

The Evening Bulletin

Jim McCaffrey's Local Beat

“Barnes Friends: Foundation Move Is Part Of Conspiracy”

by: Jim McCaffrey

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George Widman/Associated Press Mark Schwartz, an attorney representing Friends of the Barnes Foundation, addresses members of the group outside the home of a neighbor of the Barnes Foundation in Merion yesterday.

Philadelphia - In the backrooms and kitchens of some of the Main Line's wealthiest estates, it has long been suspected that there is a conspiracy in Philadelphia high society to move the Barnes Foundation's \$3 billion art collection to the Philadelphia Museum of Art.

It has been rumored that the Barnes' endowment was purposely emptied using frivolous lawsuits. The foundation could then go to the Orphan's Court and claim a financial hardship that would allow the collection to move to Philadelphia.

Yesterday, Bryn Mawr attorney Mark Schwartz, representing Friends of the Barnes Foundation, a nonprofit organization concerned with neighborhood issues associated with the Barnes Foundation, publicly asserted that these rumors are truthful.

In a petition submitted to the Montgomery County Orphan's Court, Schwartz claims the Barnes' board of trustees is so riddled with compromise and conflicts that the only way to protect the interests of the foundation and its indenture is to take the "drastic" step of putting the foundation into receivership.

If the court fails to do this, the petition maintains, the end result will not be the Barnes Collection in a new gallery on the Benjamin Franklin Parkway as the public has been led to believe, but rather the assimilation of the art works into the collection of the Philadelphia Museum of Art.

Among the people Schwartz claims are a part of this conspiracy are Barnes' president Dr. Bernard Watson, the Barnes Board of Trustees, Lenfest Foundation chairman Gerry Lenfest, the Pew Charitable Trust, the trustees of Lincoln University, Gov. Ed Rendell, the state attorney general, Sen. Vincent Fumo and Comcast chairman Brian Roberts.

Calls to a number of the people named in the petition were not returned yesterday.

Montgomery County Commissioner Tom Ellis made Schwartz resign as the county's counsel in the Barnes' matter. The county claims it wants to keep the collection in Merion Station but wanted no part of the charged allegations in Schwartz' petition.

Some of the points and accusations listed are as follows:

The attorney general, instead of assuring adversarial proceedings in this matter, became an active participant with Gov. Ed Rendell to pressure Lincoln University trustees to withdraw their opposition to the Barnes Foundation's petition in exchange for a commitment by the commonwealth to give Lincoln University millions of dollars of taxpayer money. The attorney general did not recognize its conflicts or those of others."

Years after the Court hearings, came the revelation that \$107 million was appropriated by the commonwealth of Pennsylvania to pay for the move of the collection from Montgomery County. The failure to bring this appropriation to the attention of the court calls into question the veracity of testimony concerning genuine efforts of the Barnes board to solve financial issues by attracting private funds. The court's lack of knowledge of the appropriation alone, let alone the nature of the conflicts present, affected the entire outcome of those proceedings."

The foundation board had unclean hands, and ... it is no accident that this foundation had not been able to raise funds as it was too busy squandering those funds. At no time has the Barnes Foundation pursued actions against prior trustees for breach of their fiduciary duties and the recoupment of squandered funds. ... It is certainly possible for the Barnes to raise funds, but not with a board that does not wish to do so, is conflicted, and has abdicated its fiduciary responsibilities."

The move has nothing to do with the vision of indenture of Dr. Barnes, and everything to do with Philadelphia tourism, the development of Museum Row, access to the Barnes collection for the Philadelphia Museum of Art, and the PEW Charitable Trusts' goals of qualifying as a public charity - all third party interests with ambitions diametrically opposed to Dr. Barnes."

The process of 'getting it all changed' has taken the focus away from the real problem, namely, the board itself."

Gerry Lenfest, chairman of the Lenfest Foundation, is also chairman of the board of trustees of the Philadelphia Museum of Art (PMA). Mr. Lenfest was the corporate counsel of Walter Annenberg's Triangle publications in 1965 before serving as managing director of the company's communications division. In 1974 he started Lenfest Communications after purchasing several companies from Mr. Annenberg. In 2000, he sold his interests to Comcast Corporation."

Judge Arlin Adams is an honorary trustee of PMA and served as counsel for the Barnes in support of the move."

"Petitioners believe that the majority of Barnes board members have been nominated by PEW, which is major booster of Philadelphia's 'Museum Row' and the Philadelphia Museum of Art. PEW used the Barnes Foundation move as a centerpiece in its application to change from private foundation to public charity status."

Barnes board member Aileen Roberts' husband is the Comcast Corporation CEO, Brian Roberts. Comcast used images from the Barnes collection as part of Comcast's 'GalleryPlayer On Demand' television programming (www.comcast.com/galleryplayer). Since there has not been a full financial audit of the Barnes Foundation since 1996, it is not clear what financial benefits from this arrangement have accrued to the Barnes. Mr. Bonovitz is also a member of the board of trustees of Comcast.

Barnes board member Stephen J. Harmelin manages a law firm that has represented the Barnes Foundation, the Annenberg Foundation, Walter Annenberg personally, and the estate of Walter Annenberg. A skeptic might ask if this is why the Barnes-PEW/Lenfest agreement only made mention of an 'additional third party' that was involved, and did not mention the Annenberg Foundation by name."

The Comcast webposting is significant because reproductions of the work in Barnes' Gallery was something Barnes always opposed.

The petition also asserts, "Lincoln University's involvement in this case was silenced by the commonwealth's infusion of \$80 million of appropriations and Gov. Ed Rendell's promises of additional fundraising. This is evidence of the abdication of fiduciary responsibility by Lincoln University's trustees as they sacrificed their control over the Barnes board for financial relief."

The petitioners tell the court they believe, "That the endgame may come when the compromised and co-opted Barnes Foundation decides that the collection needs to be housed in a place of last resort, that just so happens to have some space, e.g., the Philadelphia Museum of Art. Of grave concern to the to the petitioners is that section 1.2 of the Barnes-PEW/Lenfest Agreement allows for this possibility of an alternate site without court approval, but ironically only with the approval of Pew/Lenfest."

Schwartz contends the \$107 million appropriation had the approval of Philadelphia state Sen. Vincent Fumo. He notes Fumo has a "long relationship" with Harmelin's law firm, Dilworth Paxon. He also points out appropriations bills are written by the governor and the Republican and Democratic chairpersons of the Senate and House appropriations committees.

The petition quotes Fumo telling a magazine in 2006 he "doesn't remember" who requested the money.

As a result, the petition refers to the money allotted by the state for the move "the immaculate appropriation."

It also calls the proposed move of the Barnes' collection to the Benjamin Franklin Parkway the "Disneyfication" of the collection.

It accuses the board of "squandering" the endowment on legal fees citing nearly \$6 million in legal fees to various law firms from an endowment trustees testified was only \$10 million.

The petition concludes, "Board members Bernard Watson and Stephen Harmelin were the principal witnesses at the proceedings on behalf of the Barnes Foundation. In the words of this court a 'skeptic might' say that all of what has been orchestrated by PEW, Lenfest, Annenberg, Watson, and Harmelin, allowed them to be on all sides of the table without revealing the extent of conflicts to this court."

The petition asks the court to reopen the proceedings that granted the Barnes' petition to move its collection to Philadelphia. It asks the court to rescind prior orders, compel a new accounting, declare the Barnes board in violation of its fiduciary responsibilities, pursue appropriate penalties against the board, remove the present board members, and place the Barnes in court-imposed receivership.

Dr. Albert Barnes never minded a fight. As a local on the Main Line whose family knew Barnes well recalled, "He was a kind man, but he could intimidate you physically if he needed to or he could intimidate you intellectually if that was your choice. It was up to you how you wanted things. He never minded a fight."

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