discretion to find its relevancy or not.

10 We will in deliberation and certainly
11 in the order speak to the relevance that we found
12 or did not find. I think it is actually more
13 expeditious to accept it and then throw it out if
14 it is not useful than to banter whether it
15 hypothetically may or may not be.

16 So I take it, then, there is a motion
17 to deny the strike -- a motion to strike the
18 improper submission of evidence?

19 MR. CAMARDO: Mr. Chair, just for one
20 second, could I just be heard on the issue of the
21 tapes for a second? We still haven't been provided
22 a copy of the two-hour videotape.

23 CHAIRPERSON GRIFFIS: We haven't
24 either. We're not going to see the two-hour video.

25 MR. CAMARDO: So to even know whether

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1 this five-minute video is part of the two-hour tape
2 or where it comes from, --

3 CHAIRPERSON GRIFFIS: Right.

4 MR. CAMARDO: -- there has been no
5 foundation laid here whatsoever.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. CAMARDO: I just object and I want
8 that objection noted for the record, --

9 CHAIRPERSON GRIFFIS: Very well.

10 MR. CAMARDO: -- that it's coming in
11 with no foundation whatsoever and there's nobody to
12 cross-examine here.

13 CHAIRPERSON GRIFFIS: Understood. It
14 will be noted, the objection. Let me just restate
15 the fact that that's a perfect statement to make in
16 the case presentation and I don't think that -- I
17 know that all of that will be taken with great
18 seriousness by the Board in its deliberation.
19 Again to reiterate, rather than spending a great
20 deal and amount of time arguing over relevancy of
21 evidence, I would rather be shown that it is
22 relevant or is not relevant.

23 So with that, also --

24 MEMBER ZAIDAN: Mr. Chair, if I may,
25 just on that particular point, because I think

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1 there is a distinction, there is a fine distinction
2 here, I am inclined to agree with Mr. Camardo's
3 objection. I'm not going to argue that it prevents
4 us from looking at the video, but I think the
5 concern that was noted in Point 5 of the motion to
6 strike is perhaps the larger one here, and that is
7 what we're going to look at is a five-minute,
8 shorter, shall we say, compilation --

9 MR. TEMPLE: Actually, that's not
10 correct.

11 MEMBER ZAIDAN: What are we looking at?

12 MR. TEMPLE: I think you should note
13 for the record that there were two exhibits that
14 were introduced by the Appellant at the outset.
15 One was Exhibit 4 and the other was Exhibit 20.
16 The Exhibit 20 was a two-hour meeting, and not
17 necessarily the same meeting from which this
18 excerpt is taken.

19 MEMBER ZAIDAN: Okay.

20 MR. TEMPLE: This excerpt is an
21 abbreviated excerpt from a January the 21st meeting
22 and is very pointed on the issue of a halfway
23 house.

24 MEMBER ZAIDAN: Okay.

25 MR. TEMPLE: So that particular

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1 objection merely is a question of weight.

2 MEMBER ZAIDAN: My concern, perhaps,
3 is, and I don't want us to get too far in it
4 because I think we can still move forward, but when
5 you say abbreviation, what that implies to me or
6 perhaps what it might suggest to the Intervenor is
7 that there was some editing done, and that's not to
8 suggest any inappropriate editing, but nevertheless
9 editing that perhaps could present the remarks out
10 of context.

11 MR. TEMPLE: Sure. I appreciate that.
12 I will assure you that that is self-evident.

13 MEMBER ZAIDAN: Okay.

14 MR. TEMPLE: But I will also say to you
15 that the presentation here on the tape is unedited
16 to the extent that it is excerpt, the two speakers,
17 Mr. Lowry and someone from the Bureau of Prisons.

18 MEMBER ZAIDAN: Okay. And the excerpt
19 is shown in its entirety without any --

20 MR. TEMPLE: That's correct.

21 MEMBER ZAIDAN: Okay. Okay.

22 Thank you, Mr. Chair.

23 Just to put a pin in that, perhaps the
24 way to deal with that is, it would perhaps be my
25 inclination, if we move forward with the viewing of

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1 it -- and I don't think that's going to be
2 extraordinarily prejudicial because we're going to
3 have all the parties here, we don't necessarily
4 have the same strictures here in this room that you
5 might normally find in a court of law where the
6 gateway for evidence is a little stricter, shall we
7 say.

8 But I would perhaps be more inclined
9 to, shall we say, in this instance, grant some
10 leeway as it relates to the Intervenor's and the
11 Appellee's ability to, shall we say, cross-examine
12 or, as the Chair has suggested, present evidence to
13 the contrary in your case presentation as relates
14 to what is presented on the videotape. That's my
15 only concern, once again. But I think we can move
16 forward and still view the tape.

17 CHAIRPERSON GRIFFIS: Thank you.

18 Let's bring back the motion, then. Is
19 there a second?

20 COMMISSIONER PARSONS: Second.

21 CHAIRPERSON GRIFFIS: Thank you, Mr.
22 Parsons.

23 Discussion of the motion?

24 [No response.]

25 CHAIRPERSON GRIFFIS: I would ask for

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1 all in favor of the motion to signify by saying
2 aye.

3 [Chorus of ayes.]

4 CHAIRPERSON GRIFFIS: Opposed?
5 Abstaining?

6 [No response.]

7 CHAIRPERSON GRIFFIS: Did we do them
8 all?

9 Ms. Bailey, if you would record the
10 vote.

11 MS. BAILEY: This is the motion to
12 strike, Mr. Chairman?

13 CHAIRPERSON GRIFFIS: That's correct.

14 MS. BAILEY: The motion was made by
15 you, Mr. Griffis. Mr. Parsons seconded, Ms.
16 Miller, Mr. Etherly, Mr. Zaidan are in agreement.
17 So it's five, zero, zero.

18 CHAIRPERSON GRIFFIS: Good. Okay. In
19 which case, let's go to the videotape. We're going
20 to bring the TV up a little bit more forward,
21 perhaps, and we are going to turn it on. Before we
22 turn it on, I'm going to ask that the
23 representative set the stage for this. Who is
24 this, where is this, what time, and what's the
25 circumstance?

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1 MR. TEMPLE: Thank you. This is a Ward
2 5 Concerned Citizens Meeting, which is open to the
3 public. There were ANC people here, and you will
4 see there were representatives from Bannum, the
5 Bureau of Prisons, the community, and they are
6 answering questions to the community.

7 The individual, the first individual
8 who is speaking is Cathy Patterson. She will
9 introduce herself. She is from the Bureau of
10 Prisons and she is speaking about what type of
11 facility this is. The second person who is
12 answering questions, and it's in direct response a
13 question, is Mr. Lowry. The excerpt is not more
14 than about five minutes.

15 CHAIRPERSON GRIFFIS: Okay. And this
16 public, meeting, how was it billed? How was it
17 advertised? What did it say people were gathering
18 for?

19 MR. TEMPLE: Okay. It was advertised
20 by flyers by the Concerned Citizens Ward 5 Group to
21 everyone in the community.

22 CHAIRPERSON GRIFFIS: Yes. What did it
23 say? Why would people turn out to this?

24 MR. TEMPLE: Because it was about the
25 halfway house and notifying people about the

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1 halfway house and the panelists responding to what
2 was then a rising --

3 CHAIRPERSON GRIFFIS: Don't move off my
4 question. What did the announcement say?

5 MR. TEMPLE: It said that this is a
6 meeting in which we'll discuss -- we'll have people
7 present from the Bureau of Prisons and Bannum to
8 discuss what's going on at 2210 Adams Place
9 relative to the halfway house.

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER ZAIDAN: The point of this
12 meeting was not to discuss zoning issues, right?
13 This was more of a general community meeting?

14 MR. TEMPLE: Actually, it was a general
15 community meeting, that's correct.

16 MEMBER ZAIDAN: But you're not
17 proffering this as expert testimony to sort of
18 speak in terms of -- because there's a big
19 difference to what people may perceive as a halfway
20 house or a correctional facility and then how they
21 are defined in our zoning regulations, and that's
22 the core issue here.

23 MR. TEMPLE: Actually, Mr. Zaidan, I
24 think that you will find in this video, this
25 particular case turns around the question of

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1 whether or not this is a halfway house.

2 MEMBER ZAIDAN: As it's defined in the
3 zoning regulations.

4 MR. TEMPLE: Absolutely. But where the
5 commonality from a legal point of view is and
6 factual point of view is that -- there's only one
7 commonality in this case, that the federal system
8 and the D.C. system both considered this a halfway
9 house, and Mr. Bannum and the city, for that matter
10 -- well, particularly Bannum had been denying that
11 it's a halfway house.

12 The first speaker is the assistant
13 administrator for the Bureau of Prisons, and she is
14 distinctly discussing the issue of a halfway house,
15 and what she says and what you will hear is that
16 for purposes of the Bureau of Prisons, a community
17 corrections center and a halfway house are terms
18 that are used interchangeably, and that has
19 significance, great significance for this
20 particular case.

21 CHAIRPERSON GRIFFIS: Okay. I think
22 Mr. Zaidan's direct question was, if I can put it
23 into a hypothetical, is this discussion similar to
24 what a discussion might be with the Zoning
25 Administrator? I mean, are they talking about

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1 zoning -- I think we will see -- well, maybe there
2 will be more questions that will come once we have
3 viewed the --

4 MR. TEMPLE: I hope I answered his
5 question.

6 MEMBER ZAIDAN: Let me piggyback on
7 that. I think it's important, yes, that we
8 understand what the definition of a halfway house
9 is under the District and federal prison
10 regulations, or whatever they may be, but in
11 essence it really has no strong bearing to this
12 because we're only here to determine what a halfway
13 house and a correctional facility is under the
14 zoning regulations, and they may be two different
15 things, and I am sure they are.

16 MR. TEMPLE: Well, actually, I think
17 that as the case develops, I mean, this case is
18 going to turn on a fundamental premise. Number 1
19 is whether -- and under our rules, if we look at
20 Section 11-199, is this, is that if this is a
21 halfway house, contrary to what the ZA has argued,
22 our position is that it can't be under 199 --

23 CHAIRPERSON GRIFFIS: Okay. Mr. Zaidan
24 has posed a good question and it's a bit
25 rhetorical, but I think it puts it out there. It's

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1 an important issue to bring up, but I don't want to
2 argue --

3 MEMBER ZAIDAN: I'll try not to be
4 rhetorical, Mr. Chair. I'm sorry.

5 CHAIRPERSON GRIFFIS: I don't want the
6 case argued to try and answer your question because
7 I think it's an excellent question.

8 Now, let me also get a last question,
9 perhaps, Mr. Temple, from me regarding the tape.
10 Am I clear that this is not an edited tape, did you
11 say?

12 MR. TEMPLE: I said that the segments
13 are not edited, they are unedited. It is a tape
14 that put together a comment from one person and a
15 comment from another person.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. TEMPLE: But those comments are not
18 -- we didn't put one thing here, cut it and put
19 something else there, you see.

20 CHAIRPERSON GRIFFIS: Okay.

21 Ms. Miller.

22 MEMBER MILLER: Could you just refresh
23 my memory? What's the date of this tape?

24 MR. TEMPLE: January 21st, 2003.

25 MEMBER MILLER: And who else is present

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1 at this meeting?

2 MR. TEMPLE: The community, ANC
3 commissioners --

4 MEMBER MILLER: About how many people,
5 would you say?

6 MR. TEMPLE: Probably somewhere between
7 50 to 75.

8 MEMBER MILLER: And the length of the
9 meeting? We're saying five minutes out of how much
10 time?

11 MR. TEMPLE: For about two or three
12 hours.

13 MEMBER MILLER: Okay.

14 MR. CAMARDO: May I voir dire Mr.
15 Temple, please? I've got a couple of questions.

16 Mr. Temple, was this set up by the
17 Citizens for Safe Ward Number 5 or the ANC?

18 MR. TEMPLE: First of all, I think the
19 appropriateness of voir diring me needs to be
20 raised. I'm counsel, not witness.

21 MR. CAMARDO: I understand that, but
22 you're testifying as a witness --

23 MR. TEMPLE: I have answered questions
24 to -- I am not testifying. I have answered
25 questions to the Chairman. To that extent, as

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1 counsel, I don't expect that I should be voir
2 dired. To the extent that --

3 CHAIRPERSON GRIFFIS: No, I think they
4 are questions of clarification. Why don't you ask
5 me what the questions are that need clarification
6 from the tape?

7 MR. CAMARDO: Who set the meeting up?
8 What was the purpose of the meeting? I still
9 haven't heard that. And once again, we have not
10 been provided with a copy of the whole tape to even
11 see what it's all about. Apparently there was some
12 flyer sent out advertising for this meeting. We
13 haven't seen a copy of that flyer.

14 So based on what the purpose of the
15 meeting is, if it was just a sales meeting for Mr.
16 Lowry to try to ease the facility into the
17 community, I think that's very important to look
18 at. So you can't take this tape out of context,
19 because --

20 CHAIRPERSON GRIFFIS: Right.

21 MR. CAMARDO: -- you've got a community
22 corrections facility that has already been set up,
23 zoning has already been given, and Mr. Lowry may be
24 just trying to ease the fear of the residents.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. CAMARDO: So by taking something
2 out of context like this may be highly prejudicial
3 to Bannum's case.

4 Now, for Mr. Temple to come forth now
5 and say, well, these are admissions or we're saying
6 something different, it's just -- it's not a fair
7 situation, what's going on right now.

8 CHAIRPERSON GRIFFIS: Okay. What we're
9 going to ask for introduction into the record is
10 the flyer that announced this meeting. I think it
11 was stated that it was set up by the citizens'
12 group, and we have the number of participants.

13 I'm also going to ask that participants
14 trust our wisdom in our own deliberations on the
15 relevancy, the importance or the high regard of
16 what we see and what we read. I think we, and I
17 have said this all too many times in appeals in
18 cases, the error we might make is taking in too
19 much information and evidence, but I do not believe
20 that it has been detrimental in our deliberations
21 and decisionmaking. I think we have good filters
22 for that which is pertinent and that which is not,
23 and we also I think share some of the concerns that
24 you just raised in terms of context, and I think
25 that's what Mr. Zaidan's question was actually

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1 going to, was what is the context of this, as my
2 question was, who advertised it, and what was
3 actually on the advertisement that brought the
4 people out.

5 So with that, we will have -- yes?

6 MR. RUSHKOFF: One question from DCRA.
7 Was anyone from DCRA present at the meeting in
8 their official capacity?

9 CHAIRPERSON GRIFFIS: It's an excellent
10 point.

11 Mr. Temple, are you aware, was the
12 Zoning Administrator or anybody from DCRA present?

13 MR. TEMPLE: I do not believe anyone
14 from DCRA was present at that meeting.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. CAMARDO: One other point, the
17 person from the BOP, whether or not she has
18 authority to even be speaking on behalf of the
19 Bureau of Prisons. The Bureau of Prisons has come
20 out with a statement of work and they have already
21 defined what a community corrections center is.
22 It's a penal institution. And now for somebody to
23 come forward from the BOP who may say something
24 there that's a lower-ranking official with the BOP,
25 do they have authority? Generally the only person

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1 with authority --

2 CHAIRPERSON GRIFFIS: Okay. I think
3 that's a proper and pertinent point to bring up in
4 your case presentation if that is what one might
5 say poking holes in this. I have to say it seems
6 to me, in the shortness of this limited evidence in
7 this case, I think that's a pertinent point to
8 bring up in the case presentation that will inform
9 the Board.

10 Ms. Miller, did that raise other
11 questions in your mind?

12 MEMBER MILLER: Well, I just want to
13 follow up on DCRA's point, and that is, I'm
14 wondering if anyone from DCRA was invited to go to
15 the meeting or notified of this meeting?

16 MR. TEMPLE: Yes. For purposes of the
17 community, every meeting that they had to discuss
18 this, they invited representatives from Bannum,
19 Bureau of Prisons, and DCRA. In fact, DCRA did
20 attend a subsequent meeting.

21 At this particular meeting, and you
22 will see here, there is not only one person from
23 the Bureau of Prisons, there are three at the point
24 where Mr. Lowry is discussing his particular point.

25 So this is a very serious meeting and it's very

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1 well attended by most of the parties.

2 MR. CAMARDO: I will just respond to
3 that quickly that, once again, we're talking about
4 the Citizens for Safe Ward Number 5. It has
5 nothing to do with the zoning issue before us.
6 It's not even the ANC meeting. I could see if it
7 was an ANC meeting, it might have some relevance,
8 but --

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. CAMARDO: -- it's a total separate
11 meeting that's totally distinct from this Board or
12 any relevance from this Board whatsoever, and it's
13 very highly prejudicial.

14 Once again, I can't cross-examine this
15 tape, I can't cross-examine the person from the BOP
16 on the tape, and you are taking away -- I
17 understand, Mr. Chairman, you made a point, trust
18 your judgment on this stuff, but on the other hand,
19 I also have an obligation to cross-examine and I
20 have a right to cross-examine. If he plays a
21 snippet from the tape of somebody from the Bureau
22 of Prisons, I have no ability here to cross-examine
23 that person.

24 CHAIRPERSON GRIFFIS: I understand, and
25 this is the way the Board is taking up that issue,

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1 cross-examination: As I said when I first started,
2 what we're doing is viewing this as evidence
3 submitted much analogous to written testimony or a
4 written letter on the issue. Again, I think it's
5 important to understand that we read everything, we
6 review everything, and we do not deliberate on what
7 we find not substantive to the case and we
8 deliberate on the merits of that which is submitted
9 that is substantive.

10 With that, I think we have heard the
11 issues. Let's take a look at --

12 MR. CAMARDO: Mr. Chairman, just one
13 other thing. At this point in time, after he plays
14 the tape, I would like a brief opportunity to put
15 Mr. Lowry up on the stand to give his assessment of
16 what was said at the meeting and the reasons why it
17 was being said. I would like to address the issue
18 at this point in time.

19 CHAIRPERSON GRIFFIS: I will poll the
20 Board with that. We are going to get to your case.
21 Would it not be just as pertinent as presentation
22 of the case if you call him as a witness to deal
23 with that and perhaps other pieces?

24 MR. CAMARDO: Well, once again, he has
25 already closed his case. He closed his case at the

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1 last hearing.

2 CHAIRPERSON GRIFFIS: No, I understand.
3 But you have an opportunity --

4 MR. CAMARDO: So I don't know if this
5 is being done as a rebuttal. I mean, if he wants
6 to play this tape in rebuttal --

7 CHAIRPERSON GRIFFIS: That's fine. We
8 will look at it -- I don't have any difficulty with
9 that. If we don't mind being a bit flexible and
10 brief in the order of this, we can dispense with
11 that aspect and then move on.

12 MEMBER ZAIDAN: Just in response to
13 that, Mr. Chairman, I mean, I would be very
14 amenable to that. I would encourage the Intervenor
15 to just be very focused and very specific in your
16 examination of Mr. Lowry, but I think it would be a
17 reasonable shall we say counterbalance to the
18 videotape, once again not suggesting that the tape
19 is not an accurate representation of what happened,
20 but I am somewhat swayed by the concerns that have
21 been raised by the Intervenor. So I think that
22 would be a nice tradeoff, so to speak, but keep it
23 very focused and very tight.

24 MR. TEMPLE: Will we have a limited
25 opportunity, to cross-examine, then, either side,

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1 if he does that?

2 CHAIRPERSON GRIFFIS: Well, now we have
3 opened the door, huh?

4 [Laughter.]

5 CHAIRPERSON GRIFFIS: This is what
6 we're going to do. After the tape, we can have a
7 witness called. On that, we will note -- well, we
8 will allow brief cross-examination, and actually
9 I'm going to allow redirect of the witness, and we
10 will dispense with that.

11 After that, we are going to the DCRA's
12 case, we are then going to Bannum's case, and then
13 we are going to rebuttal and closing, all of which
14 will be before dinner tonight.

15 So with that, Mr. Moy, if you would be
16 so kind, and I would ask everyone to give their
17 attention to the television.

18 [Whereupon, the tape was played.]

19 CHAIRPERSON GRIFFIS: Okay. Mr.
20 Camardo, do you need a couple minutes to prepare?
21 Okay. Let's take ten minutes to have you prepare
22 and we will return. We will keep the tapes right
23 here. We are going to leave the room. If you want
24 to or need to review it or play it again, obviously
25 it is a short tape, you can avail yourself to do

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1 that.

2 [Recess.]

3 CHAIRPERSON GRIFFIS: Very well. Let's
4 reconvene.

5 Mr. Camardo are you -- very good.

6 MR. CAMARDO: Yes, Mr. Chairman, we are
7 prepared to proceed.

8 CHAIRPERSON GRIFFIS: Good.

9 Forgive me, but give me your name
10 again.

11 MR. COX: Kevin Cox.

12 CHAIRPERSON GRIFFIS: Mr. Cox. Okay.

13 MR. COX: Mr. Chairman, we're going to
14 call Mr. David Lowry to the stand.

15 CHAIRPERSON GRIFFIS: Good.

16 Whereupon,

17 DAVID LOWRY,
18 was called as a witness by counsel on behalf of the
19 Intervenor and, having been previously duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. COX:

23 Q Mr. Lowry, you saw the videotape that
24 was just played, correct?

25 A Yes, I did.

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1 Q Now, can you just give us some context
2 of what was the purpose of this meeting that you
3 were at and how was it that you came to be there in
4 the first place?

5 CHAIRPERSON GRIFFIS: I'm going to just
6 have you turn on your microphone also. Excellent.

7 THE WITNESS: I initially met with two
8 or three persons who, as I understood it,
9 represented the Bryant Street Homeowners'
10 Association, and they wanted some more information
11 about Bannum's program. At that meeting, they
12 asked me if I would attend a meeting with other
13 people in the community for informational purposes.

14 Prior to the meeting, I became aware of
15 a flyer that was being distributed that said that
16 Bannum was going to take arsonists, rapists, sex
17 offenders in the program, was going to have 200,
18 250, 300 people; so I, along with Cathy Campbell
19 with the Bureau of Prisons, decided to attend the
20 meeting to try to educate the community on what our
21 program was about.

22 Q The flyer that you mentioned, it
23 mentioned Bannum was going to be taking arsonists
24 and rapists. Is that true? Are those true
25 statements?

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1 A No.

2 MR. TEMPLE: Objection. Irrelevant.
3 Irrelevant to this --

4 MR. COX: We're just trying to
5 establish some context as to why everybody was
6 there.

7 CHAIRPERSON GRIFFIS: So it's
8 established, then, that Mr. Lowry was anticipating
9 perhaps a hostile crowd that may have had
10 misinformation, from your understanding, and so you
11 were prepared to go address that.

12 THE WITNESS: When I arrived, there
13 were close to 200 people, they were bringing them
14 in by the buses, there were TV cameras. I viewed
15 it as very hostile.

16 CHAIRPERSON GRIFFIS: Okay. Did it
17 make the news?

18 THE WITNESS: I believe it did, yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. COX: May I proceed?

21 CHAIRPERSON GRIFFIS: Yes. Sure.

22 MR. COX: All right.

23 BY MR. COX:

24 Q Mr. Lowry, the woman in the video, Ms.
25 Cathy Campbell, you're obviously familiar with her?

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1 A Yes.

2 Q And could you tell the Board what her
3 position is at the BOP?

4 A Well, on the tape, she introduced
5 herself as assistant administrator for community
6 corrections. Ms. Campbell attended that meeting,
7 as I did. She also attended four other meetings in
8 the community last year, which, in my affidavit, I
9 discussed, where again we spoke with ANC people,
10 the community, educating the community as to the
11 aspects of Bannum's program.

12 Q In the videotape, we heard Ms. Campbell
13 use the term "halfway house." Could you tell the
14 Board, was that term used in a slang manner at the
15 meeting?

16 A It's a state-of-art term. I have been
17 in the corrections business for 20 years. I have
18 used it, you know, on and off for many years, I
19 used it on the tape, but it doesn't change the fact
20 that the contract we had with the Bureau of Prisons
21 says it's a community corrections center.

22 Q Let me just direct your attention to
23 the portion of the contract -- actually the
24 statement of work. It's part of the record. It's
25 Exhibit L to Bannum's motion to dismiss, which is

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1 at BZA Exhibit Number 20. I will put that in front
2 of you. Is that the statement of work that I just
3 referred to?

4 A Yes.

5 Q All right. And if we go in about five
6 or six pages, do you see a page there that says
7 "Explanation of Terms"?

8 A Yes.

9 Q All right. And let me direct your
10 attention toward the middle of the page.

11 MR. COX: Is the Board with me here so
12 far?

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. COX: Okay.

15 BY MR. COX:

16 Q Toward the middle of the page, there is
17 a definition for the term "community corrections
18 center." Do you see that?

19 A Yes.

20 Q And the community corrections center,
21 that's what Bannum's facility is at 2210 Adams
22 Place, correct?

23 A According to our contract, yes.

24 Q All right. Can you just read for the
25 Board what the definition is there that is

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1 contained in your contract?

2 A "Community corrections center (CCC):
3 The location in which the contractor's programs are
4 operated. Also called facility, center, community
5 treatment center (CTC), or a halfway house. A CCC
6 is considered a penal or correctional facility."

7 Q Okay. And you also heard Ms. Campbell
8 talk, and since you were at the meeting, I am sure
9 she talked more about it, the fact that the
10 residents in your facility are actually inmates,
11 aren't they?

12 A The persons at our facility are inmates
13 serving a term of imprisonment.

14 Q Now, at this meeting, were there any
15 issues about zoning discussed?

16 A No, not that I recall.

17 Q Did anybody pull out the Zoning Code
18 and talk about the term "halfway house" as it
19 relates to the Zoning Code?

20 A No. Somebody at one meeting asked me
21 if I was familiar with the Zoning Code and I
22 responded that I was not.

23 Q So this meeting had nothing whatsoever
24 at all to do with the term "halfway house" or
25 however it's defined in the D.C. Zoning Code; isn't

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1 that true?

2 A That's true.

3 MR. COX: That's all on direct. Thank
4 you.

5 CHAIRPERSON GRIFFIS: Thank you.

6 DCRA.

7 CROSS-EXAMINATION

8 BY MR. RUSHKOFF:

9 Q Mr. Lowry, do you agree that the date
10 of this meeting was approximately January 21st,
11 2003?

12 A The best I can recall, somewhere in
13 that area.

14 Q Do you recall meeting any DCRA
15 officials at the meeting or speaking to any DCRA
16 officials either immediately before or after the
17 meeting?

18 A No.

19 MR. RUSHKOFF: Okay. No further
20 questions.

21 CHAIRPERSON GRIFFIS: Mr. Temple.

22 CROSS-EXAMINATION

23 BY MR. TEMPLE:

24 Q Mr. Lowry, I am not clear. Did you say
25 that Ms. Cathy Campbell, the woman on the tape

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1 there, she is the assistant administrator at the
2 Bureau of Prisons?

3 A My understanding of the tape, she
4 introduced herself as the assistant to the
5 administrator of community corrections.

6 Q You know Cathy Campbell; isn't that
7 correct?

8 A Yes, I do.

9 Q And she is, to your knowledge, the
10 assistant administrator at the Bureau of Prisons;
11 is that correct?

12 A For community corrections, yes.

13 Q My question was, she is the assistant
14 administrator -- she is -- let me change the
15 question. She is an assistant administrator at the
16 Bureau of Prisons in charge of community
17 correctional centers; is that correct?

18 A That's not correct.

19 Q Okay.

20 A Stuart Rawls is the administrator for
21 community corrections. Ms. Campbell is his
22 assistant.

23 Q So she is not an assistant
24 administrator. You're saying she is an assistant
25 to the administrator?

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1 MR. COX: I am going to object. He has
2 already answered the question.

3 MR. TEMPLE: I don't think he has.

4 MR. COX: I think he has.

5 MR. TEMPLE: Well, you can rule.

6 CHAIRPERSON GRIFFIS: Wow.

7 [Laughter.]

8 CHAIRPERSON GRIFFIS: Go ahead, Mr.
9 Etherly.

10 MEMBER ETHERLY: I mean, perhaps is the
11 way in which Ms. Campbell characterized herself,
12 would you disagree with her characterization? My
13 recollection as assistant administrator for
14 Community Corrections Branch.

15 THE WITNESS: My understanding is she
16 is the assistant to the administrator in the
17 Community Corrections Branch.

18 MEMBER ETHERLY: In the Community
19 Corrections Branch. Okay. Thank you.

20 Thank you, Mr. Chairman.

21 MR. TEMPLE: May I continue?

22 BY MR. TEMPLE:

23 Q Mr. Lowry, is it your testimony today
24 that a community corrections center is not a
25 halfway house?

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1 MR. COX: I am going to object to the
2 form of that question. Could you rephrase it?
3 What is a halfway house?

4 MR. TEMPLE: The gentleman used it in
5 his examination of the witness.

6 CHAIRPERSON GRIFFIS: I think the
7 question needs to be rephrased to stay in the
8 context of the tape, which is what this witness is
9 only coming forward to say, and the question may
10 want to go to what was the meaning of the term --

11 MR. TEMPLE: Actually, with all due
12 respect, I think that the gentleman was
13 specifically asked a question on the halfway house
14 issue and he read the definition, and he made him
15 read it into the record, saying that a community
16 corrections center which also says it's a halfway
17 house.

18 His understanding is very important,
19 and my question to him is very direct: Does he
20 consider or does he not consider a community
21 corrections center a halfway house?

22 MR. COX: Again, I'm going to restate
23 the objection. Mr. Temple is not defining what his
24 definition of a halfway house is. If he wants to
25 ask Mr. Lowry where he read halfway house from, he

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1 will tell him that.

2 MR. TEMPLE: I can rephrase the
3 question.

4 CHAIRPERSON GRIFFIS: Right.

5 BY MR. TEMPLE:

6 Q Mr. Lowry, why don't you tell the panel
7 here what your definition is for halfway house,
8 please?

9 A My definition of a halfway house goes
10 back to 20 years ago when I was in graduate school.

11 In the Kentucky prison system, to get out of
12 prison, you had to have a job and a place to live.

13 Persons who didn't have a job or a place to live
14 could not be released from an institution, so they
15 were released to a halfway house. They could come
16 and go, they were free to move about. That's my
17 definition of a halfway house, whereas a CCC, as I
18 have a contract in this context, it's a penal or a
19 correctional facility as the contract says.

20 Q Now, Mr. Lowry, you have been in your
21 business, in your position at Bannum, since 1984;
22 is that correct?

23 A That's correct.

24 Q And you have been executive director
25 since 1984; is that correct?

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1 A That's correct.

2 Q And you also have -- this is your 17th
3 contract with the Bureau of Prisons; is that
4 correct?

5 A Yes, more or less.

6 Q Yes. And in those contracts, isn't it
7 correct that you have referred to your facilities
8 in your written proposals and otherwise as halfway
9 houses?

10 MR. COX: I'm going to object to the
11 scope of this cross. We're going way beyond the
12 little snippet that we just saw.

13 CHAIRPERSON GRIFFIS: Right. That goes
14 beyond the tape for sure and now what Mr. Lowry's
15 actual testimony went to. Let's continue. New
16 question.

17 BY MR. TEMPLE:

18 Q Mr. Lowry, are you saying that a
19 community corrections center in your opinion is not
20 a halfway house?

21 MR. COX: I'm going to object. He has
22 already answered that question.

23 MR. TEMPLE: He has not answered that
24 question.

25 MR. COX: And I'm going to object to

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1 the --

2 CHAIRPERSON GRIFFIS: I question the
3 pertinence of pushing him so far to define it, but
4 the other aspect is I'm not sure why that isn't
5 answered by him reading the actual definition of
6 what is in the contract.

7 MR. TEMPLE: If you would indulge me,
8 if the panel would indulge me, I submit to you that
9 this case is very significant relative to his
10 knowledge. He has consistently represented to this
11 government, the District of Columbia, in the
12 process of securing a permit that it is a community
13 corrections center. Whether he understood that it
14 was a halfway house, we can get into it much more
15 in his case in chief, but I think that the door has
16 been opened here. This whole presentation was
17 about whether a community corrections center is
18 deemed a halfway house. It has implications under
19 Section 199, 11 DCMR.

20 This gentleman has not answered the
21 question. The door has been opened. It is what is
22 at issue in this whole discussion. I think it's
23 very relevant.

24 CHAIRPERSON GRIFFIS: Mr. Lowry, in
25 your opinion, is a CCC a halfway house?

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1 THE WITNESS: No, it's not.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. TEMPLE: Thank you. No further
4 questions.

5 CHAIRPERSON GRIFFIS: Questions from
6 the Board?

7 MEMBER ZAIDAN: I have a question for
8 Mr. Lowry.

9 You said in your statement that the
10 facility -- and I'm hoping I get your statement
11 correct; please tell me if I'm wrong -- this
12 facility is a penal or correctional facility and it
13 has inmates serving a term of imprisonment.

14 THE WITNESS: Yes.

15 MEMBER ZAIDAN: Am I more or less
16 correct?

17 THE WITNESS: Yes. I read that from
18 the contract.

19 MEMBER ZAIDAN: From the scope of work?

20 THE WITNESS: Yes.

21 MEMBER ZAIDAN: Right. When you say
22 there's inmates there that are serving a term of
23 imprisonment, are there people that are serving
24 their whole range of their imprisonment, like they
25 have only been there for a day and they are

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1 beginning their ten-year sentence, or are they at
2 the end of their imprisonment? Can you give a
3 little bit more information on that?

4 THE WITNESS: Persons who are convicted
5 of federal crimes are sentenced by a judge to a
6 term of imprisonment. The Bureau of Prisons then
7 designates where that person will serve their
8 sentence. We --

9 MEMBER ZAIDAN: Their whole sentence or
10 the first part of their sentence?

11 THE WITNESS: Well, the Bureau of
12 Prisons designates whether they go to a
13 maximum-security prison, medium, minimum, or camp.

14 MEMBER ZAIDAN: Okay.

15 THE WITNESS: So they go to an
16 institution. A person from D.C. may go to Lompoc,
17 California. When they are at their last three to
18 four months, they come to a community corrections
19 center to serve the remainder of their sentence.

20 MEMBER ZAIDAN: Okay.

21 THE WITNESS: So our people are still
22 in the custody of the U.S. Attorney General. If
23 they come up missing for 20 or 30 minutes, we have
24 to report them to the United States Marshals as an
25 escaped federal fugitive.

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1 MEMBER ZAIDAN: Right.

2 THE WITNESS: That's why it's called a
3 correctional facility or penal institution.

4 MEMBER ZAIDAN: So people who are in
5 the last three or four months of their term are at
6 this location.

7 THE WITNESS: Yes. And the Bureau of
8 Prisons, according to my contract, requires that I
9 provide care, custody, and security of these
10 persons.

11 MEMBER ZAIDAN: Okay. Are there, and
12 this may be in the scope of work -- I don't have it
13 in front of me, but just to make sure I'm clear --
14 are there rehabilitative programs? Are you trying
15 to ease people into society who are coming out of
16 there? Or is this just where they are serving
17 their confinement?

18 THE WITNESS: They are serving their
19 confinement. They are eligible to go out and work.

20 MEMBER ZAIDAN: Okay.

21 CHAIRPERSON GRIFFIS: Any other
22 questions from the Board?

23 MEMBER ETHERLY: Mr. Lowry, following
24 along with Mr. Zaidan's line of questioning, with
25 respect to the remarks that were provided by Ms.

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1 Campbell in the videotape, during her comments
2 regarding staff, she spoke about employment
3 applications or I should say staff providing
4 assistance for inmates with employment
5 opportunities, housing opportunities. She
6 referenced financial shall we say workshops or
7 educational opportunities regarding financial
8 management.

9 Is it your understanding or would you
10 characterize that as an accurate assessment of the
11 activities that would be conducted at the location
12 in question here?

13 THE WITNESS: Well, according to the
14 contract, we have to provide some assistance in
15 them obtaining employment if they don't already
16 have a job. We have a community resource manual
17 and we have a position that's designated as an
18 employment specialist. So as I recall what she
19 said, yes, it's generally according to the
20 contract.

21 MEMBER ETHERLY: And additionally, her
22 comment describing the average stay in the District
23 of Columbia for inmates of this type of facility
24 averaging 90 days, to the best of your
25 recollection, is that an accurate statement as

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1 well?

2 THE WITNESS: Yes. Yes, it is.

3 MEMBER ETHERLY: Okay. Thank you.

4 Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Ms. Miller.

6 MEMBER MILLER: Mr. Lowry, correct me
7 if I'm wrong, but I thought you may have referred
8 to a CCC in the tape as a halfway house, and I
9 believe that you responded to the Chairman that you
10 did not believe that a CCC was a halfway house, and
11 I'm getting the impression that you may think that
12 a CCC has some characteristics of a halfway house,
13 but it's different from a halfway house, so I'm
14 wondering if you might be able to clarify that for
15 me.

16 THE WITNESS: Again, I have been doing
17 this for many years and a halfway house -- I've
18 also been contracting for the Bureau of Prisons for
19 a number of years, too. In my mind, a typical
20 halfway house is not what the Bureau of Prisons
21 contracts for to place their inmates.

22 Again, I just have to fall back on a
23 simple explanation in Kentucky. I had a contract
24 with the Kentucky Department of Corrections to
25 take care of persons who didn't have any place else

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1 to go. That's what a halfway house is. We didn't
2 have a lot of requirements. It was affectionately
3 called three hots and a cot. You just took care of
4 them. They didn't have any place to go. You would
5 help them get a job.

6 At a CCC, under contract with BOP, it's
7 very sophisticated, and I will add that we used to
8 contract with the Department of Corrections in
9 Florida as well, and it was the same thing. We did
10 not get inmates, we got persons who had been
11 released from whatever custody they were in. The
12 persons I get in a CCC are inmates. Now, yes, I
13 occasionally have called it a halfway house.

14 We're required by the contract to
15 provide notices to the mayor, chief of police -- I
16 think I have gone into this, I have testified to it
17 numerous times -- and I believe in those letters,
18 if you look, I call it a community corrections
19 center. I am not trying to sit here and play word
20 games.

21 We take care of inmates. If an inmate
22 comes up missing, we call the United States
23 Marshals. In my understanding of a halfway house,
24 that doesn't happen. We fingerprint them. If one
25 expires on us, we have to go take their

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1 fingerprints at the morgue. That has happened.
2 You don't do that at a halfway house.

3 We check them in, we check them out, we
4 call twice a day when they are at work, we have to
5 verify they're there. If we make a phone call,
6 they're not at work, 20 minutes can go by where we
7 call hospitals, jails, family. If we don't locate
8 them, we call the Bureau of Prisons and then the
9 United States Marshals and they go after them.

10 CHAIRPERSON GRIFFIS: Mr. Parsons.

11 COMMISSIONER PARSONS: Mr. Lowry, when
12 people leave this facility, where do they go at the
13 end of their three- or four-month --

14 THE WITNESS: It depends on their
15 sentence. As I said, they are serving a portion of
16 their sentence with us. Generally it's the last
17 portion. Some, if it's expiration, then they're
18 free and clear, they have served their sentence. A
19 lot of them, I don't know what percent, go under
20 supervision by the United States Probation Office
21 depending on how much more time they have to serve.

22 COMMISSIONER PARSONS: Is there need
23 for some of them to go to what you now define as a
24 halfway house?

25 THE WITNESS: No. No.

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1 COMMISSIONER PARSONS: They are just
2 released freely into society?

3 THE WITNESS: Yes.

4 COMMISSIONER PARSONS: There's no other
5 transition?

6 THE WITNESS: No. They are released,
7 but they are monitored by the United States
8 Probation Office if they still have a term to be
9 served.

10 COMMISSIONER PARSONS: Now, I guess
11 we're getting into your case, but since we're on a
12 roll, what provisions are there to lock up these
13 clients of yours at night?

14 THE WITNESS: There's no provisions to
15 lock them up, and --

16 COMMISSIONER PARSONS: Okay. Do you
17 have a guard force, then?

18 THE WITNESS: We don't have guards. We
19 have what we call counselor aides. They are
20 security, they are there around the clock. We do
21 frequent bed checks, telephone calls to employers.

22 If they are allowed to go home on, say, a Saturday
23 for three or four hours on a pass -- we do have
24 pass and furlough systems just like they do in the
25 prisons -- we have to call so many times and check

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1 on them, and again, if they come up missing, we
2 have 20 minutes to try to find them before we have
3 to report them as an escape. But if they walk out
4 the door, we're not able to physically restrain
5 them, but they are an escaped federal fugitive.

6 COMMISSIONER PARSONS: So there's a
7 distinct difference between other levels of prison
8 where -- I assume there are no other prisons -- I
9 am characterizing your facility as a prison because
10 it's part of a prison sentence. There are no other
11 prisons that have the flexibility that you do.

12 THE WITNESS: A prison camp. A prison
13 camp.

14 COMMISSIONER PARSONS: Prison camp,
15 there's no guards, has no --

16 THE WITNESS: Well, they have staff,
17 but certain inmates are free to move around the
18 compound, free to go out to work. Jails, a lot of
19 jails have work release programs. You have drunk
20 drivers committed to jail programs who spend the
21 weekend.

22 COMMISSIONER PARSONS: But I assume all
23 of those institutions have armed guards and
24 provisions for locking people up.

25 MR. TEMPLE: Prison camps, my

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1 understanding is at a prison camp, they have a lot
2 of freedom of movement. If somebody crosses the
3 line in the sand, they are an escaped federal
4 fugitive. It's the same way with us.

5 We don't have to have electric fences
6 or guns. If they cross the line in the sand,
7 they're an escaped federal fugitive. When they
8 arrive at the program, they are told they are still
9 in the custody of the Attorney General. They sign
10 rules and regulations. They cross the line,
11 they're reported.

12 COMMISSIONER PARSONS: Thank you.

13 MR. TEMPLE: Mr. Griffis?

14 CHAIRPERSON GRIFFIS: Yes, Mr. Temple.

15 MR. TEMPLE: Brief recross? Very
16 brief?

17 CHAIRPERSON GRIFFIS: On what? On the
18 new statements?

19 MR. TEMPLE: Mr. Griffis, with all due
20 respect --

21 CHAIRPERSON GRIFFIS: I was asking on
22 what.

23 MR. TEMPLE: On a couple of things that
24 he stated.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. COX: Could we just redirect him
2 for a few questions here and then he can have his
3 recross?

4 CHAIRPERSON GRIFFIS: No, because then
5 you get redirect. So let's keep it all under one.

6 FURTHER CROSS-EXAMINATION

7 BY MR. TEMPLE:

8 Q Mr. Lowry, you said, in response to one
9 of the questions, you said that these individuals
10 are eligible to work. Isn't it true that all
11 offenders are expected to be employed at your
12 facility for 40 hours per week?

13 A Not all. Some. We can get waivers if
14 they are disabled, if we get disabled persons who
15 can't work.

16 Q But generally, as a rule, all of the
17 persons who are residing at your facility are
18 required under your contract to have employment;
19 isn't that correct?

20 A Yes, that's correct.

21 Q Okay. And isn't it also true, Mr.
22 Lowry, that when you wrote to Mr. Vincent Orange in
23 April 2001, you referred to the facility as a
24 halfway house?

25 MR. COX: I'm going to object to the

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1 scope.

2 CHAIRPERSON GRIFFIS: Exactly. We
3 didn't go that far.

4 MR. TEMPLE: The gentleman said when he
5 wrote, he didn't refer to it as a halfway house, he
6 called it a community corrections center.

7 THE WITNESS: I think I said I don't
8 quite recall. I usually call them a community
9 corrections center.

10 MR. TEMPLE: That's not what he
11 testified.

12 CHAIRPERSON GRIFFIS: Mr. Lowry is
13 going to be called as a witness for the
14 presentation of the general case?

15 MR. COX: Yes.

16 CHAIRPERSON GRIFFIS: Okay. We will
17 get into that further then.

18 MR. TEMPLE: Thank you.

19 CHAIRPERSON GRIFFIS: Let's stick to
20 what we have.

21 Anything else, Mr. Temple?

22 MR. TEMPLE: No further questions.

23 CHAIRPERSON GRIFFIS: Okay.

24 Redirect?

25 MR. COX: Yes. Thank you, Mr. Chair.

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REDIRECT EXAMINATION

BY MR. COX:

Q Mr. Lowry, are any of the prisoners at the CCC sentenced directly to the CCC?

A No.

Q Isn't it true that the federal courts over the past many years have been directly sentencing the inmates to CCCs?

MR. TEMPLE: Objection. Asked and answered.

MR. COX: I'm getting specific.

CHAIRPERSON GRIFFIS: There was specific and general I guess is the question.

MR. COX: More specific question.

THE WITNESS: Repeat that.

BY MR. COX:

Q Isn't it true that over the past several years, the federal courts had directly sentenced prisoners to the CCCs?

A Oh. Yes.

MR. TEMPLE: Objection. Irrelevant. Past few years -- he asked about this facility.

MR. COX: I said the past several years.

MR. TEMPLE: It's irrelevant.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. COX: It's completely relevant to
3 how they get sentenced there. Mr. Zaidan asked
4 about the term of their stay when they are
5 sentenced there, when they are put there.

6 CHAIRPERSON GRIFFIS: Okay. There were
7 two questions and two different answers. Mr.
8 Lowry, you indicated that they are not directly
9 sentenced --

10 THE WITNESS: That's right.

11 CHAIRPERSON GRIFFIS: -- to CCCs; is
12 that correct?

13 THE WITNESS: Persons are sentenced, as
14 I testified before, to serve a term of
15 imprisonment.

16 CHAIRPERSON GRIFFIS: Right.

17 THE WITNESS: And then the Bureau of
18 Prisons designates them to whatever facility. Now
19 --

20 CHAIRPERSON GRIFFIS: Okay. I think
21 it's answered.

22 BY MR. COX:

23 Q Mr. Lowry, do the inmates have a right
24 or an entitlement to go to a CCC?

25 MR. TEMPLE: Objection.

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1 MR. COX: On what basis?

2 CHAIRPERSON GRIFFIS: On what?

3 MR. TEMPLE: It's irrelevant if they
4 have a right to go to a CCC.

5 CHAIRPERSON GRIFFIS: Yes. I'm not
6 really understanding the question.

7 MR. COX: Actually, I think it is
8 somewhat relevant. I mean, we are trying to figure
9 out exactly what this thing is. I think in terms
10 of how it functions between a halfway house --
11 well, I'm using that term loosely because that's a
12 contested word right now -- you know, halfway
13 house, CCC, jail, whatever it is, I think that's
14 relevant. I think we need -- I mean, I think we
15 need to stick to exactly how this thing is
16 functioning, and I think that's part of it.

17 CHAIRPERSON GRIFFIS: Can you clarify
18 the question a little bit?

19 MR. COX: Sure.

20 CHAIRPERSON GRIFFIS: I'm not
21 understanding what it is.

22 BY MR. COX:

23 Q Mr. Lowry, do the inmates that come to
24 the CCC, do they have a right or are they entitled
25 to go to a CCC during the last portions of their

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1 sentence, --

2 A No.

3 Q -- or is that a privilege?

4 A When an inmate is -- when they are
5 eligible to be referred to a CCC, they have to more
6 or less volunteer to come to the CCC. They can
7 choose to serve the remainder of their sentence in
8 the prison.

9 MEMBER ZAIDAN: If I could ask, just to
10 clarify, that's at the end of their term, --

11 THE WITNESS: At the end.

12 MEMBER ZAIDAN: -- towards the end of
13 their term. So they have the opportunity to go to
14 what you are classifying as a CCC.

15 THE WITNESS: Yes.

16 MEMBER ZAIDAN: Okay.

17 THE WITNESS: They can choose to serve,
18 say, as an example, their last three months at a
19 CCC or serve their last three months at the camp or
20 the minimum or the medium prison they were in.

21 BY MR. COX:

22 Q Mr. Lowry, you mentioned that these
23 inmates are constantly monitored, and I think you
24 answered this, but if an inmate were to escape or
25 break the rules, what happens to them? Where do

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1 they go?

2 A The United States Marshals lock them
3 up, they are detained, and my understanding is they
4 go back to a higher secure institution.

5 Q They don't come back to the CCC?

6 A No.

7 MR. COX: Okay. I have no other
8 questions.

9 CHAIRPERSON GRIFFIS: Okay. Thank you
10 very much, Mr. Lowry.

11 [Witness excused.]

12 CHAIRPERSON GRIFFIS: Is DCRA ready to
13 present their case?

14 MR. RUSHKOFF: DCRA's case will consist
15 entirely of argument, so I guess my question to the
16 Board is would it make sense to go ahead with that
17 right now or should I wait and consolidate that
18 with a closing argument at the end? I can do it
19 either way. But I will not be presenting any
20 witnesses or documents that are not already in the
21 record.

22 CHAIRPERSON GRIFFIS: Well, we will
23 leave it up to a quick poll.

24 Bannum's representatives, are you ready
25 to go right now and would you like to proceed now?

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1 MR. CAMARDO: We are ready to go, but I
2 would like to hear the position of the District, so
3 if there is any problems I think they have with
4 their case, I will be free to fill in any issues.

5 CHAIRPERSON GRIFFIS: Okay. So you
6 would rather stick to the order.

7 Mr. Temple, do you have an opinion on
8 this?

9 MR. TEMPLE: Absolutely. Either he's
10 going to present a case or not. If he's not going
11 to present any witnesses and he wants to yield, I
12 think the point is that the position of the
13 District is fundamentally distinct and should have
14 no bearing on the position of the Intervenor.

15 CHAIRPERSON GRIFFIS: So you don't have
16 any --

17 MR. TEMPLE: I object strenuously to
18 that. He can present his case. If he's going to
19 make an argument, and that's what he is effectively
20 doing, he's making a pseudo-abbreviated argument as
21 to what his position is, that's just wasting time.

22 COMMISSIONER PARSONS: I think the
23 rules distinctly call for the District to make the
24 -- they go first in the order of precedence.

25 CHAIRPERSON GRIFFIS: That's correct.

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1 Mr. Temple, the question to you was, do
2 you object to the order in moving DCRA?

3 MR. TEMPLE: I don't follow your
4 question. If, in fact, the gentleman is saying
5 he's not going to go -- if he's going to go and
6 present an argument, it's disconcerting because the
7 case isn't closed. For purposes of your and our
8 simple approach to this, if all of us make closing
9 arguments simultaneously, I think it's better. If
10 he has no witnesses, he passes. If he's going to
11 make an argument, it's just going to mean -- it's
12 going to be disconcerting. I don't think it does
13 the process any good.

14 CHAIRPERSON GRIFFIS: My anticipation
15 was at the close -- my anticipation would be at the
16 presentation of each of the cases, both the DCRA
17 and the Intervenor, that they would have
18 conclusions there, and then it goes to your
19 rebuttal and closing statement. We have not in the
20 past always had a panel of closings, but each case
21 is closed and then you have rebuttal and closing.

22 So the only issue, my thought was that
23 we might go to Bannum's case-in-chief and then
24 their closing and DCRA. Bannum is objecting to
25 that. Mr. Temple, you have difficulty with that?

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1 You do.

2 MR. TEMPLE: I think that what you said
3 is the correct way to do it. If he doesn't present
4 a case, Bannum presents, they both do their closing
5 points, and then we can do rebuttal, if that's the
6 way you want to do it, with the closing following
7 the rebuttal. Otherwise, he's giving a closing
8 before Bannum gives their presentation of the
9 evidence.

10 MR. RUSHKOFF: I mean, if you want, I
11 can also make mine into an opening. I mean, I
12 think Bannum is concerned about surprise. I don't
13 want them to be surprised. I'm happy to lay out
14 where we're going and --

15 CHAIRPERSON GRIFFIS: You're on.

16 MR. RUSHKOFF: Okay. Should I just get
17 going?

18 CHAIRPERSON GRIFFIS: Absolutely. Yes.

19 MR. RUSHKOFF: Okay. Here we go.

20 PRESENTATION BY COUNSEL

21 ON BEHALF OF THE APPELLEE

22 DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

23 MR. RUSHKOFF: I mean, essentially the
24 way our position is distinct from the ANC's
25 position and Bannum's position is that in reading

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1 the regulations, it seems to us that when you're
2 dealing with what is commonly referred to as a
3 community correctional center, that what you're
4 talking about is something that fits the definition
5 in the regulations for a CBRF. It also fits any
6 reasonable understanding of what a detention or
7 correctional facility is.

8 Now, that doesn't mean that it can
9 necessarily be located in a C-M District as a
10 matter of right; that then depends on whether or
11 not it's temporary. But in this case, assuming
12 that what we're dealing with is a temporary
13 facility, meaning up to three years on leased
14 property, et cetera, then it can be, if it's a
15 temporary detention or correctional facility, it
16 can be located in a C-M District as a matter of
17 right.

18 If it's a CBRF, and it can also be a
19 CBRF, and we cannot think of a temporary detention
20 or correctional facility that would not fall within
21 the definition of CBRF set forth in the
22 regulations, then it may also be located in a C-3
23 or C-4 District as a matter of right based on its
24 status as a CBRF.

25 Now, I think there has been a

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1 suggestion that somehow our interpretation saying
2 that it can be both a CBRF and a temporary
3 detention or correctional facility is somehow
4 creating a loophole and that these are facilities
5 that would not be allowed as a matter of right were
6 it not for this, you know, loophole that's being
7 created. But, you know, keep in mind that a CBRF
8 can be located in a C-3 or C-4 District as a matter
9 of right; yet a temporary detention or correctional
10 facility may be located in a C-M District as a
11 matter of right.

12 Now, in trying to make sense of this
13 scheme, one might ask why is it that a CBRF -- in
14 other words, the -- we don't buy this
15 lockdown/non-lockdown facility distinction, but
16 suppose for a minute that you did and you felt that
17 the key issue here is degree of security, what you
18 would be saying is that if, I suppose, it's an open
19 or a non-lockdown facility, then it could be in a
20 C-3 or C-4 District, but if it's in a locked
21 facility, then it has to be in a C-M District, and
22 it's hard to come up with a rationale to justify
23 why one would be in one and one would be in the
24 other.

25 Now, I think there is a rationale for

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1 CBRFs not ordinarily being placed in C-M Districts.

2 In other words, your status as a CBRF does not
3 justify putting you in a C-M District because a C-M
4 District is a manufacturing district.

5 A CBRF by its nature is a residential
6 facility, so you wouldn't say you can put a
7 residential facility as a matter of right in a
8 manufacturing district. That's not out of concern
9 for residential areas; that's out of concern for
10 the residents themselves.

11 So when they were working on -- when
12 they were coming up for a scheme for CBRFs, they
13 said sure, you can put it in a business district as
14 a matter of right, you can put it, you know, in a
15 C-3 or the C-4, the downtown business district, as
16 a matter of right, but they did not say you could
17 put it in a C-M District as a matter of right,
18 because keep in mind you're talking about more than
19 just -- you're talking about facilities that apply
20 to people who didn't do anything wrong to society
21 and presumably need protection and should not be
22 put next to a factory.

23 MEMBER ETHERLY: So Mr. Rushkoff, --

24 MR. RUSHKOFF: Yes.

25 MEMBER ETHERLY: -- by that rationale,

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1 then, why a temporary detention or correctional
2 institution in a C-M District?

3 MR. RUSHKOFF: Okay. The reason those
4 go in a C-M District is they were dealing with a
5 problem of prison overcrowding and they knew that
6 there had to be an easy way to put them somewhere.

7 So a C-M District, at least intuitively, would be
8 a setting that would be less likely to disturb
9 other uses.

10 Let's say you put it between two
11 factories, you put a jail or a halfway house or
12 something like that, you put a correctional
13 institution between two factories. I think the
14 rationale would be that, look, these people have a
15 choice now between being in an overcrowded jail or
16 being between two factories. Neither is a great
17 situation, but this is what we do to people in the
18 correctional system.

19 MEMBER ETHERLY: And when you say jail,
20 Mr. Rushkoff, what do you mean?

21 MR. RUSHKOFF: Well, I think when they
22 were originally thinking of the D.C. Jail, they
23 were thinking about overcrowding at the jail. Now,
24 they didn't say "jail," they said "detention or
25 correctional facility," which -- I mean, suppose

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1 you have -- I mean, this is a bit off the record,
2 but you could have a situation -- I believe we have
3 one now -- where you have a shortage of places to
4 put people who are ready for work release, so you
5 have people sitting in jail, in the D.C. Jail or in
6 the prison system, who perhaps are ready for a
7 halfway house, and there have been reports about
8 this in the paper. But I think the original
9 rationale, they were thinking, "We've got people in
10 this jail, we've got overcrowding. Where can we
11 put these people in kind of a quick -- a process
12 that's quick for getting them somewhere else? And
13 I think there would be the least collateral harm if
14 we put them in C-M District."

15 So then when they were thinking in
16 terms of correctional institution, they thought C-M
17 District. They weren't thinking, "Gee, these poor
18 prisoners are going to be next to a factory." On
19 the other hand, when they were thinking CBRF, they
20 were thinking, "We can't put them in a C-M
21 District. That's not fit for human habitation,"
22 okay?

23 MEMBER ETHERLY: Let me pause for a
24 moment, and I will ask the Chair's indulgence. But
25 here is what I am struggling with. You have a C-M

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1 District and you have the argument being made that
2 under 801.7(k), this is a temporary detention or
3 correctional institution. The struggle is trying
4 to figure out what is meant under the zoning
5 regulations by a temporary detention or
6 correctional institution.

7 There are a number of important parts
8 in that definition, some of which I think you have
9 run through. I think that word "temporary" is very
10 important, and I don't necessarily think the word
11 "temporary" necessarily speaks simply to the issue
12 of how long the lease is for.

13 Now, when you look at the legislative
14 history of this particular provision, and I found
15 it very helpful that the Intervenor Bannum included
16 that history under Tab 8 of its memorandum on the
17 merits in opposition to the appeal, let me walk you
18 through what I'm struggling with because I think
19 your argument is kind of touching on it, but I want
20 you to understand and I think also for the purposes
21 of the Intervenor's presentation I want the
22 Intervenor to understand what I'm struggling with
23 here.

24 If you look under Tab 8, and I
25 apologize for not having more direct guidance, but

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1 I'm looking at I believe the announcement for case
2 Number 71-33, which is the case that spoke to the
3 particular language that we're looking at here.
4 The purpose of Case Number 71-33, which was to
5 adopt this language, was, and I'm reading directly
6 from the legislative history and the public notice
7 dated December 23rd, 1971, the purpose reads:

8 "The purpose of this amendment is to
9 provide for the interim or temporary locations for
10 persons being confined by the court until permanent
11 facilities can be acquired and developed for such
12 purposes."

13 That was for the proposed text change
14 of detention or correctional institution on leased
15 property.

16 Now, if you move further into the final
17 report of what then was referred to as the Zoning
18 Advisory Council for Case Number 71-33, I'm reading
19 in essentially the -- it's the paragraph just prior
20 to the recommendation portion of the final report:

21 "The effect of this amendment would be
22 to permit detention or correctional institutions on
23 leased private property in the industrial zones of
24 the city. This would permit the Department of
25 Corrections to lease private industrial property

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1 for the purposes of establishing correction
2 facilities to accommodate overflow population from
3 the established institutions or as a temporary
4 facility while they proceed with the process of
5 budget, acquisition, and development of permanent
6 facilities."

7 My concern/question to you, then, Mr.
8 Rushkoff, is, is it not reasonable to interpret
9 801.7(k) to be a pressure release valve that only
10 applies to full-fledged jails?

11 We're hearing a lot about the
12 interchangeability of terms -- halfway house,
13 community correctional center, what have you -- but
14 in my effort to cut through the smoke and mirrors,
15 and I'm not using that term pejoratively with
16 respect to anybody's presentation, but in terms of
17 the substance here, how would you respond to the
18 argument that 801.7(k) was developed as a pressure
19 release valve for the pressure that was being
20 experienced by jails, i.e. for persons who had
21 already been adjudicated, had already been
22 sentenced, and were beginning -- although I'm not
23 saying that's an important distinction, but these
24 are people who are in the midst of their sentence,
25 not necessarily going toward the end, not working

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1 towards work release, but we had to find some way
2 of handling how to bed those people down.

3 This was a provision that sought relief
4 in a C-M zone because they felt it was going to be
5 of the least impact, so to speak, to a residential
6 community. How do you deal with that?

7 MR. RUSHKOFF: Okay.

8 MEMBER ETHERLY: I threw a lot at you,
9 but I think that's --

10 MR. RUSHKOFF: That's okay. Let me
11 focus on the two --

12 MEMBER ETHERLY: I think that's the
13 issue here, for me. So help me understand where
14 DCRA fit into that picture.

15 Let me just keep going for a little bit
16 here because, like I said, I threw a lot at you,
17 but I think the issue here is what in the Zoning
18 Administrator's thought process either disagrees
19 with that rationale or that thinking, okay? Help
20 me understand why that interpretation doesn't make
21 sense.

22 MR. RUSHKOFF: I think part of what you
23 say fits right in with our thinking on this issue,
24 which is the aspect we were discussing, pressure
25 and the need to relieve pressure. I think that's

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1 where the term "temporary" is really key.

2 I think the rationale, to fit it within
3 what I was saying earlier, would be even -- we're
4 not even going to house prisoners in these
5 conditions on a permanent basis. It is meant to be
6 like a release or sort of an extra measure that we
7 can follow when we're having trouble locating
8 facilities quickly. I think that was the rationale
9 behind it.

10 The second part of what you said was
11 let's say that it was intended to focus on people
12 say in the middle of their sentence rather than at
13 the end of the sentence, something to that effect.

14 I don't really see support for that --

15 MEMBER ETHERLY: And that might be a
16 stretch. I grant you that. That might be a
17 stretch.

18 MR. RUSHKOFF: I mean, here I think
19 that it's very important -- it was very important
20 in analyzing this facility that these are not, for
21 example, individuals like the ones in Kentucky who
22 had finished their sentence and there was no place
23 for them to go. It would be very -- I don't think
24 you could fairly characterize something like that
25 as a correctional institution. These people had, I

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1 guess, paid their debt to society. At this point,
2 society is just taking care of them a little
3 longer.

4 Here, we're dealing with individuals --
5 at least our understanding is that we're dealing
6 entirely with individuals who are serving
7 sentences, individuals who if they leave can be
8 prosecuted for prison break, who are currently
9 being -- you know, while they are serving
10 sentences, they are also in a process of being
11 cared for and rehabilitated, which is how it's hard
12 in good faith to say this is not a community based
13 residential facility as well.

14 But it seems to me that what you've got
15 are -- you know, being a CBRF by itself is not
16 going to get you into a C-M District, okay? You
17 know, being a temporary detention or residential
18 facility probably can get you into a C-3 or a C-4
19 -- it's not really an issue in this case, but
20 probably can get you into a C-3 or a C-4 because
21 it's hard to think of one that wouldn't also
22 qualify as a community based residential facility,
23 at least under the definition that we have in the
24 regs.

25 I mean, the distinction between -- hold

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1 on one moment.

2 [Pause.]

3 MR. RUSHKOFF: I mean, there's been a
4 lot of attention given to the distinction between
5 lockdown facilities and facilities that are not
6 lockdown facilities, and, you know, we haven't seen
7 anything in the regs or in the cases or anything
8 that would support a distinction between those two
9 kinds of correctional institutions.

10 We also think in terms of what we think
11 is the rationale for placing CBRFs in these
12 business districts and placing temporary
13 correctional institutions in the C-M Districts. We
14 think that, if anything, it might go the other way.

15 In other words, it seems to me that if you were --
16 when you are thinking about a non-lockdown facility
17 and you are concerned about people coming and going
18 and maybe, you know, bothering people, that you
19 probably want something like that to be in a C-M
20 District rather than a C-3 District because you've
21 got businesses around. So, I mean, if that's the
22 concern, and I don't think that is the concern
23 here, but if that were the concern, I don't
24 understand why you would put one in a C-3 and the
25 other in a C-M.

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1 In fact, we don't really see any basis
2 for a distinction between lockdown versus not
3 locked down. What we see, we do see a distinction
4 between general CBRFs, which might include
5 perfectly innocent good people who are in need of a
6 little extra help in life, we can see a strong
7 concern not to put people like that in, for
8 example, a C-M District. You're not going to put
9 them next to a factory.

10 We also see -- and I wouldn't call that
11 vindictive or anything, but I think that there is
12 not that same concern for prisoners, in part
13 because these are people who, because of their
14 wrongful acts, are in the government's custody, and
15 in part because we know that there has been a
16 longstanding problem with overcrowded conditions at
17 correctional institutions. So I think the feeling
18 was, look, if we can get these people quickly,
19 through some abbreviated process, into a C-M
20 District, that is going to be better off for them
21 than leaving them, say, three or four people to a
22 cell at some jail somewhere. So, you know, I see
23 that rationale. But the other one, I haven't been
24 able to find a hook on.

25 I mean, I can go into -- I was going to

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1 -- maybe what I will do is stop here. I think I
2 have given Bannum a pretty good notice of where
3 we're coming from, and I can go through more detail
4 in closing.

5 MEMBER ETHERLY: Don't let me stop you.

6 MR. RUSHKOFF: Okay. Because I was
7 actually -- well, I think this might be good for an
8 opening, I think, the amount I have done so far. I
9 really wanted to lay out what the position was.
10 And then in terms of the rest, what I would have
11 done is simply go -- I was just going to kind of
12 methodically go through the various provisions.
13 But I think that maybe what I will do is hold off,
14 let them go, and then I can combine my response to
15 their case as well as the ANC's case.

16 MEMBER ETHERLY: And let me be clear.
17 Please feel free to proceed as you would. I mean,
18 I took a little bit of liberty there and I
19 appreciate the Chairman's leeway and my colleagues'
20 leeway, because typically it is, as I understand
21 it, the purview of the Board to allow parties to
22 present their case in full. But as I struggle with
23 the interchangeable terms, I think there's a very
24 -- I just think there's a very simple way of
25 looking at this, and what I'm struggling with is,

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1 when you try to make sense of what's a CBRF versus
2 what's a temporary detention or correctional
3 institution and why do we even have a sentence
4 under the definition of "CBRF" which speaks to the
5 issue of if something is a CBRF, it can't be
6 anything else --

7 MR. RUSHKOFF: Right. Would you like
8 me to address that?

9 MEMBER ETHERLY: So what I'm struggling
10 with, and I will let you speak to that in a moment,
11 but once again what I'm struggling with very simply
12 is, isn't it reasonable to think that 801.7(k)
13 simply speaks to a full-fledged jail, and the
14 reason why it speaks to a full-fledged jail is
15 because it's being placed in a C-M zone?

16 When you continue to look at the
17 legislative history, the language speaks to saying
18 that by providing installations in industrial
19 areas, the impact on residential sections of the
20 city will be minimized. That's why you can have a
21 temporary detention or correctional institution in
22 a C-M zone.

23 But if you flip to a CBRF, which by its
24 definition can't be some other use, perhaps the
25 rationale for a CBRF is the decision has been made

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1 that in terms of easing that transition back into
2 society, that type of use can be found shall we say
3 compatible in a more residential area. That, to
4 me, seems very simple, seems very logical. It
5 almost cuts a lot of what we have heard for the
6 last three or four sessions out the door. So
7 that's what I'm struggling with.

8 But once again I appreciate the Chair's
9 indulgence and that of my colleagues as I try to
10 work with this. I'm going to shut up now. Mr.
11 Rushkoff, please feel free to proceed forward.

12 MR. RUSHKOFF: Thank you.

13 MEMBER ETHERLY: Thank you, Mr.
14 Chairman.

15 MR. RUSHKOFF: Maybe I will just go
16 through the definition of CBRF, because this is
17 what led to us coming to the conclusion we did, was
18 just studying the regulation.

19 I mean, the first sentence says that,
20 "A CBRF is a residential facility for persons who
21 have a common need for treatment, rehabilitation,
22 assistance, or supervision in their daily living."

23 Now, if you focus on rehabilitation and
24 supervision in their daily living, to us, that
25 sounds like a correctional institution. These are

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1 people who need supervision, rehabilitation. And I
2 think the correctional institutions, except for
3 people on death row, are considered to be
4 rehabilitative facilities.

5 Now, if you look at the definition of
6 adult rehabilitation home, it says a facility
7 providing residential care for basically adults
8 under pretrial detention or sentenced court orders.

9 Again, there's nothing there about whether it's
10 lockdown or not locked down. The criteria involves
11 residential care for adults under sentenced court
12 orders, and I don't see any way to distinguish,
13 using that definition, between saying that a
14 halfway house is an adult rehabilitation home and
15 some kind of locked down facility or jail is not an
16 adult rehabilitation home.

17 Now, if you look up further, there's the
18 sentence that I think you are referring to, Mr.
19 Etherly. If an establishment is a CBRF, quote, "it
20 shall not be deemed to constitute any other use
21 permitted under the authority of these
22 regulations."

23 If a temporary detention or
24 correctional institution is a CBRF use, and that's
25 what we think, then when you say -- I mean, the

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1 only -- let me go back a second.

2 This sentence, when it says it shall
3 not be deemed to constitute any other use, "other
4 use" must mean a use other than CBRF use. It shall
5 not be considered to constitute a non-CBRF use.
6 For example, a community based residential facility
7 that is also a bowling alley shall not be deemed to
8 be a bowling alley and get out of the CBRF rules,
9 but if what you're talking -- for example, one type
10 of CBRF is an adult rehabilitation home. So if you
11 say, okay, this CBRF, we deem it to be a adult
12 rehabilitation home, since that's a subset of CBRF,
13 that's not an "other use," that is a CBRF use.

14 Now, we think that temporary detention
15 or correctional institution, if it has adults in
16 it, is going to be a adult rehabilitation home; if
17 it has youths in it, it's a youth rehabilitation
18 home; and it's even possible, if you look at the
19 definitions, to be both an adult and a youth
20 rehabilitation home in the same institution.

21 So it's possible something could be a
22 adult rehabilitation home, a youth rehabilitation
23 home, a temporary detention or correctional
24 institution, and we would say that all of these are
25 CBRF uses. So it's not like the bowling alley

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1 analogy where you say, well, let's call it a
2 bowling alley, and that way we can get the CBRF
3 into someplace it's not supposed to be.

4 One thing that I think I will go into
5 before stopping just because this may also --
6 again, I'm thinking mainly in terms of presenting
7 enough of our argument that there isn't any
8 surprise here. There were references in our motion
9 for an affirmance here at the conclusion of the
10 Appellant's case to whether or not this should even
11 be an appeal from the permit. I was suggesting
12 that what they should be doing is asking us to
13 revoke the permit rather than appealing the
14 issuance of the permit. I wanted just to flesh
15 that out a little bit.

16 As we see it, the simple case is --
17 which may not be this one, the simple case is where
18 someone applies to do something -- okay, let's say
19 someone makes an application to do X, okay, and
20 they are issued a permit to do X. Then time goes
21 by and someone comes forward and says, "They're not
22 doing X, they're doing Y," okay? In that
23 situation, where the application said, "We want to
24 do X," we said, "You can do X, here's a permit,"
25 and they're doing Y, it doesn't make sense for them

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1 to come straight to the BZA and appeal and say,
2 "They're not doing X. We're appealing the decision
3 to issue the permit." In that case, they should
4 really come straight to DCRA and say, "Look what
5 they are doing."

6 Now, that is a basis for revoking the
7 permit, although you actually don't have to revoke
8 the permit at that point. You could move against
9 them, Corporation Counsel could move against the
10 organization for acting without a permit. But you
11 could go ahead and just revoke the permit at that
12 point to remove any ambiguity as to whether or not
13 the activity is authorized.

14 Now, a slightly more complicated
15 situation which I think is what we've got here is
16 -- what you might have here, you have an
17 application to do X, okay, and we issue a permit to
18 do X, but in saying this is a -- you know, in the
19 application, you say, "We're going to do X, Y, and
20 Z," okay. We issue a permit to do X. If someone
21 comes forward and says, "Hey, wait a minute,
22 they're doing Y and Z," okay? Now, given that
23 those were in the application, presumably they have
24 a right to rely on the fact that they disclosed it
25 all and we said you can do X, but it was clearly

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1 contemplated that X would include Y and Z because
2 it was all set forth in the application, at that
3 point, it makes sense to say, "You should be
4 allowed to appeal the decision to grant an
5 application to do X in response to an application
6 that described Y and Z kind of together with X,"
7 okay? So they should be able to appeal that.

8 But suppose there's an application --
9 and I guess our view is really this may be the
10 current situation -- there's an application to do
11 X, all right, and it includes a discussion of Y and
12 Z, but if the ANC comes forward and says, "They're
13 doing A, B and C," things that weren't in the
14 application, okay, that shouldn't be an appeal from
15 the permit, the permission to do X, because it's
16 not Y and Z, which were disclosed in the
17 application, it's something new, and the something
18 new in this case I think may refer to this whole
19 five-year issue, okay? And, you know, there, the
20 question is, was it an error, you know, was it an
21 error to issue the permit to do X, Y and Z? No.
22 We have someone who is now doing something, you
23 know, that I am calling A, B or C.

24 CHAIRPERSON GRIFFIS: Okay. So you're
25 saying there's a difference between an error in

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1 issuing a permit and compliance with the permit
2 that was issued or even the C of O.

3 MR. RUSHKOFF: Right. And the reason
4 we're setting forth three categories here is I
5 think the argument might be that even if -- I think
6 their argument might be to the extent that things
7 were disclosed to DCRA, I'm conceding that might be
8 a legitimate basis for an appeal even if we didn't
9 give express authorization to do it. Where it
10 hasn't even been disclosed to DCRA, you know,
11 appealing the permit is not the way to go, because
12 --

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. RUSHKOFF: So that's our position.

15 CHAIRPERSON GRIFFIS: Anything else?

16 MEMBER ZAIDAN: Mr. Chair?

17 CHAIRPERSON GRIFFIS: Let me see if
18 he's finished.

19 MR. RUSHKOFF: Yes. I will stop here.

20 CHAIRPERSON GRIFFIS: Okay.

21 Mr. Zaidan.

22 MEMBER ZAIDAN: Well, actually I wanted
23 to respond to that issue and then I had a question
24 in regards to DCRA's permitting process, which is
25 obviously the big issue.

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1 I mean, the argument you just made I
2 can understand; however, how do you reconcile that
3 with our jurisdiction under 118.5, which gives us
4 the authority to hear any administrative decision
5 by an administrative officer of the government?

6 I mean, if you issue a permit for X, to
7 use your analogy, and X is perfectly appropriate,
8 the Board still has the jurisdiction to hear that
9 appeal, it would seem to me. I mean, would you
10 agree with that?

11 MR. RUSHKOFF: Yes.

12 MEMBER ZAIDAN: Okay.

13 MR. RUSHKOFF: Yes. If we issue a
14 permit to do X, certainly someone can appeal and
15 say, "You never should have issued a permit to do
16 X."

17 MEMBER ZAIDAN: Okay.

18 MR. RUSHKOFF: I mean, that's a little
19 bit hard in this case because the statute says --
20 you know, talks about a temporary correction or
21 detention facility in a C-M District. So first,
22 we, you know, issued a building permit to convert
23 something to a detention or correctional facility,
24 and then we issued a certificate of occupancy for a
25 correctional or a detention facility, so almost by

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1 definition, what we did was okay.

2 I mean, I'm trying not to take that
3 rigid position. I'm trying to show where we're
4 conceding and where we're not. We're conceding
5 that to the extent under all the circumstances it
6 was clear what we were talking about, and, you
7 know, Bannum -- to the extent Bannum made it clear
8 what they were going to be doing, I think they
9 would be right to appeal if they shouldn't be
10 allowed to do that. To the extent it wasn't even
11 disclosed to us what Bannum would be doing, then
12 that's really not a subject for the appeal.

13 MEMBER ZAIDAN: Okay. Well, actually,
14 you brought up a point that relates to my next
15 question, and that is, your position is that this
16 facility falls under 801.7(k), which is the -- I
17 don't have it directly in front of me, but is it a
18 temporary correctional facility that is only
19 allowed to operate for three years?

20 MR. RUSHKOFF: That's right.

21 MEMBER ZAIDAN: What did DCRA rely on
22 to ensure that this would only operate for three
23 years?

24 MR. RUSHKOFF: In this case, DCRA
25 decided it would issue a certificate of occupancy

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1 for three years, so that the certificate of
2 occupancy just expires after three years.

3 MEMBER ZAIDAN: Okay. That has always
4 been my -- that has been a big point of confusion
5 in my mind because all of the documents we've seen
6 and I think Bannum has even testified to that
7 during this proceeding, that their contract is for
8 five years, this is going to operate for five
9 years. The regulation, despite all of this
10 confusion, is pretty clear that they can only
11 operate for three years.

12 MR. RUSHKOFF: Yes. I have --

13 MEMBER ZAIDAN: So I'm just wondering
14 what DCRA relied on. Now, if you were planning on
15 pulling the C of O after three years, I guess
16 that's something we need to deliberate on.

17 MR. RUSHKOFF: At the time the building
18 permit was issued, I haven't -- I'm not aware of
19 anything that was in front of DCRA at the time it
20 issued the building permit that would have led it
21 to believe it would be five years rather than up to
22 three years.

23 If you look at the two letters from the
24 year I think 2001, 2002, there were the two letters
25 there, there's no reference in there to anything

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1 about five years.

2 MEMBER ZAIDAN: There's a reference to
3 three years?

4 MR. RUSHKOFF: I think it's -- I think
5 they quote from -- I think they quote from the reg,
6 which would make it -- which says three years in
7 it. Yes, I think that's what they do.

8 MEMBER ZAIDAN: So DCRA's normal
9 permitting process for this type of use would be to
10 issue it for three years and pull the C of O after
11 three years. They don't ask to see contracts or
12 whatever type of agreements, the lease, anything?

13 MR. RUSHKOFF: That's right. That's
14 right.

15 MEMBER ZAIDAN: It's just issue the C
16 of O for three years and then pull it after three
17 years.

18 MR. RUSHKOFF: That's right. I mean, I
19 think that there's a lot of situations where people
20 ask DCRA to do things all the time. DCRA does not
21 go behind the application. In other words, you
22 apply, say you want to do a bowling alley. They
23 don't check to make sure, gee, have you ordered
24 bowling balls? We assume that the application is
25 disclosing to us what they want to do because we

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1 only authorize them to do what they have asked for
2 permission to do.

3 MEMBER ZAIDAN: Right.

4 MR. RUSHKOFF: If they decide they want
5 to go do something else, well, they don't have a
6 permit or they don't have a certificate of
7 occupancy to authorize what they're doing.

8 MEMBER ZAIDAN: Right.

9 MR. RUSHKOFF: And presumably they have
10 an incentive to tell us what they want to do,
11 because if they don't, they're not going to get a
12 permit authorizing it. I mean, that's --

13 MEMBER ZAIDAN: Right. Well, and I
14 cannot speak factually because I'm just kind of
15 speaking anecdotally on this, but I know there are
16 other areas of the regulations -- for example,
17 shared parking facilities -- that are required, and
18 again, I'm not quoting regulations, that are
19 required to have leases to show that two facilities
20 are being leased. Well, it's my understanding --
21 again, I'm speaking anecdotally, so I may be
22 incorrect on this -- but that DCRA requires to see
23 the lease before they issue the permit to know that
24 that regulation is satisfied.

25 What I'm kind of pushing you on here is

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1 what did they -- what did you guys rely on to know
2 that this is only going to operate for three years
3 under a lease agreement?

4 MR. RUSHKOFF: Right.

5 MEMBER ZAIDAN: Now, if your contention
6 is that you rely on the good faith of the applicant
7 and you are going to pull the C of O if they're
8 wrong or you're going to pull the C of O after
9 three years, then that's what we have to deliberate
10 on.

11 MR. RUSHKOFF: I mean, we could issue
12 the -- first of all, this is the appeal from the
13 building permit. A person can get the building
14 permit and not even have a contract yet, okay? So
15 we don't say, "Can we see the contract."

16 I mean, presumably someone wants --
17 someone is interested in a temporary correctional
18 institution, and someone is interested in providing
19 that service, and they say, "Well, let's first see
20 if we can get a facility for it in a C-M District."
21 So they find a facility.

22 The first thing they do is say, "Can we
23 get permission to even convert this thing? Do we
24 have anything to talk about?" So they come
25 forward.

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1 "Can we have permission to convert this
2 to a community correctional center."

3 "What's that?"

4 "Well, you know, it fits within
5 temporary detention or correctional institution."

6 "Fine."

7 Okay. So then they get a building
8 permit. They may never do anything, they may never
9 get a contract to use it. They may just get this
10 permit and then they just end up throwing it away
11 because no one -- they can't get the business.

12 MEMBER ZAIDAN: Without getting a C of
13 O.

14 MR. RUSHKOFF: Right. Right.

15 MEMBER ZAIDAN: Well, I'm not trying to
16 advocate that it's an easy regulation to
17 administer. It's tough when regulations rely on
18 lease agreements and contracts.

19 MR. RUSHKOFF: I think the hard issue
20 here, which I will just throw out because we just
21 don't have an answer to at this point, is what does
22 it mean to be a permanent -- I mean, clearly
23 something that's a permanent correctional facility,
24 okay, is not authorized.

25 MEMBER ZAIDAN: That's true.

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1 MR. RUSHKOFF: I mean, we don't have
2 any guidance on this issue, and one reason I think
3 that -- I think one reason why we were hesitant
4 earlier to cut off more than we can process in this
5 proceeding is because there's a whole issue as to
6 if your intention is to operate a permanent
7 facility and you seek authorization to operate a
8 temporary facility, and then you just kind of let
9 that expire, you know, was that a temporary
10 facility because you never got authorization to go
11 past three years and it just ended, or was it a
12 permanent facility because --

13 MEMBER ZAIDAN: Well, it seems to me --
14 in other words, you just said that after the three
15 years, you would pull the C of 0 --

16 MR. RUSHKOFF: Right.

17 MEMBER ZAIDAN: -- and the operation
18 would be operating illegally.

19 MR. RUSHKOFF: That's correct.

20 CHAIRPERSON GRIFFIS: Is there anything
21 that precludes from reapplying for a C of 0 at the
22 same site?

23 MR. RUSHKOFF: I mean, it seems to me
24 at that point you would deny the application to
25 renew because --

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1 MEMBER ZAIDAN: I would hope so.

2 MR. RUSHKOFF: -- the whole idea was it
3 was supposed to be temporary for up to three years.

4 So, you know, I don't know what happened -- I
5 mean, we have gotten into the issue of this
6 contract. Now that we finally got the contract
7 last week, the contract actually raises more
8 questions than it answers, because it's a one-year
9 contract with four options to renew at the
10 discretion of the Bureau of Prisons, okay?

11 So the question is, let's say in the
12 fourth year they renew that, you know, they seek to
13 renew the contract, okay? And let's say we say,
14 "Hey, your three years is up." I don't even know
15 if under the contract are they free to say, "Look,
16 we will house them somewhere else in the District"
17 and, you know, try to do that. I don't know what
18 happens at that point.

19 MEMBER ZAIDAN: Well, it seems to me it
20 would all relate to the C of O. You've got the
21 contract issue, and then if I am reading the RFP
22 correctly, I think the RFP's proposed scope of work
23 was for five years. So it seems to me this is all
24 kind of turning on this five-year issue.

25 CHAIRPERSON GRIFFIS: Let's go to the

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1 heart of the matter, and that is DCRA's review, as
2 you said, of the application, the materials
3 presented in the application which led DCRA to
4 issue a certificate of occupancy for a community
5 corrections center.

6 First of all, you stated and one of the
7 important questions is how was temporary
8 established? And you said, well, you guys had
9 built in that you would issue a C of O only for
10 three years.

11 You have also given testimony today and
12 in your briefing about the similarities for the
13 ability of a CCC to fit within the definition of
14 CBRF and adult rehabilitative home.

15 So in reviewing to issue a permit for a
16 CCC, the first question is, is that a defined term
17 in the zoning regulations?

18 MR. RUSHKOFF: A CCC is not a defined
19 term in the zoning regulations.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. RUSHKOFF: I think that --

22 CHAIRPERSON GRIFFIS: So then issuing a
23 CCC, it's essentially a category that was created
24 by DCRA to put on the permit; therefore, they will
25 have had and do have a substantial definition of

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1 what that is.

2 What I have heard you say and in your
3 briefing, in one of your footnotes, you're saying
4 that there is an overlap, there are similarities.
5 One could be a subset of another and be then
6 limited and it's more specific. My point being how
7 do you reconcile the definition in 199 as you have
8 read and stated, the similarities for CCC, and
9 801.2, which clearly states for purposes of this
10 subsection a community based residential facility
11 shall not be considered a commercial use, which
12 would obviously preclude that in the C-M zone?

13 MR. RUSHKOFF: In that provision, if
14 you are -- my recollection of that provision is
15 that if you're considered a commercial use, then I
16 believe you're then allowed, based on your status
17 as a commercial CBRF, you would be allowed in that
18 district, okay?

19 What we're saying is --

20 CHAIRPERSON GRIFFIS: Let me clarify.

21 MR. RUSHKOFF: Okay.

22 CHAIRPERSON GRIFFIS: The point is that
23 a CBRF would not be allowed to be counted as a
24 commercial use that would make it allowable. It
25 would have to then go to 801.7, which is obviously

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1 what we're distinctly talking about.

2 MR. RUSHKOFF: That's right.

3 CHAIRPERSON GRIFFIS: And that's where
4 the specific comes.

5 If I'm following your argument, you're
6 saying, okay, well, a CCC as presented in the
7 application and the material reviewed by DCRA for
8 the permit, it fell within the parameters of a CBRF
9 and a adult rehabilitative, but also somehow met
10 this more stringent requirement of 801.7 saying
11 that it's a temporary detention and correctional
12 institution.

13 I still don't understand -- I think
14 it's been asked now, this would be three times --
15 but how DCRA actually made that distinction of,
16 one, a use that's not defined CCC in the
17 regulations and put it into the most specific, and
18 that being the temporary detention or correctional
19 institution.

20 MR. RUSHKOFF: Well, without having --
21 in the record, we have two letters from Bannum
22 where they said that their intention was to run a
23 temporary detention or correctional institution for
24 a period of up to three years at a particular --
25 and they were interested in that location on Adams

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1 Place. Then they seeked permission to convert a
2 building to a community correctional center, okay?

3 Now, whatever a community correctional
4 center is, and presumably there's a range of
5 community correctional centers, I would imagine,
6 you have the term "correctional center" in there,
7 okay, so certainly, while it may not be true that
8 every single community correctional center would
9 qualify as a correctional or detention institution
10 -- there may be something that doesn't -- the
11 question here is, they are asking for authority to
12 convert a warehouse into a community correctional
13 center. Once they do that, if they want to then
14 get a certificate of occupancy and operate it, they
15 will have to operate it as a temporary detention or
16 a correctional center.

17 CHAIRPERSON GRIFFIS: But the first
18 step for zoning review and approval is the permit.

19 MR. RUSHKOFF: Right.

20 CHAIRPERSON GRIFFIS: It had to be
21 approved. Are you saying that there is a different
22 zoning review for a certificate of occupancy than
23 there is for a permit issue?

24 MR. RUSHKOFF: No.

25 CHAIRPERSON GRIFFIS: Okay. So I don't

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1 see how you're --

2 MR. RUSHKOFF: One involves they want
3 to convert a building, okay? They want to convert
4 a building from a warehouse to something they call
5 a community correctional center, and they have also
6 disclosed that their ultimate goal is to operate
7 the community correctional center within the
8 meaning of 801.7(k). That is their intent, okay?

9 CHAIRPERSON GRIFFIS: So what was
10 presented? How did DCRA make that decision? If
11 we're having such a hard time seeing the clear --

12 MR. RUSHKOFF: I guess -- you know, the
13 way DCRA made the decision is by saying, is a
14 temporary detention or correctional facility
15 allowed in a C-M District, okay? And it was a
16 relatively straightforward thing. The thought
17 process was, is this a use that's allowed in the
18 district? Okay. Then we can authorize them to
19 convert the building for that use and then to get a
20 certificate of occupancy for that use. If they
21 wander from that use, okay, then they are subject
22 to enforcement or revocation or something like
23 that, but as long as -- and I think part of the
24 reason was as long as their certificate of
25 occupancy tracks the language of the regulation,

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1 then sort of by definition, they've got to comport
2 themselves with the requirements of 801.7(k).

3 CHAIRPERSON GRIFFIS: What was the
4 specific information in the application that moved
5 this community correctional center out of adult
6 rehabilitative home into the temporary detention
7 and correctional institution?

8 MR. RUSHKOFF: It was not moved out of
9 adult rehabilitative home. It clearly -- this is
10 an adult rehabilitative home.

11 CHAIRPERSON GRIFFIS: I'm sorry. And I
12 say that only because you said the process of
13 thought at DCRA was, yes, this could fit within
14 that, but somehow moves to a more specific level.

15 MR. RUSHKOFF: No. It did fit within
16 adult rehabilitative home.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. RUSHKOFF: I mean, I don't even
19 know if there was --

20 CHAIRPERSON GRIFFIS: Is an adult
21 rehabilitative home allowed under 801.7?

22 MR. RUSHKOFF: An adult rehabilitative
23 home is only allowed under 801.7(k) if it is a
24 temporary adult rehabilitative home and an adult
25 rehabilitative home that is operated as part of the

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1 correctional system so that escapes from the adult
2 rehabilitative home are prosecuted as prison
3 breaks. So it's a narrow, narrow subcategory of
4 adult rehabilitative home.

5 CHAIRPERSON GRIFFIS: Okay. Are there
6 other sections in 801 of which this permit
7 application came under review that you are aware?

8 MR. RUSHKOFF: Just 801.7(k) is the
9 only clause that it could -- first of all, we're
10 talking about a C-M District, so that's -- the only
11 thing close to permitting a facility like this in a
12 C-M District would be this temporary correctional
13 institution.

14 CHAIRPERSON GRIFFIS: Is it your
15 testimony, then, that DCRA, in reviewing this, did
16 not review under Section 805 external effects of
17 permit applications? "When filing an application,"
18 805.1 states, "for a building permit or certificate
19 of occupancy with the Department of Consumer and
20 Regulatory Affairs for a use permitted under 801.7,
21 the applicant shall submit with application three
22 copies of site plans showing buildings," and (b) is
23 more pertinent: "A description of any operations
24 that would be subject to the standards of external
25 effects."

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1 MR. RUSHKOFF: Well, first, I would say
2 I am not testifying -- I am not testifying on
3 behalf of DCRA; I'm simply making legal argument.
4 There is nothing in the record that I'm aware of
5 that deals with those issues. That's not an issue
6 that was raised by the ANC, a failure to consider
7 those external effects, so I did not prepare that
8 issue because I didn't realize it was an issue
9 today.

10 CHAIRPERSON GRIFFIS: I think we're
11 going to ask for you to submit into the record
12 whether that was or was not done.

13 MR. RUSHKOFF: Okay.

14 CHAIRPERSON GRIFFIS: I think it's
15 fairly pertinent and the appeal is that the permit
16 was issued in error and clearly there are tests
17 that have been put to us for it. But the Board as
18 its discretion I believe can move a little bit
19 beyond it. It seems to be a very easy thing to put
20 to rest. But -- well, we will leave it at that.

21 Let me stop there and allow others.
22 Ms. Miller?

23 MEMBER MILLER: Mr. Rushkoff, when I
24 look at the legislative history of 801.7(k), it
25 looks like it was enacted in '71, and I'm wondering

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1 if there were any other facilities that fall into
2 this category that building permits were issued for
3 or is this the first.

4 MR. RUSHKOFF: You mean any other
5 particular buildings?

6 MEMBER MILLER: That constituted
7 temporary detention facilities that we can look at
8 to see, well, what did they look like.

9 MR. RUSHKOFF: Oh. I can't answer your
10 question, but I can -- if we are going to be
11 researching external effects, certainly I can find
12 out. So the question specifically is what other
13 types of buildings have been allowed to operate
14 under 801.7(k) so we can see what they are?

15 CHAIRPERSON GRIFFIS: When was this
16 done? In 1987?

17 MEMBER MILLER: It says 1971.

18 MR. RUSHKOFF: Yes.

19 MEMBER MILLER: So there's been over 30
20 years since this was enacted. Yes, that's number
21 one, to see what this animal is, because that is
22 part of what this is about, what is a temporary
23 detention facility.

24 Also, is it your legal interpretation
25 that this provision can be applied to the overflow

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1 of prison population now and not just of the prison
2 population in 1971 that was creating the problem?
3 For instance, this is outside of this record, but
4 you made reference to newspaper articles that talk
5 about not having enough places for prisoners in
6 D.C. Jail to go to.

7 Number one, do you read this
8 interpretation as allowing -- as providing for that
9 kind of situation?

10 MR. RUSHKOFF: Yes.

11 MEMBER MILLER: And I understand that
12 there are some inmates presently at this facility.
13 Are any of them from the D.C. Jail?

14 MR. RUSHKOFF: I don't believe so. I
15 mean, I think I'm not in the best position to opine
16 on that, but my understanding is that this is run
17 by the Bureau of Prisons and it would be people
18 coming from the federal system as opposed to the
19 D.C. Jail, but I'm sure that Bannum can correct me
20 if I'm wrong on that.

21 MEMBER MILLER: Okay.

22 MR. RUSHKOFF: I think the article I
23 had referred to earlier was referring not so much
24 to specifically the problem of jail overcrowding,
25 but the article -- and I believe the article

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1 referred extensively to this proceeding -- was
2 referring to the problem of a large number of
3 people are expected to need the transitional
4 halfway-house type facility, that that's what the
5 media has been covering, and that's due to the fact
6 that there were a lot of drug arrests I believe in
7 the early '90s and these people now are finally
8 reaching the end of their sentences and many, many
9 people are going to need halfway house facilities
10 from the federal system.

11 MR. TEMPLE: Excuse me. To the extent
12 that the gentleman is referring to an article that
13 is not admitted into evidence, I would move that it
14 be struck from the record for any purposes of
15 consideration by this Board.

16 CHAIRPERSON GRIFFIS: I wasn't
17 following. What article are you --

18 MR. TEMPLE: It's the second time it
19 has come up before the panel today. Thank you.

20 MEMBER MILLER: We can strike that from
21 the record, but I think the general point is, would
22 your type of facility be used to absorb an overflow
23 of prisoners in the District of Columbia, and I
24 think the answer was that as of now, and we're
25 going to hear more testimony, the prisoners are

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1 coming from the federal system.

2 CHAIRPERSON GRIFFIS: Right. Okay.
3 Let's clarify first of all what you are submitting
4 in terms of Ms. Miller's request to look at other
5 similar -- I think we're going to have to do that
6 in two steps. I think what I would like to do,
7 since it was established in 1971, get a list of all
8 permits, just the numbers so that we will be able
9 to count them, as to those issued in the C-M zone
10 under 801.7(k), and then we can establish -- if
11 there are two, we can look at the specific
12 projects. If there are 659, we may have to take
13 another course. So as quickly as that can come in,
14 then we can figure out which way it would go.

15 Mr. Parsons, I believe you had some
16 questions.

17 COMMISSIONER PARSONS: Well, following
18 up on Ms. Miller's question or one that has been
19 bothering me all afternoon, and you started it, is
20 this -- going back to 1971 and realizing the
21 genesis of this particular provision, how is it,
22 then, that DCRA determined that this is an
23 emergency -- that is, the jails are overcrowded,
24 the prisons are bursting and we need temporary
25 relief for a three-year period until more

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1 facilities can be built in the District of
2 Columbia?

3 MR. RUSHKOFF: I mean, I don't think
4 DCRA saw its role as analyzing the -- and I don't
5 think DCRA will ever be well-equipped to make a
6 determination as to whether or not there is an
7 emergency in either the federal or the D.C. prison
8 system. I think maybe the -- I can't imagine that
9 the intent of the regulation was for DCRA to engage
10 in that inquiry.

11 There are references in the legislative
12 history to concern that the term "temporary" by
13 itself would not work, that you needed a little
14 more, and I believe -- unless -- well, there was
15 concern that they had to be very, very clear about
16 the temporary nature of it, and that's why there's
17 so much seemingly duplicative language in 801.7(k).

18 There's a reference to temporary, there's a
19 reference to leased property, there's a reference
20 to three years. And I don't know the answer, but
21 my guess would be that that was part of an effort
22 to make sure that it would only be used for bona
23 fide temporary facilities, the idea that you
24 wouldn't set up a whole facility on leased property
25 for less than three years. Presumably it's very

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1 expensive to get started with one of these. You
2 wouldn't do it unless there was some sort of
3 emergency because it may not really make economic
4 sense to do it this way, that you would normally
5 acquire a facility and run it on a permanent basis,
6 and presumably the amount of time it takes to get
7 one of these things set up is going to make it
8 economically infeasible if you know you've got only
9 up to three years to run it. That is my guess, but
10 I don't know the answer.

11 COMMISSIONER PARSONS: Why is it you
12 don't think that DCRA should reach out and come to
13 such a conclusion that there is an emergency and a
14 temporary need?

15 MR. RUSHKOFF: I think that trying to
16 make that determination is far beyond DCRA's
17 expertise, especially the individuals who would be
18 trying to make that decision. I think to be able
19 to evaluate what the needs are of either the
20 federal or the D.C. correctional institution -- for
21 example, a representation was made by people in the
22 federal system that there is an emergency; I don't
23 see how DCRA could ever look beyond that and
24 conclude that there isn't an emergency.

25 I mean, I suppose that you could have

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1 some kind of pro-forma form that's filled out, but
2 one thing, the regulation doesn't actually refer to
3 an emergency. I think that was the legislative
4 history.

5 Following the regulation, the
6 regulation refers to temporary, it refers to leased
7 property, and those are things that DCRA certainly
8 can either evaluate at the beginning, you know, and
9 say, "We will not give you a building permit unless
10 you show us the lease," or they can say, "Look, we
11 are giving you authorization to go ahead on a
12 temporary basis on leased property," you know, and
13 if those things don't pan out, if it is not leased
14 property, if it is not temporary, if they're going
15 beyond three years, it is very easy for DCRA to,
16 you know, take action if one of those bright lines
17 is crossed.

18 COMMISSIONER PARSONS: Well, if we
19 carry this -- if that threshold isn't crossed, if
20 this was a temporary emergency that the Bureau of
21 Prisons could attest to, not the applicant, but
22 some official agency could attest to, and we waived
23 that, we say, "Well, that's not DCRA's
24 responsibility, they're just going to read the
25 letter of the law, and if it says 'temporary,' come

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1 on in."

2 So your first test is, are you a CBRF
3 and the answer is yes; are you temporary, and if
4 you say, "I'm temporary, Scout's Honor, I'm
5 temporary," then you can go into C-M-1, you see. I
6 mean, that's where this is leading.

7 MR. RUSHKOFF: You mean C-M -- okay.
8 First of all, you wouldn't say, "I am a CBRF"; what
9 you would say, you would say, "I'm a correctional
10 institution," okay?

11 COMMISSIONER PARSONS: Right.

12 MR. RUSHKOFF: And you would say, "I'm
13 temporary, I'm on leased property," and then you're
14 allowed in there.

15 Now, I think the concern about -- I
16 think the main concern with things not being
17 temporary, at least when I went through the
18 statutory scheme before, I think the main concern
19 is not that putting a permanent facility in a C-M
20 District poses some kind of problem that a
21 permitted facility in a C-3 District doesn't pose;
22 I think the concern there is with, I guess, the
23 fairness to federal prisoners of putting people --
24 setting up a permanent facility in a manufacturing
25 zone.

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1 I have to say that to have DCRA in the
2 first instance trying to decide is this really
3 temporary or is this really permanent, I mean, it's
4 real -- I even wonder whether or not that's even a
5 valid concern in terms of what are the legitimate
6 regulatory interests of the District of Columbia.
7 Is it really any of our business whether or not the
8 Bureau of Prisons is putting people in a C-M
9 District temporarily or permanently, because the
10 harm there is on the prisoner, not -- in terms of
11 our regulatory interests, I'm not sure that it's
12 within the scope of what we're concerned about.
13 We're concerned about, you know, whether or not
14 these various uses fit together within the
15 District, and so --

16 COMMISSIONER PARSONS: What we would be
17 concerned about is the welfare of those who are
18 occupying the space.

19 MR. RUSHKOFF: Right.

20 COMMISSIONER PARSONS: And it's clear
21 that the Zoning Commission intended that CBRFs be
22 located in different zones than this one, so that
23 when prisoners, if they are called that, are moving
24 back and forth on their way to work and acclimating
25 themselves back in society, they are not walking

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1 through a manufacturing zone, and that was the
2 intent of the zoning regulations that I'm familiar
3 with.

4 So now we reach back 30 years to an
5 entirely different industry that didn't even know
6 what a community correction facility was, or center
7 was, and grabbing that temporary aspect of it and
8 drawing it forward 33 years and saying, "Oh, it
9 fits," and that's what I'm having trouble with.
10 But I will stop at that.

11 CHAIRPERSON GRIFFIS: Other questions
12 from the Board?

13 MEMBER MILLER: I just want to follow
14 up on Mr. Parson's comments, because that has
15 gotten me thinking in a different direction, too,
16 and I would like Mr. Rushkoff to respond to this.

17 I'm looking at the purpose of the
18 amendment, and it says, "The purpose of this
19 amendment is to provide for interim or temporary
20 locations for persons being confined by the court
21 until permanent facilities can be acquired and
22 developed for such purposes," and then I'm hearing
23 that the purpose of this facility, though, is
24 something very different, it's to house inmates
25 temporarily until they are free to go back to

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1 society. I just don't know if these -- these don't
2 seem to fit.

3 MR. RUSHKOFF: Oh, you're saying the
4 use of the word "temporary"? "Temporary" clearly
5 refers not to whether the prisoners are there
6 temporarily. I think everyone agrees that the
7 facility itself is what is supposed to be
8 temporary, okay?

9 CHAIRPERSON GRIFFIS: That's not what
10 she's saying.

11 MEMBER MILLER: But the reason it's
12 supposed to be temporary is different, it seems to
13 me.

14 MR. RUSHKOFF: The reason it's supposed
15 -- well, I think the reason it's supposed to be
16 temporary is it's supposed to deal with overflow,
17 with managing a prison population. It's not
18 supposed to be --

19 CHAIRPERSON GRIFFIS: But what her
20 point is, is that temporary as it's written here
21 talks about this is where prisoners will be housed
22 while their new prison is being built, not that
23 this is a temporary three-year lease and then the
24 facility goes away or that prisoners or clients or
25 however you want to refer to them are there for a

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1 temporary stay.

2 MR. RUSHKOFF: I mean, I don't know if
3 it's that specific, temporary while a new prison --
4 it could be it's here because we project over the
5 next two years we will have more prisoners than we
6 have room for, and it could be that after the
7 two-year period is over, you have taken care of the
8 excess population, the population then drops, and
9 your permanent facilities are now sufficient. I
10 mean, there could be many situations where you need
11 to set up something on a temporary basis.

12 CHAIRPERSON GRIFFIS: There could be,
13 but are you saying in 1971, that's all what they
14 were thinking, the Zoning Commission, in writing
15 that?

16 MR. RUSHKOFF: Well, I don't know
17 everything what they were thinking. I think they
18 were thinking that at times, you have more people
19 in jail than you can accommodate, and there has to
20 be --

21 CHAIRPERSON GRIFFIS: They weren't
22 anticipating a large prison system that services
23 the District of Columbia may be closing and that
24 there is an overflow of prisoners, that there may
25 have been a time at which temporary provisions

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1 would have to be made before more permanent
2 situations were made?

3 MR. RUSHKOFF: I mean, they may have
4 been reacting -- it often happens that you react to
5 a specific crisis. There may have been, you know,
6 a specific crisis that's described in the
7 legislative history involving overcrowding at a
8 particular jail that caused them to create a rather
9 general regulation that would deal presumably not
10 just with that situation in 1970 or '71, which they
11 could have set forth that situation. They could
12 have said, "We have a problem right now with
13 overcrowding," and they could have put that in the
14 regulation: "To the extent that people are
15 addressing this particular problem, you can do it
16 through this exception." That's not what they
17 said. They used general language that presumably
18 could be used in circumstances in the future. They
19 didn't limit it to D.C. facilities, so presumably
20 it could apply to a federal facility.

21 CHAIRPERSON GRIFFIS: So you're saying
22 if we had sections in the zoning regulation that
23 actually expired themselves, that that section
24 would expire when the crisis expired?

25 MR. RUSHKOFF: No. I'm just saying

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1 that if the intent is to have a regulation deal
2 with a relatively narrow circumstance, that should
3 be set forth in the regulation. I think if you
4 have a relatively broad regulation, to go beyond
5 the plain meaning and to say this should be
6 interpreted in light of the legislative history to
7 give it a much narrower meaning than it has on its
8 face, I'm just not sure that that's a correct way
9 of construing regulations.

10 CHAIRPERSON GRIFFIS: Okay.

11 Any other questions from the Board?

12 [No response.]

13 CHAIRPERSON GRIFFIS: Okay. One last
14 time, then. You indicated to Mr. Parsons that you
15 wouldn't come in if you were going to a C-M zone
16 and say you have a CBRF, but it's of a temporary
17 nature. But you need to clarify again for me, you
18 have said that the temporary detention or
19 correctional institution is actually a further
20 definition of an adult rehabilitative home, which,
21 in fact, is a CBRF; is that correct?

22 MR. RUSHKOFF: Yes, except that it
23 could potentially be a youth rehabilitation --
24 rehabilitative home. What I'm saying is --

25 CHAIRPERSON GRIFFIS: Still fitting

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1 within the definition, --

2 MR. RUSHKOFF: Right.

3 CHAIRPERSON GRIFFIS: -- the current
4 definition of CBRF.

5 MR. RUSHKOFF: The reason -- I mean,
6 the fact is that just applying the language of the
7 regulations, it's hard without twisting and turning
8 to say that -- and I'm not going to twist and turn.
9 I mean, these things fit within the definition of
10 CBRF, at least the language we have here.

11 Also, not twisting and turning, they
12 seem to fit clearly within the definition of
13 correctional institution, and, in fact, looking at
14 the definition in this Bannum -- the attachment --
15 the explanation of terms that Bannum submitted, I
16 think it's from either their contract or it's from
17 -- when they define community correction center,
18 they say -- they specifically use the term "halfway
19 house," they also say "correctional facility." So
20 the idea that there is such a thing as a halfway
21 house and it's distinct and different from a
22 correctional institution just doesn't seem to
23 comport with these facilities.

24 Now, I -- you know, just the reality of
25 it --

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1 CHAIRPERSON GRIFFIS: Okay. The
2 facility -- are you saying, then, the regulations
3 themselves make no distinction between CBRF and the
4 temporary detention correctional?

5 MR. RUSHKOFF: No, they make a
6 distinction. One is a narrow subset of the other.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. RUSHKOFF: Between CBRF, you get to
9 either adult or youth rehabilitation facility, and
10 then within -- they could then -- if they are
11 correctional and temporary, they would then fit
12 within 801.7(k).

13 But in terms of the analysis, I don't
14 think, when you get one of these things, you say,
15 is it a CBRF? I don't think that's where -- I
16 think what you -- you short-circuit that and you go
17 straight to the issue of: Is this a correctional
18 institution? Is this a detention institution? Is
19 it temporary? You know, is it on leased property,
20 et cetera?

21 CHAIRPERSON GRIFFIS: Okay. I have
22 clarity on your point now.

23 MEMBER ETHERLY: Not so much a
24 question, Mr. Chairman. I would just note that I
25 think the problem with the analysis, Mr. Rushkoff,

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1 is you run into you still are going to get hung up
2 on that language regarding if an establishment is a
3 CBRF as defined in the section, it shall not be
4 deemed to constitute any other use. I am still
5 struggling with that and I haven't heard anything
6 to sway me from looking away from that language.

7 The second piece, and I mentioned that
8 earlier, but the second piece that I didn't mention
9 is you talk about kind of perhaps straining or
10 torturing the analysis, and I'm paraphrasing, not
11 using your words, --

12 MR. RUSHKOFF: Right. That's about
13 what I said.

14 MEMBER ETHERLY: -- but just
15 paraphrasing there. That doesn't necessarily
16 follow that CBRF and temporary detention facility
17 -- I want to make sure I have my terms right --
18 that CBRF and temporary detention or correctional
19 institution -- you're almost suggesting that they
20 can be used interchangeably because you're saying
21 this could also be viewed as a adult rehabilitative
22 home or a youth rehabilitation home.

23 Why not simply -- the reason it doesn't
24 make sense to me, let me just put it like this,
25 801.7(k) comes along in 1971. The CBRF law comes

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1 along in 1981. You have a very clear recitation of
2 all of the subsets of CBRF in the zoning regs under
3 the definitions as we see set forth in Title 11.
4 Why not simply say that temporary detention center
5 or temporary correctional facility is a subset of
6 CBRF?

7 MR. RUSHKOFF: Let me respond first to
8 the first point, had to do with the sentence that
9 you are hung up on about the "any other use." I
10 don't see how that could be read any other way than
11 "any other use" referring to a non-CBRF use because
12 everything in the sentence says if it's a CBRF, it
13 shall not constitute any other use.

14 So, for example, I will use the bowling
15 alley analogy where if something were -- you
16 couldn't say this is both a community based
17 residential facility and a bowling alley because a
18 bowling alley is not a CBRF use; but if a
19 correctional institution is always a CBRF, then
20 you're not talking about a non-CBRF use.

21 Now, I think the second -- I'm sorry,
22 what was your second point?

23 MEMBER ETHERLY: The second point was
24 more just an observation of trying to make the
25 analysis work. If 801.7(k) comes along in 1971 and

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1 your CBRF reg comes along in 1981, and you look
2 back at the legislative history, --

3 MR. RUSHKOFF: Right.

4 MEMBER ETHERLY: -- why not simply
5 include temporary detention or correctional
6 institution as a subset of a CBRF?

7 MR. RUSHKOFF: The reason is -- I can
8 respond to that, which is that here, they list
9 seven subcategories. Those seven subcategories,
10 they say -- they say every CBRF has to fit within
11 one of those seven subcategories. If it doesn't
12 fit -- that's a way of defining CBRF -- if it
13 doesn't fit within one of those seven, it is not a
14 CBRF, okay? You don't need to list temporary
15 detention or correctional facility because that --
16 first of all, it's temporary. There's no point in
17 confusing the issue by adding that. But let's say
18 why not add detention or correctional facility?

19 MEMBER ETHERLY: I hear where you're
20 going, Mr. Rushkoff. I just think --

21 MR. RUSHKOFF: The answer is that it is
22 split between adult rehabilitation home and youth
23 rehabilitation home, and it's a subset of each.

24 MEMBER ETHERLY: I hear where you're
25 going.

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1 MR. RUSHKOFF: So the purpose here was
2 simply to try to say, okay, what's a CBRF? Can we,
3 through seven categories, define the whole
4 universe? Yes, they did. These are the seven, and
5 if it's not within these seven, it's not a CBRF.
6 That's why they did that, not to say that there
7 aren't subcategories that include a little of A and
8 a little of F, okay? That's --

9 MEMBER ETHERLY: I just think the only
10 way that analysis works for you is if you do do
11 away with the language of, "If it's a CBRF, it
12 can't be something else." If you kind of look away
13 from that sentence, then I think it works and I can
14 go with you, but you take those two together,
15 there's still a challenge there.

16 Thank you.

17 Thank you, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Sure.

19 Any other questions? No other
20 questions from the Board?

21 [No response.]

22 CHAIRPERSON GRIFFIS: Very well. We
23 are going to take a ten-minute break, let people
24 organize, and we will come back for
25 cross-examination.

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1 [Recess.]

2 CHAIRPERSON GRIFFIS: This is the
3 Board's thinking at this point. First of all, I
4 misspoke a little bit, Mr. Rushkoff, that we were
5 going to get into cross-examination. As you are
6 the attorney representing, you will not be
7 cross-examined. So what I -- the Board is now
8 prepared to move on to Intervenor's, the Bannum
9 case, and what I would like to do is give a little
10 bit of direction.

11 Of course, it's your discretion, but I
12 know you had said at last that you had out-of-town
13 witnesses. What we're going to proceed with is you
14 can call those obviously in any order you want. We
15 will have cross-examination of the witnesses after
16 testimony, and that way, conceivably you can
17 dispense and not recall witnesses, but obviously it
18 gives you a little bit more flexibility. It also
19 gets through a complete aspect of it.

20 If we don't finish the entirety of it
21 this evening -- I would like to be a little
22 rational and not be here until ten or eleven. We
23 started at eight o'clock this morning, so our
24 attention span is limited. It goes until seven
25 o'clock, I guarantee you, and after that, there are

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1 no guarantees. But my point being, very directly
2 and seriously, is I would like to finish this
3 tonight, but in case, I propose that we -- I give
4 you that direction. So if you're ready to proceed,
5 we can move ahead.

6 MR. TEMPLE: Do I understand, for the
7 record, that Bannum has an hour for their
8 case-in-chief?

9 CHAIRPERSON GRIFFIS: That's an
10 excellent point. I'm about to ask how long you
11 think their case will be for presentation.

12 MR. CAMARDO: I would like to make a
13 quick opening statement, and I think the Board has
14 come up with various questions. I've got those
15 questions jotted down, or concerns. We really want
16 to address those concerns. I have four witnesses
17 that will address those concerns very specifically
18 and emphatically.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. CAMARDO: So if it runs over a
21 little bit of an hour, we've been at it all this
22 time, I really appreciate it if the Board can hear
23 those witnesses because they will get into the
24 overflow, to the intent of the regulations. They
25 will also get into what a CBRF is versus what a

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1 community corrections center is. There is a
2 different. It's not the same thing. And we can
3 get into those issues.

4 CHAIRPERSON GRIFFIS: Right. Okay.
5 We're going to have openings, we're going to have
6 four witnesses. What I would like to do is have
7 you try and define it within the 60 minutes. Of
8 course, our questions don't count towards that
9 time, nor does cross-examination. So that's
10 presentation of your material.

11 I will give a little bit of direction
12 or a lot of direction depending on the need in
13 terms of if we're going way beyond the scope of
14 what we feel is before us for the appeal, and that
15 will keep some time also.

16 With that, what I would like to do is
17 ask the Board, as we go through, we will not
18 interrupt with questions at that time, but we will
19 hold questions until the end. We will entertain
20 Board questions first of the witnesses and after
21 our Board questions, we will go to
22 cross-examination, and then that witness will be
23 finished. So moving right along, let's get to it.

24 MR. CAMARDO: Well, I'm prepared to
25 give an opening, and I'm also prepared to call four

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1 witnesses.

2 OPENING STATEMENT BY COUNSEL
3 ON BEHALF OF INTERVENOR BANNUM

4 MR. CAMARDO: In the opening statement,
5 I want to focus on what has been submitted to the
6 Board to help you make this determination. To me,
7 I think it's very clear. I think that we are an
8 801.7(k), we are temporary, we are a correctional
9 institution, and I will show you some court cases
10 on that in a minute, I will show you again the
11 statement of work.

12 We are on leased property, there's no
13 doubt about that, we're on leased property, and
14 we're there not to exceed three years, and we're --
15 I think we're making this a lot more complicated
16 than what it really is.

17 Now, we went to the District, we told
18 them exactly what we were doing. We went and filed
19 our building permit. In our building permit, we
20 said we want to operate a community corrections
21 center. There was some objection from the
22 community. They made us revise that. We came
23 forth and in both cases we were issued valid
24 permits, and the last permit that was issued says
25 three-year temporary use, temporary 150-bed

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1 community corrections center on leased property for
2 a period not to exceed three years. As long as you
3 fit within that definition, regardless of anything
4 else, you meet that requirement.

5 I think the other thing that really
6 troubles me is the Board reviewing this -- there's
7 a couple different reviews that a board can
8 undertake. One is an arbitrary and capricious
9 determination; another one is a de novo review.

10 Now, the permits do have some
11 presumption of validity. They have been issued,
12 they have been considered. The gentleman that work
13 for the District have been around for many years,
14 they know what the terminology is, they know what
15 the rules and regulations are, and they just don't
16 issue these, I believe haphazardly in some sort of
17 scheme with Bannum to circumvent the zoning laws.
18 So I think there is some presumption of validity to
19 be given to those.

20 I think it's also up to the ANC or Mr.
21 Temple, whoever he represents, the ANC or he
22 represents the people or whoever the party that has
23 taken this appeal, I think it's up to them to come
24 forth and show this Board why we don't fit into
25 801.7(k) category, and I think he has failed

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1 miserably.

2 As a matter of fact, when you look at
3 our brief that we submitted for affirmance or
4 dismissal, we have shown that his seven witnesses
5 or six witnesses came forth and they all supported
6 Bannum's position. As a matter of fact, Mr. Temple
7 invited the Board to go forth and look at our
8 statement of work. He submitted the statement of
9 work. What does that statement of work say? It
10 says a CCC is considered a penal or correctional
11 facility. That meets within the definition of a
12 correctional institution. Very clear. Now, Mr.
13 Temple submitted that.

14 Mr. Mendleson came forth and he
15 basically admitted that we're only going to be
16 there for three years. Mr. Nobel came forth on
17 cross-examination and basically established the
18 fact that we're going to be there for three years,
19 we are a community corrections center, we're also a
20 correctional institution. I mean, these are his
21 witnesses. Regina James came forth under
22 questioning from Mr. Etherly and basically
23 established that she's really troubled by the fact
24 --

25 MR. TEMPLE: Mr. Griffis?

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1 MR. CAMARDO: -- this may extend beyond
2 three years.

3 MR. TEMPLE: Mr. Griffis, I have to
4 object. This is not opening statement; this is a
5 response to our case. He's not talking about what
6 he is going to prove, and I think that that -- I
7 mean, he had the opportunity -- this is his motion
8 for affirmance being repeated and it's consuming
9 valuable time unless this time is going to be
10 counted against him. I think --

11 MR. CAMARDO: Mr. Temple, my job right
12 now is to discuss the evidence that has been
13 submitted. You have submitted various evidence --

14 CHAIRPERSON GRIFFIS: Let me interrupt,
15 gentlemen.

16 MR. CAMARDO: Okay.

17 CHAIRPERSON GRIFFIS: First of all, Mr.
18 Temple, there is some latitude in an opening
19 statement. I don't think -- we're not going to
20 rehash the entire motion, but it is essentially his
21 time, his opening, and he's establishing, I think,
22 the outline of the case, which he is getting to. I
23 am sure he will talk about what the witness is
24 going to do, as he started to, and also, as I'm
25 hearing, establishing what he feels that his burden

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1 actually is. So let's continue with this, and if
2 it goes far afield, the Board is aware of it and we
3 will draw our attention --

4 MR. CAMARDO: And once again, my job is
5 to summarize the evidence. Mr. Temple has put
6 forth evidence that I think supports Bannum's
7 position, okay? I needed to comment on that.
8 We're going to have some witnesses that I believe
9 support our position, but once again, do we meet
10 the criteria laid out in 801.7(k)? Are we
11 temporary? Yes, we are. Are we a correctional
12 institution? Yes, we are. Are we on leased
13 property? Yes, we are. And we're not there to
14 exceed three years. As a basis of all this now, we
15 have a certificate of occupancy and we have people
16 in there. We're operating under a Federal Bureau
17 of Prisons contract. We have inmates in there.

18 Now, we submitted as part of the
19 written record at BZA 20 Bannum's memorandum on the
20 merits in opposition of the appeal, and there are
21 various exhibits there that I think really help the
22 Board if they are looked at very closely.

23 Any time you look at an interpretation
24 issue, which apparently we're looking at here, you
25 always look at various things. You look at what

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1 the case law says about it, you look at the course
2 of conduct between the parties, and you look at the
3 intent. I think if we look at the course of
4 conduct between the parties, at Exhibits 1 and 2,
5 you can see very clearly here that Bannum came
6 forth in two letters, one letter dated December
7 11th, 2000, and told the District exactly what it
8 was going to be doing. There were no
9 misrepresentations. As a result of that, the
10 building permit was issued.

11 Bannum says basically Bannum proposes
12 to lease the property at 2210 Adams Place for use
13 as a residential community corrections center under
14 a contract with the U.S. Department of Justice.
15 Individuals are referred to the facility either
16 directly by the court system under a conditional
17 release from the Parole Commission or through a
18 transfer from a federal institution in order to
19 make the transition back into society. That's
20 exactly what we're doing.

21 We came forth again in another letter
22 after we got the contract to err on the side of
23 caution. Another letter dated November 26th said
24 the same thing: be on leased project under a
25 contract with the U.S. Department of Justice for a

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1 community corrections center. Very clear. There
2 was no intent here to dupe, to circumvent the
3 regulations, and the D.C. people considered that,
4 they're experts at this, they considered it, they
5 said, "Yes, you meet the requirements. As a result
6 of that, we are going to give it to you."

7 Now, I think the onus is on Mr. Temple
8 to come forth and show A) how that has been
9 misrepresented or B) we don't fit within the
10 801.7(k) regulation. I think for the Board to go
11 further and examine the intent of the regulations
12 and discuss CBRFs, I think we're just going way
13 beyond something that needs to be addressed.

14 Now, building permits were issued --
15 that's at Exhibit 4 and 5 -- based on our
16 applications, and once again, in our application
17 for a building permit, we said very specifically
18 temporary use, three-year temporary use for a
19 community corrections center.

20 In February of 2003, Mr. Temple
21 objected, and so did Councilman Orange object to
22 the issuance of the building permit and asked for a
23 stop work order. In both cases, the stop work
24 order was denied by the District and basically said
25 once again that we meet the criteria in the zoning

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1 regulations. I think they considered it very
2 carefully, they looked at it again, and there's
3 another presumption of validity here.

4 So we've got our applications, we've
5 got our signed letters, we've got letters from Mr.
6 Temple and from Vincent Orange asking for
7 reconsideration, so I think it has been very
8 carefully considered here.

9 Now, what do the cases say about this
10 issue? There has been a recent case that has been
11 issued, it's a part of your materials, it's also
12 part of our motion to -- attached to our motion to
13 dismiss the case called the Howard case, it's dated
14 February 27th, 2003, making a determination. It's
15 the federal court now speaking as to what a CCC is,
16 and if you read that case, we kind of laid out in
17 our motion for affirmance various portions of that
18 case, and I would just like to take a minute to
19 read to the Board the specifics because I think the
20 federal court has already made this determination.

21 It says, "So the question the Court
22 faces would appear to have evolved into the
23 question whether community confinement centers are
24 penal or correctional institutions. It becomes
25 obvious without going far that a community

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1 corrections center is in fact a penal or
2 correctional institution." Once again, exactly
3 what 801.7 says, correctional institution.

4 The Court also goes on to say,
5 "Moreover, the Court finds that community
6 confinement centers are places of imprisonment.
7 They are confined."

8 Now, we use this term "lockdown" I have
9 heard from the Board. To me, that really doesn't
10 make any sense in this day and age because there's
11 all kinds of work release programs. I mean, if you
12 are in a place of imprisonment, essentially you are
13 locked down, if you want to use that term. We are
14 a jail, so to speak.

15 Placement in a CCC allows an inmate to
16 leave the CCC for purposes of employment but
17 otherwise requires the inmate to be in the CCC. So
18 you've got to be there. You can only leave for
19 your job. As the joint report by the Sentencing
20 Commission of the Bureau points out, except for
21 employment and other required activities, offenders
22 in the CCC component must remain in the facility at
23 all times. So it's a place of confinement.

24 We've heard all this stuff about
25 halfway houses and are you a halfway house, and Mr.

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1 Lowry, you said you are halfway house. It doesn't
2 mean anything. It's just a -- it's a
3 colloquialism, it's just a term of art. Community
4 corrections center is a prison, it's a place of
5 detention, it's a correctional institution, and
6 until the ANC can come forth and show that we're
7 not or the courts are wrong, basically this Board
8 should affirm the issuance of those permits.

9 The Court goes on to say, "The inmates
10 do not return to their homes, they do not set their
11 own schedules. They are confined for all practical
12 purposes and under the control of the government
13 through its agents. The degree of confinement is
14 not determinative of whether these inmates are
15 confined. The Court cannot escape the conclusion
16 that a term served in a CCC is a term of
17 confinement, and that a term of confinement is a
18 term of imprisonment."

19 Now, the Board got into this issue a
20 little bit about the intent of the regulations, and
21 apparently they were very troubled --

22 MR. TEMPLE: Mr. Griffis, objection.
23 As I pointed out, again, he's continuing -- this is
24 not an opening statement. I gave an opening
25 statement, I said what my case was going to be

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1 about, who I was going to call, it was brief. This
2 is an argument and, I mean, to say what he's going
3 to bring and to bring the people -- that's a
4 closing statement he is giving. I just want to
5 voice my objection.

6 MR. CAMARDO: I think that evidence can
7 be in two forms, Mr. Griffis. It can be in written
8 form, it can be in verbal form. I'm going over my
9 written evidence. It's all attached to our
10 memorandum that we submitted with eight or nine
11 exhibits. I'm trying to highlight those exhibits
12 for the Board and that as evidence I'm commenting
13 on.

14 CHAIRPERSON GRIFFIS: You've got 47 and
15 50 seconds left.

16 MR. CAMARDO: I think that's a little
17 unfair, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: I'm just saying
19 it's your time, utilize it.

20 MR. CAMARDO: I think that the Board
21 has asked very specific questions and I'm trying to
22 comment on those questions.

23 CHAIRPERSON GRIFFIS: I understand
24 that. That's what I'm saying, let's keep going.

25 MR. CAMARDO: Now, the Board was very

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1 troubled by the final report, the text amendment
2 that talked about the effect of this amendment
3 would be to permit detention or correctional
4 institutions on leased property in industrial
5 zones of the city. This would permit the
6 Department of Corrections to lease private
7 industrial programs for the purpose of establishing
8 correctional facilities to accommodate overflow.

9 Now, we can address that. I have a
10 witness that will address that. The Bureau of
11 Prisons has taken over the D.C. Department of
12 Corrections and it is for overflow. So once again,
13 we do meet the intent of this final report. I have
14 a witness -- I have two witnesses that will testify
15 to that intent, Mr. Willingham and Mr. Hulon
16 Willis.

17 The other thing I want to address a
18 little bit is this issue about a CBRF versus a
19 halfway house versus a penal or correctional
20 institution. I believe that there's a difference
21 between a CBRF -- because the comments were made
22 here that if we're a CBRF, we're jammed within the
23 CBRF category and you can't be anything else. I
24 believe there is a distinction and we will go
25 through that with our witnesses as to why we feel

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1 that distinction.

2 But once again, if it is CBRF, you have
3 to be permanent, you can't be temporary. A CBRF
4 can be for a permanent amount of time, okay? 801.7
5 can be for temporary.

6 Secondly -- I will pull out this
7 regulation for a minute. Just give me one second.

8 I don't want the Board to get hung up on this
9 issue. One-ninety-nine under Definitions talks
10 about an adult rehab home, and I think there was
11 some concern that if you're an adult rehab home,
12 you can't be over in a C-M District, you're either
13 a CBRF or you have to be a penal or correctional
14 institution, and there have been discussions and
15 argument made that Bannum is a halfway house;
16 therefore you are an adult rehabilitation home and
17 you can't be a penal or a correctional institution.

18 Now, if you read the regulations very
19 clearly, it says an adult rehabilitation home, it's
20 a facility providing residential care, and they're
21 talking about a permanent facility now, not a
22 temporary facility. Bannum does not provide
23 residential care for one or more individuals 16
24 years of age or older who are charged by the United
25 States Attorney with a felony offense or any

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1 individual 21 years of age or older under pretrial
2 detention or sentenced court orders. Bannum does
3 not have people under sentenced court orders, and
4 we're going to show testimony on that. So
5 technically, even though they are very similar, to
6 jam us into a CBRF and basically say that we cannot
7 be a penal or a correctional institution under
8 801.7(k), that we're a halfway house, and it's
9 either got to be a halfway house or it's got to be
10 a penal correctional institution, and if you're a
11 halfway house, you belong in this adult rehab home,
12 and therefore you can't be a penal or correctional
13 institution, I think is just plain erroneous, and
14 we're going to show why we don't fit technically
15 into this adult rehab home.

16 So if we don't fit within the adult
17 rehab home, we fit within this 801.7(k) category.
18 Once again, we meet all the requirements: We're
19 temporary, we're a correctional institution as
20 determined by the federal courts, as determined by
21 the statement of work that Mr. Temple submitted
22 into evidence. He submitted our statement of work,
23 penal or correctional institution. We're there not
24 to exceed three years regardless of whether Bannum
25 has a lease for a thousand years.

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1 Now, Bannum's lease, and we will get
2 into that a little bit, runs concurrent with the
3 government contract, and I have heard discussions
4 here that somehow Bannum's contract is for five
5 years. That's not true. Bannum has a one-year
6 contract, and if you look at the contract very
7 carefully, it incorporates our discussions that we
8 had with them. We showed them our zoning. That
9 zoning has been incorporated into the contract.
10 It's a one-year contract. Our lease runs
11 concurrent with the government contract. So to
12 hear all of this stuff that Bannum has got a
13 five-year contract or a six-year contract, it's not
14 true, and we will get into that a little bit on our
15 direct testimony.

16 So we've got a one-year contract with
17 four one-year options. If we don't have zoning,
18 the BOP is not going to exercise an option. It's
19 temporary. It meets the three years. We're within
20 the regulations. We're within the confines of the
21 building permit. For this Board to sit up here and
22 make a determination that the District erred in
23 issuing a building permit after all of this time
24 and effort and after all of this expense, it's not
25 equitable and it's not fair.

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1 With that, we will go to our witnesses.

2 MEMBER ZAIDAN: Mr. Chair, may I ask a
3 quick question?

4 CHAIRPERSON GRIFFIS: Yes, quick
5 question.

6 MEMBER ZAIDAN: I don't know if you can
7 answer it or not. I was making the claim earlier,
8 and I was saying it was based on my recollection
9 because I have a mountain of paper in front of me
10 and I could not fish it out, about the contract.
11 So you're saying that it's a one-year contract with
12 options up to four years; is that correct?

13 MR. CAMARDO: What I'm saying basically
14 it's a one-year contract that incorporates our
15 zoning. We told the BOP that we had three-year
16 zoning, okay, and they have incorporated that into
17 our contract. It's a one-year contract with four
18 one-year options. It doesn't mean the BOP is going
19 to exercise an option. As a matter of fact, if you
20 don't have zoning, they are not going to exercise
21 an option.

22 So there is absolutely no problem with
23 our contract that Mr. Temple is trying to cloud the
24 issue with and say that we're being disingenuous or
25 say that we're doing something wrong. Entirely not

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1 true. It's misinformation again and it's further
2 misrepresentations. One-year contract with four
3 one-year options. The lease runs concurrent with
4 our government contract.

5 MEMBER ZAIDAN: Okay.

6 MR. CAMARDO: So we don't have a
7 long-term lease.

8 MEMBER ZAIDAN: So if the lease -- if
9 the options of the contract are not exercised, the
10 lease is not --

11 MR. CAMARDO: That's correct.

12 MEMBER ZAIDAN: -- is terminated as
13 well.

14 MR. CAMARDO: That's correct.

15 MEMBER ZAIDAN: Okay.

16 MR. CAMARDO: So it's temporary as
17 well. So all one has to do is look at this
18 801.7(k), go right down through those four points.

19 Do we meet them or not? The rest of this stuff,
20 we can discuss this thing for the next thousand
21 years and have a thousand different opinions on it.

22 Did we violate 801.7(k) or didn't we?

23 MEMBER ZAIDAN: Well, I mean, my
24 question was just a clarification on the contract.

25 MR. CAMARDO: Okay.

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1 MEMBER ZAIDAN: And I appreciate your
2 clarifying that for me. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you, Mr
4 Zaidan.

5 The Board is ready for witnesses.

6 MR. COX: Bannum calls Mr. Hulon
7 Willis.

8 MR. TEMPLE: Excuse me. I don't know
9 the practice here, but to the extent that you have
10 witnesses in the room, do you have a rule on
11 witnesses where those witnesses can be sequestered
12 or asked to leave?

13 CHAIRPERSON GRIFFIS: Absolutely not.

14 MR. TEMPLE: Okay. Thank you. Okay.
15 Whereupon,

16 HULON L. WILLIS, JR.,
17 was called as a witness by counsel on behalf of the
18 Intervenor and, having been previously duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. COX:

22 Q Mr. Willis, sir, could you please state
23 your name for the record?

24 A Huron Lavon Willis, Jr.

25 Q And Mr. Willis, where do you live?

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1 A I reside at 7314 Kitchawam Court,
2 Chesterfield, Virginia.

3 Q And can you just briefly explain for
4 the Board what your educational background is?

5 A I have a bachelor of arts degree in
6 sociology from the College of William and Mary in
7 Virginia. I have a master of social work in social
8 service management from Howard University.

9 Q Okay. And are you presently employed?

10 A Yes.

11 Q And how are you employed?

12 A I'm employed as the facility director
13 for Bannum Place of Washington, D.C., Incorporated.

14 Q And how long have you been employed in
15 that capacity?

16 A I have been employed as a facility
17 director since May 2003.

18 Q And would you briefly describe what
19 your duties are as director there?

20 A I oversee the day-to-day operations of
21 the facility and supervise the staff of the
22 facility.

23 Q Now, prior to work for Bannum, could
24 you tell the Board how you were employed let's say
25 immediately preceding your employment at Bannum?

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1 A My last employer was the D.C.
2 Department of Corrections. I was employed with the
3 D.C. Department of Corrections from 1989 until
4 2003.

5 Q Okay. And how were you -- in what
6 capacity were you employed?

7 A My last position was I was the
8 executive assistant to the deputy director for
9 administration.

10 Q And what kind of things did you do in
11 your position there?

12 A I was -- primarily I reviewed documents
13 that were addressed to either the director for the
14 D.C. Department of Corrections or the deputy
15 director. I sat in in his absence in meetings and
16 responded to correspondence.

17 Q Okay. And prior to that, how were you
18 employed?

19 A Well, I began my career with the D.C.
20 Department of Corrections in 1989 as the
21 administrator of Community Correctional Center
22 Number 4. After that, I was moved to become the
23 acting deputy director of administration for
24 medium-security facility at Lorton. I did a stint
25 -- two stints detailed to the D.C. Department of

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1 Human Services to run as the assistant
2 superintendent for Cedar Knoll prior to its
3 closure, then later I was the acting superintendent
4 of Oak Hill Youth Center.

5 After that, I was deputy warden for the
6 Correctional Treatment Facility and then I went
7 from there to become the compliance officer at the
8 D.C. Jail and then later on contract monitor for
9 the D.C. Department of Corrections, and I oversaw
10 the residents or the inmates that were housed under
11 Virginia contracts for the D.C. Department of
12 Corrections.

13 Q Without going back and walking through
14 each of these positions, can you tell the Board
15 approximately how many years you have been employed
16 in the corrections field?

17 A I have been in corrections since --
18 literally since I graduated from undergrad with the
19 exception of the period of time that I was in
20 graduate school.

21 Q So nearly 20 years or approximately 20
22 years or so?

23 A Approximately 20.

24 Q Okay. And you are also a professor at
25 Howard University; isn't that correct?

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1 A Yes. I'm an adjunct professor of
2 social work and I'm responsible for the criminal
3 justice track for graduate students in social work.

4 MR. COX: Bannum would like to offer
5 Mr. Willis as an expert in corrections.

6 CHAIRPERSON GRIFFIS: Very well.
7 Questions of the witness at this time from Board?

8 Are you submitting any written
9 documentation of the resume that we have just heard
10 orally?

11 MR. COX: I can submit that. I have
12 the resume. I will have to make copies of that,
13 but I do have it.

14 CHAIRPERSON GRIFFIS: Okay. Why don't
15 we have that just for the record. I think it
16 suffices in terms of what was just given.

17 MR. TEMPLE: May I be heard, Mr.
18 Griffis?

19 CHAIRPERSON GRIFFIS: Yes. You don't
20 need to ask. I'll get to it.

21 MR. TEMPLE: Okay.

22 CHAIRPERSON GRIFFIS: If I delay, then
23 you can jump on me.

24 MR. COX: Can we just -- while you guys
25 are -- while we're debating this, can we --

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1 CHAIRPERSON GRIFFIS: Oh, I'm sorry. I
2 thought I had stopped.

3 MR. COX: That's all right.

4 CHAIRPERSON GRIFFIS: I am keeping an
5 eye on it, and I'm adding some time on it.

6 MR. COX: Thank you.

7 CHAIRPERSON GRIFFIS: So it will all be
8 equitable at the end.

9 MR. COX: Thank you.

10 CHAIRPERSON GRIFFIS: Yes. Mr. Temple,
11 objection to qualifying Mr. Willis as an expert
12 witness?

13 Can I just have clarification of what
14 he is being proffered as an expert in?

15 MR. COX: Mr. Willis is an expert in
16 corrections, in the field of corrections.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. TEMPLE: Yes. My problem doesn't
19 go to Mr. Willis' background indeed. He's superbly
20 qualified. My problem goes to, for purposes of an
21 expert witness, him being able to give some
22 impartial, independent, objective decision. Mr.
23 Willis is indeed an employee and one of the
24 managers at the present facility, and his
25 expertise, to the extent that he's giving

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1 testimony, it's not a problem. To the extent that
2 we think he's giving unbiased independent
3 testimony, it is.

4 CHAIRPERSON GRIFFIS: Okay. Very well.
5 We will take that at heart, and also I'm sure your
6 understanding would be that that would come up in
7 cross-examination and would be your ability to
8 evidence that for the Board.

9 Mr. Rushkoff, do you have any objection
10 to establishing Mr. Willis as an expert witness in
11 corrections?

12 MR. RUSHKOFF: No objection.

13 CHAIRPERSON GRIFFIS: Very well.

14 Can I hear any objections from the
15 Board?

16 [No response.]

17 CHAIRPERSON GRIFFIS: Not hearing any,
18 we can take that as a consensus.

19 Mr. Etherly, did you have --

20 MEMBER ETHERLY: No objection. Perhaps
21 my gut is kind of encouraging me whether or not
22 there is a need to perhaps specify that a little
23 further. Corrections as it relates to shall we say
24 management or operations of facilities?

25 MR. COX: I think we qualified Mr.

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1 Willis in the broad field of corrections, but I
2 suppose, if it would make the Board feel better, we
3 could narrow that to correctional facilities.

4 MEMBER ETHERLY: No objection, Mr.
5 Chairman.

6 CHAIRPERSON GRIFFIS: Okay. Just to
7 clarify, Mr. Cox, it's our understanding in terms
8 of an expert witness in corrections, you are
9 proffering him based on his experience, and that
10 would be towards facility programming and
11 management of correctional operations?

12 MR. COX: That's fair to say, yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. COX: Mr. Willis is a fact witness
15 and an expert to the extent that we have indicated.

16 CHAIRPERSON GRIFFIS: Right. I don't
17 think we need to belabor. I think it's understood
18 by the Board. If there are no objections, then we
19 can look to Mr. Willis as an expert witness at this
20 point.

21 MR. COX: Thank you.

22 BY MR. COX:

23 Q Mr. Willis, could you briefly explain
24 to the Board what it is that Bannum operates at
25 2210 Adams Place?

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1 A Bannum operates a community
2 correctional center. The center is operated under
3 contract with the Bureau of Prisons. Inmates who
4 are in the service of the last 10 percent of their
5 sentence are given the opportunity to serve that
6 portion out in a community correctional center as
7 opposed to an institution, and while at that
8 community correctional center or while at Bannum
9 Place of Washington, D.C., they have to become
10 gainfully employed, follow any programmatic needs,
11 be it drug treatment or otherwise specified under
12 the U.S. Parole Commission if need be or the Bureau
13 of Prisons, and live by the rules and regulations.

14 Q And could you briefly explain to the
15 Board how it was that the BOP -- how the need was
16 developed to have this CCC in Washington, D.C.?

17 A The need for the CCC in Washington,
18 D.C. derived out of the congressionally mandated
19 closure of Lorton prison system, and under that,
20 under the congressionally mandated closure, the
21 Bureau of Prisons absorbed the D.C. Code offenders
22 that were housed at Lorton.

23 Consequently, as those offenders are
24 due to be released, then they are typically
25 released back to the sentencing district where they

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1 were sentenced.

2 Q Now, these prisoners at Lorton that you
3 described -- can you describe the conditions at
4 Lorton prior to its closure?

5 A The conditions at Lorton prior to its
6 closure were probably some of the most deplorable
7 in terms of history. At one time, Lorton was under
8 approximately nine court orders over prison
9 conditions. In fact, I oversaw the court orders
10 that affected the D.C. Jail, but as a compliance
11 officer, I was also responsible for having to
12 monitor at times or audit the conditions at the
13 Lorton facilities as well.

14 The conditions consisted of the
15 majority of the inmates were housed in open
16 dormitories as opposed to single cells, which is
17 now the norm for most correctional facilities, and
18 as a result, there was a lot of predatory behavior.

19 The weaker inmates were preyed upon by the
20 stronger inmates.

21 Q Is it fair to say that the need for the
22 CCC that Bannum runs was created because D.C. was
23 no longer equipped to handle the prisoners that
24 were at that facility?

25 A Yes.

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1 Q Now, you've heard the testimony about
2 the Zoning Code. In your opinion, is Bannum a
3 correctional or detention institute?

4 A Yes, it is.

5 Q And could you also shed a little light
6 on the -- there was testimony about the case 71-33
7 and the impetus behind that legislation in 1971.
8 Could you shed a little bit of light on that as
9 well?

10 A Well, there were two consent decrees
11 that affected the old D.C. Jail during that time.
12 That was Campbell v. Magruder and D.C. Inmates v.
13 Delbert Jackson. One was filed by pretrial inmates
14 and one was filed by post-trial inmates, and both
15 cases were combined in Federal District Court.

16 From 1995 to 1999, I was the compliance
17 officer that monitored the District's compliance
18 with coming into compliance with those civil suits,
19 and part of that was that they were -- the District
20 was looking for some type of relief in the event of
21 overcrowding.

22 I think a number of things impacted
23 upon that. You had the D.C. Emergency Powers Act
24 that at one time would push up the sentence -- I'm
25 sorry -- the parole eligibility date of inmates to

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1 ease the overcrowding at Lorton. The idea of the
2 temporary detention facilities was also another way
3 of looking at easing the overcrowding.

4 The Department of Corrections, to my
5 knowledge, did not use that zoning for temporary
6 jails, but did use it as a way of being able to
7 establish community correctional centers to ease
8 the overcrowding not only at the D.C. Jail, but to
9 ease the overcrowding in the prisons, because
10 inmates were moved from the prisons who were close
11 to their parole eligibility date into the community
12 correctional facilities as a way of easing the
13 overcrowding conditions at Lorton.

14 Q And you have already provided your
15 opinion that Bannum's CCC is a detention or
16 correctional institution. Could you briefly just
17 describe what kind of controls or security measures
18 are in place at the facility, you know, that Bannum
19 has over the prisoners there?

20 A Well, first of all, there are different
21 levels of correctional facilities. You have your
22 super-max facility, which is the highest level of
23 security, you have your maximum security, you have
24 your medium security, you have your minimum
25 security, you have your camps, and then you have

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1 this community corrections facilities. At each
2 level of security it determines what type of
3 perimeter you have, what type of patrols you have,
4 what type of officers are in those facilities.

5 For example, when I was a contract
6 monitor for Virginia, the super-max and the max
7 facilities were -- the officers were allowed to
8 carry non-lethal weapons inside the facilities.
9 The lowest or minimum security facilities or
10 community correctional facilities have no
11 perimeters around them, which means that you have
12 inmates or residents in those facilities, but if
13 you don't have a fence, then you're a community
14 correctional or a camp, and that's the lowest type
15 of facility, and given that facility, you have no
16 perimeter, no locks that can't be unlocked, but
17 they're still under a sentence of incarceration.

18 Q So is it fair to say that there are
19 different levels of security at these different
20 facilities, but they are all correctional or
21 detention institutes? Is that fair to say?

22 A Yes.

23 Q This may be going off a little bit, but
24 I just want to touch upon it. How many people does
25 Bannum employ right now?

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1 A We have, including myself,
2 approximately ten staff members.

3 Q Okay. And based on your experience
4 over the years, can you describe the relationship
5 that a CCC has with the community directly around
6 it?

7 MR. TEMPLE: Objection. That question
8 is vague. He's talking about community corrections
9 centers having some absolute relationship with the
10 surrounding community, and it's very relative. I
11 think the question needs to be specific.

12 CHAIRPERSON GRIFFIS: Can we just stop
13 the clock? I don't understand. You're objecting
14 to the question, but you're saying it's very
15 relevant.

16 MR. TEMPLE: The question was this:
17 Can you describe the relationship --

18 CHAIRPERSON GRIFFIS: I heard the
19 question.

20 MR. TEMPLE: That's not an absolute
21 question. There is not one relationship that you
22 have.

23 CHAIRPERSON GRIFFIS: I see. So the
24 question can't be answered --

25 THE WITNESS: It can't be answered,

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1 right.

2 CHAIRPERSON GRIFFIS: -- by Mr. Willis.

3 But Mr. Willis has been offered as someone that
4 has managed facilities before.

5 My concern is more of what the
6 pertinence is towards the definition or the DCRA
7 decision to grant the permit, so if you find that
8 it is directly related to that, then let's go to
9 it; otherwise, we're not doing a public hearing on
10 the impacts of this.

11 MR. COX: I just want to make a
12 complete record. We explored some of these issues
13 at the first couple hearings. So it doesn't go
14 directly to that, but would the Board indulge us
15 just a couple of questions, and that's it?

16 MR. TEMPLE: Mr. Griffis, I have only
17 one concern. We followed the rules of this Board
18 when we presented our case and we completed our
19 case within an hour, and I'm just making a note
20 here, because these questions are very
21 non-pertinent in many respects and they are going
22 to consume valuable time, so when they come back
23 and say, "We need another hour," it's going to be
24 prejudicial to the Appellant.

25 CHAIRPERSON GRIFFIS: Somewhat. An

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1 additional hour I don't think would be appropriate.

2 But there has been information that has not
3 directly gone to this appeal, and again it goes to
4 the Board's discretion of how it relates. Again,
5 we're not measuring impact.

6 So I'll allow brief -- it is your time
7 essentially. There is nothing detrimental to
8 asking the questions, but whether it actually is
9 pertinent and relates directly is up to you.

10 MR. COX: Then why don't I stop there
11 with Mr. Willis. I have no further questions for
12 him.

13 CHAIRPERSON GRIFFIS: Okay.

14 What did I say? The Board is going to
15 question first or after? First?

16 MEMBER MILLER: First.

17 CHAIRPERSON GRIFFIS: First? Oh, good.
18 My memory still serves me. Okay. Board
19 questions, then, of Mr. Willis. Mr. Etherly.

20 MEMBER ETHERLY: If I may, Mr. Chair.

21 Mr. Willis, thank you very much for
22 your testimony. It was I think fairly instructive
23 on a couple of points. I just wanted to kind of
24 massage a couple of areas to make sure my
25 understanding is clear.

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1 THE WITNESS: Sure.

2 MEMBER ETHERLY: With regard to your
3 comment about inmates within the last 10 percent of
4 their sentence being directed to facilities of this
5 type, who makes that determination and when? Is
6 that a determination that's made at the time of
7 sentencing; i.e., will the judge in that particular
8 case mandate that this is an inmate who is eligible
9 for that 10 percent of their sentence in a
10 community correctional center?

11 THE WITNESS: To my understanding, that
12 was a mandate from the Attorney General's Office
13 and the Bureau of Prisons makes that determination.

14 MEMBER ETHERLY: Okay. So if I am a --
15 gosh, I'm trying to figure out a scenario just to
16 understand it, but I know it's a very case-specific
17 issue. Okay. I'll leave that for a moment because
18 I don't think it's a major issue, but I just wanted
19 to understand how that works.

20 THE WITNESS: Sure.

21 MEMBER ETHERLY: Let me ask this: It
22 wouldn't be appropriate to say that every convicted
23 felon is going to be eligible for that 10 percent
24 time at the end of their sentence. Let's say
25 you're convicted of something that gets you a

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1 20-year deal. At the end of that, you know, 10
2 percent of that remaining time, you're not
3 necessarily guaranteed to be going into a halfway
4 house, or are you?

5 THE WITNESS: Not being an employee of
6 the Bureau of Prisons, I wouldn't be able to answer
7 that.

8 MEMBER ETHERLY: Okay. Okay.
9 Understood. Okay.

10 You referenced Lorton and you also
11 referenced D.C. Jail facilities, with which, you
12 know, any number of us may or may not be familiar.

13 How would you characterize the difference? If you
14 were asked what is the difference between Bannum
15 Place, the facility that you are now affiliated
16 with, and D.C. Jail or Lorton, how would you
17 characterize that? Is there a difference between
18 those two facilities and, if so, on what ground?
19 Is it a security issue, i.e. is the Bannum Place
20 facility considered -- I think we have used the
21 term it's a CCC, so the level of security would be
22 different versus Lorton or D.C. Jail. How would
23 you characterize the difference between --

24 THE WITNESS: Given the fact that I
25 operated Community Correctional Center Number 4 for

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1 approximately 18 months and I'm now the facility
2 director at Bannum Place, the accountability
3 requirements at Bannum Place are significantly
4 higher than the requirements that were in place
5 when I was the administrator at Community
6 Correctional Center Number 4.

7 MEMBER ETHERLY: Okay. And Community
8 Correctional Center Number 4 is what?

9 THE WITNESS: Community Correctional
10 Center Number 4 was under the D.C. Department of
11 Corrections and it is now closed.

12 MEMBER ETHERLY: Okay. And that would
13 be otherwise known as Lorton?

14 THE WITNESS: Yes.

15 MEMBER ETHERLY: Okay. Okay. So the
16 difference between -- well, let me focus the
17 question a little more. From a security standpoint
18 of the levels of security that you talked about,
19 super-max, max, medium, minimum, the camps, CCCs,
20 difference between Bannum Place and once again
21 Community Correctional Center Number 4 or what was
22 otherwise known as Lorton?

23 THE WITNESS: They would both fall into
24 the same category being that they were community
25 correctional centers.

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1 MEMBER ETHERLY: Okay.

2 THE WITNESS: Even within community
3 correctional centers, you can have different
4 degrees of security.

5 MEMBER ETHERLY: Okay. So would you
6 say the level of security at Lorton was different
7 than the level of security at Bannum Place?

8 THE WITNESS: I would say the level of
9 security at Bannum Place is different from the
10 level of security at --

11 MEMBER ETHERLY: Higher or lower?

12 THE WITNESS: Bannum is higher.

13 MEMBER ETHERLY: Higher. Okay. Okay.

14 With respect to -- you spoke about your
15 understanding of consent decrees, the civil suits
16 that were brought by pretrial and post-trial
17 inmates. I thought that was very helpful.

18 Based on your experience with the
19 post-1971 -- or I should say the regulation that
20 was adopted in 1971 as an effort to, shall we say,
21 respond to the pressures of overcrowding, first of
22 all, you agree with that characterization that in
23 part the 1971 reg that we're talking about in
24 essence was developed as a response to pressures of
25 overcrowding.

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1 THE WITNESS: Yes.

2 MEMBER ETHERLY: Okay. Were you
3 familiar -- you may have heard earlier my
4 colleague, Ms. Miller, had inquired about whether
5 or not there were other facilities of the type like
6 Bannum Place that might have been established
7 pursuant to those consent decrees. Are you aware
8 of other facilities similar to Bannum Place? And I
9 say similar in a very broad sense.

10 THE WITNESS: There were facilities
11 such as -- that were operated at that time by the
12 D.C. Department of Corrections as well as there are
13 a number of contract facilities throughout the
14 District that have contracts with the Bureau of
15 Prisons and/or at one time D.C. Department of
16 Corrections as well.

17 MEMBER ETHERLY: Okay. Okay.

18 And then finally -- no, that concludes
19 it. Thank you. Thank you very much.

20 Thank you, Mr. Chair.

21 COMMISSIONER PARSONS: Mr. Chairman,
22 could I jump in quickly out of order?

23 CHAIRPERSON GRIFFIS: Yes, Mr. Parsons.

24 COMMISSIONER PARSONS: One of the
25 responses to Mr. Etherly's question -- was all of

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1 Lorton deemed a community correctional facility?

2 THE WITNESS: No, sir.

3 COMMISSIONER PARSONS: Because the
4 implication was that Community Correctional
5 Facility Number 4 was Lorton.

6 THE WITNESS: No. I --

7 COMMISSIONER PARSONS: It was a part of
8 Lorton.

9 THE WITNESS: I think that a lot of
10 times, people refer to Lorton -- Lorton was the
11 District's prison system. Community Correctional
12 Center Number 4 was an aspect of the D.C.
13 Department of Corrections and it came under the
14 Community Corrections Division of the D.C.
15 Department of Corrections. The institutions at
16 Lorton and the D.C. Jail came under the
17 institutional component of the D.C. Department of
18 Corrections.

19 COMMISSIONER PARSONS: I was only
20 trying to clarify that there was much more going on
21 at Lorton.

22 THE WITNESS: Oh, yes. Yes.

23 COMMISSIONER PARSONS: Thank you.

24 CHAIRPERSON GRIFFIS: Ms. Miller.

25 MEMBER MILLER: Mr. Willis, can you

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1 tell us the date that Congress mandated the closure
2 of Lorton?

3 THE WITNESS: I really cannot, not off
4 the top of my head.

5 MEMBER MILLER: A year, or the
6 timeframe.

7 THE WITNESS: The closure was somewhere
8 around I believe April of 2002. I haven't really
9 had to go back and -- to be honest with you, when I
10 was separated from the D.C. Department of
11 Corrections, I sort of put all that behind me.

12 MEMBER MILLER: Well, you brought it up
13 in your testimony.

14 THE WITNESS: Yes.

15 MEMBER MILLER: I just want to follow
16 up with whatever you can remember.

17 THE WITNESS: Sure.

18 MEMBER MILLER: Can you tell me how
19 many prisoners they were placing and where they
20 placed them?

21 THE WITNESS: Who?

22 MEMBER MILLER: Well, whoever was at
23 the prison and had to leave Lorton, where did they
24 go?

25 THE WITNESS: At the time of the

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1 closure, there were approximately 9,000 inmates
2 under the custody of the D.C. Department of
3 Corrections.

4 MEMBER MILLER: And where did they go?

5 THE WITNESS: To the Federal Bureau of
6 Prisons. Not all at once. The District had to
7 out-source a lot of the inmates. That's how I
8 became the contract monitor in Sussex, Virginia. I
9 was responsible for monitoring the contract of all
10 approximately 1,200 inmates that were housed under
11 the Virginia Department of Corrections.

12 They out-sourced inmates to the
13 Corrections Corporation of America, they were
14 housed in New Mexico, Tennessee, various places
15 throughout the country, Ohio as well, while the
16 Bureau of Prisons was building more bed space and
17 starting to identify where they were going to start
18 locating those -- relocating those inmates and
19 absorbing them.

20 MEMBER MILLER: You also mentioned the
21 two consent decrees which were related to
22 overcrowding in prisons.

23 THE WITNESS: The consent decrees were
24 -- those two particular ones were related to the
25 overcrowding at the D.C. Jail as well as some other

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1 life safety issues.

2 MEMBER MILLER: Okay. And that was
3 1995 to 1999?

4 THE WITNESS: That I was the compliance
5 officer. The consent decrees date back to I
6 believe '69 and '73, if memory serves me right.

7 MEMBER MILLER: So did the consent
8 decrees require that the prisoners be placed
9 elsewhere?

10 THE WITNESS: The consent decrees --
11 yes, they did. The consent decrees required that
12 -- well, first and foremost, which is probably
13 going on in a different venue today, established a
14 cap at the D.C. Jail, and in establishing that cap,
15 it mandated that the D.C. Board of Parole at that
16 time render a decision 45 days prior to an inmate's
17 parole eligibility date.

18 It also mandated that inmates who were
19 -- be housed, I guess the best way to put it is, in
20 least restrictive means. It created the ability
21 for the courts to direct pretrial inmates into
22 community correctional centers as opposed to being
23 housed at the D.C. Jail. It created at that time I
24 think a District-sponsored bail program as well.
25 There were a number of things it created in order

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1 to try to relieve the overcrowding, not only at the
2 D.C. Jail, but within the D.C. Department of
3 Corrections.

4 MEMBER MILLER: Okay. And I'm not
5 sure, you may have been asked this, but I just want
6 to be sure. Were there any temporary detention or
7 correctional institutions established during this
8 period to respond to this overcrowding?

9 THE WITNESS: At some point later on, I
10 do remember when the District did sell the
11 Correctional Treatment Facility to Corrections
12 Corporation of America and turned around and paid
13 them to house their inmates in it.

14 THE WITNESS: Where is that housing?

15 THE WITNESS: The same place. It was
16 adjacent to the D.C. Jail on the grounds of the
17 D.C. General Hospital, and also Community
18 Correctional Center Number 4, which was at 1355-57
19 New York Avenue.

20 MEMBER MILLER: Okay. My last
21 question, I guess, is with respect to the two
22 consent decrees, do you know whether they have been
23 fully complied with or is D.C. still responding to
24 them?

25 THE WITNESS: The District was finally

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1 -- Judge Bryant finally rescinded the order
2 approximately I would say six months to a year ago
3 maybe.

4 MEMBER MILLER: I have one more
5 question. I think you made reference to a cap at
6 the D.C. Jail. To your knowledge, is that still in
7 effect?

8 THE WITNESS: I think there's a
9 self-imposed cap. The cap was lifted. I believe
10 there was a self-imposed cap, and today, in fact,
11 it's before the Judiciary Committee under Council
12 Member Patterson to impose that cap once again --
13 to impose a new cap once again.

14 MEMBER MILLER: Thank you.

15 CHAIRPERSON GRIFFIS: Other questions
16 from the Board?

17 [No response.]

18 CHAIRPERSON GRIFFIS: Mr. Willis, in
19 operating Bannum, is it correct that part of the
20 employee income goes to the facility?

21 THE WITNESS: Excuse me?

22 CHAIRPERSON GRIFFIS: Is there any
23 employment income or any sort of wages that are
24 utilized by the facility? Do people go out and
25 work and a percentage of wages go to the facility?

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1 THE WITNESS: Oh. All residents that
2 are in Bureau of Prisons-operated facilities,
3 contract facilities, it's a requirement that 25
4 percent of their -- that they pay what's known as a
5 subsistence, which is 25 percent of their gross.

6 CHAIRPERSON GRIFFIS: Okay. For
7 clarity, that's happening, then, at the facility
8 you now manage, Bannum?

9 THE WITNESS: Yes.

10 CHAIRPERSON GRIFFIS: And your
11 statement is that happens in all facilities?

12 THE WITNESS: Under contract, to my
13 knowledge, yes.

14 CHAIRPERSON GRIFFIS: Okay.

15 COMMISSIONER PARSONS: Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Yes.

17 COMMISSIONER PARSONS: Mr. Willis, I'm
18 trying to get a little better handle on the current
19 emergency, if there is one.

20 As I understand it, all of the Lorton
21 prisoners, when they left, the 9,000 of them, went
22 elsewhere in the country. Now what is occurring to
23 create this need for this temporary facility?

24 THE WITNESS: What is creating the need
25 is that as these residents or as the inmates get

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1 close to the 10 percent date or to release, they
2 will be returned to the District of Columbia.

3 COMMISSIONER PARSONS: And this has not
4 occurred before?

5 THE WITNESS: This has occurred before
6 when it was under the D.C. Department of
7 Corrections, yes.

8 COMMISSIONER PARSONS: So while the
9 9,000 were at Lorton, they were under a program
10 where they would be released at the 10 percent
11 level into these community correctional facilities
12 here in the District of Columbia?

13 THE WITNESS: It wasn't -- they didn't
14 have a 10 percent level, but they were, yes, they
15 were released or transferred from Lorton to the
16 District, to community correctional centers in the
17 District.

18 COMMISSIONER PARSONS: And how many of
19 those were there, or are there?

20 THE WITNESS: At one time, the D.C.
21 Department of Corrections operated four centers and
22 was under contract with private vendors for
23 approximately I'd say another four to six centers.

24 COMMISSIONER PARSONS: So about ten?

25 THE WITNESS: Yes.

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1 COMMISSIONER PARSONS: And then,
2 because the Bureau of Prisons took over the
3 operation, all of those were closed?

4 THE WITNESS: I really --

5 COMMISSIONER PARSONS: In other words,
6 they don't exist any more?

7 THE WITNESS: I don't think that the --
8 I don't think -- I don't believe the Bureau of
9 Prisons automatically just absorbed the contracts.
10 I really can't address that.

11 COMMISSIONER PARSONS: Well, you
12 certainly would know if any of them are in
13 operation today, wouldn't you?

14 THE WITNESS: Well, I know within the
15 D.C. Department of Corrections they no longer have
16 any community correctional centers now. There is
17 the Bureau of Rehabilitation that operates I think
18 three facilities, and then there are some other
19 private vendors, including Hope Village, that
20 operate two. But as to whom they are receiving,
21 the only one that I am aware of really is Hope
22 Village that receives -- Hope Village and the
23 Bureau of Prisons that also receive -- I'm sorry --
24 Hope Village and the Bureau of Rehabilitation that
25 receive residents from the Bureau of Prisons, and

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1 maybe Washington Halfway House for Women.

2 COMMISSIONER PARSONS: And maybe you
3 are going beyond your expertise here, but after
4 this current three-year period, is it your
5 understanding that others are building permanent
6 facilities or planning on building permanent
7 facilities that will --

8 THE WITNESS: I have no knowledge of
9 that.

10 COMMISSIONER PARSONS: Okay. So we
11 have reached the limit. That's fine. Thank you.

12 CHAIRPERSON GRIFFIS: Thank you, Mr.
13 Parsons.

14 Ms. Miller?

15 MEMBER MILLER: Mr. Willis, are all the
16 residents at the Bannum facility from the District
17 of Columbia?

18

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 THE WITNESS: To my knowledge, I would
4 say about 99 percent are. I know for sure that --
5 I know for 100 percent that they were all sentenced
6 in the District of Columbia.

7 MEMBER MILLER: And the other facility
8 you mentioned, like Hope Village or whatever, is
9 that the same type of facility as we're talking
10 about in this case?

11 THE WITNESS: I don't know how it's
12 zoned, but it's a community correctional center.

13 MEMBER MILLER: It's a detention center
14 with inmates?

15 MR. TEMPLE: It's a community
16 correctional center.

17 MEMBER MILLER: Okay.

18 MEMBER ETHERLY: If I could follow up,
19 where is Hope Village located?

20 THE WITNESS: Hope Village is located
21 at 2429 Langston Place, Southeast, right off of
22 Alabama Avenue.

23 MEMBER ETHERLY: Okay. To the extent,
24 and feel free to, of course, reply that you're just
25 not familiar with it, are you familiar to any

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1 extent with the security measures in place at Hope
2 Village?

3 THE WITNESS: Yes.

4 MEMBER ETHERLY: How would you
5 characterize those security measures? Well, first
6 of all, on the scale that you provided, clearly
7 it's a community correctional center, so there is
8 no perimeter fencing.

9 THE WITNESS: Right.

10 MEMBER ETHERLY: Similarly, no weaponry
11 of any type carried or otherwise --

12 THE WITNESS: No.

13 MEMBER ETHERLY: -- possessed by any of
14 the guards of staff.

15 THE WITNESS: When you're in a
16 community correctional center, weaponry is strictly
17 prohibited.

18 MEMBER ETHERLY: Strictly prohibited by
19 BOP.

20 THE WITNESS: Period.

21 MEMBER ETHERLY: Okay. And that would
22 be the same, of course, for Bannum Place, Inc., as
23 well?

24 THE WITNESS: Exactly.

25 MEMBER ETHERLY: Okay. Thank you.

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1 Thank you, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Anything else?

3 COMMISSIONER PARSONS: One more.

4 You had mentioned the term "parole" and
5 I wanted to understand that. Are these clients or
6 occupants in a state of parole, and if so, what
7 does that mean?

8 THE WITNESS: State of parole? There
9 are -- there are some residents who are what's
10 known as public law placements, which means that
11 they have already been granted parole but for
12 virtue of the fact that they don't have an approved
13 parole plan, be it housing and/or employment, they
14 are placed in a community correctional center for
15 up to 120 days until that can be developed and then
16 they are released.

17 MEMBER ETHERLY: And that's a minority
18 of the --

19 THE WITNESS: That's a very small
20 minority of the persons in --

21 MEMBER ETHERLY: Thank you.

22 THE WITNESS: Yes.

23 CHAIRPERSON GRIFFIS: One more round?

24 [No response.]

25 CHAIRPERSON GRIFFIS: No. Okay.

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1 Let's start -- Mr. Temple, if you want
2 to start cross-examination, Mr. Rushkoff will
3 follow.

4 MR. TEMPLE: Thank you.

5 CROSS-EXAMINATION

6 BY MR. TEMPLE:

7 Q Isn't it true that the reason why
8 Lorton was closed was because the Federal
9 Government began to assume -- eliminated the
10 federal payment to the District of Columbia and
11 assumed the public safety budget in its correction
12 system?

13 A I really don't have any knowledge of
14 that.

15 Q The Department of Corrections, when you
16 worked for them, to the extent that they operated
17 adult rehabilitation homes, they did not use the
18 term "community corrections center," did they?

19 A I don't have any knowledge of them
20 operating adult rehabilitation homes.

21 Q Do you have any knowledge of the
22 Department of Corrections sending residents from
23 Lorton to halfway houses?

24 A I have knowledge of the Department of
25 Corrections sending residents to community

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1 correctional centers.

2 Q Okay. Did the Department of
3 Corrections not use contract, quote/unquote,
4 halfway houses during the time that you worked in
5 the Department?

6 A They did use contract facilities.

7 Q Did they call -- isn't it true that
8 they referred to them as halfway houses?

9 A Yes, at times, they did.

10 Q Okay. And isn't it true that what you
11 refer to as Community Correctional Center Number 4
12 was, in fact, a halfway house located on New York
13 Avenue?

14 A Community Correctional Center Number 4
15 was a community correctional center located on New
16 York Avenue.

17 Q And at that particular community
18 corrections center, how many inmates resided there?

19 A When I opened the facility, we had 158,
20 and at some point it was increased to 250.

21 Q And at that particular facility, do you
22 recall how that facility was zoned?

23 A No, I don't.

24 Q Okay. So you don't know whether this
25 particular Board had to approve the zoning for that

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1 facility; is that correct?

2 A To my knowledge, I don't even know if
3 there was zoning for the facility.

4 Q Now, you indicated that the Bannum
5 halfway house has better security than the Lorton
6 prison; is that correct?

7 A I'm not familiar with the Bannum
8 halfway house.

9 Q The Bannum center where you work; is
10 that correct?

11 A I'm sorry, what was your question
12 again?

13 Q The Bannum facility you testified had
14 better security than Lorton. Is that your
15 testimony?

16 A No. My testimony was that the
17 accountability at Bannum Place of Washington, D.C.
18 was higher than Community Correctional Center
19 Number 4 that I operated back in 1989.

20 Q Okay. And how many residents are
21 presently at Bannum's facility?

22 A We have 40 residents at Bannum Place of
23 Washington, D.C.

24 Q And how long has it been open, please?

25 A It has been open since May -- I believe

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1 it was May 7th that we received residents.

2 Q That's two months; is that correct?

3 A Yes.

4 Q Isn't it true that you have had three
5 escapes from the Bannum facility to date?

6 A Yes.

7 Q You said that the community corrections
8 center is the same as the jail?

9 A I don't recall making that statement.

10 Q But isn't it true under the contract
11 that Bannum has with the Bureau of Prisons, Bannum
12 has to arrange for transportation for indigent
13 offenders to seek employment; is that correct?

14 A You're referring to?

15 Q To what you have to do under your
16 contract with the Bureau of Prisons.

17 A Are you referring to the statement of
18 work?

19 Q Yes, sir.

20 A I believe so.

21 Q Isn't it true that under your contract
22 with the Bureau of Prisons, an inmate or resident
23 can actually have a cell phone or a beeper if they
24 deem it appropriate and they show cause for it?

25 A If it's approved by the Bureau of

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1 Prisons.

2 Q And in fact under your contract with
3 the Bureau, inmates can go home for the weekend or
4 to visit their mother at a certain point during
5 their stay; isn't that correct?

6 A At a certain point during their stay,
7 once the home has been approved, they can have a
8 social pass that can lead up to overnight.

9 Q And, in fact, under your contract with
10 the Bureau, the inmates also have recreation
11 opportunities in and outside of the facility; is
12 that correct?

13 A They can, yes.

14 Q And they can also get passes for even
15 just one overnight visit for up to 100 miles away
16 under your contract with the Bureau of Prisons;
17 isn't that correct?

18 A Yes.

19 Q And they can go to school and go to
20 classes outside of the facility; isn't that
21 correct?

22 A There is a possibility of that, yes.

23 Q And when you talk about accountability,
24 essentially where you -- the inmates can do a range
25 of outside activities up until nine o'clock p.m.;

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1 isn't that correct?

2 A If approved.

3 Q Can inmates at the D.C. Jail have
4 telephones, cellular phones?

5 MR. COX: Object to the term "D.C.
6 Jail." Which jail are we talking about?

7 MR. TEMPLE: D.C. Jail.

8 THE WITNESS: To my knowledge, no.

9 MR. TEMPLE: Okay.

10 BY MR. TEMPLE:

11 Q Can inmates at the D.C. Jail have
12 beepers?

13 A To my knowledge, no.

14 Q Can inmates at the D.C. Jail go out
15 during the day to look for employment?

16 A If they are granted work release.

17 Q Is it the rule at D.C. Jail that
18 inmates have to go out and find work?

19 A No.

20 Q Can inmates at D.C. Jail go home for
21 the weekend and go to the Redskins football game
22 with their cousins?

23 MR. COX: Objection. There is no
24 testimony in the record that any Bannum CCC
25 residents or prisoners go to Washington Redskins

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1 football games.

2 CHAIRPERSON GRIFFIS: Next we're going
3 to hear who is a fan and who isn't. But I
4 understand the scope, but just make it a little bit
5 more serious and direct.

6 MR. TEMPLE: Well, it's actually a fair
7 question, and I think the question is not -- I
8 mean, it may be in jest, but D.C. Jail inmates
9 cannot go to a Redskins game on the weekend, can
10 they?

11 MR. COX: There is no testimony at all
12 in the record that --

13 MR. TEMPLE: I'm doing
14 cross-examination.

15 MR. COX: Yes, it's completely beyond
16 the scope and there is no testimony in the record
17 about football games attended by Bannum prisoners.

18 CHAIRPERSON GRIFFIS: How about are
19 they --

20 MR. TEMPLE: Strike the question.

21 CHAIRPERSON GRIFFIS: Are they able to
22 leave D.C. Jail for recreational and entertainment
23 activities?

24 THE WITNESS: At times, defense
25 attorneys have approached the court and the judges

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1 have acquiesced and ordered inmates to be released
2 for different reasons, and sometimes, although it's
3 not specified in the court order, there probably
4 are recreational --

5 CHAIRPERSON GRIFFIS: Okay.

6 BY MR. TEMPLE:

7 Q How frequent is that, that you know
8 that inmates have been allowed by court order to
9 leave D.C. Jail for recreational purposes? How
10 many times can you recall?

11 A Well, since -- I really can't.

12 Q Okay. Are you familiar -- you said
13 that when you were at the D.C. Jail, you had some
14 knowledge and interaction -- correct me if I'm
15 wrong -- with D.C. correctional facilities -- I
16 mean community correctional facilities in the
17 District of Columbia?

18 A What was your question again?

19 Q During the time that you worked with
20 the Department of Corrections, you had some
21 experience with D.C. community correctional
22 centers; is that correct?

23 A Yes.

24 Q Do you know whether any of those
25 centers -- actually, isn't it true that none of

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1 those centers were deemed to be temporary
2 correctional institutions for purposes of zoning?

3 A I was never aware of what they were
4 zoned, if they were zoned.

5 Q Isn't it true that Community
6 Correctional Center Number 4 was an adult
7 rehabilitation home?

8 A Community Correctional Center Number 4
9 was a community based correctional facility.

10 Q Ms. Cathy Campbell, who you had an
11 opportunity to see on the video, stated that there
12 were empty beds in D.C. at the January 31st, 2003,
13 meeting. Do you know if that is true, if that was
14 true?

15 MR. COX: I'm going to object. Mr.
16 Willis -- you haven't established that he was at
17 this meeting and heard those statements, so I don't
18 know if he can testify as to what she was talking
19 about.

20 BY MR. TEMPLE:

21 Q Mr. Willis, were you present at that
22 meeting when Ms. Campbell spoke?

23 A I don't recall the date, but I do
24 believe that was the one and only meeting I did
25 attend.

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1 Q Okay. And at that meeting, do you know
2 if what she stated was, in fact, true, that there
3 were empty beds in D.C. as of January 21st, 2003?

4 A At that time, I was not residing in the
5 District, nor was I keeping up with what was going
6 on with the District per se.

7 Q Are you familiar with the lease that
8 you presently have on the Bannum space that you
9 occupy?

10 A No.

11 Q A few more questions.

12 MR. TEMPLE: Indulgence, please.

13 [Pause.]

14 BY MR. TEMPLE:

15 Q Do you know the exact dates of those
16 consent decrees that you referenced?

17 A I believe they were 1973 and '69 or '73
18 and '71, but I really don't recall. I know they
19 were approximately 30 years old.

20 Q Are you familiar with the legislative
21 history that this panel has discussed earlier this
22 evening, or afternoon?

23 A Only from what I've heard.

24 Q Were you familiar with the action by
25 the City Council in 1971 when this particular

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1 section, 801.7(k), was being considered?

2 A No.

3 Q Okay. You first became familiar with
4 the consideration of that section, then, during
5 this particular process; is that correct?

6 MR. COX: During which process?

7 MR. TEMPLE: During this zoning hearing
8 process. Is that correct?

9 THE WITNESS: I'm not sure I understand
10 your question.

11 BY MR. TEMPLE:

12 Q You first became familiar with the
13 legislative history of 11 DCMR 801.7(k) during this
14 zoning process; is that correct?

15 A I really don't -- I'm not sure on what
16 -- what you're quoting, which one you're quoting.

17 Q Okay. You have no personal knowledge
18 about why the provision 801.7(k) was actually
19 enacted into law; is that correct?

20 A If you could tell me what 801.7(k) is.

21 MR. TEMPLE: No further questions.
22 Thank you.

23 CHAIRPERSON GRIFFIS: Thank you, Mr.
24 Temple.

25 Mr. Rushkoff.

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1 MR. RUSHKOFF: Thank you.

2 CROSS-EXAMINATION

3 BY MR. RUSHKOFF:

4 Q Are there residents at Bannum's
5 facility -- when I refer to Bannum's facility, I'm
6 talking about the one on Adams Place. Are there
7 residents at Bannum's facility who are not
8 considered to be in the custody of the correctional
9 system? Let me put it another way. Are all the
10 residents at Bannum's facility in the custody of
11 the correctional system?

12 A All the residents at Bannum Place of
13 Washington, D.C. are under the custody of the
14 Attorney General.

15 Q Okay. Are there D.C. Code violators
16 who are now residents at Bannum, if you understand
17 that question? In other words, people who violated
18 D.C.'s own local laws, you know, as set forth in
19 the D.C. Code.

20 CHAIRPERSON GRIFFIS: Like zoning, you
21 know, when we lock them up.

22 [Laughter.]

23 MR. RUSHKOFF: No, not zoning.

24 THE WITNESS: To be very honest with
25 you, any D.C. Code offender comes under the

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1 authority of the Attorney General.

2 BY MR. RUSHKOFF:

3 Q Right. So right now, do you have D.C.
4 Code offenders who formerly would be at D.C. Jail
5 or Lorton? Do you have -- are there any at
6 Bannum's facility?

7 A We have former inmates of the D.C.
8 Department of Corrections who are now residents of
9 Bannum Place, yes.

10 Q As part of the same sentence in which
11 they were serving when they were in the D.C.
12 system?

13 A Yes.

14 Q Okay. Do you also have individuals who
15 are serving what would be called federal sentences
16 for violations of federal law who have not been
17 part of the D.C. system?

18 A Yes.

19 Q Okay. Now, if someone -- if a resident
20 of Bannum's facility walks off, can that individual
21 as a result be prosecuted for a prison break?

22 A It's called -- prison breach is the --

23 Q Breach?

24 A Yes.

25 Q Okay. They can be prosecuted -- is

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1 that a felony?

2 A Yes.

3 Q Okay. Now, when you -- you said you
4 were involved with Community Correctional Center
5 Number 4.

6 A Correct.

7 Q When you were there, when you were
8 involved with this institution, if an individual
9 who was a resident there walked off, could that
10 individual be prosecuted for prison breach?

11 A Yes.

12 Q Okay. Now, Community Correctional
13 Center Number 4 was located in D.C., right?

14 A Yes.

15 Q Okay. And it didn't have armed guards,
16 correct?

17 A No correctional staff were armed at
18 that facility.

19 Q Okay. And it didn't have perimeter
20 fencing, correct?

21 A No perimeter fencing.

22 Q And if I asked the same two questions
23 about Bannum's facility, you would give the same
24 answers -- no armed guards, no perimeter fencing --
25 correct?

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1 A No armed correctional staff, no
2 perimeter fencing.

3 Q Okay. Now, Lorton is located in
4 Virginia, correct?

5 A It was.

6 Q It was. Right. And when it existed,
7 it did have perimeter fencing and armed guards,
8 correct?

9 A It had perimeter fencing at the
10 majority of the -- it had perimeter fencing at all
11 of the facilities, but at the minimum security
12 facility, I think there was only -- I don't believe
13 there were armed staff.

14 Q Now, were there residents at Lorton who
15 were granted work release while they were residents
16 there?

17 A Yes, out of the minimum security
18 facility.

19 Q Okay. And these people in the minimum
20 security facility were restrained by perimeter
21 fencing; is that correct?

22 A A single perimeter fence, yes.

23 Q Was it a barbed-wire fence?

24 A It was a single perimeter fence with
25 razor wire barrier.

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1 Q Okay. So in order to go to work, they
2 had to be given a way of bypassing the barbed wire
3 -- the razor wire fence, correct?

4 A Yes.

5 Q Okay. Are you familiar with whether or
6 not residents of the D.C. Jail have historically
7 been granted work release?

8 A There have been residents who have been
9 granted work release from the D.C. Jail.

10 Q Okay. In deciding -- well, let me ask
11 you this question: Are you familiar with any of
12 the considerations by Bannum in deciding to put
13 this facility where it's located?

14 A I don't understand your question.

15 Q Were you involved at all or are you
16 familiar with Bannum's thinking in deciding to
17 locate this facility where it is?

18 A No.

19 Q Okay.

20 MR. RUSHKOFF: I have no further
21 questions.

22 CHAIRPERSON GRIFFIS: Thank you.

23 Any redirect?

24 MR. COX: Just a couple quick
25 questions, Mr. Chair.

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1 REDIRECT EXAMINATION

2 BY MR. COX:

3 Q Mr. Willis, with respect to the -- I
4 think Mr. Parsons asked you about subsistence and
5 you testified that the inmates have to pay 25
6 percent of their income to the facility. Can you
7 be more specific? Where does that money go?

8 A The 25 percent is deposited into a
9 corporate account.

10 Q And ultimately where does the money end
11 up? Whose hands?

12 A I would assume that since the corporate
13 account is with Bannum --

14 MR. TEMPLE: Objection to the extent
15 that he doesn't know. He said, "I would assume."
16 I would object to the --

17 CHAIRPERSON GRIFFIS: Okay. I don't
18 see the relevance.

19 MR. COX: Okay.

20 CHAIRPERSON GRIFFIS: And since it was
21 my question --

22 MR. COX: Oh, I'm sorry. I thought it
23 was Mr. --

24 CHAIRPERSON GRIFFIS: That's all right.
25 Okay.

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1 MR. COX: My apologies.

2 CHAIRPERSON GRIFFIS: Anything else?

3 BY MR. COX:

4 Q Mr. Willis, with respect to the inmates
5 who leave on passes or go to classes, they all have
6 to return to the facility, correct?

7 A Yes.

8 Q If they don't return to the facility,
9 are they prosecuted for prison breach?

10 A They are placed in escape status.

11 Q And they are ultimately prosecuted for
12 prison breach, you testified?

13 A I believe so, yes.

14 Q Okay.

15 MR. COX: I don't have any further
16 questions.

17 CHAIRPERSON GRIFFIS: Okay.

18 Are there any questions on those two
19 answers?

20 [No response.]

21 CHAIRPERSON GRIFFIS: Very well. Thank
22 you very much, Mr. Willis. We appreciate your
23 being down here this evening.

24 [Witness excused.]

25 CHAIRPERSON GRIFFIS: Who is your next

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1 witness and how long do you believe that witness
2 will run?

3 MR. COX: The next witness is Mr. Bill
4 Willingham, and he will probably take an hour, I
5 would imagine, with questions from the Board and
6 cross-examination.

7 CHAIRPERSON GRIFFIS: No, just his
8 testimony.

9 MR. COX: Oh, just his testimony?
10 Probably a half an hour.

11 CHAIRPERSON GRIFFIS: Half an hour.
12 Okay.

13 MR. COX: Would the Board permit a
14 couple minutes break, five-minute break?

15 MR. TEMPLE: Mr. Griffis, before we do,
16 I would like to inquire. The gentleman has 29
17 minutes and 37 seconds left. He indicated that his
18 next witness, which is his second of four
19 witnesses, is going to consume a half an hour, and
20 Mr. Lowry hasn't testified. I have some concern
21 about the amount of time that they expect to use.

22 CHAIRPERSON GRIFFIS: Good. Excellent
23 point. We have roughly 30 minutes left in the hour
24 presentation of the case, so in this moment of
25 recess, if you could prioritize your time, I think

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1 the Board may grant a little flexibility at the end
2 of 60 minutes based on the clock and such, but it's
3 not upwards of 30 minutes, it's more in the realm
4 of five to ten minutes. So take that under
5 advisement and we will be back in ten.

6 Also, let me just update for everyone.

7 It's the anticipation of the Board we will begin
8 to start slowly losing quorum on about seven
9 o'clock as members have to leave. Of course,
10 anything they miss, they will read the entire
11 transcript before deliberating on the case.

12 However, with that in mind, we are at
13 the 6:30, roughly, hour. This is going to be the
14 last witness that we hear today. We will get
15 through that testimony, questions from the Board,
16 and cross-examination, and we will complete the
17 hearing this evening. So in the recess, I will
18 work to start pulling together another date for the
19 continuation of this.

20 MR. COX: Thank you, Mr. Chair.

21 [Recess.]

22 CHAIRPERSON GRIFFIS: Okay. We're
23 ready to proceed when you are.

24 MR. TEMPLE: Mr. Griffis?

25 CHAIRPERSON GRIFFIS: Yes?

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1 MR. TEMPLE: Can I just have a second?

2 I talked to the scheduling people in the interim
3 and they said that the next hearing is scheduled --
4 is possibly September. These gentlemen have about
5 40 minutes left, and we spent about 20 hours here.

6 I would ask if it's any way possible, and I
7 understand and I appreciate everybody's schedule --
8 I have children -- if we can finish this tonight,
9 if we have ten-minute closing arguments.

10 I think that an inordinate amount of
11 time is going to -- if we go to September, the
12 gentleman just testified that they have almost 30
13 percent of their capacity, and this issue -- there
14 are two court dates, there is one next Friday in
15 state court, there's another one in federal court
16 on the 25th, and I think that in the public
17 interest, something needs to happen to resolve
18 this, and if it is possible to do it today, I think
19 it is in the public interest.

20 [Pause.]

21 CHAIRPERSON GRIFFIS: Okay. Let's be
22 realistic about this.

23 MR. RUSHKOFF: Mr. Chair?

24 CHAIRPERSON GRIFFIS: If we do this
25 tonight -- let me just run through the scenario,

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1 and I'm the worse at predicting how long these
2 things take, however, here's my prediction. We're
3 going to get through the witness now. We will take
4 a break for dinner, which should be close to eight
5 o'clock, we would get back at nine, and my
6 estimation is we have three and a half hours left.
7 That's putting us until midnight or after.

8 The Board, although apprehensive, will
9 follow my direction to stay, but I think everyone
10 here ought to be a little bit realistic about
11 whether that's appropriate for this evening or not.

12 MR. TEMPLE: As I mentioned, I chaired
13 a board for the city years ago and it was worse
14 than this because we met four nights a week, and
15 this particular case is of such -- it's a case of
16 first impression, it is of monumental significance.

17 The communities keep coming out. It's obvious.

18 CHAIRPERSON GRIFFIS: So you want us to
19 stay.

20 MR. TEMPLE: I think that approach is
21 appropriate. I respect the imposition, but I just
22 think that if we wait until September, it's going
23 to have a ridiculous implication because it would
24 be talking about 150 people and an irreversible
25 situation for the community.

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1 CHAIRPERSON GRIFFIS: Mr. Rushkoff?

2 MR. RUSHKOFF: I can stay this evening.

3 I am not requesting that we stay, but if that is
4 the decision, I can certainly accommodate the
5 Board.

6 MR. TEMPLE: The Board also noted at
7 its last meeting that it could go late, but it
8 intended to finish it. You stated that.

9 CHAIRPERSON GRIFFIS: Oh, yes.

10 MR. TEMPLE: Yes.

11 CHAIRPERSON GRIFFIS: Of course, I
12 never put a time to it for good reason.

13 MR. COX: You know, the public interest
14 is justice here, and we should given as much time
15 as it takes, and with the Board's indulgence, Mr.
16 Temple took more time than he was allotted and --

17 MR. TEMPLE: Forty-five minutes.

18 CHAIRPERSON GRIFFIS: We've got to
19 stick to the issue tonight.

20 MR. COX: I just want to make sure that
21 we're able to get our case out and have all these
22 facts elicited from the witnesses, and however long
23 it takes within reason, with the Board's
24 indulgence, you know, we should have our chance to
25 get that out. But I don't see us going until

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1 midnight tonight.

2 CHAIRPERSON GRIFFIS: Why?

3 MR. COX: You mentioned that you're
4 going to be losing a quorum, didn't you?

5 CHAIRPERSON GRIFFIS: Well, I can pull
6 a little weight and keep a quorum, I think.

7 MR. COX: I have witnesses from out of
8 town. I don't know what their schedules are like
9 and I don't know if they've got planes to catch. I
10 would have to confer with them.

11 CHAIRPERSON GRIFFIS: All right. Let's
12 take a minute. We won't leave. Why don't you get
13 that done and come back.

14 [Off the record.]

15 CHAIRPERSON GRIFFIS: Very well. I
16 think I have a brief compromise. We're going to go
17 until nine o'clock tonight with no break, limited
18 if we need, as we will lose some of our technical
19 capabilities at that time, so actually we can't
20 stay past nine tonight, although I was optimistic
21 to see the midnight hour here, and then we're going
22 to squeeze this into the 22nd of July afternoon and
23 that should suffice for the time to finish this, so
24 let's talk 22nd problems, issues.

25 MR. TEMPLE: That's fine by us. If I

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1 understand correctly, sir, for purposes of the
2 22nd, we would basically be having closing
3 arguments if the testimony is finished tonight.

4 CHAIRPERSON GRIFFIS: If we can do two
5 witnesses, cross-examination, questions in two
6 hours, absolutely.

7 MR. TEMPLE: Yes. And I also suspect
8 that, notwithstanding what counsel said, we did our
9 case in 45 minutes or so, if I recall, for the
10 record.

11 CHAIRPERSON GRIFFIS: I understand.

12 MR. TEMPLE: So to the extent that they
13 get an extension, I would just hope that -- I don't
14 have any problem with that, but I think that we
15 should be able to finish their case within the next
16 hour and 55 minutes in terms of their witness
17 testimony.

18 CHAIRPERSON GRIFFIS: We will all keep
19 our fingers crossed.

20 COMMISSIONER PARSONS: Mr. Chairman, I
21 should mention that I had not anticipated what the
22 definition of "late" was and have another
23 commitment at eight o'clock, so I will be leaving
24 here at seven-fifteen but am committed to reading
25 the record as it evolves and will be here on the

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1 22nd as well.

2 CHAIRPERSON GRIFFIS: Very well. Let's
3 confirm the 22nd at this time.

4 MR. TEMPLE: Yes.

5 MS. BAILEY: Mr. Chairman, could you
6 please clarify for me what time on the 22nd?

7 CHAIRPERSON GRIFFIS: Let me first make
8 sure it's absolutely acceptable to everybody.

9 MR. TEMPLE: It is for the Appellant.

10 CHAIRPERSON GRIFFIS: Indeed.

11 MR. RUSHKOFF: And it's okay with DCRA.

12 MR. CAMARDO: I've got a concern. The
13 Board has asked a lot of questions. I think we
14 have tried to accommodate the Board in answering
15 their questions and we have been kind of following
16 the Board's lead a little bit as to the questions
17 they had, and Mr. Parsons has taken an active role.

18 Now, I know you made a representation
19 here basically that you would be committed to
20 reading the record, but that takes away the fact of
21 the interaction, hearing live witness testimony.
22 You may even have more questions on this thing.

23 We've all spent a lot of time, a
24 tremendous amount of time on this thing, and it's a
25 very important issue, there's a lot at stake here,

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1 and I hate to cut this thing short. I would like
2 to have the Board here, the full Board here, so if
3 there are more questions that we need to address,
4 we can address those.

5 CHAIRPERSON GRIFFIS: Okay. So you're
6 saying we should conclude now.

7 MR. TEMPLE: With all due respect now,
8 this Board can meet and there can be three people
9 here by law.

10 CHAIRPERSON GRIFFIS: All right.

11 MR. TEMPLE: We're not entitled to five
12 people.

13 CHAIRPERSON GRIFFIS: I understand the
14 regulations. I also know how this Board has been
15 taken to court on not a full Board proceedings. So
16 weighing that, also weighing the late hour --

17 MR. TEMPLE: Mr. Griffis, to the extent
18 that Mr. Parsons is going to read the transcript
19 and has been here, I think there is very little
20 prejudice. We're talking about an hour and 45
21 minutes.

22 COMMISSIONER PARSONS: This has been
23 the practice of this Board for many years. I don't
24 see any reason that this can't proceed without me.

25 CHAIRPERSON GRIFFIS: Okay. Thank you,

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1 Mr. Parsons. I tend to agree it has been the past
2 practice of the Board when going outside of our
3 hours, which were scheduled until six o'clock.
4 We're going to proceed with one more witness this
5 evening and follow through with that, and then we
6 will set the rest for the 22nd.

7 MR. TEMPLE: Mr. Griffis?

8 CHAIRPERSON GRIFFIS: Yes?

9 MR. TEMPLE: May I just make one point,
10 just for the record. I just underscore this. You
11 know, I apologize in making this comment, but I
12 just want to tell you, the panelists, Bannum has
13 sought to continue this hearing time after time
14 after time. The integrity of that particular
15 objection needs to be taken into consideration. To
16 the extent that there can be a quorum --

17 CHAIRPERSON GRIFFIS: I understand.
18 Mr. Temple --

19 MR. TEMPLE: May I just finish, please?

20 CHAIRPERSON GRIFFIS: Actually not. I
21 understand what you're saying and I understand what
22 you're pushing us to, and let me just reiterate
23 what I say oftentimes. There's a lot that I weigh
24 when I think about these things. I also weigh that
25 I know, because I was just in the back room with

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1 the Board, they're hungry and I'm not sure that
2 they're going to be focusing on it. So I am more
3 concerned with how this Board is feeling --

4 MR. TEMPLE: I appreciate that.

5 CHAIRPERSON GRIFFIS: -- and the
6 attitude and the attention it can give.

7 Secondly, one of our biggest priorities
8 is not to continue case. It helps us to not. I
9 had to do as much preparation for today as I did at
10 the first case. It's a waste of my time having
11 additional hearings for this. I would much rather
12 stay and get this done. But there are realities
13 that need to be factored in, too, and so you need
14 to trust that I do that.

15 Let's proceed this evening, let's
16 utilize the short time that we have.

17 MR. TEMPLE: Thank you.

18 CHAIRPERSON GRIFFIS: We will have to
19 go off the record shortly because our recorder will
20 be leaving, so this proceeding will end whether I
21 like it or not, whether it's mid-sentence or not,
22 so let's use the time we have.

23 MR. TEMPLE: Very well.

24 CHAIRPERSON GRIFFIS: It is too bad
25 that Mr. Parsons won't participate in this single

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1 witness. He will, if he reads the transcript and
2 has additional questions, submit them, they will be
3 answered, and we will deal with them at that point,
4 and we will set this for July 22nd. It is the
5 third case in the afternoon. I will not anticipate
6 what time today as one was actually released and
7 did not go to a whole hearing. We made it timely
8 until 2:15, 2:30. You're all going to have to use
9 your own judgment and look at the schedule, but
10 obviously our afternoon starts at one, two cases
11 before it, and then we will do our best again to
12 continue this case and finalize it on the 22nd.

13 MR. TEMPLE: Thank you.

14 CHAIRPERSON GRIFFIS: Thank you.

15 Let's go to the next witness.

16 MR. COX: Bannum calls Mr. Bill
17 Willingham.

18 Whereupon,

19 WILLIAM L. WILLINGHAM,
20 was called as a witness by counsel on behalf of the
21 Intervenor and, having been previously duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. COX:

25 Q Sir, for the record, I just told your

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1 name, but could you state your name for the record?

2 A It's actually William L. Willingham.

3 Q And where do you reside, Mr.
4 Willingham?

5 A At 90A Valley Drive in Steele,
6 S-t-e-e-l-e, Alabama.

7 Q And are you presently employed?

8 A I'm retired and self-employed.

9 Q Prior to retiring -- when did you
10 retire, first of all?

11 A In July of 2000.

12 Q And prior to retiring in July 2000, how
13 were you employed?

14 A I was retired by the federal -- I mean
15 employed by the federal prison system.

16 Q By the BOP, as we have been calling it?

17 A Yes.

18 Q Okay. And we will walk through how you
19 were employed, but how many years were you employed
20 by the BOP?

21 A A little over 20.

22 Q And with respect to the position you
23 held with the BOP immediately prior to retiring,
24 can you tell me how long you were employed in that
25 capacity and what capacity it was and what your

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1 duties were?

2 A Five years -- and I might clear up
3 another issue from a little while ago. I was the
4 community corrections assistant administrator. And
5 you want me to go into the duties now?

6 Q Well, your point being, is that the
7 position that Ms. Campbell holds?

8 A That's Ms. Campbell's position that
9 she's in now.

10 Q Okay. So before Ms. Campbell took her
11 present position, that's the position that you
12 held?

13 A Yes.

14 Q Okay. And in that capacity, what were
15 your duties?

16 A I was responsible for the supervision
17 and oversight of all the community corrections
18 contract evaluation panels, and I was responsible
19 for the development and implementation of national
20 policy that pertained to all aspects of community
21 corrections. Also that included making visits to
22 all the community corrections field offices and
23 providing training to all the community corrections
24 field staff, including the community corrections
25 managers, the contract oversight specialists, the

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1 legal technicians, the whole gamut of community
2 corrections.

3 Plus, I was -- my last two to three
4 years, I did most of the operational reviews for
5 the community corrections field offices. That's
6 where we would actually go out and tell our staff
7 how they were doing their job as pertains to
8 community corrections.

9 As far as national policy, the last
10 major piece of policy that I was involved with was
11 writing the or having a large part in writing the
12 community corrections statement of work.

13 Q Is that the same statement of work that
14 we have heard testimony on, Mr. Willingham?

15 A Yes.

16 Q Okay. That's part of the record in a
17 couple of places.

18 A Right.

19 Q But that's what we talked about
20 earlier?

21 A Right. Yes.

22 Q Okay. And you were responsible
23 partially for drafting that document?

24 A Yes, I was.

25 Q Okay.

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1 A Also, we had our staff training in
2 Denver, Colorado, and I made numerous trips out
3 there to provide training to the community
4 corrections staff, and when we went to the
5 community corrections facilities, what we always --
6 I oversaw the training that the Bureau of Prisons
7 provided to the community corrections staff. Plus
8 I made numerous on-site visits to proposed
9 community corrections contracts and just a mirage
10 of duties.

11 Q And that was from 1995 up until you
12 retired in 2000?

13 A In 2000, yes.

14 Q Okay. What about prior to your
15 position that you've described? What did you do
16 for the BOP immediately before that?

17 A That's when I was on community
18 corrections program review team. That was a lot of
19 travel. We traveled about 35 weeks a year, and we
20 went to all the community corrections satellite
21 offices and did a full, I guess a good word for it
22 is an audit of that office including an audit of
23 all the community corrections contracts they were
24 responsible for, and we rated their job
25 performance.

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1 Q During that period of time, how many
2 reviews did you estimate that you conducted?

3 A Oh, I know exactly. I went on 111
4 reviews while I was the program review examiner.
5 Most of the community corrections regional
6 administrators, the management center
7 administrators, I did those by myself or maybe with
8 one other person that I would take with me.

9 Q Okay. And why don't we go back once
10 more to your position that you held before your --
11 as an examiner for the BOP.

12 A Before that, I was a community
13 corrections manager responsible for the Western
14 Region. That office was in Phoenix, Arizona. If I
15 remember right, my areas of responsibility were
16 California, Nevada and Utah, and I was over all the
17 community corrections contract facilities that we
18 had in those states, not just community corrections
19 centers, but all of our jails that we had under
20 contract with the United States Marshal Service.

21 MR. COX: Bannum offers Mr. Willingham
22 as an expert witness in community corrections and
23 correctional facilities in general.

24 CHAIRPERSON GRIFFIS: Any questions
25 from the Board?

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1 Are you also submitting a hard copy?

2 MR. COX: Yes, I also have copies for
3 the Board.

4 CHAIRPERSON GRIFFIS: We will get that
5 into the record.

6 Mr. Rushkoff, any objection to granting
7 expert status?

8 MR. RUSHKOFF: Not at this point.

9 MR. TEMPLE: I have a brief --

10 CHAIRPERSON GRIFFIS: At what point?

11 MR. RUSHKOFF: Well, maybe after a
12 brilliant question is asked and depending on the
13 answer, I could change my mind.

14 CHAIRPERSON GRIFFIS: So you are
15 withholding your opinion at this point.

16 MR. RUSHKOFF: I don't have any problem
17 at this point.

18 MR. TEMPLE: I have a brief voir dire
19 of the witness.

20 VOIR DIRE

21 BY MR. TEMPLE:

22 Q What is this document here?

23 A I was asked to prepare a resume before
24 I came out here and, just to be honest, that's a
25 document that I had left over from when I retired

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1 that lists your last jobs and qualifications. Just
2 in case you decide to put in for another job before
3 you retire, that's what you have to submit with
4 your paperwork.

5 Q This document says that you were
6 Community Corrections Contracting Section Chief,
7 9/3/95 to present.

8 CHAIRPERSON GRIFFIS: If you're going
9 to go through that, we're going to need copies of
10 it. Can we take a moment and make copies and
11 distribute it to the Board?

12 MR. TEMPLE: I'm not going to take up
13 the time with that. I'll just ask one other
14 question. I can get copies and deal with that
15 later.

16 BY MR. TEMPLE:

17 Q Are you presently employed, sir?

18 A I'm self-employed.

19 Q Okay. And are you being paid to
20 testify today?

21 A No, I'm not.

22 Q Okay. And who paid for your plane
23 ticket here?

24 CHAIRPERSON GRIFFIS: I'm not sure what
25 the pertinence to the Board is for that.

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1 THE WITNESS: I didn't pay for it
2 myself.

3 MR. TEMPLE: Okay. Bias. I can ask
4 the questions in the cross-examination, but it's
5 definitely pertinent. If he's going to be an
6 expert, he's being paid by Bannum.

7 CHAIRPERSON GRIFFIS: I mean, it would
8 be analogous to hiring a transportation engineer to
9 do a traffic study, which are paid consultants.

10 MR. TEMPLE: In a court of law, it's an
11 elementary question when --

12 CHAIRPERSON GRIFFIS: This isn't a
13 court of law.

14 MR. TEMPLE: In this proceeding, if
15 he's being paid and he's testifying, and he's
16 testifying for the people who are paying him --

17 CHAIRPERSON GRIFFIS: Let's put it in
18 the context of the Board of Zoning Adjustment which
19 you're in front of. We hear testimony from
20 architects who I'm assuming, and, gosh, I hope I'm
21 right, are paid by the applicant and their
22 testimony they are presenting and their time is
23 also paid for.

24 MR. TEMPLE: Okay.

25 THE WITNESS: Oh, I don't mind

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1 answering.

2 MR. TEMPLE: Very well. Thank you.

3 CHAIRPERSON GRIFFIS: No, I know you
4 don't mind.

5 Okay. I just don't want us to walk
6 down a whole different animal than what we're
7 normally used to doing and what we actually are
8 supposed to be looking at.

9 If there is no objection -- Mr.
10 Rushkoff, have you changed your opinion?

11 MR. RUSHKOFF: No, I haven't.

12 CHAIRPERSON GRIFFIS: Okay. Any
13 objections from the Board of bestowing the high
14 honor of expert status on Mr. Willingham as an
15 expert in -- similar to Mr. Willis; is that
16 correct?

17 MR. COX: That's correct.

18 CHAIRPERSON GRIFFIS: Okay. And
19 everyone understands what that is. Are there any
20 objections to that?

21 MR. RUSHKOFF: I have no objection.

22 CHAIRPERSON GRIFFIS: Okay. Very well,
23 then. Mr. Willingham, you will be before us as an
24 expert witness in corrections and correctional
25 facilities.

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1 MR. COX: Thank you, Mr. Chair.

2 I just notice that Mr. Parsons has
3 left.

4 CHAIRPERSON GRIFFIS: That's correct.

5 MR. COX: Is that noted for the record
6 just so we're clear as to when we lost him? If
7 not, I would just like it noted.

8 CHAIRPERSON GRIFFIS: I hope we haven't
9 lost him. Mr. Parsons has left the hearing room
10 and it is approximately -- I don't know what time
11 it is -- 7:20 or so.

12 MR. COX: Thank you.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. COX:

15 Q Mr. Willingham, if you would, can you
16 briefly describe the security and the controls that
17 are in place over residents at -- inmates at the
18 community corrections centers run by the BOP?

19 MR. TEMPLE: Objection. Irrelevant.

20 CHAIRPERSON GRIFFIS: Mr. Cox, what's
21 the relevancy of the question?

22 MR. COX: Mr. Willingham is going to
23 offer testimony as to the character of the use of
24 the -- Bannum's use of the 2210 Adams Place
25 facility, that it's a detention or correctional

1 institution.

2 CHAIRPERSON GRIFFIS: Mr. Temple --

3 MR. COX: So how more relevant could
4 his testimony be?

5 MR. TEMPLE: I'm going to object to the
6 testimony as redundant. I mean, the gentleman has
7 already testified to that.

8 CHAIRPERSON GRIFFIS: Mr. Willis has?

9 MR. TEMPLE: Mr. Willis.

10 MR. COX: I don't think we asked Mr.
11 Willis that question.

12 CHAIRPERSON GRIFFIS: Okay. Let's get
13 through it. I would tend to agree, if we're
14 hearing the same questions and answers of Mr.
15 Willis, I think it has been established, so let's
16 see if that's the case.

17 BY MR. COX:

18 Q Obviously your experience is BOP
19 corrections, so try to focus your answers to BOP
20 community corrections centers.

21 Could you, as my question was, could
22 you describe for the Board the security controls
23 that are in place over the inmates at the community
24 corrections centers run by the BOP?

25 A Yes. The securities and controls that

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1 are in place are outlined in detail in the
2 statement of work, and naturally that's the
3 document that the contractor has to abide by to
4 fulfill his requirements under the government
5 contract.

6 I don't really know where you want me
7 to begin, but I guess we can start -- I heard the
8 term that the Bannum facility had three escapes,
9 and I don't know whether that's true or not true,
10 but the -- in the case of an escape from a
11 community corrections center, the contractor is
12 required to almost immediately notify the Bureau of
13 Prisons and the United States Marshal Service.

14 CHAIRPERSON GRIFFIS: Okay. And I
15 think we have --

16 THE WITNESS: We have already done
17 that, I believe, but we didn't -- I don't think
18 they went into things like all the checks that are
19 done while they are at work and -- you know, if you
20 want to go into those.

21 CHAIRPERSON GRIFFIS: Mr. Cox, would it
22 be appropriate to ask the witness whether there are
23 differences in the descriptions that Mr. Willis
24 gave regarding the security of this specific
25 facility?

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1 MR. COX: Okay.

2 BY MR. COX:

3 Q Mr. Willis -- I mean Mr. Willingham,
4 could you describe the similarities, if any, of the
5 CCC program to a prison?

6 A Oh. Yes, there you go. The best way,
7 and I've made this comparison many times over the
8 years, the best way that you can describe a
9 community corrections center is back to a federal
10 prison camp.

11 A federal prison camp is an entity all
12 of its own. There are no fences. We can clear up
13 the issue about the weapons. Nobody is armed at a
14 federal prison camp, but every inmate there, they
15 are in the custody of the Attorney General of the
16 United States serving a federal sentence.

17 They get up in the morning, they all go
18 to work under very minimal supervision, if any type
19 of supervision, and basically the federal prison
20 camp runs just like the community corrections
21 center. Periodic job checks are made to make sure
22 they're on the job, we check with their work
23 foreman to make sure that they are always on the
24 job timely and they're not skipping out. We do
25 random UA checks on them when they're in the

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1 federal prison camp the same way they do when
2 they're in the community corrections center.

3 In the prison camp, they are eligible
4 for increased what we call levels of
5 responsibility. You know, they are eligible for
6 certain types of furloughs after an appropriate
7 amount of time at the camp with a discipline-free
8 record, and the same similarity goes to the
9 community corrections center.

10 A pass or a furlough is not an
11 automatic right. They have to show a continued
12 pattern of good behavior, no incident reports, good
13 work performance, then we'll consider them for a
14 pass. All passes have to be approved by the Bureau
15 of Prisons. The facility can't do that on their
16 own.

17 Q And with respect to subsistence, Mr.
18 Willis briefly touched on that. Can you advise the
19 Board as to how the subsistence is collected and
20 where that money goes?

21 A Yes. The Bureau of Prisons requires
22 that each contractor collect 25 percent of an
23 inmate's gross income as a subsistence payment.
24 That money, it comes directly off the contractor's
25 bill for services provided to the Bureau of

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1 Prisons. If the bill at the end of the month is
2 \$10,000 and they have collected \$3,000 in
3 subsistence, we only pay them \$7,000.

4 Q Okay. So the money ultimately goes to
5 the BOP?

6 A Yes, it goes to Bureau of Prisons --
7 well, actually it goes to the Federal Government,
8 to the general fund.

9 Q Now, would you agree with Mr. Willis'
10 assessment of what happens to an inmate at the CCC
11 if they were to escape? Did you hear what he
12 testified to about that?

13 A I've heard so much since I've been here
14 the last few times. I am sure that he went through
15 the correct escape procedures. If an inmate --
16 there's different ways of reporting an escape. If
17 the inmate's employer calls the facility and says
18 Inmate So-and-So has not shown up for work, or if
19 on one of the scheduled counts the inmate is not
20 accounted for in the facility, if it was to be one
21 of those occasions when he's on pass, and the
22 contractor is required to make a lot of random
23 phone calls to that inmate while he is on pass, if
24 he doesn't answer the phone or come to the phone,
25 he's placed on escape status. Once on escape

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1 status, he becomes an escaped federal inmate with
2 another felony charge.

3 Q Okay. Once caught, does the inmate go
4 back to the CCC --

5 A No.

6 Q -- or where does he go?

7 A No. You never return. Once
8 apprehended, the United States Marshals will place
9 him in the closest federal institution.

10 Q Could you define for the Board what a
11 community corrections center is exactly?

12 A A community corrections center is a --
13 it's a penal institution. I know I have heard this
14 term, CBRF, and I don't know if I can talk or not,
15 but I read that, what a CBRF is, and --

16 CHAIRPERSON GRIFFIS: Let's not
17 speculate a lot.

18 BY MR. COX:

19 Q Before we go too far into it, the CBRF
20 term you're referring to, is that contained in
21 Section 199 of the D.C. zoning regulations?

22 A Oh, I forgot where it was at. I know I
23 read it in there.

24 Q Well, what did you read?

25 A I mean, I can look at it and tell you

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1 if it's --

2 MR. COX: With the Board's indulgence,
3 may I just pull that out and see if that's what
4 he's talking about? One moment, please.

5 CHAIRPERSON GRIFFIS: Mr. Cox, when he
6 does that, I would just give a little direction
7 that the pertinence of your questions should be
8 well thought out.

9 In cross-examination, I imagine Mr.
10 Willingham will be torn apart as to not being an
11 expert in zoning regulations as he just stated he
12 just read it. So if there's some great relevancy
13 to his opinion of what he read in 11-199, the
14 definitions of the terms in Title 11 DCMR --

15 MR. COX: All right. I think I can
16 direct the questions that way.

17 BY MR. COX:

18 Q Mr. Willingham, if you would, I'm
19 looking at the definition of adult rehabilitation
20 home contained in Title 11, DCMR Section 199.

21 A Right.

22 Q Is that what you looked at earlier?

23 A Oh. Right. I've read that several
24 times.

25 Q Okay. Now, the definition for adult

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1 rehabilitation home specifies, among other things,
2 it's a facility providing residential care. Is a
3 CCC a facility that provides residential care?

4 A No.

5 Q And it references residential care for
6 one or more individual 16 years of age or older.
7 Does --

8 A We have no juveniles in a community
9 corrections center, and the way we classify a
10 juvenile with the Bureau of Prisons is whatever the
11 age of majority is for their particular state of
12 residence.

13 Q And the definition goes on to further
14 state, "or any individual 21 years of age or older
15 under pretrial detention." Does the CCC house any
16 individuals under pretrial detention?

17 A A community corrections center does not
18 house any pretrial-type residents.

19 Q And then finally, it says, "or
20 sentenced court orders."

21 A And we have no court-ordered placements
22 in a community corrections -- I mean in an adult
23 rehabilitation home.

24 Q Now, we have heard testimony -- you
25 have heard testimony about lockdown being a quality

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1 of a detention or a correctional facility. Can you
2 comment on that?

3 A I think somebody else kind of went into
4 that testimony. When I think about the term
5 "lockdown," I think about our maximum-security
6 penitentiary in Florence where the inmates are
7 locked down 24 hours a day and escorted by three
8 staff members wherever they go. That's a true
9 lockdown facility.

10 When a federal inmate enters the
11 federal prison system, he is classified as to a
12 particular security need for that inmate, and he
13 may start out at a prison camp or he may actually
14 start out at a maximum-security prison.

15 According to the length of the
16 confinement, well, the goal of the federal prison
17 system is to have that inmate's security level
18 decreased, and the way that happens is by a period
19 of good conduct and good institutional adjustment,
20 and the Bureau of Prisons does not rehabilitate,
21 but we offer numerous programs that the inmates can
22 take advantage of if they choose to, so naturally
23 we look at this to see what kind of programs
24 they've participated in. That's how they work
25 their way down the institutional level to a federal

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1 prison camp and then on out to a community
2 corrections center.

3 Q So there are different levels of
4 security in different correctional institutions; is
5 that fair to say?

6 A Yes.

7 Q But they are all nonetheless
8 correctional or detention facilities?

9 A Right. They are all federal prison
10 facilities.

11 Q Now, I asked you about a community
12 corrections center. Back to that question, you
13 referenced the statement of work. I'm going to
14 direct your attention to BZA Exhibit Number 20,
15 which is Bannum's motion -- brief on the merits,
16 and that's Tab 12 of that document. Do you
17 recognize that document, Mr. Willingham?

18 A Oh, yes.

19 Q And can you tell me what that is?

20 A Which section are you looking at?

21 Q Well, it's an excerpt. Can you tell me
22 what this is a page from?

23 A Oh. It's an explanation of the terms
24 of definitions.

25 Q Is that part of the scope of work that

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1 you authored?

2 A Yes, it is.

3 Q Okay. And can you tell me if that
4 document defines community corrections center?

5 A Yes.

6 Q And how does it define that term?

7 MR. TEMPLE: Objection. This is
8 redundant. It's already done. It's a piece of
9 paper, it's a writing, it's clear, it has been
10 testified to, it's in evidence. This is
11 extraneous.

12 MR. COX: Mr. Willingham helped author
13 this document and can go into how that term came
14 about, something that Mr. Hulon Willis could not.

15 CHAIRPERSON GRIFFIS: Okay. Keep it
16 specific. I mean, time is limited.

17 THE WITNESS: I think I know what
18 you're getting at here. We use different terms for
19 community corrections center. Kind of a good
20 example of this would be like the slang term that
21 the inmates use for a federal prison camp. They
22 call it the country club. It's by no shape, form,
23 or fashion a country club, but that's the accepted
24 term for it in the prison system.

25 So we looked over this definition of a

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1 community corrections center and we went back to
2 the beginning when it was a community treatment
3 center, and at that time, it was also known as a
4 halfway house. The inmates think of a community
5 corrections center as a halfway house just like
6 they would going to a prison camp as going to the
7 country club, as a knife is a shank. So we use
8 terms that are familiar to the inmates, and the
9 staff of the federal prison system get in the habit
10 of using those terms.

11 So a community corrections center has
12 been called a halfway house by federal inmates for
13 years and years, but it's still a community
14 corrections center, it's still a penal institution.

15 CHAIRPERSON GRIFFIS: Okay.

16 BY MR. COX:

17 Q And in terms of the specific use and
18 character and quality of the CCC, how would you
19 define that?

20 A How we use it in regards as to
21 utilization?

22 Q Well, just specifically -- you say
23 halfway house is kind of a loose term. How would
24 you classify the CCC?

25 A Oh, it's a correctional facility, it's

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1 a penal facility.

2 Q Mr. Willingham, I am going to hand you
3 what has been marked as Bannum Number 1.

4 [Bannum Exhibit No. 1 was
5 marked for identification.]

6 CHAIRPERSON GRIFFIS: While you are
7 doing that, Mr. Cox, I'm going to advise you that
8 we have about 20 minutes, so I would ask you to
9 assess your time and utilization of it.

10 MR. TEMPLE: Mr. Griffis, I'm going to
11 object to this. This is the first time I have seen
12 it. To the extent they have exhibits, we have
13 given them exhibits before the hearing, the rule
14 requires it, and I have never seen this document
15 before this moment.

16 MR. COX: It's a public document. We
17 can give Mr. Temple time to look it over.

18 MR. TEMPLE: Regardless of whether it's
19 a public document, it is an exhibit, and the rules
20 say 14 days, or even if it is supplemented, we
21 wouldn't object, but just to give a -- strike the
22 objection.

23 CHAIRPERSON GRIFFIS: Okay.

24 Mr. Cox, let me just be direct. I
25 understand Mr. Willingham's experience at the

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1 broader level of BOP and community corrections
2 centers. I haven't seen -- there's one aspect that
3 was pertinent and direct to this appeal in this
4 particular permit. I will give you my opinion.
5 I'm not sure how much more is needed with this
6 witness based on the experience and based on the
7 first witness, Mr. Willis. So again, if you need a
8 moment to assess, it's obviously your time to use,
9 but I know you have two other witnesses you're
10 going to need to try and get through.

11 MR. COX: Thank you, Mr. Chair.

12 BY MR. COX:

13 Q Just briefly, Mr. Willingham, this
14 document that I have put in front of you, can you
15 identify what it is?

16 A Yes. This is the utilization program
17 statement for community corrections.

18 Q Okay. And could you briefly describe
19 what that document is?

20 A Briefly, it is the rationale on how we
21 select and transfer an inmate to a community
22 corrections center and the inmates that are
23 eligible for transfer to a community corrections
24 center.

25 Q All right. Quickly, I just want to

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1 direct -- can you tell me what year this document
2 was published?

3 A This one was in 1998.

4 Q Okay. You were employed during that
5 time?

6 A Yes.

7 Q All right. So you have seen this
8 document before, then?

9 A Yes.

10 MR. COX: We would like to admit this
11 as Bannum Exhibit Number 1. No objection,
12 hopefully.

13 MR. TEMPLE: No objection.

14 [Bannum Exhibit No. 1 was
15 received into evidence.]

16 BY MR. COX:

17 Q Mr. Willingham, I am going to direct
18 your attention specifically to page 4 of that
19 document.

20 A Yes.

21 Q And the first full paragraph there
22 starts 18 USC Section 3621(b). Could you read that
23 into the record, please, and then I would like to
24 ask you a question about it.

25 A Okay. "The Bureau of Prisons shall

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1 designate the place of the prisoner's imprisonment.

2 The Bureau may designate any available penal or
3 correctional facility the Bureau determines to be
4 appropriate and suitable. A CCC meets the
5 definition of a penal or correctional facility."

6 Q Okay. Now that you have read it into
7 the record, could you tell me what exactly that
8 statute is, what it's all about?

9 A In a nutshell, it's the Bureau of
10 Prisons' guidance that a community corrections
11 center is a penal or a correctional facility, and
12 we use that as a place of designation when
13 appropriate for our federal inmates.

14 Q Do you understand that to be where the
15 BOP gets its authority to sentence inmates to penal
16 and correctional facilities?

17 A From the Attorney General.

18 Q Okay.

19 A All inmates are under the custody of
20 the Attorney General of the United States, and that
21 authority to confine is designated to the Federal
22 Bureau of Prisons.

23 Q All right. Are you familiar with
24 Bannum's proposed -- or actually Bannum's
25 operational CCC at 2210 Adams Place?

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1 A Yes.

2 Q In your opinion, could you tell me what
3 that facility is?

4 A It's a community corrections center.

5 Q Is it a place of imprisonment?

6 A Yes, it is.

7 Q Is it a detention or correctional
8 institution?

9 A Yes, it is.

10 Q Now, in order to get a contract with
11 the BOP for a community corrections center, is the
12 contractor required to submit proof of zoning?

13 A Oh, yes. Yes.

14 Q And when the contractor submits that,
15 does the BOP rely upon it?

16 MR. TEMPLE: Objection. This is all
17 leading. I tried to refrain. He's just asking
18 leading questions. This is his witness.

19 MR. COX: I'm trying to move through
20 this quickly.

21 CHAIRPERSON GRIFFIS: It seems to be a
22 fairly direct question of whether they have to
23 comply with zoning.

24 THE WITNESS: Oh, the zoning has to be
25 provided by the time the contractor submits their

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1 best and final proposals to the government. It has
2 to be there.

3 CHAIRPERSON GRIFFIS: Okay. Let's
4 continue.

5 BY MR. COX:

6 Q You have heard some testimony about the
7 duration of Bannum's contract at 2210 Adams Place,
8 Mr. Willingham, correct?

9 A Yes.

10 Q If the BOP had negotiated this contract
11 with Bannum and acknowledged the three-year zoning,
12 are those negotiations -- do those finally become
13 part of the final contract with the BOP?

14 A Yes.

15 MR. TEMPLE: Objection. Totally
16 speculative relative to this contract and the way
17 the contract is phrased.

18 MR. COX: Mr. Willingham is an expert
19 in community corrections contracting and community
20 correctional facilities. He certainly knows all
21 about contracts and what is required in the
22 issuance of the contracts.

23 CHAIRPERSON GRIFFIS: Mr. Willingham,
24 in the contracts, in order for them to be signed
25 with BOP, would they have to be in compliance with

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1 the local and state codes and laws?

2 THE WITNESS: Yes, they would.

3 CHAIRPERSON GRIFFIS: Okay.

4 THE WITNESS: In fact, the basic
5 contract with the Bureau of Prisons -- this is a
6 little different -- is a two-year contract with
7 three option years, and the option years are all
8 exercised strictly at the pleasure of the Bureau of
9 Prisons. I believe this one is for a one-year base
10 period and four option years.

11 CHAIRPERSON GRIFFIS: Okay. There is
12 no provision that, this being a federal entity, for
13 instance, that it wouldn't have to comply with
14 certain codes or local regulations?

15 THE WITNESS: As far as life safety
16 codes, it would have to comply with the most
17 stringent of the life safety codes.

18 MR. COX: If I may, Mr. Chair, is your
19 question is the contractor required to comply with
20 zoning laws or is it required to submit proof of
21 zoning? Is that what you're asking Mr. Willingham?

22 CHAIRPERSON GRIFFIS: Okay.

23 MEMBER ZAIDAN: Well, that's what he
24 just testified to.

25 CHAIRPERSON GRIFFIS: Right. Yes.

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1 THE WITNESS: The contract wouldn't
2 have been awarded unless we had proof of zoning.

3 MEMBER ZAIDAN: And maybe to help keep
4 this a little more focused, I am sure, in order to
5 show your proof of zoning, you gave them a copy of
6 your building permit or your C of O? Or what did
7 you give them to show them that?

8 MR. COX: Well, Mr. Willingham didn't
9 give them anything.

10 MEMBER ZAIDAN: Well, I mean, what
11 would you typically show?

12 THE WITNESS: They would submit
13 whatever zoning information they received from the
14 city, their proof of zoning. Sometimes it's in the
15 form of a certificate, sometimes it's in the form
16 of a letter from the zoning -- it's according to
17 the different state or locale.

18 CHAIRPERSON GRIFFIS: Okay.

19 THE WITNESS: And also they have to
20 have a certificate of occupancy, too.

21 BY MR. COX:

22 Q I want to direct your attention along
23 these same lines to BZA Exhibit 20, Bannum's
24 memorandum on the merits in Tab Number 1. Can you
25 just take a quick read through that document.

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1 MR. TEMPLE: What document are you
2 referring to, for the record?

3 MR. COX: To the one that I just
4 identified, 20.

5 MR. TEMPLE: What is the date of the
6 document? I don't have it in front of me.

7 MR. COX: It's a December 11, 2000,
8 document from --

9 MR. TEMPLE: Thank you.

10 CHAIRPERSON GRIFFIS: Exhibit Number
11 68. Oh, I'm sorry. It is not 68. It's your first
12 filing; is that correct?

13 MR. COX: It's Tab Number 1 on our
14 memorandum on the merits.

15 CHAIRPERSON GRIFFIS: Seventeen April?

16 MR. COX: It's part of our brief on the
17 merits at Tab 20 of the BZA file.

18 MEMBER ETHERLY: If I have it
19 correctly, it's Exhibit 20, and you're referring to
20 the December 11, 2000, letter to Michael Johnson.

21 MR. COX: Thank you, Mr. Etherly.

22 MEMBER ETHERLY: Okay.

23 BY MR. COX:

24 Q Mr. Willingham, that letter that I'm
25 showing you here that's dated December 11, 2000,

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1 from Holland & Knight, have you seen this before?

2 A No.

3 Q Okay. After having read through it, is
4 that letter sufficient proof of zoning for the BOP?

5 A Yes, it would be.

6 Q Okay. And what about the one that is
7 at Tab 2 right after that? Could you take a look
8 at that November 26, 2001, letter?

9 A Yes, it would be also.

10 Q Okay. And both of those letters that
11 you have just looked at identify a contract for
12 three years, or actually -- strike that.

13 In the second paragraph of the first
14 letter dated December 11th, 2000, I'll read. It
15 says, "The property at 2210 Adams Place, Northeast,
16 is located in the C-M-2 District. Under Section
17 801.7(k) of the zoning regulations, temporary
18 detention or correctional institution on leased
19 property for a period not to exceed three years is
20 permitted as a matter of right in a C-M District."

21 A Yes.

22 Q That three-year period that's submitted
23 to the BOP, does that become part of the contract?

24 A Part of the contract, yes.

25 Q So for all intents and purposes, that's

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1 a three-year contract?

2 A That's a three-year contract.

3 Q And the BOP relies upon that?

4 A Yes.

5 Q And you mentioned that most contracts
6 are issued for two years. This one happens to be a
7 one-year base. Is that correct?

8 A That's correct

9 Q But a three-year total contract --

10 A That's correct.

11 Q -- with the options?

12 A That's correct.

13 Q Does the BOP ever issue any contract
14 with a base period longer than two years?

15 A No.

16 MR. COX: Could I have just one moment,
17 please, with the clock stopped just to confer?

18 [Pause.]

19 MR. COX: Mr. Chair, I have no further
20 questions for Mr. Willingham.

21 CHAIRPERSON GRIFFIS: Very well. Let's
22 go to the Board.

23 Questions? Any Board questions of Mr.
24 Willingham at this time?

25 MEMBER ETHERLY: Very briefly, Mr.

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1 Chair.

2 Mr. Willingham, I appreciate your
3 testimony. You have heard some questions back and
4 forth about security levels, lockdowns, and I'm not
5 going to go too deeply into that, but I just want
6 to just touch on a couple of issues very quickly.

7 With respect to the program statement
8 that was provided during your examination here, --

9 THE WITNESS: Yes, sir.

10 MEMBER ETHERLY: -- if one takes a look
11 under the community corrections center criteria and
12 referral guidelines that begins on page 7 of the
13 document, it refers to the referral process for how
14 inmates come into a CCC, --

15 THE WITNESS: Yes.

16 MEMBER ETHERLY: -- and I found that to
17 be very helpful because I was questioning earlier
18 how an inmate comes to be referred, and so this
19 document was very instructive.

20 The question for you, in your
21 experience, are there instances or have there been
22 instances where you have seen an inmate come into a
23 CCC through a process other than what is laid out
24 here in the referral process?

25 THE WITNESS: In the past -- let me --

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1 MEMBER ETHERLY: Meaning you have your
2 regular referrals, you have situations that might
3 involve female inmates who are pregnant, I believe,
4 and then you might -- and I think that perhaps
5 concludes the various referral routes. But I'm
6 just trying to get a sense, is there any kind of
7 other way in which an inmate or client might come
8 to a CCC other than through the referral that's --

9 THE WITNESS: The referral process is
10 the procedure for an inmate to --

11 MEMBER ETHERLY: Okay.

12 THE WITNESS: I was thinking along your
13 lines, we do have a program for female inmates that
14 are expecting.

15 MEMBER ETHERLY: Okay.

16 THE WITNESS: We call that the Mothers
17 and Infants Together Program.

18 MEMBER ETHERLY: Okay. And that's
19 referred to in the document.

20 THE WITNESS: It's a referral type
21 process also.

22 MEMBER ETHERLY: Okay. Now, with
23 respect to the statement of work, let me return
24 back to that statement of work once again, which is
25 outlined in Exhibit 20 at my tab -- I believe it's

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1 Tab L. The statement of work refers to what I
2 believe to be three program components for a CCC,
3 and I'm looking at what is referred to as Chapter
4 10, page 47, of the community corrections center
5 statement of work. The three program components,
6 based on what I'm looking at in just very quick
7 fashion, community corrections component, which
8 appears to be the most restrictive --

9 THE WITNESS: Most restrictive part.

10 MEMBER ETHERLY: You then have the
11 pre-release component, --

12 THE WITNESS: Yes.

13 MEMBER ETHERLY: -- and then you have
14 the home confinement component.

15 THE WITNESS: Home confinement. That's
16 correct.

17 MEMBER ETHERLY: Are there inmates --
18 in your experience, have you seen instances at CCCs
19 where inmates at a different component are housed
20 in a CCC?

21 THE WITNESS: Just those three
22 components.

23 MEMBER ETHERLY: Just those three
24 components only. Okay.

25 THE WITNESS: Now, some -- there are

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1 some contractors that have side contracts with,
2 say, the United States Marshal Service or the
3 Department of Immigration, but that has -- it may
4 be located on the same grounds, but it has to be a
5 totally separate facility where both --

6 MEMBER ETHERLY: Okay. So it's not
7 part of the CCC.

8 THE WITNESS: It's not part of the CCC,
9 no, sir.

10 MEMBER ETHERLY: Okay. Is each CCC
11 required to retain documentation or records as to
12 what percentage of its population falls under each
13 component?

14 THE WITNESS: Oh, I'm sure, because the
15 records are maintained for 30 years.

16 MEMBER ETHERLY: Okay.

17 THE WITNESS: So there's a record of --
18 if you're talking about the three components listed
19 in the statement of work, the community corrections
20 center component?

21 MEMBER ETHERLY: Meaning if I wanted to
22 inquire what the percentage of Bannum Place's
23 current population is, for example, within the
24 community corrections component, would you be able
25 to provide that information?

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1 THE WITNESS: I'm sure Bannum would.
2 That's a question that we would ask if we were
3 reviewing that facility.

4 MEMBER ETHERLY: Okay. But that's
5 typically documentation or recordkeeping --

6 THE WITNESS: Yes.

7 MEMBER ETHERLY: -- that's done by the
8 facility. Okay.

9 Thank you, Mr. Chair.

10 Thank you, sir.

11 CHAIRPERSON GRIFFIS: Other questions
12 from the Board?

13 [No response.]

14 CHAIRPERSON GRIFFIS: Very well.

15 Mr. Rushkoff or Mr. Temple, are you
16 ready?

17 MR. TEMPLE: Thank you. Just briefly.

18 CROSS-EXAMINATION

19 BY MR. TEMPLE:

20 Q Sir, you live in Alabama? Is that
21 where you worked when you worked for the Bureau of
22 Prisons?

23 A No. I worked here in Washington, D.C.

24 Q And are you familiar with the D.C.
25 Corrections process?

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1 A Very little.

2 Q Are you familiar with D.C. zoning laws?

3 A Not at all.

4 Q And you were shown a document that
5 talked about community corrections centers and the
6 gentleman asked you for an explanation. But it
7 also says halfway house there, not in quotes; do
8 you see that?

9 A I don't see it in front of me.

10 Q Let me just show it to here.

11 MR. TEMPLE: If you don't mind showing
12 it to the gentleman, please?

13 MR. COX: Where is this?

14 MR. TEMPLE: The same document that you
15 showed him earlier.

16 MR. COX: I showed him a few documents.

17 MR. TEMPLE: It's the definitions
18 statement from the statement of work.

19 MR. COX: Let's be specific what we're
20 looking at here. What tab is this at? What
21 exhibit?

22 MR. TEMPLE: It's the same explanation
23 statement from the statement of work.

24 CHAIRPERSON GRIFFIS: Is it Attachment
25 G, page 1 of 5, on the top?

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1 MR. COX: That's what it says on top.

2 MR. TEMPLE: Yes.

3 CHAIRPERSON GRIFFIS: Okay. So this is
4 part of your motion for affirmation and it's
5 Exhibit 1 of that motion.

6 BY MR. TEMPLE:

7 Q Mr. Willingham, it says that a
8 community corrections center is a halfway house
9 there. Is that what it says?

10 A No. It says it's also called that.

11 Q Okay. It's also called --

12 A It's also called a CTC, a facility. We
13 tried to think of every term --

14 Q I just asked you a question.

15 A Oh, I'm sorry.

16 Q It's also called a halfway house; is
17 that right?

18 MR. COX: Can you let him finish his
19 answer, please? I know you don't like it, but can
20 he finish, please?

21 CHAIRPERSON GRIFFIS: Okay.

22 BY MR. TEMPLE:

23 Q It's also called a halfway house; is
24 that correct?

25 A That's one of the terms, yes.

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1 Q Okay. And you worked for the
2 Department of Corrections for how long?

3 MR. COX: I object --

4 BY MR. TEMPLE:

5 Q I mean for the Bureau of Prisons for
6 how long?

7 A A little over 20 years.

8 Q Okay. And can you tell me what your
9 understanding is, based on your experience, of --
10 tell this panel here what a halfway house is and
11 what it does.

12 A What a halfway house is?

13 Q Yes. As it's referenced in that
14 provision.

15 A Oh, I don't have any -- as far as we
16 were concerned when we wrote this, that was just a
17 terminology that a community corrections center was
18 known by in the past. I have an understanding of a
19 halfway house, but it has nothing to do with the
20 Bureau of Prisons.

21 Q And let me ask you, do you -- excuse
22 me.

23 You said that a halfway house -- a
24 community corrections center is a correctional
25 institution; is that correct?

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1 A Yes.

2 Q Have you in your experience at the
3 Bureau of Prisons in terms of your contracting
4 awarded a contract for a temporary correctional
5 institution?

6 A I'm not sure what that refers to. All
7 of our community corrections contracts are
8 temporary.

9 Q When you say temporary, what is your
10 understanding of the term "temporary" in that
11 context?

12 A They are all two-year contracts with
13 three-year base periods. They are temporary.
14 After that, they are over with. I mean the
15 community corrections manager has to ask that a
16 contract be resolicited.

17 Q In your dealings with this Bannum
18 halfway house contract, you have seen the statement
19 of work in this particular case; is that correct?

20 A Yes.

21 Q And you said you were an expert on
22 contracting?

23 A Well, I consider myself, yes.

24 Q Okay. And in the case of the Bureau of
25 Prisons, if a proposal in the form of a request for

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1 a proposal came in to you and it was for a
2 particular -- for a contract with one or two years
3 with three option years, what kind of lease would
4 you require the contractor to have?

5 MR. COX: Object to the form of the
6 question. How would a contract be coming in to Mr.
7 Willingham? I don't understand the question.

8 MR. TEMPLE: He indicated that he was
9 involved with the contracting. He indicated that
10 he conducted 100 or so audits of contracts. He
11 indicated he is an expert in contracting. I am
12 asking from the point of view of the Bureau of
13 Prisons, and the question was very specific.

14 THE WITNESS: I'm not sure -- he said
15 if the contract -- if there's no -- you're talking
16 about if Mr. Lowry or anybody puts in a contract
17 with the Bureau of Prisons, what do we look at in
18 the evaluation?

19 BY MR. TEMPLE:

20 Q Let me rephrase it. You know that --
21 did you know that Mr. Lowry submitted a 685-page
22 proposal to the Bureau of Prisons for this
23 contract?

24 A That sounds about right.

25 Q Okay. Do you know if the Bureau, when

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1 it looks at a request for proposal, actually looks
2 at the lease?

3 A Yes, we would look at the lease.

4 Q Okay. And if the Bureau has a contract
5 that could be a maximum of five years -- do you
6 understand me so far?

7 A I'm with you.

8 Q Okay. Would it require that the
9 individual have a two-year lease, three-year lease,
10 or five-year lease?

11 A We would have to have the two-year
12 lease for the base period.

13 Q Okay.

14 A Most of the contracts read -- their
15 leases read that they run in conjunction with the
16 federal contract.

17 Q And so if this lease was for three or
18 four -- was for four years, it wouldn't be
19 consistent with what you're saying; is that so?

20 A Yes. A lease is a lease.

21 MR. COX: I object to the form of the
22 question.

23 MR. TEMPLE: Excuse me?

24 MR. COX: What lease are we talking
25 about?

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1 BY MR. TEMPLE:

2 Q If the lease that Bannum has for this
3 facility doesn't say one year with an option
4 renewable for four years, that would be
5 inconsistent with what you're testifying to.

6 A No. We would be happy with the lease
7 if it was for the base period, if it was for the
8 life of the contract, if the lease read in
9 conjunction with the contract, just as long as we
10 had a valid lease, because it's up to the
11 contractor to maintain that lease. That's what
12 he's saying that he is going to do. If he doesn't
13 maintain the lease, he gets defaulted, cut and dry.

14 Q So if he has a lease for one year, it
15 wouldn't make a difference as to whether or not he
16 got the contract; is that your testimony?

17 MR. COX: I object to the form of the
18 question.

19 THE WITNESS: I don't really understand
20 the question.

21 BY MR. TEMPLE:

22 Q If the person submitting a bid only had
23 a one-year lease, that wouldn't make a difference
24 in the Bureau of Prison's mind relative to awarding
25 it the contract; is that correct?

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1 A We want some wording that the lease
2 would run with the contract, or it could be on a
3 year-to-year basis. But the bottom line is if he
4 had a lease for the initial base period of that
5 contract, and it's upon the contractor, not the
6 Bureau of Prisons, to ensure that that lease stays
7 in effect, well, that's what we look at the
8 contractor to do. If he doesn't have the lease, he
9 can't operate.

10 CHAIRPERSON GRIFFIS: I think the
11 question has been answered.

12 THE WITNESS: We default him.

13 BY MR. TEMPLE:

14 Q You said that you conducted 100 or so
15 contract audits during the time that you worked at
16 the Bureau of Prisons?

17 A No. I said I conducted over 100
18 program reviews of community corrections offices.

19 Q Okay. And those are not considered
20 program audits?

21 A Yes. Oh, yes. But they are Bureau of
22 Prisons personnel.

23 Q Okay. And when you conducted those
24 audits, how many -- did you conduct audits of any
25 of the Bannum facilities, community corrections

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1 center facilities?

2 A No. The audits are conducted of Bureau
3 of Prisons' community corrections offices. We have
4 them scattered all through the United States plus
5 six regional offices and different management
6 center administrator offices, and in conjunction
7 with those reviews of the community corrections
8 offices, we did some visits and reviews of the
9 contract facilities, and I am sure that I have been
10 -- I can't remember, but I am sure that I have been
11 to Bannum facilities. I have been to all of them.

12 Q But you are familiar with the contracts
13 that were awarded to these community corrections
14 centers during the time that you were in your
15 position as a contract supervising officer.

16 A There were hundreds. I had a staff
17 that -- I oversaw the contract evaluation panels.

18 CHAIRPERSON GRIFFIS: Okay. I think
19 the Board understands.

20 MR. TEMPLE: Okay. Well, I'm going
21 somewhere.

22 THE WITNESS: I don't know -- I can't
23 say that I'm familiar with each and every contract.

24 BY MR. TEMPLE:

25 Q Well, as to the options issue in

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1 contracts, you're familiar with the Bureau -- it
2 has exclusively authority to exercise an option; is
3 that correct?

4 A The Bureau of Prisons does, yes, sir.

5 Q And you are familiar with that process;
6 is that correct?

7 A Yes. That's correct.

8 Q And how often relative to community
9 corrections centers do you know that the Bureau
10 doesn't exercise options?

11 A It has happened on occasion.

12 Q Okay. So it's rare that it happens;
13 isn't that correct?

14 MR. COX: Object to the
15 characterization.

16 THE WITNESS: It's according to the
17 needs of the Bureau of Prisons.

18 BY MR. TEMPLE:

19 Q Do you know relative to -- you're
20 familiar with Bannum's other halfway house -- or
21 community corrections center operations?

22 A Not really.

23 Q And you're not familiar with their
24 contracts?

25 A I know that they have some contracts

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1 with the Bureau of Prisons, but that wasn't my --
2 you know, I don't run those contracts.

3 Q Okay. Did you have any dealings with
4 any of Bannum's contracts?

5 A Yes.

6 Q Okay. Do you know --

7 A As far as the award process.

8 A Do you know of any situation relative
9 to Bannum's 16 halfway houses that the Bureau did
10 not exercise an option in an option year?

11 A I seem to recall -- you know, I would
12 have to do some research on that. I couldn't give
13 you a qualified answer just, you know, just off the
14 top of my head. I was involved with so many of
15 those things.

16 Q You talked about this program statement
17 which has been introduced without objection into
18 the record. This program statement is dated
19 12/16/1998.

20 A Yes.

21 Q Do you know if it has been revised
22 since you left the Bureau of Prisons?

23 A No, I don't. It is easy to check, it's
24 on the Internet.

25 CHAIRPERSON GRIFFIS: Okay. Let's just

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1 stick to the answers to the questions.

2 BY MR. TEMPLE:

3 Q You said something here, and I just
4 need clarification, you said something about
5 inmates being sentenced to these various
6 correctional institutions, but in response to a
7 question, you said they weren't sentenced to these
8 community corrections centers; is that correct?

9 A I don't believe I -- the Bureau of
10 Prisons designates the inmates.

11 Q Clarify for me. They are sentenced to
12 prison, but they are not sentenced to the community
13 corrections centers that you --

14 A Usually the sentences are too long.
15 You know, a community corrections center is not
16 really set up for handling, you know, a long-term
17 inmate that needs a higher custody level.

18 Q I am just asking you a very basic
19 question.

20 A I'm trying to answer it.

21 Q I understand. And the question is, are
22 these individual inmates sentenced -- they are not
23 sentenced -- I want to be clear -- they are not
24 sentenced to halfway houses or community
25 corrections centers?

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1 A Well, the judge doesn't sentence an
2 inmate to anywhere; he just gives the inmate a
3 sentence. Then they are designated by the Bureau
4 of Prisons to the appropriate facility.

5 MR. TEMPLE: Okay. No further
6 questions.

7 CROSS-EXAMINATION

8 BY MR. RUSHKOFF:

9 Q Sir, do you have experience with
10 situations where the contractor has zoning approval
11 for a limited period of time?

12 A I don't really understand that
13 question. Either the contractor has zoning, the
14 way we look at it in the evaluation process, or the
15 contractor does not have zoning.

16 Q Do you know of a situation where the
17 contractor had zoning for, say, one year and then
18 it expired and no one knew what would happen after
19 that?

20 A No, I don't.

21 Q No. Okay. Have you had an experience
22 where they had zoning approval for three years
23 only?

24 A No.

25 Q Okay. Do you have any idea what would

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1 happen --

2 A Usually just the contractor has the
3 appropriate zoning and there is no time limit.
4 They just have the appropriate zoning.

5 CHAIRPERSON GRIFFIS: Just stick to the
6 succinct answers to the questions.

7 THE WITNESS: Just yes or no?

8 CHAIRPERSON GRIFFIS: Well, if you can,
9 that would be the best.

10 BY MR. RUSHKOFF:

11 Q You understand Bannum's contractual
12 arrangement, right?

13 A Somewhat.

14 Q Okay. If you know, you can answer.

15 A Okay.

16 Q Suppose, after three years, Bureau of
17 Prisons opted to renew the contract for a fourth
18 year, okay?

19 A I got you.

20 Q And suppose the response from Bannum
21 was, "Well, our zoning approval expired." What
22 would happen next under this contract?

23 A We would move the inmates to somewhere
24 else. We would default that contract.

25 Q Now, when you default the contract, is

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1 Bannum -- I don't know -- are they off the hook at
2 that point?

3 A Well, in this case, if that's written
4 in the contract, the Bureau of Prisons already
5 understands that they won't have this zoning after
6 a certain amount of time, so it probably wouldn't
7 have any detrimental effect on Bannum. But in
8 another circumstance where that wasn't the
9 arrangement, well, it would -- that would fall
10 under a default and affect future contract awards.

11 Q So it all depends on whether or not the
12 zoning issue is written into the contract?

13 A Yes.

14 Q Okay. Do you have experience with
15 changes in zoning status being written into
16 contracts?

17 A Not really.

18 Q Okay.

19 A In fact, this is the first contract I
20 have ever seen exactly like this one.

21 CHAIRPERSON GRIFFIS: We're a unique
22 city.

23 THE WITNESS: It's very unique.

24 CHAIRPERSON GRIFFIS: And we're very
25 proud.

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1 BY MR. RUSHKOFF:

2 Q If you want to -- this isn't necessary
3 -- if you wish to, you might want to look at
4 Exhibit 20, Tab 1, while I ask the questions, but
5 you can -- I'm going to ask you about some of the
6 phrases that appear there. This is Tab 1, December
7 11th, 2000, letter.

8 Does a community correction facility
9 provide residential rehabilitation services?

10 A No. Rehabilitation is not even in the
11 vocabulary of somebody who works for the Bureau of
12 Prisons.

13 Q Okay.

14 A It might be hard to say, but it's not.

15 Q Okay.

16 MR. COX: Just so I'm clear, are you
17 reading that term that you just read from that
18 document? Because I don't have that.

19 MR. RUSHKOFF: In the first sentence of
20 the document, it says, "This office represents
21 Bannum, Inc., a company that provides residential
22 rehabilitation services," and I was just asking
23 whether a community corrections center offers
24 residential rehabilitation services and the answer
25 was no. Okay.

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1 THE WITNESS: That's written, but --

2 MR. RUSHKOFF: All right.

3 THE WITNESS: From day 1, when somebody
4 first becomes a member of the Bureau of Prisons,
5 their job is to confine inmates and everything
6 follows after that. You know, we provide all kinds
7 of programs and educational opportunities and you
8 name it, and if the inmate wishes to pursue those,
9 well, he changes his life. If he doesn't, he
10 doesn't.

11 MR. RUSHKOFF: Okay.

12 BY MR. RUSHKOFF:

13 Q This may be repeating a question you
14 were asked before, but you would say that a
15 community corrections center does not provide
16 residential care; is that correct?

17 A Now, what do you mean in the terms of
18 residential care?

19 Q Earlier, you were reviewing the
20 definition of adult rehabilitation home and you
21 said that a community corrections center does not
22 provide residential care, and I just want to make
23 sure that --

24 A I'm looking at residential care like an
25 Alzheimer's patient.

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1 Q Okay.

2 A I'm not really --

3 Q All right. So it doesn't provide
4 health care, is what you're saying?

5 A No. The inmate is responsible for his
6 own health care.

7 Q Okay. Now, are individuals referred to
8 a community correction center under a conditional
9 release from the Parole Commission?

10 A Under a conditional release from the
11 Parole Commission. No, they're strictly referred
12 -- actually, there's not many inmates that fall
13 under the old parole category any longer since the
14 Parole Board was disbanded.

15 Q Well, let me ask you this first. What
16 is conditional release from a Parole Commission?
17 Does that mean you're no longer in the correctional
18 system?

19 A I imagine so.

20 Q Okay. Do community correction centers
21 accept individuals who are no longer in the
22 correctional system?

23 A No.

24 Q Okay. Do you have any idea, just --
25 I'm not asking you to go into the heads of who

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1 wrote this letter, but if just from working in the
2 field, you would know what this is in reference to:
3 a transfer from a federal institution in order to
4 make the transition back into society. Do you know
5 what that is referring to?

6 A Yes. That's an --

7 MR. COX: I'm going to object to the
8 form of the question. As you said, Mr. Willingham
9 did not write this document. I asked him about the
10 document in terms of whether it was sufficient for
11 meeting the zoning requirement. So anything that
12 you're getting into in terms of what is in that
13 here, why it's in there, what it means, Mr.
14 Willingham has no basis to testify about that.

15 MR. RUSHKOFF: Okay. Fair enough.

16 BY MR. RUSHKOFF:

17 Q When you were reviewing the definition
18 of adult rehabilitation home, you said that
19 residents of community corrections centers are not
20 there pursuant to sentenced court orders. Could
21 you explain what you meant when you said that?

22 A In some state-run facilities, the judge
23 can issue a court order for a mirage of different
24 things -- for instance, somebody go to a center as
25 a condition of his drug treatment program, that he

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1 must reside in-house for a period of so many weeks
2 or days; as a condition -- if the judge doesn't
3 feel comfortable with this person on the street
4 waiting to go to trial, he has to go there as a
5 condition of a pretrial-type confinement; those
6 type things.

7 Q So your understanding of under
8 sentenced court orders would mean an order
9 referring specifically to that facility as opposed
10 to a general term of incarceration; is that what
11 you meant?

12 A Right. Now, a judge does not sentence
13 or order an inmate to any federal facility.

14 Q Okay.

15 A Under any circumstances. So that's why
16 I said that didn't apply.

17 Q Okay.

18 A And then we don't have any
19 pretrial-type inmates in CCCs and we don't have any
20 juvenile placements in CCCs or drug-treatment type
21 or alcohol-treatment type in CCCs or unwed mothers
22 or --

23 CHAIRPERSON GRIFFIS: Okay.

24 BY MR. RUSHKOFF:

25 Q Okay. Would you agree that individuals

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1 are referred to a community corrections center
2 directly by the court system?

3 A No.

4 A They would not. Okay.

5 A They are referred by the warden of the
6 particular institution to the community corrections
7 manager, and the community corrections manager
8 forwards that referral down to the facility
9 director of the community corrections center for
10 his approval.

11 Q Just to make sure there isn't a
12 misunderstanding, let me just ask you a longer
13 question. Are individuals referred to a community
14 corrections center directly by the court system
15 either to serve their entire sentence in
16 confinement at the community corrections center or
17 to complete their confinement at a community
18 corrections center after a portion has been served
19 at a federal institution?

20 MR. COX: I'm going to object again.
21 Mr. Rushkoff is reading again from the November 26,
22 2001, letter. To the extent that Mr. Willingham
23 did not participate in authoring this document and
24 doesn't know anything about how it ended up in the
25 --

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1 CHAIRPERSON GRIFFIS: In addition, I
2 think we have explored actually how it comes, and
3 the question has been asked and answered in a
4 couple iterations. But I think we understand the
5 intent of the question, so I think we can move on.

6 MR. RUSHKOFF: Okay. No further
7 questions.

8 CHAIRPERSON GRIFFIS: Ms. Miller has
9 one additional question.

10 MEMBER MILLER: I just want to clarify.
11 Did you testify that all contracts for community
12 corrections centers are temporary?

13 THE WITNESS: Yes.

14 MEMBER MILLER: And that they are for
15 usually a one- to five-year period?

16 THE WITNESS: Yes. They are usually a
17 two-year base period with three option years.

18 MEMBER MILLER: And why are they for
19 that period of time? Why are they temporary? Why
20 are they, you know, for two to five years as
21 opposed to ten years?

22 THE WITNESS: That's the changing needs
23 within a five-year time period. The needs for El
24 Paso could change where we need 50 more beds than
25 what was originally contracted for, or we may not

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1 need any more beds. You know, the population might
2 really have took a nosedive, so we just don't
3 advertise for another contract in El Paso. Maybe
4 we asked for more beds in Albuquerque to combine
5 the two facilities. In fact, a new contract has to
6 be solicited for before the -- at the beginning of
7 the last option year.

8 MEMBER MILLER: How often are they
9 granted to the same party? I mean, they are not
10 renewed because they are resolicited, but how often
11 does a facility then get the same type of contract
12 again?

13 THE WITNESS: You're talking about
14 after the initial five years --

15 MEMBER MILLER: Right.

16 THE WITNESS: -- if it runs the whole
17 five?

18 THE WITNESS: Say it expires in three
19 years, yes.

20 THE WITNESS: The incumbent usually --
21 always has a little advantage, and as far as how
22 many get re-awarded contracts, I don't have any
23 idea now.

24 MEMBER MILLER: You don't have any
25 idea? I mean, is it common or uncommon?

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1 THE WITNESS: I mean, you know, it's a
2 fair and open competition. Everybody has the
3 opportunity to bid and put in a solicitation.

4 MEMBER MILLER: Okay.

5 THE WITNESS: You know, the only reason
6 I said the contractor may have -- the incumbent may
7 have a little advantage was because he has usually
8 already got an established facility and somebody
9 else coming in might have a little hard time trying
10 to -- I even hate to use this word -- get the
11 zoning for one or --

12 CHAIRPERSON GRIFFIS: Understandable.

13 THE WITNESS: Yes.

14 MEMBER MILLER: Thank you.

15 CHAIRPERSON GRIFFIS: Mr. Etherly.

16 MEMBER ETHERLY: Mr. Chair, if I could,
17 I know we probed this area at length, but I believe
18 Mr. Rushkoff's line of questioning stumbled upon
19 something which is pretty interesting and actually,
20 to me, pretty good. That's not to suggest that
21 some other stuff wasn't. But what I was struggling
22 with in one of our earlier dialogues was, if this
23 isn't a temporary detention facility or
24 correctional facility, why can't it be a CBRF, and
25 if not, why can't it be an adult rehabilitation

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1 home?

2 Now, your line of questioning to Mr.
3 Willingham stumbled upon I think a very important
4 distinction under CCC rules and regulations, and
5 that is that, according to Mr. Willingham's
6 testimony, CCCs typically are not -- the residents
7 are not the site to which pretrial detainees or
8 sentenced court order type of individuals are sent
9 to, because my question -- my thinking was, well,
10 why isn't this just an adult rehabilitation home?

11 Well, under District of Columbia zoning
12 regs, if you look at the definition, towards the
13 end there, "or any individual 21 years of age or
14 older under pretrial detention or sentenced court
15 orders," and Mr. Willingham's response to your
16 question there was that typically CCCs are not the
17 place to which pretrial detainees are sent.

18 In fact, the document that was
19 introduced by the Intervenor notes, at page 10,
20 under Limitations on Eligibility for all CCC
21 Referrals, and I'm reading directly from the
22 document, "Inmates in the following categories
23 shall not ordinarily participate in CCC programs,"
24 and at Subsection J, which is on page 12, at the
25 top, "Inmates whose admission and release status is

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1 pretrial, holdover, or detainee." Interesting.

2 Now, the follow-up question I have
3 there is, in the preamble to the Limitations on
4 Eligibility, it says, "shall not ordinarily
5 participate in CCC programs." My question might
6 sound a little repetitive, but I just want to be
7 sure Mr. Willingham understands what I'm getting
8 at.

9 "Ordinarily" suggests that there might
10 be extraordinary circumstances under which a person
11 might be sent directly to a CCC, perhaps to that
12 more restrictive component that we talked about
13 earlier. Perhaps there are instances.

14 So my question is, in your experience,
15 have you seen situations where individuals have
16 been sent to a CCC directly by the court or in a
17 pretrial detainee type of situation?

18 THE WITNESS: Not that I can --

19 MEMBER ETHERLY: In your 20 years of
20 experience, you haven't seen that --

21 THE WITNESS: Not that I can recall.

22 MEMBER ETHERLY: -- or heard of any of
23 that? And it would further be your testimony that
24 you are not aware of any individuals who would fit
25 that description presently detained or incarcerated

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1 at the Bannum Place, Inc., location on Adams Place?

2 THE WITNESS: No, not that I'm aware
3 of.

4 MEMBER ETHERLY: Okay. Thank you.
5 Thank you, sir.

6 Thank you, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Any last
8 questions?

9 [No response.]

10 CHAIRPERSON GRIFFIS: Very well.

11 MR. COX: Mr. Chair, can we have two
12 minutes? I might have one or two questions on
13 redirect, and that's it.

14 CHAIRPERSON GRIFFIS: We will give you
15 that time so that you consolidate your questions
16 and can come back with a few. Just to reiterate,
17 that would be the end of this evening, and then I
18 will go over schedule and everything else. We will
19 also give a list of submissions, dates for
20 submissions, and we will tie it up, then.

21 MR. COX: Thank you.

22 [Off the record.]

23 MR. COX: Thank you for your
24 indulgence. We don't have any further questions
25 for Mr. Willingham at this point. We don't have

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1 any further questions, but it's our understanding
2 we're going to be able to call the rest of our
3 witnesses with the time remaining and a little bit
4 more next time?

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. COX: All right.

7 MR. TEMPLE: Mr. Griffis, I had three
8 cross-examination -- recross questions.

9 CHAIRPERSON GRIFFIS: Recross?

10 MR. TEMPLE: Three. After you guys
11 asked questions and he asked questions, I had --

12 CHAIRPERSON GRIFFIS: Didn't you have
13 cross?

14 MR. TEMPLE: I asked the first
15 questions.

16 CHAIRPERSON GRIFFIS: Recross?

17 MR. COX: We didn't redirect. He has
18 already crossed.

19 CHAIRPERSON GRIFFIS: All right.
20 Brief, just on the answers to the questions --

21 MR. TEMPLE: Yes. Precisely.

22 FURTHER CROSS-EXAMINATION

23 BY MR. TEMPLE:

24 Q The first question is, are you -- is it
25 not true that the Bureau of Prisons -- I mean that

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1 community corrections centers do have directly from
2 the court certain pretrial detainees?

3 MR. COX: He has already answered that
4 question three times now.

5 MR. TEMPLE: I'm asking the question.
6 He can answer. It's recross and it's limited.

7 CHAIRPERSON GRIFFIS: I understand
8 that, but I tend to agree, it was asked. You're
9 asking whether the court directly sentences someone
10 to a CCC.

11 MR. TEMPLE: That's correct.

12 CHAIRPERSON GRIFFIS: We have had that.

13 MR. TEMPLE: He could have answered --
14 see, I'm clarifying the question. He answered that
15 on direct examination. I'm asking him on cross,
16 which is in a different context.

17 CHAIRPERSON GRIFFIS: That actually
18 came from Mr. Etherly also.

19 MR. COX: Mr. Etherly explored that
20 whole subject.

21 MR. TEMPLE: He's not
22 cross-examination.

23 CHAIRPERSON GRIFFIS: Oh, he is.

24 MR. TEMPLE: Okay. Very well.

25 CHAIRPERSON GRIFFIS: He's actually

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1 more important than cross.

2 MR. TEMPLE: Okay. Very well. But he
3 could have answered the question. I'm just trying
4 to clarify it.

5 THE WITNESS: No.

6 MR. TEMPLE: Okay. Very well.

7 BY MR. TEMPLE:

8 Q And are you not aware of what's called
9 a public placement in the Bureau of Prisons where
10 judges sentence today, in 2003, 2002, inmates
11 directly to community corrections centers?

12 A That has nothing to do with the Federal
13 Bureau of Prisons.

14 Q Okay. Can you tell the panel, please,
15 what a public placement from a court is?

16 A I vaguely -- that has to do with the
17 United States Probation Office. I don't have
18 anything to do with that.

19 Q Can you explain what it is?

20 A Or I didn't have anything to do with
21 that.

22 MR. COX: I'm going to object. This is
23 beyond the scope of Mr. Willingham's expertise.
24 He's not qualified --

25 THE WITNESS: You need a U.S. probation

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1 officer.

2 CHAIRPERSON GRIFFIS: Okay.
3 Understood.

4 MR. TEMPLE: With indulgence, please --

5 MR. COX: No indulgence. He --

6 MR. TEMPLE: Excuse me. I'm talking to
7 the panel here, not to you, sir.

8 With indulgence, please, if I can get
9 him -- the public placement issue is, I understand
10 that there is an arrangement where federal courts
11 do, and whether it may be through the U.S.
12 Probation Office, they do sentence inmates directly
13 to community corrections centers.

14 CHAIRPERSON GRIFFIS: Mr. Temple, he
15 doesn't have the knowledge of it nor the expertise
16 to --

17 MR. TEMPLE: Well, I didn't get a
18 chance to ask. He said he didn't know -- I wanted
19 to clarify that he didn't have an understanding of
20 that.

21 MR. COX: He has no factual knowledge
22 --

23 MR. TEMPLE: Okay. Because if he was
24 in charge of that position at the Bureau of
25 Prisons, then maybe they don't send them directly,

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1 but I'm trying to ascertain whether they send them
2 indirectly.

3 CHAIRPERSON GRIFFIS: But how is that
4 out of the recent testimony from the questions from
5 the Board?

6 MR. TEMPLE: Because he said that, and
7 it's a very important question here, whether the
8 Bureau of Prisons -- whether the court sentences
9 inmates directly to community corrections centers.
10 His answer was no.

11 THE WITNESS: They don't.

12 MR. TEMPLE: It has very significant
13 implications. Now, there is a letter where the
14 opposite was stated. I am trying to clarify it,
15 because on cross-examination -- from my experience
16 and research, that is not exactly true. I merely
17 want to ask him the question.

18 MR. COX: Well, call a witness from the
19 --

20 MR. TEMPLE: He has testified to it. I
21 have the right to ask him. He testified to it.

22 CHAIRPERSON GRIFFIS: Make a succinct
23 question so that Mr. Willingham can understand it
24 and answer it, and if he can't, he can't.

25 BY MR. TEMPLE:

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1 Q Are you familiar, sir, with the term
2 "public placement of inmates to community
3 corrections centers"?

4 A I am. I am familiar with the term.

5 Q Can you explain what it is, please?

6 A No, I can't. That's a United States
7 Probation function, not a Federal Bureau of Prisons
8 function.

9 Q Okay. Very well.

10 My last question. The gentleman on the
11 panel, Mr. Etherly, referenced the adult
12 rehabilitation home, and I wanted to make sure it
13 was clear. The community corrections center
14 actually houses individuals who are 16 years or
15 older who are charged by the United States Attorney
16 with a felony offense after they have been
17 convicted; is that correct?

18 A What age? Sixteen?

19 Q Sixteen years or older.

20 A We don't have any juvenile placement.

21 Q How about 21 years or older?

22 A If that's the age of majority.
23 Sometimes it's 21, 22, sometimes 18.

24 Q They have to be charged --

25 A No. They have to be a sentenced

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1 federal inmate.

2 Q Okay.

3 A They have to have a judgment and
4 commitment order sentencing them to a term of
5 confinement by a federal judge.

6 MR. TEMPLE: No further questions.

7 MR. COX: No further questions.

8 CHAIRPERSON GRIFFIS: Questions?

9 [No response.]

10 CHAIRPERSON GRIFFIS: Very well. Thank
11 you all very much. Stay tuned, I'll give you a
12 little update.

13 Ms. Bailey, would you mind going
14 through, with our assistance, the submissions that
15 we're asking for? After the list of submissions, I
16 will take clarification questions so everyone knows
17 exactly what is to be submitted, and we will set
18 the date for when those are to be submitted. I
19 will first set the date and clarification of when
20 we are meeting next, and then we will go back from
21 there.

22 MR. COX: Mr. Griffis, --

23 CHAIRPERSON GRIFFIS: Yes.

24 MR. COX: -- if I may, you have already
25 talked about this July 22nd date. One of our

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1 witnesses I know of here, Mr. Lowry, has another
2 commitment on that day, and counsel has another
3 commitment out of town, too. Not to put the Board
4 proceeding last, but those are going to be pretty
5 tough to move. So is there another time that we
6 could perhaps continue the hearing until?

7 MR. TEMPLE: They knew that. Why
8 didn't they let Mr. Lowry testify before this
9 gentleman, Mr. Willingham? Again --

10 MR. COX: Counsel has conflicting
11 dates, too, so it doesn't matter.

12 CHAIRPERSON GRIFFIS: Well, first of
13 all, as we get into the summer months and as this
14 continues on, there will be scheduling conflicts.

15 MR. TEMPLE: Can Mr. Lowry testify
16 tonight? He's here. I mean, the prejudice is
17 overwhelming.

18 MR. COX: Mr. Lowry's plan was
19 finishing up tonight at eight and has plans to --
20 we're already well over, and it's nobody's fault,
21 but --

22 MR. TEMPLE: That's ridiculous.

23 MR. COX: It's not ridiculous.

24 MR. TEMPLE: I don't think we need to
25 buy into that.

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1 CHAIRPERSON GRIFFIS: Okay. Actually,
2 I don't need to hear the argument.

3 Okay. These are the options. We have
4 the option of the 22nd, third case in the
5 afternoon, or we have the first case in the
6 afternoon on the 29th, which will start at nine
7 o'clock.

8 [Pause.]

9 MR. CAMARDO: Mr. Chairman, we just
10 resolved one of our conflicts. We can do it on the
11 22nd.

12 CHAIRPERSON GRIFFIS: Fabulous. Okay.
13 So we will be the third case in the afternoon.

14 Let's run through the list of
15 submissions at this point.

16 MS. BAILEY: The first document that I
17 have, Mr. Chairman, is ANC-5B is to provide the
18 flyer that gave the community the announcement of
19 the January 21st, 2003, ANC community meeting.

20 The second item that I have is DCRA is
21 to file a statement or documentation indicating
22 whether Section 805.1 of the zoning regulations was
23 complied with by Bannum.

24 The third --

25 MR. RUSHKOFF: I don't think that's

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1 right. I think we were going to provide examples
2 of the use of 801 --

3 MS. BAILEY: I haven't finished, sir.

4 MR. RUSHKOFF: Oh, I'm sorry.

5 MS. BAILEY: The third item I have, Mr.
6 Chairman, is DCRA is to research and respond to
7 whether other similar facilities have been issued
8 permits to operate under Section 801.7(k);
9 specifically identify the facilities by permit
10 numbers and type of facilities.

11 MR. RUSHKOFF: Okay. Going back to the
12 second item, our first item, we were supposed to
13 review whether there was consideration of external
14 effects, and then the other one, I think she stated
15 correctly. We're going to research permits issued
16 pursuant to 801.7(k) since 1971 and see what these
17 facilities were about.

18 CHAIRPERSON GRIFFIS: That's correct,
19 and specifically with Section 805, and I think Ms.
20 Bailey stated it, was to show that --

21 MEMBER ZAIDAN: Eight-oh-five is the
22 external effects.

23 CHAIRPERSON GRIFFIS: Right. Right.
24 That this permit was reviewed for that.

25 MR. RUSHKOFF: Okay.

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1 MEMBER MILLER: Mr. Chairman?

2 CHAIRPERSON GRIFFIS: Is that all you
3 have, Ms. Bailey?

4 MS. BAILEY: Those were the three items
5 I have, sir.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much.

8 Ms. Miller.

9 MEMBER MILLER: Mr. Chairman, I was
10 wondering if I could ask for an additional
11 submission. After thinking about the testimony
12 that I heard today, we were looking at the
13 legislative history to 801.7(k) and discussing how
14 the amendment came about as a response to an
15 emergency situation in which the Zoning Commission
16 determined that we may need facilities on a
17 temporary basis to deal with that emergency, and
18 then we were discussing whether or not that
19 regulation would still have meaning 30-something
20 years later. And then I heard a lot of testimony
21 from Mr. Willis about it seemed like when Lorton
22 closed, that the inmates had to go elsewhere and
23 that now they're coming back and there is a need
24 for facilities again.

25 I may not be paraphrasing this exactly

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1 correct, but in any event, where I'm leading to is
2 I'm wondering if there is anything in the works for
3 permanent facilities to absorb the type of inmates
4 the Bannum facility is housing on a temporary
5 basis. Is that clear to the parties?

6 MEMBER ETHERLY: Mr. Chair, one final
7 submission that I think would be helpful from the
8 Intervenor. I believe it was Mr. Willingham's
9 testimony that typically your CCC contractors do
10 maintain data as it relates to the percentage of
11 inmates or the percentage of their clients that are
12 incarcerated under the community corrections
13 component and the pre-release component.

14 To the extent Bannum Place, Inc., could
15 provide data, and I don't know whether or not there
16 would be any privacy issues -- I'm, of course, not
17 talking about names or anything like that, but just
18 data as to the percentage of your current
19 population that is maintained under the community
20 corrections component and the population that's
21 maintained under the pre-release component. I
22 think that would be helpful data. Once again, the
23 --

24 MR. COX: Mr. Etherly, you're just
25 talking specifically about the D.C. facility,

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1 correct?

2 MEMBER ETHERLY: That is correct. That
3 is correct.

4 MR. COX: Thank you.

5 MEMBER ETHERLY: Not national figures,
6 of course.

7 MR. TEMPLE: Excuse me. May I suggest
8 that Bannum provide the lease for the record?

9 CHAIRPERSON GRIFFIS: We'll think about
10 that.

11 MEMBER ZAIDAN: I have a question for
12 Mr. Rushkoff in regards to the lease because the
13 lease, I mean, that's -- I have pondered myself.

14 You testified that the permit was not
15 issued based on the lease, correct? The permit was
16 issued with the understanding that the operation
17 would -- the C of O would be pulled after three
18 years regardless of what the lease is, correct?

19 MR. RUSHKOFF: Well, I hope I didn't
20 testify. I mean, in reviewing the record, I didn't
21 see anything in the record here, and the record is
22 supposed to contain what we need to decide, I
23 didn't see anything there -- I didn't see a lease,
24 I didn't see any evidence of any consideration of a
25 lease.

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1 MEMBER ZAIDAN: I mean, well, from
2 DCRA's perspective, you're saying that the lease
3 was not a material fact in issuing the permit.

4 MR. RUSHKOFF: That's right.

5 MEMBER ZAIDAN: Okay. Now, if that
6 would have gone the other way, I would have
7 supported getting the lease, but I think that leads
8 us down a difficult path because the mechanism,
9 whether or not it's effective or not, for DCRA
10 enforcement through your provision is to revoke the
11 C of O, not verify the lease.

12 CHAIRPERSON GRIFFIS: Right. I would
13 tend to agree, unless other Board members have
14 differing opinion. I am not sure what the value in
15 these proceedings would be in getting a copy of the
16 lease.

17 Okay. Anything else? If we go this
18 late next time, someone's got to buy pizza.

19 Now, we are on the 22nd of July, third
20 in the afternoon, so submissions I would like to
21 have in the Thursday before the Tuesday, and that
22 is the 17th of July. Thursday. Does that do it?
23 The 17th. Okay. So that information comes in on
24 the 17th. Obviously it's all served all around.
25 If we could, the documentations that are smaller in

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1 scale, transmit expeditiously. What I do not look
2 forward to is meeting on the 22nd and hearing what
3 we have heard at the beginning of each case, is
4 somebody didn't get something or vice versa and
5 those complications.

6 So I will take questions now of
7 clarification. The last piece I have to clarify is
8 time. We have, as we will return on the 22nd -- my
9 estimation of the time left on the clock, if my
10 math serves me, adding up time, rounded off, we
11 have 21 minutes and 30 seconds, and that is what we
12 will set the clock to at that time. We have two
13 further witnesses we'll go through. Of course,
14 cross-examination and questions from the Board
15 don't count towards that time. So as you prepare,
16 take that into consideration.

17 MR. TEMPLE: This clock says five
18 minutes and 33 seconds. Is there some basis for
19 that disparity?

20 CHAIRPERSON GRIFFIS: There is. In
21 fact, that's what exactly the clock says in front
22 of me, five minutes and 33 seconds. However, I do
23 note, as I do have the clock directly in front of
24 me, so I don't need to look at these constantly,
25 that the clock ran quite a bit and mostly through

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1 our questions, and I was writing down each time the
2 segments of minutes, seconds, off of this clock and
3 rounding it off. It equals up to about that. So
4 that's where we'll set it on the 22nd.

5 MR. TEMPLE: Can I, again in the
6 interest of efficiency for the Board and
7 predictability, I suspect that Bannum will need
8 additional time. Rather than getting to the issue
9 when they need additional time -- they want to call
10 two witnesses -- can we agree that we would extend
11 it by 30 minutes by consent, and that would give
12 them 30 minutes more -- 40 minutes more than we
13 had, and then at least we don't have to deal with
14 the extension of time again. So we could also
15 predict a finish.

16 CHAIRPERSON GRIFFIS: Add 30 minutes
17 for a total of 51 minutes?

18 MR. TEMPLE: Yes. I mean, we're going
19 to get to this issue. I just don't want to have us
20 bottleneck, and we -- and I would also say we can
21 agree that we would give closing arguments not to
22 exceed ten to 15 minutes.

23 CHAIRPERSON GRIFFIS: That's very
24 commendable. Yes. Closing remarks will be limited
25 to ten minutes. Additional time, getting through

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1 two witnesses, I'm going to add 20 minutes, then,
2 noting Mr. Temple's consideration of that, so we
3 will have the clock set at 41.30 going in if
4 there's no overall objection to that, and that way,
5 it does clear up, and I appreciate that, Mr.
6 Temple, any discussion that we might have as we get
7 to that.

8 MR. CAMARDO: It's my understanding,
9 then, Mr. Temple, you are not going to be calling
10 any rebuttal witnesses?

11 MR. TEMPLE: It's very unlikely that,
12 if I call them, they will take more than five to
13 ten minutes max. I mean, we still have that much
14 time in our case in chief time, our hour time.

15 CHAIRPERSON GRIFFIS: Right. Okay. So
16 anticipation now is availability of several
17 witnesses for rebuttal, but that can, in fact, be
18 defined as we get to the 22nd or on the 22nd.

19 Okay. Questions on submissions, any?
20 Everyone is clear?

21 MR. TEMPLE: Yes. I only wanted to
22 raise a point. I mean, I only made the point about
23 the lease -- if there was a five-year lease here, I
24 think that it wouldn't be irrelevant, quite
25 frankly. I think it would be quite interesting

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1 given all discussion about the lease up to
2 three-year period. So I don't think that it's
3 totally insignificant, and I just would hope that
4 to the extent that the Board -- this party, the
5 ANC, did a Freedom of Information Act to get the
6 contract documents.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. TEMPLE: They didn't offer that. I
9 just think that you should have all the information
10 possible, as you stated earlier.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. TEMPLE: It's better to have more
13 and know than to have less and not know.

14 CHAIRPERSON GRIFFIS: Right. Here is
15 my brief deliberation on the lease issue. Going
16 directly to what DCRA would review in order to
17 establish the pertinent zoning for the issuance of
18 the permit, and, with that, the testimony that we
19 heard today in terms of how contracts are let to
20 these facilities, it's my understanding that
21 conceivably someone could have a 100-year lease for
22 a building and that would not run with the contract
23 itself, and more specifically going down to if DCRA
24 was looking at it to issue the permit and had to
25 establish some temporary measure. The testimony

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1 today was that they felt that that provision could
2 be provided with a certificate of occupancy, and I
3 think it would also go to the utilization of the
4 facility, not the lease for the building itself, it
5 would go to the build-out, which may or may not
6 house this type of facility.

7 MR. TEMPLE: That's not what the
8 gentleman testified to. He said that they would
9 prefer to have the lease run concurrent with the
10 contract.

11 CHAIRPERSON GRIFFIS: No, I understand
12 that also, and it is a little bit of my
13 extrapolation of what he was saying, but --

14 MR. TEMPLE: But if one would
15 presuppose in this particular case that there was a
16 five-year lease and there is a five-year contract
17 where there is an option, that the Bureau could
18 elect to extend the option, then I think it would
19 raise some questions, certainly as to what was
20 represented to the permit people on the
21 applications.

22 MEMBER ZAIDAN: I mean, that's a point
23 that I was going through when I was reading through
24 the material and questioning Mr. Rushkoff, but, you
25 know, unfortunately it has been testified -- well,

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1 he didn't testify; I have already been corrected on
2 that -- but it has been stated that DCRA's policy
3 would be to revoke the C of O after three years.

4 CHAIRPERSON GRIFFIS: Right.

5 MEMBER ZAIDAN: I mean, we don't have
6 any evidence on whether or not that would have or
7 did happen or would not happen, so, you know,
8 technically, the way the record is, is they may
9 have a ten-year lease, but after three years, their
10 C of O would be getting revoked.

11 MR. TEMPLE: Under the law, what would
12 happen is that the gentleman, if there was a
13 suggestion of revocation, what they would do is
14 come before the Board to get a special exception
15 extension, and if I'm correct, and I may not be
16 correct --

17 MEMBER ZAIDAN: That's presuming the
18 outcome of this hearing.

19 MR. TEMPLE: And the only thing I'm
20 saying is that it would be instructive to know
21 whether -- I mean, our position is that there is
22 some -- this is a strategic exercise by Bannum,
23 quite frankly, and we're not hiding that point. We
24 think that this is a deliberate --

25 MEMBER ZAIDAN: I'm aware of that.

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1 MR. TEMPLE: -- effort to circumvent
2 the law, and we think that if the lease here said
3 there was a five-year lease, and it's not offered
4 -- they haven't offered the statement of work, they
5 haven't offered the lease or anything -- we think
6 it would be very relevant be the Board.

7 MEMBER ZAIDAN: Well, let me say this
8 and take it for whatever it's worth. You know,
9 regarding the outcome of this proceeding, you have
10 heard from DCRA that their actions will be to
11 revoke the C of O after three years, so regardless,
12 I mean, there is some protection there.

13 MR. TEMPLE: I don't know. They said
14 something in court that they changed since this has
15 happened.

16 MEMBER ZAIDAN: Well, I have no
17 knowledge of that.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. CAMARDO: Let me just clear this
20 up, okay? First of all, we think that the lease is
21 completely irrelevant to the situation.

22 MEMBER ZAIDAN: That's what I'm saying.

23 MR. CAMARDO: But let me finish for a
24 second, okay? And once again, I think the Board
25 has hit the nail on the head. You've got a

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1 three-year temporary facility, that's what you got
2 the C of O for, end of story. Whether or not
3 Bannum's got a five-million-year contract, I mean,
4 that's Bannum's problem. They've got a three-year
5 temporary C of O and that's the end of it.

6 But to clarify any problems whatsoever,
7 we will bring forth that portion of the lease that
8 discusses how long we're going to be on that
9 property for and we will show you it runs
10 concurrent with our government contract.

11 We will also bring forth our C&D
12 letters, our negotiation letters that we had with
13 the BOP where we showed them it was a three-year,
14 okay, we're just going to be there for three years,
15 that's all our zoning was for. We gave the BOP our
16 zoning certificates. And based upon that, the BOP
17 issued a government contract.

18 Once again, nobody is going to pull the
19 wool over the BOP's eyes here. They know exactly
20 what's going on. They wanted proof of zoning, we
21 gave them the three years, and we will show you
22 those documents to end this thing --

23 CHAIRPERSON GRIFFIS: Okay. Very well.

24 MR. CAMARDO: -- once and for all.

25 CHAIRPERSON GRIFFIS: Maybe we will

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1 keep all these things very late because people get
2 a lot more amenable in time, documents. Of course,
3 you know, you burden us with reading all those
4 documents, too.

5 MR. CAMARDO: Well, I'm only raising
6 this because Mr. Temple seems to go off on all
7 these red herrings and --

8 CHAIRPERSON GRIFFIS: I understand. I
9 understand.

10 MR. CAMARDO: -- we're just trying to
11 shut these avenues off.

12 MR. TEMPLE: I'm grandstanding.

13 CHAIRPERSON GRIFFIS: Gentlemen --

14 MR. CAMARDO: Well, that's your word,
15 not mine.

16 CHAIRPERSON GRIFFIS: You guys got the
17 rest of the night to go to the bars and deal with
18 this. I noted that you said you were going to give
19 pertinent parts of the documents; is that correct?

20 Are there going to be sections of it?

21 MR. CAMARDO: First of all, the lease
22 is our personal business. There are --

23 CHAIRPERSON GRIFFIS: Right.

24 MR. CAMARDO: -- rates in there and
25 things of that nature.

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1 CHAIRPERSON GRIFFIS: All I want to see
2 is what we need to read and the pertinent parts to
3 it.

4 MR. CAMARDO: Correct.

5 CHAIRPERSON GRIFFIS: I need the citing
6 of what it is in the total document to put it in
7 the context so Mr. Temple isn't concerned about
8 what isn't there, what should be there. So if
9 there is a table of contents that's listed, that
10 would be pertinent without necessarily the
11 substantive pieces.

12 I would agree, in this proceeding and
13 other proceedings, there is information that may
14 not be valuable to the Board or should not be in
15 the public realm, but let's make sure that we don't
16 run into the question of Mr. Temple being concerned
17 that he's not seeing exactly what it is.

18 So I appreciate you offering those
19 forward. The Board was not moved in the direction
20 to actually ask for that, but we will look for that
21 receipt also. If you could -- well, there it is.
22 We will put it in also on the 17th.

23 Any other questions, clarifications,
24 time issues?

25 [No response.]

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1 CHAIRPERSON GRIFFIS: All right. That
2 being said, staff have anything else for us?

3 MS. BAILEY: No, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Very well. Then
5 this concludes the 8th of July 2003 afternoon
6 session.

7 [Whereupon, at 8:57 p.m., the session
8 concluded.]

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