

IN THE REGULAR DIVISION
OF THE OREGON TAX COURT
(Property Tax)

)	
YU CONTEMPORARY, INC.)	
)	
Plaintiff,)	
)	
vs.)	
)	
DEPARTMENT OF REVENUE, STATE OF)	
OREGON,)	
)	
Defendants,)	CASE NO. TC 5245
)	
and)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Intervenor.)	

VERBATIM REPORT OF PROCEEDINGS

April 5, 2016

Before the
HONORABLE HENRY C. BREITHAUPT

TRANSCRIBED BY:

Kaedra Ray Wakenshaw, CCR, RPR, CRR
CCR No. 1900

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BE IT REMEMBERED that on April 5, 2016, the
above-captioned cause came on duly for hearing before the
HONORABLE HENRY C. BREITHAUPT, Judge of the Regular Division of
the Oregon Tax Court (Property Tax); whereupon, the following
proceedings were had, to wit:

<<<<<< >>>>>>

JUDGE BREITHAUPT: Thank you. Please be
seated.

Good morning, everyone.

MR. BRADFORD: Good morning, Your Honor.

MR. RASCH: Good morning, Your Honor.

JUDGE BREITHAUPT: This is the time for oral
argument in -- no. It's not oral argument. It's trial.
That's why. Well, I have lots of stipulations. So I beg
your pardon -- time for trial in Yu Contemporary, Y-U
Contemporary, Inc., vs. Department of Revenue and Multnomah
County Assessor.

If counsel would introduce themselves, please.

MR. BRADFORD: Good morning, Your Honor. Jeff
Bradford and Michael Millender from Tonkon Torp for
plaintiff, Yale Union.

JUDGE BREITHAUPT: Thank you.

MR. RASCH: Your Honor, Carlos Rasch, on behalf

1 of the Assessor's Office.

2 JUDGE BREITHAUPT: Welcome.

3 MR. PAUL: Daniel Paul for the State, for the
4 Department.

5 JUDGE BREITHAUPT: Thank you.

6 You can see that these gentlemen and Mr. Rasch are
7 unaware of the housekeeping rule, which is you do not need
8 to stand unless you wish to at any point, but you're
9 welcome to stand if you wish to.

10 And so today we have, I would say, an interesting case
11 involving the scope of the property tax exemption statutes
12 in Oregon. As I've read your papers, the taxpayer draws
13 quite a distinction between what I'm going to call -- well,
14 first of all, draws my -- our attention to the fact that
15 there is an ownership requirement found in one statute, and
16 then there is a use requirement which follows and in -- and
17 in the view of the taxpayer has a differential application
18 depending on what kind of organization you are.

19 MR. RASCH: That's correct.

20 JUDGE BREITHAUPT: And I will say not
21 surprising in some ways because, for example, I had a case
22 last year or the year before involving the Elk's Club in
23 Oregon City, which has -- fraternal organizations have --
24 and the issue in that case was the application of exemption
25 statutes to a fraternal organization, which was a

1 separate -- seemed to have a separate history and
2 development.

3 Now, you have -- and I thank you for this -- provided
4 a substantial stipulation of matters that, it appears to
5 me, would be difficult to contest. And I thank you for
6 that.

7 Let me ask by way of again housekeeping or
8 organization a couple of things. Number one -- and I -- in
9 asking the question, I do not mean to suggest that I have
10 an answer that I would prefer to hear, but I just want to
11 know, given the scope of the stipulation, what do you think
12 the probability is that we will need more than one day of
13 trial?

14 And I would ask, I suppose, counsel for taxpayer
15 first.

16 MR. BRADFORD: Your Honor, our hope is that we
17 can get through matters today. We would hope to put on two
18 of our witnesses this morning, and then you'll define the
19 afternoon. We'll see, I guess, how things go with
20 cross-examination and the like, but our hope would be that
21 tomorrow's spillover is just that, just in case we don't
22 get through. But after talking it through with counsel,
23 our hope is that we'll be through today.

24 JUDGE BREITHAUPT: And, Mr. Paul, should I be
25 looking primarily at Mr. Rasch for the answer to this

1 question?

2 MR. PAUL: Yes, Your Honor. The State will not
3 be putting on any witnesses.

4 JUDGE BREITHAUPT: All right. Mr. Rasch?

5 MR. RASCH: Agreed, Your Honor. We -- like
6 counsel said, we spoke this morning. Our hope is that we
7 can get it done today. We also discussed doing written
8 closings as well, and we're in agreement with that if the
9 Court is.

10 JUDGE BREITHAUPT: Yes. And, frankly, that was
11 my next question. But first of all, thank you for -- let's
12 try to get done today.

13 And one of the reasons I say that is that if we were
14 to go into tomorrow, especially if we were to go towards
15 the noon hour, I have a conference call at 1 o'clock
16 Pacific Time with a bunch of folks, believe it or not, a
17 tax court judges annual conference. There is such a thing.

18 Everyone -- you know, I only thought that it was in
19 Germany that every particular group had a conference and a
20 publication. It comes over to America. We have this
21 conference, and I'm responsible to help organize it.

22 So we would need to adjust -- in effect, adjust our
23 feedbag time tomorrow because of the 1 o'clock, if we
24 needed that time. So we'll try to get through today.

25 And the second point was -- and I don't mean,

1 Mr. Rasch, in any way, or Mr. Paul, too, by comparing to
2 criticize or even comment particularly on your trial
3 memorandum, but Mr. -- but the taxpayer's trial memorandum
4 looked to me very much like what could be, with some
5 adjustments, a closing brief; that is, it was rather
6 thorough. I'm not suggesting yours wasn't thorough, but I
7 was wondering today, "Well, are we -- are people
8 anticipating some closing arguments?" You are, in writing.

9 And I would hope you would address -- I will just say
10 I would hope, for the benefit of the Court, that counsel
11 for the County and the State would address the points
12 regarding, for example, legislative history that I wouldn't
13 find typically -- wouldn't find them in trial memoranda.
14 But I don't mind that they're there. They help frame what
15 the discussion is going to be about.

16 MR. RASCH: Sure.

17 JUDGE BREITHAUPT: But you'll have an
18 opportunity to respond to those in the closings.

19 Okay. So unless there are other housekeeping matters,
20 I will say that I believe, from reading your papers, that I
21 understand your basic positions. If you'd like to have a
22 brief opening comment, you may. Otherwise, we can proceed
23 to presentation of evidence.

24 MR. BRADFORD: Your Honor, just a few
25 housekeeping matters.

1 In the stipulations, the parties agreed that the
2 exhibits that we identified in advance of trial were both
3 authentic and admissible. And we've also agreed that with
4 your approval we will go ahead and submit those into
5 evidence, our exhibits into evidence.

6 JUDGE BREITHAUPT: All right. Very well.
7 Thank you.

8 MR. BRADFORD: And with that, we have a copy
9 for the judge. Would you prefer me to hand that to the
10 clerk or directly to you?

11 JUDGE BREITHAUPT: I'll take it.

12 MR. RASCH: And are those just plaintiff's
13 exhibits?

14 MR. BRADFORD: That's right.

15 MR. RASCH: Okay.

16 MR. BRADFORD: Yeah.

17 MR. RASCH: I have a copy as well, but it
18 contains both, so I don't know if that might be more
19 beneficial.

20 MR. BRADFORD: Oh, of both sets?

21 MR. RASCH: Right.

22 MR. BRADFORD: Okay. Yeah.

23 MR. RASCH: Yeah.

24 MR. BRADFORD: There's just a tab that
25 differentiates.

1 JUDGE BREITHAUPT: And they are tabbed. That's
2 a good thing. I think we've -- we've adopted a revised
3 rule on that because I got tired of getting paper cuts on
4 my fingers by trying to flip through so much paper that had
5 not been tabbed. So spread the word, tabs --

6 MR. BRADFORD: Tabs.

7 JUDGE BREITHAUPT: -- tabs, good thing; no
8 tabs, bad thing.

9 MR. BRADFORD: Okay.

10 MR. RASCH: Oh, here.

11 JUDGE BREITHAUPT: Thank you very much.

12 All right. Mr. Bradford?

13 MR. BRADFORD: Yes. Just a briefing opening
14 statement, Your Honor.

15 JUDGE BREITHAUPT: Mm-hmm.

16 MR. BRADFORD: Your Honor, the taxpayer, Yale
17 Union, is a young nonprofit organization with an ambitious
18 objective of exposing our community to contemporary artists
19 who, although renowned in other parts of the country and
20 the world, are otherwise not familiar names here. The
21 evidence will show that they accomplish this by
22 performing -- or programming four major exhibitions a year,
23 each of which is typically up for six to eight weeks.

24 Curators from Yale Union identify artists whose work
25 and ideas are underrepresented in the Portland art scene

1 and invite them to come and share their art at Yale Union.

2 The artists sometimes bring their art with them, but
3 more often they come to the space and custom-build
4 installations just for that unique exhibition. Most of the
5 work happens in the weeks or months leading up to the
6 exhibition on-site.

7 The exhibition opens sometimes with a special lecture,
8 a poetry reading, or performance, and then it remains
9 available to the general public, free of charge, for
10 several weeks.

11 This was the case with Terry Atkinson. Mr. Atkinson
12 is a British sculptor who has taught at the Coventry School
13 of Arts and the University of Leeds. He's a well-known
14 artist in the UK and other parts of Europe.

15 JUDGE BREITHAUPT: This will be stipulated --
16 is it either stipulated or be established by the evidence?

17 MR. BRADFORD: It will be established by the
18 evidence.

19 JUDGE BREITHAUPT: Thank you.

20 MR. BRADFORD: And the evidence will show that
21 Mr. Atkinson had not previously shown his art in the United
22 States, but that he came first to Yale Union at the
23 organization's invitation.

24 The evidence will show that Mr. Atkinson's art was
25 available to them and to our general public for free and

1 showed for several weeks. This is the model that Yale
2 Union applies in it -- go ahead.

3 JUDGE BREITHAUPT: May I ask: I understand
4 Y-U, YU Contemporary, is, in effect, an acronym for Yale
5 Union. But let me ask you, if I may, where does -- Yale
6 Union was a laundry, but why Yale and why Union?

7 MR. BRADFORD: Well, what the evidence will
8 show is that the --

9 JUDGE BREITHAUPT: Not that I'm a Harvard man.
10 Don't misunderstand me.

11 MR JAMISON: That's an excellent question, Your
12 Honor. I have no idea except maybe that the Ivy League had
13 cache in Oregon even back in 19 -- 1910.

14 MR. BRADFORD: And what the evidence will show
15 is that before they were actually donated the building,
16 they were -- that they were presenting art at the building
17 and that it was in 2013 that a very generous donor gave
18 them the building that they now -- that they now occupy.

19 Was there the --

20 MS. MARTIN: The building is the Yale Union
21 laundry building, and it -- it's kind of a long story, but
22 just because it was the Yale laundry and the Union laundry,
23 and they combined.

24 JUDGE BREITHAUPT: Which only, I suppose -- I
25 think this is the proper way to use the phrase -- begs the

1 question: Why was one of them the Yale laundry? I'm
2 wondering if the Union laundry -- it could have been Union
3 Avenue. It could have been that they wanted to have, like
4 print shops often do, a clear expression that they were a
5 unionized workforce.

6 But in any case, that's not relevant to us.

7 MR JAMISON: There's a history there as well --

8 MS. MARTIN: There is.

9 MR JAMISON: -- union organizing at that -- at
10 that building.

11 MS. MARTIN: Yeah.

12 JUDGE BREITHAUPT: You can tell that I will
13 sometimes -- I will try to limit my interjections because I
14 want to get done in one day. And Mr. Rasch might say, "If
15 he wants to get done in one day, why does he keep
16 interrupting?"

17 MR. RASCH: No. I --

18 JUDGE BREITHAUPT: Go ahead.

19 MR. RASCH: Feel free.

20 MR. BRADFORD: No. But as -- as was just
21 mentioned, part of the unique situation that we're in with
22 this case, Your Honor, is that in 2013 this building was
23 donated to the organization. It's a massive building. And
24 I do have a picture of it. It occupies almost an entire
25 city block, just to give you a point of reference.

1 JUDGE BREITHAUPT: Mm-hmm. Can you give me the
2 cross-streets depicted?

3 MR. BRADFORD: Yeah. I think the
4 cross-streets -- it's on 10th Avenue and close to Elm; is
5 that right? Yeah.

6 JUDGE BREITHAUPT: Mm-hmm.

7 MR. BRADFORD: And on its upper floor, it has a
8 large -- starting to get the general idea -- it has a large
9 open air, open light gallery that the organization uses for
10 its exhibitions or unique music concerts and for other
11 performances.

12 Because the building is a historic site, it is subject
13 to a number of constraints. And working within the
14 constraints of the building and their own budget, Yale
15 Union is offering as many offerings as it can with the
16 ambition of trying to expand its programming in the future.
17 Right now they're in the middle of a capital campaign to
18 allow them to use the building to its full potential and to
19 increase visibility to the general public.

20 But with what they do with what they already have,
21 they're already garnering positive feedback and praise from
22 art critics and our -- getting written up by the Oregonian
23 and other publications right alongside with Portland Art
24 Museum, with the Elizabeth Leach Gallery, and with
25 organizations like Disjecta.

1 We recognize that there are certain things that aren't
2 orthodox for our area in what Yale Union does. They don't
3 have a normal standing gallery or collection of art.
4 Instead the artists come in, provide the art unique for
5 these exhibitions. But the evidence will show that this
6 model still qualifies for a property tax exemption because
7 it satisfies all the requirements for the statute.

8 And I'll save the argument for later, but it is an art
9 museum because it's a nonprofit organization organized to
10 display art to the public and educate the public about art.
11 For reasons you'll hear, Yale Union doesn't use the label
12 "art museum," but that doesn't change whether it satisfies
13 the statute.

14 Except for commercially leased space that's outside
15 this case, it uses the building in conjunction with its
16 mission of displaying art --

17 JUDGE BREITHAUPT: Wait a moment. Why is
18 commercially leased space outside of this case?

19 Or stated differently, as I looked at the briefing of
20 the County, I sensed two themes perhaps, maybe three. One,
21 "Mmm, doesn't look -- doesn't look, act, and operate like
22 an art museum," two, "Look at all these weddings and
23 receptions and other events."

24 And as to the second prong -- and I would say three
25 perhaps -- the argument that as to a charitable exemption,

1 there needs to be some form of gift and giving.

2 But that second piece, the stipulated list of
3 substantial rentals -- and I'm going to distinguish
4 between -- I guess for my question -- distinguish between
5 rentals for weddings and receptions versus rentals to what
6 I'll call fixed tenants who are doing some kind of
7 commercial operation. What are you talking about here in
8 that phrase of yours about commercial leasing?

9 MR. BRADFORD: It would go to the fixed tenants
10 that you were describing, that for purposes of this matter,
11 we've conceded our -- the lease space is taxable under the
12 statute.

13 JUDGE BREITHAUPT: And have you done that on
14 the basis of some allocation of -- is there a -- is there a
15 physical division or some way to say, "This many square
16 feet is exempt and this many -- well, this many square feet
17 is clearly taxable and the other portion we're arguing
18 about"?

19 MR. BRADFORD: Yes, Your Honor. We have
20 stipulated that approximately 4,600 square feet, which
21 is -- which is distinct from the rest of the structure --
22 these are office and work spaces that have locked doors.
23 The tenants are under -- on commercial leases, and it's
24 about 4,600 square feet that --

25 JUDGE BREITHAUPT: Okay.

1 MR. BRADFORD: -- that we stipulate is not
2 exempt.

3 JUDGE BREITHAUPT: Thank you.

4 And you're not -- as far as I can tell, the parties
5 have not said -- have not approached the matter with
6 respect to the what I'll call weddings and receptions
7 piece, have not approached the matter from a division of
8 exempt status.

9 Mr. Paul, I think, is familiar with a case out of
10 Yamhill County where there has been some -- there have been
11 some proportionality rules applied to say even though
12 there's -- even though -- when there's mixed use, I
13 think -- I'm thinking here of the Evergreen Air and Space
14 Museum kinds of approaches, where there's mixed use and the
15 counties have been willing to say concededly, "X percent
16 is museums, not art museum, but educational museum space,
17 and Y percent we're arguing about."

18 Even though it's mixed use, there's been -- there's no
19 mixed use discussion here with respect to the wedding and
20 reception function. Am I correct?

21 MR. BRADFORD: That's --

22 JUDGE BREITHAUPT: Go ahead.

23 MR. BRADFORD: Yeah. That's correct, Your
24 Honor. The commercial space, the lease-fixed commercial
25 space, totally taxable.

1 JUDGE BREITHAUPT: Off the table.

2 MR. BRADFORD: The remaining space, I'm
3 familiar with those models. But due to the constraints of
4 Rule 408, there's not much more I can really say about
5 that.

6 JUDGE BREITHAUPT: And remind me. Rule 408
7 being...?

8 MR. BRADFORD: Settlement discussions.

9 JUDGE BREITHAUPT: Oh, thank you.

10 MR. BRADFORD: And I guess the only thing that
11 I would add to that is that part of the objective that the
12 organization has is to be -- is to be a cultural center for
13 the community, to bring people into our space, oftentimes
14 when there's art on display, and to allow people to enjoy
15 that building that way.

16 We, based on the stipulations, did prepare a simple
17 demonstrative, which I think is in your materials as
18 Demonstrative 4 --

19 MR. RASCH: Yes.

20 MR. BRADFORD: -- which, based on the
21 stipulations, demonstrates kind of the breakdown of usage
22 that your question goes to, Your Honor. And while we
23 recognize that there are numbers of rentals that happen
24 each year, the actual time that's dedicated to sharing art
25 with the public far outweighs that ability --

JUDGE BREITHAUPT: And this is time rather than revenue.

MR. BRADFORD: This is time --

JUDGE BREITHAUPT: Of course, revenue would be -- I mean, the County can comment, but revenue would be sort of a strange test because if you -- if your -- if your exhibits to the public are free and you charge for weddings, then inevitably the ratio on revenue will be heavily to the side of weddings, I'll call it.

MR. BRADFORD: That's entirely correct, Your Honor.

JUDGE BREITHAUPT: So this is time, usage time.

MR. BRADFORD: Yes. That's right. Just kind of -- use counted by days.

JUDGE BREITHAUPT: Okay.

MR. BRADFORD: And what the evidence will show is that when art is made available through the exhibitions, that is made free to the public. For some music performances or the like, there's a nominal fee that's charged.

So the public has access to the art at Yale Union for either no cost or low cost, especially when compared to commercial venues in our area.

JUDGE BREITHAUPT: Okay. If -- I beg your pardon because I've been interrupting you, but go ahead and

1 wind up because --

2 MR. BRADFORD: Certainly.

3 JUDGE BREITHAUPT: -- I'm going to be hearing
4 this, I take it.

5 MR. BRADFORD: Certainly. To summarize,
6 whether the Court finds that it's an art museum or a
7 charitable organization, Yale Union will meet the standard.
8 It is here to serve the community. It relies on -- the
9 evidence will show that it relies on donor support.

10 It relies on charitable contributions by grant
11 organizations such as the Meyer Memorial Trust and
12 government bodies like the Regional Arts Council. It is
13 here to offer programming that fulfill -- or that fills a
14 space that otherwise isn't available in the community. And
15 that's why we feel that it's entitled to the exemption.

16 JUDGE BREITHAUPT: Thank you.

17 Mr. Rasch, anything?

18 MR. RASCH: Yes, Your Honor. Briefly.

19 Obviously we're here because the County does not
20 believe that the space is being utilized as an art museum
21 and meets that definition. And even if it were to meet
22 that definition, it doesn't use the space primarily or
23 exclusively as an art museum as required under the statute.

24 As we discussed briefly earlier, we obviously disagree
25 with plaintiff's interpretation of how this space needs to

1 be used in conjunction with the statute, whether that be
2 2 -- Sub 2 (f) or Sub 2 (a) of 307.130.

3 The space, as Mr. Bradford pointed out, is unique in
4 the sense that the way it's used by YU for its exhibitions
5 and its art is that it brings in these -- brings the
6 artists in and they work at the space. I think the
7 evidence is going to show that they even stay there sort of
8 temporarily while they're working on their exhibit.

9 So it's -- from the County's perspective, it's almost
10 more of an artist colony than -- rather than an art museum
11 or something of the like. It has a lot of different mixed
12 use.

13 Even space that's used primarily for the exhibitions
14 or concerts and so forth is used for weddings, for
15 corporate events, for various other functions that are
16 clearly not related to its intended purpose, which is as an
17 art museum.

18 Demonstrative 4, I'd just like to point out that it's
19 a little bit misleading in the sense that between
20 October 16, 2013, and December 31, 2015, there are 806
21 days. So when you factor in the total amount of days,
22 actually, the use related to YU exhibitions and related
23 events is less than 40 -- or less than 50 percent. It's
24 about 45 percent. About 413 days it's empty; it's not used
25 at all for anything.

1 JUDGE BREITHAUPT: What year is at issue? Or
2 what year or years are at issue here?

3 MR. RASCH: Well, Your Honor, the application
4 for exemption is for the 2014/2015 tax year, although there
5 is also a pending application for the 2015/2016 tax year,
6 which is in the magistrate level.

7 JUDGE BREITHAUPT: But --

8 MR. RASCH: For this particular case,
9 2014/2015.

10 JUDGE BREITHAUPT: And so 2014/2015 would be --
11 for purposes of exempt status, would be for the period
12 ending on 1/1/14 and starting on 1 -- 12/31. Not starting.
13 1/1 -- 1/1/13?

14 MR. MILLENDER: Wouldn't it be July 1, 2014, to
15 June 30, 2015?

16 MR. RASCH: That would be our understanding as
17 well.

18 JUDGE BREITHAUPT: Well --

19 MR. BRADFORD: It's a tax year.

20 JUDGE BREITHAUPT: I'm going to need some help
21 on this because -- when I say "need some help," I've needed
22 help from the time I started practicing law in Oregon with
23 respect to the fiscal year feature of property tax versus
24 the calendar year, which is used for so many purposes. We
25 all know that for taxable property, even though the tax

1 year is '14/'15, the assessment date is January 1, '14,
2 which is in the calendar year.

3 For exemption I would just ask you to be really
4 careful about and tell me what you think the period of --
5 the measuring period is.

6 I do not think it can be the period of the tax year,
7 because the question of exempt status has to have -- has to
8 have been settled. You don't sort of determine it during
9 the year for which you're determining it, if you see what I
10 mean.

11 MR. MILLENDER: Your Honor, I've wrestled with
12 this question. It's something that occurred to me as I
13 read through the many, many cases in this area. And -- and
14 I acknowledge your question.

15 I think in practice, when this court has had to
16 wrestle with these exemption questions, it has used a
17 slightly longer, looser -- I think a longer or broader view
18 of periods of use. And I think that's for good reason,
19 because so much of -- so many cases in this area turn not
20 just on how a space is being used on a given day, which
21 could be the day that the inspector for the County
22 arrives --

23 JUDGE BREITHAUPT: Oh, and I didn't mean to
24 suggest a day, by the way.

25 MR. MILLENDER: Right.

1 JUDGE BREITHAUPT: I'm just talking about a
2 period of time.

3 MR. MILLENDER: Mm-hmm.

4 JUDGE BREITHAUPT: And thinking that if I -- if
5 you had asked me this morning, "Guess what the period is?"
6 without study, I would have said, "Well, the assessor --
7 when is the application for exempt status due?"

8 MR. PAUL: It's due, I believe, by April of
9 the -- the April before the tax year begins.

10 JUDGE BREITHAUPT: Precisely. The April before
11 the tax year begins.

12 MR. RASCH: Correct.

13 JUDGE BREITHAUPT: And it must be reporting,
14 then, either what's happening on that date or perhaps what
15 has been happening for a period of time ending with that
16 date.

17 You'll help me with this. So will Mr. Stokes, my law
18 clerk. I might even get involved, but -- so -- and I raise
19 it only because of Mr. Rasch's point about "Well, let's
20 look at what the denominator should be and what the
21 numerator should be." And I'd ask you to pay attention to
22 that as well.

23 But go ahead, Mr. Rasch.

24 MR. RASCH: Okay. Well, and, Your Honor, my
25 point was --

1 JUDGE BREITHAUPT: So you scored a point here.

2 MR. RASCH: My point was to just point out that
3 this isn't demonstrative of the whole picture.

4 JUDGE BREITHAUPT: Yeah.

5 MR. RASCH: It's just a snippet here of really
6 the use and/or nonuse of the subject property for art
7 purposes.

8 JUDGE BREITHAUPT: And I would appreciate --
9 again, you make a point of nonuse, that is, what happens if
10 a space is used for X, but no use for a period of time. Do
11 we -- do I have any guidance in the case law, or what does
12 the statute indicate?

13 MR. RASCH: And that's something that we
14 will --

15 JUDGE BREITHAUPT: Yeah.

16 MR. RASCH: -- definitely address with the
17 Court.

18 So I guess from just looking at it, aside from your
19 point, just looking at these two dates, we would look at it
20 and say, well, actually 55 percent of the time it's not
21 being used for YU exhibits and related events rather than
22 78 percent of the time that it is, given the wide range.

23 Does that make sense?

24 JUDGE BREITHAUPT: Help me with -- help me with
25 the math.

1 MR. RASCH: Sure. So there's 806 days between
2 these two time periods.

3 JUDGE BREITHAUPT: Mm-hmm.

4 MR. RASCH: 363 of them are being used for --

5 JUDGE BREITHAUPT: Okay. Gotcha. So instead
6 of 70 -- how did -- how did Mr. -- is it Bradford?

7 MR. BRADFORD: Yes.

8 JUDGE BREITHAUPT: How did you come up with
9 78 percent? What was your denominator?

10 MR. BRADFORD: That is calculated by looking at
11 actual days of use.

12 MR. RASCH: So they didn't take into
13 consideration nonuse, which there's 312 days of nonuse.

14 JUDGE BREITHAUPT: Oh, oh, oh, oh.

15 MR. BRADFORD: Your Honor, I think the
16 rationale there was you look at the case law. I think
17 nonuse -- for non-profits, nonuse days really should be
18 excluded. If we use that standard, I think most churches
19 and synagogues in the state would lose their exemptions
20 because there are many of these buildings that are empty
21 for five or six days of the -- of the week.

22 Personally, my -- I belong to a synagogue that has a
23 2,000-square-foot balcony that's used two days a year for
24 the Jewish High holidays.

25 JUDGE BREITHAUPT: I was going to say, without

1 picking on any particular group, there are some people
2 known as Christmas and Easter Christians, who only come to
3 church -- the pastors and priests would wish that they had
4 people there during the week. But anyway, okay.

5 MR. RASCH: And my counter to that would be
6 that those -- those places of worship are generally open to
7 the public to come in and pray and do whatever they need to
8 do at that time. Just because it's not being used
9 particularly for mass doesn't mean it's not being used by
10 the public as a whole, whereas in this instance there's
11 nothing there. What's the public going there to do?
12 What's the benefit to the public? How is the -- how is
13 this --

14 MR. BRADFORD: Respectfully, Your Honor, that
15 may be true for some places of worship, but not all places
16 of worship. I know my building is locked six days out of
17 the week.

18 But we're pretty far afield from --

19 JUDGE BREITHAUPT: Yeah. We will get to this.
20 Thank you.

21 MR. RASCH: So based on -- based on its model,
22 its use and/or nonuse and based on the statute, which we
23 disagree creates some sort of lesser standard for art
24 museums --

25 JUDGE BREITHAUPT: Mm-hmm. This goes back to

1 the Coos -- Coos County Museum issue.

2 MR. RASCH: Correct.

3 JUDGE BREITHAUPT: What about this statute that
4 focuses both on museums and their (unintelligible)? What
5 am I to learn from that? You'll help me with that with
6 your briefing.

7 MR. RASCH: Yes, Your Honor. We -- the County
8 took the position that it's not -- it's not an art museum,
9 doesn't qualify, and even if it is, it does -- the use
10 isn't conducive to an exemption.

11 Secondly, it also does not qualify as a charitable
12 organization, as the evidence will show.

13 JUDGE BREITHAUPT: And is that a separate
14 basis?

15 MR. RASCH: Well, Your Honor, we've kind of
16 taken -- looked at it from the position, I think both of
17 us, sort of "if not, then this" sort of position.

18 JUDGE BREITHAUPT: Mm-hmm. Mm-hmm.

19 MR. RASCH: And our position is that it's not
20 an art museum and it's also not a charitable. So I think
21 that --

22 JUDGE BREITHAUPT: But --

23 MR. RASCH: -- it could -- it could be -- it
24 could not be an art museum, but it could qualify as a
25 charitable organization.

1 JUDGE BREITHAUPT: And vice versa? It could be
2 an art museum but not a charity?

3 MR. RASCH: Correct.

4 JUDGE BREITHAUPT: Okay. Thank you. I just
5 wanted to get that clear.

6 MR. RASCH: Yes.

7 JUDGE BREITHAUPT: It's either --
8 it's either --

9 MR. RASCH: It could be both.

10 JUDGE BREITHAUPT: It's A or B -- A or B or
11 both.

12 MR. RASCH: Right.

13 JUDGE BREITHAUPT: Okay.

14 MR. RASCH: But we believe it's neither.

15 JUDGE BREITHAUPT: Sure. Sure. Sure.

16 MR. RASCH: So --

17 JUDGE BREITHAUPT: A or B or neither. A or B
18 or both.

19 MR. RASCH: Right. And the evidence will show
20 that it lacks the requirements, charitable object,
21 charitable performance, gift and giving, and exclusive use
22 for charitable purposes.

23 From our, the County's, investigation, it seems that
24 the benefit to the public is somewhat incidental. It seems
25 like the benefit is more to the artists involved, to the

1 members of the organization, and any benefit to the public
2 is not -- is not primary. It's sort of an incidental
3 benefit.

4 And while we aren't taking the -- we wouldn't disagree
5 that their mission and purpose has some sort of, you know,
6 benefit or is a worthwhile endeavor, it's not charitable.

7 JUDGE BREITHAUPT: Not to -- not to -- I listen
8 to a classical music station that has, at 9 o'clock and
9 6 o'clock every day, the Composers Date Book, which is
10 often devoted to new music. And their tag line at the end
11 of their big announcement of a sponsor is, "And remember,
12 all music was once new," which, now, I'm not suggesting.

13 But your issue isn't "This is new kinds of art."
14 It's -- in other words, you're not going to the content of
15 the art.

16 MR. RASCH: Right.

17 JUDGE BREITHAUPT: You're going to the "But the
18 artist comes and stays there and" --

19 MR. RASCH: It's the use.

20 JUDGE BREITHAUPT: Yeah.

21 MR. RASCH: It's not -- we're not saying that
22 what they're displaying isn't artistic or isn't --

23 JUDGE BREITHAUPT: Right.

24 MR. RASCH: We're not here to judge what is art
25 and what isn't. We're here to --

1 JUDGE BREITHAUPT: That's good.

2 MR. RASCH: We're here to --

3 JUDGE BREITHAUPT: I was wondering if you were.
4 We'd have an Article 1, Section 8, or at least overhang.

5 MR. RASCH: No. We're here because we don't
6 think the building is being used in conjunction with the
7 statute --

8 JUDGE BREITHAUPT: Okay.

9 MR. RASCH: -- and in compliance with the
10 statute for exemption.

11 JUDGE BREITHAUPT: Okay. And, again, you may
12 have a witness or you'll tell me whether or not -- there is
13 this flavor in at least some of the briefing about, "Well,
14 they don't behave like an art museum. I mean, they don't
15 have this kind of advertising or this kind of whatever."
16 We'll get to that, I suppose.

17 So are we ready?

18 MR. RASCH: Yes.

19 JUDGE BREITHAUPT: Call your -- the words that
20 all litigators fear: Call your first witness.

21 MR. BRADFORD: We'd like to call Jenny Martin
22 to the stand, please.

23 JUDGE BREITHAUPT: Ms. Martin, it's not because
24 they fear you. It's because now the rubber meets the road.
25 All the planning is over.

1 And would you into the microphone state your full name
2 and spell it, please.

3 MS. MARTIN: My name is Jennifer Lee Martin,
4 J-e-n-n-i-f-e-r, L-e-e, M-a-r-t-i-n.

5 JUDGE BREITHAUPT: All right. I'll now ask my
6 law clerk to administer the oath to you.

7 THE CLERK: Please raise your right hand.

8 (WITNESS SWORN)

9
10 JENNIFER L. MARTIN, having been first duly sworn on oath,
11 testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. BRADFORD:

15 Q Ms. Martin, please describe your educational and
16 professional background to the Court.

17 A My undergraduate was in biology at the University of
18 Colorado, and I got my master's in business at Oregon State
19 University. I started working at YU five years ago as --
20 originally development assistant, and I am now the
21 operations director for organization.

22 Q And throughout today's proceedings, we'll refer to Yale
23 Union or YU interchangeably.

24 What is YU?

25 A YU is a contemporary art center. It's led by a desire to

1 support emerging and under-acknowledged artists, propose
2 new modes of production, and stimulate the public discourse
3 around art.

4 Q How does Yale Union, or YU, accomplish this mission?

5 A We have four major exhibitions in a year. They run for six
6 to eight weeks. We have a number of auxiliary programs
7 around each exhibition.

8 We produce new art on-site. That production takes
9 about a month to three months. And the process of getting
10 to that point takes about two years.

11 JUDGE BREITHAAPT: If I may, when you say you
12 "produce new art on-site," I could understand that as YU
13 itself creates new art versus what I've heard already
14 referred to, which is you invite artists to come and
15 themselves install, create, display new art --

16 THE WITNESS: Yes.

17 JUDGE BREITHAAPT: -- which is --

18 THE WITNESS: I should have probably used the
19 word "commission" the production of new art. Well, we have
20 staff that produces it in direction by the artist if our
21 staff are doing the production.

22 JUDGE BREITHAAPT: Thank you.

23 Q. (BY MR. BRADFORD) How does YU's mission benefit the
24 general public?

25 A Because we bring artists from around the nation and around

the world, we give Portland, as well as the Northwest, an opportunity to experience art that they would otherwise not be able to experience unless they left the state.

Q And what are your responsibilities as operations manager for the organization?

A I do day-to-day operations. I also manage the finances. I do event logistics, and I write grants for the organization.

MR. BRADFORD: I'd like to turn the Court's attention to what's previously been admitted as Plaintiff's Exhibit No. 4.

JUDGE BREITHAUPT: This is Demonstrative 4?

MR. BRADFORD: No. Plaintiff's Exhibit 4.

JUDGE BREITHAUPT: 4. Okay.

MR. BRADFORD: May I hand this to the witness, Your Honor?

JUDGE BREITHAUPT: Mm-hmm.

Q (BY MR. BRADFORD) Please explain to the Court how YU's funded.

A YU's funded through a number of sources: Individual contributions, grant contributions from foundations, and government grants, as well as earned income from either rentals or, in very small circumstances, ticket sales, very -- like, one percent.

Q Looking to the bottom of Plaintiff's Exhibit No. 4, under

1 "Non-Financial Data," what are the exhibitions that are
2 listed here? What does that mean generally?

3 A In 2014 we've had -- we had several exhibitions, four main
4 ones, if my memory's right, and a couple small, like
5 one-week, exhibitions as well.

6 Q What are the events that are listed under that same
7 heading?

8 A The events are going to be readings, educational talks,
9 film screenings, and music concerts.

10 Q Who are the staff of YU that are indicated here?

11 A We have seven staff. We have four curators, myself, our
12 director, and we also have a -- well, am I doing this math
13 right? Yes -- the building coordinator, maintenance
14 coordinator.

15 And then we have six unpaid staff, who aren't paid but
16 contribute significant time to the institution and have a
17 certain amount of power over -- autonomy over certain
18 decision making and creation, I guess. I'm not describing
19 that right.

20 Q What kind of decision making are you referring to?

21 A We have an individual who helps with our printing, and so
22 he's a big part of creating any publications and catalogs
23 that go along with the exhibitions, but he's not paid.

24 Q What do volunteers do for the organization?

25 A Volunteers have a number of objects that they do. They, in

1 a lot of ways, help with event setups, event logistics.

2 They help with security. They help with cleaning. They
3 help with creation of the exhibitions.

4 They help with, you know, making sure that the artists
5 are comfortable, and if they need somebody to drive them
6 around the city, they'll do that as well.

7 Q Turning your attention now to the section above that on
8 Plaintiff's Exhibit No. 4, under the heading "Income," what
9 is the line item regarding earned income? What does that
10 represent?

11 A Earned income represents both the long-term income for the
12 spaces that we lease out through here as well as any
13 rentals that we have that are what we consider event
14 rentals, which are weddings. Those are usually about 12 a
15 year. And then there's a very small percentage that's
16 income from ticket sales or publications.

17 MR. BRADFORD: I'd like to now turn the Court's
18 attention to Plaintiff's Exhibit 5.

19 Q (BY MR. BRADFORD) Plaintiff's Exhibit 5 has previously
20 been admitted into evidence and identified as a series of
21 letters and documentary evidence of grant applications and
22 awards. How does YU obtain these grants? What does it
23 have to do?

24 A For each foundation there is a -- each foundation is unique
25 in terms of what they require, but there is a grant

1 application process. And they look at how well our mission
2 statements and our objectives for whatever we're applying
3 for meets their own objectives and mission statement.

4 It requires submitting financial information. It
5 requires, you know, oftentimes meeting with the individuals
6 that are on the grant application committee from their end.

7 Q What kind of information about your programming do you have
8 to provide to these organizations?

9 A We have to provide kind of an overview of what the scope of
10 the -- if it's going to be an exhibition grant. There's
11 also general operating grants -- but the scope of whatever
12 the exhibition or project is going to be, the
13 qualifications of the artist and curators involved, the
14 objectives that we are trying to fulfill through the public
15 with that exhibition.

16 Q A moment ago you mentioned a distinction
17 between exhibition-specific grants and general support or
18 operating grants. Would you explain that distinction to
19 the Court?

20 A Yes. So every -- every grant-making organization has their
21 own idea of what they want to support. Certain
22 organizations, like the Oregon Arts Commission, for
23 instance, will give general operating support, which means
24 they -- the grant-making funds are -- usually you're
25 writing a grant to describe what you're doing over a year

1 or two, depending on what their grant period is.

2 The grant-making funds can then be used for any
3 operations. So it can be used for utilities. It can be
4 used to pay salaries. It can -- anything other than paying
5 debt or capital, infrastructure.

6 Then there are capital grants, which are specific
7 towards doing capital projects. So if I can do an example,
8 we're currently building a door, and PDC gave us a grant to
9 reopen the storefront of our building or construction. We
10 can't use those funds for any of our artistic program or
11 salaries. It's just going to that capital project.

12 And then there's project or program grants, which is
13 specific to one exhibition or specific to an event or
14 whatever their -- whatever we put into the grant
15 application.

16 Q What do these grant providers require of the organization
17 to account for the money received once it's awarded?

18 A A majority of the grants require a recording process. Some
19 of them there's an interim report, meaning halfway through
20 the period. Usually that's in the case when it's a
21 multiyear grant. You have to describe what you've done so
22 far, what objectives you've met, how many attendants you've
23 had, the budget for the project.

24 And then there's a final report that basically has to
25 detail how well you stayed within budget, changes to the

1 project that were made, whether that's because of budget or
2 other reasons, and again audience and critic feedback.

3 MR. BRADFORD: I'd like now to turn the Court's
4 attention to Plaintiff's Exhibit No. 6.

5 JUDGE BREITHAAPT: Mm-hmm. And just for the
6 record and to make sure we get this down: All the exhibits
7 that are contained in the package that I got here, both
8 plaintiff's and defendant's, are admitted; correct?

9 MR. RASCH: Correct, Your Honor.

10 MR. BRADFORD: Yes.

11 JUDGE BREITHAAPT: Thank you.

12 Q (BY MR. BRADFORD) This exhibit has been identified
13 previously and admitted as a copy of the organization's
14 members list. Tell us about the membership program.

15 A We currently have two membership levels. Originally we
16 had, I think, six. When we first started, we based it on
17 Portland Art Museum and all the other ones where they had
18 the six members levels.

19 But because we don't have admission fees and we don't
20 charge for a majority of our programs, we found that -- as
21 well as a lot of our audience are younger individuals, we
22 found that having just two distinct was more in line with
23 what we were doing at -- at this time.

24 And so there is a \$60 level, which is basically just
25 the standard baseline for all membership donation for every

1 museum that I know of, or for the majority of them. And
2 the benefits there are you get free admission to the music
3 concerts, which is our only admission, ticketed event. And
4 we actually want that because we want to get to the point
5 where the music concerts are also free.

6 The \$1,200 level one is more for looking at patron
7 level. And there's -- there's not that much of a larger
8 benefit, but we do invite them to board meetings. We give
9 them access to the building during office hours and -- you
10 know, and then they get the lower level as well.

11 Q Just to draw out a few things that you said for the benefit
12 of the Court. You made a distinction between events that
13 have admission and events that are free of charge. Would
14 you, just for the record, clarify which events do those?

15 A On our end?

16 Q Yes.

17 A Everything is free except for the music concerts, which we
18 have about 12 of those a year.

19 Q And what's the typical charge for admission to those?

20 A \$12.

21 Q So what purpose does this membership program serve,
22 generally?

23 A The membership program is really just a standard donor
24 option for people to support the institution. Again, you
25 know, the \$60 one is just the low end. Every institution

1 that has a membership program that isn't supported wholly
2 by a government organization -- there are a couple art ones
3 that are supported by schools -- you know, they have some
4 support system for individual donors, and they offer
5 benefits. So we're doing the same in this instance.

6 Q Why do some members receive key cards?

7 A The people who are at the \$1,200 level we consider to be,
8 you know, significantly financially invested in the
9 institution, and we want them -- we want to encourage them
10 to be strong advocates of the program. So by giving them
11 key cards that access the public spaces during office
12 hours, it means that they can bring in potential other
13 donors or advocates or people interested in the program and
14 act as a -- I want to say shepherd of what we're doing to
15 the community.

16 Q What instructions do you provide to members that receive
17 key cards about using them?

18 A They're -- they're accessing the public space, to be
19 respectful. Obviously, you know, they can't access staff
20 areas.

21 I think that's -- I'm not really sure where you want
22 me to go with that.

23 Q Do other art museums or nonprofit organizations that you're
24 aware of provide similar membership benefits?

25 A For the key card access, I believe that there are a lot of

1 other organizations that do offer access to large donors,
2 but not necessarily key card access, but they'll offer
3 access to them at off hours.

4 Q And with regard to the rest of the benefits offered to
5 members, in your experience, does that track what you've
6 seen with other organizations like Yale Union?

7 A Yes.

8 Q For any given exhibition or event, how does attendance of
9 your members compare to attendance of non-members or the
10 rest of the events?

11 A Our exhibitions kind of vary in the audience. So, you
12 know, for example, we've had an Ethiopian singer here, and
13 it's attracted a large African-American community.

14 We've had Russian propaganda music. That's had its
15 own community.

16 Yuji Agematsu was a Japanese artist that we had on
17 exhibition, and that brought in a lot of different people
18 who are interested in Japanese art specifically.

19 So I think we have a base audience that follows us on
20 our email list, and that's about, you know, 7,000, of which
21 I think 4,000 is from the Oregon area; and then Facebook
22 that also follows us. And then we get various -- probably
23 35 percent new people coming through for each exhibition.

24 Q So for any given event, how does the number of members
25 compare roughly to the number of non-members that

1 actually --

2 A Oh, so we -- for any given -- I'll just use exhibition
3 because that's how we track. We use a clicker to track
4 people who come through. We have about 3,000 to 4,000
5 people who come through, and we have about 150 \$60 members
6 and about two dozen who are at the \$1,200 member. So I
7 don't know what that percentage would be, but...

8 Q Thank you.

9 JUDGE BREITHAAPT: Five percent.

10 THE WITNESS: Thanks. I can't do math up here.
11 I'm a little nervous.

12 MR. BRADFORD: I'll go ahead and concede I
13 couldn't do that in my head.

14 JUDGE BREITHAAPT: Well, I'm rounding up. 174.
15 I'm rounding to 200. 200 into 4,000 is 20. 20 into a
16 hundred is five.

17 Q (BY MR. BRADFORD) Turning your attention to Plaintiff's
18 Demonstrative No. 1, the Court actually asked me for this
19 information before. I'm probably not the best person to
20 describe it. But can you tell us roughly how the building
21 is oriented?

22 JUDGE BREITHAAPT: Now, I now see a reference
23 to "Perfect Fit." So if I were to go just to the left of
24 your building, I'd be at Grand Central Bowl; right?

25 THE WITNESS: Yes.

1 JUDGE BREITHAAPT: Well, I should say just west
2 of your building.

3 THE WITNESS: Yes.

4 JUDGE BREITHAAPT: If I was driving up Belmont
5 from downtown, I'd first pass Grand Central Bowl. Then I'd
6 hit --

7 THE WITNESS: Yeah.

8 JUDGE BREITHAAPT: Maybe the next block or one
9 block more, I'd hit -- maybe one block more I'd hit what I
10 think of --

11 THE WITNESS: And we're --

12 JUDGE BREITHAAPT: -- as the Perfect Fit
13 building.

14 THE WITNESS: Yeah. And we're actually
15 attached to the elections, Multnomah County elections,
16 building.

17 JUDGE BREITHAAPT: Aha.

18 THE WITNESS: So we take up -- you said almost
19 a whole. We take up half the city block. They take up the
20 other half.

21 JUDGE BREITHAAPT: And they lie to the east and
22 the north of you. Or maybe the east of you.

23 THE WITNESS: Just east. Yes.

24 JUDGE BREITHAAPT: Just east. You go the whole
25 block? North-south?

1 THE WITNESS: We're -- it's -- we're half.

2 They're half and we're half.

3 JUDGE BREITHAUPT: Okay. Thank you.

4 Q (BY MR. BRADFORD) And so based on the perspective here,
5 can you tell us what we're looking at specifically? What
6 street is it?

7 A That is Belmont.

8 Q And this street?

9 A That is 10th.

10 Q And where's the main entrance for exhibitions located on
11 the building?

12 A It's on the other side.

13 Q Okay. So around -- around this corner?

14 A Around the corner, yes.

15 Q And the main administrative entrance for the office?

16 A It is now on the other side.

17 Q I'm going to hand you a virtual walkthrough of the
18 building, a few demonstratives.

19 So where's the public entrance to the gallery here?

20 JUDGE BREITHAUPT: Just a moment. May I first
21 ask: On the photograph that is a photograph of -- or
22 representation of a building, is that a demonstrative? And
23 if so, what number?

24 MR. BRADFORD: It's a demonstrative. This
25 is -- it's actually an enlargement of Plaintiff's Exhibit

1 No. 1.

2 JUDGE BREITHAUPT: Okay. Very well. So that's
3 enlarged No. 1. And what you're about to ask the witness
4 about, is it also an enlargement of another exhibit?

5 MR. BRADFORD: Yes, Your Honor. This is an
6 enlargement of Exhibit 4, Page 4. And they're all marked.

7 JUDGE BREITHAUPT: Thank you. Thank you.

8 MR. BRADFORD: And actually, I think --

9 MR. RASCH: It's actually Exhibit 3.

10 MR. BRADFORD: Exhibit 3. Yeah. That's right.
11 I think it's Exhibit 3.

12 JUDGE BREITHAUPT: Okay. So the schematic is
13 Exhibit 3?

14 MR. BRADFORD: That's right.

15 JUDGE BREITHAUPT: And the -- and the picture
16 of the large open light space is --

17 MR. BRADFORD: I think this one actually might
18 be similar in this part. This is an enlargement of
19 Plaintiff's Exhibit 2 --

20 JUDGE BREITHAUPT: Okay.

21 MR. BRADFORD: -- which isn't in here.

22 JUDGE BREITHAUPT: Thank you.

23 Q (BY MR. BRADFORD) So going back to my original question,
24 when the public comes to enter the gallery, where is that
25 shown here on this enlargement?

1 A There's an exterior white staircase that's on the left,
2 right there.

3 Q And what room are they coming into when they come upstairs?

4 A They're coming into the main exhibition room, which is this
5 room right here.

6 Q Okay. The main gallery?

7 A Mm-hmm.

8 Q Let's turn to -- how does Yale Union use this room in
9 general?

10 A This is --

11 JUDGE BREITHAUPT: And the reference there is
12 to the main exhibition space --

13 THE WITNESS: Mm-hmm. Yes.

14 JUDGE BREITHAUPT: -- "this room"?

15 THE WITNESS: Yes.

16 MR. BRADFORD: Thank you.

17 JUDGE BREITHAUPT: Mm-hmm.

18 A This room is where we put up our -- the majority of our
19 public programming. The four main exhibitions a year go in
20 here, as well as a majority of our readings and talks, film
21 screenings, and music.

22 Q (BY MR. BRADFORD) In addition to the program that you just
23 described, how else is the main exhibition room used?

24 A We also rent out the space for event rentals.

25 Q Does Yale Union maintain a library?

1 A We do.

2 Q And where is that library located?

3 A The library is this little, small box right there.

4 Q What's the purpose of the library?

5 A The library has some rare art books. It's basically an
6 artistic research library.

7 Q Does Yale Union maintain artist studio space?

8 A Yes.

9 Q And where are those located throughout the enlargement?

10 A There's only one on this floor plan, and it's the upper
11 left-hand box right there.

12 Q This one?

13 A Mm-hmm.

14 JUDGE BREITHAAPT: For my benefit, you
15 described entering and come up a stairway, so that makes me
16 think this is a second floor.

17 THE WITNESS: Mm-hmm.

18 JUDGE BREITHAAPT: Will we get to the first
19 floor?

20 MR. BRADFORD: We will.

21 JUDGE BREITHAAPT: Thank you.

22 MR. BRADFORD: The virtual floor takes you
23 through the public access.

24 JUDGE BREITHAAPT: Okay.

25 MR. BRADFORD: And then we'll get down to the

1 guts of the building that are apparently used by the
2 organization.

3 JUDGE BREITHAUPT: Thank you.

4 Q (BY MR. BRADFORD) How are -- so you mentioned this studio
5 space here. How is that studio space used?

6 A It depends on what we're doing at the time, but it's either
7 used as production for the artists to come up with ideas
8 for our future exhibitions if they're here for a site tour
9 or production if they're here for actually the installation
10 of the exhibition, which is a couple weeks before the
11 exhibition opens.

12 Between the three studios, usually one of them is a
13 green room. It depends on which one at the time.

14 And we also -- when there -- when there aren't artists
15 using all three, we open them up to staff, board members,
16 and volunteers if they're working on a YU project.

17 Q So you mentioned the one space here, and the other two of
18 the three are in other floors that we'll get to?

19 A Yes.

20 Q What else is on the second floor?

21 A There's also a kind of guest area, like an open area that
22 people can congregate, as well as a kitchen, dining area.

23 Q So let's take those one at a time. The guest area that you
24 referred to, where is that here on the enlargement?

25 A That's the middle piece.

1 Q And when you say "guest area," what specifically is that
2 used for?

3 A When we have large groups of people that are here for an
4 exhibition, it's kind of like an area -- I mean, it's
5 between the bathrooms and the kitchen, which we often use
6 as, like, a reception area and the main area. So it's kind
7 of just a -- like almost like an entryway, except it's not
8 our entryway.

9 Q You called it a reception area? Did I hear you right?

10 A Yeah. It's -- yeah. It's reception.

11 Q And then you also referred to a kitchen. Where is the
12 kitchen?

13 A The kitchen is in the right-hand upper corner.

14 Q Here?

15 A Mm-hmm.

16 Q What is the kitchen used for?

17 A The kitchen is used for fund-raising dinners. It's also
18 used for reception uses during openings and concerts and
19 talks where we do catering and drinks. And we also do
20 small -- small film screenings and poetry readings in there
21 if the event is under 50.

22 Q Now head downstairs.

23 JUDGE BREITHAUPT: Did I understand from your
24 testimony thus far that the kitchen would also be used, for
25 example, in connection with the weddings or the receptions

1 that are done by private parties?

2 THE WITNESS: Mm-hmm. Yes.

3 JUDGE BREITHAUPT: Thank you.

4 THE WITNESS: It's not a commercial kitchen,
5 though. So they can't actually cook on anything.

6 Q (BY MR. BRADFORD) This is also an enlargement that will be
7 found in Exhibit No. 3. I again apologize for the
8 mismarking.

9 Does Yale Union maintain an office on the building --
10 or on the property?

11 A Yes.

12 Q And where is that office located here?

13 A The office is currently located on the left. It's the L.

14 Q So here?

15 A Mm-hmm.

16 Q And who uses this office?

17 A Administration for us. The curators as well can be in
18 there. And then there's also our printing equipment and
19 presses in there as well.

20 Q How does Yale Union staff or volunteers enter the building?

21 A We enter the building through the door that's right on
22 this -- there. Yeah.

23 Q Here?

24 A Mm-hmm.

25 Q Are there any plans to improve public access to the first

1 floor? You described public access coming up to the second
2 floor previously. Any plans to improve access on this
3 floor?

4 A Yes. We're currently opening -- there's that hallway
5 that's red in the middle.

6 Q Here?

7 A Yeah. The door is three feet off the sidewalk. We've gone
8 through a land use review and permitting, and we're in the
9 process of constructing that door to become the main
10 entrance to the first floor.

11 Q You referred a moment ago to printing equipment. Where is
12 that located?

13 A That's located on the left side of the administration area.
14 Yeah.

15 Q Who uses the printing equipment?

16 A Both our staff as well as one of the unpaid staff who also
17 has Container Corps, and oftentimes the artists that are
18 working if they're doing a publication or a catalog in
19 coordination with their exhibition.

20 Q So the printing equipment is sometimes used for Yale Union
21 staff and sometimes used by, you said, Container Corps?

22 A Mm-hmm.

23 Q What's Container Corps?

24 A Container Corps is basically a printer. It's an individual
25 who does printing.

1 Q How does the printing equipment benefit Yale Union's
2 program?

3 A There is often a publication piece for each exhibition.
4 Whether that's a catalog describing the exhibition that's
5 going on, written by the artist or the curators involved,
6 that's available to any audience member that's seen the
7 exhibition so that they have information on the artist and
8 what's going on. And then there -- we also print books as
9 well.

10 Q And when the County inspector came through in July of 2014,
11 where was the printing equipment located then?

12 A In July we were in a transition. We'd just finished the
13 construction of the first floor, so we were currently
14 moving everything into that office. The printing shop
15 before that was in the basement.

16 Q Does Yale Union maintain a wood shop?

17 A Yes.

18 Q And where is that located here?

19 A That is the upper red area.

20 Q Here?

21 A Mm-hmm.

22 Q And who uses the wood shop?

23 A Staff and artists.

24 Q How does the wood shop benefit YU's program?

25 A Every exhibition is created with an installation unique to

1 that exhibition. So that may be the production of building
2 tables to display or other kinds of display. That's also
3 building walls to display the art. Oftentimes the artistic
4 piece is a designed piece that is produced on-site or is
5 created by the artist.

6 Q We've essentially just jumped from one corner of this board
7 to the other. What's -- what else is on the first floor of
8 the building?

9 A We have rented out several areas in the building for
10 basically lease tenants. And that's the remainder.

11 Q Okay.

12 A The green and the blue.

13 Q When you say "the green," that would include this space
14 here?

15 A Mm-hmm.

16 Q Here?

17 A Mm-hmm.

18 Q Then there's green space here?

19 A Yes.

20 Q Then over here?

21 A Yep.

22 Q And you also referred to blue space?

23 A Yes.

24 Q That's here and there?

25 A Yes.

1 Q And those are commercially leased spaces?

2 A That's correct.

3 Q Again, this is available in Plaintiff's Exhibit No. 3.

4 This is marked "First Floor Mezzanine." What is the
5 first floor mezzanine and how is it accessed?

6 A The first floor mezzanine is accessed -- there's a hallway
7 that goes from the second floor down to the first floor
8 exit, and it's basically between the first and second
9 floor.

10 Q And what's on the mezzanine level?

11 A There are two artist studios.

12 Q Those are located here?

13 A Yeah. In the red.

14 Q Who uses these artist studios?

15 A Visiting artists or other site visits or installation
16 purposes. And then again it's the same -- if we don't have
17 an artist that's already in there, then it can go towards
18 staff or board volunteers if they're working a YU project.

19 Q You mentioned what staff might use them for. What would
20 visiting artists use these spaces for?

21 A When they come out for a site visit, they're coming up with
22 ideas for a future exhibition. That's usually six months
23 in advance or more. And so they'll be working with the
24 curators on different ideas, and so they may lay out some
25 of their ideas in there.

1 It's also an area that they can, when they're doing
2 installation purposes, set up work that they don't want to
3 get put into the ballroom. And then it's also as a green
4 room for, you know, these artists or musicians or before
5 and after they give a talk or performance.

6 Q When you say "green room," what do you mean by that?

7 JUDGE BREITHAUPT: Thank you.

8 A A green room is a phrase that describes basically an area
9 where a performer can relax before and after a performance.

10 Q (BY MR. BRADFORD) Do the artists live in this space while
11 they're working at Yale Union?

12 A No.

13 Q What's the rest of the space that is indicated here?

14 A It's air.

15 Q Okay. So there's really only this on the mezzanine level?

16 A Yes.

17 Q Is that right?

18 A Yeah.

19 Q Carrying down the stairs, this is also an enlargement from
20 Exhibit 3. What's in the basement of the building?

21 A The majority of the basement is storage. We also have a
22 music production area. And we have a room that had
23 previously been where the print shop was.

24 Q Let's take those one at time. You said that there's
25 storage. Where is -- where is the storage area?

1 A The storage is majority of the left side except for
2 probably a quarter area on the bottom left quarter is not.

3 And then also the boiler room is storage. And along
4 the hallway there are actually closets in there, if you --

5 Q Just to take that one step, you said that "the lower
6 quarter area is not." What's in this part of the basement?

7 A That was where the print shop used to be, and recently
8 we've started using it for both storage and as an
9 additional area that people can work in.

10 Q So there's a workspace here that's sometimes used for
11 storage?

12 A Yeah.

13 Q Then you said additional storage around that space?

14 A Yes.

15 Q And what's in the rest of the basement, on this side?

16 A So the bottom right corner is the music production studio.

17 Q So the music production studio here. And how does Yale
18 Union use the music production studio?

19 A There is an aspect of music in -- in what we do. So there
20 are oftentimes sound pieces that go into the exhibition,
21 and those are produced on-site. We don't use it as much as
22 we used to, but we still use it.

23 Q What about the rest of what's here in the basement?

24 A A majority of it's concrete, and then there's an
25 underground river.

1 Q You're going to have to explain to us what you mean by the
2 "underground river." That's this area here?

3 A Yes. There's a river that flows underneath the area, and
4 it's actually open in the building so you can actually see
5 it. It's very slow-moving.

6 JUDGE BREITHAAPT: River or stream?

7 THE WITNESS: It's a creek, stream. It's very
8 slow-moving.

9 JUDGE BREITHAAPT: Name?

10 THE WITNESS: Well, they actually filled it.
11 So I don't know what the original name was. But it goes
12 underneath the entire area there. It used to be marsh, and
13 they filled that area, but there's still an open access to
14 where we are.

15 JUDGE BREITHAAPT: Mosquitos?

16 THE WITNESS: Huh-uh. No.

17 Q (BY MR. BRADFORD) Anything else in the basement that we
18 didn't talk about?

19 A There's some old boilers down there and an elevator shaft.
20 That's it.

21 JUDGE BREITHAAPT: You're familiar with Tanner
22 Creek on the west side?

23 THE WITNESS: Is that --

24 JUDGE BREITHAAPT: The Tanner Springs Park --

25 THE WITNESS: Yeah.

1 JUDGE BREITHAUPT: -- in the Pearl District?

2 THE WITNESS: I don't --

3 JUDGE BREITHAUPT: Tanner Springs runs under
4 much of what we think of as -- not think of, we know as
5 Pearl. There is an -- there is an underground water
6 course.

7 THE WITNESS: I didn't know that.

8 Q (BY MR. BRADFORD) Has the building received any special
9 recognition?

10 A It's on the historic register.

11 MR. BRADFORD: I'd like to turn the Court's
12 attention to Exhibit 7.

13 JUDGE BREITHAUPT: 7? Mm-hmm.

14 Q (BY MR. BRADFORD) How does the building status as a
15 historic place affect your use of it?

16 A Because of its historic status, anything -- any capital
17 changes that we do have a significantly long -- longer
18 process and more in-depth process to actually carry out.

19 Q How does it affect your ability to mark the building or
20 otherwise put up signing?

21 A There are lots of regulations in terms of changing the
22 exterior of the building. There's a much longer process.
23 It's basically a land use review that's before you can
24 actually apply to make those kind of exterior changes.

25 Q And how does this status affect the building -- or the

1 programming for the organization?

2 A I'm sorry. I don't know -- can you rephrase that question?

3 Q Sure. Is there anything about the unique status of the
4 building that affects programming or your ability to
5 conduct your business in the building?

6 A Yeah. Because it's more than a hundred years old, it
7 hasn't had necessary seismic upgrades and other
8 improvements in over a hundred years. We are just starting
9 to make changes and improvements to the building. The
10 entire capital campaign is expected to cost \$10 million, so
11 we'll have to raise that amount.

12 But because of that, we're currently limited to having
13 events under 50 people unless we get a special permit
14 through the fire marshal. And we have 12 for-profit
15 permits and 12 non-profit permits a year for that.

16 MR. BRADFORD: I'd like to talk more about
17 those permits. If I could turn the Court's attention to
18 Plaintiff's Exhibit 8.

19 Q (BY MR. BRADFORD) So you just mentioned having to obtain
20 permits like the one in Exhibit 8. What circumstances
21 require obtaining a permit like this?

22 A Anytime there's going to be more than 50 people in the
23 space at a single moment, we have to get a permit. The
24 permit can be up to four days, but it can be only for
25 basically what I'd say is one floor plan.

1 So YU can use all four days because we're all -- we're
2 doing it within one event, but if we're doing a wedding,
3 it's just one permit for the one day, so...

4 Q And what limitations do these requirements, if any, put on
5 your program?

6 A It -- there's a uniqueness involved in terms of maximizing
7 both the number of large events that we can do as well as
8 the earned income to support the running of the building
9 itself. And then we also do a lot of events that are
10 expected to either be under 50 people or that we limit the
11 number of people coming in and out during a specific time.

12 Q Is there any construction going on in the building right
13 now?

14 A Yes. We're opening the first floor door.

15 MR. BRADFORD: I'd like to turn the Court's
16 attention to Plaintiff's Exhibit No. 9.

17 Q (BY MR. BRADFORD) And this has been identified and
18 admitted already into evidence as a brochure about your
19 capital campaign. If we could turn your attention then to
20 Page 5 of Exhibit -- Plaintiff's Exhibit 9. What was the
21 thinking behind creating this new entrance?

22 A We wanted to have a main entrance to the building that's a
23 beautiful facade that comes off of the sidewalk that's on
24 10th.

25 Q So where -- looking back to the enlargement that we have up

1 now, where would that be located on this picture?

2 A That would be located in the center of the building on the
3 left side.

4 Q So here?

5 A Mm-hmm.

6 Q Okay. How will this entrance improve the organization's
7 visibility to the public?

8 A It will become a much easier access to the space. It's
9 also in our long-term plans to be able to curate both
10 levels. And so that will become one of the main entrances
11 to all of the public spaces.

12 Q Just to further explain that, when you say the long-term
13 plan is to curate both levels, could you explain more what
14 that means with regard to what you're doing now and what
15 you hope to do in the future?

16 A Sure. We're five years old. We've grown our annual budget
17 from -- originally it was closer to \$250,000. We're now up
18 to half a million dollars.

19 This building itself can support an operating program
20 of \$1 million to \$2 million. So when we're at the half
21 million dollars, we're not able to do multiple exhibitions
22 at once. We can only do the four a year. But eventually,
23 when we get to the \$1 million to \$2 million level, we can
24 have exhibitions on the first floor and then exhibitions on
25 the second floor.

1 JUDGE BREITHAAPT: May I ask a question? You
2 earlier talked about special permit requirements from the
3 fire department that -- 12 for-profit, 12 not-for-profit
4 when you wanted more than 50 people. As far as you know,
5 if you know, is that with respect only to the second floor
6 or the whole building?

7 THE WITNESS: The whole building.

8 JUDGE BREITHAAPT: So even if you expand to
9 include the first floor -- I'll call it build out or have
10 access to the first floor -- you may run into permit
11 limitations?

12 THE WITNESS: Yes. So when we do all of the --
13 when we finish the capital campaign, we will be considered
14 what they term an assembly use space, at which case our max
15 will be 500 people. But because we haven't done the
16 seismic and \$10 million capital campaign that's required,
17 we're considered non-assembly, and so that's why our limit
18 is at 50.

19 JUDGE BREITHAAPT: Okay. So it's not just a
20 door. The door on the first floor will get people in, but
21 you won't --

22 THE WITNESS: Right.

23 JUDGE BREITHAAPT: You'll need to --

24 THE WITNESS: The door won't yet change it.
25 There's --

1 JUDGE BREITHAAPT: -- also do a lot more in
2 order to get to the --

3 THE WITNESS: Yeah. There's --

4 JUDGE BREITHAAPT: -- 500.

5 THE WITNESS: There's a big project coming.

6 Q (BY MR. BRADFORD) And could you elaborate as to what some
7 of those other changes would have to be as part of this
8 capital campaign?

9 A Yeah. The largest change is the seismic. That's probably
10 \$3 million to \$4 million. And that is -- basically there
11 will be two huge cross-beams that will go at either end of
12 the building that will connect with -- I'm not a seismic
13 engineer, but some other stuff in the floors, and then it
14 goes down to a single --

15 JUDGE BREITHAAPT: Stuff in the floors.

16 MR. BRADFORD: I'm pretty sure that's what they
17 would say too.

18 A Goes in a single, like, beam that's grounded in, like,
19 below the basement. So that's the biggest part.

20 We're doing some of the smaller thing -- we're
21 starting to raise funds for some of the smaller things,
22 like repointing the brick, which definitely needs it
23 because there's bricks falling out. And eventually we'll
24 have to redo the roof and some other big projects as well
25 as, you know, there's also the historic restoration aspect

1 of it, which is part of it as well, so...

2 Q (BY MR. BRADFORD) I'd like to turn your attention now to
3 Plaintiff's Exhibit No. 10.

4 JUDGE BREITHAAPT: Before we do that, let's
5 take a seven-minute break, please.

6 (RECESS TAKEN)

7 JUDGE BREITHAAPT: Now, Ms. Martin, do you know
8 what used to be across the street, across Belmont?

9 THE WITNESS: In the -- in the goat field?

10 JUDGE BREITHAAPT: Yes. What was in the goat
11 field?

12 THE WITNESS: I can't remember what it was, but
13 it burned down, didn't it?

14 JUDGE BREITHAAPT: It burned down. They burned
15 down. Alito and Monte Carlo Restaurants. This was the
16 Italian -- the center of Italian-American life, Amajos
17 Lanes, and the -- and the gigantic fresh vegetable market,
18 which is now the goat field.

19 THE WITNESS: No, it's not the goat field
20 anymore.

21 JUDGE BREITHAAPT: Oh, what's happened?

22 THE WITNESS: They've -- actually, they're
23 developing it now. So the goats moved. They have their
24 own Facebook page.

25 JUDGE BREITHAAPT: All right.

1 THE WITNESS: But they've -- the City really
2 wanted them. They moved them.

3 JUDGE BREITHAUPT: I keep interrupting. But
4 no. I mean, those two restaurants were -- I mean, long
5 before trendy Italian restaurants ever hit Portland, you
6 had what I'd call old Italian-American restaurants, and
7 they were wonderful. I was taken there as a young boy
8 sometimes.

9 Okay. Go ahead.

10 Q (BY MR. BRADFORD) Just before we leave the capital
11 campaign, one -- one more question: Are there any plans to
12 improve visibility for the public, in addition to the door,
13 to identify what's in the building?

14 A Yeah. We have a public art piece that will be a kind of
15 standing mural, marking place -- a placeholder for the
16 building that we're working with an artist called Karel
17 Martens, and we are currently in the fund-raising process
18 for that and are hoping to be able to install that in 2016.
19 Or 2017.

20 Q Turning your --

21 A This is 2016.

22 Q Turning your attention to Page 7 of Plaintiff's Exhibit 9,
23 is that what's referred to here?

24 A Yes. This is a little bit hard to see. It's actually a
25 gift with LEDs that will have rolling kind of digitized

1 both our name, but most likely also the name of the
2 exhibitions that are up and other things. We're working
3 with the Regional Arts and Culture Commission to implement
4 and install this.

5 Q And did I hear you correctly that part of that piece will
6 be to identify the organization and its exhibitions?

7 A Yeah.

8 JUDGE BREITHAAPT: So if I'm looking here at
9 Page 7, I see now what appear to be the western -- will be
10 the western view of your building in the middle with the
11 new door.

12 THE WITNESS: Yeah. So that brown door there
13 is the one that we are in the process of --

14 JUDGE BREITHAAPT: Is this current view or
15 hoped-for, future view?

16 THE WITNESS: This is the overlap on a past
17 view. So the building itself is from -- I don't know when
18 the picture was taken, but it's previous, before we started
19 construction on the door.

20 JUDGE BREITHAAPT: Mm-hmm.

21 THE WITNESS: The gift with the Yale Union with
22 the LEDs that will kind of move --

23 JUDGE BREITHAAPT: Mm-hmm.

24 THE WITNESS: -- that is an illustration placed
25 on top of a photo. So that -- that is --

1 JUDGE BREITHAAPT: And where will the LEDs be?

2 I mean, am I -- I don't see anything here other than the
3 building and some what look like trees.

4 THE WITNESS: It's hard to see, but it's --
5 they're square pieces --

6 JUDGE BREITHAAPT: Ah, yes.

7 THE WITNESS: -- that have LEDs lights. And so
8 each of those -- I think it's two feet by two feet squares
9 that go between each of the windows --

10 JUDGE BREITHAAPT: Yes.

11 THE WITNESS: -- can be programmable.

12 JUDGE BREITHAAPT: Okay. So basically, it's
13 going to be a light show.

14 THE WITNESS: Yeah.

15 JUDGE BREITHAAPT: Okay.

16 Q (BY MR. BRADFORD) Turning your attention now to
17 Plaintiff's Exhibit 10. The parties have stipulated to the
18 contents or the events described in Plaintiff's Exhibit 10,
19 so mercifully, we will not be reviewing them line by line.
20 And we stipulate to the fact that the events listed here
21 took place.

22 Why does Yale Union rent its space out?

23 A We rent out the space for a number of reasons. The earned
24 income is a significant supporter for the running of the
25 building -- of the building and operations of the

1 institution. It was, especially earlier in our lifetime,
2 when most grant-making organizations want you to do
3 three-year programming before they'll give grants -- so we
4 were a little bit reliant on that in the building of our
5 life phase. But it's also a community center where other
6 non-profits can have events to do fundraising, people can
7 have weddings there, corporate events can take place. So
8 it's basically a community center.

9 Q Could the dates that are rented out to these private
10 parties you described be used to offer more display time to
11 the public?

12 A Well, most of these exhibitions -- or most of these events,
13 these rentals, are happening when there's an exhibition up.
14 So the people who are attending these events actually have
15 access to the exhibition that's currently there, and
16 it's -- it's kind of a bonus for them to be able to have
17 the art as part of whatever they are doing.

18 Q Does the calendar of rental events or private engagements
19 interfere in any other way with your showing of art to the
20 public?

21 A No.

22 MR. BRADFORD: I'd like to now turn the Court's
23 attention back to Demonstrative No. 4.

24 JUDGE BREITHAUP: Let me ask: Is this
25 Demonstrative 4 also found in the volume that I have?

1 MR. BRADFORD: Your Honor, Demonstrative No. 4
2 is information that's essentially extrapolated from the
3 parties' stipulations. We understand the County has made
4 their position clear about what's there, but it's not an
5 enlargement or duplication of any other exhibits. It's
6 merely an extrapolation of two.

7 JUDGE BREITHAUPT: I'm just wondering where I
8 should keep my demonstratives. How many are there?

9 MR. BRADFORD: So that would be the only other
10 one of the enlargements.

11 JUDGE BREITHAUPT: And the enlargements are
12 enlargements of exhibits that I already have --

13 MR. BRADFORD: That's correct.

14 JUDGE BREITHAUPT: -- marked as exhibits;
15 right?

16 MR. BRADFORD: That's correct, Your Honor.

17 JUDGE BREITHAUPT: Thank you.

18 MR. BRADFORD: This is the only freestanding
19 demonstrative --

20 JUDGE BREITHAUPT: Thank you.

21 MR. BRADFORD: -- in your material. And we
22 have -- and the materials we have provided for you there
23 are part of the binder. We appreciate the County preparing
24 the rest of the exhibits for you.

25 JUDGE BREITHAUPT: Thank you.

1 Q (BY MR. BRADFORD) So this is just a demonstrative exhibit
2 and not -- and not an actual exhibit in evidence, but it's
3 taken from the stipulations of the events that happened
4 during the relevant time period. If you know, between
5 October 2013 and December 2015, how many exhibitions did
6 Yale Union have?

7 A 2013, I think four. I'd have to look at the calendar.

8 Q Four in the year 2013?

9 A From October 2013 till when?

10 Q Right. So let me rephrase that. Between October 2013 and
11 December 2015 --

12 A Oh, sorry.

13 Q -- how many exhibitions did Yale Union have?

14 A We would have had nine or ten.

15 Q And how many musical performances would have happened
16 during that same time period?

17 A 27.

18 Q So it sounds like you're estimating -- and I don't mean to
19 make you guess, but if you know, roughly about how many is
20 it during that time?

21 A Yeah. There's usually 12 a year.

22 Q And how many rental events would have happened in that time
23 period?

24 A Again, 12 a year.

25 Q How do -- how does the number of days dedicated to

1 exhibitions and rental events compare with the number of
2 days of private events? Sorry. Let me rephrase that.

3 How does the number of days dedicated to exhibitions
4 and related events compare to the number of days dedicated
5 to private rentals?

6 A It's not a huge amount of time.

7 Q And what do you mean by that? Can you explain how they
8 compare?

9 A Well, we've got 12 events for the rentals, and then the
10 rest of the year we're either producing an exhibition open
11 to the public or be installing. So, yeah, I would say it's
12 very -- a small amount.

13 Q And how long do those rentals usually last for?

14 A Most of the rentals are one day.

15 Q And I think you mentioned this before. Are there
16 exhibitions on display when the private rentals are
17 happening?

18 A The majority of the time, yes.

19 Q During what hours of the day are exhibitions usually open
20 to the public?

21 A We tend towards weekends. The exhibition hours are
22 dependent on the curators and artists who are involved in
23 the exhibition. So they take into account light or how the
24 exhibition will be viewed during the daytime.

25 Most of the time it's between 12:00 and, I think, 6:00

1 Thursday through Friday. Or Thursday through Sunday.

2 Sorry.

3 Q And why are the exhibits only open for a few days a week?

4 A We find that the majority of our attendees are coming on
5 the weekends. And then, you know, students will come
6 Thursdays, Fridays.

7 Q And how often do students attend events at YU?

8 A We have a significant population from the local colleges
9 around Portland. So I would say -- I'm guessing -- 20 to
10 40 percent is students.

11 Q And when you say "the local colleges," which colleges would
12 those be?

13 A Reed, Lewis & Clark, PSU. We get people from Oregon State.
14 And then we occasionally have high school classes as well,
15 like Buckman. Or sorry. Buckman's not a high school. But
16 high school and then elementary as well.

17 Q Outside of exhibition hours, what are Yale Union's normal
18 operating hours for staff or volunteers?

19 A 10:00 to 5:00, Monday through Friday.

20 Q And how consistent is that throughout the year?

21 A Pretty consistent.

22 Q By "pretty consistent," what do you mean?

23 A We are -- we typically take a holiday, like, end of
24 December to mid-January, but then the rest of the time
25 we're 10:00 to 5:00, Monday through Friday.

1 Q And during those -- during that time when staff and
2 volunteers are there, roughly how many people are occupying
3 the building?

4 A Outside of our commercial tenants, there's our six paid
5 staff, and then we usually have three to seven either
6 unpaid staff or board members that are working with staff.
7 And then we'll have a handful of volunteers who are in, you
8 know, a couple times a week.

9 Q Who's responsible for advertising the organization's events
10 and exhibitions?

11 A Our curators typically do that, actually.

12 Q What does Yale Union do generally to promote these events?

13 A We do press releases to local newspapers. We have a press
14 preview, which is usually the day before the exhibition
15 opens, where we invite local press to come and see the
16 exhibition. We make sure that the exhibitions are listed
17 with all of the local advertisements as events, and we do
18 Facebook and other social media and our email campaigns.

19 Q We're going to talk a little bit more about some of those.

20 Turning your attention now to Plaintiff's Exhibit
21 No. 11. Besides YU, what are some of the other
22 organizations listed in Exhibit 11?

23 A Blue Sky, Portland Art Museum, Disjecta, Rock Box.

24 Q And how would it be that Yale Union would end up in a
25 publication like this?

1 A That's going to be the critic's decision, so in this case
2 John Motley's.

3 Q In your experience, how does Yale Union compare to these
4 other organizations?

5 A We're -- we often -- you know, we're all doing contemporary
6 art, and a lot of times we collaborate with a lot of these
7 organizations as well.

8 Q Turning now your attention to Plaintiff's Exhibit No. 12,
9 what is the Portland Mercury?

10 A It's a local write-up in Portland.

11 Q What do you mean by "write-up"?

12 A A local newspaper.

13 Q How do events for Yale Union end up in the Portland
14 Mercury?

15 A We send them to their events coordinator, and they choose
16 to list them.

17 Q When you say you send them, do you mean --

18 A We send them press releases with the dates that things are
19 going to be occurring.

20 Q Who's responsible for preparing press releases for the
21 organization?

22 A That's our curators.

23 Q And how does it work that they send these press releases
24 out to the press? What do they do to do that?

25 A Oh, they typically have a write-up with some information

1 about the exhibition as well as the dates and times that
2 things are happening, and then they send it to the person
3 on the staff over there that receives press releases.

4 Q Do art critics or writers ever review Yale Union
5 exhibitions in detail?

6 A Yes.

7 Q How do critics or reviewers find out about these
8 exhibitions?

9 A Well, usually critics and reviewers are actually looking
10 for exhibitions to review, so they choose what exhibitions
11 they feel are appealing to the public.

12 Q Turning now your attention to Plaintiff's Exhibit No. 13.

13 MR. RASCH: Did you say 13?

14 MR. BRADFORD: 13, yeah.

15 Q (BY MR. BRADFORD) What is Art in America?

16 A Art in America is a magazine that looks at art across the
17 nation and reviews things that are occurring.

18 Q Does the organization have any kind of formal or informal
19 relationship with the author here, Nick Irvin?

20 A No.

21 Q How would Mr. Irvin have to become familiar with the
22 exhibition listed here in Exhibit 13?

23 A I don't actually know how he became familiar with it, but
24 again, they're looking for exhibitions to review. We would
25 have -- this came out in -- I'm not sure when this came

1 out. But this came out after the exhibition was open. So
2 he would have either heard about it -- we do some press
3 releases to Art in America, but he would have either heard
4 about it through the press release and come to see it or
5 heard about it from somebody else.

6 Q What impact do reviews like this have on your efforts to
7 advertise programming at Yale Union?

8 A This -- it has a number of impacts for us. It's an
9 exterior way for us to qualify what programming we're
10 doing. Some of these magazines are really significant, and
11 it's very hard to get a review in them. So getting a
12 review in, like, Art in America or Art Forum, for instance,
13 is kind of a landmark of what we're accomplishing.

14 It's also an opportunity for people outside of the
15 local population to hear about the exhibitions and
16 potentially increase tourism to Portland by wanting to go
17 see that if they're -- if they -- if they want to come to
18 the Northwest.

19 Q You also just a moment ago referred to Art Forum. What's
20 Art Forum?

21 A It's another big art critic magazine.

22 Q And has Art Forum ever written about Yale Union
23 exhibitions?

24 A Yes.

25 Q I'd like to turn now your attention to Plaintiff's Exhibit

1 No. 14. What is depicted here in Plaintiff's Exhibit 14?

2 A This is an announcement through the on-line forum of the
3 Oregonion for an exhibition opening for Willem Oorebeek.

4 Q And briefly, who is --

5 A Sorry. Yeah.

6 Q I'm sorry. Go ahead.

7 A It is -- yeah. It's supposed to be an opening. Yeah.

8 Q Briefly, who is Willem Oorebeek?

9 A Willem Oorebeek is an artist from the Netherlands that we
10 had exhibits at YU.

11 Q How do Yale Union exhibitions end up in the Oregonion
12 on-line?

13 A Again, we -- similar process. We send press releases, and
14 they choose to post them.

15 Q Turning your attention now to Plaintiff's Exhibit 15,
16 Plaintiff's Exhibit 15 is, admittedly, kind hard to read.
17 Tell us what we're looking at here, please.

18 A This is an email announcement for the same show, the Willem
19 Oorebeek exhibition.

20 Q Who is responsible for creating and distributing this
21 message?

22 A This goes through our curator as well as our board
23 president, Flint, who's here, Flint Jamison.

24 What was the second part of the question?

25 Q Who is responsible for distributing messages like this?

1 A Oh, and then they send it -- the curators and the board
2 president send it through our general email campaign to our
3 email list.

4 Q What is this email list that you referred to? Tell us more
5 about that.

6 A The email list are people who sign up either through our
7 website or at events to get news about YU.

8 Q What's the purpose of this email list?

9 A It's to share what we're doing at the exhibitions phase, as
10 well as individuals who want to attend have an opportunity
11 to find out what's upcoming.

12 Q And how many email addresses, roughly, are contained on
13 this list?

14 A There's about 7,000.

15 Q And how, again, does that compare to the number of members
16 that the organization has?

17 A To round it up, 200.

18 Q Why doesn't YU use conventional advertising methods like
19 print ads in the Oregonian or radio advertisements?

20 A We have done a couple, but they're very expensive. And we
21 also find -- and so we don't have a significant marketing
22 budget for that. And we also find that our audience is a
23 younger audience in a lot of ways, and so they're tracking
24 social media and on-line advertisements rather than, you
25 know, bus advertisements.

1 Q I'd like to turn your attention now to Plaintiff's
2 Exhibit 16. Plaintiff's Exhibit 16 has been identified and
3 entered into evidence as a printout of selections from Yale
4 Union's website. What kind of information is available on
5 the organization's website?

6 A The website's actually designed to be a documentation of
7 everything YU's done. So every exhibition is listed here,
8 and within the exhibition -- and within each of these
9 exhibitions, you can find photo documentation as well as
10 written documentation of what was done here.

11 Q I'd like to turn your attention to Page 6 of Plaintiff's
12 Exhibit 16. Under the subheading "Visit" in the second
13 paragraph, it starts with "By public transit." Do you see
14 that?

15 A Mm-hmm.

16 Q Could you read that paragraph to us, please?

17 A "By public transit, YU is situated near the intersection of
18 15 and 70 bus lines. Vehicle and bicycle street parking in
19 the neighborhood is traditionally easy. Entrance to
20 exhibitions is free."

21 Q We talked about this briefly before. Yale Union, does it
22 charge admission to its arts exhibitions?

23 A No.

24 Q Which events does it charge for?

25 A The only events we charge for are music concerts.

1 Q And the typical charge for those concerts?

2 A \$12.

3 Q How do these charges compare with ticket prices for
4 commercial concerts in Portland?

5 A It's -- we're -- we're basically charging just to try to
6 break even for costs. Most concerts are going to be much
7 more than that.

8 Q Does Yale Union provide discounts or free admission for
9 anyone besides its members?

10 A We do discounts for students or free admission. Anybody
11 that doesn't have money to pay for the show and still wants
12 to go, we let them in. And we also have kind of a
13 collaboration with the other non-profits, just like the
14 Portland Art Museum, Northwest Film Center, that their
15 staff gets in free.

16 Q Just to back up. Something you mentioned a moment ago. If
17 a non-member arrived at an event and couldn't cover the
18 cost of admission, would they be turned away?

19 A No. They can still come in.

20 Q So when people can't pay for admission, you still let
21 people come?

22 A Yes.

23 Q Turning now to Plaintiff's Exhibit 17, how does Yale Union
24 use Facebook?

25 A Facebook's just a way to share with the community what

1 we're doing.

2 Q Looking now at this first page of Plaintiff's Exhibit 17,
3 there's mention here of John Russell. Who's John Russell?

4 A John Russell was an artist that gave a talk at YU.

5 Q And what's the story behind the picture?

6 A I don't actually know. He chose the picture.

7 Q So Mr. Russell provided you with a picture?

8 A Yes.

9 JUDGE BREITHAAPT: Is that a picture of
10 decapitated chickens?

11 THE WITNESS: In a hot tub. Yeah.

12 JUDGE BREITHAAPT: All right.

13 Q (BY MR. BRADFORD) And you said, just to be clear, that it
14 was provided by the -- by the artist?

15 A Yeah.

16 JUDGE BREITHAAPT: Does he live in Portland?

17 THE WITNESS: I don't know.

18 JUDGE BREITHAAPT: I want to watch out for this
19 guy.

20 Q (BY MR. BRADFORD) Does Yale Union use its Facebook page to
21 promote its events?

22 A Yes.

23 Q And how does it do that?

24 A As you can see, we post what's upcoming. We actually
25 communicate with, you know, people who are interested in

1 coming to the program as well.

2 Q Turning your attention to Page 4 of Plaintiff's Exhibit 17,
3 what's shown here on Page 4?

4 A This is a -- basically, an event for a Willem Oorebeek
5 announcement.

6 Q So this was a Facebook posting for this specific event?

7 A Mm-hmm.

8 Q It says under the heading of "Guest" on the right-hand side
9 that about 246 went. Is that an accurate reflection of how
10 many people attended this event?

11 A I believe it was more than that.

12 Q Any sense to why there would be disparity between how many
13 actually attended and what's shown here?

14 A Individuals that aren't on -- that aren't following us on
15 Facebook who attended, as well as people who just don't
16 click that they're attending.

17 Q So this is just -- to the best of your knowledge, this is
18 limited to people who identified on Facebook that they
19 attended?

20 A Yeah. They would have done it prior to the event usually.

21 Q Turning your attention now to Plaintiff's Exhibit 18,
22 please. How does YU use Twitter?

23 A Same thing. An opportunity to, you know, share what we're
24 doing with the public.

25 Q Turning specifically to Page 2 of Plaintiff's Exhibit 18.

1 What's depicted here?

2 A This is just an event announcement sign that's currently
3 located on the exterior of our building on Morrison.

4 Q And when was it installed?

5 A I believe, like, November of 2015.

6 Q Turning now to Page 5 of Plaintiff's Exhibit 18. If you
7 know, who is Sarah Fitzsimmons?

8 A I don't know who Sarah Fitzsimmons is.

9 Q Is she a member of Yale Union?

10 A No.

11 Q Can you read to us what she posted here, please?

12 A "Just had a transcendent experience at Yale Union, an
13 amazing space for contemporary art, which you must visit if
14 you are in Portland -- while."

15 Q And who usually monitors the Twitter account for Yale
16 Union?

17 A That's our curators as well as our board president.

18 Q I want to talk now about the actual inspection that the
19 County performed.

20 A Mm-hmm.

21 Q If you recall, what day did the County first inspect the
22 property?

23 A I don't -- in my memory, I don't remember the exact day.
24 But they list it as July 1st, so I'm going to go with that.

25 Q The parties have actually stipulated that the first

1 inspection happened on July 1st --

2 A Yes.

3 Q -- 2014. Did the County assessor notify your organization
4 of the date of the inspection in advance?

5 A No.

6 Q On July 1st, what would have been happening on the property
7 that day?

8 A We had just closed the Yuji Agematsu exhibition, so we were
9 in the process of deinstalling.

10 Q Briefly, could you tell us a little bit about the Yuji
11 Agematsu exhibition?

12 A Sure. Yuji Agematsu is a New York artist. He works with
13 found objects, some people might say garbage, and creates
14 miniature sculptures out of these objects.

15 Q And you said that at this time the exhibition was just
16 finishing; is that right?

17 A Yes.

18 Q Did the inspector ask any questions while on-site?

19 A Yes.

20 Q Did you offer any explanation for the state of the property
21 at the time of the inspection?

22 A Yes.

23 Q Was there anything else of significance going on in the
24 building during July 2014?

25 A We had just finished the first floor build-out.

1 Q And what does that mean?

2 A So we did a large basically installation of walls,
3 permanent walls, to create our new administration office as
4 well as divide out the commercial lease spaces that we were
5 going to be leasing. And it also included some fire
6 sprinklers and some other things, handrails and other
7 installations that -- building requirements that we're
8 required to do.

9 Q You mentioned just now that it included building out a new
10 administrative office.

11 A Mm-hmm.

12 Q Was there a different space that was used before that for
13 the administrative office?

14 A Yeah. Previously we were in the south end.

15 Q And were you, then, transitioning between spaces?

16 A Yes.

17 Q Did this come up during the inspection?

18 A Mm-hmm.

19 Q Did the inspector request any additional information or
20 materials from you as part of the inspection?

21 A Not at that time.

22 Q Did they follow up afterwards, asking for any additional
23 information or materials?

24 A I can't remember if it was with you guys, after we were
25 doing the appeal, or not.

1 Q And by "you guys," can you explain -- what happened after
2 the July 2014 inspection?

3 A We -- we appealed it.

4 Q And when you say you appealed it --

5 A After they -- after the denial letter, we appealed it.

6 Q So there was an appeal after the denial, then a subsequent
7 visit. Is that what you're describing?

8 A Yes.

9 Q And --

10 JUDGE BREITHAUPT: Wait. Now you've lost me.
11 There was an appeal after a denial and then a subsequent
12 visit. Can we do this by dates?

13 MR. BRADFORD: Certainly.

14 Q (BY MR. BRADFORD) So we've just described an inspection
15 that happened on July 1st, 2014; is that right?

16 A Yes.

17 Q And then what happened after that, after that visit?

18 A We received notification November -- in November of that
19 same year denying us the nonprofit exempt -- exemption. We
20 appealed that with a written letter in December.

21 MR. BRADFORD: So it may be helpful to the
22 Court to turn, then, to the parties' stipulations for these
23 facts so --

24 JUDGE BREITHAUPT: That's fine. I can go get
25 them. I just wanted to make sure that I got this

1 particular --

2 A Okay. Yeah. And then they came back in January for
3 another visit.

4 Q (BY MR. BRADFORD) It may be helpful just to frame it, that
5 this first inspection that we're talking about in July of
6 2014, that was in response to the organization's
7 application --

8 A Yes.

9 Q -- for exemption; is that right?

10 A Yes.

11 Q Okay. Hopefully that puts it in sequence.

12 And then to the best of your knowledge, besides the
13 follow-up visit that happened in January of 2015, did the
14 County office ever request any additional information,
15 either by phone or email or the like?

16 A Not directly.

17 Q When you say "not directly," did they provide you with any
18 information indirect -- or ask for any information
19 indirectly?

20 A I don't know. Did they ask you for any information?

21 Q So they didn't -- and you're referring, then, to counsel.

22 A Yes.

23 Q They didn't -- they didn't make any other requests of the
24 organization?

25 A Right. Right.

1 Q I'd like to turn now to Plaintiff's Exhibit No. 20.

2 Plaintiff's Exhibit No. 20 has been previously identified
3 and admitted into evidence of a collection of pictures
4 taken by the County's inspector. I just want to walk
5 through what we're looking at.

6 Can you tell us what's shown in this first page of
7 Plaintiff's Exhibit 20?

8 A This is one of the studio spaces that we were using as a
9 green room at the time.

10 Q And going back to the enlargements, Plaintiff's Exhibit 3
11 that I have here, where would that show on the floor plan?

12 A It is the top smaller room.

13 Q This room here?

14 A Mm-hmm.

15 Q Okay. From -- in June of 2014, who would have been using
16 this room?

17 A Among others, but mainly Yuji Agematsu, because he was
18 here.

19 Q And, again, that's one of the artists that was exhibiting
20 at Yale Union at that time?

21 A Yes.

22 Q Why is there furniture shown here?

23 A There -- these rooms are supposed to be not astir. They're
24 supposed to be comfortable. They're supposed to be a space
25 that the artist can use as conducive to creativity. As a

1 green room especially, it's -- during performance periods,
2 we want people to relax so they're not over-pressured.

3 A lot of the furniture is -- actually, all of our
4 furniture is donated to us, so we use what we have. So in
5 this case this room is supposed to be a relaxing, like,
6 oasis that they can go to.

7 Q An oasis with donated furniture. Who donates the furniture
8 to the organization?

9 A Anybody in the community.

10 Q Does anyone live at Yale Union?

11 A No.

12 Q From July of 2014 through June of 2015, was anyone living
13 at Yale Union?

14 A No.

15 Q You mentioned Mr. Agematsu. Was he sleeping overnight in
16 that space while he was using it?

17 A No. We had other accommodations for him.

18 Q By "other accommodations," what do you mean?

19 A In this case we had a donor. It was actually myself, that
20 he stayed at my house in our guest room.

21 Q Turning your attention then to Page 2 of the same exhibit,
22 what's depicted here?

23 A This is the same room.

24 Q Okay. The same room. Why does -- why are the clothes
25 hanging up?

1 A This is, again, in transition between Yuji and Park. Park
2 McArthur is a --

3 JUDGE BREITHAUPT: Who?

4 THE WITNESS: What?

5 JUDGE BREITHAUPT: Between Yuji and who?

6 THE WITNESS: So we have -- again, we have a
7 rotating number of artists that come out for various
8 purposes. Park McArthur is an artist that exhibited later.
9 She was out here for a site visit.

10 She is disabled and in a wheelchair. And so a lot of
11 her work is with access and basically looking at normal
12 versus living in a different world with a disability.

13 Q (BY MR. BRADFORD) And to go back to the question: Why are
14 clothes shown in this picture, if you know?

15 A Her original premise was around that idea, which is how do
16 you live with a disability.

17 JUDGE BREITHAUPT: Excuse me. These are
18 photographs taken by a visitor from the Assessor's office;
19 correct?

20 THE WITNESS: Mm-hmm.

21 JUDGE BREITHAUPT: So why are these clothes
22 here?

23 THE WITNESS: They were -- oh.

24 JUDGE BREITHAUPT: And then "her premise," is
25 "her" in that response the artist or the Assessor's

1 official or visitor?

2 THE WITNESS: So the artist has the idea of
3 working with issues of access and disability.

4 JUDGE BREITHAUPT: Mm-hmm.

5 THE WITNESS: So her original premise for the
6 exhibition that she was going to do involved that idea,
7 which is how do you live with disability. So she was
8 actually working with fashion items in that sense.

9 So she had just arrived. All of this stuff is kind of
10 here as they were working with ideas.

11 The final exhibition included a larger sound piece,
12 and the final pieces only included a few straight jackets
13 instead of some of the sculpture items that she was
14 considering working with at the time.

15 Q (BY MR. BRADFORD) So some of the materials shown here on
16 Page 2, including the clothing, some of that material is
17 actually material that was intended to be used for the
18 exhibition; is that right?

19 A Right.

20 Q Okay. And looking to the right-hand side of Page 2, there
21 seems to be bedding or linens of some kind. What are we
22 looking at there?

23 A We have, again, couches and other day beds that people can
24 relax on. And so this is just things that are covering
25 them.

1 Q So those are furniture coverings?

2 A Mm-hmm.

3 Q Would anybody have been using that -- you called it a day
4 bed. Would anybody have been using that day bed to sleep
5 overnight?

6 A No. We have to get hotels for everybody or donor areas.

7 Q And why is that? You said "we have to." Why is it that
8 you have to?

9 A We're -- we're not ready to do that aspect of our program,
10 which is a long-term residency program. To actually do it
11 in that sense, which a lot of art centers do, it would be
12 an additional, oh, probably \$50,000 to our budget, and
13 there's other things that we're prioritizing at this time,
14 as well as other building improvements that we are also
15 prioritizing at this time.

16 Q So to be clear: There may be long-term plans for the
17 organization to provide an actual on-site residency?

18 A Yes.

19 Q Okay. And that's not what's happening now?

20 A No.

21 JUDGE BREITHAUPT: The implication of what you
22 say is not only is it not happening, but it could not
23 happen -- could not happen, and the implication there is
24 could not happen legally.

25 THE WITNESS: It will -- it will happen

1 legally --

2 JUDGE BREITHAAPT: Well --

3 THE WITNESS: -- when we move towards it, yes.

4 JUDGE BREITHAAPT: Is your testimony, though,
5 that "We can't have people stay here"? Is it "We choose
6 not to" or "There's something that says we can't have
7 people overnight"?

8 THE WITNESS: Both. So we have looked into
9 doing that aspect of the program, but there are things that
10 we have to go through with the City in order to make that
11 happen. I've looked at preliminary, but I haven't looked
12 at it significantly in terms of making that happen because
13 we've chosen to do other things first.

14 JUDGE BREITHAAPT: And at the end of the day,
15 your testimony is, nobody's sleeping overnight here?

16 THE WITNESS: Yes. So we still have to get
17 accommodations for everybody. But we're creating these
18 spaces to be comfortable retreats that they can use. It's
19 just at the end of the day, they have to go someplace else.

20 JUDGE BREITHAAPT: Okay.

21 Q (BY MR. BRADFORD) Turning now your attention to Page 3 of
22 Exhibit 20, Plaintiff's Exhibit 20. What room is this?

23 A This is the south end of the exhibition space.

24 Q The exhibition space that we have on the enlargement over
25 here? You've referred to it as the south end. Is that

1 shown here on this picture?

2 A The majority of it is where these little terra-cotta pieces
3 are.

4 Q Okay. So specifically looking here?

5 A Mm-hmm.

6 Q So actually, this would be facing the wall that we're not
7 seeing; is that -- is that right?

8 A Right.

9 Q Okay. Looking at this picture that comes, by the
10 Assessor's date, on July 1st, 2014, why -- why does this
11 space look vacant right now?

12 A So the exhibition that we had up at the time was Yuji
13 Agematsu. Because of the way the exhibition -- the -- what
14 was in the exhibition, these very small, very tiny
15 sculptures, we ended up creating the exhibition in the
16 north end and left the south end for performance aspects of
17 some of his pieces that he performed, as well as other
18 readings and talks.

19 Q So you referred to the north and south end. Just to be
20 clear, did this particular exhibition -- that would have
21 shown at which part of the room?

22 A The exhibition would have been at the -- where the elevator
23 is and beyond.

24 Q So this part --

25 A Yeah.

1 Q -- that we can see? And what this picture in Exhibit 20
2 shows is a vacant area here that you use for performances;
3 is that right?

4 A Yes. So the picture would have been taken where that first
5 rock was. The person would have been standing there.

6 Q Turning the page to Page 4, what room is this?

7 A This is another artist studio on the second floor.

8 Q On the second floor. And where would this room show up on
9 the floor plan for the second floor?

10 A Upper left corner.

11 Q This one?

12 A Mm-hmm.

13 Q Okay. What was this room being used for in July of 2014?

14 A This one was empty at this time.

15 Q What is the furniture shown in the lower left-hand corner?
16 What are we seeing there?

17 A This is a futon.

18 Q Futon? And why is it there?

19 A Again, these rooms are supposed to be comfortable, not
20 astir.

21 Q Was anybody sleeping in that space overnight during that
22 time?

23 A No.

24 Q Turning to Page 5 of Plaintiff's Exhibit 20, what room is
25 this?

1 A This is a studio on the mezzanine level.

2 Q This would be on the mezzanine level that we were just
3 looking at, the other studio?

4 A Yes.

5 Q In July of 2014, what would this have been used for?

6 A This would have been used in coordination with the Park
7 site visit.

8 Q And by "Park," you're referring to Ms. McArthur?

9 A Mm-hmm.

10 Q And Ms. McArthur was...? Just to refresh the Court's
11 memory.

12 A An artist who exhibited at the space.

13 Q In the foreground, and noted by the inspector there,
14 there's a cat there. Why is there a cat there?

15 A We allow pets in the space.

16 Q So pets were allowed at Yale Union?

17 A Yes.

18 Q Do other people bring pets to this -- to the property?

19 A Yes.

20 JUDGE BREITHAAPT: A question. What about
21 dogs?

22 THE WITNESS: Dogs, cats.

23 JUDGE BREITHAAPT: I'm a dog --

24 THE WITNESS: We've had a pig.

25 JUDGE BREITHAAPT: I'm a dog person. No goats?

1 THE WITNESS: We have not had a goat yet, just
2 a pig.

3 JUDGE BREITHAUPT: Let me go back somewhat more
4 seriously. You refer to site visits. Now, what I've
5 inferred from your testimony is that a site visit, given
6 the way you react with your artists and what you want them
7 to do -- I'm inferring, but I want you to tell me if I'm
8 inferring correctly.

9 A site visit would be part of what ultimately would be
10 an exhibit or would hope to be an exhibit, but it would be
11 the artist coming out and looking at the space, looking at
12 the light, looking at the surfaces, looking at what can be
13 done and then saying, "Okay," hypothetically, "Okay. I
14 see. I can do it here. What I'm thinking about I can do
15 here, but we'll need some walls here and some other stuff
16 there, and it's going to need to be at this time of day,
17 and I'm going to want to have stuff here because the light
18 comes in."

19 Now, I'm -- that's what I've been inferring about a
20 site visit as opposed to when the artist comes out, maybe
21 the artist goes away, creates something, brings it back,
22 installs it. People come and look at it. Then they
23 take -- then you and they take it down.

24 Is that the basic MO?

25 THE WITNESS: Very close to it. So it's

1 usually a two-year process that the curators engage with
2 the artist. The artist starts thinking about ideas. They
3 come out for the site visit with probably, I would say,
4 four ideas, five. They'll come out with several ideas and
5 work with curators at that time, thinking about the space
6 itself, work out aspects of their ideas while they're
7 there, and then during that site visit, they kind of, with
8 the curators, needle down what they would like to do into
9 one or two ideas, and then they keep talking about it.

10 And then the installation is when they come out and
11 actually install whatever they commissioned as new work or
12 shipped out to YU.

13 JUDGE BREITHAUPT: Okay. Thank you.

14 Q (BY MR. BRADFORD) Turning the page to Page 6. The
15 inspector here noticed -- or noted at the top of the page
16 that there was bedding stuff and a half bath. Do you see
17 that?

18 A Mm-hmm.

19 Q Did you accompany the inspector through the walkthrough on
20 July 1st, 2014?

21 A I did.

22 Q Did you personally observe any of the bedding that was
23 there at the time?

24 A No. It wasn't pointed out to me. No.

25 Q Would you have any idea why there might be, assuming that

1 there is, bedding stored somewhere on the property?

2 A I wouldn't describe it as bedding, but this is in January.
3 We don't have heat in a majority of the building in
4 January, so it's very cold. So we hang blankets, as you
5 can see, up on the windows and -- yeah.

6 Q And I need to correct something. I said -- I referred to
7 the first visit in July of 2014. As you correctly pointed
8 out, this is noted as happening in January of 2015. So
9 January of 2015 was this second walkthrough that we talked
10 about?

11 A Mm-hmm.

12 Q And that's the time that you're describing where there's
13 sometimes linens used to cover the windows. My mistake.

14 Now I'd like to turn your attention to Page 9. Go
15 ahead and jump to Page 9. What room is shown here on
16 Page 9 of Exhibit 20?

17 A This is one of YU's bathrooms.

18 Q And where would this bathroom be located?

19 A This one is located off of the second floor.

20 Q Okay. And looking to the floor plan of the second floor,
21 where would this be?

22 A It is in the middle right. That one.

23 Q This? This here? This --

24 A Yes.

25 Q So there's a tub and shower. So why would anybody need a

1 shower?

2 A Well, this was done before I was here, before the
3 institution was public. So we didn't actually put this in.
4 It does get used occasionally by some of our bikers, but
5 otherwise, it's just there.

6 Q And you say "some of our bikers." Can you elaborate what
7 you mean by that?

8 A Some of our staff members like to bike to work.

9 Q So staffers bike to work and then use the shower? Is that
10 what you're saying?

11 A On occasion, yeah.

12 Q Is this shower being used by people that are trying to stay
13 the night?

14 A Huh-uh.

15 Q Turning to Page 10, just again for our point of reference,
16 what's shown here on Page 10 and where does it show up on
17 the floor plan?

18 A This is the kitchen, which is the upper right-hand corner.

19 Q And you mentioned this before, but how is the kitchen used
20 as part of Yale Union's program?

21 A We use it in several ways. This is the only room in the
22 building that has heat. So we have a projector in here
23 that we use for small film screenings. We do fundraising
24 dinners in here. Staff uses it for lunch. And we also use
25 this as a reception area for events.

1 Q I'd like to turn your attention now to Plaintiff's
2 Exhibit 21. Plaintiff's Exhibit 21 has been previously
3 identified and entered into evidence as a commercial lease
4 agreement with Rainmaker. What is Rainmaker?

5 A Rainmaker was a separate nonprofit that leased out a
6 portion of the blue area of the first floor from YU. They
7 had their own nonprofit mission of -- they rented out the
8 space and then subsidized it at a more affordable income --
9 or more affordable level to recent MFA grads to use as well
10 as provided professional development to them.

11 Q So you referred to the blue space on the first floor. Just
12 for context, can you tell us where that would show up on
13 this floor plan?

14 A Yeah. So the blue boxes.

15 Q "The blue boxes" being this space here?

16 A Yeah, the little one above.

17 Q And this space here?

18 A Yeah.

19 JUDGE BREITHAUP: And why do you refer to them
20 as blue? Is there a blue line that I can't see?

21 THE WITNESS: Yeah. So it's -- there's the
22 green areas, which are the commercial ones, and then the --
23 I did it at the time because it was a nonprofit versus the
24 for-profit commercial tenants, but they're all in the --

25 JUDGE BREITHAUP: And the green areas are

1 different from the green rooms. The green rooms --

2 THE WITNESS: Yes.

3 JUDGE BREITHAUPT: -- have to do with artist
4 comfort. The green areas --

5 THE WITNESS: Yeah.

6 JUDGE BREITHAUPT: This is getting confusing.

7 THE WITNESS: Yeah.

8 JUDGE BREITHAUPT: Okay.

9 Q (BY MR. BRADFORD) Yeah. So to be clear, this space that
10 we're referring to now, the space that's in blue, is this
11 space excluded from the appeal for the exemption?

12 A Yes.

13 Q What -- I'd like to turn now your attention to Page 10 of
14 Plaintiff's Exhibit 21. What's shown here on Page 10?

15 A These were rules that we gave to their -- the tenants of
16 that nonprofit.

17 Q And how are these rules enforced?

18 A Visually. We -- I mean, staff visually looks for them
19 doing something that they're not supposed to be doing.

20 Q Looking down the list of building rules, one of the rules
21 says "No pets without Yale Union appeal." Does Yale Union
22 offer that approval to people that request it?

23 A We will give a -- yeah, we'll give them approval. We want
24 to make sure that if they are bringing pets, it's not going
25 to disrupt anything that we have when we're open to the

1 public.

2 Q And right below that it says, "No overnight sleeping." Is
3 that a rule that Yale Union enforces --

4 A Yes.

5 Q -- with its commercial tenants?

6 Besides the organization and its commercial tenants,
7 do people receive mail at Yale Union?

8 A There are a few people that receive mail at Yale Union --

9 Q What --

10 A -- mainly staff.

11 Q Sorry. I cut you off there.

12 A Mainly staff.

13 Q Why do people receive mail at Yale Union?

14 A Either because they don't trust their own mail system or
15 because they are traveling or they're moving.

16 Q Does Yale Union advise its staff or members that they can
17 receive mail there?

18 A Only if they request it.

19 Q Have you ever personally suggested to someone that they can
20 have their mail sent, property?

21 A No.

22 Q What do you do when you're going through the mail and you
23 receive mail that's for someone else?

24 A I set it to the side.

25 MR. BRADFORD: I'd like to turn the Court's

1 attention now to Plaintiff's Exhibit 22.

2 Q (BY MR. BRADFORD) The parties have already stipulated that
3 several individuals, including Mr. Jamison, have listed the
4 property's address as their residence with the DMV, among
5 others. Does Yale Union allow or encourage members of the
6 board to list the property as their residence?

7 A No.

8 Q Does Yale Union allow or encourage its staff to list the
9 property as their residence?

10 A No.

11 Q Does Yale Union allow or encourage its volunteers to list
12 the property as their residence?

13 A No.

14 Q Does Yale Union allow or encourage its member donors to
15 list the property as their residence?

16 A No.

17 Q So as far as you know, if someone lists the property as
18 their residence, they're doing that without Yale Union's
19 permission or encouragement?

20 A That's correct.

21 Q Does setting aside mail for people that are receiving it
22 there personally interrupt your ability to do your job?

23 A No.

24 Q Does setting aside mail or -- personal mail for individuals
25 interrupt Yale Union's activities in any other way?

1 A No.

2 MR. BRADFORD: Thank you. Other than for
3 redirect, I have no other questions for this witness.

4 JUDGE BREITHAUPT: Thank you.

5 Cross-examination?

6 MR. RASCH: Do you mind if we take five, Your
7 Honor?

8 JUDGE BREITHAUPT: As long as you give it back.

9 MR. RASCH: Yeah. I've just got to use the
10 restroom.

11 JUDGE BREITHAUPT: Righto. Five minutes.
12 Thank you.

13 (RECESS TAKEN)

14 JUDGE BREITHAUPT: All right.

15 Cross-examination, Mr. Rasch.

16 MR. RASCH: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. RASCH:

19 Q Ms. Martin, we were just looking at Exhibit 22, I believe,
20 which was the driver's license identification card. Your
21 testimony was -- is that YU doesn't allow people to list it
22 as a residence or receive mail; correct?

23 A Correct.

24 Q And what is Mr. Jamison's role with YU?

25 A Mr. Jamison is the founder of the organization.

1 Q Does he -- does he have any other sort of title?

2 A He's currently the president of the board.

3 Q So he's the board president and the founder; correct?

4 A Mm-hmm.

5 Q But YU doesn't allow people to put their -- name it as
6 their residence?

7 A Yes. That's -- officially, yes.

8 Q Okay. So as a board member or president, does he have
9 authority to make decisions on behalf of YU?

10 A He represents the board.

11 Q Is that a "yes" or "no"?

12 A He has authority in terms of he leads the board and he
13 votes with the board.

14 Q Okay. I'd like to go back through -- actually, looking
15 back at Demonstrative, I believe, 1, Exhibit 1, you
16 previously testified that the main entrance to the public
17 is sort of around the corner from what we're seeing here;
18 is that correct?

19 A Correct.

20 Q And you said that there wasn't any sort of -- I believe you
21 said there wasn't any sort of sign on the building as to --
22 to indicate what it is?

23 A Currently our signage is on the doors, and they change per
24 exhibition.

25 Q Okay. And what -- and what sort of signage are you

1 referring to?

2 A There's lettering on the glass -- on each of the glass
3 doors, both on the one on 10th and the gallery door as
4 well.

5 JUDGE BREITHAAPT: If I may, we need to pay
6 attention to time frames here --

7 THE WITNESS: Oh.

8 JUDGE BREITHAAPT: -- because we're not
9 talking, at least yet, about what currently is true. I
10 think -- I don't know, but I think -- I'll ask Mr. Rasch to
11 please introduce questions, when appropriate, with what
12 time frame --

13 MR. RASCH: Sure.

14 JUDGE BREITHAAPT: -- you're seeking to find
15 out about.

16 MR. RASCH: And that's a good -- a good
17 distinction.

18 Q (BY MR. RASCH) When did the signage begin on the door?

19 A I believe we started doing the final signage in 2012 or
20 early 2013 on the doors.

21 Q Okay. And is it -- you described -- can you describe what
22 that signage was again?

23 A Sure. The vinyl signage is -- it's just a process that
24 prints off whatever, lettering or picture, and then it goes
25 onto the door so you can see -- see out the door, but there

1 is lettering on the door.

2 Q Okay. So it's on the actual front door?

3 A On -- yes. On both the gallery door and on the first floor
4 north -- north end door.

5 Q And what sort of information would typically be on there?

6 A So on the -- on the first floor doors, there is a map that
7 gets you to the gallery entrance with a red arrow. There
8 is usually -- there's the name of the institution, the
9 address, phone number, et cetera.

10 And then we put up the information about the
11 exhibition and the dates that the exhibition is going to
12 run. So that's what changes, is the exhibition dates.

13 Q Are there any hours on there?

14 A Yes. So the exhibition hours is included.

15 Q Okay. And this -- this process began, you said, in 2012,
16 2013?

17 A Yes.

18 Q And is there any other sort of advertisement or signing or
19 anything to indicate what the building is and what sort of
20 activities go on there?

21 A Not at this time, no.

22 Q Do any of the commercial tenants have any sort of signage?

23 A No.

24 Q Okay. Did any of the commercial tenants ever have any
25 signage, to your knowledge, on the door?

1 A There was left over from Perfect Fit, who was the owner of
2 the building previous. There was some signage left over
3 from them that took us a little while to be able to take it
4 down because of the historic process. We had to get
5 permission to remove some of it.

6 Q On a typical day you said that the hours are from 10:00 to
7 5:00, is that correct, Monday through Friday?

8 A Yes.

9 Q How is access to the building for the staff? Is it the
10 same door that the public would enter?

11 A Right now it's the first floor door on 10th Avenue.

12 Q Okay. And is that the same door that the public would
13 enter, or is that a different door?

14 A The public enters on the gallery level.

15 Q And can the public enter at any time, from 10:00 to 5:00 on
16 Monday through Friday? In other words, is the building
17 open to the public when there aren't exhibits being
18 exhibited?

19 A If somebody is in the office, we're happy to let somebody
20 in, yes.

21 Q Has that ever happened, where someone just walks in --

22 A Mm-hmm.

23 Q -- to your knowledge?

24 A Yeah.

25 Q And what is there -- what sort of access does the public

1 have from 10:00 to 5:00 if there's no exhibits, to the
2 building?

3 A If there's no exhibits, usually we will give them a tour of
4 the space and of the exhibit room and then tell them about
5 what upcoming exhibitions we have.

6 Q And you said that members who give \$1,200 or more are given
7 key card access. Why would they need key card access if
8 it's open to the public?

9 A So that's just so that they can be advocates and if they
10 want to bring somebody through. And it's -- they basically
11 take a role of -- of the staff person or the advisory board
12 or board member.

13 They have -- because of their support of the
14 institution, they have knowledge about what's going on here
15 as well as our long-term goals. And so many of them will
16 take somebody through during their lunch break and share
17 what YU -- what YU is doing and encourage others to support
18 and get involved in it.

19 Q I guess that doesn't really answer my question, because if
20 it's open to the public, why do they need special key card
21 access?

22 A So they -- it's just something that we've done. It's a
23 choice that we made.

24 And it is open to the public Thursday through Sunday
25 when the exhibition's open, but if they wanted to show the

space during off hours, during our office hours, when staff's there, they could do that without making an appointment. They could also make an appointment and we would do it as well.

Q Is there anything --

JUDGE BREITHAAPT: Excuse me. Just a moment. I'm lost.

Let's take Monday through -- Monday to Thursday. I'm just a guy out walking around. I see this place. I want to go in. Can I just open a door and go in?

THE WITNESS: No. So if there's somebody in the office, which there usually is, and you knocked on the door, we would let you in.

JUDGE BREITHAAPT: All right. And then you would say, "Hey, this is YU. Want to take a look at our space?"

THE WITNESS: Yep.

JUDGE BREITHAAPT: "Here's what's coming up"?

THE WITNESS: Yep.

JUDGE BREITHAAPT: Okay. Thursday through Sunday, I'm -- on Friday afternoon I'm playing hooky, and I walk around down there, and I want to go in. Can I go in?

THE WITNESS: Yes.

JUDGE BREITHAAPT: And I go in through the door that takes me up the stairs to the --

1 THE WITNESS: Yep.

2 JUDGE BREITHAUPT: Okay. Fine.

3 Now, I'm a \$1,200 donor and I've got a key card. I
4 don't need it on the Thursday through Sunday.

5 THE WITNESS: Right.

6 JUDGE BREITHAUPT: At least I don't need it if
7 I want to show people what I'll call the event space. If I
8 want to show them the print shop or other stuff -- or maybe
9 the print shop isn't a good -- well, if I want to show them
10 the basement or introduce them to staff, I might need --

11 THE WITNESS: You'd probably have to make an
12 appointment.

13 JUDGE BREITHAUPT: Okay.

14 THE WITNESS: If there's nobody in there, we
15 try to secure everything that's not the public spaces.

16 JUDGE BREITHAUPT: So the key card is really
17 for the Monday through -- Monday to Thursday?

18 THE WITNESS: Monday through Wednesday.

19 JUDGE BREITHAUPT: -- through Wednesday, if
20 patrons, we'll call them, wish to have access to the
21 building generally?

22 THE WITNESS: Yes.

23 JUDGE BREITHAUPT: Okay.

24 Q (BY MR. RASCH) Now, is that the same on the Thursday
25 through Sunday if there's no exhibit? Or is there an

1 exhibit every Thursday through Sunday?

2 A No. There's not. There's not. Because we have the
3 installation period and the deinstall period.

4 Q Okay. So same question, then. If they're -- if it's a
5 non-exhibition Thursday through Sunday, what sort of access
6 does the public have?

7 A Same thing as if they came on Monday through Wednesday or
8 made an appointment. So they could come, and as long as
9 there's somebody in the office, we'll take them through and
10 tour the space, whether there's an exhibition there or not.

11 Q But there is -- is there off-weekend office hours?

12 A Not Saturday and Sunday. So if you wanted to come on the
13 weekend, like, visit the library, you'd have to make an
14 appointment.

15 Q Okay. Could a member with key card access come on the
16 weekend?

17 A No.

18 Q Does that ever happened -- or happen, that a member would
19 come during off hours and accessed the building?

20 A Not without making an appointment. They'd have to let us
21 know first, and then we'd meet them.

22 Q What would happen if a member did that, if a member showed
23 up?

24 A It would be locked. The key access is by time. It's an
25 electronic key card.

1 Q Okay.

2 A So it's set up with the -- with time, so -- and it logs
3 everybody that comes through. So when you're not in the
4 10:00 to 5:00, Monday through Friday, it just doesn't open
5 the door.

6 Q Gotcha.

7 JUDGE BREITHAUPT: I don't think that's worth
8 1,200. If you want 1,200 from me, you're going to have to
9 let me have the whole -- 24/7, 365.

10 Q (BY MR. RASCH) I want to go back to Plaintiff's Exhibit 3,
11 I believe.

12 Before I go there, I just have a quick question. Is
13 there -- are there any sort of building compliant issues
14 with the City or County that you're aware of or the fire
15 department, anything like that?

16 A Can you reword the --

17 Q Sure. Is there any sort of compliance issues currently
18 with the -- with the building?

19 A Like complaints or works in progresses?

20 Q I'm talking about with the fire -- fire department, city or
21 county ordinances, anything like that that you're aware of?

22 A We have a great relationship with the fire department and,
23 yeah, with the City as well.

24 Q You mentioned that there's restrictions on the space, that
25 only 50 people at one time can be there; is that correct?

1 A Right.

2 Q And does that include staff and -- is it total occupancy of
3 50 at a time?

4 A Mm-hmm.

5 Q Okay.

6 JUDGE BREITHAAPT: Again, just so I make sure
7 I'm understanding: Unless you have a permit --

8 THE WITNESS: Right. Unless we have a permit.

9 JUDGE BREITHAAPT: -- for which you are now
10 currently limited to 12 for -- for compensation 12, 12
11 artistic event, 12 non-artistic event.

12 THE WITNESS: Right. And they can go up to
13 four days.

14 JUDGE BREITHAAPT: Okay.

15 Q (BY MR. RASCH) And when you have a permit, what's the
16 occupancy?

17 A The occupancy's 500.

18 Q Okay. And so for private events, for example, you have to
19 get a permit for each one of those if the occupation's
20 going to be over 50?

21 A Yes.

22 Q And what about for exhibits? Do you get permits or...?

23 A So our typical permits for our exhibits is -- we try to
24 schedule as much within the four-day period as we can. So
25 the opening, which we know we'll have more than 50 people,

1 is part of a permit.

2 We usually include a talk the next night and
3 oftentimes a concert as well during the same weekend so
4 that it's in four days.

5 And then when it's open during the weekend during just
6 regular hours, we just have to make sure that if there is
7 more than 50 people, they just -- we just have to stop them
8 at the door and say, "There's 50 people in the space right
9 now," and they just have to wait.

10 Q And so when you have your commercial tenants and your staff
11 and all that, does then that -- that limits the amount of
12 public entrance to the -- to the building; is that right?

13 A Mm-hmm. Yeah.

14 JUDGE BREITHAUPT: So the commercial lessees
15 and their people count towards 50?

16 THE WITNESS: Yeah. So the hours of what we're
17 doing is kind of nice as well because a lot of our
18 commercial tenants aren't here on the weekends. So it's
19 who is in the building at any given time is who we have to
20 be in track of.

21 JUDGE BREITHAUPT: Thank you.

22 Q (BY MR. RASCH) And you also mentioned -- you mentioned
23 hours. The exhibit hours, you said, are Thursday to Sunday
24 from -- can you repeat what those were?

25 A It changes per exhibition and because of the decisions that

1 the curators make. Sometimes it's noon to 5:00 or 6:00.
2 Sometimes they want to do shorter hours, and they'll do,
3 like, 11:00 to 4:00.

4 Q Do you ever do, like, hour-, two-hour exhibits a day?

5 A I don't think we've ever had less than three hours a day.

6 Q And I'm only wondering because looking at Exhibit 15, which
7 I'll hand over to you since -- and this is Plaintiff's
8 Exhibit 15. It lists the hours of the opening there. It
9 looks like May 30th was 4:00 to 6:00. So I'm trying to --

10 A Oh, the opening's at separate events. That's when we're
11 inviting -- it's almost like an event in itself, and that's
12 where, you know, we have people come in and we're
13 basically, you know, announcing -- we give a short talk.
14 And it's kind of outside -- it's the start of the gallery
15 hours. So that's -- it is part of the gallery hours, but
16 it's, like, the commencement of it.

17 Q So then it's -- and is the gallery hours in addition to
18 4:00 -- the 4:00 to 6:00?

19 A So the opening was Saturday, May 30th, from 4:00 to 6:00.
20 The gallery hours started 2:00 to 5:00 Thursday through
21 Sunday until July 19th.

22 Q Okay. So that's a separate -- a separate --

23 A Yeah.

24 Q -- time frame?

25 A Basically, it started the next -- the gallery hours started

1 the next day.

2 Q Turning back to my -- or your Exhibit 3. Referring you to
3 Exhibit 3, which is also blown up here on the
4 demonstratives, and looking at the basement, so start
5 there. Correct me if I'm wrong, but you said that this
6 area here is storage?

7 A Yes.

8 Q And is this area used exclusively for YU storage, or do any
9 of the other commercial tenants get to use this storage?

10 A No. This is YU's storage.

11 Q Okay. And then you said the print shop used to be here;
12 correct?

13 A That's correct.

14 Q And, again, same question. Is that print shop YU
15 exclusive?

16 A Mm-hmm.

17 Q So no other commercial tenants use that print shop?

18 A The only other use is the printer, which is Container
19 Corps.

20 Q And what does Container Corps do?

21 A Container Corps is an independent printer. He is not a
22 paid staff, but he donates an amount of his time to print
23 with our curators and artists most of our catalogs and
24 publications.

25 Q So does Container Corps conduct separate business outside

1 of YU business?

2 A Yes.

3 Q And is Container Corps a tenant there, then?

4 A He doesn't pay rent, and we don't pay him a salary. So his
5 personal use time that he spends in the building is
6 basically our salary to him.

7 Q Is there -- are there any other -- I'll call them tenants,
8 but entities that use this space that either don't pay rent
9 or you don't pay outside of YU uses?

10 A At this time, no. But there was a second printer who was a
11 letter press print -- she was a letter press printer. But
12 she spent half her time in Nebraska and half her time in
13 Portland. And so she was here at our space during the time
14 she was in Portland at the time, but now she's gone back to
15 Nebraska.

16 Q And was that in -- was she there using the space in the
17 2014/2015 period?

18 A Yes.

19 Q And what company was that or what -- who is that?

20 A EMprint Press.

21 Q EMprint Press?

22 A Mm-hmm.

23 Q And what was her business?

24 A Letter pressing.

25 Q And did she use the print space?

1 A Mm-hmm.

2 Q She did use the print -- the YU print space?

3 A Yeah. Same -- same thing. She worked on our printing
4 stuff, and she'd work in there.

5 Q Okay. And how -- if you gave it a percentage allocation of
6 use, how much would you say the print space area was being
7 used by EMprint Press versus for YU purposes?

8 A I believe that they print three days a week, and we print
9 one -- or three days a month, and we print one to two days
10 a month on the presses, full press production.

11 Q In 2014/2015 did any other tenant or entity that was not YU
12 use any of the space in the basement?

13 A No.

14 Q Okay. You mentioned that this area here was used for music
15 production?

16 A Mm-hmm.

17 Q And so your testimony is that no other entity in 2014/2015
18 used the space for non-YU-related use?

19 A Correct.

20 Q Are you familiar with a company called Marriage Records?

21 A Yes.

22 Q What's your familiarity with Marriage Records?

23 A Marriage Records is a company -- it's been disbanded. I
24 believe they stopped running operations in 2012, officially
25 disbanded after he had a royalties -- I can't remember the

1 date.

2 He -- it's run by Curtis Knapp, who is a cofounder and
3 currently the director of the organization.

4 Q Of YU?

5 A Of YU.

6 Q Okay. And so you're saying, then -- your testimony is that
7 Marriage Records ceased operations by 20 -- 2014/2015 they
8 were no longer in operation?

9 A He stopped operations previous to that but was still
10 receiving royalties. And I don't know when -- the official
11 end of his term. But, yes, he was -- the Marriage Records
12 was not working out of the space at that time.

13 Q Was Marriage Records conducting any sort of business at all
14 in the YU space in 2014/2015, whether that be wind-up or
15 anything like that?

16 A No. I would say no.

17 Q And so, then, no other companies other than EMprint --
18 EMprint?

19 A EMprint.

20 Q -- and YU used the basement space?

21 A And Container Corps.

22 Q And Container Corps. How much -- what percentage of use
23 for 2014/2015 would you say Container Corps used the print
24 area?

25 A So he's printing three days a month, but he's in the space

1 most days every week working on his laptop.

2 Q And is that -- was that the same in the 2014/2015 time
3 frame?

4 A Yeah.

5 Q Do you know how much -- do you have any indication of how
6 much business he generates revenue-wise out of that space?

7 A I -- I don't know anything about his business.

8 Q Fair enough. Just wondering if you did.

9 A Sorry.

10 Q It's okay.

11 So we're looking at the first floor now. And you
12 mentioned that this area, the top right, is used as a wood
13 shop?

14 A Correct.

15 Q Do any other companies or tenants, entities, anything other
16 than YU use the wood shop?

17 A No.

18 Q Okay. And then this area, you said, now is printing
19 equipment; correct?

20 A Yeah. So it moved from the basement to the left side of
21 that room. Yeah.

22 Q In 2014/2015, though, was this the print shop area or was
23 the print shop area in the basement?

24 A So we finished construction of the first floor in June of
25 2014. It was delayed. It was supposed to be through

permitting and stuff, so it was supposed to be done sooner than that. So up until the completion, it was downstairs, and then it moved upstairs.

Q And do you have any indication of when it moved upstairs?

A Around June of 2014.

Q June 2014? And same question then: When it moved upstairs in June 2014, did any other entities use this space?

A Before? Before that time frame or after that time frame?

Q Well, so after that time frame.

A After that time frame, it was just our admin's office and then the print stuff.

Q And the print stuff, was the print area used by EMprint and/or Container Corps after 2015, after it moved upstairs?

A Yes. Once it moved upstairs, it's the same process. It just moved floors.

JUDGE BREITHAUPT: Well, again, let me try it
this way: After it moved upstairs --

THE WITNESS: Yes.

JUDGE BREITHAUPT: -- was there any third-party use of the print shop area?

THE WITNESS: Besides the individuals that we've discussed now?

JUDGE BREITHAUPT: No. The question is: Was there any third-party use of the print shop area?

THE WITNESS: Yes, by Container Corps and

1 EMprint Press.

2 JUDGE BREITHAUPT: Thank you.

3 Q (BY MR. RASCH) Prior to the print shop moving upstairs, so
4 prior to June 2015, did you say --

5 A '14.

6 Q -- 2014, what was this area used for?

7 A Before that period of time, this was basically just an open
8 space, and so for the most part, it remained empty.

9 Q Okay. So it wasn't used for storage or anything; it was
10 just an empty space?

11 A Yeah.

12 Q Was the area directly above it that we previously
13 indicated was -- is being used as administrative office
14 space for YU, was that being used for that purpose at the
15 same -- at that same time, that same time frame?

16 A I'm sorry. Can you repeat the question?

17 Q Sure. Sorry. So --

18 MR. BRADFORD: Counsel, I'm sorry. I can't see
19 what you're directing the witness to.

20 MR. RASCH: Oh, sorry.

21 Q (BY MR. RASCH) So we previously indicated -- you
22 previously indicated this area above what is now the print
23 shop --

24 A It's actually the right is the admin. So it's the L, on
25 the L, the lower on the L is where all of the admin stuff

1 is. And then the printing presses go along the left
2 windows.

3 Q Oh, so this whole area, these two indicated areas here, are
4 the print -- is the print shop?

5 A Yes. So the dotted line is actually just fire access.
6 It's not a wall. It's just pointing out like -- because of
7 the way the floor plans was, they're -- they're
8 construction floor plans, so they're pointing out fire
9 escape access, which is what the dotted lines are. So
10 there's actually no divider wall.

11 Q Okay.

12 A So we take up the right side of the room, and then we have
13 an open area that's, like, the walkway, and then on the
14 left side of the room are the printing presses.

15 Q Okay. So then let's go back and dissect that a little bit.
16 So prior to the print shop moving upstairs in June 2014,
17 this entire left-hand area here was empty?

18 A Correct.

19 Q Once the print shop moved upstairs in 2015 -- or June 2014,
20 now this entire area encompasses the print shop?

21 A Mm-hmm.

22 Q Or from that area?

23 A The printing presses, yes.

24 Q Okay. And that's the area that's used by YU and the two
25 other, EMprint and Container Corps; correct?

1 A Correct.

2 Q Then you indicated that the right-hand space here is YU's
3 administrative offices?

4 A Mm-hmm.

5 Q And has that been the use -- how long has that been the use
6 for?

7 A So before -- so prior to the build-out of the first floor,
8 we were previously located in an area that was rented out
9 by tenants, and that was our offices. So we moved from the
10 south end of the building to the north end.

11 Q When was that?

12 A We did the final move-in when the -- we moved into this
13 section of the building -- again, the construction was
14 delayed by, like, seven months. So our plans to move in
15 changed, but it was in June, when the completion --

16 Q 2014?

17 A Yeah. When the completion was, that's when we moved in.

18 Q So previous to June 2014, what was the use of the area that
19 is now the office space?

20 A Previously it was under construction for five months.
21 Before that it was an open space.

22 Q Okay. So it was either unused or under construction?

23 A Yeah. In 2013 it was open, basically.

24 Q Okay. And you indicated, then, that previous to that, YU
25 offices were being -- were where did you indicate on this

1 blueprint?

2 A So originally our offices were in the south end where those
3 green ones are.

4 Q So for the record, just here in the --

5 A In the --

6 Q -- bottom right corner?

7 A In the green upper right corner.

8 Q Okay.

9 A So there's four spaces.

10 Q Got it. Okay.

11 A There --

12 JUDGE BREITHAAPT: For my ben -- I see. For my
13 benefit, the north is to the left? I just saw the compass
14 at the bottom here.

15 THE WITNESS: Yes.

16 JUDGE BREITHAAPT: Okay. Thank you.

17 THE WITNESS: North is left.

18 JUDGE BREITHAAPT: Thank you.

19 THE WITNESS: Yeah. Sorry.

20 A Yeah. So we were in there. We had a transition period,
21 because of the delay in construction, where we had already
22 leased out those offices when we thought we were going to
23 be move-in ready that we were in a transition and just
24 working wherever we felt like working in the building for a
25 while.

1 Q (BY MR. RASCH) Were there ten -- other tenants in that --
2 in those areas while you were utilizing that space?

3 A Before we leased it out?

4 Q Yes.

5 A No.

6 Q Not before you leased it out. While it was being used --
7 you said that it was being used as offices, right, that
8 you --

9 A When we were -- when we were in there, it was just us.

10 Q Okay. But it wasn't -- at that point it hadn't been
11 leased, or at least tenants hadn't moved in?

12 A So we -- I don't remember exact dates. We leased out the
13 offices with the plan of having our construction done. The
14 construction got delayed, but we'd already signed a
15 contract to lease.

16 So they moved in in 2013 when we thought our
17 construction would be ready to go. It was -- it took a
18 long time to get through that process.

19 So we set up just our desks wherever we wanted to in
20 the space. Like I was in the huge downstairs room. It
21 was -- yeah. So because we had already signed the
22 contract, we kind of were for a little while in this
23 little, like, floating area.

24 Q I think I understand. So once they moved in, then you guys
25 had -- YU administrative piece kind of moved around

1 throughout the building --

2 A Right.

3 Q -- wherever you could find space for it?

4 A And then once the construction was done, we moved to there.

5 Q You moved into this area?

6 A Yeah.

7 Q All right. Thank you.

8 A Sorry. I know that's -- the City stuff takes a long time
9 to do.

10 JUDGE BREITHAUPT: But wandering in the
11 wilderness for a few years never hurt anyone.

12 THE WITNESS: Yeah. It was -- it was nice.
13 Really cold.

14 Q (BY MR. RASCH) This green space here that's an artist
15 studio, that's labeled as an artist's studio, who was
16 occupying that space in the 2014/2015 time period?

17 A So that's actually mislabeled. That is a lease tenant
18 space that was rented to the chocolatier. When the
19 chocolatier moved out, now the coffee roaster, who leased
20 the other spaces, has now added that to their lease tenant.

21 Q Do you know what companies those are, what they're called?

22 A The chocolatier was Cocoa Nu, and the coffee -- coffee
23 maker, coffee roaster, is Roseline Coffee.

24 JUDGE BREITHAUPT: Just to make sure we don't
25 have a problem: That correction on that map is taken into

1 account, I take it, in your treaty regarding commercially
2 leased space and non-commercially leased space.

3 MR. RASCH: Correct.

4 JUDGE BREITHAUPT: Thank you.

5 MR. RASCH: Yes. It's labeled green, which --

6 JUDGE BREITHAUPT: Okay.

7 Q (BY MR. RASCH) I was just trying to figure out what
8 tenants --

9 A Sure.

10 Q -- in 2014, 2015...

11 So if you could and if you -- to the best of your
12 recollection, if you could give me a list of the tenants
13 that were occupying this space in 2014/2015, non-YU, you
14 know, not YU, but tenants or other commercial entities.

15 A Sure.

16 MR. BRADFORD: I'm going to go ahead and object
17 to relevance. That's excluded from the appeal. Why do we
18 need to go through the commercial space?

19 JUDGE BREITHAUPT: I had the same question.

20 MR. RASCH: Well, I'm trying to -- I'm trying
21 to see whether or not -- what sort of access, what the use
22 was, why -- what access they had throughout the building,
23 that sort of thing.

24 JUDGE BREITHAUPT: Why? Why does it matter?
25 You stip -- they stipulated that for the period that you're

1 asking about, that is fully taxable space --

2 MR. RASCH: Sure. But what I want to know --

3 JUDGE BREITHAUPT: -- and what isn't fully
4 taxable -- now, if you -- are you asking about what was
5 commercially leased out? That's what I understood your
6 question to be. Although I was going to ask you this
7 question: Are you talking about the commercially leased
8 out or the non-commercially leased out space? And are you
9 trying to get to any third-party users other than YU?

10 MR. RASCH: Yes.

11 JUDGE BREITHAUPT: So you don't care about the
12 commercially leased space. You care about the other space
13 that isn't commercially leased, and you're inquiring, much
14 as you did with the print shop, were there other people
15 using that space, non-print shop, non-commercially leased
16 out, was there somebody else making use of that space. Is
17 that your question?

18 MR. RASCH: That's correct.

19 MR. BRADFORD: Your Honor, that wasn't the
20 question that was phrased. But I wouldn't object to the
21 question as the Court phrased it.

22 JUDGE BREITHAUPT: You would not?

23 MR. BRADFORD: I would not.

24 JUDGE BREITHAUPT: And nor would I sustain such
25 an objection.

1 Go ahead.

2 MR. RASCH: So let me rephrase.

3 Q (BY MR. RASCH) Other than what we've talked about, did any
4 of the other commercial lease tenants and/or non-YU-related
5 entities or parties use -- utilize the space that you sort
6 of marked here as YU space in red?

7 A The only use they have is literally the hallways.

8 Q And that's just for passage?

9 A Yeah.

10 Q There's no storage --

11 A No.

12 Q -- or anything like that?

13 Okay. For the first floor mezzanine level, same
14 question. Any of the commercial tenants or non-YU entities
15 utilize the space here in 2014/2015?

16 A No. We -- we -- as I said previously, at some point in
17 time, volunteers and board members and advisory council can
18 use the space after prioritizing visiting artists, but only
19 for YU-related projects.

20 Q So what are YU-related projects?

21 A Creating fund-raising schemes. If they are doing something
22 relating to marketing, those are usually -- if they're --
23 if they're helping either administratively or building
24 exhibitions as a volunteer to support staff, they'll do
25 that.

1 Q Okay. So is that almost utilized like another workspace?

2 A Yeah.

3 Q Do any of the staff, board members, or YU employees -- do
4 any of them utilize that space for non-YU related --

5 A No.

6 Q -- activities in that time frame?

7 A No.

8 Q You indicated that Curtis Knapp was the -- was one of the
9 founders and the directors of YU, also was the owner of
10 Marriage Records; is that correct?

11 A Mm-hmm.

12 Q Do you know whether he utilized that space for any of
13 his -- if he has other entities or companies other than
14 Marriage Records that he utilized that space for that?

15 A No.

16 Q And you --

17 JUDGE BREITHAUPT: Well, just a moment. Is the
18 question do you have any knowledge or did he?

19 Q (BY MR. RASCH) Do you have any -- do you have any
20 knowledge of whether or not he did?

21 A I have no knowledge, and I would -- oh, yeah. No
22 knowledge.

23 Q Is that something that would be brought to your attention
24 or you'd be made aware of?

25 A Well, he was done with the other project at that time

period anyway, so I don't know why he would use something that doesn't exist anymore.

Q Did Mr. Knapp have any other companies or --

A Huh-uh.

Q -- lease other than Marriage Records?

A No.

Q Then finally looking at the second floor, which we did discuss is the main gallery space, do any of the commercial tenants have access to this space or utilize this space at all?

A No.

Q What about the kitchen that we previously talked about?

A No.

Q Is there any third-party use -- it doesn't have to be commercial tenants, but any third-party use of the gallery or the kitchen other than what we've talked about with, you know, the rentals and things like that?

A Just the event rentals.

Q And the event rentals with regards to the kitchen, those do -- that does get utilized for the event rentals?

A Yes.

JUDGE BREITHAUP: Mr. Rasch --

MR. RASCH: Yes.

JUDGE BREITHAUP: -- if I may ask you, we're at 12:07. Would you like to -- do you believe you could

1 relatively promptly finish your cross-examination of this
2 witness and would you like to do that? Or would you like
3 to take a break and then continue afterwards?

4 MR. RASCH: I think I can do that. I --

5 JUDGE BREITHAAPT: "Do that" meaning finish
6 with this witness?

7 MR. RASCH: Finish with this witness and
8 then --

9 JUDGE BREITHAAPT: Please go ahead.

10 MR. RASCH: Okay.

11 JUDGE BREITHAAPT: Relatively promptly.

12 Q (BY MR. RASCH) Are you familiar with a company called
13 Veneer -- Veneer Magazine or an entity called Veneer
14 Magazine?

15 A Yes.

16 Q What's your familiarity of that entity?

17 A Veneer is a publication that we've taken on. It was a
18 project that was started as -- by Flint Jamison, and it was
19 related to YU's mission, and so YU started to produce it
20 once it became an entity. It kind of was two separate
21 projects by the same individual, and they have combined.

22 Q Okay. So is -- but was Veneer Magazine a separate entity
23 or was it an LLC? What sort of --

24 A Veneer Magazine is a publication.

25 Q But is it some sort of company, then? Does Veneer have

1 staff or --

2 A No. No.

3 Q Does YU -- did YU purchase it?

4 A No.

5 Q It just sort of merged or combined its --

6 A Yes.

7 Q And was Veneer being run or operated out of YU's space?

8 A We have not yet produced a publication, but we do keep the
9 past issues, and we -- we're the ones that sell them and
10 ship them.

11 Q For past issues?

12 A Mm-hmm.

13 Q And those past issues, were they published prior to
14 their -- that sort of merger between Veneer and YU?

15 A Yes.

16 Q Okay. Are you familiar with a company or an entity called
17 For Hire?

18 A No.

19 Q Okay. What about Belmont Investments, LLC?

20 A Yeah. Yes. Belmont Investments, LLC, is the development
21 across the street. And they are the ones that directly pay
22 for the commercial lease offices on the south end that
23 Anderson Construction is using as their construction office
24 for that building. So that's part of our commercial
25 tenant.

1 Q Does anyone from YU have any affiliation with Belmont?

2 A We have a board member called -- his name is Noel Johnson,
3 who's on our board, who represents Killian Pacific, who
4 is -- I don't know how all of those combine, but I think
5 Belmont LLC is -- owns or is a subsidy of Killian Pacific.
6 I'm not sure.

7 But we have a board member that's on our board to
8 basically help us with our capital campaign and historic
9 production. We invited him onto the board.

10 Q Do any sort of tenants get below-market-rate leases, to
11 your knowledge, or anything like -- any sort of benefit
12 like that?

13 A No.

14 Q Okay. What about Croma Games?

15 A Croma Games was the tenant previous to Anderson
16 Construction.

17 Q No affiliation, any ownership affiliation, between Croma
18 Games and YU?

19 A No.

20 Q Going back to -- I believe it was Exhibit 10, which is the
21 event rental. I'm just curious as to what -- looking at
22 Page 2 of Exhibit 10, Plaintiff's Exhibit 10 --

23 A Mm-hmm.

24 Q -- the second entry there says XOXO?

25 A Yes.

1 Q And then it looks like they had use of the upstairs
2 ballroom from September 20th through the 22nd for \$20,000.
3 What is XOXO?

4 A XOXO is a -- I would call it a tech conference, but it's
5 basically -- it's really big in Portland. They bring in,
6 like, new games. They bring in speakers from around the
7 world that are talking about new technologies.

8 Q And is it -- do they host their conference -- is it a
9 conference? Is that what is being hosted?

10 A A conference and a market.

11 Q Okay. And then is there -- are there sales going on, to
12 your knowledge?

13 A They have -- they sell tickets, yes.

14 Q Do they sell any sort of technology or --

15 A Technology, no. I think they might sell T-shirts, but I
16 don't think they -- not to my knowledge.

17 Q I'm asking because, you know, sometimes you go to
18 technology conferences, and some of the companies are
19 selling their product. Is there any product sales going
20 on, to your knowledge?

21 A Not to my knowledge.

22 Q Do you know how many people attend this event?

23 A They -- so they sell 500 tickets for -- no -- 450 tickets
24 for the event. It's not just at our location. So there's
25 several buildings. So they also have a market. I don't

1 know what the full number is. But our space will have up
2 to 500 people in the space during any given time.

3 Q Do events such as XO, some of these other private events --
4 do they impact YU's use of the space to the extent that
5 they're going on during regular business hours?

6 A No. So the majority of these are using the space around
7 our exhibition.

8 JUDGE BREITHAAPT: What do you mean by around
9 your exhibition?

10 THE WITNESS: So however our exhibition is set
11 up, they set up their event around it.

12 JUDGE BREITHAAPT: Physically around it --

13 THE WITNESS: Physically around it.

14 JUDGE BREITHAAPT: -- or temporally around it?

15 THE WITNESS: Physically around it.

16 JUDGE BREITHAAPT: Okay.

17 A XOXO is one of those that plans out quite far in advance,
18 so they schedule their tech conference in between our tech
19 conference, so that we don't have an exhibition up at that
20 time. So they work around our schedule to have access to
21 the room.

22 Q (BY MR. RASCH) What is your tech conference?

23 A Our programming schedule.

24 Q Okay. So around your --

25 A Yeah.

1 Q -- programming.

2 A Yeah.

3 Q Gotcha.

4 JUDGE BREITHAAPT: Okay. Let me go back.

5 "Around our exhibit" could mean "They get four days,
6 whatever those four days, when we don't have an exhibit up,
7 and then we put our exhibit up." Or it could mean "We have
8 our exhibit up. And then a bunch of gamers come and set up
9 their tables and do whatever gamers do, and we just hope
10 that they don't foul up our exhibit."

11 THE WITNESS: So for XOXO, they're specific.
12 They schedule their tech conference around our programming
13 schedule. So they make sure that they're doing it in
14 between exhibitions, so there's nothing up --

15 JUDGE BREITHAAPT: Thank you.

16 THE WITNESS: -- for that specific --

17 JUDGE BREITHAAPT: That's what I meant by
18 "temporally."

19 THE WITNESS: Right.

20 JUDGE BREITHAAPT: Kind of logic --

21 THE WITNESS: Some of these weddings set up
22 their exhibition while our exhibition is up, and we make
23 sure that we have somebody in there manning the exhibition
24 for security.

25 JUDGE BREITHAAPT: Making sure the children do

1 not spill their Martinelli cider on the --

2 THE WITNESS: Correct.

3 JUDGE BREITHAUPT: Yeah. Okay.

4 Q (BY MR. RASCH) And when calculating annual attendance,
5 does YU take into consideration and include in its
6 calculations the private use of the event space as
7 attendees?

8 A We do -- when the ones come into the gallery, they get
9 clicked off. So if somebody chooses to come into the
10 actual art exhibition, there's usually some kind of divider
11 if we're renting out the space with an exhibition up.
12 Those people count.

13 If they're just hanging out for the wedding and they
14 don't come to see the art, we don't count them.

15 Q So isn't the art and the wedding -- aren't they usually in
16 the same location?

17 A They are, but they're not -- so depending on the
18 exhibition -- we're renting out the space. If the
19 exhibition is in one area of the exhibition space, separate
20 from another, we'll rent out the space. If it's a
21 full-room exhibition, we don't usually rent out the space.

22 Q So there's some sort of divide -- if it's not a full-room
23 exhibition, it's just, like, in a corner of the room,
24 you'll divide that, and you'll have some sort of way to --

25 A Yeah.

1 Q -- to count who goes in to see the space?

2 A Right.

3 Q Got it. And is that the same for any sort of private
4 event, same scenario, same setup?

5 A Mm-hmm.

6 Q Okay. So conceivably then --

7 A A portion of the people that are -- that we count are from
8 these private events, yes.

9 Q Are from private events.

10 Okay. Let me just go through here.

11 Do you have any indication, looking at -- I'm looking
12 at Exhibit 4, which is the 2014 annual report that we
13 previously looked at. And it lists earned income at
14 \$245,396. And I think your previous testimony was that's
15 based on events, ticket sales, and commercial tenants.

16 Do you have a percentage breakdown of what that looks
17 like, what percent is events, what percent is ticket sales,
18 what percent is commercial tenants?

19 MR. BRADFORD: Your Honor, that was a very
20 specific question about an exhibit that's not in front of
21 her. Could we -- could we offer that to the witness?

22 Do you need to hear the question again?

23 THE WITNESS: No. I got the question. I'm
24 just trying to think in my memory. Do we have an exhibit
25 with the actual profit and loss statement?

1 MR. BRADFORD: Yeah. I think most of this is
2 reflected in our stipulation. It's not in the evidence
3 itself.

4 THE WITNESS: Okay.

5 MR. BRADFORD: I think we stipulated to all of
6 the amounts for the rentals or the dates or what they
7 actually made and then --

8 JUDGE BREITHAAPT: 77 is "Income from event
9 rentals. Income upstairs ballroom." Well, let's see.

10 MR. RASCH: I don't think ticket sales and --

11 JUDGE BREITHAAPT: Yeah. I'm sorry.

12 MR. RASCH: -- and commercial tenants wasn't --
13 was not part of that.

14 JUDGE BREITHAAPT: Why are we worried about
15 commercial tenants?

16 MR. RASCH: I'm just trying to get an idea of
17 their -- of the --

18 JUDGE BREITHAAPT: I understand, but --

19 MR. RASCH: -- income and funding.

20 JUDGE BREITHAAPT: Well, but -- oh, I see. So
21 you're saying, "I don't -- now I'm not worried about the
22 use of the space. It's concededly taxable. But I'm taking
23 the commercial tenant. I'm concerned about or I'm
24 interested in the revenue that comes" --

25 MR. RASCH: Revenue. Correct.

JUDGE BREITHAAPT: -- "from that space to the support of the organization."

MR. RASCH: Right. Exactly.

JUDGE BREITHAAPT: Okay. And the categories, as I understand it, are commercial tenant, lease revenue, movie revenue --

MR. RASCH: Concert revenue.

THE WITNESS: Concert revenue.

JUDGE BREITHAAPT: I'm sorry -- concert revenue, and what I'm going to call wedding revenue. Your testimony has been those are the only three.

THE WITNESS: Right.

JUDGE BREITHAAPT: Well, de minimis sale of books or programs.

THE WITNESS: Right.

JUDGE BREITHAAPT: Okay. So do you have an estimate of the --

THE WITNESS: I'm going to give a ballpark.

JUDGE BREITHAAPT: Mm-hmm.

Q (BY MR. RASCH) Sure.

A Don't hold me to this. 2 percent is the ticket sale publications, and then the other half is pretty much divided between commercial tenant and weddings.

JUDGE BREITHAAPT: So four --

Q (BY MR. RASCH) So it's roughly equal?

1 A Yeah.

2 JUDGE BREITHAUPT: 49 percent commercial,
3 49 percent wedding?

4 THE WITNESS: Yeah.

5 Q (BY MR. RASCH) Does YU have any sort of public education
6 programs or workshops or class -- classes or anything like
7 that?

8 A We invite universities to -- for -- to the exhibitions to
9 have classes around the art if it's relevant to their
10 conversation. So professors will bring their class and
11 have a class at the exhibition related to our -- our shows.

12 In terms of classes that we specifically host --

13 Q Or offer.

14 A No. I mean, we have our talks that are open to the general
15 public, but -- so they're educational in that sense,
16 because a lot of times it's the curators or the artists
17 that are talking about the inspiration for their show or,
18 you know, what they're doing, but it's not a class really.

19 JUDGE BREITHAUPT: If I may ask, you've
20 mentioned Reed and Portland State. What about Pacific
21 Northwest College of Art? Do they come?

22 THE WITNESS: Mm-hmm. Yep.

23 JUDGE BREITHAUPT: So not only what I'll call
24 broadly defined colleges and universities, but art schools
25 as well?

1 THE WITNESS: Right.

2 JUDGE BREITHAUPT: Thank you.

3 Q (BY MR. RASCH) And do you do any specific targeting in
4 terms of advertisement at these specific institutions,
5 whether that be Reed or Portland State or...?

6 A I wouldn't say advertising. We have relationships with a
7 lot of the professors there through our advisory board and
8 our curators. And so there's a lot of -- there's a lot of
9 collaboration and communication that goes on between our
10 institution and the educational institutions, as well as
11 the other art organizations in Portland.

12 Q There's no flyers at the, you know, student commons, "Hey,
13 come check out this exhibit on this date" kind of thing?

14 A We've done that, but it's not a regular thing that we're
15 doing.

16 We've gone to -- I mean, we have gone to, like,
17 volunteer fairs and talked about our organization there and
18 invited people to volunteer, but it's not -- we're not
19 passing out flyers every exhibition. It's kind of
20 occasionally.

21 Q What about -- same question for, like, say, Portland Art
22 Museum. You said you have a relationship with them. Do
23 you do any sort of advertising -- advertising there?

24 A Not advertising, no.

25 Q Or sort of letting people know that you have something --

that you have an exhibit coming up, that your -- you know, your building or that you guys are trying to -- promoting or hosting some sort of art event? Is there any sort of that going on?

A Yeah. We're not promoting, like, on-site or doing flyers there. I mean, we've done -- we collaborated with Northwest Film Center, so we actually did an exhibition at the Portland Art Museum with the Portland Art Museum. So, I mean, that might -- that one would have been marketed, but otherwise no. We're letting them know we have it, but otherwise, we're just doing the regular outreach.

Q And I think this is my last question. But previously you testified as to the limitations of the building and the expense that you're looking at for future upgrade and to be able to expand its use; correct?

A Mm-hmm.

Q And it's -- I think you said it was in the neighborhood of \$10 million?

A Correct.

Q Do you -- knowing the limitations and the costs of the building versus sort of the use and/or, you know, what you -- what the organization was planning for the building, do you know why they decided to purchase this building, given such limitations and expense?

MR. BRADFORD: Objection. That misstates

1 testimony. He said they purchased the building.

2 Q (BY MR. RASCH) Or I'm sorry. Do you know why they decided
3 to use this building?

4 A My understanding of it -- this would be a guess. This
5 building was available. It was offered to be used by
6 this -- this idea, this organization.

7 Originally the plan was to purchase the building, and
8 then the previous owner decided to donate it, which we were
9 very fortunate that they did.

10 But the plan was this long-term strategic plan to be a
11 significantly large organization that provided contemporary
12 art and was a landmark institution in Portland. So our
13 long-term strategic plan is to grow and into -- is to grow
14 into this building.

15 It's -- I guess it's pretty big thinking, but, you
16 know, that's what you work for. I mean, we've already
17 doubled our operating budget in five years, and we -- in
18 another five years, we should double it again.

19 And so for us, you know, it's ambitious, but that's
20 the goal, is to be able to curate this entire building and
21 to be able to offer the Northwest these really great
22 exhibits.

23 Q And do you have a sort of timeline as to when you think
24 you'll reach that goal?

25 A We're doing some of the projects, the beginning projects,

1 but we're hoping to be able to have completed -- I mean,
2 it's -- we're based on a ten-year plan right now.

3 MR. RASCH: I believe that's all I have. I
4 don't know if Mr. Paul has --

5 MR. PAUL: No, no questions.

6 MR. BRADFORD: We'll request a very brief
7 redirect after the break.

8 JUDGE BREITHAUPT: Right. The "why did they do
9 this," I thought it was because you don't look a gift horse
10 in the mouth, but you were actually getting ready to pay
11 for the gift horse; right?

12 THE WITNESS: Yeah.

13 JUDGE BREITHAUPT: Well, serendipity strikes.

14 MR. RASCH: Very expensive gift horse.

15 JUDGE BREITHAUPT: Okay. Folks, let me -- let
16 me ask counsel. I mean, this is a tough guess. Not tough.
17 This is a bit of an estimate.

18 But we now have this witness done with direct and
19 cross. You have a sense of what your redirect might be.
20 You then have one other witness?

21 MR. BRADFORD: That's right, Your Honor. And
22 if you're looking for some kind of indicator for how much
23 longer the plaintiff's case will take, one quick-and-dirty
24 proxy is that we've gone through about two-thirds of our
25 exhibits already. The rest of them are limited to a

1 particular point in time. And so I think that we've
2 actually done quite a bit of the work we have to do
3 already --

4 JUDGE BREITHAUPT: Okay.

5 MR. BRADFORD: -- and that we will spend
6 considerably less time with the next witness.

7 JUDGE BREITHAUPT: And then does the County
8 have a witness, or two?

9 MR. RASCH: We have two, Your Honor, just the
10 two inspectors. So we just -- you know, it's just going to
11 be pretty straightforward, pretty quick, I'd imagine.

12 JUDGE BREITHAUPT: Okay. So we're still
13 on-line.

14 What if we -- could we try to be back here at 1:15?
15 Would that -- let's do this: Let's make it 1:30. And the
16 reason I say that is you're going to be going right into
17 the teeth of trying to find a sandwich or bowl of soup.

18 MR. BRADFORD: I was about to say, it will
19 depend on how long it takes to eat at the Sassy Onion.

20 JUDGE BREITHAUPT: Well, you -- yes. Best
21 wishes. And we'll see you back here at 1:30.

22 MR. RASCH: Thank you.

23 JUDGE BREITHAUPT: Be ready to go.

24 (LUNCH RECESS TAKEN)
25

AFTERNOON SESSION

JUDGE BREITHAAPT: Do you have redirect?

MR. BRADFORD: Very briefly, Your Honor.

JUDGE BREITHAAPT: All right.

MR. BRADFORD: On cross-examination -- oh, Your Honor, I should ask, are we ready to begin?

JUDGE BREITHAAPT: Yes, we are.

MR. BRADFORD: Thank you.

REDIRECT EXAMINATION

BY MR. BRADFORD:

Q On cross-examination there were some questions about the timing of construction and the location of the administrative offices. We'd just like to clarify.

So the parties have stipulated that the building was transferred to Yale Union in October of 2013. At that time what was the state of the construction on the first floor?

A Well, we became aware that they were going to donate the building several months prior. So we started the process of doing the construction with permitting.

Because the building hadn't had any major changes to it in -- well, in their history -- they told us they didn't have any records of any changes -- a lot of things got triggered that we were not expecting.

Originally the capital project was estimated to be

1 \$80,000. The City came back with lots of changes that they
2 wanted to do on all levels, not just the first floor that
3 we were changing, and wanted to have us do about \$400,000
4 of construction improvements.

5 We went back and spoke to them a lot about -- about
6 that process and the fact that we couldn't at that time
7 afford to do a lot of them. So we discussed it and ended
8 up compromising on what they wanted done, which ended up
9 being \$150,000, like sprinklers and things like that.

10 Q When you say "they," you're referring to working with the
11 City permitter?

12 A BD -- the Bureau of Development Services.

13 Q Okay.

14 A And so after that process was complete, we thought that the
15 actual construction would be done in March of 2014, but the
16 construction itself got delayed, and so it wasn't done
17 until June of 2014.

18 Q So you just described a process that went roughly through
19 the fall of 2013 through June of 2014. Is that fair?

20 A Right.

21 Q And to back up: When you first came into the building,
22 where were the administrative offices for Yale Union?

23 A Before we started the process of permitting the
24 construction, we were in the south end of the building
25 where we currently lease out as commercial space. When it

1 got delayed, we were kind of wherever we could be once we
2 had already signed a contract, expecting to be in at that
3 point in time, but we'd already signed a commercial lease.
4 So we kind of floated throughout the building, and then we
5 moved to the north end.

6 Q And when you say you floated, that was because the
7 commercial tenant had come in to occupy that lease space?

8 A Correct.

9 Q And once the construction was complete in June of 2014,
10 what happened then with the administrative office?

11 A Then we moved into the north and where we have our current
12 admin office. It took a couple months to move everything
13 in.

14 Q You referred to different individuals, and on
15 cross-examination sometimes they're referred to as
16 entities, that are also making use of the printing
17 equipment in Yale Union, two of them, EMpress and Container
18 Corps.

19 So, first, what is EMpress Printing?

20 A EMpress is an individual who does letter press printing.

21 Q And who is that individual? Who are we talking about?

22 A Her name is Emily Johnson.

23 Q And in addition to having printing equipment at Yale Union,
24 how is Ms. Johnson involved with the organization?

25 A We consider her unpaid staff. So her -- she works on our

1 projects at no cost, our publication projects. She also
2 assists with us on event coordination and other general,
3 like, tasks around the building.

4 Q Just to clarify, because I think I actually might have
5 personally misheard you: You said you consider her unpaid
6 staff?

7 A Correct.

8 Q Unpaid staff. Okay.

9 JUDGE BREITHAUP: But your method of
10 pronunciation -- where were you raised?

11 THE WITNESS: Chicago.

12 JUDGE BREITHAUP: Mm-hmm. On paid -- when you
13 say "unpaid," I hear "on paid."

14 THE WITNESS: Oh, sorry.

15 JUDGE BREITHAUP: No, no, no, no. I'm glad
16 that your counsel clarified it.

17 Q (BY MR. BRADFORD) And you consider her unpaid staff for
18 what reason? What makes her staff in that sense?

19 A She works like any other -- any paid staff would. She
20 helps us with all of our, like, events. Well, she's in
21 Nebraska now, but when she was still here, she helps us
22 with the events with, you know, like the exhibition stuff.

23 And -- and then all of the work that she does for YU,
24 which is pretty significant, you know, we're not -- we're
25 not paying her for that, but she's doing all that work.

1 Q And so you say "when she was here." We're clarifying the
2 time spaces that we're looking at. Was she -- was she
3 here, meaning in Portland in the Yale Union space, between
4 2014 and 2015?

5 A Yeah. I think she was in Portland that year five months
6 out of the year.

7 Q And the rest of the time, where would she have been?

8 A Nebraska.

9 Q And you described -- you said that she isn't compensated
10 for doing the printing for the organization?

11 A Correct.

12 Q Or wasn't at the time.

13 The other printing -- printer that you described was
14 Container Corps. Who is that? You referred to them as an
15 individual. On cross they were referred to as a -- as an
16 entity. When you think of Container Corps, who are we
17 talking about?

18 A That's Gary. Gary Robbins.

19 Q Okay. And what is -- was it Mr. Robbins? What is his
20 relationship with Yale Union?

21 A The same as Emily's. He --

22 Q So it's a similar swapping relationship?

23 A Yes, it's a swapping relationship.

24 Q And does he help Yale Union in any other way when he's not
25 doing printing for the organization?

1 A Yeah. I usually drag him into a lot of things when I need
2 help. Yeah. And anytime anybody needs help, he -- he's
3 happy to help us.

4 Q For example, what would that mean? Give us specific.

5 A If we're getting ready to do an exhibition and we need to
6 move stuff, I'll drag him to help us move stuff. He helps
7 us with reception things at exhibition, event openings,
8 setup for shows, things like that.

9 Q On cross-examination there were several questions about
10 Marriage Records and --

11 JUDGE BREITHAUPT: Go ahead.

12 Q (BY MR. BRADFORD) On cross-examination there were several
13 questions about an entity called Marriage Records. And the
14 County has entered into evidence Intervenor's Exhibit 22.
15 Intervenor's Exhibit 22 has been identified as a personal
16 property declaration for Marriage Records.

17 The document has different dates on it. It says that
18 they were assigned to trial in late April 2015. Do you see
19 that?

20 A Mm-hmm.

21 Q Was Marriage Records receiving mail at Yale Union prior to
22 that time?

23 A Prior to that time? Yes.

24 Q Would they have been receiving mail in November of 2014 at
25 the -- at the building?

1 A They could have, but they -- they'd already shut down by
2 that point.

3 Q When you say "they'd shut down at that point," your
4 testimony was that they shut down, meaning that they were
5 no longer in operation, as of --

6 A Right.

7 Q -- 2012 was your testimony?

8 A Right.

9 Q Okay. Turning your attention to the list of assets that I
10 think's on the following page. I guess it's on the third
11 page. So on Pages 3 and 4 and particularly on Page 4,
12 there's a list of assets. Were any of the assets listed on
13 these documents actually at Yale Union between
14 November 2014 and April 2015?

15 A No.

16 Q Turning your attention back to the first page of
17 Intervenor's Exhibit 22 --

18 JUDGE BREITHAUPT: Excuse me for just a moment.
19 Between November 2014 and what date in '15?

20 MR. BRADFORD: I said April of 2015.

21 JUDGE BREITHAUPT: Thank you.

22 Q (BY MR. BRADFORD) Turning your attention back to the first
23 page, who is Marion Lucas?

24 A Marion Lucas is an independent bookkeeper.

25 Q So is she a staff member of Yale Union?

1 A No.

2 Q Was Yale Union consulted or given any direct information by
3 Marriage Records before these documents were signed?

4 A No.

5 Q When would have been the latest time that the assets listed
6 on Exhibit 22 would have been on the property?

7 A 2012.

8 Q So to the best of your knowledge, none of Marriage Records'
9 assets listed here were on the property following 2012?

10 A No.

11 Q On cross-examination, there was questions about Belmont
12 Investments. Backing up, who is Anderson Construction?

13 A They're the commercial lease tenant.

14 Q And what is their relationship with Belmont Investments?

15 A I'm not specifically sure. But Anderson's in the office.
16 Belmont's the actual financier.

17 Q So when you say "Anderson's in the office," how is Anderson
18 Construction, to the best of your knowledge, using the
19 lease space?

20 A They're using it instead of getting a trailer that would go
21 towards the development property.

22 Q So Anderson Construction's using the office, the leased
23 office, in lieu of some kind of construction trailer?

24 A Correct.

25 Q For the prop -- the development across the street?

1 A Correct.

2 Q Okay. On cross-examination you were asked, towards the end
3 of the County's questions, about your future plans for the
4 building, for the long-term vision of the organization, and
5 you mentioned that you hope to be able to curate the whole
6 building. What are your plans with curating the building?
7 What did you mean by that?

8 A The spaces that are currently commercial tenants would
9 become public exhibition space.

10 Q So your long-term plan is to end the leased space -- end
11 the lease relationships and to curate the spaces that are
12 currently leased to commercial tenants?

13 A Yes.

14 MR. BRADFORD: I have no other questions for
15 this witness, Your Honor.

16 JUDGE BREITHAUP: Okay. Any recross?

17 MR. RASCH: Just one quick question.

18 RECROSS-EXAMINATION

19 BY MR. RASCH:

20 Q If your plan is to lease -- or replace the exhibits with --
21 replace the commercial space with exhibit space, how do you
22 plan on raising the capital in order to do that, given that
23 your exhibits are free?

24 A Financing the operations?

25 Q Yes.

1 A Well, see, we're slowly building up our -- both our patron
2 individual donor base as well as our reputation with
3 foundations. Most foundations don't want to give money to
4 an organization that has less than three years of
5 programming, so we're, like, at the low, low end of that
6 level. So both of those will grow to the point that the
7 long-term tenant commercial lease spaces will no longer be
8 needed because we will have that larger independent given.

9 Q Would you also intend to increase your event rental
10 availability?

11 A I don't see that it would increase significantly, but
12 slightly.

13 MR. RASCH: That's it, Your Honor. Thank you.

14 JUDGE BREITHAUPT: Thank you.

15 Thank you, Ms. Martin.

16 Ms. Martin told me on the way out towards lunch, when
17 I rode in the elevator with her, that this was her maiden
18 voyage not only in a courtroom, but on a stand.

19 I would give her a pretty good grade today. She was
20 responsive -- she appeared to be responsive to your
21 questions, appeared to answer them. Some witnesses don't
22 do that very well.

23 MR. BRADFORD: Thank you.

24 We'd like to call Aaron Flint Jamison to the stand.

25 JUDGE BREITHAUPT: All right. Mr. Jamison.

1 MR. JAMISON: Thanks.

2 COURT CLERK: Please state and spell your full
3 name.

4 MR. JAMISON: My name is Aaron Flint Jamison.

5 A-a-r-o-n, F-l-i-n-t, J-a-m-i-s-o-n.

6 COURT CLERK: Spell your last name again.

7 MR. JAMISON: Sorry. J-a-m-i-s-o-n.

8 COURT CLERK: Please raise your right hand.

9 (WITNESS SWORN)

10

11 AARON F. JAMISON, having been first duly sworn on oath,
12 testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. BRADFORD:

16 Q Mr. Jamison, please describe your educational and
17 professional background to the Court.

18 A In -- in 2002 I graduated with a BA from a liberal arts
19 college in Canada called Trinity Western University. In
20 2006 I got an MFA in visual arts from San Francisco Art
21 Institute.

22 I am a visual artist. I'm represented by two
23 galleries, one in Paris called Air de Paris and one in
24 New York called Miguel Abreu Gallery.

25 I'm an educator. I'm an assistant professor of

1 photography and media at the School of Art -- Art History
2 and Design at the University of Washington in Seattle. I'm
3 the editor of Veneer Magazine, and I'm the chair of the
4 board at Yale Union.

5 Q As the chair of the board or in your various capacities
6 with the organization, what do you do to support YU?

7 A Technically, I meet and run board meetings quarterly, and
8 then the other -- the other primary role is that I meet
9 with curators weekly. I travel a lot, so that's often over
10 Skype or phone calls. And we -- I provide feedback to
11 these professionals and then approve the exhibitions that
12 we might -- that we might put on.

13 Q In addition to your board responsibilities, how are you
14 involved with the formation of the organization?

15 A Right. In -- I am a cofounder with Curtis Knapp, as
16 Jenny's already mentioned. In 2008 Curtis asked me to --
17 you know, to partner with him.

18 And over that time, I've helped in various ways. But
19 a lot of it has been about the vision. And I've worked --
20 I've worked with him and the board to develop that.

21 Q You referred to "the vision." Tell us more about YU and
22 Mr. Knapp that founded YU.

23 A Yeah. The vision is not unlike one of a Kunsthall. And a
24 Kunsthall is, like, a -- is a European non-collecting art
25 institution. There -- there are very few of these

1 institutions in the United States, and what makes them so
2 rare is that because they don't collect visual art or they
3 don't -- their income has -- they have to be creative with
4 their income. And so usually it comes through foundations
5 or other earned income possibilities.

6 Q And for those of us that aren't familiar with a Kunsthal
7 model, what does it mean to be a non-collecting art
8 institution?

9 A Right. Museums, technically speaking, often have -- often
10 collect art and store it and insure it. And that is not
11 our mission statement, even though a lot of the things that
12 we're doing are things that museums also do.

13 We are producers of culture. And when I say
14 "producer," it's going to be -- that's a -- that's a broad
15 term. But what we -- what we do is we commission artists
16 to make culture for our public.

17 Q So you talked just now about artists in the public. Is
18 Yale Union's primary objective to serve artists or to serve
19 the public?

20 A So we serve art -- we give artists access to the public.
21 Our goal is to serve artists and the public.

22 Q How does Yale Union benefit the general public, though?

23 A I mean, this is -- that's a bigger question on culture and
24 what it does. We open our doors and provide that --
25 provide the public with art exhibitions and performances,

1 lectures, concerts, et cetera.

2 Q What is the role of the board of directors at Yale Union?

3 A The role is to oversee operations and direction. There's
4 seven board members, part -- part of whom are like
5 cultural -- cultural members in our art community and then
6 some are who are, like, investors and real estate -- real
7 estate people.

8 Q You also have a separate advisory council. What does the
9 advisory council do?

10 A Yeah. These are also friends of the -- of the institution
11 that can provide us with information regarding specific
12 cultural interests. Those people often are -- are in
13 different cities if we need to learn about specific art
14 projects in those cities.

15 Q So you say they -- or refer to you certain art projects.

16 A Mm-hmm.

17 Q How would that affect Yale Union's operations here in
18 Portland?

19 A Yeah. Most of the work -- well, actually, you know, the
20 work that we present in our displays, it's up to this point
21 been exclusively from international artists. The mission
22 is to bring that culture into -- into the region, not to
23 present the culture that is currently here.

24 Q You also mentioned your work with curators. What do the
25 curators at Yale Union do?

1 A Yeah. So we have four curators on staff. They're
2 professionals who -- whose job is to select -- to research
3 and select the art that we would display.

4 I can -- you know, Hope Svenson is one of our
5 curators. She went to Harvard -- sorry -- and then worked
6 Art Forum.

7 And Robert Snowden worked at the New Yorker.

8 Scott Ponik during this time period went -- is from
9 Europe. He worked at the Werkplaats.

10 And then Mark Lewis is a music curator. And he's just
11 a nerd. He's good at his job.

12 Q Walk us through the annual programming for Yale Union
13 generally. What does it look like?

14 A Right. Any given time we have approximate -- we have
15 four -- four public exhibitions a year. Those general --
16 generally speaking, those happen in the warmer months
17 because it's like -- it's cold. It's, like, maniacal to
18 try to get an audience there in the winter to look at --

19 Q Why is that?

20 A -- to look at art. Because it's -- all you think about is
21 how cold you are. You can't think about the fact that
22 there's -- that you're looking at art.

23 So when the weather turns -- oh, the other point is
24 that art gets damaged if it gets that cold, so we can't
25 have it there.

1 When the weather turns, we start our exhibition
2 programming. We like -- like we've gone through before,
3 there's approximately six to eight weeks of each program.
4 There's install time that leads up to that, deinstall time
5 that is after that.

6 Each exhibition we've worked on for up to two years in
7 advance. The site visits that we've already talked about,
8 various production, production -- or sorry -- various
9 construction projects relating to the specific displays,
10 the curators have visited the artists multiple times at
11 their -- at their studios, et cetera.

12 Q What determines the number of exhibitions in your program?

13 A Well, it's two things. It's, like I said, seasons. And
14 then also the -- you know, financially.

15 Right now we -- we spend between \$20,000 and \$40,000
16 on an exhibition. That number has raised in the last year
17 and a half. Prior to that it was -- our shows were a
18 little bit more humble, but now -- but now we're -- but now
19 we're growing. So it's a delicate balance.

20 You know, Jenny tells us how much money we have to
21 spend, and then we're the ones who spend it.

22 Q How do the other events, the concerts and the performances,
23 fit into your annual program?

24 A Right. These are often just as complements to the
25 exhibition. A lot of times the artists who are exhibiting

1 are also musicians or performance artists, so they will --
2 they will present in these situations also a time-based
3 performance for an audience.

4 The other thing that happens is with these concerts or
5 readings or lectures, it's a way for us to encourage the
6 public to frequent and visit our project.

7 Q You referred to time-based performances.

8 A Mm-hmm.

9 Q And just so that we understand what you mean --

10 A Sorry.

11 Q -- how does that relate to, I guess, a long-term
12 exhibition? What do you refer to as a time-based
13 performance?

14 A Yeah. Thanks for -- I'm sorry. Some of my rhetoric is --
15 it's stuck in art -- in art language.

16 Time-based performance would be, you know, temporal,
17 temporal visit, like a visit of something that's -- that
18 has time. So, like, a movie would go from point -- Time A
19 to Time B. So you would ask an audience to be there that
20 entire time together, something like that.

21 Q So you're distinguishing between a live performance or live
22 screening --

23 A Yeah.

24 Q -- and just sort of a long-term --

25 A Exhibition.

1 Q -- display; is that right?

2 A Yes. Exactly.

3 Q Okay. How do you -- you talked about the curator's role in
4 reaching out to artists. How do you decide which artists
5 to invite to display art at Yale Union?

6 A This is like -- this is the -- this is what a curator's job
7 is. And it's not a simple answer, but it has to do with
8 these conversations that the curators have within --
9 together, and then they'll bring that to me. And we'll
10 talk about it and decide whether or not it's feasible,
11 timing, budget, et cetera. And we'll go from there.

12 There's not -- there is no, like, specific formula
13 for, like, you know, we take the traveling exhibition or a
14 show that another institution put on and then we put it on.
15 You know, it's because our institution's based around the
16 model of creating new work with an artist and commissioning
17 them, it is -- it's very labor-intensive.

18 Q Do you typically display art by members or donors?

19 A No. Never.

20 Q You never display art by members or donors?

21 A Nope.

22 Q Are they given preferential consideration, then?

23 A Nope.

24 Q Are members or donors consulted on which artists are
25 invited to display art?

1 A Nope.

2 Q Do exhibiting artists pay to display their art at Yale
3 Union?

4 A No. We actually -- we pay an honorarium, a very generous
5 one, to all art -- to all artists who have ever performed
6 or exhibited at Yale Union.

7 Q So when you say that you support artists bringing art to
8 the community, will you support artists who aren't actually
9 exhibiting at Yale Union?

10 A Can you rephrase that?

11 Q Yeah. So Yale Union, in its support of artists, it isn't
12 supporting artists who aren't exhibiting at Yale Union; is
13 that right?

14 A Right.

15 Q Okay. Setting aside the leased commercial space, do
16 exhibiting artists pay to use Yale Union studio space?

17 A Nope.

18 Q Describe the process of putting on an exhibition. You've
19 described the process of identifying artists, but what does
20 it look like by the time you've invited an artist to
21 presenting the exhibition?

22 A Okay. I'll try to -- I'll try to do this cogently. And
23 Jenny's already talked about it a little bit.

24 Imagine the curators deciding they want to work with
25 someone. That goes into a conversation internally. We

1 then would make contact with an artist. That artist, say,
2 lives in Berlin. We make this contact via email or phone
3 through that specific artist's gallery. It's so
4 convoluted.

5 Anyways, it's like a game of flirtation for, like,
6 four or five months, where they start doing -- the artist
7 would start to do research on us, we would do research on
8 them.

9 At some point the curators would go to that artist's
10 location in Berlin, visit them in the studio, and ask them
11 specifically to make an exhibition with us.

12 There is no immediate answer. A couple months goes
13 on. Then the artist flies to Portland either -- for the
14 first of probably two studio site visits.

15 And at that time they see the space. They interact
16 with the -- with the architecture for the first time. That
17 interface is what enables them to create a plan, hopefully,
18 for what would become that exhibition up to 18 months
19 later.

20 That first visit is so provisionally -- provisional,
21 and a lot of it is just about meeting the staff members
22 and experiencing the space.

23 The conversation goes on. The curators maybe go back
24 to Berlin to visit, start plans. Jenny talks about
25 proposals that the artist would potentially bring. Those

1 proposals are, honestly, just feasibility studies,
2 feasibility studies whether the budget, time, et cetera,
3 could -- could actually work. That would come in the
4 second site visit potentially.

5 And then that's up until a year in advance. And then
6 two months in advance, let's say, we would start actually
7 constructing the plan, the exhibition, the commission. And
8 that takes place in the wood shop and in the print shop
9 prior to moving up into the exhibition hall.

10 Q So just to make sure that I'm understanding --

11 A Sorry.

12 Q -- you described kind of a process through which Yale Union
13 and the artist that it seeks to invite kind of come to
14 terms about whether it's feasible for the artist to exhibit
15 there, whether there's budget, and whether all the other
16 factors align for it to happen. And now you're starting to
17 describe a process through which the artists actually put
18 their art up into your space.

19 A Yeah. Right.

20 Q And it sounds like that takes a period of several months
21 too. Tell us why that takes so long.

22 A Right. So depending on the artist's plan, there's a --
23 there's a necessary build-out of walls or furniture, like
24 ex -- furniture for the exhibition. That could be tables
25 or whatnot.

1 That takes -- that can take up to two months because
2 our staff is small for production, et cetera.

3 And then we install the work that is oftentimes made
4 on-site in the studios or shipped in from their specific
5 studios in, for instance, Berlin.

6 Q So you mentioned that some of it's created on-site. You
7 mentioned both the wood shop, the print shop, and the
8 studios.

9 A Mm-hmm.

10 Q What purpose do the studios serve in this process?

11 A Well, like I said and what Jenny said, those studios
12 provide a private space for an artist to work. This is --
13 this is what artists do. They need studio spaces to try
14 ideas and take risks in that way.

15 And one of the -- one of the very special things about
16 Yale Union is that we have -- we have that possibility to
17 host artists in that way. It's the dream that we get to
18 like -- we have that.

19 I mean, it's stupid that we have the building, and
20 it's like -- it's crazy. But the fact that we're able to
21 offer this to artists is, like -- is what makes us so
22 special.

23 Q And how does working on-site affect the artist's ability to
24 create the exhibit?

25 A Oh, it makes them better. Yeah. I mean, if an artist is

1 able to work on-site and interface with all of the
2 architecture and the people and that -- and I almost said
3 energy, but that's too hippie for a courtroom. It makes it
4 possible for them to have a more intimate experience in
5 exhibit -- in making work. And that makes -- that makes
6 the work better.

7 And the reviews that Jenny and you have already talked
8 about, you know, are -- are evidence.

9 Q So you've talked us through the process of getting the
10 artist into the space, of now creating the exhibitions.
11 Once those installations are prepared for the exhibitions,
12 does Yale Union sell art or hold it on consignment?

13 A No, no, no. Yeah. There's no -- there's no commercial
14 value of any art that -- we have no commercial role in
15 this -- in the sale of art.

16 Q And just to clarify: So Yale Union doesn't sell or hold it
17 out on consignment. Is any of the art exhibited at Yale
18 Union for sale as part of the exhibition?

19 A Not by Yale Union. Yeah. To clarify, once we commission
20 work by an artist and we pay them this generous honorarium
21 and we pay for all of the production of that work, then the
22 model of a Kunsthal is to give -- like generously give that
23 work to the artist.

24 It's the artist's idea. It's their intellectual
25 capital that made it. And so we -- it's like a gift. The

1 institution gives this to the artist.

2 Q So I want to be very clear about --

3 A Yeah. Sorry.

4 Q No. I want to be very clear about my question.

5 So Yale Union isn't putting the art on display to sell
6 it?

7 A Yes.

8 Q And it's not for sale by anyone else while it's on display
9 at Yale Union; is that right?

10 A Exactly.

11 Q Okay.

12 A I mean, I should -- I need to clarify here because this is,
13 like, one of -- this is, again, like, art -- art language.
14 And it's maybe not applicable. But, you know, all these
15 artists eventually have commercial galleries. And after
16 the exhibitions, you know, five years later, the work that
17 is on -- that was produced by Yale Union -- or by the
18 artist with Yale Union would be for sale, but Yale Union
19 would never receive any income from that and/or benefit,
20 you know. It's just that -- it's just that it was
21 initially made at Yale Union.

22 Does that make sense? I hope that makes sense. It's
23 complicated.

24 Q Thank you for explaining.

25 I'm going to turn your attention now to Plaintiff's

1 Exhibit 24. First, looking at Exhibit -- Plaintiff's
2 Exhibit 24, what is Art Forum? We've talked about it
3 briefly.

4 A Art -- Art Forum is a -- is a periodical of art reviews
5 published monthly except in the summer. We also have an
6 on-line -- on-line version. It's -- it's, you know, one of
7 the most well-regarded and prestigious art review
8 publications.

9 Q Just I think I lost the last part of your sentence. You
10 said it was one of the most...?

11 A Well-regarded and prestigious international art
12 publications.

13 Q There's a date listed here without a year at the top of
14 Exhibit 24. It says November 8th through December 21st.
15 The parties have actually stipulated that that is for the
16 year 2014.

17 The author of this article is listed as Stephanie
18 Schneider. She's also listed on your advisory council.
19 Who is she?

20 A Stephanie Schneider is the curator of the Cooley -- Cooley
21 Gallery at Reed College. She's also an art critic.

22 Q And the purpose of Ms. Schneider's article is to write
23 about Terry Atkinson. Who is Terry Atkinson?

24 A Teary Atkinson is an artist from Great Britain, artist and
25 philosopher and writer. We produced with him an exhibition

1 in our space in 2014.

2 He -- he's an older man, but this was the first time
3 his work has been presented in North America in an
4 institutional context.

5 Q Did that have anything to do with why he was invited -- did
6 that have anything to do with why he was invited to present
7 at Yale Union?

8 A The fact that it was his first time? Yes.

9 Q Oh, why else were you interested in bringing Mr. Atkinson
10 to Yale Union?

11 A Beyond -- beyond that maiden voyage, as we've said, he --
12 his work is -- he's a philosopher, and he's a publication
13 anchor. And this specific work that we produced with him
14 is about, like, oil and -- and it's quite political. And
15 we felt, like, at the time it was, like, important to bring
16 that conversation to the community.

17 Q Just a moment ago you described the process of bringing
18 artists to exhibit here in Portland. Did you follow a
19 similar process with Mr. Atkinson?

20 A Exact -- it was exactly that process.

21 Q I'd like to turn now your attention to Plaintiff's Exhibit
22 No. 25. Plaintiff's Exhibit 25 has already been identified
23 as an article from the Oregonian about the Atkinson
24 exhibit.

25 If you turn to Page 2 of Plaintiff's Exhibit 25, the

1 byline is listed as attributed to John Motley. Who is John
2 Motley?

3 A John Motley is a -- is an art critic and a writer in
4 Portland, from Portland, Oregon.

5 Q And how did Mr. Motley come to review Mr. Atkinson's work?

6 A You know, we have, like Jenny said, a press preview prior
7 to exhibitions opening where local press are encouraged to
8 come and interface directly with the artist and curators.
9 Mr. Motley might have come to that event. I'm not sure.
10 But if not, he would have been there for the opening or
11 shortly thereafter.

12 Q Is Mr. Motley otherwise associated with Yale Union?

13 A No.

14 Q I'd like to turn your attention now to Plaintiff's
15 Exhibit 26. What is depicted in Plaintiff's Exhibit 26?

16 A These are -- these are two of Mr. Atkinson's wall
17 sculptures that were on display at his exhibition at Yale
18 Union. The white space, what is -- what is, you know,
19 gray, actually, in this image is the wall that we produced
20 in the space that's approximately -- that's 30 feet long.
21 The work itself was made in the wood shop in -- downstairs
22 at Yale Union by specifications that the artist sent --
23 sent to us, like blueprints, essentially.

24 Q So part of the creative process is that, in this case,
25 Mr. Atkinson provided you with directions about parts of

1 his pieces he wanted constructed on-site by Yale Union
2 staff?

3 A Exactly.

4 Q Okay. Were there any other parts of the building besides
5 the wood shop that were used in preparing for this
6 exhibition?

7 A In the -- I mean, the print shop, there's a healthy -- a
8 lengthy catalog that we printed and gave away for free to
9 anyone who came to the exhibition.

10 Q I'd like to turn your attention to Plaintiff's Exhibit 27.
11 Just a moment ago you referred to a healthy catalog --

12 A Sorry.

13 Q -- that was handed out. Is Plaintiff's Exhibit 27 the
14 publication you're referring to?

15 A Yeah. Sorry. "Healthy" is not the -- yes. This is --
16 this is a reproduction of the catalog that we printed in
17 the print shop. The text was produced by the curators and
18 by the artist himself.

19 Q And this was printed on-site, on the property?

20 A Yes. Exactly.

21 Q And how was it printed there?

22 A By Container Corps, Gary Robbins, on his presses. We --
23 we -- this was produced.

24 JUDGE BREITHAUPT: A question, if I may. You
25 said by Container Corps, Gary Robbins, on "his" presses.

1 THE WITNESS: Mm-hmm.

2 JUDGE BREITHAUPT: To whom do the presses
3 belong?

4 THE WITNESS: Great -- great question. Gary --
5 Gary owns two presses. They're offset presses. One is the
6 size of this table. One is the size of that table.

7 JUDGE BREITHAUPT: Okay.

8 Q (BY MR. BRADFORD) Turning your attention to Page 11 of
9 Plaintiff's Exhibit 27, the dates here are listed as
10 November 8th through December 21st of 2014, which is what
11 the parties stipulated to. During that time it was open,
12 was it -- was the public charged for admission to this
13 exhibition?

14 A No.

15 Q Okay. Was there -- you referred -- in prior testimony
16 there's reference to programming around the opening of an
17 exhibition?

18 A Mm-hmm. Right.

19 Q Was there any special opening or other programming done
20 around the Atkinson --

21 A So --

22 Q -- the Atkinson exhibition?

23 A Yeah. Exactly. The exhibition opened, as we talked about,
24 on November 7th or 8th. There would have been -- there
25 would have been an approximately two- -- to three-hour

1 opening party, essentially, where we invite, like, a large
2 number of people to come to the exhibition. We pull the
3 permit that Jenny already talked about that allows more
4 than 50 people in the building. And then that would last
5 over the course of the weekend.

6 And so at that point we also had a program with a talk
7 by the artist and the curator that was open to the public,
8 and it was in the space with the work, with the art works.

9 Q Turning your attention now to Plaintiff's Exhibit 28.

10 There's an event described in Plaintiff's Exhibit 28 the
11 parties have stipulated to having occurred. What was the
12 purpose of the event that's described here?

13 A The purpose is to invite the public to exchange with the
14 artist and the curator of the exhibition there. There is
15 an open -- a talk and what we would call a Q and A,
16 question and answer, period that the public gets to -- to
17 interface with the artist.

18 Q This is described as a talk with Terry Atkinson and Richard
19 Birkett. Am I saying that right? Who is Mr. Birkett?

20 A Richard Birkett's a curator of -- of the only other
21 American Kunsthall. It's in New York. It's called Artists
22 Space.

23 Q And how did he become involved with this exhibition?

24 A He's on our advisory board, and he has a personal
25 relationship with Terry Atkinson, the artist. And they --

1 they've been working together on various projects for up to
2 ten years. So his knowledge of the work was more -- was
3 very intimate, and he suggested it to us as a potential
4 exhibition.

5 Q And how much did you charge the public for admission to
6 this talk?

7 A It was free.

8 Q I'd like to turn your attention now to Plaintiff's
9 Exhibit 29.

10 MR. BRADFORD: And, Your Honor, in addition to
11 the scanned copy of the exhibits that you have with the
12 materials that were provided to you prior to trial, we've
13 also included, and defendants have agreed to, an insert in
14 the back which includes a printed copy of Exhibits 29 and
15 30, the contents of which exactly match the information
16 that the Department has produced.

17 JUDGE BREITHAUPT: Now, this reminds me, my
18 former partner, Mr. Bonyhadi, once tried an antitrust case
19 involving the Tillamook Creamery Association, which makes
20 cheese. And it was tried in federal court. One of the
21 exhibits was a big wheel for better cheese. It was in
22 Judge Solomon's court.

23 And at the conclusion of the trial, the bailiff/clerk
24 was asking, "What are we going to do with this exhibit?"
25 It was this big wheel of cheese. And Ernie, not one to

1 look a gift horse in the mouth, said, "I'll take it."

2 And he did. And he kept it in a freezer at his home.

3 And then later we used it at a picnic, not as a weapon, but
4 actually as a condiment.

5 So this will remain as an exhibit in the court records
6 until such time as you surrender any interest. You'll have
7 a chance to get it back. But if you don't, I just want to
8 warn you.

9 THE WITNESS: It sounds like -- it sounds like
10 a --

11 JUDGE BREITHAAPT: I don't mean to suggest that
12 this is any improper gratuity to me.

13 THE WITNESS: Right. No. I won't --

14 JUDGE BREITHAAPT: You can give me -- you can
15 give me an exhibit or two.

16 THE WITNESS: I won't take it as such.

17 JUDGE BREITHAAPT: Okay.

18 THE WITNESS: Bribery --

19 JUDGE BREITHAAPT: But this is the real --

20 THE WITNESS: -- conflict of interest or --

21 JUDGE BREITHAAPT: This is the real thing;
22 right?

23 THE WITNESS: Yeah.

24 MR. RASCH: Cheese block.

25 THE WITNESS: Can I explain these?

1 Q (BY MR. BRADFORD) Please. Yeah. Tell us what we're
2 looking at with Exhibit 29 first.

3 A Okay. So Exhibit 29 is a -- is an artist's book that we
4 made on-site at Yale Union in the print shop on letter
5 presses. It is authored by a very famous poet named Susan
6 Howe, who is a professor at Harvard. And she also made an
7 exhibition at Yale Union. And so this was, like, an
8 accompanying special publication that we produced.

9 It's letter press. It's -- yeah, I'm really proud of
10 this. I don't know what else to say about it.

11 JUDGE BREITHAAPT: You might tell me what you
12 mean when you say "letter press."

13 THE WITNESS: Oh, yeah. Great. Sorry.

14 JUDGE BREITHAAPT: You obviously admire letter
15 press.

16 THE WITNESS: Yeah. Right.

17 Okay. So there's, you know -- okay. You know, when
18 printing started Gutenberg-style, there was -- there was
19 dif -- there was -- it kind of started by debossing, like,
20 type -- lead type onto paper.

21 JUDGE BREITHAAPT: Mm-hmm.

22 THE WITNESS: And then eventually new
23 technology came where oil was -- oil and grease were
24 involved, and that was called lithography.

25 The debossing of ink onto paper is called letter

1 press. And those presses aren't used anymore. It's a
2 very, like, boutique industry. It's mostly -- mostly
3 accommodates, like, wedding invitations.

4 Nevertheless, we fetishize -- we have learned to
5 fetishize that medium because of its materiality. And so
6 we produce -- we produce things with it.

7 Q (BY MR. BRADFORD) You mentioned that this was prepared on
8 the property with the letter print press.

9 A Right.

10 Q Going back to the print shop, you also clarified that at
11 least two of the pieces of printing equipment there belong
12 to Mr. Robbins. Are there more than two pieces of printing
13 equipment --

14 A Right.

15 Q -- in the print shop?

16 A Yes. Exactly. There's -- there are a half-dozen presses
17 total, the -- and paper cutters, et cetera. And the others
18 would belong to Emily Johnson of EMprint Press.

19 Q So between Ms. Johnson and --

20 A Mr. Robbins.

21 Q -- Mr. Robbins, does that account for the equipment in the
22 print shop?

23 A Exactly.

24 Q How was this booklet used?

25 A We produced this in a limited number and then, well, gave a

1 lot of them away to people who visited the exhibition, but
2 then we also sold them for \$5 apiece, and they went like
3 hotcakes.

4 Q When you say you sold them, what do you mean? How was
5 that --

6 A Right. We did that through our website. We sent out a
7 mass email. And there was a PayPal button. But obviously
8 it doesn't actually add up to much earned income when you
9 sell them --

10 Q If you know, do you have any sense for what amount of
11 earned income that would be?

12 A Well, it says here that we -- I think it was that we
13 produced it in a number in addition of 500. Can somebody
14 do that math for me?

15 Q So \$5 for a run of about 500?

16 A Yeah. I'm imagining that we gave away at least half of
17 those --

18 Q Do you have any sense for what --

19 A -- because we're suckers.

20 Q Do you have any sense for what it took to actually produce
21 it, what the cost would be --

22 A Oh, yeah.

23 Q -- for production?

24 A The paper we print -- we printed on Crane's Lettra, which
25 is the most expensive paper that you can buy. And then,

1 you know, we didn't charge -- or we didn't have to pay for
2 the letter press time because it was both myself and Emily
3 printing it. But the paper alone was at least \$3 a book or
4 something like that, you know, ridiculous.

5 Q I'm going to go ahead and turn now to Plaintiff's
6 Exhibit 30. Again, Plaintiff's Exhibit 30 we provided a
7 scanned copy and a physical copy to the Court on approval
8 by defendants.

9 JUDGE BREITHAUP: Did this happen over the
10 lunch hour, or was it here this morning?

11 MALE SPEAKER: This morning, Your Honor.

12 MR. BRADFORD: Prior to trial, Your Honor.

13 JUDGE BREITHAUP: Oh, I'm glad I didn't drop
14 them now.

15 A This is -- this is another artist's public -- a publication
16 that we made, an artist's book, that is -- that is poems by
17 a Pulitzer Prize-winning poet named Rae Armantrout. We
18 made this book with her in 2015 in an edition of 250.

19 Q (BY MR. BRADFORD) And how was this used during the
20 exhibition?

21 A This is not -- the cool thing about this project is that
22 it's just a Yale Union publishing project on its own,
23 independently. There's no exhibition. Yale Union is also
24 a publisher.

25 Q We're going to turn back now to Plaintiff's Exhibit 23.

1 Earlier Ms. Martin identified a library on the property.

2 Can you tell us more about the purpose the library serves?

3 A Well, we've been collecting -- we've been collecting books
4 that aren't available in public collections in Portland or
5 even the Northwest, and then we have a small room where we
6 attempt to secure those books and then make them accessible
7 to the public.

8 Q When you say they're accessible to the public, how can the
9 public access the library?

10 A It's through -- it's -- they just have to email us and set
11 up an appointment, and they can spend as much time there as
12 they want. The books don't circulate because they're
13 worth -- they're rare. They're all -- they're -- it's a
14 rare book collection. But we -- but it gets used,
15 actually, by students and scholars and book enthusiasts.

16 Q So you said that it gets used and it's set up by
17 appointment. How would someone become aware that they can
18 access the library?

19 A Well, we -- we sent out this document to our mailing list
20 at the time, and then on the website there's a -- there's a
21 lexicon of all the titles that we have. So you're able
22 to -- you're able to know what books we have, and you
23 can -- if you want to see any of those specifically, you
24 just ask.

25 Q And you mentioned that it gets used by students and

1 scholars. Are there any conditions or prerequisites for
2 any person of the public to be able to access this library?

3 A No, no, no. Yeah. It's just -- it's open to the public,
4 all public.

5 Q You mentioned that it occupies a small space now. Are
6 there any long-term plans to expand the library?

7 A Yeah. Of course. The dream is that it's huge.

8 Q And in the short-term future, any specific plans?

9 A You know, the ambition of the library is similarly tenored
10 to the budget that Jenny tells us we have. So end of the
11 year, whatever we have to spend, we do. You know, it
12 doesn't -- it doesn't tend to be a lot. Slow, slow growth.

13 Q This got mentioned in prior testimony. What is Veneer?

14 A Okay. Veneer Magazine is a publication that, you know,
15 I -- I made, I started making, in 2007. In 2012/2013 --
16 no -- 2012, the then director of Yale Union was a woman
17 named Sandra Percival. She -- she, like, made it a Yale
18 Union publication project.

19 Q So you said that it's now a Yale Union publication project,
20 but before that what was your role with Veneer?

21 A Oh, I was -- I've been the editor. I'm just the editor.

22 Q Is Veneer a commercial venture?

23 A No. Veneer only loses money. It's -- you know, depending
24 on -- depending on the issue -- we print it off-site at
25 offset presses in Canada, general speaking, and usually

1 just the production costs are around \$10,000. And I don't
2 know if we've ever made, you know, \$300 or \$400 from book
3 sales, actually.

4 Q So if that's the case, then why print it at all?

5 A Oh, because it's an art project. It's an art project. You
6 know, it doesn't have commercial value. It doesn't --
7 doesn't really work within the system of commerce.

8 Q And what is Yale Union doing with Veneer currently?

9 A Well, it's -- it's in between issues. The last one was
10 produced in 2013 or something, and now the next one will be
11 produced in 2000 -- at the end of this year -- at the end
12 of the summer -- I'm sorry -- end of 2016, September of
13 2016, which we had to find money for it, and we found -- we
14 suckered a French institution into paying for it.

15 And then right now, to answer your question directly,
16 just in the basement we have this place called the pit of
17 despair where all of -- like, all of the junk -- all of the
18 junk that's donated to us ends up there, and there's boxes
19 of storage of Veneer Magazine.

20 Q So we're going to unpack a couple things --

21 A Sorry. Yeah.

22 Q -- that you mentioned just now. And I appreciate the
23 shorthand about suckering a French institution. Do you
24 want to tell us what you mean by that --

25 A Sorry. Yeah.

1 Q -- please?

2 A In court speak here.

3 JUDGE BREITHAUPT: Just speak --

4 A Well, like I said, there's no commercial value to this
5 project. And so in order to justify it as artwork, we have
6 to -- we have to convince someone that it's worthy of -- of
7 its -- of its art.

8 And so I convinced this -- a place called the Gallery
9 La -- Fondation Lafayette, Fondation Galeries Lafayette, in
10 Paris to pay for the next one.

11 Q (BY MR. BRADFORD) And there may be some modesty as the
12 editor to talk about it being suffering. But what was it,
13 do you think, that made it -- or how did what you're doing
14 with Veneer appeal to the financier that you're able to
15 identify?

16 A Oh, I mean, it's -- I'm proud of it as an artwork. And I
17 think that it exists as much -- and this is -- you know,
18 this would be the eleventh issue, and each one is in -- is
19 a piece of art. And so even though it, like, masquerades
20 as a book, it's actually, like, an artwork.

21 Q So you consider the publication a piece of art in its own
22 right?

23 A Yeah.

24 Q Are you the only author or contributor to Veneer?

25 A No, no, no. There's, like -- there's many, many, many

1 contributors.

2 Q And where do those contributors come from? How do you
3 identify them?

4 A The publication, if we talk about the content of it, it's
5 mostly technical documents that are, like, PDFs, of, like,
6 computer repair manuals or something.

7 So there's a -- there's a group of editors. I'm the
8 editor in chief, but there's a couple of other editors, and
9 we find the content and the authors, you know, on the
10 Internet or where -- or through, like, various expertise
11 forums or just Wikipedia.

12 Q So you just referred to a couple different -- a couple
13 different places of media that we need to be clear about.

14 A Sure.

15 Q Is Veneer Magazine a physical publication?

16 A Yes.

17 Q Does it also have an on-line component?

18 A Yes. Yeah.

19 Q And when you referred to electronic content, were you
20 referring to the on-line component?

21 A Yes. I mean, yeah.

22 Q And with regard to the physical publication, to date has it
23 yet been printed at Yale Union?

24 A Nope.

25 Q Is the expectation that moving forward it will be printed

1 at Yale Union?

2 A There -- with Veneer, there aren't any expectations. It's
3 just like a -- it's just like a triumph when we get to make
4 a new one because it's so ridic -- it costs so much money
5 to do.

6 Q So you have plans for a future publication, but it's not an
7 immediate priority for the organization?

8 A Exactly.

9 JUDGE BREITHAAPT: That's helpful. When you
10 say "you have plans," is it you, Mr. Jamison, have plans,
11 or you -- pardon the pun --

12 THE WITNESS: Yeah.

13 JUDGE BREITHAAPT: -- Yale Union that have
14 plans?

15 THE WITNESS: And I'm sure this is like a --
16 this is -- this is -- this is a great and precise question.
17 It's -- it is Yale Union.

18 I'm the chair of the board, you know? But I'm one
19 voting -- I'm one voting member of that.

20 JUDGE BREITHAAPT: Sure.

21 THE WITNESS: Majority rules on the board. And
22 so it's not -- it's not just me.

23 Q (BY MR. BRADFORD) If there's a printed publication in the
24 future, would the expectation be that it be printed using
25 the printing equipment that's on-site at Yale Union?

1 A That would be cool, but it's -- I don't know.

2 Q And you said "that would be cool." You referenced
3 previously sort of the rare -- the rarity of the equipment
4 itself. Is it fair to say that that equipment is rare?

5 A Oh, yeah.

6 Q Would Yale Union --

7 A It's actually not -- I mean, to clarify, the equipment that
8 we have at Yale Union for printing, it's not efficient
9 equipment. It's not like -- you can't really, like, make
10 any money with it in some regards because it's not a
11 high -- high-volume offset press that prints magazines and
12 binds them super quickly or efficiently.

13 So the tools are boutique and craft -- and
14 craft-based, are made for craft-based applications. So to
15 produce something like Veneer would take months, three,
16 four months, to produce on those machines.

17 Q By contrast to the smaller brochures --

18 A Yeah.

19 Q -- that you use for your exhibitions?

20 A Exactly.

21 Q So it's part of the appeal of the equipment that's there is
22 the novelty or rarity of its use?

23 A Yeah. Yeah. Yeah. It's about, like -- about
24 fetishization of process.

25 Q And by that, you might be referring to the uniqueness of

1 the process?

2 A Yes. Sorry.

3 Q Could Yale Union carry out its publication or the
4 publication component of its artwork without access to the
5 equipment that's there on-site?

6 A Yes.

7 Q And how would they do that?

8 A Well, we'd just make it in Canada.

9 Q And why do you say that?

10 A Well, like, those are high -- you can -- there's one here
11 in Portland out by the airport. It's called Image
12 Pressworks. It's a press that just spits out very quickly
13 whatever you want to print.

14 It costs a lot of money to use it, but you can -- you
15 can use these machines in Canada because of the dollar
16 value. You can do it up there cheaper.

17 Q So you just described a couple of possible alternatives.
18 Does it affect your calculus or your ability to produce
19 these by having them there on-site?

20 A Can you rephrase that one?

21 Q I'm happy to rephrase that.

22 A Yeah.

23 Q You just identified that, yes, there are alternatives to
24 having the printing work done for Yale Union.

25 A Mm-hmm.

1 Q What difference does it make that these particular
2 resources are available on-site at Yale Union?

3 A For Veneer Magazine specifically?

4 Q For Yale Union --

5 A Oh.

6 Q -- and its publications.

7 A Yeah. Those -- again, those publications, the fact that
8 we're able to work with Emily and Gary in this kind of
9 trade economy and because they're not as ambitious as
10 Veneer Magazine, it makes sense that we get to use these --
11 these specialized tools.

12 Q So we're making a distinction between the supplemental
13 publications for your exhibitions and then Veneer Magazine,
14 which you also testified has now been adopted by the
15 organization. You said that one's more ambitious than the
16 other. What did you mean by that?

17 A Unfortunately I don't have any Veneer Magazine to put into
18 evidence, but it's a thick -- it's a thick book each time,
19 color, full color. The presses that we use -- or that are
20 at Yale Union are one-color presses, usually just black
21 or...

22 Q So the ambitiousness that you're referring to goes to
23 volume and able -- like, characteristics of the printing?

24 A Quality. Yeah.

25 Q Okay. I'm going to turn your attention now to Plaintiff's

1 Exhibit 22. The parties have stipulated that several
2 individuals, including you, have listed the property's
3 address as their residence with the DMV, among others. So
4 just to be absolutely clear: Do you live on the property?

5 A No.

6 Q Have you ever lived on the property?

7 A Nope.

8 Q Has there ever been a time when you were living in Portland
9 and had no other residence besides Yale Union?

10 A No.

11 Q Why did you list the property's address as your residence,
12 then?

13 A When was -- when was this?

14 Q So turning your attention to the bottom of Plaintiff's
15 Exhibit 22, the date stamp that's shown there is
16 December 15th, 2008.

17 A Okay.

18 Q Does that offer any kind of --

19 A Yeah. Okay. So in 2008, as I've already talked about,
20 this is the time when Curtis, the other cofounder, asked me
21 to start this project.

22 I visited -- I visited Portland. I was living in
23 Paris. I visited Portland to consider it, like a site
24 visit.

25 And when I started to get serious about the idea, I

1 couldn't move back to the United States without health
2 insurance. And so I'm epileptic, so I needed to establish
3 residency and get on the Oregon medical insurance pool,
4 which is now defunct.

5 And at the time I was -- Yale Union wasn't a thing.
6 Yale Union didn't exist. I wasn't in charge of it. There
7 was no board of directors or anything. It was just the
8 most consistent address that I thought might be around.

9 Q But you were living somewhere else. So why not use the
10 address for where you were living?

11 A Oh, in Paris? Well, essentially, I needed to establish
12 residency, like I said, in order to get health insurance
13 that I could afford.

14 And as with many of the individuals on the list who
15 have -- who have listed Yale Union over the years as a
16 residence or mailing address, we're itinerant artists.
17 They don't -- they don't live there or sleep there, but
18 it's like an anchor. It's literally property.

19 Q Your testimony a moment ago was that you've never lived at
20 Yale Union and that you were visiting in 2008 to determine
21 whether or not you'd move forward with --

22 A Mm-hmm.

23 Q -- with the organization as it was initially being
24 conceived or formed. At that time were you staying
25 somewhere else in Portland?

1 A Yeah.

2 Q So why not list that address as your residence?

3 A I don't know under oath how much you want me to get into my
4 personal life. But I've -- you know, I've lived at
5 various -- with various people over the last eight years.
6 And to be honest, the most -- the most stable location for
7 having mail sent happened to be this -- this place.

8 I wish there was, like, a box that said, "Do you have
9 epilepsy and do you need health insurance? Sign there."
10 But instead -- I'm not proud of the fact that I signed
11 there, you know.

12 Q So you said you're not proud of that. In retrospect, do
13 you regret having listed that as your residence?

14 A Sure. I don't know what you -- yes.

15 Q Looking to the right side of the form, right by where you
16 listed the building's address, it does offer you the
17 opportunity to list a mailing address different than
18 residence.

19 A Mm-hmm.

20 Q Were you concerned at the time about providing another
21 mailing address to organizations like the DMV?

22 A To be honest, I was, like, 28. I didn't imagine that years
23 later I'd be in tax court, of course, like. And I've since
24 changed it to my current -- you know, my residence now. I
25 feel guilty that I did it.

1 Q So you mentioned that you feel guilty. Right before that
2 you said that you've since updated your address with the
3 DMV. Is that -- was that --

4 A Yes.

5 Q -- your testimony?

6 A Yeah.

7 Q Now, earlier it was identified that you are president of
8 the board of directors at Yale Union.

9 A Yeah.

10 Q And clearly you individually filled this out with the DMV.
11 But does Yale Union allow or encourage members of its board
12 to list the property as their residence?

13 A Nope.

14 Q Does Yale Union allow or encourage its staff to list the
15 property as their residence?

16 A No.

17 Q Does Yale Union allow or encourage its volunteers to list
18 the property as their residence?

19 A No.

20 Q And does Yale Union allow or encourage its member donors to
21 list the property as their residence?

22 A No.

23 Q On the website and various -- in various applications and
24 other printed places where you described the organization,
25 you've referred to it as an art center or center for

1 contemporary arts. Why not just call it an art museum?

2 A Okay. Art museums often have collections, and our mission
3 is specifically not to collect art, but to produce it. And
4 that -- that is about the production of culture or
5 presentation of culture to a public.

6 And so at the same time there's a library, there's
7 printing presses, there's a wood shop, there's studios for
8 these artists to use. All this makes it a center or a
9 Kunsthall, not a -- not a museum.

10 Q Were you involved in organizing the membership benefits
11 program?

12 A Yes.

13 Q Where did you receive the idea for membership's benefit
14 program for the organization?

15 A Well, as Jenny's already spoken to, we -- you know, our
16 audience is -- our audience is young. To incentivize
17 membership to anything is hard. Everybody's -- young
18 people are entitled.

19 And we just tried to think of something that was
20 cheaper than Netflix that would start to encourage them to
21 become patrons or young philanthropists, even if it was \$5
22 a month.

23 The upper membership, which is a hundred dollars a
24 month, is a model where we -- again, we're trying to find
25 ways to incentivize, like, what can we actually give. We

1 don't have that much, you know. We have -- because we make
2 everything for free, our model is open -- to make things
3 open to the public for free, what else can we give?

4 And because there isn't this history of young
5 philanthropy in Portland, access during business hours
6 through a key card was one of the options.

7 And since this has happened, other art institutions
8 have all subsequently started to adopt it. The Wattis
9 Institute in San Francisco now also gives access to their
10 space during -- during open hours, or during business
11 hours.

12 Q So you've referred to other art institutions and their
13 membership programs. Do you -- are you a member of any
14 other art organizations in that same sense?

15 A Oh, yeah. I'm a mem -- yeah.

16 Q And do you pay for that membership?

17 A Yes.

18 Q What's the most that you've ever paid for admission to see
19 an exhibition somewhere?

20 A I paid \$25 to go to MOMA last -- last month.

21 Q Do you get special benefits for being a member to these
22 other organizations?

23 A Well, often you get access to the shows for free if you
24 want to or get into, like, wine and cheese openings prior
25 to the -- prior to the show opening. Occasionally you get

1 to meet the artist, depending on how much money you give,
2 you know.

3 MR. BRADFORD: Other than reserving time for
4 redirect, I don't have any other questions for this witness
5 at this time.

6 JUDGE BREITHAAPT: Thank you.

7 Cross-examination?

8 MR. RASCH: Yes, Your Honor.

9 JUDGE BREITHAAPT: I would just note we're at
10 quarter to 3:00, so I think we're probably still roughly on
11 schedule. In part that depends on the length of this cross
12 and the time you expect to leave for your witnesses, but...

13 MR. RASCH: I'll try to be as efficient as
14 possible.

15 JUDGE BREITHAAPT: Yeah. I don't mean to rush
16 you.

17 MR. RASCH: No, no, no. I appreciate that.
18 Thank you.

19 JUDGE BREITHAAPT: It's your case and you have
20 a right to come back. None of us may be here, but
21 you'll...

22 CROSS-EXAMINATION

23 BY MR. RASCH:

24 Q Mr. Jamison, I want to refer you back to Exhibit 22, which
25 is the DMV application.

1 A Yes.

2 Q I'm a little confused about sort of the timing here. If
3 you could explain it to me. It looks like this was from
4 12/15/08. You said YU didn't exist at that time; correct?

5 A As a nonprofit or...?

6 Q I'm just trying to figure out what your connection to this
7 address and property was in 2008 and what iteration that
8 was.

9 A Mm-hmm. In 2008 the property had been or -- had been
10 purchased by what was known as Alter LLC. That LLC was --
11 was owned by Laurel Knapp, the ex-wife of Curtis Knapp, and
12 Curtis is the cofounder of Yale Union.

13 Q How do you know Curtis?

14 A I started a nonprofit art space in Anacortes, Washington,
15 in 2002, and that was also an art exhibition and music
16 performance space. And Curtis, as a musician, came and
17 played multiple concerts there. That exhibition space,
18 that art center, lasted until 2010.

19 Q And was that something that you were the founder of or --

20 A Yes, I founded it. It's called Department of Safety. It
21 was an old fire station in Anacortes.

22 Q And what sort of -- what was the reason behind it closing?

23 A It got cold. Yeah. I went to grad school, and new
24 leadership took over at some point, you know. And I think
25 in one of the winters -- in the 2010 winter it was

1 specifically really frigid. And there was no money left in
2 the bank account, so it folded.

3 It was never -- yeah. There was a lot more investment
4 volatility in that project than Yale Union.

5 Q Was it -- was it a similar model as Yale Union --

6 A No.

7 Q -- how you --

8 A No, no, no. There wasn't -- there wasn't, like, the --
9 there wasn't like this is the vision or anything.

10 Young kids graduating from undergraduate art college
11 started a punk house in a fire station, and we put on
12 concerts and exhibitions. That was -- that was when I was
13 22, you know? Now this is many, many years later.

14 Q And I don't mean any disrespect, because this is going by
15 how you described it, but how is Yale Union any different
16 than slightly older art school graduates getting together
17 and partying in a building --

18 A Cool. No disrespect.

19 Q No. I'm not trying to. That's what I'm trying to
20 differentiate here.

21 Is it -- see where I'm getting at in terms of what the
22 difference is between Department of Safety -- is that what
23 it was called? -- and Yale Union, how they differ?

24 A Well, it's -- it's like night and day. And especially
25 because I don't have the luxury of you knowing what

1 Department of Safety really was, I can't -- it would be
2 hard for me to explain it cogently.

3 Nevertheless, Yale Union is ambitious, and we are --
4 we are built for a public of Portland. We are presenting
5 work that has never -- that would never get to be here
6 otherwise. It -- we're making exhibitions that are, you
7 know, between \$30,000 and now \$50,000 each.

8 Department of Safety, we were just -- you know, it was
9 just \$10.

10 Okay. So is there a financial equivalent to the -- to
11 the youth and age equivalent? I don't know.

12 You know, are you suggesting that, oh, because it
13 closed down, Yale Union's also going to close down?

14 Q No, no, no. No. I'm just trying to figure out the
15 different --

16 A Right. Yeah.

17 Q -- sort of art model.

18 MR. BRADFORD: And I'm going to go ahead and
19 object to the relevancy of this. This is way outside the
20 scope of the timeline that we're talking about or anything
21 to do with the property that we're trying to get exemption
22 for.

23 JUDGE BREITHAUPT: I was going to say I
24 question what the relevance is. What is the relevance?

25 Q (BY MR. RASCH) Well, you pretty much -- you earlier

1 testified that Yale Union isn't an art museum. That's how
2 you -- that was your prior testimony.

3 MR. BRADFORD: And I'm going to --

4 A It's pedantic, you know.

5 MR. BRADFORD: I'm going to object to the
6 characterization of that. My objection to the prior
7 question still stands.

8 JUDGE BREITHAUPT: I would agree. What I think
9 what the gentleman said is that he didn't name it "Museum"
10 because --

11 MR. RASCH: Then I could be wrong, but I
12 thought it was -- the mission was to collect and not
13 produce. It's not a museum in that regard.

14 THE WITNESS: We do not collect.

15 MR. BRADFORD: Objection still stands.

16 JUDGE BREITHAUPT: Yeah. I mean, you can ask
17 him, but if you're saying -- if you're trying to -- well,
18 not trying. If you're characterizing his testimony from
19 earlier, my recollection of the testimony in answer to a
20 question from Mr. Bradford was, "Well, given what you do,
21 why didn't you call this Yale Union Art Museum?" And he
22 said, "Because we don't collect art and display it. We
23 work with artists to produce art for the public to
24 experience." That was his answer.

25 MR. RASCH: Right. And then I believe -- and I

1 could be wrong, but I believe he followed up but --

2 JUDGE BREITHAUPT: Now, why don't you now take
3 him with what you believe he may have said and ask him
4 whether he said it.

5 Q (BY MR. RASCH) Do you --

6 MR. BRADFORD: And my objection still stands to
7 the relevance of the prior project that's not at issue
8 here.

9 JUDGE BREITHAUPT: Ah. Ah. Ah. Very well.
10 Very well. Haven't gotten there yet on that objection.
11 And I don't understand the relevance of the Safe -- the
12 Department of Safety.

13 MR. RASCH: Well, what I was trying to get at
14 here is sort of the mindset of the founders.

15 JUDGE BREITHAUPT: Well, let me ex -- let me
16 remind you, coming from Multnomah County, is it not the
17 case that special assessment, valuation, and exemption are
18 a year-by-year matter?

19 MR. RASCH: Yes.

20 JUDGE BREITHAUPT: Then what relevance would
21 some year long, long ago and far away, in a world in which
22 there's a sales tax, Anacortes, Washington -- no. I don't
23 understand the relevance.

24 That gentleman had views and experiences then. He had
25 views and experiences during the tax year in question. I'm

1 going to sustain the objection.

2 MR. RASCH: Okay.

3 JUDGE BREITHAUPT: And so I don't want to
4 wander -- I don't want you to wander into prior years and
5 spend either time or effort on them.

6 MR. RASCH: Sure.

7 MR. BRADFORD: Thank you, Your Honor.

8 Q (BY MR. RASCH) Mr. Jamison, do you consider YU a museum?

9 A You know, it depends on who you talk to.

10 Q Can you elaborate on that a little bit?

11 A Well, if I'm talking to you, yes.

12 Q In your heart of hearts, do you consider it a museum?

13 A The word "museum" in Europe means something other than the
14 word means in here. I consider it a Kunsthall. That's what
15 I consider it.

16 Q Okay. And going back to your discussion or testimony about
17 Veneer, how much of Veneer's business is conducted at YU?

18 A Well, like I said, there isn't -- there isn't a lot of
19 business.

20 JUDGE BREITHAUPT: For my -- for my help, what
21 do you mean by "business"?

22 MR. RASCH: Whether that's --

23 JUDGE BREITHAUPT: Or maybe would you help the
24 witness by --

25 THE WITNESS: Yeah. Great.

1 JUDGE BREITHAAPT: -- explaining what you --
2 yeah. I'd ask you to help me and the witness by explaining
3 what you mean by "business."

4 Q (BY MR. RASCH) Sure. I presume a magazine doesn't make
5 itself. Is that correct, given your past experience as an
6 editor?

7 A Mm-hmm.

8 Q There's things that need to be done. There's artists that
9 need to be contacted --

10 A Right.

11 Q -- or contributors or, I presume, photographers, whoever.
12 Whoever contributes to the magazine, there needs to be some
13 coordination; correct?

14 A That's correct, that it can happen on or off-site the Yale
15 Union. You -- you know my risumi now. You know how much I
16 travel. So it just -- it's flexible.

17 Q Is there specific space at Yale Union that's dedicated to
18 Veneer --

19 A No.

20 Q -- business?

21 A No.

22 Q You testified that the print shop, the actual print presses
23 that are there --

24 A Mm-hmm.

25 Q -- two owned by Gary -- can you --

1 A Robbins.

2 Q -- Robbins and then by Emily Johnson. Does YU actually own
3 any print presses that are at the print shop?

4 A No.

5 Q So the work that's done on behalf of YU is done -- on
6 behalf of YU for their exhibits, as we discussed earlier,
7 is done by these two other entities; is that correct?

8 A Exactly. Yeah. It's a trade.

9 Q And what's the trade?

10 A We offer -- we offer space. This is -- and they offer
11 product -- or service.

12 Q Do they pay rent at all?

13 A No.

14 Q And so they get to use YU space to conduct their business
15 commercially to the public, and in exchange they --

16 A Produce for us.

17 Q -- produce for you for no charge?

18 A Exactly. And they're also -- they're considered staff. As
19 Jenny said, they volunteer for us all the time. They're
20 part of our meetings. They give tours to anyone who comes
21 by, et cetera.

22 Q Before I forget, looking back at Exhibit 22, this is DMV --
23 the infamous DMV application here. You said you've been
24 residing at the address for 12 years?

25 A Where?

1 Q Is that -- I could be wrong, but it says "How long have you
2 been" -- it's next to where you listed Portland, Oregon
3 97214. Do you see that? It's hard to make out that last
4 word, but --

5 JUDGE BREITHAAPT: "How long have you been
6 driving?"

7 MR. RASCH: Is that -- mine's smudged out. I
8 can't --

9 JUDGE BREITHAAPT: Well, mine is too, but I
10 guessed. I mean, I should say I guessed the word
11 "driving."

12 THE WITNESS: I think that's "driving."

13 JUDGE BREITHAAPT: Well, we could ask you. How
14 old were you in 2008?

15 MR. RASCH: Well --

16 JUDGE BREITHAAPT: '79, '89. About 19. 18, 19
17 years old.

18 THE WITNESS: Yeah. I mean, what happened is I
19 had a brain tumor. Brain tumor was -- you know, I -- that
20 made me epileptic. I wasn't able to drive through high
21 school. I got -- I got off meds around 18 -- when I was 18
22 or 19, started driving.

23 Q (BY MR. RASCH) Okay. That's what I was trying to -- I,
24 for some reason, assumed it meant how long have you been
25 living there, but I was incorrect. So thank you.

1 You said the library is open to the public. And I
2 think the question was asked, "Well, how would the public
3 know it was there?" And your response was...?

4 Can you go ahead and address that because --

5 A Yeah. The web -- it's on the website.

6 Q On YU's website?

7 A Yes.

8 Q Is there any sort of other advertisement of the existence
9 of the library of any kind anywhere else to the public at
10 large?

11 A No, not that I can think of offhand. Various support
12 materials we've sent out to donors it will be spoken about.

13 I need to clarify that, like, our -- you know, when we
14 talk -- we were talking about flyers earlier that we
15 really -- you know, the majority of our -- the majority of
16 our outreach is through social media. That's -- that's
17 really where we get our audience, so...

18 Q So through your Facebook or Twitter?

19 A Twitter, Facebook, Instagram, these things, yeah.

20 Q And is the library typically something that's listed on
21 those mediums?

22 A Not recently. We got -- we had a big donation. Or not
23 donation, but we were able to collect a large serious
24 contribution of books in the middle of last year, which
25 meant 2015, and we were able to talk about it at that

1 point.

2 We don't like -- I think people would get annoyed if
3 we just are talking about this tiny library that they could
4 come visit, but...

5 Q Is it by appointment only?

6 A It's by appointment only, yeah.

7 Q You also mentioned that there's for-public exhibition --
8 large-scale exhibitions, as you described them?

9 A Mm-hmm.

10 Q And they're all in the summer months, basically; is that
11 correct?

12 MR. BRADFORD: Objection. That misstates
13 testimony.

14 JUDGE BREITHAAPT: Why don't you just ask him
15 when they were.

16 Q (BY MR. RASCH) When are those large for-public exhibitions
17 typically?

18 A They generally -- let's say mid-March, you know, through
19 all the way into December.

20 Q Okay. So it's more than just the warm months, I believe is
21 how you said?

22 JUDGE BREITHAAPT: It's going to be 850 this
23 week.

24 MR. RASCH: Yeah. But you can't plan ahead for
25 that in Portland.

1 JUDGE BREITHAUPT: Oh, no, no, no. I almost
2 got snowed out of a Little League game in April.

3 Q (BY MR. RASCH) I'm just trying to get an understanding --

4 A An example would be that, like, this year our programming
5 is just now -- is just now beginning, something like that.

6 Q In 2014/2015 time frame, what was the -- sort of the
7 exhibition date range?

8 A I would have -- I would have -- hopefully that's in --
9 that's been stipulated. I don't know off the top of my
10 head.

11 MR. BRADFORD: Your Honor, I'll represent to
12 the Court that that would be absolutely in our
13 stipulations.

14 JUDGE BREITHAUPT: Okay.

15 Q (BY MR. RASCH) And when you bring -- when YU brings the
16 artists in to -- you described a process by which the
17 artists are sort of engaged and then brought into -- to
18 Portland --

19 A Mm-hmm.

20 Q -- their site visits and so forth. Once they've decided to
21 go ahead and create an exhibit for YU --

22 A Mm-hmm.

23 Q -- how long -- how long typically are they here for?

24 A It depends on the -- it depends on the exhibition. Would
25 you like to give me -- would you like me to give you an

1 example?

2 Q Sure. Like what's a typical sort of -- you know, is it
3 weeks? Months? Years?

4 A Yeah. There's not a typical. But what is typical is
5 the YU staff production. And that is, like, two months
6 prior we start producing the ex -- creating the display
7 sometimes. And it totally depends on the artist, how much
8 time they would spend with us creating the display.

9 Q Do you recall what -- in the 2014/2015 time frame, what the
10 longest an artist was in town for an exhibition for?

11 A I do not recall.

12 Q Do you have any sense of -- was anyone here more than a
13 month?

14 A Oh, yeah.

15 Q And in that time, when they're here more than a month,
16 where are they typically -- what are their accommodations?

17 A Usually they stay at Jenny's, but it just depends. You
18 know, it's donors, donors' apartments, these kinds of
19 things.

20 Q Does YU ever put them up in a hotel for a month, say?

21 A No, never for a month. A lot of times we treat artists --
22 if they're, like, doing concerts or lectures, readings,
23 it's just, like, a one-night stay, we can afford a -- we
24 can afford a hotel.

25 Q And you mentioned you've never actually resided at the

1 subject property. Have you ever stayed for multiple nights
2 in a row or slept over or anything like that?

3 A No.

4 MR. RASCH: I think that's all I have, Your
5 Honor. Thanks.

6 JUDGE BREITHAAPT: Redirect?

7 MR. BRADFORD: Very briefly.

8 REDIRECT EXAMINATION

9 BY MR. BRADFORD:

10 Q Earlier there was a question about the timing in which you
11 made the DMV application in 2008 and the formation of
12 two -- and the formation of Yale Union. The parties, of
13 course, have stipulated to the fact that the organization
14 was formed in October 15, 2009. Does that refresh your
15 recollection of the timing?

16 A Great. Yeah.

17 Q So you're just a year -- or within a year of your initial
18 coming to Portland.

19 You also were asked about the library and how --

20 JUDGE BREITHAAPT: Excuse me for just a moment.
21 Is it the case that -- the organization may have been
22 formed on October 15, 2009. I'm not sure -- have we had
23 testimony as to when Mr. Jamison came to Portland?

24 MR. BRADFORD: We may need to clarify or lay a
25 little more foundation. That wasn't --

1 JUDGE BREITHAUPT: I just -- I can't remember.

2 I don't want to confuse the date of the corporation with
3 the date of his arrival.

4 MR. BRADFORD: And the date that I was
5 referring to previously was the date that comes from the
6 DMV application in Plaintiff's Exhibit 22

7 JUDGE BREITHAUPT: Sure.

8 Q (BY MR. BRADFORD) And to the best of your recollection,
9 given that those dates that we just established, the date
10 of formation of the organization in October of 2009 and the
11 date of your application backing up to December of 2008 --

12 A Mm-hmm.

13 Q -- about when do you think you arrived at Portland to begin
14 these conversations with Curtis Knapp?

15 A Right -- right here, right in 2008, is when we started
16 talking about it.

17 Q On cross-examination you were asked questions about how the
18 public would become aware of the library and their ability
19 to access it. You were asked a specific question of what
20 else besides the website would direct people to the
21 library.

22 A Mm-hmm.

23 Q Drawing your attention back to Plaintiff's Exhibit 23.

24 A I have it here. Right. This is a -- this is a printed --
25 printed document that was produced in the print shop

1 downstairs that we -- we distributed at exhibitions and
2 gave away that talks about the library and how it's open to
3 the public.

4 Q Would that be another way that the public would become
5 aware of the access or the available access to the library?

6 A Yes. Thanks for clarifying.

7 Q And then, finally, you were asked a question on
8 cross-examination that actually goes to a potential legal
9 conclusion upon which this case hinges about the status of
10 the organization as an art museum. If an art museum is
11 defined as a nonprofit organization organized to display
12 works of art to the public, would that align with your
13 understanding of the work and mission of Yale Union?

14 A Exactly. That's exactly what we're doing.

15 MR. BRADFORD: No further questions.

16 JUDGE BREITHAAPT: Recross?

17 MR. RASCH: Nope.

18 JUDGE BREITHAAPT: Thank you, Mr. Jamison.

19 THE WITNESS: Thank you.

20 JUDGE BREITHAAPT: Other than sharing the name,
21 do you bear any relationship to the famous Jamison of
22 Jamison -- well, Jamison Thomas Gallery, Jamison Gallery in
23 Portland?

24 THE WITNESS: Yeah. Exactly. In the square?

25 JUDGE BREITHAAPT: Yes, yes.

1 MR. BRADFORD: So do you have any relation?

2 THE WITNESS: No, unfortunately.

3 JUDGE BREITHAAPT: Did you say "unfortunately"?

4 THE WITNESS: Unfortunately.

5 MR. BRADFORD: Unfortunately no relation.

6 JUDGE BREITHAAPT: I once had an opportunity to
7 buy a Gregory Grenon triptych at a point when it was
8 affordable in that gallery shortly before he died, and I
9 didn't do it, and I -- and I still kick myself.

10 MR. BRADFORD: We have no further witnesses to
11 call, Your Honor.

12 JUDGE BREITHAAPT: All right. Mr. Rasch?

13 MR. RASCH: Yes, Your Honor. The County
14 Assessor calls Belinda Deglow. Deglow?

15 JUDGE BREITHAAPT: Come forward, please.

16 MS. DEGLOW: Deglow.

17 MR. RASCH: Deglow. Sorry.

18 JUDGE BREITHAAPT: We will have a pronunciation
19 practice here in just a moment.

20 I'm Breit like a light, haupt like a rabbit.

21 MR. RASCH: I even practiced it too.

22 JUDGE BREITHAAPT: Hers or mine?

23 MR. RASCH: Oh, hers.

24 JUDGE BREITHAAPT: Okay.

25 COURT CLERK: Can you state your full name for

1 the record and spell it?

2 MS. DEGLOW: Belinda Maria Deglow. Boy, that's
3 really loud. B-e-l-i-n-d-a, M-a-r-i-a, D-e-g-l-o-w.

4 COURT CLERK: Please raise your right hand.

5 (WITNESS SWORN)

6
7 BELINDA M. DEGLOW, having been first duly sworn on oath,
8 testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. RASCH:

12 Q Good afternoon. Could you please state your current
13 employment?

14 A I am a tax exemption specialist with Multnomah County
15 Assessor's Office.

16 Q And as a tax exemption specialist, what are some of your
17 responsibilities?

18 A I review applications for property tax exemptions for
19 various organizations within Multnomah County. I
20 administer the historic exemption program. I administer
21 the low-income housing program, things of that nature.

22 Q Okay. And how long have you been at the current position
23 with Multnomah County?

24 A I've been with Multnomah County for a little over six
25 years, almost seven years; in this position since, I

1 believe, April of 2014.

2 Q And what sort of training have you had with regards to
3 evaluating exemption applications and/or exemption cases?

4 A Well, I was a commercial appraiser with Marion County for a
5 few years before coming up to Multnomah County. So in that
6 position as a commercial appraiser, I would approve and
7 deny exemptions for just commercial properties when they
8 were -- when they applied for those applications.

9 Then I came up to Multnomah County later, and in April
10 I learned their process and how they go about approving and
11 denying, and I was doing them there also.

12 Q And how many exemption applications would you typically see
13 in any given year?

14 A I believe we have --

15 JUDGE BREITHAAPT: Excuse me, if I may.

16 THE WITNESS: Mm-hmm.

17 JUDGE BREITHAAPT: Can we again try to bracket
18 this with --

19 MR. RASCH: I will, Your Honor.

20 JUDGE BREITHAAPT: -- time frames?

21 MR. RASCH: I'm getting there.

22 JUDGE BREITHAAPT: Thank you.

23 MR. RASCH: Thank you.

24 A So this will be my third season as an exemption specialist.
25 It's typically a little over 600 applications, multiple

1 accounts, things like that.

2 Q (BY MR. RASCH) Do you recall in 2014/2015 approximately
3 how many exemption applications you, yourself, looked at
4 and/or examined?

5 A Oh, wow.

6 Q Ballpark.

7 A Probably a couple hundred.

8 Q So at least -- at least 200?

9 A Yeah.

10 Q And --

11 A I was new that first season, so not -- that would have been
12 probably 200.

13 Q And just to be clear: You were new to Multnomah County?

14 A To -- just to that position. I had been there April of
15 2014.

16 Q So you were new -- you were new as a tax exemption --

17 A As my -- yes. As my first season, I probably did 200 or
18 so. I'm estimating. I really -- I think I signed every
19 single approval or denial because there was nobody else
20 doing those on a full-time basis. And the person that was
21 doing them was only doing it part-time, so our
22 supervisor -- she was technically retired and working in
23 back, so our supervisor had me signing everything. But I
24 myself reviewed probably around 200 or so.

25 Q Okay. And then prior to, when you were at Marion County --

1 A Mm-hmm.

2 Q -- you also had experience with exemptions as well?

3 A Yes.

4 JUDGE BREITHAAPT: For the Court's benefit:
5 You mentioned commercial exemptions.

6 THE WITNESS: Yes.

7 JUDGE BREITHAAPT: Is that under construction
8 exemption or --

9 THE WITNESS: Well, I did do some CIP
10 applications as well, but in Marion County the appraisers
11 do everything. They do their own studies; they do their
12 appraisals; they do all the exemptions; they do all the map
13 changes, everything.

14 JUDGE BREITHAAPT: I guess what I'm interested
15 in is what commercial exemption from taxation would exist
16 other than construction work in progress or --

17 THE WITNESS: So what I mean by that is any
18 commercial property that an organization was applying for
19 an exemption for. There are residential properties that
20 also receive applications. Or people are trying to get an
21 exemption because sometimes a single-family residence will
22 be used by a nonprofit organization.

23 JUDGE BREITHAAPT: Okay.

24 THE WITNESS: And so I mean just strictly
25 commercial properties.

1 JUDGE BREITHAAPT: Okay. By the type of
2 property, not by necessarily the activity that's going to
3 go on --

4 THE WITNESS: The exemption program, yes.

5 JUDGE BREITHAAPT: -- inside of it.

6 THE WITNESS: Mm-hmm.

7 JUDGE BREITHAAPT: Okay. Thank you.

8 THE WITNESS: Mm-hmm.

9 Q (BY MR. RASCH) And are you a registered appraiser --

10 A Yes.

11 Q -- in the state of Oregon?

12 A Since 2001.

13 Q So going back to your testimony, you were saying that you
14 ballparked that first season of 2014/2015 around 200
15 exemption applications that you reviewed and processed?

16 A Yes.

17 Q Of those 200, give or take, do you have any sort of idea of
18 how many you allowed or granted versus denied?

19 A I -- I don't have a specific number, but it's not very
20 many.

21 Q Not very many granted or not very --

22 A Not very many denied.

23 Q So would you say the majority of exemption applications
24 were granted?

25 A Yes.

1 Q And I'm just going to hand you what's marked as
2 Intervenor's Exhibit 1.

3 A Thanks.

4 Q Just want you to take a look at that. And if you don't
5 mind confirming for the Court that that document there
6 accurately reflects your experience and credentials.

7 A Yes, it does.

8 Q Turning back -- turning back to the application for
9 exemption by YU Contemporary for the 2014/2015 tax year,
10 are you familiar with that document?

11 A The application itself?

12 Q Yes.

13 A Yes.

14 Q Let me go ahead and give it to you as Exhibit --
15 Intervenor's Exhibit 3. And when was it that you first saw
16 that particular application, exemption application?

17 A Well, typically our process, when we receive applications,
18 is to -- with all of them, but especially new ones, we
19 check to make sure that all of the necessary documents are
20 there and the articles of incorporation, the bylaws,
21 501(c)(3) letter, all that. So once all of those things
22 are verified, we put it in a drawer and we pull from there
23 to go out and do field visits or do any -- work the file,
24 basically.

25 So there's kind of a preliminary process, and then

1 there's the actual field visits and decision making that
2 takes place.

3 So the first time I saw this was when I pulled it from
4 the drawer to do the field visit, make a decision.

5 Q Okay. So at that point when you first saw it, there hadn't
6 been a decision made as to whether there was an exempt --
7 whether the exemption application was approved or denied?

8 A No.

9 Q And so going back to your testimony about the process, so
10 it sounds like what you're saying is that an application
11 comes in. When an application comes in, do you review it
12 for accompanying documents, or how does -- how does the
13 process typically work?

14 A Well, for existing organizations, if we already have all of
15 the articles and that, we don't typically ask for a lot
16 more unless it's been a long time since we've reviewed all
17 of those things. We will sometimes ask for updated
18 financial documents, things of that nature, anything that
19 will give us some information about how the organization is
20 operating, because organizations do evolve over time. I
21 mean, I think even YU plans on evolving. So we do like to
22 try and get more information.

23 For new organizations, we try and ask for those things
24 up front.

25 Q So "those things" being their articles of incorporation and

1 bylaws?

2 A Yes.

3 Q Anything else?

4 A We do -- we typically now -- I don't know that this has
5 always been the case -- we ask for information about their
6 gift and giving when it's a charitable organization; we ask
7 about their programming, things like that.

8 Q Do you know if that was the case in 2014/2015?

9 A I don't know if that was the case in this case, and I'm
10 guessing it's not because I asked for some of those things
11 after the fact, so...

12 Q And so -- and so I want to try and limit, for purposes of
13 your testimony --

14 A Mm-hmm.

15 Q -- to that time frame of 2014/2015. So once the
16 application and the --

17 JUDGE BREITHAUPT: Again, for my benefit: What
18 I heard the witness just testify to, I thought, was "In
19 some cases I would have -- in some cases there would be
20 inquiry regarding gift or giving or other program, but I
21 don't believe I did that here until after the fact." And I
22 interpreted that to be until after the denial.

23 THE WITNESS: No. I meant after the field
24 visit.

25 JUDGE BREITHAUPT: Oh, okay. After the field

1 visit.

2 THE WITNESS: Right.

3 JUDGE BREITHAUPT: Thank you.

4 THE WITNESS: Mm-hmm.

5 Q (BY MR. RASCH) So you got the application, reviewed the
6 articles and bylaws, conducted a field visit, and then
7 inquired about the additional documents, the gift and
8 giving?

9 A Yes. I think that there -- I think they might have
10 provided some of the publications of the art exhibits, but
11 nothing about -- we will ask sometimes -- well, typically
12 we ask about funding, how do you account for the funds,
13 what is your gift and giving, that kind of thing.

14 Q When you receive the documents, the articles of
15 incorporation and bylaws, what sort of -- what are you
16 looking for --

17 A Well --

18 Q -- or what sort of analysis are you giving it?

19 A We look at the mission of the organization. Sometimes it's
20 very generic. It just says that it's operating under the
21 necessary kind of mission of receiving a 501(c)(3), it's
22 charitable, scientific, or otherwise.

23 Sometimes we're lucky enough to get a little bit more
24 than that, and they expand on how they're doing that, what
25 the purpose is beyond just that.

1 JUDGE BREITHAAPT: Excuse me for just a moment.

2 THE WITNESS: Mm-hmm.

3 JUDGE BREITHAAPT: Counsel, I'd like to talk
4 with you. Rather than everybody else leave the room, we'll
5 leave the room.

6 MR. RASCH: I'm just going to leave the door
7 open.

8 JUDGE BREITHAAPT: No, no, no. Please.

9 (Pause in the Proceedings)

10 JUDGE BREITHAAPT: Okay. I want to assure the
11 witness, by the way, this has nothing to do with you, other
12 than the coincidence of the fact that you happen to be on
13 the stand at this point.

14 MR. RASCH: So --

15 JUDGE BREITHAAPT: Please go ahead.

16 Q (BY MR. RASCH) Okay. I'm going to go ahead and
17 fast-forward a little bit here. I want to try to
18 fast-forward to your investigation, what you -- what you
19 did in terms of determining whether or not YU wasn't
20 exempt -- whether or not they were exempt, their
21 application would be approved or denied.

22 So if you could sort of explain what you did to
23 investigate that and go further.

24 A Okay. Well, I just want to clarify that although I was new
25 to the position in Multnomah County, I wasn't new to the

1 process of reviewing organizations and how to make the
2 determination because of my experience with Marion County.

3 So when I saw the application, I looked through what I
4 had. I went to do the site visit. And I was surprised by
5 what I saw. There was a lot of vacant space.

6 Commercial tenants to me weren't a big deal. We have
7 a lot of organizations where they sublease out to a
8 commercial tenant, and that's taxable. And they know it,
9 and it's not an issue. So I wasn't worried about the
10 taxable tenants, but there was just a lot of vacancy.

11 On the first floor it looked like they were building
12 it out for what turns out to be, I think, Rainmaker or
13 somebody else now. The mezzanine appeared to have two
14 people living there.

15 And I believe I did ask Jenny about the spaces, and
16 she said, "People stay here for a few months before they
17 actually do the exhibit."

18 And I said, "You mean -- wait. They stay here before
19 the exhibit or during, like, while their exhibit's taking
20 place?"

21 She said, "No. While the exhibit's taking place, we
22 put them up in a hotel typically for the opening weekend
23 that are the exhibit, but they don't stay here at that
24 time."

25 So the impression I was left with, then, after

1 seeing -- and the reason I asked the question was because I
2 saw clothes, I saw beds, I saw a cat. That was indicative
3 of a loft that somebody was staying, in a studio apartment.

4 Q And when you say "Jenny," are you referring to
5 Ms. Martin --

6 A Yes.

7 Q -- the witness earlier?

8 A Sorry.

9 Q Okay.

10 A So -- but I did ask the question.

11 Then we went to the -- we actually -- when we started
12 out, we started in the first floor. I saw all of that
13 space. I saw the space they moved from and the space they
14 moved to.

15 Q So when you -- let me -- sorry to interrupt you, but you're
16 saying you went and you inspected each of the floors of the
17 building.

18 A Yes.

19 Q And you started with the first floor?

20 A Yes.

21 Q And when you say "the space that they moved from to the
22 space they moved to," are you referring to the space YU
23 moved from --

24 A Within the building.

25 Q -- from their administrative offices to the space they

1 ended up -- that YU ended up moving to?

2 A Yes.

3 Q All right.

4 A And it did take me some time to find the door because
5 there -- there isn't a lot of signage. The space -- the
6 door that I actually went into just opened up into a
7 corridor where there were bikes hanging. There was no
8 formal entrance or anything like that.

9 They had moved from the south side of the building, on
10 the Belmont side of the building, over to the north side,
11 on the Morrison side of the building.

12 So all of -- other than the space that they were in on
13 that first floor that they were moving to, everything in
14 the what I would call office space was empty, completely
15 empty.

16 There were items in the warehouse space, and there was
17 a coffee manufacturer and chocolate company that were --
18 had a build-out, their own space that they were using.

19 Q And when you say "warehouse space," what space were you
20 referring to? On the first floor?

21 A Yeah.

22 Q Okay.

23 A There's only one warehouse space in the building. So
24 that's on the first floor.

25 JUDGE BREITHAUP: If I may --

1 THE WITNESS: Mm-hmm.

2 JUDGE BREITHAAPT: -- was it clear to you whose
3 warehouse it was?

4 THE WITNESS: No.

5 JUDGE BREITHAAPT: Thank you.

6 THE WITNESS: Oh, did you have another
7 question?

8 Q (BY MR. RASCH) Were you able to make a determination from
9 your initial inspection of what was being used for YU
10 purposes, what was being used for commercial purposes?
11 Could you make that distinction?

12 A For the chocolate space and the coffee space, that was
13 easy. There were items in the warehouse space that I
14 didn't really know because it also looked like they were
15 still working on some of the build-out, not only in the
16 warehouse space where the coffee and chocolate people were,
17 but also in what's kind of the office space on the first
18 floor. They had been doing some tenant improvements. And
19 so I didn't know if some of those were materials for that
20 or not.

21 But I did ask. I asked what those -- what that space
22 was used for, and she said it was YU space.

23 Let's see. And so that was the first floor. So I
24 measured those spaces.

25 And then we went down to the basement. And in the

1 basement there was a music studio, or she called it the
2 music studio. There was some music equipment there. It
3 was a pretty casual atmosphere.

4 We went over and we saw the -- she showed me where the
5 boiler room area was and the river. She said -- she
6 indicated that they had rented it out, I believe, to film
7 Grimm at some point.

8 Q To -- I'm sorry. To what?

9 A To film -- for film production for the show Grimm. I
10 believe that's what it was.

11 Q So they rented that boiler room space out for --

12 A Yeah. It's really scary down there. So I think it wasn't
13 very --

14 Q So let me -- let me make sure we get -- this is clear.

15 So you said that you were informed that they rented
16 this space out to film the TV show Grimm --

17 A Yes. I believe that was the show.

18 Q -- or a scene or something there?

19 A Mm-hmm.

20 Q Okay. Was that -- do you -- did you have any idea of when
21 that was?

22 A No. She didn't indicate a time frame. She just mentioned
23 that they had filmed it there.

24 Q Okay.

25 A I don't think they filmed it there regularly. At some

1 point in time they rented the space out.

2 JUDGE BREITHAUPT: Excuse me.

3 THE WITNESS: Yes.

4 JUDGE BREITHAUPT: The word "they."

5 THE WITNESS: YU. That's who I meant.

6 JUDGE BREITHAUPT: And that's what Ms. Martin
7 said?

8 THE WITNESS: I believe what she said was
9 that -- I don't want to say exactly what she said as the --
10 what she said was, "We've rented -- this space has been
11 used in Grimm." And I believe she said, "We rented it out
12 for use in the show Grimm."

13 JUDGE BREITHAUPT: Thank you.

14 THE WITNESS: Uh-huh.

15 MR. BRADFORD: And Your Honor, of course,
16 instructed plaintiffs earlier about not objecting to
17 questions posed by the Court. We'll just ask the Court to
18 take judicial notice that this would otherwise be subject
19 to a standard hearsay objection about who is -- who is
20 being quoted here and what it's being offered to show.

21 Q (BY MR. RASCH) Okay.

22 A So we went through the hallway over to where the printers
23 were. And there was -- I took pictures of all of these
24 spaces. I took pictures of the printing press. I asked
25 about the items that were being stored along the wall. She

1 said that those were exhibits that they hadn't yet sent
2 back. So I just assumed that that was all exempt space.

3 And she indicated that the printing presses were used
4 for YU publications.

5 Q Did you have any understanding of who owned the printing
6 press or printing presses or anything like that?

7 A No. I didn't know that any other businesses were operating
8 out of that printing press until after the fact when I did
9 some research on-line.

10 Q Did you have any indication that any other of the tenants
11 were using that space, the basement space?

12 A No.

13 Q Okay. So after you reviewed the basement and the first
14 floor, did you go up to the mezzanine level?

15 A No. I believe we went up to the second floor.

16 Q Which is the main exhibit space?

17 A Yes.

18 Q Okay. What did you observe there?

19 A There was a portion of the main hall that was being used as
20 an exhibit when I went. There was a photographer there
21 that was taking pictures of the exhibit. Those --

22 Q What sort of exhibit did you see?

23 A A lot of wrappers and gum on tiny needles, an enlarged
24 table like this, lots of tables with -- it was -- it was a
25 display. It wasn't just strewn about without any kind

1 of -- I mean, it was clearly an art exhibit.

2 Q Okay.

3 A And it was -- it looked like there was a temporary wall
4 there that kind of separated that space on that main floor.

5 And then when I turned around to the other direction,
6 looking south, there was kind of a little bit -- it's not
7 completely walled off, but a separate space that had a
8 music speaker there, and I think there was -- might have
9 been a microphone stand there.

10 Q When you said you saw something that you thought was
11 clearly an art exhibit, what amount of space was that
12 taking up in the whole exhibition space?

13 A I think it was a little bit less than half of part of the
14 exhibit space. That -- that big hall is --

15 Q So if you turn around and look behind you, are you able to
16 indicate there or see there where that exhibit was?

17 A I would say it's -- it probably stopped where that second
18 rock is, the second big rock.

19 Q And where did it start from? Against the wall?

20 A Yeah, against the far wall, came up to about --

21 Q Is the far wall toward the second big rock, so the rock
22 closest to -- I guess we're looking at the white rock?

23 A No. The yellow rock.

24 Q The yellow rock?

25 A Mm-hmm.

1 Q Okay. And what was the rest of the -- what did the rest of
2 the space have?

3 A Nothing. It was empty.

4 And if you -- if you stand where these red bricks are
5 and you turn the other direction, just completely do a 180,
6 there's -- it's a separate -- it is a separate space. It's
7 not a huge wall with a small entry, but it is a separate
8 little space.

9 And that is where I think they do their concerts, from
10 my understanding anyway. And there was a speaker there
11 and, I think, a microphone stand there. So that whole
12 space, including the music portion, probably was maybe a
13 third of the space.

14 Q Okay. You mean a third of the space that was --

15 A From wall to wall.

16 Q And what was a third of the space?

17 A The exhibit.

18 Q Okay. Was there anything else that you observed on that
19 level?

20 A No.

21 Q Did you observe the rest of the rooms or spaces on the
22 second floor?

23 A Yes. When you come up the staircase, there's -- I think
24 she called it kind of an open area. There was -- it was
25 empty. There was no art or anything like that.

1 And then off on the other side of that open area,
2 there were some -- some smaller rooms. And I think one of
3 the pictures in there showed, like, a bed with some linens
4 in it. And the rest of it was really empty, maybe a desk
5 in there.

6 But they were -- they were empty. There was no art in
7 any of those spaces.

8 I saw the kitchen and bathroom with a shower.

9 Q So the bathroom with the shower's on that same level?

10 A Yes.

11 Q Was there any activity in the kitchen that you witnessed?

12 A I think somebody might have been in there having a bowl of
13 cereal or something.

14 Q Did you review any of the financial documents? Or let
15 me -- let me go back. So I just want to make sure we get
16 the full, complete inspection here.

17 So other than the -- did you next then go to the
18 mezzanine level?

19 A Yes.

20 Q Okay. What did you observe there?

21 A There were -- there was one person that was in one of the
22 spaces. There were -- there was a bed in there. Well, in
23 both spaces, there were beds in there. There were clothes.
24 There were books. There were bikes.

25 I think that's one of the things that caught me a

1 little bit off guard, that there were bikes in there when
2 there's a bike rack downstairs. For anybody that's leasing
3 space or working there, there was a bike rack downstairs.
4 But in this case their bikes were actually in what I
5 would -- what I considered to be their living space, things
6 like that.

7 Q Okay. Did you inspect any other portion of the building?

8 A I think that was about it. After I was done, I took
9 pictures of the outside.

10 And I did leave Jenny with -- she indicated that
11 Rainmaker was going to be moving in. So I asked her if
12 Rainmaker was a nonprofit, and she said she believed that
13 they were. So I left her with an application for exemption
14 for a nonprofit and said that if they were going to be
15 using the space, they needed to apply also.

16 Q Okay. And so what did you do after the inspection to sort
17 of continue to process or make a determination about the
18 exemption application?

19 A Afterward I knew that I was -- initially I was thinking I
20 was going to have to parse out the spaces that were taxable
21 and exempt. So I emailed Jenny, and I asked her some
22 questions about the space.

23 I asked her for copies of leases. I asked her if the
24 artists paid rent. Let's see. And I think I asked her for
25 a copy of a building schematic if she had it.

1 Q And when you say "Jenny," again, you mean Ms. Martin?

2 A Yes. Sorry.

3 Q And what was her response to when you asked her if the
4 artists pay rent?

5 A She said no, they don't pay rent, but they're there for a
6 few months. She didn't say they didn't live there. She
7 didn't say they didn't stay there -- that they stayed
8 there. She just said they're typically there for a few
9 months.

10 Q Did you ask or get an opportunity to review any financial
11 documents for the organization?

12 A I looked on-line and looked at the financials that they do
13 provide. They actually do provide some information
14 on-line. And I did get a profit and loss statement. Don't
15 recall whether or not I got that before the denial or
16 after. It might have been after.

17 Q Was there anything that stuck out to you from -- from
18 review of those financials that, you know, led you to
19 conclude one way or the other whether they were exempt?

20 A I would say there was nothing on the financials that was a
21 definitive, "Oh, this doesn't qualify." It was the sum
22 total of everything that I saw and I had discovered in
23 researching the organization and the uses of the building
24 and the founders and all of that.

25 I was looking at it as needing to meet the three tests

1 of a charitable organization, what was the primary purpose
2 of the organization, was it charitable. And what I found
3 was that -- or my take on it was that they were -- they
4 have a goal of helping emerging artists. They're trying to
5 give them a venue, a platform to help develop them as
6 artists. That, to me, isn't a charitable purpose.

7 They didn't mention anything in their website about
8 having an education program. They didn't mention anything
9 about if your school wants to come and tour the property or
10 visit an exhibit. I didn't see anything on the website, at
11 least at that time, about educational opportunities for the
12 public.

13 Q And so you say -- when you say that the goal of helping
14 emerging artists and so forth didn't seem charitable to
15 you, did you have a criteria that you were basing that on
16 or --

17 A To --

18 Q -- how did you come to that conclusion?

19 A To me it seemed like the people that were help -- it was
20 going to be helping or it helps are the artists. It's --
21 which isn't a bad thing. It just doesn't help the public
22 in any way.

23 I didn't see anything on there that specifically --
24 and I do see it on other websites where they talk about,
25 you know, trying to give -- make accessible to people that

1 wouldn't otherwise, you know, have access or afford this
2 exposure to art. It didn't -- it didn't jump out at me as
3 that being the primary objective of the organization. It
4 jumped out at me that there were founders -- both founders
5 of the organization seemed to be operating businesses out
6 of there.

7 I went to the website, and I looked at -- I wasn't
8 expecting to find it, but when I looked at the printing
9 press, it said that there were two people running separate
10 businesses out of that space. That is always automatically
11 a taxable space, when there's a for-profit business
12 operating out of a space like that.

13 There seemed to be such an intermingling of for-profit
14 uses. The big question was: Is this benefiting their
15 members or a specific group of people, or is it benefiting
16 the public?

17 And I didn't think that it met that burden. I didn't
18 think that it was operating in a manner to further a
19 charitable purpose. I didn't see any gift and giving. I
20 didn't see any -- anything of that nature.

21 Q When you received the application for exemption, did you
22 approach it from a perspective of a charitable organization
23 seeking exemption or an art museum seeking exemption?

24 A I looked at it as a charitable organization from the
25 beginning. After the fact, the issue of it being an art

1 museum was brought up, which was never represented to me in
2 that way before the appeal.

3 But I still -- in my understanding of the statutes,
4 just like with scientific organizations and literary
5 organizations, they still have to meet that burden of being
6 charitable, so...

7 Q And why did you approach it initially from a charitable
8 organization standpoint? Was it based on the application
9 itself? Or what made you think that that was what was
10 being applied?

11 A Just based on the application. We have -- we have other
12 art organizations that don't present themselves as arts --
13 art museums. They are -- they consider themselves to be
14 arts organizations, and they apply under the same statute,
15 under 130.

16 Unfortunately, the form is short and doesn't give a
17 lot of opportunity to maybe delineate which -- what you're
18 exactly trying to apply under. But that was how I looked
19 at it.

20 Q Would it have changed your opinion one way or the other had
21 they -- whether they applied as an art museum or a
22 charitable organization ultimately on the application
23 itself?

24 A Well, after reading the statute and looking at --
25 my understanding of it is that it really -- it really

1 didn't make a difference whether they were an art museum or
2 not because they still have to meet that charitable test.

3 JUDGE BREITHAUPT: All right. Excuse me for
4 just a moment.

5 Mr. Rasch, I want to just be very careful here.
6 Earlier I understood you to say it's either charitable --
7 either art museum or charitable or neither, either art
8 museum or charitable or both. That is to say, your view --
9 and, again, this is -- I'm not suggesting you did anything
10 wrong necessarily. I'm just saying this witness's
11 testimony is different from the position that you apprised
12 me of earlier, or at least that's the way I view it. Am I
13 viewing it wrongly?

14 MR. RASCH: No, Your Honor. I think -- I think
15 we're taking the -- we've taken the position that it's an
16 art -- it could either be an art museum or a charitable
17 organization or both or neither.

18 JUDGE BREITHAUPT: But, for example, the
19 test -- the tests for charitable organizations, such as
20 gift or giving, might not apply to art -- or are you taking
21 the position that all of the tests of charitable also apply
22 to art museum?

23 MR. RASCH: No, not necessarily. Based on the
24 statute, I think --

25 JUDGE BREITHAUPT: Good. Because I -- because

1 other -- if you said "yes" to that, I'd say, "Well, then it
2 doesn't make any difference." There's no point in saying
3 museum or charitable or both. It would just be charitable.

4 MR. RASCH: Well, no. I think it's -- if it's
5 an art museum, it -- and it's being exclusively and
6 primarily used to display art, under the statute then it
7 could qualify for exemption --

8 JUDGE BREITHAAPT: Okay.

9 MR. RASCH: -- or it's a charitable
10 organization that could qualify for exemption.

11 JUDGE BREITHAAPT: I think we're clear on that,
12 and thank you for allowing me that interruption.

13 THE WITNESS: No problem.

14 Q (BY MR. RASCH) Based on your review and investigation of
15 the subject property, did you feel that it was being
16 primarily used as an art museum, given what you witnessed
17 and further investigated?

18 A No.

19 Q And why is that?

20 A Well, that was because even though some of the spaces were
21 vacant at the time, their intended use was commercial
22 leases. The time that they actually have exhibits there
23 seemed to be pretty minimal, and the revenues that they
24 were receiving from those exhibits was pretty minimal in
25 comparison to the number of events, like rental events, and

1 the revenues that they were generating from that.

2 JUDGE BREITHAUPT: When you say "rental
3 events," do you mean weddings?

4 THE WITNESS: Weddings and photo shoots and
5 those things.

6 JUDGE BREITHAUPT: But you don't -- but you
7 don't mean commercial rentals?

8 THE WITNESS: No.

9 JUDGE BREITHAUPT: Thank you.

10 THE WITNESS: Mm-hmm.

11 Q (BY MR. RASCH) And you differentiate the commercial
12 rentals versus the event rentals, let's say? By "event
13 rentals," I mean the weddings and the --

14 A Right.

15 Q -- other events that were hosted there.

16 A Right.

17 Q Okay.

18 A There was also the issue of there being -- the founders
19 having other ventures where they were listing these offices
20 as their primary place of business. There was also the
21 printing press businesses that were being operated out of
22 there. There was also the people that appeared to be
23 living there.

24 When I looked at everything as a whole, the financials,
25 the organization, the use of the property, everything, it

1 just didn't meet the test.

2 MR. RASCH: Okay. Thank you. That's all I
3 have.

4 JUDGE BREITHAUPT: Cross-examination?

5 MR. BRADFORD: Yes. Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BRADFORD:

8 Q The parties' stipulation was that the date of this
9 inspection that you're referring to was July 1st, 2014.
10 That was the inspection you were there for; correct?

11 A Yes. Yes.

12 Q And you didn't notify Yale Union of the date of this
13 inspection in advance; is that right?

14 A No.

15 Q "No" you did not or "no" that's incorrect?

16 A No, I did not notify them in advance.

17 Q And your prior testimony was that after reviewing the
18 application, you determined in advance that this was --
19 that they were applying as a charitable organization; is
20 that right?

21 A Yes.

22 Q And you acknowledge that the form doesn't delineate between
23 charitable organizations and art museums; correct?

24 A Yes.

25 Q You said that during your visit, you asked Ms. Martin

1 questions?

2 A Yes.

3 Q And she provided answers to your questions?

4 A Yes.

5 Q Were there any questions that you asked for which she
6 provided no answers?

7 A Not that I recall.

8 Q Your prior testimony was that you encountered evidence of
9 what was clearly an art exhibit; is that right?

10 A Yes.

11 Q Did you -- you didn't consult the organization's website
12 prior to the visit; is that right?

13 A Not that I recall.

14 Q So you weren't aware that, based on the date of the -- you
15 weren't aware, based on the date of the inspection and what
16 the parties have stipulated to in advance, that this
17 followed just a day or two after the close of an
18 exhibition?

19 A No, I was not.

20 Q You were made aware, though, upon your arrival that they
21 had just undergone significant construction on the first
22 floor; is that right?

23 A Yes.

24 Q And that they had just finished shifting offices from one
25 side of the floor to the other?

1 A Yes.

2 Q You said that part of your determination that they were not
3 properly using the space was based on vacant spaces that
4 were clearly for commercial leases; is that right?

5 A Yes.

6 Q And you said that part of your determination that they
7 weren't entitled to the exemption was based on the minimal
8 revenue they received from their art exhibitions as
9 compared to private rentals; is that right?

10 A Yes.

11 Q You said that as part of your inspection, you identified
12 what looked like beds or linens; is that correct?

13 A Yes.

14 Q You didn't actually see anybody sleeping there, did you?

15 A No, I did not.

16 Q Did you talk to anybody that said that they were sleeping
17 there?

18 A No, I did not.

19 Q Did you speak with anybody that said "I'm staying here"?

20 A No. I didn't talk to -- there was only one person that was
21 in one of the rooms when I was there. And I took pictures,
22 and that was it. I didn't speak to the person that was
23 there.

24 Q So you didn't speak to the person that was in the room at
25 the time?

1 A No. Just Jenny.

2 Q So you never actually identified any person that's living
3 at Yale Union?

4 A I have not asked anybody if they live there.

5 Q And no one has actually told you that they're, in fact,
6 living there or staying the night?

7 A No.

8 Q Your testimony was at some point that there had been
9 filming done on the property for the TV program Grimm?

10 A I believe it was Grimm.

11 Q And your testimony also was that you had no idea when that
12 happened?

13 A That's correct.

14 Q And so you wouldn't be able to say, sitting here today,
15 whether that happened before the period for which the
16 application was made?

17 A I don't know when it took place.

18 Q And based on that, you wouldn't know whether it was done
19 before Yale Union even began occupying the building?

20 A That's correct. But I believe I did look at PortlandMaps,
21 and there were film production permits taken out. I don't
22 recall the dates.

23 Q And if that were true, none of that is currently in
24 evidence; is that correct?

25 A I don't believe so.

1 Q You said that it's typically your practice to ask for
2 information regarding gift and charitable giving but that
3 that hadn't happened in this case; is that correct?

4 A Yeah. I didn't see -- typically what we ask is for
5 organizations to give us in their own words the programming
6 and services that they provide so that we get a better
7 understanding of what it is that they do. They do a better
8 job of explaining how they operate than sometimes we get in
9 the articles and bylaws.

10 Q You said that's typically what you do, but that didn't
11 happen in this case; is that right?

12 A Correct.

13 Q And you said that you hadn't done that before. Did you
14 request that information following your field visit on
15 July 1st, 2014?

16 A I don't recall.

17 Q And you said that in making the determination about whether
18 they qualified for the property tax exemption, you applied
19 the statutory language for charitable organizations, the
20 charitable organizations tests, as you testified; is that
21 right?

22 A Yes.

23 Q So you did not apply any other standard that would
24 specifically pertain to art museums; is that right?

25 A That's correct.

1 Q You mentioned that as part of your post field visit
2 investigation, you spent some time on Yale Union's website;
3 is that right?

4 A Yes.

5 Q Did you see reference on the website to exhibits or
6 exhibitions?

7 A Yes.

8 Q And did you investigate any of those specific exhibitions?

9 A Investigate in what way?

10 Q Did you visit the particular web pages pertaining to those
11 exhibitions?

12 A Yes. I read some of the write-ups that they have on-line.
13 And they provided some of the publications, which explained
14 some -- some about the artists and their medium and what
15 the exhibit was.

16 Q And did those write-ups or web pages indicate that those
17 were made available to the public?

18 A Well, they were on the web page, so it was available to the
19 public.

20 Q So the information about the exhibition was available to
21 the public, and the exhibition for which that information
22 was describing was also available to the public?

23 A Sure.

24 Q You said that you found evidence that there were other
25 businesses or entities operating out of the property?

1 A Yes.

2 Q And is that based on the stipulated facts regarding what
3 has been listed with the Secretary of State's website?

4 A Yes.

5 Q Did you actually reach out to any of the individuals listed
6 for those entities with the Secretary of State?

7 A I don't recall.

8 Q You don't recall ever actually speaking to anyone that
9 identifies an entity that's also working in the building?

10 A Well, there were various organizations, and some of them I
11 didn't need to reach out to because it was clear that they
12 were operating out of there.

13 All of the -- either because Ms. Martin had indicated
14 that they were there or that their website -- like EMpress
15 and Container Corps actually states on the website that
16 they're operating their businesses out of there. So some
17 of them I didn't need to actually go and contact them to
18 find that out. It was made apparent to me.

19 Q And just to be clear: You said some of them you didn't
20 need to.

21 A Mm-hmm.

22 Q Did you actually, in fact, reach out to anyone related to
23 any of these entities that are associated with the
24 building?

25 A No.

1 Q So you didn't speak with anyone else besides Ms. Martin
2 about the organizations or entities that are associated
3 with the property?

4 A That's correct.

5 Q And you said that it lists on websites like for EMpress or
6 Container Corps that they are operating there. Did the
7 language they are "operating there" actually appear on the
8 website or just the address was listed?

9 A On YU's website, it says that the two companies are running
10 their businesses out of YU's building. That's specifically
11 what it says.

12 Q So you found that information on Yale Union's website?

13 A Yes.

14 Q And you mentioned that all of those are operating
15 for-profit. How do you know that they're for-profit
16 organizations?

17 A Well, because typically people don't call a nonprofit
18 organization a business. So when somebody says, "I'm
19 running my business out of here," I'm assuming that they're
20 running a business for profit.

21 Q And, again, you said that somebody says "I'm running my
22 business out of here," but you didn't actually speak with
23 those people?

24 A No, I did not.

25 Q And you didn't actually check the status of those entities

1 as to whether they are profit or for-profit?

2 A I did go to their website, and they -- I went to both
3 Container Corps' and to EMpress's. They didn't indicate
4 anywhere on there that they were a nonprofit organization.

5 Q You had mentioned that as part of your inspection of the
6 building that you had seen what they called the underground
7 river in the scary space that's part of the filming.

8 A Yes.

9 Q Would you agree that the space there appears to be
10 virtually unusable for any practical reasons?

11 MR. RASCH: Objection as to her ability to
12 state what --

13 JUDGE BREITHAUPT: I'm sorry?

14 MR. RASCH: Objection as to her ability to
15 state what space is usable for what reason.

16 MR. BRADFORD: She's actually an appraiser, and
17 all of her credentials were just put in detail on the
18 record. I think she --

19 JUDGE BREITHAUPT: Absolutely. I'm going to
20 allow the question. You can ask her in her experience or
21 given her training.

22 A I believe that the spaces that are currently utilized in
23 the basement are all that you can utilize in the basement.
24 There's a corridor. There's, I believe, some formerly
25 laundry spaces there that -- I believe that the space

1 where at the time that I was there that was used for
2 storage and for the presses is pretty much all that can be
3 used. Oh, and the music studio space.

4 Q (BY MR. BRADFORD) You said that part of your consideration
5 was looking at the articles of incorporation and the
6 bylaws. Are you aware of any requirement that the articles
7 of incorporation state the organization's purpose?

8 A You know, I don't know if it says that they have to state
9 their purpose.

10 Q And when you reviewed the organization's bylaws, did you
11 see the purpose of the organization stated there?

12 A I'm trying to remember. There was two of them that were
13 there.

14 Do you have it in front of me? I've read their
15 purpose several times in different places. I don't recall
16 whether or not it was on the bylaws or not.

17 Q So I'd turn your attention to Intervenor's Exhibit 10.

18 MR. BRADFORD: Is that right?

19 MR. RASCH: Yes.

20 Q (BY MR. BRADFORD) Under the section -- or the heading of
21 Section 2, "Purpose," do you see that?

22 A Yes.

23 Q Does this refresh your recollection?

24 A Yes.

25 Q So you were aware of the organization's purpose prior to

1 your inspection in 2014?

2 A Yes.

3 Q Okay. In your experience in working with organizations and
4 reviewing applications, do businesses always immediately
5 update their registrations with the Secretary of State when
6 they move?

7 A Actually, yes, if they continue to operate, they typically
8 do.

9 Q Turning your attention now to Intervenor's Exhibit 19,
10 which has already been entered into evidence. Towards the
11 top of the page, under the heading "Renewal due," it says
12 "Yes." Do you see that?

13 A Yes.

14 Q So is it fair to say that the information here is
15 potentially out of date?

16 A I guess it depends on when it is that we looked at it. If
17 it was before March of '15, then it wouldn't have been out
18 of date. And I was there July 1st of '14. So it wouldn't
19 have been out of date at the time that I was there.

20 Q But it's possible that if the renewal's listed as needing
21 to be accomplished that it would be out of date?

22 A Can you restate that?

23 Q Sure. It's possible that if, in fact, the renewal
24 status -- that it needs to be made, that it could be out of
25 date?

1 A I guess yes. I'm not really sure what you're...

2 Q And looking to Page 2 of Exhibit 19, we can, in fact, see
3 when the last report was made --

4 A Mm-hmm.

5 Q -- prior to your visit?

6 A Yes.

7 Q And this particular exhibit is pertaining to Croma Games.
8 Just to be clear: You did not contact Croma about this
9 filing before denying Yale Union's exemption; is that
10 right?

11 A That's correct.

12 Can I say something, though? I do --

13 Q If you'll just wait for the question.

14 A Oh, I was going to say something more about not needing to
15 contact Croma.

16 JUDGE BREITHAUPT: Not until a question is
17 asked.

18 THE WITNESS: Okay.

19 Q (BY MR. BRADFORD) Turning your attention now to
20 Intervenor's Exhibit 29. Did you rely on these records in
21 determining whether to accept or reject Yale Union's
22 application?

23 A No, I did not.

24 Q Had you seen these prior to making a determination to
25 accept or reject the exemption?

1 A No. I think that these were given after the fact.

2 Q When you say "given after the fact," do you mean that the
3 County identified these following the denial of the
4 exemption application?

5 A I believe so.

6 Q Turning your attention now to Intervenor's Exhibit No. 30.
7 These have been identified and entered into evidence as
8 various DMV records. Had you seen these records prior to
9 making a determination to deny the exemption application
10 for Yale Union?

11 A No.

12 MR. BRADFORD: No further questions at this
13 time.

14 JUDGE BREITHAAPT: All right. Redirect?

15 MR. RASCH: None, Your Honor.

16 JUDGE BREITHAAPT: Thank you. You are excused.

17 MR. RASCH: I'm going to go ahead and collect
18 my evidence.

19 JUDGE BREITHAAPT: You're going to collect your
20 what?

21 MR. RASCH: Collect the evidence from the
22 witness.

23 JUDGE BREITHAAPT: Oh, I see. I thought you
24 were looking at me when you said that. I thought you were
25 going to collect something from me, and this is -- these

1 are my letter press products. I'm not giving them to you.

2 MR. RASCH: Wouldn't dream of it, Your Honor.

3 THE WITNESS: And did you give me this or did
4 he give me that?

5 JUDGE BREITHAAPT: May I assume, Ms. Deglow --

6 THE WITNESS: Deglow.

7 JUDGE BREITHAAPT: -- Deglow, that you are
8 officed in the County building and, therefore, it's a short
9 walk to the location of this property?

10 THE WITNESS: Yes.

11 JUDGE BREITHAAPT: Right. This is Belmont
12 Street. That's Hawthorne Street.

13 THE WITNESS: Mm-hmm. It's very close.

14 JUDGE BREITHAAPT: But -- Mr. Rasch?

15 MR. RASCH: Yes, Your Honor. Just one last
16 witness. The County calls Karla Hartenberger to the stand,
17 please.

18 COURT CLERK: Can you state your name for the
19 record and spell it?

20 MS. HARTENBERGER: Karla Hartenberger,
21 K-a-r-l-a, H-a-r-t-e-n-b-e-r-g-e-r.

22 COURT CLERK: What were the last three?

23 MS. HARTENBERGER: Pardon?

24 COURT CLERK: Hartenberg...?

25 THE WITNESS: E-r. E-r.

1 COURT CLERK: Please raise your right hand.

2 (WITNESS SWORN)

3
4 KARLA HARTENBERGER, having been first duly sworn on oath,
5 testified as follows:
6

7 DIRECT EXAMINATION

8 BY MR. RASCH:

9 Q Ms. Hartenberger, can you please state your current job
10 title and place of employment?

11 A I work for Multnomah County. And at the time of 2014, I
12 was a tax exemption specialist. I now am a residential
13 supervisor.

14 And as a tax exemption specialist for Multnomah
15 County, most of my duty in regards to exemptions was to do
16 field inspections to determine use and also verify the size
17 of the space.

18 Q And how long have you been -- have you been doing tax
19 exemption field inspections?

20 A From 2009 till just current.

21 Q And have you done exemption field inspections for
22 charitable organizations --

23 A Yes.

24 Q -- in the past?

25 A Mm-hmm.

1 Q At the time of 2014/2015, how many charitable organization
2 field inspections would you say you've done, roughly?

3 A I would say -- during 2014/'15?

4 Q Up to -- up till the point where you --

5 A From 2009 to 20 --

6 Q Yes.

7 A Okay. I would say about 150, 200 maybe.

8 Q Do you have any hand in determining or making the actual
9 determination as to whether or not to deny or approve an
10 exemption application?

11 A Not really. What I do is I just write up the notes stating
12 how it's being used and also the size of the space and
13 verifying the space --

14 Q Had you -- had you inspected --

15 A -- and take pictures.

16 Q Had you inspected any art museums in the past?

17 A I did go see -- oh, during that time period?

18 Q From 2009 to 2014, had you done any exemption field
19 inspections for art museums?

20 A Not that I recall.

21 Q Is that -- are art museum exemption applications typical or
22 common?

23 A We don't get very many.

24 Q What was -- what's the last one you got that you recall
25 besides this one?

1 A I don't -- haven't done any that I've...

2 Q And fast-forwarding to this particular case, what was
3 your -- what was your involvement with regards to YU?

4 A My -- can you state that again?

5 Q Sure. What was your involvement with regards to the
6 property and the exemption application in this case?

7 A Oh, the plaintiff sent over building floor plans for us to
8 look at to see if we could agree as to what space was being
9 commercially leased and maybe see if we could come to some
10 sort of agreement or settlement in the case.

11 Q Who were the plans sent to?

12 A I believe it was to Lindsay of Multnomah County.

13 Q Okay. So a former County attorney. Okay.

14 A Yes.

15 MR. BRADFORD: We're going to have to raise an
16 objection to this line of questioning per Rule 408.

17 MR. RASCH: I wasn't aware that that's where it
18 was going. I was just --

19 JUDGE BREITHAUPT: She used the magic word --

20 MR. RASCH: Well, after, after the --

21 JUDGE BREITHAUPT: -- "settlement."

22 MR. RASCH: Yeah. Sure. At the end of her
23 answer. I didn't know that that's where -- I didn't know
24 that that's where it was going. So we can agree to
25 withdraw that line of questioning.

1 JUDGE BREITHAAPT: Yeah.

2 MR. BRADFORD: So as long as there aren't any
3 further questioning going this way, Your Honor, we can just
4 move along and disregard her answer.

5 JUDGE BREITHAAPT: Caution. Thank you.

6 MR. BRADFORD: Thank you.

7 Q (BY MR. RASCH) So --

8 JUDGE BREITHAAPT: Do you understand, ma'am?
9 You're not to testify to matters involving settlement
10 negotiations.

11 THE WITNESS: Okay.

12 Q (BY MR. RASCH) And just to be clear: That wasn't my
13 understanding. Did you have any involvement out -- in this
14 case outside of settlement negotiations?

15 A No.

16 MR. RASCH: Okay. Then I have no further
17 questions.

18 JUDGE BREITHAAPT: Any cross?

19 MR. BRADFORD: I don't think that we've got
20 grounds to given the scope.

21 JUDGE BREITHAAPT: Thank you.

22 MR. RASCH: Thank you.

23 MR. BRADFORD: Your Honor, briefly, given
24 testimony that came out from -- I'm going to say it
25 wrong -- Ms. Deglow, we'd just like a momentary recall of

1 Ms. Martin to describe what she actually said.

2 JUDGE BREITHAAPT: All right. This is in the
3 nature of rebuttal?

4 MR. BRADFORD: That's correct.

5 JUDGE BREITHAAPT: Not in the nature of. It is
6 rebuttal testimony.

7 MR. BRADFORD: Correct.

8 JUDGE BREITHAAPT: Ms. Martin, come on back.
9 You can -- your grade, which was a pretty good grade, is
10 now still open. We have not had to close the final grading
11 period.

12 THE WITNESS: Right. Okay.

13 JUDGE BREITHAAPT: Just when you thought it was
14 safe to go back in the water.

15
16 JENNIFER L. MARTIN, having been previously duly sworn on
17 oath, testified as follows:

18
19 REBUTTAL EXAMINATION

20 BY MR. BRADFORD:

21 Q And I'll endeavor to be mercifully brief.

22 A Okay.

23 Q You're already under oath, and I just remind you of that
24 oath as you provide testimony --

25 A Yes.

1 Q -- momentarily.

2 We heard testimony earlier that you had said something
3 to the effect that people were staying at the property.
4 Did you hear that testimony today?

5 A I did.

6 Q Do you recall saying anything like that to the inspector?

7 A I did not.

8 Q Okay. And for the sake of argument, if you had, in fact,
9 said something like that to the inspector, what would you
10 have meant?

11 A I did describe to her our long-term plans on having an
12 artist residency program where artists would stay for
13 multiple months.

14 Q And by "long-term plans," could you put that in perspective
15 for us? For the relevant time period, were any of those
16 plans in place?

17 A No.

18 Q And in the future -- you've offered prior testimony about
19 this, in fact, regarding the intents to create a more
20 robust offering that's different than what Yale Union does
21 now?

22 A Correct.

23 Q And was your testimony that there would be more involved
24 with having to get proper permitting and approval to allow
25 such programs to take place?

1 A Correct.

2 Q And just to clarify: On July 1st, 2014, was anyone staying
3 over, staying the night at the building?

4 A No.

5 Q And has that ever happened in the time that you've been at
6 Yale Union?

7 A No.

8 MR. BRADFORD: Thank you. No further
9 questions.

10 JUDGE BREITHAAPT: This is rebuttal.
11 Cross-examination?

12 MR. RASCH: No, Your Honor.

13 JUDGE BREITHAAPT: Thank you, Ms. Martin.

14 THE WITNESS: Oh, that was so short. Thank
15 you.

16 MR. BRADFORD: That's all I have by way of
17 rebuttal, Your Honor.

18 JUDGE BREITHAAPT: Thank you.

19 Unless someone tells me otherwise, I think we're done
20 with the process of taking evidence.

21 We'll have written closing arguments.

22 Let me ask: Do you wish to have a transcript of this
23 proceeding, or do you wish to work off of either the
24 recording, in which case you would cite me -- rather than
25 to a page of an agreed-upon transcript, you would cite me

1 to a rough -- well, to a place on the tape? Or do you wish
2 to brief in a vacuum? Well, I guess I would say by memory.

3 I don't like the by memory because it's very hard for
4 me to find.

5 MR. RASCH: Right. I would prefer a
6 transcript.

7 MR. PAUL: I would prefer a written transcript.

8 MR. BRADFORD: The same.

9 MR. PAUL: I think it would be easier to cite
10 precisely to --

11 JUDGE BREITHAUPT: It will be easier to cite.

12 And I would leave it to you to arrange for both the
13 preparation of the transcript, the letter printing of the
14 transcript, and the sharing of the cost of the transcript.
15 I understand there's a letter press that may be available
16 for a very reasonable --

17 MALE SPEAKER: This might be the first time
18 since 1830 that --

19 JUDGE BREITHAUPT: I was going to say --

20 MALE SPEAKER: -- that a trial transcript's
21 been printed letter press.

22 JUDGE BREITHAUPT: When I was a young lawyer,
23 there -- which is -- believe me, this is during the Ford
24 administration -- there was a senior partner who explained
25 to me that people were much more careful about their

1 briefing for the Oregon Supreme Court and Court of Appeals,
2 and the reason was that when the brief was completed, it
3 was literally sent out and it was printed. And so there
4 was none of this go print it and then think about, "Oh,
5 wait a minute. I want to make a change," because every one
6 of those -- well, if you made a change, it was very costly.

7 So the technology has advanced, but it means -- it
8 means that people like Mr. Bradach can make changes all the
9 way up until 11:30 at night and then file them
10 electronically in federal court, which, as some of those
11 older partners said, they didn't view as progress.

12 MR. JAMISON: Right.

13 JUDGE BREITHAUPT: They liked the idea of get
14 it settled, get it printed, get it gone.

15 Okay. So you'll make arrangements for a transcript
16 and how you share the expense. You'll provide a copy to
17 the Court.

18 MR. RASCH: Yes, Your Honor.

19 JUDGE BREITHAUPT: And then you will -- now,
20 briefing schedule, may I ask you to confer among yourselves
21 and give me an agreed-upon schedule, taking into account
22 your availability?

23 I will tell you that once April 21st comes and goes,
24 I'll be out until -- because of various engagements in a
25 little bit of time here, but practically speaking until the

1 early part of June. So take -- you may take that into
2 account in terms of not stressing yourselves in order to
3 get something to me which I won't be able to see or use
4 anyway.

5 MR. RASCH: And, Your Honor, just for
6 clarification: Do you want -- is it going to be typical
7 sort of closing, response? What sort of briefing?

8 JUDGE BREITHAUPT: Again, if you would -- do
9 you think you can discuss that and agree upon it? Do
10 you --

11 MR. BRADFORD: I think we can confer and
12 develop --

13 MR. RASCH: Sure.

14 MR. BRADFORD: -- a reasonable briefing
15 schedule.

16 JUDGE BREITHAUPT: Okay. Fine. Other than
17 that, anything?

18 MR. BRADFORD: No, Your Honor.

19 MR. RASCH: No, Your Honor.

20 JUDGE BREITHAUPT: If not, thank you all. And
21 thanks to the witnesses.

22 And let me -- let me only say that I appreciated --
23 I'm the oldest person -- notwithstanding hair loss, I
24 believe I'm the -- I believe I'm the oldest person in this
25 room. And I will tell you that this has been very

1 interesting to me. Quite apart from the question of
2 exemption, it's been very interesting in terms of a view on
3 a world of art that is -- that goes beyond my Janson's art
4 history text, which I had in the 1960s. Thank you.

5 MR. RASCH: Thank you, Your Honor.

6 (End of recording)

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CERTIFICATE

STATE OF WASHINGTON)
) Ss.
 COUNTY OF PIERCE)

I, KAEDRA A. RAY WAKENSHAW, a certified court reporter for Washington State, do hereby certify:

That the foregoing transcript of an audio recording was prepared under my direction and that it is a complete and accurate transcript of the audio recording to the best of my ability;

That I am not a relative, employee, attorney, or counsel to this action or of any such attorney of party or financially interested in said action or outcome thereof;

WHEREUPON, I have hereunto set my hand this 30th day of May 2016.

Kaedra A. Ray



Kaedra Ray Wakenshaw, CCR, RPR, CRR
 CCR No. 1900

A				
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