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IN THE COURT OF COMMON PLEAS IN AND FOR  
THE COUNTY OF MONTGOMERY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

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IN RE: : NO. 58,788  
THE BARNES FOUNDATION, :  
a corporation :

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PETITION TO AMEND CHARTER AND BYLAWS

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Courtroom A  
Thursday, September 23, 2004  
Commencing at 9:30 a.m.

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MORNING SESSION

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Pamela M. Moran  
Registered Professional Reporter  
Montgomery County Courthouse  
Norristown, Pennsylvania

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21 BEFORE: THE HONORABLE STANLEY R. OTT, JUDGE

22

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COUNSEL APPEARED AS FOLLOWS:

2

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HOWARD MASON CYR, III, ESQUIRE  
PAUL M. QUI NONES, ESQUIRE  
for the Intervenors, the Students of  
The Barnes Foundation

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1 THE COURT: Mr. Wellington, you're  
2 at a convenient break, new witness.

3 MR. WELLINGTON: Thank you, Your  
4 Honor. We're ready to proceed. The Foundation calls  
5 John Callahan.

6 -----

7 PETITIONER'S EVIDENCE

8 ... JOHN L. CALLAHAN, JUNIOR,  
9 sworn.

10 -----

11 BY THE COURT:

12 Q. Sir, can you spell Callahan for us as you do it?

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13 A. Yes, C-A-L-L-A-H-A-N.

14 THE COURT: Thank you.

15 -----

16 ... JOHN L. CALLAHAN, JUNIOR,  
17 having been duly sworn, was examined and testified as  
18 follows:

19 DIRECT EXAMINATION ON VOIR DIRE

20 BY MR. WELLINGTON:

21 Q. Good morning, Mr. Callahan.

22 A. Good morning, sir. How are you?

23 Q. I'm fine, thank you. I'm just going to move this  
24 book because I don't think we're going to need that.

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1 From where did you come to visit  
2 us in Norristown today, sir?

3 A. I came from sunny, finally, sunny New Hampshire  
4 where I don't get quite enough time to see the White  
5 Mountains.

6 Q. What are you currently doing professionally, Mr.  
7 Callahan?

8 A. I am attempting to retire, but I don't seem to be  
9 very good at it. I've been doing that for several years,  
10 but there always seem to be one more project or problem  
11 that's too interesting to turn down to deal with.

12 Q. Does that mean that you're acting as a consultant  
13 from time to time?

14 A. Yes, I do.

15 Q. In what area of expertise are you consulting, Mr.  
16 Callahan?

17 A. Institutional management, Board development,  
Page 5

18 development fund-raiser kinds of problems.

19 Q. Before you were trying to retire, let's start from  
20 the last and work back a little bit. What was your  
21 professional position?

22 A. Well, my last full-time paid professional position  
23 was with the American Philosophical Society in  
24 Philadelphia.

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1 Q. Your position there, sir?

2 A. I was chief development officer.

3 Q. First of all, tell us what the American  
4 Philosophical Society is.

5 A. It's a rather wondrous organization, as you may  
6 know. It was founded by Benjamin Franklin and a group of  
7 his friends and associates early in the founding of this  
8 country at a time prior to the availability of many  
9 libraries and colleges and universities for exploring  
10 useful knowledge. It was largely devoted to what was  
11 then termed natural philosophy, the natural sciences. It  
12 has 7 or 8 principal programs to this day, the principal  
13 gist of which is the support of research worldwide. It's  
14 an elective membership organization of some 635 members,  
15 about 25 percent of whom are Nobel laureates.

16 Q. Its location is here in the City of Philadelphia;  
17 isn't that correct?

18 A. It certainly is and happily so.

19 Q. What were your responsibilities at the American  
20 Philosophical Society?

21 A. I came to the Philosophical Society from Winterthur

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22 Museum & Gardens, where I had been deputy director, to  
23 work principally on resurrecting a campaign that had not  
24 worked fairly well for the development of Benjamin

Page 6

1 Franklin Hall on Walnut Street. I did so at the behest  
2 of some newly elected members of the Executive Committee,  
3 who were concerned about seeing that project succeed.

4 Q. How many years were you at the Philosophical  
5 Society?

6 A. I think, in toto, about eight, the first three of  
7 which were spent largely on that project; and then in the  
8 final five, I was very fortunate in being able to  
9 continue a staff position at the same time I had a number  
10 of consultive relationships, worked largely three days a  
11 week there and then two days in my office.

12 Q. What did you -- you mentioned, I think, that you had  
13 come from Winterthur?

14 A. Winterthur.

15 Q. Tell us your responsibilities at Winterthur and how  
16 long you were there.

17 A. I was at Winterthur for about three years just prior  
18 to the American Philosophical Society, and I had gone  
19 there because I had an invitation from the then president  
20 director. I had to return to Philadelphia, actually, to  
21 settle my father's estate, and that was not a full-time  
22 job. So I was earnestly hoping to find something  
23 constructive to do, and Winterthur at the time was  
24 planning or beginning to plan its new exhibition

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1 building. It's now complete. I hope you got an  
2 opportunity to see it. It's really quite handsome. The  
3 whole idea there was to open up the Winterthur collection  
4 to provide access to a far broader audience. I think  
5 that's been successful.

6 My duties as deputy director for  
7 external affairs covered quite a broad spectrum from  
8 publications, communications, government relations,  
9 municipal, and then, of course, all dimensions of the  
10 fund-raising program; and they also included  
11 point-to-point racing, which was a rather novel  
12 experience.

13 Q. Are you aware of the somewhat historically close  
14 relationship of Mr. DuPont and Dr. Barnes?

15 A. I am, indeed. In fact, there are many very  
16 interesting parallels in their experience, particularly,  
17 with the IRS.

18 Q. Moving off that subject, before you had found  
19 yourself at Winterthur, where were you working, sir?

20 A. I was at Amherst College for just under slightly 25  
21 years; and when I left there, I was general secretary of  
22 the corporation.

23 Q. And responsibilities at Amherst over the period  
24 included what, sir?

1 A. Well, in addition to emptying baskets, it was quite  
2 a broad spectrum. I had gone there in, I guess, 1962, as  
3 associate director of development, again, to work on a



4 campaign. I became director of development, and then I  
5 became director of development of public affairs and,  
6 subsequently, general secretary. I was secretary of the  
7 Board of Trustees and of the corporation, and in that  
8 capacity I also served on the Folger Committee, which was  
9 the Surrogate Board of Trustees for the Folger  
10 Shakespeare Library in Washington, which is administered  
11 by the trustees at Amherst College.

12 Q. In the responsibilities that we've discussed to  
13 date, have you been involved in, shall we say, major  
14 fund-raising capital campaigns?

15 A. A number, yes.

16 Q. Have you been involved in developing for nonprofit  
17 institutions development's strategic plans?

18 A. Indeed. I seem to have found a way into being  
19 chairman of the Strategic Planning Committee in New  
20 London Hospital, which I discovered to be a full-time  
21 job.

22 Q. You're doing that today while you're retired?

23 A. That's right.

24 Q. What other consulting are you doing today?

1 A. At the moment I'm working with the Katonah Museum  
2 and Gallery in West Chester County, New York. This is,  
3 actually, my third trip with them over a 20-year span.  
4 They recently had a major administrative change, and  
5 they're looking at developing an entirely new campus; and  
6 we're thinking about ways in which to find the resources  
7 to do that.

8 I've also -- first time that I've  
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9 ever been involved with a religiously oriented  
10 organization, with the Ocean City Tabernacle, and I was  
11 involved in the change of administrations there, the  
12 search for a new president; and now we are looking rather  
13 interestingly, I think, at plans for year-round  
14 operation, a very different type of assignment.

15 I serve as the vice chairman of  
16 the Board of Hawk Mountain Sanctuary in Kempton,  
17 Pennsylvania. I've been very happy to be associated with  
18 that. It's been very different from most of my other  
19 experience. And there we recently completed the  
20 development of a new campus with a major campaign.

21 Q. Any other boards on which you're currently serving?

22 A. Let me see. I've recently stepped down from the  
23 Board of The Trustees of Reservations in Massachusetts,  
24 actually, from the corporate counsel; and I have been

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1 serving on -- what do they call it? A Visitors Advisory  
2 Board of the Marine Biology Lab in Massachusetts. I,  
3 actually, did some work with them as a staff member for a  
4 period of a year subsequent to my retirement from APS.

5 BY THE COURT:

6 Q. Is that the facility in Woods Hole?

7 A. Yes. It's one of five. It's amazing that five  
8 institutions can be crammed into that small village, but  
9 they work very well together.

10 BY MR. WELLINGTON:

11 Q. Did you also serve in the development capacity for  
12 the University of Chicago at some time in your career?

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13 A. Yes, I did. That was in 1958. I had gone there out  
14 of graduate school and after the military to work as  
15 assistant director and then director of student  
16 activities. I made, I think, perhaps, the mistake of  
17 complaining once too often to the Dean about not having  
18 resources enough for student programs. He alluded to how  
19 I probably ought to find the money to do that, and that  
20 seems to have been the start of what I've been doing for  
21 a few years.

22 Q. What is your educational background, Mr. Callahan?

23 A. I'm alumnus of -- graduate of Dartmouth College. I  
24 spent a small amount of time in the seminary in New York

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1 City; and, as we say, that vaccination didn't take, and  
2 then I went on to do some graduate work at Yale  
3 University.

4 Q. Have you also served on other corporate or nonprofit  
5 boards in the past where you are not currently serving?

6 A. Yes. I was involved -- some of you may remember  
7 it -- with the American College of Public Relations  
8 Association in the early sixties in Washington D.C. I  
9 worked regionally with it while at Amherst, and I became  
10 president and then chairman of that Board nationally.  
11 And that was during the era when we elected to merge that  
12 organization with the American Alumni Council, and we  
13 created a thing now known as CASE, Council for the  
14 Advancement of Support of Education; and I served on the  
15 original Board of that organization.

16 Q. Did you also serve at one point as a trustee of the  
17 Friends of the Free Library of Philadelphia?

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18 A. Yes, I did, thank you. That was great fun, in fact.  
19 I came to have a whole new appreciation for the problems  
20 of the urban libraries.

21 Q. Have you talked or lectured in the area of  
22 non-profit fund-raising?

23 A. Yes, I have. That's largely what an organization  
24 such as the ACPRA and the AC and CASE do. There's a

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1 considerable Extension Education Division at work. They  
2 all have run or do run seminar programs sometimes during  
3 the year, sometimes in the summer; and I have chaired and  
4 participated in quite a number of those, less so in the  
5 last few years than earlier.

6 MR. WELLINGTON: Your Honor, we  
7 would submit Mr. Callahan as an expert on development by  
8 nonprofit institutions.

9 THE COURT: Mr. Barth, any  
10 questions on qualifications?

11 MR. BARTH: No questions, Your  
12 Honor.

13 THE COURT: Mr. Cyr?

14 MR. CYR: I'll reserve any, Your  
15 Honor.

16 THE COURT: Very well. You may  
17 proceed, Mr. Wellington.

18 MR. WELLINGTON: Thank you, Your  
19 Honor.

20 DIRECT EXAMINATION

21 BY MR. WELLINGTON:

22 Q. Mr. Callahan, in preparing for your testimony, did  
23 you review certain documents provided to you by counsel  
24 for the Foundation?

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1 A. Yes, sir, I did. I'm not sure I'll recollect them  
2 all. Perhaps, you can help to remind me. I have read  
3 portions of the -- I read the summary opinion of this  
4 Court, I think, dated at the end of '03. I have read  
5 testimony of several persons who have appeared in this  
6 court. I read the D&T, the Deloitte & Touche study.  
7 And, most recently, I've read Mr. Abruzzo's commentary.

8 Q. Did you also review a Summary of the Funding  
9 Initiatives by the Foundation for several years?

10 A. Thank you. Yes, I did.

11 Q. Have you had the opportunity to discuss with any of  
12 the Foundation's Leaders their plans for development  
13 efforts by the Foundation in the future?

14 A. Yes. Both the chairman of the Board and the  
15 executive director have been very gracious with their  
16 time, and we talked at length about their hopes and  
17 ambitions.

18 THE COURT: Mr. Callahan, may I  
19 make a suggestion, if it's possible, to move you up just  
20 a tad and get you closer to the microphone?

21 THE WITNESS: Okay. I'll do it.

22 THE COURT: I think you're good  
23 there as long as you're not squashed.

24 THE WITNESS: No. I'm fine.

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1 THE COURT: Thank you.

2 BY MR. WELLINGTON:

3 Q. After doing the work that you did and having  
4 conversations that you've described, in reviewing the  
5 Deloitte & Touche report, did you form an opinion, to a  
6 reasonable degree of certainty, based upon your  
7 experience and expertise in fund-raising, as to whether  
8 the Foundation could raise, approximately, 4.25 million  
9 per year in development revenue under the proposed  
10 3-Campus Model with an expanded Board of Trustees?

11 A. Yes, I did.

12 Q. What is that general opinion? And then we'll go to  
13 some background on that.

14 A. My opinion is that it's doable. I'll explain the  
15 context in which I reached that opinion. It will take a  
16 considerable ramp up. It will be hard work, but it is  
17 doable. And it's doable within the frame of reference  
18 that the Deloitte & Touche report established, which is a  
19 four-year, minus two, minus one, move year, and year one,  
20 perspective.

21 Q. I'm going to put that Deloitte & Touche table up on  
22 the Board that we looked at -- excuse me -- up on the  
23 Elmo that we looked at yesterday, and what we are talking  
24 about is this development line, are we not?

Page 15

1 A. That's correct.

2 Q. Is it this period of time that you've made an  
3 assessment, these six years that you've taken a look at?

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4 A. As I looked at it initially, the question was, can  
5 we attain a level of contributed, gifted support at 4.25  
6 million by the end of the opening year one? That means  
7 four years from go. And I believe that that is  
8 attainable. It's not a walk in the park, but it is  
9 attainable.

10 Q. Tell us -- let's start -- what are some of the  
11 general efforts that would need to be undertaken to make  
12 that a reality?

13 A. Let's talk about it in two classifications, if we  
14 can. Fund-raising is a building-block business. It  
15 begins with constituency; and constituency is, everyone  
16 out there who has some reason, some way, some dimension  
17 of involvement with an institution. And in cultural  
18 institutions, it's particularly difficult to establish.  
19 It's, obviously, the first job that must be done.

20 Why is it different for cultural  
21 institutions? Well, they don't have the natural alumni  
22 constituency that schools and colleges, Lafayette  
23 College, for example, has. They don't have the patient  
24 base that medical institutions will have. They have what

1 is at the outset a rather amorphous collection of people.  
2 Yes, there are scholars, aficionados and those who are  
3 deeply involved and care deeply about art; but there is a  
4 much wider sphere of people that needs to be brought into  
5 some sort of systematic development, and that's why the  
6 work always begins with constituency.

7 I think the next thing and most  
8 important thing, really, in all of fund-raising is

9 leadership, and it comes in several flavors. It has to  
10 start with the Board. The Board must be absolutely  
11 committed to major fund-raising.

12                                 Secondly, it devolves to the  
13 administrative leaders, the executive heads, the heads of  
14 departments, who have to be fully committed and very  
15 knowledgeable.

16                                 And, third, of course, it comes  
17 down to the staff people, who are doing the actual  
18 preparatory work for the fund-raising. I think, also,  
19 it's important to have a case statement, a clear  
20 understanding of what it is that the institution is  
21 attempting to do.

22                                 In my own experience, there are  
23 probably four dimensions of it.

24 BY THE COURT:

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1 Q. You're talking about the mission?

2 A. I am talking about the mission, yes, clarity of the  
3 mission objectives; but I'm talking about more than that.  
4 The case statement, Your Honor, is the distillate of all  
5 of the best ideas that one can assemble about where the  
6 institution has been, what it is and where it wants to  
7 go; and, really, I think, as I said, there are four  
8 components.

9                                 The first is to have an academic  
10 or an artistic plan and program. It needs to be very  
11 clearly delineated, so that it is understood and is  
12 generally consented to.

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13                                   The second, I think, is a clear  
14 business plan, what we call an operating plan, something  
15 that says these numbers do add up, this is a doable job,  
16 and we can do what we said we want to do in the academic  
17 and artistic program.

18                                   The third, I think, and,  
19 particularly important, in cultural institutions -- and I  
20 should say exceptionally important in this instance -- is  
21 a marketing plan and program; and that really depends  
22 upon a fairly extensive study and identification of what  
23 the markets are.

24                                   Fourth, and, finally, there needs

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1 to be a very clear fund-raising plan. It is a  
2 disciplined exercise that's essential. We can talk and  
3 think about ideas for a long, long time; but it's all in  
4 the execution, and that's the purpose of the fund-raising  
5 plan.

6                                   I think that's the list pretty  
7 much. I would say that the, perhaps, most compelling  
8 thing is, you need to have a very competent, able and  
9 quite exceptional staff.

10 BY MR. WELLINGTON:

11 Q.    Are there any special circumstances or needs or  
12 issues that the Barnes Foundation itself either benefits  
13 or risks that it faces in attempting to do such a  
14 program?

15 A.    Well, Mr. Wellington, I've already said that I think  
16 the ramp up here is a fairly aggressive one that was

17 alluded to in yesterday's testimony, and I agree with  
18 that. And because of that, I think there are some  
19 special circumstances. I do strongly, clearly, believe  
20 this is a doable job, as I've described it; but I think  
21 the organization will need to be very swift out of the  
22 blocks. There is no time to waste in putting together  
23 the various elements of preparation that I've described.  
24 And I hope, frankly, that some of that work is actually

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1 taking place in anticipation of where these proceedings  
2 will go.

3 I think, secondly, this is going  
4 to have to be an all-consuming commitment on the part of  
5 the people who are involved with it. I'm talking about  
6 the Board. The Board needs to be expanded. I'm talking  
7 about the staff, which will need more management skill  
8 and capability; and I'm talking about the development and  
9 public affairs staff, which would need to be greatly  
10 augmented.

11 I think, thirdly, that it will  
12 require experienced fund-raising capability. This is, as  
13 I've said, not a walk in the woods. This is not a job  
14 for neophytes. These time targets can be met. And they  
15 can be met. It will take people who know whereof they  
16 speak and how to organize their activities.

17 If you think about it, there  
18 really are five basic constituencies in all the  
19 fund-raising, whether it's annual giving or capital  
20 giving or fund-raising. They are the top prospects, so

21 to say. The people who have the power to really make  
22 things happen at the top end of the gift table. They are  
23 particularly important in cultural institutions, I think,  
24 the membership.

Page 20

1                               There is the corporate support  
2 base, the Foundation support base, and there are the  
3 government agencies. And what you're talking about in a  
4 campaign of the kind that would be required here is very  
5 sophisticated professional handling of all five of those  
6 areas. There is no time to waste in getting all of them  
7 to be simultaneously effected.

8 Q.    In some context of -- in boards that I've served on,  
9 nonprofit boards, unrelated, I've heard in campaigns that  
10 are ramping up something called alpha donors?

11 A.    Right.

12 Q.    Is that a concept that makes sense to you or not?

13 A.    The alpha donors are critical. It's a trade phrase,  
14 but I think it's quite apt. And I think it's incredibly  
15 important here to recognize that the alpha donors are  
16 already here. They're on the scene. I mean, simply,  
17 imagine the amount of money, a hundred and fifty million  
18 dollars is already committed up front to this project.  
19 That is an alpha level of support that is almost  
20 unbelievable, and it will open minds and hearts and  
21 pocketbooks, believe me. That puts this whole effort  
22 well ahead of where many, many fund-raising efforts are.

23                               And I might add, the leadership of  
24 the consortium that made that possible is really to be

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1 greatly congratulated, I think, for having done so so  
2 effectively and, moreover, to have held onto that level  
3 of support for as long as it has.

4 Q. You think raising that amount of money is doable, as  
5 I think you've said, the 4.25?

6 A. Yes.

7 Q. And it takes some serious effort, as you've  
8 indicated, and some serious leadership and some  
9 professional people. Do you have a view as to why the  
10 Barnes -- if it can do it in the new vision, why can't  
11 it -- do you have a view as to whether it could do it  
12 staying where it is in Merion?

13 A. I think the resources are not available, and the  
14 resource of people and resources of dollars for this type  
15 of fund-raising are considerable. It's that simple.

16 Q. I think you said the constituencies of membership,  
17 corporations, foundations, government agencies, that  
18 would need to be tapped to have a successful campaign?

19 A. Right.

20 Q. Any different reaction, in your experience, of  
21 contributors in any of those constituencies to 3-Campus  
22 Model that's been proposed versus the existing campus in  
23 Merion?

24 A. Mr. Wellington, I think there may be three questions

1 there. One of them, certainly, is that all of those  
2 constituencies need to be dealt with differently. They



8 somewhat. He and I differ slightly on the dimensions of  
9 the dip. His suggestion, if I understand it, is in move  
10 year, year zero, that there would be a dip of -- and I  
11 suspect that's quite clearly so with respect to earned  
12 income. But I think that if we do the kinds of things  
13 we're talking about doing in the ramp up for major  
14 fund-raisers, that the contributed income need not drop  
15 by that much.

16                                    When you think about it, you're  
17 developing membership. You're working on the top  
18 prospect base. You're doing extensive communications.  
19 You are engaging all manner of people in the future  
20 prospects of the organization. I think there are ways to  
21 not have it fall off that much.

22                                    I also am a little skeptical,  
23 frankly, as I've told him, that year one -- do I have it  
24 right? Yes, opening year will necessarily see a blip

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1 that high. And I think that if I were trying to schedule  
2 the work systematically, which one would want to do under  
3 these circumstances, that I would not want to try to  
4 count on that. I guess the only difference between us,  
5 really, I don't see a curve of this depth and dimension.  
6 I see one that's more graduated. (Indicating)

7                                    MR. WELLINGTON: Thank you very  
8 much, Mr. Callahan.

9                                    THE COURT: Mr. Barth?

10                                   MR. BARTH: Thank you, Your Honor.

11                                   CROSS-EXAMINATION

Page 22

12 BY MR. BARTH:

13 Q. Mr. Callahan, are you aware of the history of the  
14 Barnes Foundation?

15 A. Yes, sir. I've tried to be aware of it. I've done  
16 some reading on that and some inquiry. I have visited  
17 the campus twice, once when I was at Winterthur and once  
18 with my wife. And I should also say that twice I  
19 couldn't get in.

20 Q. How does the history of the Barnes Foundation in  
21 terms of its operations within the past few decades  
22 impact upon its chances of success for fund-raising in  
23 the future?

24 A. I think the full answer to that would be a very

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1 extensive one. Let me tell you that my summary opinion  
2 is that it's a good news/bad news situation.

3                               The bad news, first, that there  
4 has been some negative publicity to all of this. There  
5 are people who wonder if it's in disarray. There are  
6 people who say, well, I don't really want to be  
7 associated with something that's not going to succeed.

8                               The good news, of course, is that  
9 it's had a lot of press. There are a lot of people who  
10 are now aware of the integrity and the quality of this  
11 collection that would have had no idea of it, had there  
12 not been all these communications. I think that can be  
13 made to work for the institution. On balance, I think  
14 the history is going to work favorably for what we're  
15 talking about here.

16 Q. What is the commitment by the Pew, Lenfest and

17 Annenberg Foundations to raise a hundred and fifty  
18 million dollars, much of which, we understand, has  
19 already been committed --

20 THE COURT: Larry, I'm sorry. We  
21 have a volume control here, and we'd ask you to repeat  
22 the question. Thank you.

23 BY MR. BARTH:

24 Q. Mr. Callahan, what does the proposal by the Pew,

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1 Lenfest and Annenberg Foundations and their commitment to  
2 raise a hundred and fifty million dollars, much of which  
3 I understand has been pledged, tell you about the  
4 opportunities for fund-raising for the Barnes Foundation  
5 in the future?

6 A. I think they are unlimited.

7 Q. Would you --

8 A. I think it is simply magnificent. It's an almost  
9 unheard of kind of a start. And, as I said earlier, it  
10 will open minds and hearts and pocketbooks, I think, in  
11 ways that will be really astounding.

12 Q. Do you think that the people or individuals,  
13 Foundations, corporations, or whatever, that have made  
14 this commitment are likely to continue to support the  
15 Barnes Foundation going forward?

16 A. Well, I think the best evidence for the future is  
17 what exists today. There is a commitment not only for  
18 the major capital sum required, but to the bridge  
19 financing, which will help to support all of the work  
20 that it will take to ramp up the effort to provide

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21 sustaining resources; and my answer is yes.

22 Q. Do you understand why these commitments are being  
23 made only if the Foundation is allowed to move and the  
24 petition before this Court is granted?

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1 A. Well, I don't think I should speak for the  
2 Foundations. They are perfectly capable of doing that  
3 for themselves.

4 My own personal take on that is --  
5 I've already mentioned one part -- people give to  
6 successful enterprises. In its present configuration,  
7 the enterprise does not have great potential for success.  
8 It lacks resources. It is out of money.

9 What the Foundation Leadership is  
10 providing is an opportunity to reverse that flow  
11 entirely. So, yes, I think that it will be very  
12 successful; and I think it will be a flag. You are  
13 talking about some of the best managed Foundations in the  
14 country. Their reputations are on the line to do this  
15 job, and others will know that. Others will be  
16 responsive.

17 Q. Is it fair to say, from your answer then, that you  
18 don't think that the Barnes Foundation as presently  
19 configured has the same opportunities or chances of  
20 raising such funds through development?

21 A. That is my opinion, yes.

22 Q. Finally, do you believe that the Barnes Foundation  
23 and the ramp up that you call for, in describing or  
24 indicating you believe is necessary, can meaningfully

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1 occur until the Court grants the petition?

2 A. Well, I don't see how that it can. I don't see  
3 where there would be credibility, if I understand the  
4 question correctly, until there is finally a judgment as  
5 to the clarity of procedure.

6 MR. BARTH: Thank you. Nothing  
7 further, Your Honor. Thank you.

8 THE COURT: Mr. Cyr?

9 BY MR. CYR:

10 Q. Good morning, Mr. Callahan.

11 A. Mr. Cyr, good morning. How are you?

12 Q. Fine. And you?

13 A. Fine, thank you.

14 Q. As I understand, Mr. Callahan, you're a consultant;  
15 is that correct?

16 A. I am, yes.

17 Q. You're called in by various institutions, nonprofits  
18 primarily; is that correct?

19 A. Nonprofits exclusively.

20 Q. And you're called in to give plans or consult with  
21 them in an effort to improve their fund-raising  
22 capabilities; is that correct?

23 A. Called in to do a variety of things, and they have  
24 to do with simply conferring with Boards about what

1 future ideas might be, about Board development, about  
2 administrative change and about communications and, of

3 course, fund-raising. Fund-raising is usually the last  
4 in the line of those considerations.

5 Q. So you consult with nonprofits on a variety of  
6 issues, including fund-raising; correct?

7 A. Yes, I do.

8 Q. Is it primarily focused on developing and improving  
9 the fund-raising of the institution?

10 A. The end result of these deliberations is usually  
11 fund-raising.

12 Q. Now, it's my understanding that you were contacted  
13 by the Barnes Foundation in the recent past; is that  
14 correct?

15 A. That's correct.

16 Q. When was that about?

17 A. Well, I would say -- I'm not precisely certain of  
18 that. I'd have to look at my day book, but probably  
19 two-and-a-half months ago, maybe three.

20 Q. Is that the first time you've been consulted by the  
21 Barnes Foundation?

22 A. Yes. I have not been actively involved in the  
23 Barnes other than being a visitor there. There had been  
24 some interactions between my functions at Winterthur and

1 the Barnes for obvious professional reasons, but that's a  
2 long time ago.

3 Q. Are you aware whether Barnes has retained any other  
4 consultant with respect to fund-raising prior to your  
5 involvement?

6 A. I understand there have been some conversations with  
7 other people involved in fund-raising, but I have no

8 knowledge specifically of the dimensions or even of the  
9 individuals involved.

10 Q. So you're not aware that they've retained anyone  
11 else -- or, that they've retained anyone to advise them  
12 on fund-raising?

13 A. That's correct.

14 Q. You mentioned that you met with the chairman of the  
15 Board and some of the other staff people at Barnes; is  
16 that correct?

17 A. That's correct.

18 Q. Did you at any time commit any of your findings or  
19 analyses to any type of writing?

20 A. I did for my own purposes in development of models.  
21 I simply wanted to test my own judgment by combing down  
22 the cases. I looked at what would have to happen in  
23 years minus two, minus one, zero, and one to make this  
24 come true; and I developed several models just to test my

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1 own thinking, but I have not circulated reports of any  
2 kind, nor was I asked to do so.

3 Q. Did you bring those writings with you?

4 A. I did not.

5 Q. Now, you would agree with me the goal of  
6 four-and-a-quarter million, as you said, it's doable, but  
7 it's an aggressive goal; correct?

8 A. It's aggressive by definition. It's audacious, and  
9 it's a very good thing that it is. This is a project  
10 well worth doing. It wouldn't be worthy of Barnes to

11 have a goal less than this.

12 Q. It's aggressive because it's above all the  
13 benchmarks that were listed in the Deloitte?

14 A. I'm not sure I would agree with that. I think it's  
15 aggressive because it represents a very serious effort to  
16 swiftly try to retain resources needed to meet budget.

17 Q. So it's aggressive because the present level of  
18 annual giving is, approximately, what?

19 A. I think \$1,384,000, of which \$90,000, if I have it  
20 correctly, is membership; and the ramp up on that is four  
21 hundred and fifty thousand dollars by the end of year  
22 four, which is five times. And is that doable? The  
23 answer is yes.

24 BY THE COURT:

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1 Q. Four-and-a-half million; correct?

2 A. Four-and-a-half. I'm sorry.

3 BY MR. CYR:

4 Q. You're aware that the Barnes just started their  
5 formal fund-raising plan a couple of years ago; correct?

6 A. Yes, I am.

7 Q. And so in the last couple of years they've been able  
8 to improve their fund-raising on an annual basis to a  
9 small percentage; correct?

10 A. A small percentage.

11 Q. Now, you mentioned there's several things that are  
12 important for fund-raising. As I recall your testimony,  
13 you like to see an academic or artistic plan. Do you  
14 know if any such plan is in existence presently for the  
15 fund-raising of the Barnes Foundation?

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16 A. I do not know the existence of any plan. I do not  
17 know of any specific steps being taken to develop one. I  
18 would urge that one be undertaken as swiftly as possible.

19 Q. Is the same true of a business plan, marketing plan  
20 and fund-raising plan?

21 A. Yes, sir. And for the very reason that it costs  
22 money, and it costs for the effort of capable  
23 professionals to develop those instruments; and there  
24 have not been the resources to do it. The bridge

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1 financing here makes that possible.

2 Q. Now, you mentioned that the plan that's being  
3 proposed, the 3-Campus Model, is a plan that gives a lot  
4 of people hope and that you think would be part and  
5 parcel of generating this increase in fund-raising; is  
6 that correct?

7 A. That's correct.

8 Q. Now, if you were called in as a consultant, if, for  
9 example, the Barnes did not and they wanted to increase  
10 their fund-raising, do you think you could devise a plan  
11 to improve their present fund-raising capability?

12 A. To improve it, well, I would never say never, Mr.  
13 Cyr; but I think that such improvements would be minimal  
14 as against what the potentials are of what is proposed.

15 Q. Well, what if the plan was not to increase the  
16 annual fund-raising to four-and-a-half million, but it  
17 was to only increase it another million or a million two?  
18 Do you think that would be doable?

19 A. The answer is, I'm not certain and I haven't studied

20 that, though, I think that the downside, which is  
21 substantial, is that there is no substantive change under  
22 the scenario you proposed to the way in which the  
23 institution is functioning. And I do not think that will  
24 attract major resources. It has not done so to this

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1 point.

2 Q. You would agree with me one of the essential  
3 components to fund-raising is the composition of the  
4 Board; correct?

5 A. I would, indeed.

6 Q. Are you aware of the history of the Board  
7 composition and fund-raising?

8 A. I think, in a rough sense, yes, I am. I certainly  
9 know about its present construction. I know what the  
10 instrument that originally created the Foundation called  
11 for. I know what the adjustments have been to that, and  
12 I also know something about what the present arrangements  
13 are for extending the Board in the future.

14 Q. Before the present petition was presented to the  
15 Court, the Board was rather limited; correct?

16 A. Yes.

17 Q. It consisted of how many members?

18 A. Well, are you going to have an examination of my  
19 reading, Mr. Cyr? I believe that it was probably five,  
20 was it not, and that four -- one is deceased, so it is  
21 now four. I cannot quote you the text of the instrument  
22 that provided for how appointments were to be made, but I  
23 know that there were limitations.

24 Q. Do you hold an opinion or have you made an

1 assessment of the ability of that four- or five-member  
2 Board to raise significant funds?

3 A. Yes, I do. I have a very high opinion of  
4 Dr. Watson, and I know he can do what he says he's going  
5 to do.

6 Q. How about the rest of the Board?

7 A. I have not talked with the rest of the Board; but if  
8 he has confidence in them, I would.

9 Q. But you would agree with me that the expansion of  
10 the Board to 15 members, certainly, improves the prospect  
11 for future fund-raising?

12 A. Absolutely. I think some expansion, whether it's  
13 that precise number or some other number, is absolutely  
14 required.

15 Q. You would also agree with me that annual  
16 development, such as what we're talking about here, the  
17 unrestricted is some of the most difficult type of  
18 fund-raising to raise for an institution, is it not?

19 A. Well, annual support fund-raising is the bedrock of  
20 all fund-raising. Why? Because it's what puts one, what  
21 puts an institution in touch with all the dimensions of  
22 the constituency, from which other programs then revolve.  
23 So, yes, it's difficult in its beginning dimensions. But  
24 there is some platform here on which to work. So I don't

1 foresee it being -- yes, it is difficult; but it's being



2 done, and it can be done better.

3 Q. It's difficult because it's going towards general  
4 operating costs, salaries, and so forth, and it's not  
5 going towards a new wing on a building or an endowed  
6 chair or a scholarship; correct?

7 A. Current operating funds needs can be made every bit  
8 as appealing as other types of needs and can be of a  
9 capital or planned nature. It's a challenge, but it can  
10 be done.

11 Q. Are you aware whether the Board of the Barnes has  
12 increased their membership from four to the fifteen  
13 that's permitted by the Court?

14 A. I'm not aware, but I don't believe that that's been  
15 done. I assume it's not been done for reasons related to  
16 earlier; and, that is, there needs to be some judgment  
17 made that this whole matter will proceed. I would think,  
18 if I may say so, Mr. Cyr, that in order to get people to  
19 join this Board, there would need to be real clarity as  
20 to the next steps to be taken by this organization.  
21 People do join what they perceive to be potentially  
22 successful.

23 Q. How are you defining "success"?

24 A. I'm sorry?

1 Q. How do you define "success" in that context?

2 A. In meeting institutional objectives.

3 Q. It's just a matter of how you define those  
4 objectives; correct?

5 A. It's the execution of plans to meet objectives.

6 Q. And we have a difference of opinion as to what those

7 objectives should be?

8 THE COURT: Will you repeat that a  
9 little louder?

10 BY MR. CYR:

11 Q. We have a difference of opinion as to what those  
12 objectives should be as to the success of the Foundation;  
13 correct?

14 A. We, as individuals, might have a difference of  
15 opinion, Mr. Cyr. But, institutionally, in making its  
16 presence, its position in the world, one would hope it  
17 would do so with sufficient clarity that there wouldn't  
18 be differences. Those should be thrashed out before the  
19 communications are complete.

20 Q. Is fund-raising effective at all by the donor's  
21 views on whether or not their money will be used as they  
22 have directed?

23 A. Yes.

24 Q. And if, hypothetically, some people view that the

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1 money is going to change the donor's intent or the  
2 commission of the institution, can that affect the  
3 fund-raising ability of the institution?

4 A. Yes, that could affect it.

5 Q. So the present case, if some people feel that the  
6 Barnes Foundation is changing their mission or breaking  
7 the wishes of Dr. Barnes, that could affect the  
8 fund-raising; correct?

9 A. If that were the case, but it seems to me clearly  
10 palpable that that's not the case. The educational

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11 mission of this foundation would be greatly extended by  
12 what is proposed, not diminished.

13 MR. CYR: Thank you. That's all I  
14 have.

15 THE COURT: Mr. Wellington?

16 MR. WELLINGTON: No.

17 BY THE COURT:

18 Q. Mr. Callahan, I have a few questions for you, sir,  
19 if I may.

20 A. May I turn here so I can see you?

21 Q. Yes. You don't have to contort yourself. Make  
22 yourself comfortable. I can do everything but change  
23 courtrooms.

24 At the outset, let me commend you

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1 on your obvious contagious optimism. I'm sure that's  
2 served you well in various roles you have assumed over  
3 the years.

4 A. Thank you, sir.

5 Q. You have, obviously, been retained by the Foundation  
6 for the purpose of doing some evaluation and coming  
7 here to testify as an expert?

8 A. That's correct.

9 Q. Have you also been retained on a continuing basis as  
10 this project, as envisioned, goes forward?

11 A. I have not. When you say "retained," I'm here on a  
12 pro bono basis.

13 Q. You are?

14 A. Yes, sir; except for my expenses, which will be

15 about \$250.

16 Q. More commendation to you. To the extent that you  
17 are free to acknowledge or discuss this, has there been  
18 discussion about having a continuing role?

19 A. No, sir, there has not.

20 Q. You indicated that, in terms of materials you  
21 reviewed prior to testifying, that you read some  
22 testimony from the earlier proceeding; correct?

23 A. Yes, sir, that's correct.

24 Q. Did the review of that testimony include that of Ms.

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1 Rimel from the Pew Foundation?

2 A. Yes, sir, it did.

3 Q. Ms. Rimel did not identify, I might say  
4 appropriately, any individuals or entities that made up  
5 the contributors to that pledge; correct?

6 A. That's correct.

7 Q. Would you assume, as I have, however, that in  
8 raising that one-hundred-fifty-million dollars per  
9 organization and the others involved would have been  
10 approaching the so-called alpha donors that were  
11 referenced earlier?

12 A. Some of them, yes.

13 Q. I certainly don't want to denigrate a  
14 hundred-and-fifty-million-dollar start, because that's  
15 incredible.

16 A. I agree with you.

17 Q. But had you considered, in your overall opinion, the  
18 possibility or likelihood that most, if not all of the

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19 so-called alpha base, will be included in that first  
20 hundred and fifty, thus, reducing an alpha base for this  
21 4.25 million per year?

22 A. Yeah, I thought about that.

23 Q. What is your reaction to that?

24 A. I think there are many more donors there. I think

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1 that the integrity, the quality of the renown of this  
2 collection, I think the whole scope of this proposed idea  
3 is such that there will be international interest and  
4 involvement with this program. I don't think that the  
5 donor base has been tapped nearly to the extent that it  
6 can be.

7 Q. Have you had the benefit of any -- I'm not going to  
8 ask you to reveal any proprietary information. Have you  
9 had the benefit of any private conversation with Ms.  
10 Rimel or anyone else from the three charities involved in  
11 that pledge as to any specifics?

12 A. I have not.

13 Q. You made a statement earlier, in response to one of  
14 Mr. Wellington's questions, that your impression was that  
15 this Board and organization was -- I wrote this down --  
16 ready, willing and anxious to get going?

17 A. Yes, sir. I speak principally of the leadership of  
18 the Board.

19 Q. I was going to ask you that. Who, in particular,  
20 were you ascribing those characteristics to?

21 A. Dr. Watson.

22 Q. I take it you had had some private conversation with  
23 Dr. Watson?

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24 A. Yes, sir, I have.

1 Q. You have known him for a long time?

2 A. I've known him in different ways. We haven't had a  
3 chance yet to visit, but I've known him in his foundation  
4 presidency capacity. I actually called on him a number  
5 of years ago in connection with the ABC program where I  
6 was involved in trying to set one up in New England, and  
7 he was actively involved with that.

8 Q. Your impression is that he is a man worthy of his  
9 resume?

10 A. Without question.

11 Q. I wrote down a few other what I think were quotes of  
12 what you said, it will require quite a ramp up?

13 A. Yes, sir.

14 Q. The word "aggressive" was one you used. You used  
15 the phrase "not a walk in the park"?

16 A. Right.

17 Q. All of that is synonymous with the fact that the  
18 plan requiring 4.25 million is ambitious; agreed?

19 A. The entire plan, including that plan, is ambitious,  
20 yes, and doable.

21 Q. I didn't fail to hear that.

22 I imagine someone -- strike that.

23 My impression of your approach to things is that you are

24 largely a big picture kind of guy. Fair assessment?

1 A. In some dimensions, but I've been known to get my  
2 hands dirty on occasion.

3 Q. I'm not suggesting you couldn't micromanage, if you  
4 wanted, but in terms of the general scope of the  
5 positions you've held, it's largely from a big picture  
6 standpoint; agreed?

7 A. Yes.

8 Q. Doing that properly requires the ability to see the  
9 down sides; agreed?

10 A. I agree.

11 Q. Anybody who would use the terms "ramp up, not a walk  
12 in the park, aggressive, ambitious," has to acknowledge  
13 that the possibility exists that it can't be done; true?

14 A. Yes, sir.

15 Q. Have you considered if that were to occur at any  
16 stage of the analysis that was done by Deloitte -- but  
17 let's use their numbering system, so we can talk about  
18 this. Obviously, the danger years are zero, move year,  
19 and the first two years thereafter; agreed?

20 A. Yes.

21 Q. Have you considered what the likely results would be  
22 if those ambitious projections did not materialize? What  
23 position would the Foundation be reduced to? What  
24 options would it be reduced to if they could not do what

1 they hoped to do?

2 A. Yes, I've considered it personally. I have not  
3 considered it in the depth and to the degree that I'm  
4 sure the Foundation officers have done it before they  
5 made the commitment.

6 Q. Boy, I hope they did.

7 A. I feel quite confident that any Foundation managed  
8 as well as the Pew Foundation is has done its homework.

9 Yes, I think that there's risk. There is a risk, Your  
10 Honor, in anything worthwhile.

11 I remember the observation of  
12 Daniel Burnham in Chicago at the turn of the last  
13 century, who was concerned about developing parks for  
14 Chicago, and he appeared before a group of citizens that  
15 he thought were quite reluctant to proceed, and his  
16 comment was, we have a duty to make no small plans for  
17 they have not the power to stir many souls. I think  
18 that's applicable here.

19 Are there risks? You bet there  
20 are. But do I think they're worth taking? Yes, I  
21 certainly do. What would I do in the way of contingency  
22 planning if some of these targets were not attained? I  
23 don't know for an absolute fact, but I think I would  
24 probably request more bridge financing. I think that I

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1 would not give up the effort.

2 Calvin Coolidge once observed that  
3 the most important thing in any endeavor was  
4 perseverance; and, certainly, this merits perseverance.

5 Q. I don't challenge the general proposition that great  
6 reward requires great risk. I don't have a problem with  
7 that.

8 A. Okay.

9 Q. What I'm really interested in is that, as this plan

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10 is embarked upon or as it's envisioned, what are the  
11 escape routes, if any, that you see if it turns out that  
12 it was too ambitious or too risky?

13 A. I'm not sure that I would want to try to fully  
14 answer that question, Your Honor, without very careful  
15 study. I understand that that's a significant question.

16 I think the best that I can say is  
17 that, on the basis of experience, I would then look for  
18 ways to reduce or to diminish expectations to put on  
19 hold, if you will, certain kinds of activities until the  
20 resources were available. I don't believe that would  
21 prove to be necessary; but I think that would be prudent,  
22 as you suggest, to have that in mind.

23 Q. I think the attorneys in this endeavor, with my  
24 agreement, have studiously avoided trying to play a blame

1 game for how the Barnes has gotten into the position that  
2 it's in; and I think that's appropriate because it  
3 doesn't do any good.

4 A. Right.

5 Q. Nevertheless, you are aware, I imagine, that there  
6 has been a great deal of controversy which has led to a  
7 significant amount of bad publicity for this  
8 organization?

9 A. Yes, sir.

10 Q. Coming out of certain activities and decisions made  
11 in the nineties?

12 A. Right. But, as I've said earlier, Your Honor, I  
13 think, to some extent, some extent, that publicity can be  
14 made to work in favor of a new departure, a new plan, a

15 new program.

16 Q. And I heard you when you said that.

17 A. Okay.

18 Q. But my question to you is, in light of that reality  
19 and without getting back into the whys and wherefores and  
20 finger-pointing, have you considered what the long-range  
21 impact -- and if not the long range, let's talk about  
22 that short range, move year, zero, years one and two,  
23 whether that creates an unusually difficult hurdle to  
24 overcome with respect to that ambitious planning for

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1 those three years?

2 A. I guess the only term that I would have -- the only  
3 word I have trouble with is "unusually." I think it  
4 presents a hurdle. That's why I speak of a swift and  
5 aggressive ramp up to do this job. I believe that this  
6 is doable, as I have said. I think that the  
7 circumstances of the publicity attendant, even on these  
8 proceedings, works in favor of being able to do that so  
9 long as one does not delay, one does not dawdle.

10 Q. Of course, I wasn't talking about the publicity  
11 surrounding these proceedings.

12 A. Well, I understand that you weren't, except that it  
13 is a factor. This whole proceeding is on the newspaper  
14 front page day after day. People are aware of this.  
15 They are aware of its significance. And once there is a  
16 clear path to proceed from this point forward, I think  
17 that you will find that people will care very greatly  
18 that this plan and program succeed.

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19 Q. You think the hurdle can be overcome?

20 A. I do, indeed.

21 Q. You are aware, having read the opinion issued in  
22 January of this year, that the Court has already granted  
23 permission for the Board to expand from the five  
24 positions originally called for to fifteen?

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1 A. I am.

2 Q. Do I understand, from your testimony, at least to  
3 the extent that you are privy to this, that those

4 additional Board seats have not been filled?

5 A. To my knowledge, they have not been filled.

6 Q. Did I understand your testimony to be that it is  
7 unlikely that they will be or at least can be with  
8 respect to the types of individuals you would envision  
9 for the job until the uncertainty surrounding this  
10 proceeding has been resolved?

11 A. That's my opinion, yes. If we're talking about  
12 people with national stature, they're going to want to  
13 know precisely what it is that they're being involved  
14 with and on what terms; and they would be asked to do a  
15 lot.

16 Q. Without asking you to reveal any identifying  
17 information, have you had any discussions with  
18 Dr. Watson, or otherwise, as to the possible persons

19 making up those additional trustee spots?

20 A. No, sir, I have not. I do have some ideas about  
21 that, but I have not discussed it.

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22 Q. They have not been asked?

23 A. That's correct.

24 THE COURT: Thank you. I don't

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1 have any further questions.

2 Mr. Wellington, does that prompt  
3 anything?

4 MR. WELLINGTON: No, Your Honor.  
5 Thank you.

6 THE COURT: Mr. Barth?

7 MR. BARTH: Your Honor, it does  
8 prompt just one question, if I may.

9 BY MR. BARTH:

10 Q. Mr. Callahan, the Court has wisely questioned you  
11 about the risks of embarking upon the plan proposed by  
12 the trustees. But I'm going to ask you, are there any  
13 risks to the Barnes Foundation in the continuation of its  
14 mission if this plan is not embarked upon?

15 A. In my opinion, the risk is that the real intent of  
16 the Barnes Foundation and the collection will not be  
17 fulfilled, that is, its educational mission. I would  
18 maintain that opening up this institution will satisfy  
19 not only the current education interests, but open the  
20 institution to a far broader educational experience.

21 Q. Is there any risk, if this proposal is not  
22 entertained or granted, that the Barnes will not be able  
23 to continue or fail financially?

24 A. In my opinion, yes. We're running on empty at the

1 moment and can't do that for very long.

2 MR. BARTH: That's all I have,  
3 Your Honor.

4 THE COURT: Mr. Cyr, anything  
5 further?

6 MR. CYR: Nothing further, Your  
7 Honor.

8 THE COURT: Thank you, Mr.  
9 Callahan. It was a pleasure hearing from you.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 MR. WELLINGTON: Your Honor, we  
13 received a message in the last half hour from Mr.  
14 Harmelin that he is caught in traffic.

15 THE COURT: Would you like to take  
16 your break a little early?

17 MR. WELLINGTON: I can just -- I  
18 had given counsel the order of witnesses. I'd be happy  
19 to call Dr. Wade, who is going to be our next witness,  
20 and call Mr. Harmelin as soon as he gets here.

21 THE COURT: Either that or we can  
22 take our 15-minute break now, but I'll do it whatever way  
23 is most convenient.

24 MR. WELLINGTON: Why don't we do

1 that? And if he's here at 10:45, we'll put him on; and  
2 if not, we'll proceed with Dr. Wade.

3 THE COURT: All right. We'll take  
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4 a 10- to 15-minute break.

5 (Short recess)

6 -----

7 MR. WELLINGTON: Mr. Harmelin is  
8 not yet in the building, so we will call Dr. Edwin Wade.

9 THE COURT: All right.

10 -----

11 ... EDWIN L. WADE, having been  
12 duly sworn, was examined as follows:

13 DIRECT EXAMINATION ON VOIR DIRE

14 BY MR. WELLINGTON:

15 Q. Are we firmly affixed, Dr. Wade?

16 A. I hope we are.

17 Q. From where have we lured you to join us in this  
18 testimony, Dr. Wade?

19 A. From Sedona, Arizona.

20 Q. To leave Sedona to come to Norristown is a credit to  
21 you, sir, no disrespect to Norristown, but Sedona is a  
22 gorgeous place. Are you currently working as a  
23 consultant?

24 A. Yes, I am.

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1 Q. In what field, sir?

2 MR. KLINE: Excuse me, Your Honor.

3 Could I request a sidebar with the Court?

4 (Discussion held off the record  
5 between The Court and counsel at sidebar.)

6 THE COURT: I think your last  
7 question was to the effect of in what area does he

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8 consul t.

9

MR. WELLINGTON: Thank you very

10 much, Your Honor.

11 A. Currently, I'm consulting in the area of campaign  
12 development for nonprofit organizations, also, program  
13 development for nonprofit organizations and, also, vision  
14 and mission planning.

15 Q. When did you become a consultant?

16 A. I became a consultant, roughly, in October of 2003.

17 Q. Before that, Dr. Wade, what was your professional  
18 association?

19 A. Before that, for ten years, starting in 1993, I was  
20 the deputy director of the Museum of Northern Arizona.

21 Q. For how long did you serve in that position, sir?

22 A. Ten years.

23 Q. What were your duties as the deputy director of the  
24 Museum of Northern Arizona?

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1 A. My duties were to oversee the area of general  
2 operations for research, curati on collecti ons, management  
3 of collecti ons, publi cati ons, program devel opment,  
4 exhibi ti ons. In fact, all areas of activi ty except for  
5 finances and comptrolli ng services of the museum.

6 Q. Can you tell the Court -- tell us a little bit about  
7 the Museum of Northern Arizona.

8 A. The Museum of Northern Arizona is a 75-year-old  
9 insti tuti on, was founded by a Phi ladel phi a couple. It  
10 was a private organi zati on and remains a private  
11 organi zati on. It was a single-fami ly operati on up until  
12 1975, occupyi ng 400 acres, 57 bui ldi ngs, a natural

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13 history and cultural mission, in which five million  
14 itemized objects are in the collections.

15 Q. Tell us a little bit more about the collections of  
16 the museum.

17 A. The collections of the museum break down to,  
18 roughly, 78 percent of archaeological, natural history  
19 and cultural, which are the properties of the Federal  
20 Government. We are a nonofficial repository for Federal  
21 holdings. The museum's own collections consisted largely  
22 of Native American artifacts and artworks and, also, fine  
23 art in prints.

24 Q. Did your duties at the Museum of Northern Arizona

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1 include decision-making about the acquisition of new  
2 works or the deaccessioning of works?

3 A. Yes, it did.

4 Q. Are there policies or guidelines in the museum world  
5 that address those issues?

6 A. There are, indeed. The American Museum Association  
7 developed in 1991 and then adapted in '92 a very clear  
8 guideline as to how objects should be either acquired for  
9 accession and, particularly, objects that would be  
10 considered for deaccessioning and, also, how the proceeds  
11 from the deaccessioning should be directed towards the  
12 museum's mission.

13 Q. And those are policies with which you're familiar?

14 A. I'm very familiar.

15 Q. Do you serve currently on any Art Committees or  
16 Boards?

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17 A. Not in any formal capacity at this time.

18 Q. Where else have you been employed, sir, other than  
19 at the Museum of Northern Arizona?

20 A. In the period of 1981 to 1991, I was the director of  
21 education and curatorial services for the Philbrook  
22 Museum of Art in Tulsa, Oklahoma; and prior to that for  
23 six-and-a-half years, I was the assistant director of the  
24 Peabody Museum of Archaeology and Ethnology at Harvard

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1 University.

2 Q. Tell us a little about the Philbrook Museum of Art  
3 in Tulsa.

4 A. The Philbrook Museum of Art originally was the  
5 Philbrook Art Center at the time I joined it. We were  
6 challenged with and taking what was, again, a single  
7 member of one family's vision and changing it from a  
8 personal museum into what would be a public trust  
9 institution, upgrading the facility and developing it  
10 into a modern art museum.

11 Q. Tell us a bit about the Peabody Museum.

12 A. Peabody Museum is a venerable institution in  
13 existence since the 1860s. It is, actually, independent;  
14 but it has an association with Harvard that oversees  
15 general operating expenses in return for educational  
16 services coming from the staff. It holds some of the  
17 most significant archaeological and anthropological  
18 collections in the world and is active in research. It's  
19 a research institute.

20 Q. You mentioned the Peabody Museum had some  
21 educational component to it. Could you tell us a little

22 bit more about that?

23 A. It's primarily thought of as a teaching instrument

24 for the Department of Anthropology, but it also does

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1 general public programming through rotational exhibitions

2 and publications and, also, school classroom curricula.

3 Q. Were either of the other principal institutions with

4 which you've been engaged -- were there educational

5 components to those institutions?

6 A. All of them.

7 Q. Have you published or contributed to any books or

8 publications in the museum or arts field?

9 A. I have, roughly, sixty-five publications that span

10 articles that deal with Native American, nonwestern art

11 traditions, issues of the inception of Native American

12 and nonwestern art markets, also, dealing with philosophy

13 of aesthetics and American craft movement, and about six

14 books that deal with Native American and nonwestern art

15 issues.

16 Q. Have you testified before, Dr. Wade, as an expert?

17 A. I have, indeed.

18 Q. In general, in what settings or for whom?

19 A. I have worked with the Concessions Division of the

20 National Park Service, in which most recently we went

21 through arbitration between Amfax Corporation, which is

22 the holding company for the Fred Harvey Company, which

23 owned the lodging and artworks at the Grand Canyon. I

24 was representing with an exhibition, also, an assessment

1 and, also, with an appraisal team, what was the  
2 arbitration between valuation of what Amfax saw their  
3 property as worth versus the National Park Service.

4 I also served as an expert witness  
5 in an artist's case most recently between Bob Hazos  
6 versus the University of New Mexico and the City of  
7 Albuquerque, dealing with public art commission and the  
8 issue as to what is accepted as standards and parameters  
9 of change between a model of what is a proposed public  
10 artwork and what was the finished artwork.

11 And prior to that, I've served in  
12 capacities in various other matters.

13 Q. You've already mentioned that you have had  
14 responsibility for implementing acquisition and  
15 deaccessioning policies at institutions. Do you have any  
16 experience with deaccessioning artworks or deaccessioning  
17 works from a collection in order to raise operating  
18 revenue for an institution?

19 A. Each institution I've been involved with, Peabody at  
20 Harvard, the Philbrook Museum of Art and, also, the  
21 Museum in Northern Arizona all participated in  
22 deaccessioning. It's a very common practice within the  
23 museum world. But it was only the Museum in Northern  
24 Arizona in which the proceeds of the deaccessioning was

1 directed towards general operating.

2 (Curriculum Vitae of Edwin L.  
3 Wade premarked by counsel as Exhibit No. 70.)

4 BY MR. WELLINGTON:

5 Q. I'm going to place up here an Exhibit 70, I'd like  
6 to identify. Is that -- we can leaf through it, but is  
7 that a copy of your current CV, Dr. Wade?

8 A. That looks very much like me.

9 Q. There are a number of pages, including grants,  
10 articles, exhibitions. I won't go through it all. But  
11 is this a fair summary of some of your experience?

12 A. It's an abbreviated fair summary.

13 MR. WELLINGTON: Your Honor, the  
14 Barnes Foundation would offer Dr. Wade as an expert on  
15 the administration of art, cultural and natural science  
16 institutions and on the care of their collections.

17 THE COURT: Mr. Barth, any  
18 questions?

19 MR. BARTH: No questions. No  
20 objection.

21 MR. KLINE: We would reserve any  
22 questions, Your Honor.

23 THE COURT: Very well. You may  
24 proceed.

1 DIRECT EXAMINATION

2 BY MR. WELLINGTON:

3 Q. Dr. Wade, I want to ask you first, do you have  
4 personal knowledge and experience at the Barnes  
5 Foundation itself?

6 A. I have personal knowledge of their collection  
7 holdings. I have an understanding of the Barnes in

8 educational mission and philosophy. I have less  
9 understanding as to the daily administrative or  
10 policy-decision process.

11 Q. Do you serve on any advisory committees to the  
12 Barnes Foundation?

13 A. I serve on the Education Committee, and I serve also  
14 on the Curatorial Committee.

15 Q. Have you also served as a curator for certain of the  
16 Barnes Foundation's collection?

17 A. My expertise was originally solicited by the Barnes  
18 Foundation to then be a guest curator and a collection  
19 assessor for the Native American art holdings.

20 Q. In your experience or opinion, does that Native  
21 American art holdings have any value? And I don't mean  
22 money value, but any value?

23 A. In the one paper I prepared I stated emphatically  
24 that it is one of the unique collections in American

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1 museums because of the depth of archival records.  
2 Dr. Barnes was meticulous in keeping correspondence  
3 between individuals he either communicated about his  
4 collection or else, in this case, very important  
5 collecting agents that he had hired, such as Andrew  
6 Daschburg, who is a great artist, who then would then  
7 solicit Dr. Barnes' interest in particular objects. They  
8 would talk back and forth. That type of archival depth  
9 of history is quite unique when you're dealing with  
10 nonwestern art collections.

11 Q. What did you learn, if anything, about Dr. Barnes'  
12 interest or the reason he was collecting Native American?

13 People usually associate him with European paintings.  
14 A. To the extent that I have looked at the records,  
15 though I have not looked at them all, it becomes quite  
16 clear that, in his educational philosophy, he is pursuing  
17 ideas such as the dynamics of form, function, shape,  
18 interactions of composition; and he was quite intrigued  
19 by the objects in Native American art that dealt with  
20 geometric forms, also, was quite entranced by the  
21 continuance of the Romanesque concept of devotional art  
22 when he was collecting Spanish Colonial art from New  
23 Mexico. It was an educational aesthetic interest that he  
24 was pursuing.

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1 BY THE COURT:

2 Q. Could I go back a question?

3 A. Indeed.

4 Q. And ask you to define "nonwestern art."

5 A. "Nonwestern art" is probably a derogatory term, but  
6 it's used in museums to define everything that is made  
7 outside of the parameters of, generally, western  
8 civilization, but over the last 50 years or so, it's come  
9 to suggest what we call third and fourth world, so-called  
10 primitive people stuff.

11 BY MR. WELLINGTON:

12 Q. How long have you served on the Educational and  
13 Curatorial Committees of the Barnes Foundation?

14 A. I don't have an exact number, but I would think well  
15 over two years on the Education Committee and a tad less

16 on the Curatorial Committee.

17 Q. In your experience with the Barnes Foundation, do  
18 you believe that you have arrived at, at least, an  
19 understanding of your own as to what the mission and  
20 purpose of that Foundation is?

21 A. I believe I have.

22 Q. Could you articulate for us what you believe that  
23 mission and purpose is?

24 A. It's a very dynamic and, also, revolutionary

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1 mission. It is the idea of using art as a vehicle to  
2 stimulate what was called objective seeing, to use art as  
3 a way to emancipate the individual's right to make  
4 decisions and determination that art was not something  
5 for elitist's use. It was something that all hearts  
6 could embrace and through being able then to ponder and  
7 query what art was about and, particularly, in its  
8 installational modes in which you saw relationships that  
9 were not defined, you had to provide that extra judgment.  
10 It would then force you to make perceptions. It would  
11 force you to have dialogue. It would force you then to  
12 communicate with other people, "I like it, I don't like  
13 it, makes sense, it doesn't make sense." Once you are  
14 able then to challenge the ideology of the academic and  
15 the political world as to say "I have a personal  
16 opinion," you would then go out and be a better  
17 constituent as a member of American society because you  
18 would form your own opinions.

19 Q. Do you have a view, Dr. Wade, as to whether your  
20 understanding that you just articulated applies only to

21 the portion of the collection that is permanently hanging  
22 in the gallery at Merion?

23 A. To the best of my knowledge, having read certain of  
24 Dr. Barnes' works but, also, knowing something of the

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1 archives from the Barnes Foundation, there was no  
2 distinction made between what was primary collections and  
3 secondary, what were storage collections and gallery  
4 collections, that they were dynamic in the sense that  
5 they rotated as new ideas and new arguments were placed  
6 upon the walls. All objects were of equal value in  
7 Dr. Barnes' mind.

8 (Document entitled "Code of Ethics  
9 for Museums" premarked by counsel as Exhibit No. 89.)

10 BY MR. WELLINGTON:

11 Q. I want to go back more specifically now to some of  
12 the policies that we referenced. Let me, first of all,  
13 identify Exhibit 89, and I'm going to put it up here. If  
14 we can't see it here, we have a copy to provide for you.  
15 This first page is light. I would just identify it for  
16 the record, "Code of Ethics for Museums, American  
17 Association of Museums." Are you familiar with this?

18 A. I am very, sir.

19 Q. I want to turn to Page 8 of that, and we're going to  
20 focus down. Let me hand up a copy to you, Dr. Wade, so  
21 that -- some of this print is going to be a little fine,  
22 I think.

23 A. Thank you.

24 THE COURT: Mr. Wellington, the



1 booklet I've been given with Exhibit 89 has only the  
2 odd-numbered pages. I suspect they were on two sides and  
3 only one was copied. Would you have an extra one that I  
4 could follow along with?

5 MR. WELLINGTON: Your Honor, that  
6 was intentional.

7 THE COURT: I'm sure.

8 MR. WELLINGTON: There are some  
9 things we did not want -- no. I'm sorry.

10 MR. KLINE: Your Honor, I'm afraid  
11 we have the same problem.

12 MR. WELLINGTON: Your Honor, there  
13 are two pages on each page.

14 THE COURT: You know what? You  
15 are right. I found the single page number and then  
16 oriented my vision to that. You're right, there are two  
17 on each, the even being on the left.

18 MR. WELLINGTON: All right. I  
19 think we're okay then.

20 THE COURT: Did I panic you enough  
21 so that you need a break?

22 MR. WELLINGTON: I think I know  
23 where I am.

24 BY MR. WELLINGTON:

1 Q. This is a section called "Collections," and the  
2 first paragraph of this Code of Ethics reads: "The

3 distinctive character of museum ethics derives from the  
4 ownership, care, and use of objects, specimens, and  
5 living collections representing the world's natural and  
6 cultural common wealth. This stewardship of collections  
7 entails the highest public trust and carries with it the  
8 presumption of rightful ownership, permanence, care,  
9 documentation, accessibility and responsible disposal."

10 Is that a statement that you're  
11 familiar with?

12 A. I am.

13 Q. Is it one that you agree with?

14 A. I do.

15 Q. In this page somewhere, Dr. Wade, is there the AAM  
16 specific ethical position on deaccessioning?

17 A. At the top of Page 9 there is.

18 Q. If we look at the bottom, "disposal of collections  
19 through sale, trade or research activities is solely for  
20 the advancement of the museum's mission. Proceeds from  
21 the sale of nonliving collections are to be used  
22 consistent with the established standards of the museum's  
23 discipline, but in no event shall they be used for  
24 anything other than acquisition or direct care of

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1 collections." Is that what you were referring to?

2 A. Exactly.

3 BY THE COURT:

4 Q. What's a nonliving collection?

5 A. Nonliving collection is -- the American Museum  
6 Association deals with all types of museum disciplines.

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7 That means that we collect everything from inorganics,  
8 rocks to animal specimens to fine artworks to cultural  
9 history.

10 Q. When you're talking about animal specimens that are  
11 live, the rest is nonliving?

12 A. Zoos also fall within the distinction of museums.

13 Q. You're speaking of inanimate objects?

14 A. Exactly.

15 THE COURT: Okay.

16 BY MR. WELLINGTON:

17 Q. There are two uses that this Code of Ethics  
18 acknowledges from the sale of part of collections. One  
19 is acquisition. Can you just make -- I think we know  
20 what that means, but tell us what that means.

21 A. It is a process in which one is looking towards the  
22 enhancement of collections within the domain of art  
23 museums. It is much more common over the passage of time  
24 for new curators, new directors of institutions to then

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1 I look at fine-tuning the mission of the institution as it  
2 is affected by current times. So collections that might  
3 have been important, arms and armor, shotguns, may no  
4 longer be the educational purpose that is felt to be most  
5 important. In that case those collections that go  
6 through a process of determination through professionals  
7 that are no longer relevant to the institution's mission  
8 could be sold, and then the proceeds from those would be  
9 used to acquire materials that would then enhance the  
10 museum's educational role, either buying new specimens,  
11 buying new artworks or other properties of like that was

12 once in a collection.

13 Q. Is that permitted use of deaccessioning proceeds  
14 applicable to the Barnes Foundation, which is a closed  
15 collection?

16 A. The concept would only be applicable if, indeed, it  
17 was not that Dr. Barnes had, particularly, indicated that  
18 no objects from the collection should be sold.

19 THE COURT: Repeat that, please.

20 A. (Continued) Basically, as I know it, Dr. Barnes in  
21 what, indeed, was the original intent of the museum  
22 indicated that no objects from the collection were to be  
23 sold.

24 Q. He also indicated, did he not, that upon his death,

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1 nothing else was to be acquired?

2 A. To the best of my knowledge.

3 Q. The other permitted use of proceeds is for the care  
4 of -- I think it says, "care of collections."

5 A. It does.

6 Q. Can you just tell us what that means, what that  
7 encompasses?

8 A. There is a division between the Association of  
9 American Art Directors, who argue that proceeds from the  
10 deaccessioning of collections should only go towards  
11 acquiring new collections in similar fields. The  
12 American Museum Association, since it oversees the  
13 stewardship in the sense of voluntary association of  
14 membership, of natural history, cultural museums,  
15 aquariums, etc., decided that was too limiting a defining

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16 issue of how we use proceeds.

17                                   They then argued that you use the  
18 sale of object revenues either for acquiring new  
19 collections or else for the care, maintenance and  
20 upgrading of storage facilities of existing collections.

21                                   (Document entitled "Professional  
22 Practices in Art Museums" premarked by counsel as Exhibit  
23 No. 88.)

24 BY MR. WELLINGTON:

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1 Q.    You've mentioned that -- we've both mentioned the  
2 Association of Art Museum Directors' policies, and I'd  
3 like to identify Exhibit 88 and put the first page of  
4 that up there, first of all, "Professional Practices in  
5 Art Museums, Association of Art Museum Directors 2001."  
6 Is this the similar code of ethics or professional  
7 practices manual for the AAMD as the one we just looked  
8 at for the AAM?

9 A.    Exactly.

10 Q.    Let me hand you a copy of that, sir.

11                                   As I understood your testimony  
12 just now, the AAMD's policy on deaccessioning is more  
13 restrictive than that of the AAM? Did I hear you  
14 correctly?

15 A.    It is, exactly.

16 Q.    Can I direct your attention to Page 8 -- excuse  
17 me -- Page 10. I apologize. Page 10, Paragraph 23.  
18 Just let me ask you if that is the specific paragraph  
19 addressing the ethicality of deaccessioning.

20 A.    It is.

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21 Q. And read to us the pertinent language there,  
22 Dr. Wade.

23 A. "Deaccessioning and disposal of works of art from  
24 the collection by sale, exchange or other means require

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1 particularly rigorous examination and should be pursued  
2 with greatest prudence. There are circumstances in which  
3 the deaccessioning of works of art from the collection is  
4 justified. However, such deaccessioning must be governed  
5 by the museum's written policy rather than by exigencies  
6 of the moment. The procedure for any deaccessioning and  
7 disposal should be at least as stringent as that for the  
8 purchasing of works of art for the collection."

9 Q. Then it references Appendix B?

10 A. Exactly.

11 Q. Page 21. Here we go, I - B on Page 22.

12 A. Exactly.

13 Q. "Purpose of deaccessioning and disposal." Could  
14 you --

15 A. Very succinctly, it says, "Deaccessioning and  
16 disposal by sale" -- meaning sale of objects from a  
17 collection -- "shall not serve to provide operating  
18 funds. The proceeds from disposal must be treated as  
19 acquisition funds."

20 Q. Now, the American Association for State and Local  
21 history, also, has a similar code of ethics, does it not,  
22 sir?

23 A. It does.

24 (Document entitled "Statement of

1 Professional Standards and Ethics, Adopted 6/02"

2 premarked by counsel as Exhibit No. 90.)

3 BY MR. WELLINGTON:

4 Q. And I won't take you through the detail of this, but

5 I'd like to identify it for the record, Petitioner's

6 Exhibit 90. And is this a copy of that Statement of

7 Professional Standards and Ethics, Dr. Wade?

8 A. It is, indeed.

9 Q. Does it similarly have restrictions as to the use of  
10 the deaccessioning proceeds not to be used for operating  
11 funds?

12 A. Exactly.

13 Q. Now, ethical standards are wonderful guidelines for  
14 all of us and for all of our institutions, whatever they  
15 are. But let me ask you your understanding of the  
16 reasons, some of the reasons, why these institutions that  
17 promote the ethical standards of museums and galleries  
18 have these restricted policies?

19 A. It is essential to realize that the standards of  
20 ethical behavior that apply to museums through the  
21 various museum associations and historical societies are  
22 not a force of law. They are a voluntary code of ethics  
23 for voluntary participation within an organization. So  
24 in the sense of being a Shriner or being a Mason, you can

1 do things that will then offend your sister institutions,  
2 and they will expunge you from that association.

3                                   It was felt it was necessary to  
4 develop an association that would oversee what would be a  
5 national code of ethics for institutions calling  
6 themselves museums to give guidelines as to what was  
7 thought as proper governance, proper administration,  
8 proper care and standards of collection holdings so that  
9 donors would have a sense of security in giving moneys to  
10 institutions, foundations would have a sense that there  
11 was peer group review of the excellence of a membership  
12 organization that would then give them assurance that  
13 there were standards that would be met that would assure  
14 them that there was proper procedures being put in place  
15 to guarantee what would be the ethics and, also, the high  
16 standards they were expecting.

17                                   In that regard, it was also felt  
18 that it was essential concerning collections that were  
19 held by a nonprofit member organization that a  
20 distinction was made between the nonprofit and profit  
21 sector.

22                                   The nonprofit sector, museums are  
23 committed to the care, preservation and enhancement of  
24 collections for educational purposes. If these objects

1 and collections were intended solely for future asset  
2 consideration, that they were thought of as investments,  
3 then there was a blurring between what would be a  
4 financial holding house where collections given in trust  
5 were then thought of as simply commercial properties for  
6 future sale and reinvestment.



7 Q. You understand though that the Barnes Foundation is  
8 at its essence an educational institution whose core  
9 asset is a collection. In your view, does that  
10 distinguish it or remove it from the applicability of  
11 these ethical precepts?

12 A. First, it is essential to realize, in the entire  
13 discussion of what is an educational versus what is a  
14 museum issue, there is great variance of opinions in the  
15 profession. Many people would maintain -- and I am one --  
16 that every museum is an educational institution. The two  
17 topics are not separable. Every museum has an  
18 educational mission regardless of having collections or  
19 not.

20 BY THE COURT:

21 Q. But I assume not every educational institution is a  
22 museum?

23 A. No. A university is not necessarily a museum. But  
24 where objects are used on a curriculum and, also, focused

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1 public program basis to communicate its mission, it is  
2 hard to distinguish then what is educational versus what  
3 is a museum.

4 BY MR. WELLINGTON:

5 Q. Now, Dr. Wade, you mentioned somewhat earlier that  
6 you had personal experience with a museum deaccessioning  
7 in fact to raise operating revenue; is that correct?

8 A. That is correct.

9 Q. Could you tell us a little more about that  
10 experience, sir?

11 A. It is a complex story, which I'll try to keep brief.

12 But the Museum in Northern Arizona found itself by the  
13 mid-point of the year 2002, basically, facing insolvency.  
14 What had occurred was a very rapid and very successful  
15 growth period between 1993 to 2000. An older director  
16 left, a new director came aboard, and there was Board  
17 director conflict. The director left in February of  
18 2002. The Board then elected, rather than either  
19 appointing from internal to the staff or soliciting  
20 external to the staff a professional museum director, to  
21 rotate the director position among themselves.

22                               Between the period of February of  
23 2002 and December of 2003, there were four acting  
24 directors, all chosen from two different Boards of

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1 Directors.

2                               It happened that during that time  
3 governance was not proceeding to keep either daily track  
4 nor long-term projections over finances of the  
5 institution. And they found that by April of 2003, that  
6 they were facing, roughly, 90 days before there was a  
7 situation of bank notes called and, also, the fact that  
8 there would be a forfeiture on payment to staff.

9                               At that time there was discussion  
10 among the Executive Committee as to closing the  
11 institution, and the decision was then made by the  
12 Executive Committee of the Board and the full Board they  
13 would then look towards asset reduction, asset reduction  
14 which consisted of selling portions of the land the  
15 institution held, selling a one-third partnership in a

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16 commercial venture the institution had and, also, looking  
17 towards collections as nonperforming assets.

18 Q. And what happened? What decisions were made, sir?

19 A. The decisions were made to, basically, proceed on  
20 all three fronts. Interestingly enough, three years  
21 prior to that, under my direction, the Collection  
22 Division and myself had put together a policy, which was  
23 accepted by a former Board, that no objects from the  
24 permanent collection could ever be sold.

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1 The decision then was made that  
2 they would then rescind that policy so that collections  
3 consisting of American western paintings and, also, a  
4 select number, seven textiles from one thousand Native  
5 American textiles we held would be sold.

6 But then a debate began between  
7 professional staff and the Board as to how the revenues  
8 from those sales would be directed.

9 The collections of the Museum in  
10 Northern Arizona are important, but they are in woefully  
11 inadequate storage facilities. Many of the paintings  
12 have been damaged from water leakage and, also,  
13 environmental fluctuations. Also, the textiles early on  
14 had been treated with a variety of pesticides, including,  
15 in certain cases, arsenic; and the collections very much  
16 needed immediate care. But, nevertheless, the  
17 consideration was that rather than face what they saw as  
18 the social criticism by closing the institution for even  
19 a short period of time, all moneys would be directed  
20 towards general offering.

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21 Q. You mentioned that there was a decision to, I think  
22 you said, sell seven of one thousand Native American  
23 pieces?

24 A. Exactly.

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1 Q. How many other pieces of art?

2 A. In all, 20 pieces were sold. The remainders were  
3 paintings from a collection of 3500 paintings at the  
4 museum.

5 Q. So 20 out of -- excuse me -- 13 out of --

6 A. Thirty-five hundred.

7 Q. -- 3500.

8 Q. And how much money was raised from this particular  
9 sale, do you know?

10 A. The museum secured the services of a broker to then  
11 solicit what would then be the immediacy of sale. They  
12 did not have time in their mind to go through a public  
13 auction, which would have taken six to nine months to  
14 secure, and through that, they were able to raise one  
15 million dollars.

16 Q. Did you take a -- what was your personal position,  
17 if at all, while this was transpiring?

18 A. What I did was to prepare for the Board areas of  
19 collections that could not be touched, that, indeed, any  
20 attempt to then diminish the collections would destroy  
21 their educational intent. As a consequence, then we  
22 looked towards objects that had been given to the museum,  
23 in which 99 percent of all museum items at the Museum in  
24 Northern Arizona through donation -- they were not

1 purchased or acquired in a directed way. So we looked  
2 towards objects that had no restrictions as to their  
3 future use, that they could be sold.

4                   The Museum in Northern Arizona has  
5 an embodied corporate policy, which was formed in the  
6 1930s, in which all assets of this private institution  
7 could be used at the discretion of the Board.

8                   As a consequence then, I indicated  
9 which collections could not at all be considered to be  
10 touched. I also then filed documents with the Chairman  
11 of the Board at that time and, also, with the acting  
12 director as to museum standards and indicated the fact  
13 that it would be self-destructive and bring national  
14 censure upon the institution if they thought that they  
15 could sell the collections without, one, indicating  
16 publicly their intent; two, indicating the dire need and  
17 on the choices presented to them, if they did not sell  
18 the collections; and, three, that the collections sale  
19 should only be used for either collection maintenance or  
20 upgrading of storage facilities.

21 Q. After the -- did the sale of the works -- excuse me.  
22 You already said the sale of the works went ahead at some  
23 point, approximately, a million dollars was raised?

24 A. It went ahead in May of 2002.

1 Q. What was the reaction of some of the stakeholders or  
2 the constituents, the public, the donors, the arts

3 community that you experienced while you were there?

4 A. This is the interesting subjective world of emotion,  
5 so do not expect logic here. The situation at first did  
6 not bring for three to four months any real  
7 communication. It was such that the Museum Association  
8 did not bring censure. They did not even bring any  
9 communication as to distrust or unease until a year after  
10 the sale.

11 But what did transpire was an  
12 immediate internal dialogue that moved itself into a  
13 public arena of debate that moved then rapidly from  
14 debate into challenge and, finally, incrimination.

15 Members of the original founding  
16 family, the Colton family from Philadelphia, joined with  
17 other older friends of the museum and began in a public  
18 letter campaign to the local newspaper a challenge as to  
19 the mismanagement of governance and, also, the  
20 desperation of governance to resort to the sale of assets  
21 rather than having the proficiency to raise money through  
22 foundation support or through general philanthropy.

23 It rose to a pitched issue where  
24 potential lawsuits were argued between individuals and,

1 finally, one family member solicited through the local  
2 newspaper an association to save the integrity of the  
3 museum's mission, who then forced a recall vote among  
4 members of the museum and forced the existing Board to  
5 then be challenged to the point that they en masse  
6 resigned in July of 2003 and then were replaced rapidly

7 by most of the individuals who had brought the complaint  
8 because of a mixture of personal agendas and, basically,  
9 what was an attempt to then redirect the governance of  
10 the museum.

11 Q. Was there any response from the museum community at  
12 some point?

13 A. The museum community, immediately upon notification  
14 in the newspaper, which was done of the intending sale,  
15 brought attention to the acting director that this was  
16 imprudent and that it, indeed, challenged what were the  
17 standards of the museum profession and, also, challenged  
18 the integrity of cultural organizations in Arizona.

19 Q. Was there at some point a loss of accreditation or  
20 any loss of public support, donations, any effect on the  
21 development efforts?

22 A. What is interesting in these situations is the  
23 amazing length of life these controversies have. I think  
24 it is fair to maintain that within the museum profession,

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1 that all of us, at least the vast majority of us, feel  
2 that the sale of collections to maintain general  
3 operating is the drastic last resort of a floundering  
4 institution. It also then lingers as a wound of  
5 collateral damage.

6 Originally, three of our most  
7 prominent foundations, which was supporting the museum to  
8 the extent of 1.5 million dollars for a touring  
9 exhibition and publication, did not have any personal  
10 feelings positive or negative if the collections were  
11 sold.

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12                               However, with the increase of  
13 local debate, local incrimination and just bad behavior  
14 of the museum internally and externally, they found  
15 themselves challenged with the fact of not wishing to  
16 have their names associated with the institution.

17                               One consequence was that this  
18 touring exhibition and publication, basically, had been  
19 canceled. The three Foundations asked for the remainder  
20 of their money to be returned to them. Also, the  
21 alienation that occurred among older Board members had  
22 resulted in the loss of pledge of what had been  
23 substantial money for long-term endowment building of the  
24 museum. And then, ultimately, one of the major voices

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1 that fermented the challenge against the older Board also  
2 filed papers with the American Museum Association  
3 asserting seven issues of concern about the ethics of the  
4 existing Board.

5                               All those issues were dismissed by  
6 the American Museum Association as internal concerns,  
7 that they had reduced the number of curators in the  
8 Geology Department. Who cares? That's your internal  
9 problem.

10                               But the only issue that then  
11 prompted a response by the American Museum Association

12 was the fact that proceeds from the sale of art  
13 collections were used to support general operating.

14                               There was a conversation in the



15 Executive Committee of the museum upon notification,  
16 roughly, in, April -- not April -- I would say June of  
17 2003 in which a conversation occurred between the acting  
18 director with the Executive Committee and myself present  
19 with Ed Abel, who is the head of the Association,  
20 American Museum Association, as to what could be done.

21                                 We were facing foreclosure. We  
22 would have to then release 60 staff members. By that  
23 time we had already watched an attrition of 15 staff  
24 members, who had left not necessarily because of the sale

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1 but because of the disruption, in which no work was being  
2 done. It was just constant warfare in the press.

3                                 So the acting director said, what  
4 would you prefer, that we had closed the museum? Ed Abel  
5 said directly, you should have closed the museum rather  
6 than sell the objects --

7                                 MR. KLINE: Objection, Your Honor.  
8 The testimony is hearsay, what the witness is giving.

9                                 THE COURT: Well, I believe that  
10 the Rules of hearsay are different for expert witnesses,  
11 to begin with. They are allowed to rely on certain  
12 things within their expertise. But that having been  
13 said, I think it might be helpful and germane if we  
14 brought us back to what we're hearing. Not that this  
15 dispute in Arizona is not interesting, but I don't know  
16 that it's all that helpful to me.

17                                 MR. WELLINGTON: Almost there,  
18 Your Honor. I'm almost finished. Thank you.

19 BY MR. WELLINGTON:

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20 Q. Dr. Wade, it's been assumed or suggested, I think,  
21 in this hearing -- strike that. Let me start again. I  
22 want you to assume that the Barnes Foundation for the  
23 last couple -- three years has been able to raise in  
24 development levels from some individuals, but, mainly,

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1 foundations, roughly, a million two per year in  
2 development funds.

3 In your experience or opinion, if  
4 the Barnes Foundation was to embark on the sale of some  
5 of its significant works, could that have an impact on  
6 future willingness of foundations or individuals to  
7 contribute even at that level?

8 A. It is inconceivable, considering the uniqueness of  
9 the Barnes Foundation and its holdings, the fact that the  
10 collections represent the template of one man's vision, a  
11 man who collected artworks that were related directly to  
12 an educational mission of reform in social justice, that  
13 if those collections were broken up, that you would not  
14 receive immediate international museum censure and, also,  
15 threaten the removal of your accreditation.

16 Q. I want to ask you a final expert opinion question,  
17 Dr. Wade. I want you to assume that the Foundation is  
18 presented with two options to meet its financial  
19 situation: One, retaining the entire collection  
20 personally selected by Dr. Barnes while relocating some  
21 of those works to a new gallery in Philadelphia, which  
22 would also be supported by a 50-million-dollar endowment,  
23 or, two, selling many of those works selected by



2 looking towards the growth of the Barnes in philosophy,  
3 which I personally think is brilliant. It's marvelous.  
4 We need this. And can we accomplish that more by them  
5 having access to a broader public? Definitely, I would  
6 feel that opening a new facility to allow that  
7 educational drain and, also, that courageous spirit to be  
8 heard by many would probably make him very happy.

9 MR. WELLINGTON: Thank you,

10 Dr. Wade. I have no further questions.

11 THE COURT: Mr. Barth?

12 MR. BARTH: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BARTH:

15 Q. Dr. Wade, just a couple of questions. You mentioned  
16 a variety of institutions with which you have been  
17 associated and, certainly, especially the Peabody Museum  
18 associated with Harvard. My question is, many of them  
19 are not thought of, except, perhaps, the Peabody, as  
20 being educational institutions and in the more narrow  
21 sense. But did they or did they not, nevertheless,  
22 subscribe to the principles that you testified to  
23 earlier?

24 A. They did and, actually, each of the institutions saw

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1 themselves as educational. The Philbrook Museum of Art,  
2 we had actual art school, which was staffed by ten  
3 professionals and, also, an outreach auxiliary of  
4 teachers of 20. So we saw ourselves as communicating  
5 through education the value of art in the American world

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6 culture.

7 Q. Regarding your particular expertise in Native  
8 American art, are you aware of whether or not there is  
9 any such art in a nongallery collection?

10 A. The Native American materials are both in the  
11 gallery collection and, also, in the nongallery  
12 collection. In the educational hallway, there are a  
13 great number of very important ceramic objects. Also,  
14 additional jewelry is contained in the storage area.

15 Q. So that if the Court were to allow the sale of  
16 nongallery art, it is conceivable that some of those  
17 items might be lost from the educational operation of the  
18 Barnes Foundation?

19 A. It is conceivable. I have no idea what is being  
20 considered; but if it's thought of that objects that are  
21 in holdings other than permanent galleries are to be  
22 sold, they very well could be broken up.

23 Q. Now, you did indicate earlier in discussing the  
24 museum ethical principles, that they are -- they do not

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1 have the force of law, they are, basically, principles  
2 worked out by a cooperative organization to bind its  
3 members; is that correct?

4 A. That is correct.

5 Q. There is no legal bar to an institution to sell  
6 anything that it owns?

7 A. That is variable, depending upon if you're a  
8 federally supported institution versus a private  
9 institution. But for a private institution, there is  
10 not.

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11 Q. Subject, of course, to something like a restriction  
12 on the gift that it could not be sold or should be used  
13 for educational purposes or whatever?

14 A. Exactly.

15 Q. Now, the principles do provide, however, that you  
16 can sell a part of the collection for the care of the  
17 collection, and you've described, I think, the situation  
18 in Arizona where you described it as woeful, and you were  
19 hopeful that the proceeds would be used to improve the  
20 storage facilities so that art could be preserved?

21 A. Exactly.

22 Q. Well, let me ask you this: What is the difference  
23 between using proceeds to build adequate storage  
24 facilities and using proceeds for operations to pay the

1 air conditioning bill?

2 A. First of all, there is a general feeling -- and,  
3 again, this is a subjective issue within the museum field  
4 and philanthropy field -- that the sale of assets,  
5 particularly, art collections to generate general  
6 operating indicates a total failure and mismanagement by  
7 governance of what, indeed, is the long-term financial  
8 trust that they have been granted in the care and  
9 maintenance of an institution.

10 Also, the fact that monies are  
11 directed towards salaries, monies are directed towards  
12 issues that one can maintain are essential to the  
13 operations of the institution, meaning that you pay  
14 security guards to stand in hallways, but at the same

15 time you are then cannibalizing your primary mission and  
16 asset, meaning the collection that you were originally  
17 built for, it's, in a sense, selling personal organs so  
18 that you can sustain your life.

19 Q. This, again, although this does not have force of  
20 law, is something to be avoided as well, in the case of  
21 professional ethics, at all costs?

22 A. At all costs with the possibility of censure and,  
23 also, the removal of accreditation, which happened with  
24 the Museum in Northern Arizona.

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1 Q. What happens if there's an alternative? What do the  
2 ethical standards say about that, if there is a viable  
3 alternative to sale of artifacts?

4 A. I'm not certain I understand the question.

5 Q. Well, under the ethical standards and given the fact  
6 that such sales are not necessarily contrary to law,  
7 would the existence of an alternative make resort to such  
8 a sale even more violative of those standards?

9 A. I'm not sure how to answer that question.

10 Q. All right. I'll withdraw the question. I'm not  
11 sure it's a very good question.

12 Finally, you indicated just a  
13 moment ago that sale of collections is akin to the sale  
14 of internal organs to sustain an individual's life. What  
15 impact would that sort of a sale or self cannibalization,  
16 if you will, have on future giving?

17 A. It has incredible negative impact on future giving.  
18 The museum that I was associated with has watched a  
19 substantial drop in donations, both cash but,

20 particularly, with objects, because the sacrifice of a  
21 patron, often in memorial to a family member, in which an  
22 object is given is a sacred trust. Even when, indeed,  
23 the object is given without restrictions because of their  
24 generosity, it is the sense that they were not important

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1 enough to the future mission of your institution. But in  
2 the collecting world, there is a great amount of  
3 competition among the museums to then acquire significant  
4 collections.

5                                One reason we passed the law in  
6 our policy that we would not then deaccession from our  
7 permanent collection was to attract disfranchised patrons  
8 who said, I'm not going to just give a collection to this  
9 museum so they can sell it in five years. It had a  
10 tremendous negative impact.

11 Q. Beyond that, is it fair to say that, in the donor's  
12 mind, the fact that an institution has seen fit to sell  
13 some of its collection to raise money would indicate that  
14 rather than ask me for money, they could just sell some  
15 more?

16 A. That is also the threat that sister institutions  
17 feel. To set the precedent in which a museum starts  
18 selling its assets for the sake of general operating  
19 threatens every other museum in the museum world. It  
20 allows patrons then to say, well, I think we have too  
21 much stuff, I don't need to give you money, just get rid  
22 of that French stuff, I don't like it. It starts a  
23 domino cascade in which then it mandates those other



24 institutions to protect their own integrity to then

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1 challenge that institution that would then sell their  
2 assets.

3 MR. BARTH: Thank you.

4 THE COURT: Mr. Cyr?

5 MR. KLINE: Your Honor, we have  
6 probably 20 to 30 minutes of questions for this witness;  
7 and we're happy to proceed now, if you'd like, or if this  
8 is a good time for the break, but it's the pleasure of  
9 the Court.

10 THE COURT: It might make some  
11 sense to break for lunch now, which is what you're  
12 suggesting.

13 MR. KLINE: No, I'm not, actually.

14 THE COURT: What's the pleasure of  
15 counsel?

16 MR. WELLINGTON: I would prefer  
17 just completing Dr. Wade, who has been sitting here a  
18 couple of days.

19 THE COURT: All right. Then let's  
20 go.

21 Is that all right with you?

22 THE WITNESS: I would prefer that.

23 THE COURT: All right. Then let's  
24 proceed.

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1 BY MR. KLINE:

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2 Q. Dr. Wade, you said that you serve on two committees  
3 currently at the Barnes Foundation, the Education  
4 Committee and the Curatorial Committee? Did I get that  
5 right?

6 A. That is correct.

7 Q. So you're familiar somewhat with the policies of the  
8 Barnes Foundation, are you not?

9 A. Somewhat.

10 Q. Are you familiar, Dr. Wade, with any legal  
11 impediments to the sale of the nongallery art?

12 A. I only know through conversation. I have not looked  
13 at any documents as to the fact that there is in the  
14 original gifting to the Foundation the stricture that  
15 objects are not to be sold.

16 Q. So your understanding is that in the Indenture of  
17 Trust, that there's a provision that provides that  
18 nongallery art should not be sold; is that correct?

19 MR. WELLINGTON: Objection, Your  
20 Honor. That's a mischaracterization of the Indenture.

21 Q. (Continued) Would you please restate your answer  
22 then?

23 THE COURT: Well, it's  
24 cross-examination. He's entitled to phrase the question

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1 as he believes is accurate. Whether it's accurate or not  
2 will depend on, perhaps, redirect. Perhaps, the witness  
3 will correct him. Who knows? And, perhaps, he is  
4 correct.

5 So I'll allow it. You may ask

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6 that question.

7 MR. KLINE: Can you reread the  
8 question?

9 (The court reporter read the  
10 pending question from the record as follows:

11 "Question: So your understanding  
12 is that in the Indenture of Trust, that there's a  
13 provision that provides that nongallery art should not be  
14 sold; is that correct?"

15 A. To the best of my knowledge, again, not reviewing  
16 any Indenture, it is my understanding that objects in the  
17 permanent collection in permanent exhibition housing are  
18 not to be sold. I do not have any understanding as to  
19 what the concept was or the disposition of objects that  
20 are not in permanent galleries.

21 Q. Dr. Wade, would it surprise you to learn that on May  
22 17 of 2001 this court ordered that -- issued an order  
23 saying that the nongallery art -- the language -- I'm  
24 going to read it. Paragraph 5 of the Order of Judge Ott,

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1 the language of Paragraph 10 of the Indenture that's in  
2 Paragraph 13 must be interpreted to refer only to the  
3 works hanging permanently in the gallery, and those  
4 Indenture provisions dealt with the loaning and the sale  
5 of art and in keeping them exactly in the same places as  
6 they were at the donor's death, and now I'm reading  
7 directly from Judge Ott's adjudication.

8 MR. WELLINGTON: Your Honor, my  
9 objection is, he's not there as a legal witness. He was  
10 not asked on direct about any legality. We're talking

11 about ethical issues. His interpretation or not  
12 interpretation of Your Honor's opinion or the Indenture  
13 is both irrelevant and beyond the scope.

14 THE COURT: I don't think he's  
15 being asked to interpret it. I'm going to overrule the  
16 objection only to the extent that he did testify on  
17 direct that there were provisions restricting the sale of  
18 any of the collections. So it's fair scope.

19 And you may answer that in terms  
20 of whether or not that would surprise you. I think that  
21 was the question.

22 MR. KLINE: That's the question.

23 A. I'm not aware of any of the legal documents. So,  
24 again, as I said prior, it was my understanding through

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1 communication and conversation, not reviewing any  
2 existing documents, that there were provisions that the  
3 objects that are on permanent exhibition were not open  
4 for sale as well as not open for general movement and  
5 replacement.

6 I do not know what is the  
7 definition and whose definition it is of objects that are  
8 not on permanent exhibition. So I have no idea about  
9 that.

10 Q. Dr. Wade, you said that deaccessioning is an ethics  
11 issue; is that correct?

12 A. That is correct.

13 Q. And these guidelines are not legally binding; is  
14 that correct?

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15 A. That is correct.

16 Q. And you said you're familiar with the ethics  
17 guidelines on selling art that had been propounded by the  
18 AAM and AAMD and, in fact, we saw citations to those a  
19 few minutes ago in exhibits presented by the trustees; is  
20 that correct?

21 A. That is correct.

22 Q. Is it fair to say that the Barnes Foundation case is  
23 a very significant case in the art community?

24 A. I think it is probably a paramount case in the art

1 communi ty.

2 Q. Is it fair to say that there are different  
3 significant differences of opinion as to the  
4 deaccessioning of this art among members of the AAM and  
5 AAMD?

6 A. I think there are significant differences in the  
7 general community of interested parties, meaning the fact  
8 that if we were to talk to museum professionals who are  
9 members of the Association of Museums, I would think that  
10 the vast majority would feel that it is not feasible to  
11 sell the collections for general operating, though people  
12 external to the association, art critics and others, do  
13 have varying opinions.

14 Q. By the way, is the Barnes Foundation a member of the  
15 AAMD?

16 A. That I don't know.

17 Q. You don't know whether the Barnes Foundation is a  
18 member of the AAMD?

19 A. No, I do not.

20 Q. You said that the penalty for failing to adhere to  
21 the ethics guidelines of the AAM or the AAMD is  
22 expungement?

23 A. It is one potential. It is the most severe. You  
24 have reprimand. You can be censured or you can have your

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1 accreditation removed, which is the most severe issue.

2 BY THE COURT:

3 Q. The equivalent of excommunication?

4 A. That's exactly.

5 BY MR. KLINE:

6 Q. Has the AAMD taken any public opinion on the Barnes  
7 Foundation case?

8 A. I don't know. I have no idea.

9 Q. You're not familiar then in January of this year the  
10 AAMD expressed concern about the deaccessioning of --

11 MR. BARTH: Your Honor, I object  
12 to that line of questioning. He's definitely testifying.

13 THE COURT: Well, it's  
14 cross-examination, Mr. Barth. I think the leeway  
15 accorded to anyone doing cross-examination would  
16 contemplate that. I will allow that.

17 You may ask the question.

18 MR. KLINE: Would you read the  
19 question again, please?

20 THE COURT: It requires, of  
21 course, good-faith basis; and I'm assuming, Mr. Kline,  
22 you have it. Am I right?

23 MR. KLINE: Yes.

1 pending question from the record as follows:

2 "Question: You're not familiar  
3 then in January of this year the AAMD expressed concern  
4 about the deaccessioning of" --

5 BY MR. KLINE:

6 Q. Of the deaccessioning. I'm sorry. Let me repeat  
7 the question. Dr. Wade, are you familiar with the AAMD's  
8 pronouncement in January of this year relative to the  
9 deaccessioning of art at the Barnes Foundation?

10 A. No, I am not.

11 Q. I want to show you, if I may, an article that  
12 appeared in the Tuesday Wall Street Journal. This is an  
13 article that appeared on the 21st of September, Tuesday.  
14 We do not have copies of this article at the moment, but  
15 we will provide them as exhibits to the trustees and to  
16 the Court and to the Attorney General. I'm interested  
17 in, really, the parts of this article that deal with the  
18 AAMD.

19 MR. WELLINGTON: Your Honor, the  
20 reason for my objection is, I've seen this article. This  
21 is a Wall Street Journal article. It is not the AAMD's  
22 position paper. This actually mistakes the AAMD's  
23 position. And if Mr. -- I have no objection at all if  
24 Mr. Kline wants to show him the AAMD position paper.

1 This is not it.

2 THE COURT: I understand it. I  
3 too have seen the article. People feel the need to send  
4 me things. And this is among the things I've been sent.

5 I think the distinction legally,  
6 evidentiary that we're talking about here is that  
7 Dr. Wade has clearly been qualified and, indeed, is an  
8 expert witness. To the extent that he was allowed to  
9 draw from information of others, to the extent that he  
10 has formulated certain opinions and, indeed, related  
11 certain experiences that had helped in formulating those  
12 opinions, all of that is permissible.

13 At the same time on  
14 cross-examination he can be asked about the opinions of  
15 others, be they hearsay or, indeed, perhaps, even  
16 inaccurate; but that's what experts are compelled to deal  
17 with.

18 So I will not endeavor to  
19 determine whether the source of a question is legitimate  
20 or not. I leave that to counsel and, indeed, if  
21 necessary, redirect.

22 You may proceed, Mr. Kline.

23 MR. WELLINGTON: Thank you, Your  
24 Honor.

1 BY MR. KLINE: .

2 Q. Dr. Wade, you said in your testimony that the  
3 violation of the rule on -- or, the ethics guidelines on  
4 deaccessioning would most certainly lead to some form of  
5 censure in the museum world. In fact, you were quite



6 emphatic about that, were you not?

7 A. Yes.

8 Q. Take a look at this article that I referred to in  
9 the Wall Street Journal. You can see it does confirm  
10 what we said here. It's talking about the Holocaust  
11 right above it, but it says that while the Barnes  
12 situation isn't on that order of magnitude, it is the  
13 next most important museum issue of our time. That's,  
14 essentially, reiterating what you said; is that correct?

15 A. It's true.

16 Q. All right. It goes on to say, "Yet, AAMD has  
17 remained silent." And down here we see it says that  
18 AAMD's silence is particularly puzzling because the issue  
19 of honoring a donor's wish goes right to the heart of its  
20 members' professional responsibilities.

21 A. Indeed.

22 Q. What I'm getting at with this article, Dr. Wade, is  
23 that you, as I said, were emphatic about this issue of  
24 censure in the event that the art was sold. But from

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1 this article and the information that's presented in  
2 here, it seems as though there may be a very significant  
3 difference of opinion on that issue; is that correct?

4 A. It is likely, as a subjective issue, differing  
5 opinions; but, again, I remind everyone that we did not  
6 receive formal censure from the American Museum  
7 Association on the sale of the artworks at the museum in  
8 Northern Arizona until 16 months after the fact. There  
9 was an attempt to allow the institution to redress what  
10 had been thought of as a breach of professional standards

11 rather than taking an adversarial relationship that would  
12 then force the institution into a very restricted option  
13 of response.

14                                 So I cannot address what, indeed,  
15 they are contemplating; but it is not dissimilar than the  
16 situation we experienced.

17 Q.     All right. But you'll admit that there's no  
18 significant penalty to adhere to these ethics guidelines  
19 set forth in the AAMD? The Attorney General is not going  
20 to come after the Barnes Foundation on some legal basis  
21 to prevent that sale?

22 A.     Again, I am not a legal expert, so I cannot say that  
23 I know that. I would assume that's not the case.

24 Q.     The purpose of these ethics guidelines, Dr. Wade --

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1 isn't the purpose to protect the integrity of an  
2 institution to force it to stick to its mission?

3 A.     That's very true.

4 Q.     Isn't it true that you don't want a museum to, in  
5 your word, cannibalize its own art?

6 A.     That's very true.

7 Q.     Mr. Barth says that's his word, so he wants credit  
8 for that. I'm happy to do so.

9                                 THE COURT: I think we can spread  
10 it around.

11 BY MR. KLINE:

12 Q.     So then you would say that if a museum starts out  
13 with ten paintings and each year eats one of those  
14 paintings in order to pay salaries, at the end of the

15 tenth year you've got nothing left; is that right?

16 A. That seems logical.

17 Q. This is really one of the underlying reasons for  
18 deaccessioning; isn't it, Dr. Wade?

19 A. Not necessarily the primary issue.

20 Q. What's the primary reason, Dr. Wade?

21 A. The primary issue is that in a nonprofit situation  
22 in which a public trust is created, in which an  
23 institution dedicated to education and, also, the  
24 preservation of cultural and natural history is formed,

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1 it is looked at that objects then communicate that  
2 history. So, in a sense, it is essential to maintain  
3 what, indeed, is the integrity of your professional  
4 mission through that care and protection rather than,  
5 basically, then surrender them for simple operational or  
6 expense purposes.

7 Q. What I hear you saying is that you want to protect  
8 the integrity so that your donors will keep on giving; is  
9 that right?

10 A. Not primarily. It is to protect the integrity to  
11 allow you to retain the concept of being an educational  
12 institution and, also, a cultural institution. The side  
13 effect is that donors who believe in the efficiency of  
14 your mission and the importance of your vision will then  
15 support your institution. But, nevertheless, the real  
16 goal is to preserve history and science and, also,  
17 natural phenomena.

18 Q. By the way, did these ethics guidelines exist in  
19 1951 when Dr. Barnes died?

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24 of three-million dollars and is very excited about that.

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1 Does that sound -- first of all, do you know whether  
2 that's true or not?

3 A. First of all, there are errors in that article.  
4 Number one, the collections were not sold to a single  
5 buyer. The museum secured a broker, who placed those  
6 objects in multiple collections.

7                               Also, the pledge is focused  
8 towards what had been a long-term understanding of the  
9 museum, would raise an additional nine-million dollars  
10 for a Federal repository to hold collections, that  
11 three-million dollars could be forthcoming. That has  
12 been a pledge on the books for multiple years. But,  
13 nevertheless, it also mandates that the institution then  
14 is able to then raise the additional funding.

15                               Finally, general operating funds  
16 at the museum have been substantially reduced; and, as a  
17 consequence, there is great concern among the staff as to  
18 its operational future.

19 Q. It was interesting to me to note that Ted Danson is  
20 very actively involved in promoting this museum. Do you  
21 know that to be true?

22 A. Ted Danson originally was part of the institution  
23 because his father was one of the early directors. This  
24 year, from the best of my knowledge, communicating with

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1 staff, he canceled his fund-raising engagement this year.

2 Q. Dr. Wade, you've been very patient, and I'm very  
3 grateful for your bearing with me on this. I have one  
4 last question, and it gets back to the Museum of Northern  
5 Arizona.

6 A. Indeed.

7 Q. There you said that at some point, after this  
8 deaccessioning, there had begun family and donors of the  
9 Museum of Northern Arizona -- I assumed these are people  
10 who gave objects -- that they are some of the people who  
11 gave objects to the museum or set it up or built the  
12 building?

13 A. In certain circumstances.

14 Q. You said that they criticized the Board and probably  
15 the staff too for failing to maintain the integrity of  
16 the trust; is that correct?

17 A. Indeed.

18 Q. Isn't breaking Dr. Barnes' trust and converting the  
19 Barnes Foundation from a school to a museum -- isn't that  
20 the great deaccessioning here, Dr. Wade?

21 MR. WELLINGTON: I object to the  
22 form of the question, obviously, Your Honor, because it  
23 assumes a legal fact, which I think is inappropriate.

24 MR. KLINE: I'd be happy to

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1 rephrase that.

2 THE COURT: All right. That  
3 always makes it easy.

4 BY MR. KLINE:

5 Q. Dr. Wade, if the Barnes Foundation is converted from

6 a school to a museum, and if all the paintings are moved  
7 from its home in Merion to the City of Philadelphia, and  
8 if that is deemed by some to break the trust of  
9 Dr. Barnes, what impact does that have on donors?

10 A. First of all, I do not know the specifics that all  
11 the paintings would be moved from Merion to Philadelphia,  
12 so I can't necessarily agree to that. I don't know  
13 that's the case. Whatever you do, you are going to be  
14 severely criticized. It is the issue of choosing between  
15 courses of what, indeed, is irreparable damage versus a  
16 course in which one justifies the change as a way to save  
17 an internationally important institution, but there will  
18 be criticism regardless of what you do.

19 Q. Dr. Wade, it's really your interpretation of  
20 irreparable damage, isn't it?

21 A. I feel irreparable damage is tied to the sale of art  
22 for general offering.

23 MR. KLINE: Thank you, Dr. Wade.

24 THE COURT: Will there be

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1 redirect?

2 MR. WELLINGTON: Just very  
3 briefly, Your Honor.

4 REDI RECT EXAMI NATION

5 BY MR. WELLINGTON:

6 Q. While this article, which is by a Mr. Gibson,  
7 doesn't purport to quote the AAMD in any sense, I want to  
8 note the language here, "Yet, AAMD did issue a statement  
9 last January expressing concern over a proposal to raise  
10 needed cash by selling parts of the collection in

11 storage." Does that surprise you, sir?

12 A. Not at all. That's exactly what I expect.

13 Q. But there has not yet been a decision by anyone to  
14 sell, has there?

15 A. No, there has not.

16 MR. WELLINGTON: Thank you.

17 Nothing further.

18 THE COURT: Mr. Barth?

19 MR. BARTH: I have nothing.

20 THE COURT: Mr. Kline?

21 MR. KLINE: No.

22 BY THE COURT:

23 Q. Dr. Wade, you've been very patient. I have a few  
24 questions for you, if I may, sir.

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1 A. Indeed.

2 Q. You've indicated that you did not know whether the  
3 Barnes Foundation was a member of the Association of Art  
4 Museum directly. Do you know whether it is a member of  
5 the American Association of Museums?

6 A. To the best of my knowledge, I believe it is.

7 Q. You believe it is?

8 A. Uh-huh.

9 Q. Do you know whether it is -- of course, this is only  
10 if you know. Do you know whether they are a member of  
11 the American Association of State and Local Historians?

12 A. No, I do not.

13 Q. You do not. Last question. I respect your earlier  
14 statements about the lack of familiarity with the

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15 specifics of the legal documents, so I won't ask you  
16 questions about that. But I would like you to assume,  
17 for the purpose of the question I'm about to ask you,  
18 that there are provisions within the Trust Indenture that  
19 under certain circumstances provide for liquidation of  
20 the assets.

21 Do you have an opinion within the  
22 context of your expertise as to how the interplay works  
23 between the ethical standards that you commented about  
24 earlier and a donor who inserted provisions about

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1 liquidating his collection?

2 A. I think in a subjective world in which the whole  
3 question of deaccessioning is totally fraught with  
4 emotionalism, controversy and interpretation, that,  
5 irrespective of what, indeed, is the terminology within  
6 an original gifting instrument, there will be an argument  
7 made that in the succeeding 60-plus years it has been  
8 recognized that objects have not been sold, that, indeed,  
9 the integrity of the collection has been maintained, and  
10 at this late date, to sell, we'll then be criticized as a  
11 failure of the institution, irrespective of what the  
12 original covenant was about.

13 Q. Well, that brings us back to the fact that there's  
14 going to be criticism --

15 A. Indeed.

16 Q. -- regardless of how this plays out?

17 A. Exactly.

18 Q. And we all understand that. On the issue that I  
19 asked you about though, am I inferring properly that you

20 believe the ethical considerations trump the express  
21 provisions of the donor in that regard?

22 A. Exactly. In the most painful situation in which I  
23 was retelling the Museum in Northern Arizona, we have the  
24 provision in our incorporational documents that the Board

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1 can determine any disposition of collections, land or any  
2 other assets. It is clearly outlined that they could  
3 sell the collections, if they wished. And they could  
4 rescind any policy that would then curtail that option.  
5 It still resulted in then forced removal of an entire  
6 Board, a new Board coming in, a substantial loss of  
7 patronage and, also, program development and staff.

8 THE COURT: Thank you. Any  
9 follow-up, Mr. Wellington?

10 MR. WELLINGTON: No.

11 THE COURT: Mr. Barth?

12 MR. BARTH: No.

13 THE COURT: Mr. Kline?

14 MR. KLINE: No.

15 THE COURT: Thank you, Dr. Wade.

16 You're excused.

17 We'll take a break here. How  
18 about if we pick up at 1:30?

19 MR. WELLINGTON: Yes, Your Honor.

20 THE COURT: All right.

21 (At 12:25 p.m. a lunch recess was  
22 taken.)

23 -----

1 I HEREBY CERTIFY that the  
 2 proceedings and evidence are contained fully and  
 3 accurately in the notes taken by me in the above cause  
 4 and that this is a correct transcript of the same.

5

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PAMELA M. MORAN

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Official Court Reporter

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Received and directed to be filed

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this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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STANLEY R. OTT, JUDGE

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