

VOLUME X

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

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

PETITION TO AMEND CHARTER AND BYLAWS

Courtroom A
Monday, September 27, 2004
Commencing at 9:35 a.m.

MORNING SESSION

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

20

21 BEFORE: THE HONORABLE STANLEY R. OTT, JUDGE

22

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1

COUNSEL APPEARED AS FOLLOWS:

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10

The Barnes Foundation

11

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1 THE COURT: I think, when we broke
2 on Friday, the students had taken their expert out of
3 turn; and we're back to you, Mr. Wellington.

4 MR. WELLINGTON: That's correct,
5 Your Honor.

6 THE COURT: We're still back to
7 you.

8 MR. WELLINGTON: We're ready to
9 proceed.

10 My partner, Mr. Solano, is going
11 to call the next witness, which would be Kimberly Camp.

12 THE COURT: I was, actually,
13 chiding Mr. Solano at the close of the proceedings Friday
14 because he said something as we left, and I said, that
15 was the first I had heard from him in a week. He must
16 have taken it to heart and insisted on a role today.

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17 MR. SOLANO: You can only whisper
18 so much, Your Honor.

19 MR. WELLINGTON: We've handed out
20 some additional exhibits this morning, Your Honor, as a
21 result of something that happened on Friday. When we had
22 presented -- you might remember the first document from
23 Ms. McClea was a House & Garden article about Ker-Feal.

24 THE COURT: I remember the

Page 6

1 article. I couldn't tell you it was the first. But go
2 ahead.

3 MR. WELLINGTON: Your Honor may
4 even be right, but it was one of the articles.
5 Ultimately, the exhibit was admitted, but for a limited
6 purpose because of authenticity issues as to the
7 authorship.

8 There are additional archival
9 materials relating to the authorship of that, which we
10 didn't understand was going to be an issue, frankly, and
11 we have handed out to counsel some of those letters from
12 Dr. Barnes concerning that authorship. I just wanted to
13 let the Court know that there has been some additional
14 exhibits but directed to that point.

15 THE COURT: All right. Mr.
16 Solano?

17 MR. SOLANO: The Barnes Foundation
18 calls Kimberly Camp.

19 Your Honor, while Ms. Camp is
20 taking the stand, we do have the supplemental exhibits,
21 if I may hand them up to Your Honor.

Page 7

22 THE COURT: Sure. If you give
23 them to Mr. Yeagle, he'll hand them up.

24 -----

Page 7

1 PETITIONER'S EVIDENCE

2 ... KIMBERLY CAMP, having been
3 duly sworn, was examined as follows:

4 BY MR. SOLANO:

5 Q. Good morning, Ms. Camp.

6 A. Good morning.

7 (Short interruption)

8 MR. SOLANO: May I proceed, Your
9 Honor?

10 THE COURT: Go ahead.

11 BY MR. SOLANO:

12 Q. Ms. Camp, you testified at the earlier phase of this
13 hearing, so I'm going to limit my questions today to just
14 three areas of testimony that have been the subject of
15 last week's hearing, Ker-Feal, the use of the non-gallery
16 art by the Foundation and your vision for the new
17 gallery.

18 Before I begin, am I correct that
19 you are still the executive director and chief executive
20 officer of the Barnes Foundation?

21 A. Yes.

22 Q. Ms. Camp, we've already heard testimony from Ms.
23 McClea about the use of Ker-Feal and the Foundation's
24 educational program. More generally, can you tell us

1 whether Ker-Feal is important to the overall mission of
2 the Barnes Foundation?

3 A. Yes, it is.

4 Q. Can you explain why, please?

5 A. Ker-Feal, as articulated by Barnes in his will, was
6 to be a living museum of art and a botanical garden. We
7 have incorporated that into our overall planning and
8 mission and scope of the Foundation in the service of the
9 education program.

10 Q. Do you have present plans for use of Ker-Feal as
11 part of the Foundation's programs?

12 A. We do. We have, actually, initiated plans for
13 Ker-Feal about five years ago with raising of the money
14 for the Collection Assessment Project, have been able to
15 stabilize that property, do many of the things that it
16 needed after years of neglect, I should say, and begun
17 plans to incorporate that fully in the education program
18 for K through 12 students, adult students, residents of
19 West Pikeland Township and a whole variety of other uses
20 that we're looking at.

21 Q. Mr. Schwenderman, I believe, testified that in
22 connection with his model for the three campuses, that
23 programs at Ker-Feal may not begin immediately. Could
24 you explain that? Is that correct, first of all?

1 A. It is. We have continued to work towards getting
2 some more significant programs in place. They are, of
3 course, limited by availability of funding. We started

4 three years ago with, as I mentioned, the stabilization
5 that included basic things we needed to do before we
6 could allow students to come in the property. There was,
7 for example, dangerous mold in the house that had to be
8 ameliorated. We needed to do the full inventory of the
9 collection to ensure that there would be no more slippage
10 in the collection. We have submitted a proposal,
11 actually, to the Department of Conservation & Natural
12 Resources to continue some of the plant inventory work as
13 well as putting together an interpretive strategy that
14 encompasses Ker-Feal within the broader mission of the
15 Barnes Foundation.

16 Q. Is Ker-Feal important to the horticultural program
17 of the Barnes Foundation?

18 A. Yes, it is.

19 Q. In that connection, in 2002, did the Barnes
20 Foundation receive a report on the different varieties of
21 plants that are on the Ker-Feal property?

22 A. Yes, we did.

23 (List of Native, Naturalized and
24 Cultivated Species at Ker-Feal premarked by counsel as

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1 Exhibit No. 99.)

2 BY MR. SOLANO:

3 Q. Ms. Camp, in the large binder that is in front of
4 you, I'm going to ask you to turn to Petitioner's Exhibit
5 99, and could you take a look at that, please?

6 MR. SOLANO: It's Binder 3, I
7 believe, Your Honor.

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8

THE COURT: Yes.

9 Q. (Continued) Can you identify that document for us?

10 A. This is a report on the botanical variety of species
11 found at Ker-Feal. Part of this was done by our director
12 of our arboretum, Dr. Jacob Thomas. The other part was
13 done Dr. Ernie Schuyler (sic) with his Botany Club that
14 came out one afternoon, and these are the species that
15 they identified.

16 Q. Is this diversity of plant life at Ker-Feal
17 important to the Foundation's horticultural program?

18 A. Yes, it is.

19 Q. Ms. Camp, I believe you were in the courtroom on
20 Friday when Ms. Beaucar discussed some of the archival
21 materials regarding Ker-Feal; is that correct?

22 A. Yes, I was.

23 Q. Do the archivists at the Foundation work under your
24 supervision as executive director of the Barnes

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1 Foundation?

2 A. Yes.

3 Q. Do you recall the question that arose on Friday as
4 to whether or not the article from the December 1942
5 issue of House & Garden Magazine was or was not written
6 by Dr. Barnes?

7 A. Yes, I do.

8 Q. Has there ever been any doubt at the Foundation as
9 to whether Dr. Barnes wrote that article?

10 A. Never.

11

MR. CYR: Objection; Leading.

12

THE COURT: I don't think so. I
Page 11

13 think it's permissible.

14 The answer was?

15 A. (Continued) Never.

16 Q. In light of the testimony on Friday, did you ask the
17 Foundation's archivists to determine whether the
18 Foundation's archives contain any materials that would
19 shed light on whether or not Dr. Barnes wrote that
20 article?

21 A. Yes.

22 Q. What did they report back to you?

23 A. We found two huge folders containing the manuscript,
24 correspondence between Dr. Barnes and the House & Gardens

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1 staff, telegrams, personal invitations, all that
2 supported the fact that Barnes and Miss de Mazi a wrote
3 the articles for House & Garden.

4 Q. Ms. Camp, you should have there a thin binder of
5 supplemental exhibits. These are the ones that we handed
6 out this morning.

7 MR. SOLANO: Your Honor, I'll
8 apologize to the Court for the lack of exhibit tabs; but
9 we put it together yesterday and didn't have any. But
10 the exhibits are numbered in the binder.

11 (Letter dated May 22, 1942 to Dr.
12 Barnes from Mr. Humphrey premarked by counsel as Exhibit
13 No. 118.)

14 Q. (Continued) Ms. Camp, I'm going to ask you to turn
15 to Petitioner's Exhibit No. 118, which is a May 22, 1942
16 letter from a Mr. Humphrey to Dr. Barnes. Do you see

Page 12

17 that document?

18 A. Yes.

19 Q. Have you seen that document before?

20 A. Yes.

21 Q. Where have you seen it?

22 A. I read this document on Friday after the archivist
23 delivered the two folders to my office.

24 Q. So is this one of the documents that was in those

Page 13

1 folders?

2 A. Yes.

3 Q. Ms. Camp, could you please read the first sentence
4 of the second paragraph in that letter?

5 A. "May I at this time take the opportunity to ask you
6 whether you are any longer interested in allowing your
7 beautiful farmhouse to be shown in House & Garden?"

8 Q. Ms. Camp, there's a signature line in that letter.
9 Does that identify who Mr. Humphrey is?

10 A. Yes, it does.

11 Q. Who is he?

12 A. He's the managing editor for House & Garden
13 Magazine.

14 (Letter dated May 25, 1942 to Mr.
15 Humphrey premarked by counsel as Exhibit No. 119.)

16 Q. Ms. Camp, I'm going to ask you to turn to
17 Petitioner's Exhibit 119, which is a May 25, 1942 letter
18 to Mr. Humphrey.

19 A. Yes.

20 Q. Do you have that?

21 A. I do.

Page 13

22 Q. Have you seen that document before?

23 A. Yes.

24 Q. Where?

Page 14

1 A. In my office on Friday.

2 Q. Where did that document come from in your office?

3 A. It was given to me by the archivist.

4 Q. So this was another document from that folder?

5 A. Yes.

6 Q. This letter is unsigned. Do you have a belief who
7 wrote this letter?

8 A. Albert Barnes.

9 Q. Why do you believe that?

10 A. Barnes was systematic in his keeping copies, carbon
11 copies, of all the letters that he sent. They were
12 prepared by his secretaries and are put in those files.
13 Oftentimes, he would keep copies of both signed versions
14 as well as unsigned letters; but they were all
15 originating from him.

16 Q. Ms. Camp, I'll ask you to look at the second
17 paragraph of that letter. Does that help you to also
18 know who wrote that letter?

19 A. Yes, it does.

20 Q. Why?

21 A. Because it's written in the first person, and it's
22 talking about this article and referring to previous
23 discussions that Dr. Barnes had engaged in, documented
24 and signed letters.

1 Q. Ms. Camp, we've highlighted a portion of the first
2 paragraph of that letter on the screen. Can you, please,
3 read it?

4 A. "On the other hand, Ker-Feal is unique and an
5 article about it could be made definitely informative if
6 the person who wrote it knew enough to see what we have
7 done with that house is merely a continuation of the
8 basic principles of the educational program which we have
9 carried out at the Foundation for more than twenty years.
10 I might allow you to do the article if I could be
11 guaranteed that this idea of educational continuity would
12 be strictly adhered to."

13 Q. Ms. Camp, could you read the last paragraph of the
14 letter?

15 A. "The guarantee that you would have to furnish would
16 be that any article you published on the subject would be
17 free from personalities concerning myself, that the copy
18 would have to be approved in writing by me before it was
19 published, and that after my approval the article would
20 not be edited."

21 (Letter dated June 2, 1942 to Mr.
22 Humphrey from Dr. Barnes premarked by counsel as Exhibit
23 No. 120.)

24 BY MR. SOLANO:

1 Q. Ms. Camp, could you, please, turn to Petitioner's
2 Exhibit 120, which is a June 2, 1942 letter from
3 Dr. Barnes to Mr. Humphrey?

4 A. (Witness complies with request.)

5 Q. Is this also a document that came from that folder
6 provided to you by the archivist?

7 A. Yes, it is.

8 Q. Ms. Camp, could you, please, read the third
9 paragraph of that letter?

10 A. "The point in all this as regards Ker-Feal is that
11 the plan of study exemplifies the modern scientific
12 methods of education as well as the characteristics
13 common to all objects capable of giving the observer an
14 aesthetic experience. The farmhouse and its furniture
15 represent a genuine expression of the creative work of
16 the American craftsmen of that period. And the ensemble,
17 house and furniture, embodies an artistic expression of
18 high order."

19 (Letter dated June 6, 1942 to Mr.
20 Humphrey from Dr. Barnes premarked by counsel as Exhibit
21 No. 121.)

22 BY MR. SOLANO:

23 Q. Ms. Camp, I'm going to ask you to turn to the next
24 exhibit, Petitioner's Exhibit 121, which is a June 6,

Page 17

1 1942 letter to Mr. Humphrey. Ms. Camp, is this another
2 letter that came from that folder from the archivist?

3 A. Yes, it is.

4 Q. Ms. Camp, who wrote that letter?

5 A. This was written by Albert Barnes.

6 Q. Ms. Camp, can I ask you to, please, read the final
7 paragraph of that letter?

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8 A. "Ker-Feal is not only a historic monument embodying
9 a proper composition of furniture of the
10 pre-Revolutionary period but the grounds are being made a
11 composition of trees, shrubs, etc., which, together with
12 the house and its contents, forms a larger composition
13 that embodies objects, principles and practices which
14 represent a concrete example of the practical results of
15 education in aesthetics - that is intelligent, enjoyable
16 living."

17 (Letter dated July 23, 1942 to Mr.
18 Humphrey from Dr. Barnes premarked by counsel as Exhibit
19 No. 123.)

20 BY MS. SOLANO:

21 Q. Ms. Camp, I'm going to ask you to skip ahead to
22 Petitioner's Exhibit 123, which is a July 23, 1942 letter
23 from Dr. Barnes to Mr. Humphrey. Is this again a letter
24 that came from that folder from the archives?

Page 18

1 A. Yes, it is.

2 Q. Ms. Camp, could you, please, read the first
3 paragraph of that letter?

4 A. "The proposal in your letter of July 21st to make
5 one issue of House & Garden cover the entire subject of
6 the article on Ker-Feal seems to me the best way to
7 handle the matter."

8 Q. Could you, please, read the third paragraph of the
9 letter?

10 A. "As I told you some time ago, I shall be glad to
11 cooperate with you and Mr. Stires in making this article
12 fulfill its intended purpose of being informative of the

13 educational program of the Barnes Foundation, of which
14 Ker-Feal is an integral part. By this latter statement
15 we mean that the early American craftsmen were genuine
16 creative artists and the arrangement of their objects in
17 a suitable setting of the period can be made of as high
18 aesthetic value as any collection of paintings or
19 sculpture that the fullest knowledge and best taste could
20 provide."

21 (Letter dated September 11, 1942
22 to Mr. Humphrey from Dr. Barnes premarked by counsel as
23 Exhibit No. 124.)

24 BY MR. SOLANO:

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1 Q. Ms. Camp, could you, please, turn to the next
2 document, which is Petitioner's Exhibit 124, which is a
3 September 11, 1942 letter to Mr. Humphrey from
4 Dr. Barnes. Ms. Camp, is this again a letter that came
5 from that folder from the archivist?

6 A. Yes, it is.

7 Q. Ms. Camp, we have highlighted a portion of the third
8 paragraph of that letter. Could you, please, read that?

9 A. "As agreed upon between us, the central idea should
10 be that the article is primarily about Ker-Fael as an
11 historic monument which carries out the pre-Revolutionary
12 spirit and also exemplifies the principles of art and
13 education to which the Foundation is devoted. In other
14 words, the central idea should be a complete treatment of
15 Ker-Feal in these respects, and sufficient account of the
16 collection of paintings and of trees, plants and shrubs

Page 18

17 at the Foundation proper to supplement and reinforce the
18 significance of Ker-Fael, its purpose, its equipment and
19 its meaning in educational terms."

20 (Letter dated 9/15/42 to
21 Dr. Barnes from Mr. Humphrey with attachment premarked by
22 counsel as Exhibit No. 125.)

23 BY MR. SOLANO:

24 Q. Ms. Camp, the next exhibit is Petitioner's Exhibit

Page 20

1 125, which is a letter from Mr. Humphrey to Dr. Barnes.
2 Again, is this a letter that came from the archivist's
3 file?

4 A. Yes, it is.

5 Q. Ms. Camp, could you, please, read the first two
6 paragraphs of that letter?

7 A. "I have your letter of September 11th and have
8 discussed it with Mr. Stires.

9 "I enclose a copy of a memorandum
10 that he has written me outlining our work schedule for
11 the December issue."

12 Q. Ms. Camp, could you please turn to the next page?
13 Is this the memorandum from Mr. Stires?

14 A. Yes, it is.

15 Q. And we have highlighted a portion of the third
16 paragraph of that memorandum. Could you, please, read
17 that?

18 A. "I believe the only solid text pages should be an
19 introduction, which Dr. Barnes has consented to write,
20 and a page to precede the paintings and other color
21 photographs. I hope that Miss De Mazi a will give us

22 something about the four paintings and the gallery itself
23 for this page."

24 (Letter dated September 18, 1942

Page 21

1 to Mr. Humphrey with attachment premarked by counsel as
2 Exhibit No. 126.)

3 BY MR. SOLANO:

4 Q. Ms. Camp, could you, please, turn to Petitioner's
5 Exhibit 126, which is a September 18, 1942 letter to Mr.
6 Humphrey at House & Garden. Is this, again, a letter
7 that came from the archivist file?

8 A. Yes, it is.

9 Q. Ms. Camp, we have highlighted a portion of the
10 bottom of the first page of the letter, it looks like the
11 sixth paragraph. Could you, please, read that passage?

12 A. "Ker-Fael is not our home, but, as specifically
13 explained to you and also stated in letters, an outgrowth
14 of the educational program of the Barnes Foundation
15 exemplifying the aesthetic principles and educational
16 practices carried out in our gallery at Merion.

17 Accordingly, I suggest your text read something like
18 this:

19 "Ker-Feal, a pre-Revolutionary
20 Pennsylvania Dutch farmhouse, restored and fitted by the
21 Barnes Foundation, and used as part of its educational
22 program."

23 Q. Ms. Camp, could you turn to the next page of that
24 letter? We have highlighted a portion of the first

1 paragraph on that page. Can you, please, read that
2 portion?

3 A. "Any article that I would write, as already stated
4 to you and, also, put in writing, would deal with
5 Ker-Feal as an outgrowth of the work of the Barnes
6 Foundation during the past 20 years. It would tell in
7 simple terms how the idea of a farmhouse developed and
8 would be by frequent references to the text and to the
9 photographs treat briefly from what sources the early
10 American furniture developed, the characteristics of the
11 various periods and ideas of composition as
12 representative of aesthetics."

13 Q. Ms. Camp, this letter is not signed. Do you have a
14 belief as to who wrote this letter?

15 A. Yes. I believe that Dr. Barnes did.

16 Q. Why do you believe that?

17 A. It's written in the first person. It's a
18 continuation of a conversation between Dr. Barnes and
19 House & Garden, and it was in that same file.

20 (Letter dated October 2, 1942 to
21 Mr. Stires from Dr. Barnes premarked by counsel as
22 Exhibit No. 129.)

23 BY MR. SOLANO:

24 Q. Ms. Camp, I'm going to ask you to skip ahead,

1 please, to Petitioner's Exhibit 129, which is an October
2 2, 1942 letter to Mr. Stires from Dr. Barnes. Is this,
3 again, a letter, a document that was in the file from the

4 archivist?

5 A. Yes, it is.

6 Q. Could you, please, read the first sentence of that
7 letter?

8 A. "Enclosed are copy for my article on Ker-Feal and
9 Miss de Mazi'a's copy for the four paintings: Renoir,
10 Cezanne, Matisse, Picasso."

11 Q. Ms. Camp, could you please turn to the next page of
12 this exhibit? Is this the copy to which the letter
13 refers?

14 A. Yes, it is.

15 Q. Who is shown to be the author of that copy?

16 A. Albert C. Barnes.

17 Q. Ms. Camp, have you compared this copy or this draft
18 with the article that was published in the December 1942
19 issue of House & Garden magazine?

20 A. Yes, I have.

21 Q. And from making that comparison, can you tell
22 whether they are the same?

23 A. Yes, they are.

24 MR. SOLANO: Your Honor, that

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1 article was Petitioner's Exhibit 94.

2 THE COURT: Yes. I have it.

3 Thank you.

4 BY MR. SOLANO:

5 (Letter dated October 5, 1942 to
6 Dr. Barnes from Mr. Humphrey premarked by counsel as
7 Exhibit No. 130.)

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8 BY MR. SOLANO:

9 Q. Ms. Camp, I'm going to ask you to turn to
10 Petitioner's Exhibit 130, which is an October 5, 1942
11 letter from Mr. Humphrey to Dr. Barnes. Could you,
12 please, read the first two sentences -- excuse me. Is
13 this also a document that came from the archivist's file?

14 A. Yes, it is.

15 Q. Can you, please, read the first two sentences of the
16 third paragraph of that letter?

17 A. "I have read your article about Ker-Feal and I think
18 it is excellent. I believe, however, that this article
19 should immediately precede the photographs of Ker-Feal,
20 that is, the text should be on the page which shows the
21 small exterior views of Ker-Feal.

22 (Letter dated October 12, 1942 to
23 House & Garden Magazine from Dr. Barnes with attachments
24 premarked by counsel as Exhibit 135.)

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1 BY MR. SOLANO:

2 Q. Ms. Camp, I'm now going to ask you to jump toward
3 the back of the binder to Petitioner's Exhibit 135, which
4 is an October 12, 1942 letter from Dr. Barnes to House &
5 Garden Magazine. Do you have that document?

6 A. Yes.

7 Q. And, once again, did this come from the file from
8 the archivist?

9 A. Yes, it is.

10 Q. Ms. Camp, could you, please, read the portion of
11 that letter that we have highlighted?

12 A. "Enclosed is the article by Miss de Mazi a called for
Page 23

13 in my agreement with you. A condition of the said
14 agreement is that any text supplied by me or my
15 associates is not to be edited. This requirement applies
16 equally to this essay by Miss de Mazi a.

17 "Another stipulation of the same
18 agreement is that all copy for your December issue that
19 refers to me, Ker-Feal or the Barnes Foundation, is to be
20 submitted to me and approved by me before publication."

21 Q. Ms. Camp, would you turn to the next page of that
22 exhibit, and is this the draft that was referenced in
23 that letter?

24 A. Yes, it is.

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1 Q. Who is shown as the author?

2 A. Violette de Mazi a, Director of Education, Barnes
3 Foundation.

4 Q. Ms. Camp, have you compared that draft by Miss de
5 Mazi a with the article that appeared in the December 1942
6 issue of House & Garden that was marked as Petitioner's
7 Exhibit 95?

8 A. Yes, I have.

9 Q. And are they the same?

10 A. They are.

11 Q. Ms. Camp, I'm going to change the subject a bit. Do
12 you recall at the hearing in December there was some
13 testimony about a report that you had received that the
14 value of Ker-Feal may be as high as 12 million dollars?

15 A. Yes.

16 Q. What was the source of that information?

Page 24

17 A. The source of that information was a cell phone
18 telephone call with a developer.

19 Q. Was there ever a written offer of 12 million
20 dollars?

21 A. No.

22 Q. Was there ever an appraisal for 12 million dollars?

23 A. No, no.

24 Q. Was the offer to pay that amount in cash?

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1 A. There was no offer.

2 Q. Did the developer say that the 12 million dollars
3 would be paid up front and unconditionally?

4 A. No.

5 Q. So just what was this cell phone offer? What did
6 this person say?

7 A. I was actually returning some of my phone messages
8 from my cell phone in my car and called this gentleman.
9 He said he was interested in buying Ker-Feal; and I said,
10 I'm sorry, it's not for sale. And he went on to say, it
11 could be very valuable, and said, it could be as high as
12 12 million dollars; and I said, thank you very much,
13 we're not interested in selling Ker-Feal.

14 Q. Were there any further conversations with this
15 person about --

16 A. No.

17 Q. Ms. Camp, I'm going to move to another topic and,
18 that is, the works of art that are not hanging in the
19 Foundation's gallery. Are these works important to the
20 overall mission of the Barnes Foundation?

21 A. Yes, they are.

Page 25

22 Q. Could you explain why?

23 A. Those works that are the non-gallery assets of the
24 Foundation during Barnes' lifetime were used integrally

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1 and regularly in the education program. Because we have
2 now gotten to a place where we're able to replicate that
3 program and put it back on the path that the Barnes
4 intended, they serve an integral and important part of
5 the Barnes Foundation education program.

6 Q. Do you have any programs in place to make use of
7 these non-gallery assets?

8 A. We have programs in place, and we also have a number
9 of plans on the drawing board that use these non-gallery
10 assets.

11 Q. What plans do you have on the drawing board?

12 A. We have, for example, been in discussions with the
13 National Endowment for the Arts to create a traveling
14 exhibition of these particular works for their American
15 Masterpieces Initiative. We're one of 25 organizations
16 in this country selected to submit a letter of interest
17 for this program, the traveling exhibition. The primary
18 reason we would participate in that is to further the
19 understanding and exposure to the Barnes Foundation
20 education program. And if we're successful with the
21 grant of the \$500,000, 650,000 would be used for
22 conservation of the works. It's a one-to-one match
23 proposition.

24 BY THE COURT:

1 Q. Grant from whom?

2 A. The National Endowment for the Arts.

3 BY MR. SOLANO:

4 Q. Are there also plans in the works for publications
5 relating to the non-gallery works?

6 A. Yes. We have received two grants, one from the
7 Henry Luce Foundation and one from the National Endowment
8 for the Arts, to fund an American catalogue for the
9 Barnes Foundation. This would be only the second color
10 catalogue of the Barnes Foundation, and that catalogue
11 would accompany the touring exhibition, should we be
12 successful with that application.

13 Q. If the Barnes foundation were to sell the
14 non-gallery works, what would happen to that grant?

15 A. We would have to return the money, which is
16 \$220,000.

17 Q. Ms. Camp, there have been references in this hearing
18 to proceedings before Judge Ott in 2001 relating to the
19 non-gallery collection.

20 A. Yes.

21 Q. Do you recall those proceedings?

22 A. Yes.

23 Q. Were you involved in the petition seeking relief in
24 those proceedings?

1 A. Yes.

2 Q. What relief were you seeking at that hearing?

3 A. We, basically, wanted permission to lend the
Page 27

4 non-gallery assets.

5 Q. Were you seeking to sell those works?

6 A. No.

7 Q. Why were you seeking to lend them?

8 A. Because where they were in the administration
9 building, they weren't serving the purpose that Barnes
10 intended, and that was in the service of the education
11 program. They also were not available to scholars and
12 curators and other researchers doing work on the
13 different artists that were represented in the
14 collection, whose works were also in the gallery, as well
15 as the non-gallery assets.

16 Q. Why weren't the works being used in the educational
17 program at that time?

18 A. At that time we had not started the Collection
19 Assessment Project. We were still just in the beginning
20 of doing basic inventory. In the early nineties, the
21 faculty was prohibited from moving paintings in and out
22 of the gallery for the classes because they were being
23 damaged. The art handlers, conservators and registrars
24 that we now have on staff make it -- it, actually,

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1 facilitates them using those pieces. But up until
2 recently, we didn't have that capability.

3 Q. Why weren't you using the works in the gallery to
4 use with the ensemble program?

5 A. By the terms of the charter, we can't move the
6 ensembles. There would be no other place to exhibit
7 things outside of putting them on a painting cart and

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8 taking them in the gallery. Again, having a painting
9 cart, art handlers or conservator to monitor that
10 process, the other staff needed to do that, and move
11 works back and forth safely is a result of the Collection
12 Assessment Process; and we've only had that capability
13 after the time that that petition was filed.

14 Q. Why didn't you use the works to try to create new
15 ensembles in the administration building?

16 A. Because the charter forbids us moving pieces in and
17 out of those ensembles, and it would create a danger to
18 those pieces.

19 Q. So, Ms. Camp, then how were these works serving the
20 Foundation's mission at that time?

21 THE COURT: That time being 2001?

22 Q. (Continued) 2001 when you filed your petition.

23 A. There was very limited use. There were faculty that
24 would bring students periodically into the administration

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1 building. There were some offices that, unless staff
2 people were there, students and faculty would not have
3 any access to. There were some pieces that were in a
4 location that was so poorly lit that you couldn't really
5 see them, so the use of them was limited.

6 Q. For those works that were in faculty offices, did
7 they serve any purpose for the Foundation other than
8 decoration of those offices?

9 A. Not really.

10 Q. Is that why you filed a petition with Judge Ott
11 seeking to lend them?

12 A. It is.

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13 Q. When you sought that relief from the Court, did you
14 do so because these works were not important to the
15 mission of the Foundation?

16 A. No. They're very important to the mission of the
17 Foundation.

18 Q. Ms. Camp, I want to turn to a last topic, and, that
19 is, the construction of the new gallery building. There
20 has been some question at the hearing, I believe, Mr.
21 Harmelin, in particular, about the configuration of the
22 works and the gallery rooms as it exists today and how it
23 will be in the new building.

24 Will the gallery rooms in the new

Page 33

1 building -- I understand there are no plans yet. But is
2 it your understanding that the gallery rooms in the new
3 building would be configured the same way as they are
4 now?

5 A. Absolutely, yes.

6 Q. Will the ensembles in those rooms be the same as
7 they are now?

8 A. Yes, they will.

9 Q. In his testimony, Mr. Perks mentioned that the new
10 building will contain space for didactic exhibits. Can
11 you explain what that is?

12 A. Yes. What we have been talking about incorporating,
13 if the petition to move is approved, is a didactic
14 exhibition that would turn the visitor experience into an
15 educational experience, even for those people that we
16 consider casual visitors, those that are not enrolled in

22 Q. It's your understanding that the land and the
23 contents of Ker-Feal are subject to the Indenture of
24 Dr. Barnes?

Page 35

1 A. Yes.

2 Q. Wouldn't you agree with me that the land and
3 contents of Ker-Feal did not pass to the Foundation until
4 the death of Dr. Barnes; correct?

5 A. Yes.

6 Q. They weren't made part of the assets of the
7 Foundation when the Indenture was drafted?

8 A. Not formally, no.

9 Q. Now, do I take it that it's your understanding that
10 the Indenture restricts the sale of Ker-Feal?

11 A. That's not the part of the charter that I look to,
12 although because Ker-Feal is to be used as a living
13 museum of art and botanical garden by Dr. Barnes' Will,
14 it then functions as part of the collection. One of the
15 paragraphs that you seem to always skip over in the
16 charter talks about collections, care and handling; and,
17 in that regard, I believe that Ker-Feal, the land and its
18 contents are governed by the charter in that we have to
19 make sure that those collections are taken well care of.
20 That's in the charter.

21 Q. But, I guess, is it your understanding whether -- is
22 it your understanding that the Barnes cannot sell the
23 land at Ker-Feal?

24 A. Yes; because it's part of the collection.

1 Q. The Foundation has sold other property, has it not?

2 A. Yes, it has.

3 Q. In fact, it sold the property on Haywood Road;
4 correct?

5 A. That's what I was told. I was not there at that
6 time.

7 Q. What was the purpose of the sale of that property?

8 A. I don't know. I wasn't there at the time.

9 Q. The Foundation has sold some property. We know they
10 sold at least a piano; correct?

11 A. That's what I was told. I was not there at the
12 time.

13 Q. You would agree with me that Ker-Feal is currently
14 in a state of disrepair and neglect; correct?

15 A. No, I would not agree with that at all.

16 Q. Well, it had been in that state in the recent years;
17 correct?

18 A. No, it has not been in that state in recent years.

19 Q. Did you not testify that Ker-Feal was contaminated
20 with mold and other funguses recently?

21 A. Recently, meaning six years ago when I arrived. I
22 think, since that time, we have ameliorated those
23 circumstances with funding from West Pikel and Township,
24 the Pew Charitable Trust support, Henry Luce Foundation.

1 We've done fumigation of that property. We've done quite
2 a number of repairs to the building. To suggest that it
3 was in disrepair and neglect suggests a mental picture

4 that was not based in the reality of what Ker-Feal was.

5 Q. Well, there used to be formal gardens there;

6 correct?

7 A. Yes.

8 Q. There are no longer any formal gardens; correct?

9 A. Some of the components of those gardens remain.

10 Q. Now, the Ker-Feal is not visited by the public;

11 correct?

12 A. Periodically, it is.

13 Q. But it is not -- the public does not visit Ker-Feal

14 on a regular basis; correct?

15 A. No, it does not.

16 Q. And that's because it's not suited for regular

17 visitation by the public; correct?

18 A. No, that's not true at all. The reasons are

19 financial, because we don't currently have the staff to

20 be able to do that. We don't currently have the funding

21 to be able to do some things in the house necessary to

22 have a regular visitation. But we have been in ongoing

23 discussions with West Pikel and Township Board of

24 Commissioners, as well as several other people in the

1 Township, about incorporating Ker-Feal programs along

2 with the Mills at Anselma and, also, historic Yellow

3 Springs as part of a triumvirate of cultural

4 organizations there.

5 Q. You would agree with me that the structure of

6 Ker-Feal would require some repair and other design

7 enhancements if you were to allow the regular visitation

8 by the public?

9 A. Mr. Cyr, you're dropping down. I'm sorry.

10 Q. Let me rephrase the question. You would agree with
11 me that the structure of Ker-Feal would have to be
12 enhanced or repaired before the public could regularly
13 visit; correct?

14 A. There are some structural elements that would need
15 to be strengthened. With the house built in 1775, there
16 will always be those issues when you open it to the
17 public.

18 Q. And the Court several weeks ago visited Ker-Feal,
19 and you were present, I was present and other counsel was
20 present; correct?

21 A. Yes.

22 Q. Was it not true that certain parts of the tour,
23 particularly, the second floor, we had to stand in
24 separate parts of the floor in order not to overload the

1 floor and possibly plunge through to the first floor?

2 A. Yes.

3 Q. So you would agree that there would have to be some
4 structural enhancements before the public could go up on
5 the second floor?

6 A. Yes. And those things would be ongoing. As I
7 mentioned, the center house was built in 1775. We would
8 not, for example, want to put a load-bearing structure
9 under the entire floor because we would eliminate the
10 experience of what buildings were like during that
11 period. There's a lot that would have to go into the
12 planning of opening to the public, as Barnes intended.

13 Q. And, similarly, there would have to be increased
14 facilities for restrooms and potable water before the
15 public could regularly visit the facility; correct?

16 A. Yes.

17 Q. All of this would require capital improvements to
18 the facility; correct?

19 A. Yes.

20 Q. Have you had any estimates as to how much that would
21 cost?

22 A. Yes. We have an estimate that was prepared by John
23 Miller Associates, which was funded by that initial
24 triumvirate of funders that I mentioned earlier, the

1 Township, Henry Luce Foundation and the Pew Charitable
2 Trust that gave us an architectural and engineering
3 survey and estimate for the work needed to be able to get
4 it fully functional as an open public facility.

5 Q. Do you have a recollection of how much it would cost
6 in capital improvements to bring it up to code, so to
7 speak, so the public could visit it?

8 A. The code is not really an issue. Because it's an
9 historic property, that's a whole other discussion. I
10 don't know the figure off the top of my head, but so far
11 we have spent about a half a million dollars in Federal,
12 State, Township and private foundation money as well as
13 grants from several private individuals.

14 Q. But my question is, do you know how much more it
15 would cost to bring it up and fulfill these capital
16 improvements?

- 17 A. I don't have the figure off the top of my head, no.
- 18 Q. It's fair to say it would be a substantial amount of
19 funds?
- 20 A. Anything is substantial for us.
- 21 Q. And, presently, the Foundation doesn't have the
22 capital funds to complete the restoration of Ker-Feal;
23 correct?
- 24 A. No.

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- 1 Q. No, you don't have the funds?
- 2 A. No, we do not have the funds. It's the way you're
3 asking the question, it's a little circuitous.
- 4 Q. It's also true, is it not, that no classes are
5 regularly conducted out at Ker-Feal presently?
- 6 A. Can you define what you mean by "regularly"?
- 7 Q. Are any classes conducted out at Ker-Feal presently?
- 8 A. Yes.
- 9 Q. What classes are those?
- 10 A. We have classes in the horticultural program that
11 use Ker-Feal, and we have classes in the art and
12 aesthetics program that use Ker-Feal.
- 13 Q. And the horticultural program, how often does the
14 horticultural program take their class down to the
15 facility at Ker-Feal presently?
- 16 A. I really don't know what the frequency of it is.
17 That's the purview of my education director, but I know
18 that they go out there and use it.
- 19 Q. You can't estimate whether it's once a semester?
- 20 A. I don't know.
- 21 Q. How about for the art and aesthetic program? How

22 often do they go out for that?

23 A. I don't know.

24 Q. But you would disagree with me that they do not go

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1 out there on a regular basis?

2 A. I don't know, again, how you would define regular;
3 and I don't know how many times they use it in a year,
4 but I do know that the horticulture students and the art
5 and aesthetic students both use Ker-Feal in each academic
6 year.

7 Q. What do they use it for?

8 A. As source material for the education programs that
9 we offer in horticultural and art and aesthetics.

10 Q. There's a substantial amount of land out at
11 Ker-Feal; correct?

12 A. Yes, there is.

13 Q. A hundred and thirty-seven odd acres; correct?

14 A. Yes.

15 Q. Beyond the farmhouse and the ground surrounding it,
16 what use is made of the rest of the property?

17 A. As I had stated in, I think, the testimony with Mr.
18 Solano, the breadth and variety of botanical species that
19 is at Ker-Feal is unparalleled with those that are in
20 Merion. There are important woodlands. There are
21 wetlands and grassy areas, as well as some of the
22 plantings that Mrs. Barnes put at Ker-Feal, in the dual
23 buying of botanical specimens for Merion's arboretum and
24 for the creation of that botanical garden at Ker-Feal.

4 A. No, they did not.

5 Q. Did they ever go out and use the house?

6 A. Yes, of course.

7 Q. For what purpose?

8 A. All I can -- because you're asking me about what
9 dead people did in their property, all I can do is speak
10 from what's in the archives and what has come out of our
11 oral histories. One oral history that we did recently
12 was with one of the women who actually signed some of
13 these letters in here. And she emphatically stated that
14 Ker-Feal was specifically purchased by Barnes for
15 educational purpose, that the land immediately
16 surrounding the house was actually an open field and was,
17 in fact, planted by the Barnes based on their educational
18 mission.

19 She also asserted, as did others,
20 and from the evidence we had, that Barnes went to Europe
21 in the summer. If you remember from journal information,
22 there was a summer study course that Barnes personally
23 escorted students abroad.

24 He did periodically allow visitors

1 to go and stay there, but it was not a weekend hangout or
2 a summer retreat.

3 Q. Well, is it not true that he even had a dog bed out
4 there for his dog?

5 A. I'm sorry. Could you say that again?

6 Q. Is it not true that he also had a dog bed for his
7 dog in his bedroom at Ker-Feal?

8 A. There is a dog bed for Fidel e because the house is

9 named for him. "Ker-Feal" means House of Fidel .

10 Q. Fidel e was the name of hi s dog?

11 A. Yeah.

12 THE COURT: Some dogs are luckier
13 than others, perhaps.

14 A. He, actually, had a lot of dogs; but Fidel e was hi s
15 favori te.

16 Q. I'd like to switch, Ms. Camp, to the proceeding back
17 in 2001. Do you recall your testimony along those lines?

18 A. Yes.

19 Q. Those were the proceedings before this Court in
20 order to tour and lend the works in storage or the
21 non-gallery art; correct?

22 A. Right.

23 Q. And in that petition that the Barnes Foundation
24 filed with the Court, they argued that the restrictions

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1 set forth in the Indenture, Paragraphs 10 and 13, did not
2 apply to the non-gallery art; correct?

3 A. Yes.

4 Q. And that is how the Court ruled with respect to
5 that; correct?

6 A. Yes.

7 Q. In conjunction with that proceeding, you filed an
8 affi davi t, did you not?

9 A. Yes.

10 MR. CYR: What exhibit are we up
11 to?

12 MR. QUI NONES: 87.

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13 MR. CYR: May I approach, Your
14 Honor?

15 THE COURT: Sure.

16 MR. CYR: One for the Court also,
17 Your Honor.

18 (Affidavit of Kimberly Camp dated
19 March 6, 2001 marked by counsel as Exhibit A-87.)

20 BY MR. CYR:

21 Q. Ms. Camp, you have Exhibit 87, which is your
22 affidavit in the proceeding back in 2001; correct?

23 A. Yes.

24 Q. That was executed by you on March 6, 2001; correct?

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1 A. Yes.

2 Q. And you made that pursuant to the penalties
3 regarding unsworn falsification to authorities; correct?

4 A. Yes.

5 Q. At Paragraph 6, you would agree with me that it's
6 stated in there that, "Sadly, most of the non-gallery art
7 work has not been seen by the public in more than fifty
8 years, since Dr. Barnes died. Few know it even exists.
9 This is because it has remained in storage ever since
10 Dr. Barnes' death, leaving only the art work in his
11 gallery to serve The Foundation's mission"; correct?

12 A. Yes.

13 Q. You don't disagree with that statement presently;
14 correct?

15 A. Not really.

16 Q. Turning to Paragraph 14 of your affidavit, you

Page 42

17 state, "Instructors have not used the paintings in
18 storage for instructional purposes since about 1990 and I
19 have specifically prohibited the instructors from using
20 these paintings in their classes since my tenure began."
21 Is that correct?

22 A. Yes. But it needs to be put in context with the
23 next sentence in that paragraph.

24 Q. How does that fit in context with the following

Page 48

1 sentence?

2 A. The charter prohibits us from moving the ensembles
3 in the gallery. The non-gallery art, in order for it to
4 be used in the ensemble method for presentation, would,
5 basically, mean that we would have to take those pieces
6 out of other areas and switch them with pieces in the
7 ensemble, which would be a violation of the terms of the
8 charter; and there are conservation issues with
9 constantly moving the pieces in and out of the gallery
10 for that kind of purpose. So that's why the conservation
11 issues are important to that discussion.

12 Q. But you would agree with me that to the present
13 date, the paintings of non-gallery art have not been used
14 or have been in storage and haven't been in use in the
15 instructional classes; is that correct?

16 A. No, it's not.

17 Q. When did that change?

18 A. Actually, not far after we got this permission --
19 and, again, coinciding with the Collection Assessment
20 Project, because, as a result of that money, we have been
21 able to bring in collection staff that then can

22 facilitate the faculty using pieces. For example, the
23 Japanese prints, which are part of the non-gallery
24 assets, that we needed to be able to get the support to

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1 put them in presentation mats so that faculty could
2 safely use them and put together a process for
3 documenting when things were moving in and out, so that
4 no faculty member could just go get them and take them
5 without the approvals of the conservator, the registrar,
6 the chief of security and myself, so that we know where
7 things are. Those things are now regularly used by the
8 faculty.

9 There were also things in the
10 mezzanine and the Dutch room in the gallery. Those two
11 rooms used to be open to the public and for students and
12 faculty, but those rooms were removed in order to
13 accommodate the elevator shaft when the renovations were
14 done in the mid-nineties.

15 There are faculty members who
16 still use those works that are there. Now, we have the
17 ability, because we have the collection staff, that if
18 someone requests the use of a Byzantine cross, they can
19 put in that request.

20 We have -- the schedule is
21 confirmed with our education director where that object
22 should be placed, and our conservator will move that
23 object into the room that the instructor has indicated.

24 Q. Ms. Camp, you also gave testimony before the Court

1 with respect to the 2001 proceeding; correct?

2 A. Yes.

3 (Transcript of hearing dated
4 Thursday, May 3, 2001 marked by counsel as Exhibit A-88.)

5 MR. CYR: May I approach, Your
6 Honor?

7 THE COURT: Sure.

8 A. Do you want me to pass this up?

9 Q. Yes, please.

10 I've handed you an exhibit marked
11 A-88. Is that the number that is on the copy that you
12 have, Ms. Camp?

13 A. I think that looks like an 8. It looks more like
14 a V.

15 Q. A-88 is your testimony given on Thursday, May 3,
16 2001 in this courthouse before The Honorable Stanley R.
17 Ott; correct?

18 A. Yes.

19 Q. You were testifying in support of the petition to
20 sale or lend the art work; correct?

21 A. No.

22 Q. What were you doing?

23 A. This was in support of a petition to loan
24 non-gallery assets. It was never our intention to sell

1 non-gallery assets.

2 Q. I believe I said tour or lend.

3 A. No. You said loan or sell.

4 Q. I stand corrected.

5 Turning to your testimony on Page
6 25, you're asked a question, "What, if anything, has been
7 done with most of the stored works since Dr. Barnes'
8 death?"

9 Your answer, "They have been kept
10 in storage.

11 "Question: And does that mean
12 that they have been unseen by anybody?"

13 Your answer was, "These works have
14 not been seen or used by scholarly communities or
15 students since Barnes' death in 1951."

16 Q. Is that testimony true as of 2001?

17 A. At that time, I believe that to be true.

18 Q. Turning to Page 49 of your testimony, you were
19 asked, "Are any of those three gallery storage areas
20 accessible to students of the Barnes Foundation?"

21 "Answer: No, they are not."

22 Do you see that?

23 A. Yes.

24 Q. Is that testimony accurate?

1 A. Yes.

2 Q. Do the students have access to the storage areas of
3 the Barnes Foundation presently?

4 A. Yes.

5 Q. So that's a change since 2001?

6 A. Yes.

7 Q. What caused the change?

8 A. As I have previously cited, because of the
9 Collection Assessment Project and having collection staff
10 people present, we're able to better facilitate student
11 and faculty use of those works, whether it means coming
12 into the administration building where paintings are hung
13 on the various walls and none in the basement or it means
14 those works being taken over into the gallery at the
15 request of the faculty member.

16 Q. Ms. Camp, turning your attention to Page 60 -- do
17 you have that in front of you?

18 A. The middle of my document is upside-down.

19 I got it.

20 Q. Line 23, "Question: From everything you've read and
21 observed as you have described it here today, would it be
22 fair to say that the stored works have not had a material
23 role in the Barnesian education program?

24 "Answer: Yes.

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1 "Question: Have any Barnes'
2 instructors raised with you, Ms. Camp, a desire to use
3 the works in storage in class on a regular systematic
4 basis?

5 "No."

6 So, again, Ms. Camp, as of 2001,
7 you would agree with me, would you not, that the
8 non-gallery art is not being used in the education
9 program; correct?

10 A. As of 2001, that is the case; but it is no longer
11 the case.

12 Q. And the purpose of the request to the Court to tour
Page 47

13 and lend the works of art was to raise funds for the
14 operation of the Barnes Foundation; correct?

15 A. No, that's not correct.

16 Q. Ms. Camp, could you turn to Page 79?

17 A. (Witness complies with request.)

18 Q. "Question: Have you given any consideration to what
19 you would do with the proceeds from a tour or from
20 lending the works in storage should you be authorized to
21 do so?

22 "Answer: We would put those into
23 the general operating budget for the Barnes."

24 Are you now disputing what would

Page 54

1 be done with the funds from the tour or lending of the
2 works?

3 A. No. You asked me a different kind of question. You
4 asked if we were doing it in order to raise money. And
5 in this testimony, I remember very clearly saying that
6 there would be minimal financial gain from doing this
7 because of a number of factors, including these works not
8 being available to a scholarly community, and so this was
9 not to be looked at as some blockbuster mega-moneymaker
10 for the operating fund.

11 Clearly, if, from loan fees or
12 grants, we were able to receive funds, unless they were
13 restricted as to conservation or other use, they would go
14 into the general fund. But the loan program was not
15 conceived as a fund-raiser.

16 BY THE COURT:

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17 Q. To distinguish it from the specific tours that were
18 the subject of hearings in the early nineties?

19 A. Yes.

20 BY MR. CYR:

21 Q. We've already established that the Court ruled on
22 May 17, 2001 and granted the Foundation the right to tour
23 or lend the works; correct?

24 A. Yes.

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1 Q. Since that time has the Foundation put these
2 non-gallery pieces of art out on tour or has lent them?

3 A. To date, only one piece has gone out on loan.

4 Q. Which piece is that?

5 A. It was a Jaques Lipchitz sculpture.

6 Q. Is that The Bather?

7 A. Yes.

8 Q. So by lending the Lipchitz Bather, we can understand
9 by that it's not part of the permanent gallery
10 collection; correct?

11 A. The Bather is a rather unique piece because it,
12 actually, is part of the building. It was brought inside
13 before my arrival, from what I understand were for
14 conservation reasons. So that's how it ended up in an
15 office. But it is a formal part of the building along
16 with the other Lipchitz reliefs that go around. The
17 stand for it is, actually, still located in the front of
18 the building.

19 Q. When was the Lipchitz Bather commissioned?

20 A. I imagine it was during the time of the
21 construction, but I don't know the date off the top of my

22 head.

23 Q. Would it surprise you to know that it was sculpted
24 in 1917?

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1 THE COURT: 19 --

2 MR. CYR: -- 17.

3 THE COURT: Seventeen?

4 MR. CYR: Yes.

5 A. It's possible.

6 Q. Do you know when was the gallery constructed?

7 A. 1921 to '2 -- '22 to '25.

8 Q. The Bather, actually, sits on another Lipchitz
9 sculpture, does it not?

10 A. It sits on a stand that was sculpted to be part of
11 the Lipchitz reliefs that are on the outside of the
12 building.

13 Q. So those were part of the building, but the Bather
14 was not commissioned to be part of the building; correct?

15 A. Mr. Cyr, since, again, we're talking about things
16 that happened in this case before I was born, from
17 documentation that I have seen, the Lipchitz Bather was
18 displayed on the front of the house on top of the stand,
19 as you call it, another sculpture, on top of a stand that
20 currently exists on the outside of the building. And it
21 is my understanding that it was brought inside for
22 conservation reasons, again, before I came. That's what
23 I have been told.

24 Q. And it was lent this summer to the Philadelphia

1 Museum of Art; is that correct?

2 A. Yes.

3 Q. Why hasn't anything else been lent from the
4 non-gallery art?

5 A. Because we have not been able to raise the necessary
6 conservation dollars to ensure that any pieces that would
7 go out on loan are brought up to a point where it's safe
8 to do so. We've had a number of requests; and when we
9 talk about the dollars needed to be able to do it, those
10 potential lenders have backed away.

11 May I add something to that, Mr.
12 Cyr?

13 Q. Absolutely.

14 A. I just wanted to say that since 2001, because,
15 again, the Collection Assessment Project has given us
16 conservation assessments of those pieces, including the
17 Lipchitz reliefs on the outside of the building, we now
18 have a sense, which we didn't have when we were before
19 the Court in 2001 -- we have a sense of what some of the
20 conservation needs are for different areas of that
21 collection, and they're quite extraordinary.

22 Q. There's been some question during the course of this
23 proceeding, Ms. Camp, as to whether or not the Barnes is
24 a member of the American Association of Museum Directors.

1 Do you recall that?

2 A. Yes.

3 Q. Can you clarify the state of the record in that
Page 51

4 regard?

5 A. Yes. The Association of Art Museum Directors does
6 not accept institutional members, so there are no
7 institutional members for AAMD. It is only an individual
8 membership program. So it's only the directors that can
9 be members but not their institutions.

10 Q. So the Barnes Foundation itself is not a member; is
11 that correct?

12 A. They don't have an institutional membership
13 category, so there would be no way for us to be a member.

14 Q. I take it, you're a member?

15 A. No, I am not.

16 Q. So you're not constrained by the ethical guidelines
17 of the AAMD; is that correct?

18 MR. SOLANO: Objection, Your
19 Honor. We're beyond the scope of direct examination.

20 THE COURT: You are quite correct
21 that that's true. However, there would be no impediment
22 to calling Ms. Camp separately; and in the purpose of
23 saving time, I'm going to hope to forestall that by
24 allowing the question to be answered.

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1 MR. SOLANO: Thank you, Your
2 Honor.

3 A. Could you repeat the question?

4 Q. That is, because neither you nor the Barnes
5 Foundation are members of the AAMD, that you're not
6 constrained by the guidelines of the AAMD; correct?

7 A. I wouldn't agree that membership is directly tied to

Page 52

8 our adherence to ethical policies of the field. We are
9 members of AASLH, and they have an ethics policy that is
10 very similar to that of AAMD, so -- and if -- we feel
11 they're tied together. We are a member there.

12 Q. Ms. Camp, switching to another subject, since the
13 Court's ruling in January of this year, is it true that
14 you have not approached the Township to explore with them
15 any other options or modifications of the zoning
16 restrictions in place?

17 MR. SOLANO: Objection, Your
18 Honor. Same objection as to scope and, also, as to
19 relevancy.

20 MR. CYR: Your Honor, I'll be
21 rather limited in this area.

22 MR. SOLANO: Your Honor, I would
23 point out, also, that we deliberately limited Ms. Camp's
24 testimony in this area in light of our conversation in

Page 60

1 the robing room last week. She's already testified about
2 this at the last hearing.

3 THE COURT: She did. And I don't
4 know to which conversation you allude presently. I'm not
5 going to ask you to go beyond that.

6 I'll allow that question and
7 probably no more on that subject.

8 A. Could you repeat the question?

9 MR. CYR: Could we read the
10 question back, please?

11 THE COURT: I can do it for her.

12 BY THE COURT:

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13 Q. You have not personally contacted Lower Merion
14 Township or endeavored to do so?

15 A. There has been contact we've had with the Township
16 since then, that I have had.

17 Q. That you initiated?

18 A. Yes.

19 BY MR. CYR:

20 Q. Could you tell me what that is?

21 MR. SOLANO: Same objection, Your
22 Honor.

23 THE COURT: I'll allow that
24 because I didn't anticipate that.

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1 A. Upon inquiry by a Barnes Society member and my
2 director of education to see if we could get the Township
3 to not require us to remove school children -- K through
4 12 visits during the week from the maximum weekly public
5 count, there were, as reported to me, a series of
6 discussions.

7 What I saw, as a result of my
8 education director and this Barnes Society member going
9 to the Township, was the correspondence that was copied
10 to me, and a letter was sent to, I believe it was Bob
11 Duncan, asking for clarity in saying that they believed
12 that the Township did not require us to take tickets out
13 for every second grader who came on a Tuesday morning --
14 to take those tickets out of the Saturday afternoon
15 public visit pool.

16 And correspondence from the

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17 Township back to the Barnes Society Board member and
18 copied to me said that, yes, we did still have to remove
19 tickets for K through 12 visitors during the week from
20 the maximum weekend count.

21 There was also contact when the
22 resolution was passed. We received a letter from someone
23 at the Township, was not a commissioner or department
24 head, that said, enclosed please find the resolution,

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1 call if you have any questions; and there was nothing
2 enclosed.

3 So I instructed my assistant to
4 call them and ask them to, please, send us the enclosure.

5 Q. And did they?

6 A. It came the same day as another piece of
7 correspondence addressed to me from the Township that
8 said it had been complained to them that we had dangerous
9 potholes in the private road that runs from City Avenue
10 to the back of our property.

11 Q. After you received this enclosure, did you then
12 contact the Township about --

13 A. No.

14 Q. What's the reason for that?

15 A. I would say that after -- and, again, as Mr. Solano
16 said, I talked a lot about this at the first hearing. If
17 discussions about allowing students to use the Barnes
18 Foundation, whether they be K through 12 students or
19 adult students coming from an area college or university
20 for a multiple visit program -- if those ongoing
21 discussions do not indicate any yielding -- and those are

22 issues that don't involve traffic, they don't involve
23 parking -- there was no reason for me to believe that the
24 Township had changed any of its beliefs or practices as a

Page 63

1 result of those ongoing discussions.

2 Q. Have you ever met with any of the neighbors in an
3 attempt to resolve any of their concerns?

4 A. Yes.

5 MR. SOLANO: Objection, Your
6 Honor. Same objection.

7 THE COURT: I'm going to sustain
8 it now. I think we've gone far enough with it. I've
9 given you leeway well beyond the scope of the direct.

10 BY MR. CYR:

11 Q. You mentioned during your direct testimony that you
12 received a variety of grants from the National Endowment
13 for The Arts, is it Luce?

14 A. Luce.

15 Q. Luce Foundation; is that correct?

16 A. Yes.

17 Q. Is it correct to say that the grants, since your
18 tenure at the Barnes, have been increasing on an annual
19 basis?

20 A. Yes.

21 Q. Can you quantify that?

22 A. Not off the top of my head. And we just started the
23 development effort in 1999 so --

24 Q. And the annual fund-raising, through the Barnes

Page 56

1 Society and other mechanisms, has increased the annual
2 fund-raising; is that correct?

3 A. In some years, it has. In others, not.

4 Q. Since your tenure in the start of the formal
5 fund-raising to the present, it has increased; correct?

6 A. No. That's not true. The fund-raising, actually,
7 tanked the year that the petition was filed.

8 Q. Which petition are you speaking of?

9 A. The one before the Court currently.

10 BY THE COURT:

11 Q. Since that was filed in the fall of 2002, are you
12 speaking about calendar year 2003?

13 A. Yeah.

14 BY MR. CYR:

15 Q. Is it the grants or the annual giving that has
16 changed since that time?

17 A. Both. Philanthropic individuals and organizations
18 will tend to not fund an organization in flux. It has
19 been the ongoing support of primarily funding for the
20 Collection Assessment Project and some education programs
21 that throws off some general operating support that has
22 become the basis for our support since then.

23 MR. CYR: Your Honor, if I could
24 just take a minute.

1 THE COURT: Sure.

2 (Pause)

3 THE COURT: Mr. Cyr, would it be
Page 57

4 helpful if we took our break right now?

5 MR. CYR: Yes, Your Honor.

6 THE COURT: Why don't we do that?

7 Let's take 10 minutes.

8 (Short recess)

9 -----

10 BY MR. CYR:

11 Q. Ms. Camp, turning back to Exhibit A-80, the Deloitte
12 & Touche --

13 MR. SOLANO: Objection, Your
14 Honor. Again, Your Honor, it's the same objection;
15 beyond the scope. There was no discussion about this
16 document on direct examination.

17 THE COURT: Let me get it first.

18 I have it before me so I can
19 respond to this.

20 Mr. Cyr, I'm inclined to sustain
21 this objection because, clearly, although Ms. Camp
22 alluded to certain revenues received from Collections, I
23 don't think that a fair analysis of that would say a
24 revisiting of all of the income structures set forth on

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1 this document would be fair scope of that direct.

2 How do you respond to that?

3 MR. CYR: Your Honor, I was going
4 to focus on the subject about which we were discussing
5 before the break, and that's the development aspect.

6 THE COURT: Well, that doesn't
7 surprise me. She didn't talk about development on

Page 58

8 direct. Again, she referenced only receipts for
9 conservation and catalogue assessment. That's my
10 recollection.

11 I really would rather not revisit
12 that scene. I think we have had ample direct and
13 cross-examination on that flow chart. So I'm going to
14 sustain the objection.

15 MR. CYR: Very well.

16 Your Honor, the reason is, I don't
17 have extra copies of this last exhibit --

18 THE COURT: That's okay. We'll
19 use the overhead. That's fine.

20 BY MR. CYR:

21 Q. Ms. Camp, from time to time you write letters to the
22 editors; correct?

23 MR. SOLANO: Same objection, Your
24 Honor.

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1 THE COURT: Well, I can't rule on
2 that before I know what the subject matter is because --
3 I can't. So let's defer.

4 BY MR. CYR:

5 Q. Ms. Camp, do you recall writing a letter to the New
6 York Times on March 29, 2001?

7 MR. SOLANO: Same objection, Your
8 Honor.

9 THE COURT: Well, you, obviously,
10 immediately know what this is. I don't. So I'll let you
11 say whether you recall or not.

12 A. It looks like excerpts of the letter that I sent to

13 the New York Times.

14 BY THE COURT:

15 Q. Meaning that the Times edited it?

16 A. Significantly.

17 BY MR. CYR:

18 Q. The last sentence of your letter is, "The fix for
19 the Barnes Foundation is support, not relocation." Do
20 you see that?

21 A. Yes.

22 Q. Is that still your opinion?

23 A. No.

24 MR. CYR: Thank you. That's all I

Page 68

1 have.

2 THE COURT: Will there be
3 redirect, Mr. Solano?

4 MR. SOLANO: Your Honor, just two
5 questions.

6 REDIRECT EXAMINATION

7 BY MR. SOLANO:

8 Q. Ms. Camp, do you still have before you the
9 transcript from the 2001 hearing that Mr. Cyr marked as,
10 I believe, Exhibit A-88?

11 A. Yes.

12 Q. Can I ask you, please, to turn to Page 80 of that
13 document?

14 A. (Witness complies with request.)

15 Q. Ms. Camp, I believe that Mr. Cyr asked you about
16 your purpose in filing that petition. I'm going to show

Page 60

17 you a passage beginning at Page 80 of the transcript.
18 The question reads, "Ms. Camp, what do you hope to
19 accomplish if the Foundation is permitted to tour or lend
20 the works in storage?"
21 The answer, "The first goal is
22 really to have the pieces from storage used the way that
23 Barnes intended and that is to help transform the lives
24 of people. They can't do that if they're locked up in

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1 offices and places where people can't access them.
2 "The other goal is to further the
3 scholarship around Dr. Barnes' mission, the work of the
4 Foundation and the works that he purchased.
5 "Going back to the Soutines that I
6 mentioned, for example, it is important to a scholar or
7 curator's work to be able to look broadly at the careers
8 of individual artists and the people that were
9 influencing them, and if there are pieces to the puzzle
10 that are missing, then questions go unanswered. So if
11 we're able to lend those works so that they can get back
12 into scholarly discourse, then it furthers the field in
13 terms of our understanding of the work that artists do
14 and their individual careers.
15 "The financial gain from this
16 ability is going to be small. It's not, by any means,
17 the level that we saw from the tour of the '81 works
18 several years ago. We're talking about much smaller
19 amounts of money, and if you balance that with the
20 conservation needs of some of the works, in some ways
21 it's going to be a quid pro quo for some pieces.

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22 "The Courbet on the stairs is a
23 perfect example where, before it could go anywhere, it
24 needs to be cleaned, the frame needs to be restored, and

Page 70

1 there are other things that would need to be done with
2 it. That work is very costly.

3 "So it's more along the lines of
4 focusing on Barnes' mission, furthering the scholarship,
5 and there is some financial gain to be had, although
6 small."

7 Was that your testimony in the
8 2001 hearing?

9 A. Yes, it was.

10 Q. Was that testimony correct then when you stated it?

11 A. Yes.

12 Q. And, Ms. Camp, I'm also going to show you Page 95 of
13 your testimony at that hearing.

14 A. Mine only goes up to 84.

15 Q. I believe it's two-sided copying or at least it
16 should be.

17 A. It is, but mine only goes up to 84.

18 Q. Well, I'll put it on the screen, because it's only
19 one question that was asked by Mr. Barth at the beginning
20 of Line 18, "Finally, you don't have any current plans to
21 sell any of these materials?"

22 And your answer was, "No, we
23 don't."

24 Was that your testimony at that

1 hearing?

2 A. Yes, it was.

3 Q. Was that testimony correct at that time?

4 A. Yes.

5 MR. SOLANO: No further questions,
6 Your Honor.

7 THE COURT: Mr. Barth?

8 MR. BARTH: None, Your Honor.

9 THE COURT: Mr. Cyr?

10 MR. CYR: None, Your Honor.

11 BY THE COURT:

12 Q. Ms. Camp, I have only a very few for you, if I may.

13 At the beginning of your direct examination by Mr.

14 Solano, he asked you if your understanding of the

15 replication of the gallery in the new building would be

16 identical -- this isn't exactly your words; it's my

17 paraphrasing -- and you said, it would be. Fair

18 statement?

19 A. Yes.

20 Q. There was testimony from several experts last week

21 about the process from preliminary planning to

22 completion. You heard all that, did you not?

23 A. Yes.

24 Q. It may have been Mr. Schwenderman. It may have been

1 Mr. Callahan. Indeed, it may have been someone else.

2 But there was talk about fitting the plan within the

3 budget?

4 A. Yes.

5 Q. And that, as that process evolves and moves forward,
6 things get added or deleted. Do you remember that?

7 A. Yes.

8 Q. I don't know if this is the word that those
9 witnesses used, but you'll understand it. Is it your
10 understanding that the accurate replication of the
11 gallery is a nonnegotiable aspect of that building,
12 whatever else it looks like?

13 A. Yes.

14 Q. So, to the extent that someone might have considered
15 Mr. Harmelin's testimony to be equivocal in that regard,
16 you are not?

17 A. No.

18 Q. You're not equivocal?

19 A. I'm not equivocal in the least bit.

20 Q. You spoke very briefly about the didactic exhibits;
21 and, as I listened to your explanation as to how they
22 were to be incorporated into the overall scheme, I simply
23 wanted to know if you thought about whether those
24 exhibits will be part of the audio tour or is that too

1 far out to answer?

2 A. What we have been talking about are a number of
3 things that would happen. This didactic exhibition that
4 I referred to in my testimony would be a walk-through
5 space that would introduce visitors to the aesthetic
6 elements and Barnes' scientific process, using a variety
7 of interactives that, basically, take advantage of a

8 variety of the senses. We would hope to have multiple
9 audio tours available so that someone coming for their
10 first time would get the introduction tour. Someone
11 coming for their tenth time, who wanted to specifically
12 focus on the works of Cezanne or early American ironwork
13 or Modigliani, could pick up that audio tour and use
14 that. We did some exploration with technology, and there
15 are ways to provide that that are, actually, now quite
16 reasonable because of radio technology and all of that.

17 Q. So you're envisioning multiple or various audio
18 tours that a consumer may choose among?

19 A. Yes.

20 Q. As opposed to the present where there's a single
21 audio tour if you go to Barnes?

22 A. Yes.

23 Q. There was talk last week -- there was testimony last
24 week -- again, I can't cite you to the witness. But the

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1 notes we made were that there will be 42 hours a week for
2 public access to the new building, if it happens. Do you
3 remember that?

4 A. Yes.

5 Q. There was also -- well, my notes reflect that there
6 was also testimony that there would be 27 hours a week
7 for student use of the gallery exclusively. You remember
8 that?

9 A. Yes.

10 Q. If it is to be exclusive, that would mean, by simple
11 arithmetic, that the new building would have to be open
12 69 hours per week or some average of about 10 hours a day

17 kind of organization. People tend to still have in mind
18 the traditional museum, and that's not what we're talking
19 about doing.

20 Q. Well, you've answered my question. My math is not
21 wrong. You are envisioning an average of 10 hours a day
22 that you're open either to the public or to the students?

23 A. Yes.

24 Q. And the actual hours may be more than that because,

Page 76

1 as you said, there will be some transition down time?

2 A. Yes.

3 Q. May I assume that the actual hours of operation have
4 not yet been determined, however?

5 A. That's correct.

6 Q. Do you know whether it will be a seven-day-per-week
7 plan, however? In other words, will there be a day that
8 it will be closed to everyone, if you know?

9 A. We have not discussed being closed for any one day
10 but, rather, a seven-day operation.

11 Q. That's the operational scheme in mind to date?

12 A. Yes.

13 THE COURT: All right. I have no
14 further questions. I don't know if that prompts
15 anything, Mr. Solano.

16 MR. SOLANO: No, Your Honor.

17 THE COURT: Mr. Barth?

18 MR. BARTH: No, Your Honor.

19 THE COURT: Mr. Cyr?

20 MR. CYR: No, Your Honor.

21 THE COURT: Thank you, Ms. Camp.
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22 (Witness excused)

23 MR. SOLANO: Your Honor, if I may,
24 I'd like to move the admission of the exhibits used with

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1 Ms. Camp. They were Petitioner's Exhibits 99, which was
2 the plans for Ker-Feal list, and then a series of
3 documents from the archival files: Exhibits 118, 119,
4 120, 121, 123, 124, 125, 126, 129, 130 and 135.

5 THE COURT: Mr. Barth, do you have
6 any objection?

7 MR. BARTH: No, Your Honor.

8 THE COURT: Mr. Cyr?

9 MR. CYR: No objections.

10 THE COURT: All right. Those
11 documents are admitted by agreement.

12 (Petitioner's Exhibit Nos. 99,
13 118, 119, 120, 121, 123, 124, 125, 126, 129, 130 and 135
14 received into evidence.)

15 MR. SOLANO: Your Honor, we would
16 like to move, once again, for the admission of
17 Petitioner's Exhibits 94 and 95, which were the copies of
18 the articles by Dr. Barnes and Miss de Mazi a in the House
19 & Garden magazine. They were admitted for a limited
20 purpose on Friday. We believe we have now established
21 the authenticity of authorship, and that we, therefore,
22 ask that they be admitted for all purposes.

23 THE COURT: Mr. Cyr, do you wish
24 to argue against the burden having been met of

1 establishing the authenticity of those articles by
2 Dr. Barnes?

3 MR. CYR: No, Your Honor. We'll
4 stipulate.

5 THE COURT: All right. Very well.
6 (Petitioner's Exhibit Nos. 94 and
7 95 received into evidence.)

8 MR. WELLINGTON: Your Honor, the
9 Barnes Foundation calls Dr. Watson.

10 -----

11 ... BERNARD C. WATSON, having been
12 duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WELLINGTON:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. Dr. Watson, you, like Ms. Camp, testified at the
18 prior phase of this hearing, and so I have very limited
19 questions for you on three or four specific areas this
20 morning.

21 For the record, you remain, do you
22 not, sir, the chairman of the Board of the Barnes
23 Foundation?

24 A. Yes. I'm the president of the Board.

1 Q. I first want to ask you a question about the site of
2 the Barnes' location and the potential of the Barnes'
3 gallery in the City and the potential ownership of that

4 site. There was some question raised concerning that.

5 Can you tell us, Dr. Watson,
6 whether or not the Foundation has a commitment from the
7 City of Philadelphia in some form that a site would be
8 provided for a new gallery?

9 A. Yes, we do. The Mayor stated that publicly, that he
10 will turn over a site on the Parkway to the Foundation
11 for a new building.

12 Q. Is it your understanding that that site would be
13 turned over without the need of the Barnes Foundation to
14 purchase that site?

15 A. That is correct.

16 Q. Do you know who would own that property?

17 A. What is usually the case is that we would own the
18 building, and the property would be owned by the City,
19 and they would give you a hundred-year lease for a
20 dollar. That is the normal practice.

21 Q. I, secondly, want to ask a question that, I think,
22 Ms. Camp was also asked as well, but I want to ask you,
23 Dr. Barnes -- Dr. Watson --

24 THE COURT: I thought you had

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1 praise enough.

2 THE WITNESS: I don't want to be
3 dead though, Your Honor.

4 THE COURT: That's an accurate
5 observation. Notwithstanding all the extra that you get
6 out of that, it's probably not worth it.

7 MR. WELLINGTON: It's amazing what

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8 we came up with in the archives this week, Your Honor.

9 BY MR. WELLINGTON:

10 Q. Dr. Watson, as the president of the Barnes
11 Foundation Board, is there a commitment from the Board to
12 replicate the gallery and the ensembles as they presently
13 are in the main gallery and arranged in Merion?

14 A. Yes.

15 Q. And, despite whatever needs to conform to a budget
16 and a building plan as it evolved, is that a sacrosanct
17 commitment?

18 A. Yes.

19 Q. Is it also a sacrosanct commitment that the
20 dedicated hours and access for educational purposes to
21 the main gallery will be as Ms. Camp has just testified?

22 A. Yes.

23 Q. In the prior -- following the prior hearing,
24 Dr. Watson, Judge Ott did approve the expansion of the

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1 Board of Trustees from 5 to 15, and there's been
2 testimony that has not yet occurred. Can you give us
3 your explanation for why that has not yet occurred, sir?

4 A. Yes. After the Judge gave us the opportunity to do
5 that, we also requested from the Court that there be some
6 changes in the bylaws so that we can operate as a modern
7 Board. Among those changes requested of the Court were
8 the fact that we would be able to establish committees,
9 including a nominating committee, which would be central
10 to expanding the Board, with the quality of persons we
11 need. We want a conflict-of-interest policy, which would
12 pertain to all of the Board members. We wanted to change

13 the provision that there will not be members of the
14 Foundation as currently exist, and we also asked for
15 certain other changes which enable us to operate.

16 In addition to requesting those
17 changes from the Court, we established a committee of the
18 Board to deal with the expansion of the Board so that we
19 could get the quality and the type of person that we need
20 to operate a magnificent collection in the other property
21 that constitute the Barnes Foundation. So that process
22 has been started.

23 We have not moved beyond that for
24 two reasons. One, we have not received that permission

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1 from the Court; and, secondly, the kind of person that we
2 want to attract to this Board, who we can attract, want
3 to find out what they are joining if they become members
4 of this Board, whether it would be a beleaguered facility
5 operating under severe restrictions or whether they would
6 have the kind of situation that we have requested in the
7 petition.

8 Q. Is the Board ready to move promptly with expanding
9 the Board following the decision in this hearing?

10 A. Yes.

11 Q. Finally -- maybe not finally, but almost finally,
12 Mr. Harmelin addressed this question, and I want your
13 perspective on it as well, Dr. Watson. Is this
14 initiative a takeover by some prominent Foundations of
15 the Barnes Foundation?

16 A. It is not. It is unfortunate that it has been

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17 characterized that way by certain people. This Board
18 remains fully in charge of the Barnes Foundation, and we
19 understand what our responsibilities are, including our
20 fiduciary responsibilities. It is unfortunate that it's
21 been characterized that way because the three partners
22 that we have in this effort are the only ones who did not
23 want to take over the Foundation and to take away the
24 independence of the existing government structure.

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1 We had spoken to a number of
2 funding sources, organizational as well as individual;
3 and, as I testified earlier, they always had one thing
4 that they wanted before they would consent to give us the
5 kind of resources that we needed to operate, and that was
6 that the Board become an advisory committee or that the
7 Barnes become an addendum or an addition to an existing
8 organization, essentially, taking charge of the
9 Foundation. We rejected that out of hand.

10 Our Board has been very clear
11 about what our responsibilities are; and we were
12 unwilling, for financial resources and other resources,
13 to give up that independence.

14 These three partners are the only
15 ones who did not want that, and for them to be accused of
16 attempting to take over is really a disservice to
17 organizations which are trying to do something which I
18 consider in the best interest of everyone.

19 In addition to that, it is
20 insulting, in my personal view, to the existing Board
21 that we would sit idly by, knowing our responsibilities,

22 to let anybody come in and take away our
23 responsibilities; and that is unfortunate.

24 It is not a takeover. They are

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1 good, honest partners. They have made no demands about
2 Board membership or anything else. It is not a takeover.

3 Q. Dr. Watson, is it still your personal belief that
4 relocation of the gallery is the least drastic
5 alternative available to the Foundation to solve its
6 financial problems and continue its mission of
7 Dr. Barnes?

8 A. Yes.

9 MR. WELLINGTON: I have nothing
10 further, Your Honor.

11 THE COURT: Mr. Barth?

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

14 CROSS-EXAMINATION

15 BY MR. CYR:

16 Q. Dr. Watson, good morning.

17 A. Good morning.

18 Q. Following up on that last line of questioning, since
19 the Court decision in January of this year, have you been
20 exploring any other options other than the proposal to
21 move the Foundation to Center City?

22 A. We have explored all of the options that we explored
23 before we filed this petition, and we're still of the
24 opinion that this is the least drastic of the

1 alternatives.

2 Q. And the reason that you're exploring other options
3 is because you're in financial straits presently;
4 correct?

5 A. It's the same situation that led us to file this
6 petition. Nothing has changed.

7 Q. Now, part of the relief requested in the petition is
8 the freedom to set admission fees; correct?

9 THE COURT: Repeat that, please.

10 I couldn't hear you.

11 BY MR. CYR:

12 Q. Part of the relief requested in the petition is the
13 freedom to set admission prices, as you see fit; correct?

14 A. To operate without the restrictions which were
15 imposed upon us, which include telling us which days we
16 can be open, what hours we can be open, what we can
17 charge; and I know of no other institute of this size or
18 importance which operates under those restrictions. So,
19 clearly, that would be one of the restrictions which
20 would be removed so we would be able to do that.

21 Q. We can agree that, if the Court gives you that
22 permission, that you'll be free to raise admission fees
23 to a rate higher than they are currently; correct?

24 A. If the Court gave us that permission, yes, we would

1 be free to do that.

2 Q. That would go -- obviously, you expect increased
3 revenues from those increased admission fees; correct?

4 A. That is not necessarily true, but that is clearly a
5 possibility. There is a limit to how much you can raise
6 fees without having diminishing returns in terms of the
7 number of people who will come. But it is possible, yes.

8 Q. Under your current proposal, the admission ticket
9 price, we heard from Mr. Schwendeman, would be,
10 approximately, 12 dollars a ticket; correct?

11 A. Whatever Mr. Schwendeman has said in his testimony,
12 I would accept that; and that was done on the basis of
13 certain scenarios and what the fee would be.

14 Q. There's no reason that you couldn't charge 12
15 dollars in the Merion facility; correct?

16 A. Yes, there is a reason we can't. Because those fees
17 are not set by us; they're set by someone else.

18 Q. I understand that. Assuming the Court gives you
19 that permission though, once it happens, you could charge
20 12 dollars for visitors to visit the Merion facility just
21 like you proposed for the Center City facility; correct?

22 A. If the Court gave us that permission, we would be
23 free to do that.

24 Q. Depending upon what the price is, that would go a

1 certain way to erasing your deficit; correct?

2 A. I'm not really sure about that, but that's possible.

3 Q. Obviously, you wouldn't need Township approval to
4 increase your fees, only the permission of this Court;
5 correct?

6 A. We would need permission of whoever set the fees
7 before.

8 Q. As I understand it, you have not embarked upon a
9 capital-raising campaign to increase or to raise
10 endowment for the facility in its present location;
11 correct?

12 A. We have embarked on every fund-raising strategy that
13 is known to man in the almost five years I've been on
14 that Board. I have, in fact, spent most of my time
15 trying to raise money of all kinds just to keep the doors
16 open and to protect the valuable resources that we have.
17 That was the source of the Collection Assessment of
18 moneys that we got from the Getty Foundation, from Luce
19 and from Mellon and from Pew, because the things there
20 are so valuable that they have to be protected, and they
21 were not protected. So, yes, we have tried to raise
22 money for any purpose but, particularly, for operating
23 money.

24 Q. But is it true, Dr. Watson, that you have not

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1 embarked upon a formal campaign to raise a permanent
2 endowment for the present facility; is that correct?

3 A. We have started that already. When filing our
4 petition, we started with our partners to try to raise
5 one-hundred-and-fifty-million dollars, one hundred for
6 facility and fifty-million dollars for an endowment,
7 which we hope to receive.

8 Q. Well, you haven't done that with respect to keeping
9 the facility in its present location?

10 A. No, we have not.

11 Q. Have you given any consideration to petitioning the
12 Court to tour and lend the permanent collection as was

13 done back in the nineties?

14 A. No, we have not.

15 Q. You would agree with me that you raised 17 million
16 dollars doing that back in the nineties?

17 A. I would agree with you that the record says that
18 that tour brought 17 million dollars, and most of which
19 was used for purposes that we do not have access to
20 today.

21 Q. Would you consider that a less drastic alternative,
22 that is, tour and lending the permanent collection, as
23 opposed to uprooting the present gallery and moving it to
24 Center City?

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1 A. I would not consider that a less drastic
2 alternative.

3 Q. Have you approached the Township since the January
4 2004 decision by this Court for purposes of working with
5 the Township to allow for increased visitors to the
6 Township -- to the Foundation?

7 MR. WELLINGTON: Your Honor, I do
8 object to the scope on this.

9 THE COURT: Yes, I think it's
10 outside the scope, Mr. Cyr. I'm going to sustain it.

11 BY MR. CYR:

12 Q. The Foundation continues to attract more and more
13 grants to the Foundation; correct?

14 A. No.

15 Q. Dr. Watson, from time to time you post publications
16 on the website of the Barnes Foundation; correct?

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17 A. Do I?

18 Q. Yes.

19 A. I am technologically illiterate. So anything that's
20 posted on the website, it's being done by our staff.

21 Q. Well, to your knowledge, do you provide material to
22 the staff of the Barnes Foundation that is then posted on
23 the Foundation's website?

24 A. I'm sorry I interrupted. I'm not sure. I write

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1 letters sometime, and they wind up in the paper; but if
2 they wind up anywhere else, it is done by other people.

3 MR. CYR: May I approach, Your
4 Honor?

5 THE COURT: Sure. Is this A-89?

6 MR. CYR: It's A-90, I believe,
7 Your Honor.

8 (Document entitled "The Barnes
9 Foundation: There's More to the Story" marked by counsel
10 as A-90.)

11 BY MR. CYR:

12 Q. You have before you Exhibit A-90, "The Barnes
13 Foundation: There's More to the Story"?

14 A. Yes.

15 Q. Do you recognize this, Dr. Watson?

16 A. Yes.

17 Q. And you authored this publication. Do you
18 understand this to be posted on the website of the Barnes
19 Foundation?

20 A. Yes.

21 Q. What was the purpose of this particular article?

22 A. A lot of misinformation and inaccuracies were
23 banded about regarding our petition, and what I wanted
24 to do is to try to put some facts on the table about the

1 Barnes.

2 Q. Dr. Watson, in this article you write that a small
3 but effective development staff has created a membership
4 program of over 1300 members for corporations and
5 individuals and submitted grants to Federal, State and
6 private philanthropic organizations; is that correct?

7 A. Yes.

8 Q. You've had a number of successes with that; correct?

9 A. Yes.

10 Q. Okay. In fact, you've received a grant of a hundred
11 thousand from the Kellogg Foundation for educational
12 programs; correct?

13 A. Yes.

14 Q. You've implemented the Collection Assessment
15 Project; correct?

16 A. Yes. It's ongoing.

17 Q. And that work has been fully funded, has it not,
18 from grants from the J. Paul Getty trust, the Pew
19 Charitable Trusts, the Luce Foundation and the Mellon
20 Foundation; correct?

21 A. Yes.

22 Q. And that's funded 80 percent of your director's
23 salary; correct?

24 A. Yes.

1 Q. You've also received a hundred fifty thousand to
2 catalogue the American Collections; correct?

3 A. Yes.

4 Q. And you've received a \$95,000 grant from the
5 National Endowment for the Humanities; correct?

6 A. Yes.

7 Q. You state, "Every area of The Foundation's
8 operations is far outperforming not only operations prior
9 to Camp's arrival, but outpacing standards in the field";
10 correct?

11 A. Yes.

12 Q. So, in all aspects of the Foundation's operations
13 since the arrival of Ms. Camp and under your stewardship,
14 the Foundation has been prospering; correct?

15 A. It has not been prospering. We have been surviving,
16 and we have been able to do some things which were not
17 being done before we got there. For example -- and I say
18 to you again -- we have valuable works which were not
19 being protected because they were not conserved in the
20 appropriate manner, they were not catalogued, and they
21 did not have the appropriate security. The reason we
22 were able to get the money from J. Paul Getty Trust and
23 from the Pew Memorial Trusts and from the Andrew Mellon
24 Foundation was for the collections assessment, and that

1 was restricted money to do that work; and it was those
2 grants that enabled Ms. Camp to bring in the quality
3 personnel to assist her in that collections assessment.

4 That is not general operating support, although, as you
5 know, when you receive grants, a certain percentage of
6 that can go for supporting that particular grant. That
7 is how we got the staff.

8 I remind you, when I talk about
9 prospering under that, that is built on a base where
10 there were literally no grants being brought in because
11 there was no development staff in place. Ms. Camp
12 created the development office, a very small one, one not
13 appropriate for an organization of this size of
14 importance, and that's where those grants came from.
15 Absent that, we would not have the staff nor would we be
16 able to do that important work.

17 Q. Well, Dr. Watson, in considering the least drastic
18 options, haven't you given some consideration to sort of
19 staying the course, letting these projects and
20 professional staff and development efforts continue in an
21 effort to allow the Foundation to stay where it is and
22 continue its mission there?

23 A. We considered that before we filed the petition and
24 I have been told, as has Ms. Camp, by funding sources,

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1 that the kind of grants that we need to operate in Merion
2 will not be forthcoming as long as we are there and
3 operate under the restrictions under which we currently
4 operate.

5 As a matter of fact, as, I think,
6 Ms. Camp told you, once the petition was filed, funding
7 sources tend to wait and see what is going to happen. So

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8 the kind of increase which you referred to in this letter
9 that comes from funding sources not only is not there
10 now, it is not likely to be there.

11 Q. Well, Dr. Watson, should the Court reject in part or
12 in total the petition before the Court, you will, will
13 you not, continue your fund-raising efforts in an effort
14 to make the Foundation a continuing viable place to
15 educate students in the future; correct?

16 A. We will have no choice but to do that. It's our
17 responsibility as a Board to do everything that we can.

18 MR. CYR: Thank you. That's all I
19 have.

20 THE COURT: Will there be any
21 redirect, Mr. Wellington?

22 MR. WELLINGTON: No, Your Honor.

23 MR. BARTH: Your Honor, if I may,
24 I have a question or two.

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1 THE COURT: All right.

2 MR. BARTH: Thank you.

3 BY MR. BARTH:

4 Q. Dr. Watson, Mr. Cyr asked you some questions
5 regarding touring parts of the collection to raise money
6 as did the tour in the early 1990's. Do you recall
7 whether or not the petition to the Court at that time and
8 the Judge's adjudication described that as a one-time
9 event?

10 A. That is my understanding.

11 Q. Could the Barnes Foundation carry out its
12 educational mission, if the heart of its collection, that

13 is, the painting in the gallery, were toured?

14 A. No, it could not.

15 Q. When the tour was permitted in 1990's, was the
16 gallery open or was the institution open or closed?

17 A. I think it was closed.

18 Q. Mr. Cyr also went through your comments in Exhibit
19 A-90, and some of the successes the Barnes Foundation has
20 had in raising money. Have any of the grants that the
21 Barnes Foundation raised -- have any of them been for
22 unrestricted endowment or for operating expenses?

23 A. They have not.

24 Q. So they've all been limited in purpose?

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1 A. Yes, they have.

2 MR. BARTH: I have no other
3 questions.

4 THE COURT: Any follow-up on that?

5 BY MR. CYR:

6 Q. Dr. Watson, the tour back in the nineties was less
7 than 10 percent of the collection; correct?

8 A. I wasn't here, and I'm not sure what was in the
9 tour.

10 Q. And the gallery was closed at that time because of
11 the physical renovation to the facility; correct?

12 A. It was closed, yes.

13 MR. CYR: Thank you.

14 THE COURT: Thank you, Dr. Watson.

15 (Witness excused)

16 THE COURT: Mr. Wellington?

17 MR. WELLINGTON: Your Honor, the
18 Barnes Foundation rests its case in chief.

19 THE COURT: All right. Very well.

20 Would the Attorney General's
21 Office be calling any witness, presenting any evidence?

22 MR. BARTH: No, Your Honor. The
23 Attorney General's Office does not have any witnesses to
24 call at this time.

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1 THE COURT: Would the students
2 like to call a witness?

3 MR. CYR: Your Honor, I do not
4 think we could complete a witness before the lunch break.

5 THE COURT: Well, here's your
6 choice, and I'll let you make it. We could start now,
7 break at a convenient spot around noon or, if you would
8 prefer to break early for lunch, we could start directly
9 at one o'clock. But I'll let you call that. How is
10 that?

11 MR. CYR: Your Honor, I think at
12 this time we'll get started with our first witness.

13 THE COURT: All right. Very good.

14 MR. CYR: At this time we call our
15 expert, Debra Force, to the stand.

16 THE COURT: All right.

17 -----

18 INTERVENOR'S EVIDENCE

19 ... DEBRA J. FORCE, having been

20 duly sworn, was examined as follows:

21 DIRECT EXAMINATION ON VOIR DIRE

22 BY MR. CYR:

23 Q. Good morning, Ms. Force.

24 A. Good morning.

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1 Q. Would you please tell the Court a little bit about
2 your educational background?

3 A. Yes. I went to undergraduate at Ohio Wesleyan
4 University where I got a BA in 1975, and then I came
5 on to the University of Pennsylvania for a program called
6 American Civilization where I got a Master's degree and
7 completed all of my work, except dissertation, for a
8 Ph. D.

9 (Curriculum Vitae of Debra
10 J. Force marked by counsel as A-53.)

11 BY MR. CYR:

12 Q. Ms. Force, I'm putting on the overhead here Exhibit
13 A-53, which is your CV. Do you have that in front of
14 you?

15 A. Yes, I do.

16 Q. After you completed your education, could you tell
17 the Court your employment?

18 A. Yes. My first real job, other than some internships
19 and special projects like the Betsy Ross Foundation, and
20 so on, was with what was then INA Corporation here in
21 Philadelphia, later became CIGNA. I was hired to be the
22 curator director of the existing collection, which is a
23 collection of fire and marine memorabilia primarily; and
24 then part of my duties expanded because at that time the

1 chairman of the corporation wished to buy traditional
2 American art as well as contemporary art, and so I
3 acquired a good many pieces for the collection.

4 I also had an educational program
5 for the employees and the public in that particular job.

6 In 1984, after the merger took
7 place, I decided that I wanted to change, and I was able
8 to obtain a position at Christie's first as the assistant
9 to the head of the American Paintings Department; and two
10 or three years after that, I became head of the American
11 Paintings Department and senior vice president. I was in
12 that capacity for nine years, and my responsibilities
13 included putting together four auctions a year as well as
14 doing appraisals, and things of that sort.

15 Q. What did you do after that?

16 A. After that, I worked for about a year and a half or
17 so at Hirschl & Adler Gallery in New York, which is one
18 of the premier traditional American art galleries. I was
19 the head of the American Paintings Department there.

20 At the end of that -- or, in the
21 course of being at Hirschl & Adler, I was actually asked
22 by Richard Maloumian, chairman of Nasa Corporation, if I
23 would consider running a gallery that he wished his
24 corporation to open in New York.

1 So around 199, I guess it would
2 be, 7, I began -- or, actually, it was earlier than
3 that. '96. I began working as a director of a gallery

4 called Beacon Hill Fine Art, which was located on Madison
5 Avenue in the high seventies. And I was responsible in
6 that position for, actually, running the gallery,
7 bringing in paintings to sell, obviously, selling
8 paintings. We did a number of exhibitions, some of which
9 traveled to museums around the country. And I did some
10 appraisal work also at that time. And when the gallery
11 closed -- the corporation decided that it wasn't salient
12 to their business, and so after about four years, it
13 closed.

14 With my severance package, I was
15 able to start my own business, which I have today on 73rd
16 Street between 5th and Madison.

17 Q. Are you affiliated with any professional societies?

18 A. I'm a member of the Private Art Dealers Association.

19 Q. Do you have any appraisal experience with the
20 collections of museums?

21 A. Yes. And, certainly, when I was with Christie's, we
22 did a number of museum appraisals, including here in
23 Philadelphia, the Pennsylvania Academy of Fine Arts,
24 we've appraised the entire collection.

1 But since I've had my own
2 business, I've done appraisals for the art collection for
3 the Monumental Museum, the Hunter Museum, universities
4 like Washington and Lee University, which has a fine
5 collection. I'm also called upon on a routine basis from
6 the Brooklyn Museum, New York Historical Society and
7 other museums to evaluate individual pictures,

8 particularly, if they're about to go on loan for an
9 exhibition.

10 Q. Prior to your retention for present purposes, have
11 you had any experience with the Barnes collection?

12 A. Yes. I've had two experiences, both actually with
13 Christie's. The first was in 1989 when Christie's sold
14 the Violette de Mazi a property, and I handled all the
15 American art, which, I think, was about 24 items, of the
16 property, which was in May of that year. And then in the
17 early nineties -- I'm not sure of the date -- Christie's
18 and Sotheby's were both called in to do an evaluation of
19 the Barnes collection.

20 Q. Is that the permanent collection?

21 A. The permanent collection. So I was involved with
22 that and in working with my counterpart at Sotheby's; and
23 that was true not only for my department but also for old
24 masters and French impressionists, and so on.

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1 Q. You mentioned that you worked on the de Mazi a
2 Estate; is that correct?

3 A. Yes.

4 Q. Any other estates of note that you want to tell us
5 about?

6 A. Well, certainly, I usually handled more estates when
7 I was with Christie's than presently. But the Edi th
8 Goetz Estate in Beverly Hills, California, and -- I can't
9 think right offhand.

10 Q. How about the Glackens estate?

11 A. Oh, the Glackens Estate, yes. I did the estate
12 appraisal for the Ira Glackens Estate after he passed

13 away.

14 Q. Have you ever been consulted by Masterson Gurr
15 Johns?

16 A. I have been.

17 Q. And fairly frequently?

18 A. I would say, you know, it may be two or three times
19 a year, maybe a little more. They asked my opinion in
20 values for certain property that they're appraising.

21 Q. Have you been qualified as an expert in any other
22 court?

23 A. Yes. I have testified twice before, once in a
24 divorce hearing, and the other was a case involving the

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1 Justice Department.

2 Q. And in the proceeding involving the Justice
3 Department were you qualified as an expert?

4 A. Yes, I was.

5 Q. Are you being paid for your time in appraising the
6 art and, also, for appearing in court today?

7 A. Yes.

8 MR. CYR: I'd like to mark Ms.
9 Force's CV as Exhibit A-53, and I submit her as an expert
10 in American art. I'm sorry, Your Honor. There's one
11 other piece of that I'd like to go through before I
12 submit her.

13 BY MR. CYR:

14 Q. Do you have a specialty, Ms. Force?

15 A. Yes. It's what, I guess in the trade, is called
16 traditional American art, meaning, roughly, from the late

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17 18th century up to about 1945, for artists who,
18 basically, have established their reputations before the
19 Second World War. And American art is what I've always
20 done all my life with a short venture into contemporary
21 when I worked for INA corporation, but American art is my
22 field.

23 MR. CYR: Your Honor, at this time
24 I'd like to submit Ms. Force as an expert in American

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1 art.

2 THE COURT: On qualifications, Mr.
3 Wellington?

4 MR. WELLINGTON: No questions on
5 qualifications, Your Honor.

6 THE COURT: Mr. Barth, on
7 qualifications?

8 MR. BARTH: None, Your Honor.

9 THE COURT: All right. You may
10 proceed, Mr. Cyr.

11 DIRECT EXAMINATION

12 BY MR. CYR:

13 Q. Ms. Force, what were you asked to do in this case
14 initially?

15 A. I was asked to evaluate eleven paintings and works
16 on paper, two works on paper and nine paintings, here at
17 the Barnes for the -- you work for the attorneys in this
18 case. And, initially, I was only asked to provide
19 values. I was not asked to do the defenses at that time.

20 Q. If we turn to your report, which in the binders is
21 marked as Exhibit 54, do you have that in front of you?

22 A. Yes.

23 Q. Can you just briefly review for the record what
24 pieces of art you reviewed?

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1 A. Yes. I reviewed four oil paintings by William
2 Glackens and one drawing, and the drawing is number two
3 on the list there. And then in terms of Prendergast,
4 four works by Prendergast, three oils and one water color
5 by Maurice Prendergast, and one work by Charles
6 Prendergast, his brother; and one work by Ernest Lawson.

7 Q. At the time that you prepared and rendered your
8 appraisal value for those pieces of art, were you
9 provided with any other valuations of that art?

10 A. No, I was not.

11 Q. So the record is clear, you did not know how
12 Masterson Gurr Johns had appraised the value of those
13 pieces of art at the time you rendered your opinion?

14 A. No, I did not; and I didn't find out until after I
15 submitted my values.

16 Q. Do you have an opinion as to whether an appraisal
17 such as this should be done on a blind basis or without
18 reference to prior valuations?

19 THE COURT: On a what type of
20 basis?

21 MR. CYR: Blind.

22 THE COURT: Blind.

23 A. I think it should be done on a blind basis because,
24 in my opinion, that's the only way you can be truly

4 Even the imagery was very difficult to ascertain. So I
5 felt that I couldn't do an adequate appraisal unless I
6 saw the works in person.

7 Q. So, in that regard, arrangements were made for you
8 to travel to the Barnes on August 30th of this year; is
9 that correct?

10 A. That's correct.

11 Q. And when you were there, how did you go about
12 appraising the art work?

13 A. Well, in terms of the way it was presented, in terms
14 of the American paintings, I was shown each work
15 individually. They were brought out for me to see. And,
16 basically, you know, I would get a look at the entire
17 picture and then go up closer and look at particular
18 details, particularly, in the surface of the piece.
19 Also, looking at the condition, also, looking at the back
20 because sometimes there's inscriptions on the reverse
21 and/or you can tell some condition issues from the
22 reverse of the work of art and, also, noting the frame.
23 And although frames aren't evaluated individually,
24 certainly, certain pictures are enhanced that they have

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1 not only original frames, but, in some of the cases, the
2 Barnes pieces, actually, signed frames by Prendergast.

3 Q. Did you use any tools or other methods in examining
4 the art work?

5 A. Yes. Mr. Feigen and I were looking at all the
6 pictures together. We had a few questions about, I
7 think, maybe three or four pictures in looking at them

8 firsthand, and so we asked if we could put an ultraviolet
9 light on them, and we were allowed to do that. And,
10 basically, under the ultraviolet light, most everything
11 seemed to be just fine. There are issues, perhaps, with
12 the treatment of linings and restoration of certain
13 paintings.

14 BY THE COURT:

15 Q. What does an ultraviolet light tell you?

16 A. It shows, basically, where paint has been added to
17 the surface. You could thereby see it. It's usually
18 fluorescent, and it's a dark purple, and you can tell if
19 there are holes or glazing.

20 Q. You can tell if it's been touched up?

21 A. Right. Today there are methods where there are
22 certain paints that, actually, don't fluoresce, and
23 that's a different problem. But these were done some
24 time ago. So we could see where there was damage.

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1 BY MR. CYR:

2 Q. Is there anything else that you want to talk about
3 that you did at the physical inspection of the paintings
4 on August 30th?

5 A. No. Basically, also checking -- we were given basic
6 catalogue sheets to check the cataloguing. Obviously, a
7 foundation or museum would have the correct catalogue;
8 but I still check it anyway for where it's signed, and
9 things of that sort.

10 Q. Would that provide the provenance of the painting?

11 A. No. Well, the provenance really has to be traced
12 either through historical documents and/or information

13 provided. In the case of the Foundation, they provided
14 me sheets and descriptions. Certain ones had provenance
15 listed, and certain ones did not. For example, the
16 Glackens all came directly from the artist. The Lawsons
17 came directly from the artist. And the other paintings
18 don't seem to have provenance listed, but one would
19 assume that he might have gotten those from the artist as
20 well. He had an association with Charles Prendergast, so
21 more than likely, he may have gotten them from Maurice
22 Prendergast or his brother, Charles.

23 Q. After you completed your inspection, you then
24 returned to your gallery in New York City. What did you

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1 do next?

2 A. Well, the next step is to put each piece in context
3 within the artist's body of work, and that means looking
4 at other examples from the same period or of similar
5 subjects, and so on. Then, in terms of the actual value,
6 there are a couple of databases that can be used that
7 show the records at auction at least from 1990 onward. I
8 think before 1990 one has to use printed sources for
9 that.

10 I then looked -- I used AsArt.
11 It's actually the better of the two for American art. It
12 doesn't go for European at all. I went through an
13 assessment of various pieces to try to see what
14 comparables might exist for the works that I was
15 appraising.

16 Q. Did you consider private sales in your evaluation?

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17 A. Yes, I did. Having been, years ago, working at
18 auction and doing appraisals, it was rather
19 claustrophobic because you don't have a chance to know
20 what goes on in the outside world, so to speak, within
21 the trade or the galleries. Now that I've had the other
22 side of the experience, I do know what certain things
23 have sold for in the marketplace, and so I did bear in
24 mind figures of that sort.

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1 Q. Ms. Force, I don't want to go through every one of
2 them, but I thought it would be useful for the Court if
3 we pick a few. Why don't we look at -- start with the
4 Glackens, The Little Pier. Do you have your notes with
5 respect to how you went about evaluating this piece?

6 A. Yes, I do.

7 Q. Could you explain to the Court how it is you went
8 about appraising this particular piece?

9 A. Well, this particular piece is a very good example
10 of Glackens' beach subjects. And so, therefore, in terms
11 of trying to ascertain a value, one would primarily look
12 at other beach subjects for comparison sake.

13 In addition, Glackens' beach
14 subjects tend to be the most desirable in his work as
15 opposed to, perhaps, the New York City scenes and,
16 perhaps, other types of work as well. It all depends, of
17 course, on the subject. This particular painting is
18 quite brilliant in palette, which is one desirable
19 attribute. It also has wonderfully strong brushwork and
20 a certain sense of clarity.

21 The other thing that I find

22 interesting about this painting as opposed to some of the
23 other beach subjects is, it has rather nice dimension or
24 perspective. In other words, you've got the vignette of

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1 the figures and the dog in the foreground, then the next
2 layer back the figures on the pier and in the water, and
3 then in the far back the sailboats sailing in the
4 distance. So it makes it more of a complex-type of
5 composition.

6 Q. Did you run any comparables on this particular
7 piece?

8 A. I did. There, actually, was one that was most
9 directly comparable. However, it sold in 1989, which is
10 quite a long time ago. And since then the market for not
11 only American art, in general, but, particularly, the
12 Ashcan Group, which Glackens is a member, has escalated
13 tremendously. So the piece in question in 1989 was a
14 pier picture from a different perspective.

15 Q. Would you like to show the Court some of the
16 comparables that you looked at?

17 A. I could do that.

18 Q. With the Court's permission, could she come down and
19 use the Elmo?

20 A. Sure.

21 THE COURT: Ms. Force, when you
22 speak, you'll have to project a little bit more because
23 you have no amplification.

24 THE WITNESS: Okay.

1 A. I apologize for the image of this. For some reason,
2 it didn't come out as well as some of the others when we
3 scanned it. But, at any rate, this is a piece that was
4 sold in 1989. It's 1914, which is the same date as the
5 Barnes picture. This particular work is, certainly, a
6 very fine example; but I think the figures you can see,
7 particularly, on the right-hand side, the figures are
8 somewhat elusive. They're elongated. They're not
9 totally defined in the way that The Little Pier figures
10 are. So although I think this is a successful picture, I
11 think Barnes' picture is far superior. The brushwork is
12 also more intense in the Barnes picture.

13 This piece, however, having sold
14 for about 517,000 in 1989 would probably bring about
15 double today. The market, particularly, for the Ashcan
16 Group, and Glackens, Sloan and Henri, have all been
17 escalating tremendously. So I would expect this picture
18 to make about a million dollars today.

19 Now, in terms of more recent
20 prices, this particular painting holds the record price
21 for Glackens at auction. You can see it's a little
22 earlier having been done in 1911, and it also is quite a
23 bit more complex than the Barnes picture. You've got
24 multiple figures there in the foreground and lots of

1 various activities and buildings in the background. So
2 it really is a little bit more ambitious than the Barnes
3 picture. This painting made a million seven. So I would

8 Harrison valued it at one-and-a-quarter million; correct?

9 A. That's right.

10 Q. Why do you think it's worth 1.5 million as opposed
11 to one-and-a-quarter million?

12 A. Well, I felt the composition was more exciting, a
13 bit more interesting than the other beach subjects and
14 perspectives, but, also, the intense power and the
15 quality overall of the painting technique, I thought, was
16 quite strong.

17 Placing values on these things can
18 be somewhat object -- subjective. One appraiser may feel
19 that the work is superior to another, and the other
20 appraiser may feel the opposite. So I think that we're
21 fairly much in the same ballpark here.

22 Q. I'd like to next turn to Prendergast Figures and
23 Deer.

24 THE COURT: How about if we take a

1 break here?

2 MR. CYR: Sure.

3 THE COURT: 1:15 okay?

4 MR. CYR: That should be okay,

5 Your Honor.

6 (A lunch recess was taken at

7 12:19 p.m.)

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9

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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