

Volume II

VOLUME II

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

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- - -

Petition To Amend Charter and Bylaws

- - -

Courtroom A

Tuesday, September 21, 2004

Commencing at 1:19 p.m.

- - -

Amy Beth Boyer, R. P. R.
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

Volume II

- - -

BEFORE: THE HONORABLE STANLEY R. OTT, JUDGE

- - -

1

COUNSEL APPEARED AS FOLLOWS:

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RALPH G. WELLINGTON, ESQUIRE
HONORABLE ARLIN M. ADAMS
CARL A. SOLANO, ESQUIRE
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for the Petitioner,
The Barnes Foundation

LAWRENCE BARTH, ESQUIRE
Deputy Attorney General
for The Commonwealth of Pennsylvania
as parens patriae for charities

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

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1 1a

2 I N D E X

3 PETITIONER' S EVIDENCE

4

Wi tness Voi r Di re Di rect Cross Redr Recr

5

ELI ZABETH von Habsburg 3 50

6 By Mr. Barth 7 53, 61

By Mr. Cyr 11 58

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14 PETITIONER'S

15 Number

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16 P-64 Capital Cost Analysis for a New
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19 P-117 AMR Index Service: Index Display
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20

21

- - -

22

23

24

25

1 VON HABSBU RG - DI RECT 2

2 - - -

3 (A conference was held in

4 chambers, not reported.)

5 - - -

6 THE COURT: Ms. von Habsburg, would

7 you like to come up here and resume your seat?

8 I've received inquiries from

9 several reporters about whether or not we could do

10 something to amplify the voices of the witnesses.

11 Normally that's not a problem because there isn't a

Volume II

12 large gallery full of people. And I think that what
13 we're going to do is I'm going to look for wireless
14 mikes. I'm sure the courthouse has some. And
15 beginning tomorrow, I would hope to be able to give one
16 to each witness who assumes the stand.

17 In the meantime, Ms. von Habsburg,
18 if you don't mind, if you'd try to project your voice a
19 bit. Not that I'm suggesting that it wasn't pleasant
20 the way it was, but apparently some people are having
21 difficulty hearing you.

22 Mr. Wellington, go ahead.

23 - - -

24 ELIZABETH von HABSBURG, resuming
25 the stand, was examined and testified as follows:

1 VON HABSBURG - DIRECT 3

2 DIRECT EXAMINATION, CON'T

3 BY MR. WELLINGTON:

4 Q Ms. von Habsburg, I want to turn to the portion of

5 your appraisal that involves paintings and other works

6 on paper, and can you turn to that in your report?

7 Again, I believe that report number was --

8 THE COURT: Sixty-six.

9 BY MR. WELLINGTON:

10 Q Sixty-six.

11 Are we there?

12 A We're there.

13 Q Thank you. Ms. von Habsburg, to put into the

14 record the total value of the appraisals for all of the

15 4,500 works that Masterson appraised, one would add up

16 the seven affidavits that you submitted in that report;

17 is that correct?

18 A That's correct.

19 Q And then we'll get to the fact that one of those

20 areas was amended with a supplemental report, correct?

21 A That's correct.

22 Q I've done the addition, and it's approximately

23 fourteen million six hundred thousand dollars. Does

24 that roughly sound right to you?

25 A Yes.

1

4

2 Q And a substantial bulk of that involved the

3 paintings and works on paper, correct?

4 A That's correct.

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5 Q And in the original appraisal of the paintings and
6 works on paper that Masterson undertook, did it view
7 those originally through digitized images or through
8 personal inspection?

9 A The majority were looked at through digital
10 images, and approximately 26 percent were looked at in
11 person, I believe.

12 Q And who at Masterson did that original appraisal
13 that appears in Exhibit 66?

14 A From digital image, it was done by Joseph Ruzicka.

15 Q And, in fact, of the 205 paintings and works on
16 paper that are not part of the permanent collection,
17 about 75 percent of the value of that was in about 19
18 works; isn't that correct?

19 A That's correct.

20 Q And are you aware that Amici retained a couple of

Volume II

21 individuals to come and look just at those 19 works,

22 none of the other 4,500 items?

23 A Yes, I am.

24 Q And you're aware that they came to the Merion

25 facility to inspect them in person?

1 VON HABSBURG - DIRECT

5

2 A Yes.

3 Q And when they did that, did we ask you and

4 Masterson to come and inspect those 19 works?

5 A Yes, you did.

6 Q And did you bring one of your colleagues who is a

7 specialist in that area to assist?

8 A I did.

9 Q And who was that?

10 A Nancy Harrison.

11 Q And did she provide a supplemental report or did
12 Masterson provide a supplemental report based upon her
13 inspection of those works?

14 A Yes, we did.

15 Q Is Ms. Harrison the appropriate person to testify
16 concerning Masterson's appraisal of those 19 works?

17 A Yes, she is.

18 Q And is she here in the courtroom today?

19 A She is.

20 Q Have you also reviewed, Ms. von Habsburg, the
21 reports of Mr. Feigen and a Ms. Deborah Force that were
22 retained by Amici to inspect those 19 works?

23 A I've looked at them.

24 Q Do you know Ms. Force?

25 A I do.

1 VON HABSBURG - DIRECT

6

2 Q Do you consider her a capable appraiser?

3 A Absolutely.

4 Q Do you in fact do work with and for Ms. Force?

5 A Yes. She gives us a tremendous amount of

6 appraisal work to do.

7 Q Did the two of you work at the same institution at

8 some point?

9 A We did. We were at Christie's together in the

10 eighties.

11 Q And you are aware that the appraisals of

12 Ms. Harrison and her appraisals are within four or five

13 percent of each other?

Volume II

14 A They are.

15 Q Are you aware that -- is it true that the
16 appraisals of Masterson and the appraisal of Mr. Feigen
17 on the few works that he looked at are substantially
18 different?

19 A Yes.

20 Q Is Ms. Harrison the appropriate person to discuss
21 those?

22 A She certainly is.

23 Q Is there a Uniform Standard of Professional
24 Appraisal Practice manual?

25 A Yes, there is. It comes out each year.

1

VON HABSBURG - CROSS

7

2 Q I think the acronym of that I think we said before

3 was USPAP?

4 A That's right.

5 Q Was Masterson's appraisal of the objects in the
6 Masterson report and the supplemental report undertaken
7 following the standards of USPAP?

8 A Yes.

9 Q And today, in your professional opinion, to a
10 reasonable degree of professional certainty, do you
11 have a professional opinion as to whether the
12 appraisals that are reflected in Exhibit 66 and its
13 supplement are within the reasonable and fair range of
14 current fair market value in accordance with the
15 principles of USPAP?

16 A Yes.

17 MR. WELLINGTON: Thank you,

18 Ms. von Habsburg.

19 No further questions, Your Honor.

20 THE COURT: Mr. Barth?

21 MR. BARTH: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BARTH:

24 Q Ms. von Habsburg, I just have a couple of

25 questions regarding the use of images. You indicated

1 VON HABSBURG - CROSS 8

2 that you used images at least initially in evaluating

3 some of the works of art, works on paper; is that

4 correct?

5 A And other items, as well.

6 Q And other items, as well.

7 A Yes.

8 Q And I also understand that you were, to some
9 extent, obligated to use this methodology because of
10 the time constraints you faced in preparing the report?

11 A Correct.

12 Q Nevertheless, is there anything unusual or
13 inappropriate in your field of art appraisal to use
14 images rather than actually seeing the particular
15 object in person?

16 A No. It occurs all the time. Appraisals are done
17 by images all the time. As long as it's in the
18 affidavit stating that certain things were looked at by
19 images, that's appropriate under the USPAP guidelines.

20 Q In your experience, do you find that when you are
21 to appraise something by use of an image and then later
22 see it in person, that it is likely that the valuation

Volume II

23 originally given would change appreciably?

24 A It's impossible to say. Sometimes it does, but

25 sometimes it doesn't.

1 VON HABSBURG - CROSS 9

2 Q How can you be sure that in the use of images in

3 this particular case that there weren't factors that

4 might have resulted, had you seen them, in a decrease

5 in the valuation assigned to a particular object?

6 A We couldn't be sure.

7 Q Did you make a subsequent inspection of those

8 objects, at least of the 19 most valuable?

9 A Yes, we did.

10 Q And did you find after that inspection in this

11 particular case that the valuation changed appreciably?

12 A We did.

13 Q And how did it change and why?

14 A I'm sorry? I didn't hear your question.

15 Q How did the valuations change, in what direction,

16 and why?

17 A They went higher in some cases.

18 Q I take it, then, in some cases it did not?

19 A I believe there was one case that it went down.

20 Q What prompted you to raise your valuation or what

21 prompted you to lower it?

22 A I'm not actually the appropriate person to ask

23 because it was Nancy Harrison who prepared those

24 appraisals.

25 Q Fair enough.

1 VON HABSBURG - CROSS 10

2 Earlier this morning when you first

3 testified, you indicated that your assignment was to

4 give values for the different categories of objects, I

5 think it was 7, and you were asked to just give a total

6 for that; is that correct?

7 A That's correct.

8 Q And that is essentially what you did?

9 A That's correct.

10 Q But in doing so, did you view or inspect either

11 digitally or in person all of the objects that made up

12 that class?

Volume II

13 A We did. There were very, very few exceptions
14 which were noted in our appraisal of items which we
15 didn't see; but otherwise, we saw everything either in
16 person or by digital image.

17 Q And I assume, then, in order to give a summary or
18 total, you had to assign values to each individual
19 object?

20 A Yes.

21 Q That's yes?

22 A That's correct.

23 Q And then your summary simply represents the
24 addition of all of those individual objects within each
25 category; is that correct?

2 A That's correct.

3 MR. BARTH: I have nothing else,

4 Your Honor.

5 THE COURT: Mr. Cyr?

6 MR. CYR: Yes. Thank you, Your

7 Honor. If I could move the podium over?

8 BY MR. CYR:

9 Q Good afternoon, Ms. von Habsburg.

10 A Good afternoon.

11 Q I'd like to go back and go into the circumstances

12 for the original appraisal. You testified on direct

13 that you were contacted by Ms. Camp to make a proposal;

14 is that correct?

15 A My office was. Not me in particular.

16 Q Okay. When did you become involved?

17 A End of April of 2004.

18 Q Who was originally involved with the proposal at
19 the beginning?

20 A My colleague David Schwendeman.

21 Q And how is it that you became involved at the end
22 of April?

23 A We worked together as a team in our office.

24 Q And after the proposal was made, I assume that The
25 Barnes accepted your proposal?

2 A Initially our idea was to do individual values on
3 everything in our normal fashion with color digital
4 images and descriptions and values, but that would be
5 prohibitively expensive for the Barnes Foundation. So

Volume II

6 we did it this other way, which was to do it by digital
7 images and in person and not to give individual values,
8 but to give ballpark values on each of the seven
9 sections.

10 Q And did you give a proposal? Was it on a time and
11 material basis?

12 A I'm not sure what you mean by time and material.

13 Q Did you charge -- was your proposal -- strike
14 that.

15 Did you make a proposal for a flat
16 fee or did you state that we would charge so much an
17 hour?

18 A We gave a fee cap, plus expenses.

19 Q And the fee cap was based upon an hourly rate?

20 A That's correct.

21 Q And what was that?

Volume II

22 A The fee cap or the hourly rate?

23 Q Both.

24 A The hourly rate is 250 per hour, per specialist.

25 That's for on-site and research time, both. And the

1 VON HABSBU RG - CROSS 13

2 daily cap was \$2,000 per day, per specialist.

3 Q Was there an overall cap to the project?

4 A Yes. Forty thousand dollars, plus expenses.

5 Q And did you reach the cap?

6 A We did. We actually exceeded it, but we only

7 charged the cap, as agreed.

8 Q Now, we'll get to it in a few minutes, but there

9 was a supplemental appraisal done, correct?

10 A That's correct.

Volume II

11 Q Was there an additional charge for that?

12 A Yes, although it hasn't been billed yet.

13 Q And that would reflect Ms. Harrison's time?

14 A That's correct.

15 Q When did the -- you testified that the appraisal

16 took place by way of reviewed digital image, correct?

17 A Not only. It was digital images and on-site

18 visits.

19 Q And the digital image, you said, was 26 percent?

20 A Approximately 26 percent, yes.

21 Q Now, was that 26 percent of the entire collection

22 or did you divide it by lots, if you took 26 percent of

23 the number of lots?

24 A I think you're talking about the same thing.

25 Twenty-six percent of the total group is the same thing

1 VON HABSBURG - CROSS 14

2 as twenty-six percent of the lots.

3 Q Maybe I don't understand. How many lots were
4 there?

5 A Approximately 4,500.

6 Q As I understand -- okay. So there were -- the
7 number of individual objects exceeded 4,500?

8 A The number of individual objects? I'm not sure I
9 understand what you're saying.

10 Q Why don't we break this down. Why don't we look
11 at the objects of Ker-Feal. There was 2,734 objects,
12 correct?

13 A Allow me to get to that page. Yes, 2,734 objects.

14 Q Okay. And it's your testimony you didn't examine

15 every object or a digital image of it, correct?

16 A I didn't hear you.

17 Q It's your testimony that you didn't examine or

18 your appraisers didn't examine every object or a

19 digital image of that object of the 2,734; is that

20 right?

21 A Yes. I believe there were a few items that were

22 noted in the appraisal that we didn't actually see that

23 were on the original list, a handful of items. But

24 everything else was either appraised in person or by

25 digital image.

1

2 Q Okay. Well, how do you define a lot, then?

3 A How do I define a lot? A lot is a single item or

Volume II

4 a group of like items. In other words, when you go to
5 an auction, a lot may include five sets of
6 candlesticks, so that lot may be ten items. A lot may
7 be one candlestick. So a lot is a group of items that
8 are grouped together by somebody in some situation and
9 called a lot.

10 Q Okay. So if your appraiser, if there would have
11 been candlesticks, if there were five in that lot, he
12 or she would have seen all five, but they would have
13 valued them all the same way; is that correct?

14 A Well, in this situation, I don't think there were
15 any multiples in any of the lots. Everything in the
16 Barnes collection seems to have been done individually,
17 so we're talking about individual items. A lot may
18 have included cup and saucer as one lot. So, nominally
19 two items, but actually one object.

Volume II

20 Q Okay. So is it fair to say an individual value
21 was ascribed to every object within the 2,734 objects
22 at Ker-Feal?

23 A That's correct.

24 Q And do you have the inventory of those values with
25 you?

1 VON HABSBURG - CROSS 16

2 A No, I don't.

3 Q Is there any reason you didn't bring them with
4 you?

5 A That was not the object of the exercise. The
6 object of the exercise was those were our numbers for
7 our internal use, but we were only to give one total

8 value for each location.

9 Q So, back at your office you have an inventory of
10 all the 2,734 objects and you have a value ascribed to
11 each of those items?

12 A We do.

13 Q Okay. And did you have -- did you perform --
14 strike that.

15 Were comparables obtained for each
16 of those items?

17 A Comparables were obtained for the most important
18 items, but there were some items that were worth zero
19 or \$5 or \$1 or \$10, and for those we didn't obtain
20 comparables because we know the market for those items.

21 THE COURT: Because we know?

22 THE WITNESS: The market for those
23 items.

24 BY MR. CYR:

25 Q Over what period of time did the physical

1 VON HABSBURG - CROSS 17

2 inspection take place of the objects?

3 A I believe we were down there -- there were four of
4 us down there for three days.

5 Q And when was that?

6 A That was the end of March. Just a minute. End of
7 April. I'm sorry. Let me look at the affidavit. I'm
8 not sure. I think it was -- I'm sorry. It was the end
9 of May. It was May 25, 26, 27, something like that.

10 Q So a team of how many, four people?

11 A Four people.

12 Q Was yourself included?

Volume II

13 A Yes.

14 Q Okay. And you spent three days down at the Merion

15 location and Ker-Feal?

16 A That's correct. We divided ourselves in teams of

17 two. Two went to Ker-Feal and two went to Merion.

18 Q And then after that was completed, what was the

19 next step in the process?

20 A Our research was the next step.

21 Q And that was performed back in New York?

22 A That's correct.

23 Q And when were -- you said you were given digital

24 images; is that correct?

25 A Of some of the items.

Volume II

2 Q And you said roughly 26 percent?

3 A That's correct.

4 Q So if I divided the total number of objects by 26

5 percent, that would tell me how many digital images you

6 looked at?

7 A That's correct.

8 Q And when were you provided with the digital

9 images?

10 A I think we received those at the end of April, is

11 my recollection. It could have been the beginning of

12 May.

13 Q And with respect to the digital images, after you

14 had received those, did you also examine the physical

15 objects of the artwork for which you had digital

16 images?

17 A Some of them we did, some of them we didn't.

18 Q Okay. And why did you for some and not for

19 others?

20 A For some there was questions we needed answering

21 before we could put a value on it.

22 Q Such as what kind of --

23 A Such as condition.

24 Q Anything else?

25 A Let me think if there was anything else. Size,

1 VON HABSBURG - CROSS

19

2 perhaps.

3 THE COURT: Could I ask both of you

4 to try and up the level of your volume? I'm not

5 suggesting you become like me, but it wouldn't be a bad

6 thing.

7 BY MR. CYR:

8 Q And the reason you had to check the condition is

9 because it's important in appraising art to know the

10 condition of it, correct?

11 A Yes. In some items, not all items. Some items

12 you can tell from an image are in good condition, that

13 don't need to be checked; and some, you can't.

14 Q Okay.

15 A And it also depends on the rarity of the work of

16 art. If the work of art is very rare, then condition

17 is not as big a factor. But if the work of art is not

18 rare, then condition becomes more of a factor.

19 Q Now, with respect to Ker-Feal and the objects out

20 there, were you provided any information about any

21 other valuations that were performed of those objects?

Volume II

22 A No, we were not.

23 Q So did the Barnes Foundation provide you any

24 information on the description or the collection of the

25 objects at Ker-Feal?

1 VON HABSBURG - CROSS 20

2 A On the which?

3 Q Of the inventory and the condition of the

4 inventory.

5 A The condition of the inventory? I'm not sure.

6 Q At Ker-Feal. In other words, did Ms. Camp or

7 somebody else give you a typed out inventory of the

8 objects in Ker-Feal, and that's where you started from

9 on your appraisal?

10 A Yes. Absolutely. Yes. And then we had

Volume II

11 supplemental information when we got down to the

12 Barnes.

13 Q Okay. And do you have those records with you?

14 A No, I don't. No.

15 Q Okay. Where are those records?

16 A In my office.

17 Q And again, there was no information on those as to

18 their opinion as to value?

19 A Nothing.

20 Q Now, as I understand it, the objects at Ker-Feal

21 were valued by your appraisers at approximately

22 \$725,000; is that right?

23 A I'll check the affidavit. Do you have a copy of

24 the affidavit there? It might be easier for me to look

25 at yours rather than to flip through this to find it.

1 VON HABSBERG - CROSS 21

2 Q I think it's -- it's the first section.

3 A Yes. Here it is. \$725,209.

4 Q Okay. And it's your understanding that that is an

5 appraisal of all of the artwork that was contained in

6 the farmhouse at Ker-Feal?

7 A All the tangible personal property that was on our

8 lists.

9 Q That was your on your lists. Were there objects

10 out there that were not on your lists?

11 A Not that I know of.

12 THE COURT: Ms. von Habsburg, this

13 category has often been referred to as ceramics. But

14 did it also include the furniture that was there?

15 THE WITNESS: Absolutely. Yes.

16 THE COURT: So it included

17 virtually every item of tangible personal property that

18 you could see if you walked through that facility?

19 THE WITNESS: That's correct.

20 THE COURT: All right.

21 BY MR. CYR:

22 Q And the inventory there was approximately 2,734

23 numbers of objects there, correct?

24 A That's correct.

25 Q Ms. von Habsburg, would it surprise you to -- or

1 VON HABSBURG - CROSS 22

2 were you ever told that anyone at the Barnes had done

3 their own valuation of the Ker-Feal collection and had

Volume II

4 valued it at more than \$4 million?

5 A No. I didn't know that.

6 Q Okay. If you turned to Petitioner's Exhibit 30,

7 Page 3 --

8 MR. WELLINGTON: What was that

9 number, again?

10 THE COURT: Is that, by the way, an

11 exhibit from the earlier hearing?

12 MR. CYR: Yes, from the December

13 hearing.

14 THE COURT: It is. Okay.

15 BY MR. CYR:

16 Q In here there is a reference to Ker-Feal, and it

17 says there are more than a 1,500 piece collection of

18 furniture and pottery valued at more than \$4 million,

19 is primarily American.

Volume II

20 MR. WELLINGTON: Your Honor, could

21 we just have the document identified?

22 THE COURT: He said it was

23 Exhibit 30.

24 MR. WELLINGTON: But from not this

25 hearing, prior hearing?

1 VON HABSBURG - CROSS 23

2 THE COURT: That's correct.

3 MR. CYR: From the prior hearing.

4 MR. WELLINGTON: What is the

5 document that we're looking at one page of?

6 THE COURT: Fair request, I think.

7 MR. CYR: Yes. It's labeled

24 backup.

25 Q Well, it's fair to say that at least someone else

1 VON HABSBURG - CROSS 24

2 has had a different valuation as to the artwork at

3 Ker-Feal; is that correct?

4 A That's correct.

5 Q Now, I think that the bulk of the value of the

6 artwork in your original appraisal was the artwork from

7 the administration building, correct?

8 A That's correct.

9 Q The paintings in storage, correct?

10 A Are they in storage? I don't think they're in

11 storage. I think most of them are hanging on the

12 walls.

Volume II

13 Q Okay. Well, when I say in storage, they're not in
14 display in the public galleries, correct?

15 A That's correct.

16 THE COURT: I think the term that
17 we've been using, and it might be helpful just for
18 consistency, is to speak of the nongallery art. Is
19 that a proper phrase, Counsel?

20 MR. WELLINGTON: Yes.

21 THE COURT: Just so that we stay on
22 the same page. That's my understanding of what we're
23 speaking of.

24 And that's a term with which you're
25 familiar and comfortable?

2 THE WITNESS: Absolutely.

3 BY MR. CYR:

4 Q Just so the record's clear, Ms. von Habsburg, the
5 nongallery art is the art that is not on display in the
6 main gallery, but it's in storage or in other parts of
7 the --

8 A Actually, I didn't see any in storage. It was all
9 hanging or in the conservation studios.

10 Q And the valuation that you originally placed on
11 that was a little over \$13 million, correct?

12 A That's correct.

13 Q And that consisted of 205 pieces or paintings and
14 other drawings, correct?

15 A That's correct.

16 Q Okay. Now, did you participate in the first

17 appraisal of that artwork?

18 A It was primarily done by Joe Ruzicka, but I did
19 look at some of the pieces when I was down there, as
20 did my other colleagues, some of the pieces that had
21 images.

22 Q So Joe Ruzicka did it, primarily?

23 A He did the images. He did the valuation of items
24 from images.

25 Q And how many images did he look at?

1

2 A We figured there were about a little over 50
3 percent of the paintings, drawings, watercolors, and
4 prints had images.

5 Q Okay. So 60 percent of the 205, is that what

Volume II

6 you're saying?

7 A That's correct. Approximately 60.

8 Q So that's about 120 of them?

9 A That's correct.

10 Q Okay. Do you know which 120 were viewed by

11 images?

12 A I'd have to look back into my files, but we have

13 it in our files.

14 Q Okay. And you don't have the files here with you?

15 A I don't. No.

16 Q And you personally looked at the other -- the 40

17 percent; is that correct?

18 A I did, along with my other colleagues who were

19 down there with me.

20 Q Okay. Okay. Who else was that?

21 A David Pumphrey, Susan Hunter, and John Tatlock, as

Volume II

22 noted in the affidavits.

23 Q Now, I notice -- is there any reason Mr. Ruzicka

24 didn't come down?

25 A We had time and budgetary considerations.

1 VON HABSBURG - CROSS 27

2 Q Okay. Now, attached to your report are a number

3 of curriculum vitae, but I don't see any here from

4 Mr. Ruzicka.

5 A It should be in there.

6 Q Can you point me to where that is?

7 A Sure. Look under the paintings list. It should

8 be at the end of the paintings list.

9 Q Ah, I see it.

10 What is Mr. Ruzicka's specialty?
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11 A He has -- I'm glad you asked. He has several
12 specialties. He's known as an expert in prints of the
13 Eighteenth, Nineteenth, and Twentieth Century. He's
14 also known as a specialist in paintings, prints, and
15 other -- paintings, drawings, and other fine art from
16 the Eighteenth, Nineteenth, and Twentieth Centuries, up
17 to Contemporary.

18 Q Now, you would agree with me, of those 205 pieces
19 of art, that the vast majority of the value was in 19
20 or 20, correct?

21 A That's correct.

22 Q Now, can you tell me, of the 19 or 20 most
23 valuable paintings, were they viewed by digital image
24 or by physical inspection?

25 A Primarily digital image.

12 Q And it's fair to say that the original valuation
13 of those 18 or 19 drawings was roughly \$10 million,
14 correct?

15 A That's correct.

16 Q Give or take 100,000 or so?

17 A Yes.

18 Q Okay. And do you know, would it be important with
19 respect to the bulk of the value of the collection to
20 have those paintings examined in person?

21 A In fact, in retrospect, yes. And I'm glad Nancy
22 Harrison went down to look at them. But at the time,
23 we were under time and budget constraints and we didn't
24 get the values until the very end, at which time it was
25 time to present our appraisal. And if we'd had more

1 VON HABSBURG - CROSS 29

2 time and if we'd had a larger budget, I would have
3 certainly wanted Joe to go down and take a look at them
4 in person. That's the ideal situation.

5 Q And that's important because you can look at a
6 painting, look at the front of it, look at the back of
7 it, get an idea of the condition of the frame, you can
8 get an idea of the actual condition of the painting
9 itself; isn't that true?

10 A Well, normally the frame isn't a very big part of
11 it, but it's also useful to look at the back of the
12 painting.

13 Q Were the provenances examined with respect to
14 those 19 or 20 during the first go-around?

15 A No.

Volume II

16 Q And why not?

17 A They were not available to us at that point.

18 Q Did you make a request for those?

19 A No, we did not.

20 Q And why not?

21 A Because of time and budgetary considerations. We

22 had only a certain amount of time that our painting

23 specialist could spend on the project.

24 Q Were you provided with the provenances of any of

25 the artwork that you valued as contained in your

1 VON HABSBURG - CROSS 30

2 original report?

3 A I don't believe so. Other than that they were

4 from the Barnes collection, obviously.

Volume II

5 Q You would agree with me that the provenance can
6 have an impact upon the value of the artwork, correct?

7 A Well, the most important provenance in the Barnes
8 collection is the Barnes name, and whether or not
9 they're in a catalogue raisonne.

10 THE COURT: With your permission,
11 would you explain that term to me, "provenance"?

12 THE WITNESS: Sure. Provenance is
13 the history of an item, who was the previous owners,
14 sometimes it also includes whether they're illustrated
15 in books, whether they're in the catalogue raisonnees,
16 if it's been exhibited.

17 THE COURT: Where it's been?

18 THE WITNESS: Where it's been and
19 who's had it.

20 THE COURT: Okay. Thank you.

21 You're saying the most significant

22 prior owner would have been Dr. Barnes --

23 THE WITNESS: Without question.

24 THE COURT: -- in virtually every

25 instance?

1 VON HABSBURG - CROSS 31

2 THE WITNESS: Without question.

3 BY MR. WELLINGTON:

4 Q But the provenance would also tell you where

5 Dr. Barnes acquired the painting?

6 A Yes.

7 Q And that would have had impact?

8 A I would say that the most impact would be the fact

9 that he owned it. It really is not -- it's interesting
10 if he got it from the artist itself, which he did I
11 believe in the Courbet, but the most important factor
12 for forming value on these paintings are the fact that
13 they were Barnes collection works of art.

14 Q Now, the process of preparing this report, when
15 was the report finally prepared?

16 A I believe we handed it in in the middle of July,
17 but I'd have to check my records to give you an exact
18 date. I think it was July 15, but I could be off by a
19 little bit.

20 Q And you used as your date of valuation April 16,
21 2004; is that correct?

22 A That's correct.

23 Q And why did you use that date?

24 A That was the day we were retained. That was the

25 day the contract was signed to use us.

1

VON HABSBUrg - CROSS

32

2 Q Did you give any consideration to any change in

3 values after April 16?

4 A Until?

5 Q Until the date of your report in mid July.

6 A No. The values would have stayed the same between

7 those two. It's a very short period of time for the

8 art market, those few months.

9 Q Going back to the digital images.

10 If I may approach the witness?

11 THE COURT: Sure.

12 BY MR. CYR:

13 Q Ms. von Habsburg, I'm showing you some copies of

14 digital images that we were provided by counsel for the

15 Barnes Foundation. Do you see that?

16 A I do.

17 Q Okay. Is this representative of what you would

18 have been provided as far as digital images upon which

19 to perform your appraisal during the first time?

20 A Yes. Digital images, yes; but information, no, we

21 didn't have that much. No.

22 Q Okay. So you would have just had the digital

23 image?

24 A That's correct. And some information on the

25 piece, but not to that extent that's on that piece of

Volume II

3 Q Okay. And the digital image would have been this
4 size, approximately two inches by three inches?

5 A Yes.

6 Q Okay. So, for example, this piece of art which
7 is -- it's the Apple Eater by Matta, so this
8 information here which is below the image, would that
9 be considered information that would be considered in
10 the provenance?

11 A The description would not be considered
12 provenance. The attributes would not be. The
13 unassigned would not be. The provenance is considered
14 exhibition history. And then provenance itself.
15 Sometimes people just consider provenance that one
16 line, purchased by Albert C. Barnes. But other times,
17 provenance includes, as I mentioned before, exhibition

18 history.

19 Q So the provenance, as purchased from Pierre

20 Matisse, on April 16, 1945 for \$425?

21 A That's correct.

22 THE COURT: A pretty good deal.

23 THE WITNESS: Yes.

24 BY MR. CYR:

25 Q Didn't you think it was important to have a larger

1 VON HABSBURG - CROSS 34

2 size image than the image that is present on here?

3 A Not for that one, no. That's a very

4 straightforward Matta. That's very easy to find

5 comparables on in the auction market.

6 Q Okay. But certainly this image would not give you

Volume II

7 much information as to the condition of the painting,
8 correct?

9 A Well, you can see that there aren't any large
10 tears in it or holes or any paint losses.

11 Q By the way -- strike that. Just bear with me for
12 a minute.

13 Now, there is a painting by Courbet
14 within the collection, correct?

15 A That's correct.

16 Q Was that one that was done by digital image or was
17 that done by actual inspection?

18 A That was done by digital image the first time.

19 And when Nancy Harrison and I went back the second
20 time, it was done by physical examination.

21 Q And would you agree with me, that's a pretty large
22 painting, correct?

Volume II

23 A That is, yes.

24 Q It's 50 3/4 inches by 78 1/2 inches. That's

25 pretty large, isn't it?

1 VON HABSBURG - CROSS 35

2 A That is.

3 Q About this high?

4 A Yes.

5 THE COURT: That wide.

6 BY MR. CYR:

7 Q But again, the appraisal was done on this digital

8 image here which is probably two by three inches; is

9 that correct?

10 A That's correct.

11 Q And no provenance was provided with that; is that

12 correct?

13 A That's correct.

14 If I just might make one more point

15 about size? Size is not necessarily a determining

16 factor in value. That's something to keep in mind.

17 Size is one part of looking at value, but it's

18 certainly not the determining factor.

19 Q But you would agree with me that a drawing that's

20 78 inches high that is compressed into a image of two

21 to three inches, that it would be very difficult to

22 determine its condition, correct?

23 A That's correct, although it was 78 inches wide,

24 actually, and 56 high.

25 THE COURT: What you're saying is

1 VON HABSBURG - CROSS 36

2 that one cannot assume that the larger the painting,
3 the more valuable that it is?

4 THE WITNESS: Exactly.

5 THE COURT: And that would be true
6 even if they were all from the same artist?

7 THE WITNESS: Absolutely.

8 BY MR. CYR:

9 Q Now, the digital images of the other objects other
10 than the artwork, the paintings and the nongallery art,
11 was that similar in nature to this?

12 A Yes.

13 Q The little postage size digital images?

14 A Some are a little bigger, some are that size.

15 Q So a report is prepared in mid July. Were you in

Volume II

16 charge of the preparation of that report?

17 A In what sense, in charge of the preparation?

18 Q Who actually wrote the report?

19 A Well, we didn't write a report. We just did

20 affidavits on each item and totaled up the values. I

21 didn't personally total up the values, if that's the

22 question. And I didn't type the affidavit, but someone

23 in my team did.

24 Q Okay. And were there any drafts of the report?

25 A No.

1 VON HABSBURG - CROSS 37

2 I take that back. There may have

3 been a draft of the affidavit that I looked over for

4 spelling errors in one case or the other, but there

5 were no drafts of the report because the report was the
6 affidavit.

7 Q And when you prepared the report and transmitted
8 it to the Barnes, was that the first time they became
9 aware of your valuations?

10 A Yes.

11 Q Okay. And did they express any opinion to you as
12 to your valuations as to any objects?

13 A No, they didn't.

14 Q Did anyone else from your organization have any
15 discussions with anyone from the Barnes about the
16 valuations?

17 A Not that I know of.

18 Q So the report is prepared, it's forwarded -- did
19 you forward it to counsel or did you forward it to the
20 Barnes?

Volume II

21 A I believe we sent it to Barnes Foundation.

22 Q And at some point the second valuation was done

23 with respect to these 19 paintings; is that right?

24 A That's correct.

25 Q Okay. Can you tell me how it came about?

1 VON HABSBURG - CROSS 38

2 A Yes. We were contacted by Ralph Wellington's
3 office to say that there were some items in question
4 and there had been a judgment that your clients were
5 allowed to bring down appraisers to appraise the 19 or
6 20 most valuable paintings or items from that category,
7 and would we also be willing to come down and to
8 reappraise those items in person for fair market value,

9 as we had in the first instance.

10 Q And what was your response to that?

11 A Absolutely. We would be happy to.

12 Q At that time, were you provided with the values
13 that were arrived at by experts retained by my clients,
14 Mr. Feigen and Ms. Force?

15 A We received those values when we were at the
16 building to do the appraisal the second time.

17 Q So when you came down and you visited the Barnes
18 Foundation for the purposes of performing the second
19 appraisal, at that time you had the appraisal of
20 Mr. Feigen and Ms. Force?

21 A We received it while we were there.

22 Q But it's fair to say you had that information
23 prior to the time that the second appraisal opinion was
24 rendered, correct?

25 A That's correct.

1 VON HABSBURG - CROSS 39

2 Q And who actually participated in the second
3 appraisal?

4 A Nancy Harrison was the person who prepared the
5 second appraisal.

6 Q Okay. Were you involved in the second appraisal?

7 A I was there on site with her. I looked at them,
8 but I didn't appraise them. Nancy did.

9 Q Did you provide any input into the second
10 appraisal?

11 A No.

12 Q Now, it's fair to say, is it not,

13 Ms. von Habsburg, that the second appraisal, the vast

Volume II

14 majority of the paintings increased in value or stayed

15 the same?

16 A I could look through it and tell you one-by-one,

17 if you will let me.

18 Q Well, I'll go through this with you.

19 MR. WELLINGTON: Your Honor, beyond

20 the scope. I purposely did not ask questions

21 concerning that appraisal because, as we represented to

22 the Court, Ms. Harrison did the appraisal and as

23 Ms. von Habsburg just said, Ms. Harrison did the

24 appraisal and she's here to testify, Your Honor.

25 THE COURT: I don't think it's a

1

VON HABSBURG - CROSS

40

2 scope issue because as the president and the person

18

19 appraised.

20 BY MR. CYR:

21 Q As originally appraised, correct.

22 After the second appraisal, we can

23 agree, can we not, that the value then went up to

24 almost \$15 million for those 19 or so paintings,

25 correct?

1

VON HABSBURG - CROSS

41

2 A That's correct.

3 Q 14,750,000 by my calculations. Does that sound

4 right?

5 A That's correct.

6 Q Now, that's almost a 50 percent increase, correct?

Volume II

7 A That's correct. Primarily attributable to one
8 painting, the Courbet which you showed before.

9 Q But there were increases in others, correct?

10 A Yes, but that was the most significant increase.

11 Q Now, did the fact that upon physical inspection of
12 19 of the paintings in which the aggregate value went
13 up 50 percent, did that cause you any concern as to
14 valuations as to the rest of your collection?

15 A Well, I certainly considered it. And my first
16 thought was to check how many things we had seen in
17 person. And that's why I had the numbers on the tip of
18 my tongue, which were 74 percent of the items were seen
19 in person. And I feel extremely comfortable with the
20 values on those items.

21 And I feel comfortable on the
22 values on the other items which were of lesser value,

23 because any change would be less significant as they

24 are less valuable.

25 Q Now, we haven't been given the opportunity to

1

VON HABSBURG - CROSS

42

2 inspect those other paintings and pieces of artwork --

3

MR. WELLINGTON: Your Honor, that's

4 a misstatement. There was never any request to do

5 that, I don't believe, formally.

6

THE COURT: I'll let you rephrase

7 the question. I'm not sure I followed it exactly.

8 Let's hear it again.

9 BY MR. CYR:

10 Q Now, Ms. von Habsburg, my clients haven't been

11 given the opportunity -- we can argue about the

Volume II

12 circumstances of valuing the other artwork, but I would
13 like to go through some calculations with you. You've
14 seen the records of Mr. Feigen and Ms. Force, right, on
15 the value of the 19 paintings; is that correct?

16 A That's correct. And the second one of Mr. Feigen,
17 as well.

18 Q And you would agree that we valued them at
19 \$23,265,000. Does that arithmetic sound right?

20 A Is that arithmetic including the second valuation
21 of the Courbet?

22 Q Yes, it does.

23 A I didn't do the numbers, but yes, if you're
24 telling me that that's the numbers, I will take it the
25 arithmetic is right.

1 VON HABSBURG - CROSS 43

2 Q And you will agree with me that Mr. Feigen and

3 Ms. Force are recognized in the field, correct?

4 A Yes, they are.

5 Q Now, the trustees valued the same paintings at

6 14,750,000, correct?

7 A The trustees is our valuations?

8 Q Your valuations.

9 A That's correct.

10 Q Okay.

11 A The value -- it should say fair market value on

12 here, because it's a very important distinction when

13 you're making an appraisal between fair market value

14 and retail replacement. So you really have to put in

15 this document that it's fair market value. It's

Volume II

16 absolutely crucial.

17 Q Now, you reviewed Mr. Feigen and Ms. Force's

18 appraisal, correct?

19 A I did.

20 Q And you understood them?

21 A They had slightly odd terminology, and if you

22 bring them up to me I'll point it out to you. But it

23 said fair market -- I can't remember what it was. And

24 they said something about net to the Barnes, which is

25 not actually the correct wording for fair market value.

1

2 That's a different kind of value. That's marketable
3 cash value, when you're talking about net value. So I
4 was a little unclear as to what his value was.

5 Q Okay. Well, let's assume they were fair market
6 value for purposes of this line of questioning.

7 Now, I've done the arithmetic here.

8 You would agree that our experts' valuation was
9 approximately 157 percent of your valuation, correct?

10 A One hundred and fifty-seven percent higher, you're
11 saying?

12 Q Yes.

13 A Yes.

14 Q If we take 157 percent of \$14.75 million, you
15 should arrive at \$23 million.

16 A Okay.

Volume II

17 Q Okay. Now, as I understand it, after you did the
18 second appraisal on the 19 pieces of art, you didn't go
19 back and reappraise anything else other than that?

20 A No. That's correct.

21 Q Or give any other values, correct?

22 A That's correct.

23 Q Okay. But if we assume that that art, the value
24 that you had totaled -- the total value of your art was
25 \$19,054,000, correct?

1 VON HABSBURG - CROSS 45

2 A Sorry. What was that number?

3 Q That includes your second valuation plus all of
4 the other?

5 THE COURT: All seven categories.

Volume 11

6 BY MR. CYR:

7 Q All seven categories.

8 A And it's taking out the first numbers for the

9 paintings on the original appraisal and substituting

10 the second numbers?

11 Q Correct.

12 A Okay.

13 Q And then if we assume that that value was off by

14 the same percentage that -- between the Amici's experts

15 and our experts and multiplied that, we would come up

16 with a value --

17 A I'm sorry. I've lost you here. Help me.

18 Q If we assume that --

19 THE COURT: You're suggesting to

20 the witness that if one were to apply the same ratio

21 you've created to her aggregate number, you would come

22 up with an aggregate of 30.9 million?

23 MR. CYR: Correct. You're much

24 more articulate with statistics, Your Honor.

25 THE WITNESS: I can't even comment

1 VON HABSBURG - CROSS 46

2 on that. That sounds like such an assumption to me.

3 It seems sort of completely out of the clouds, there.

4 BY MR. CYR:

5 Q By the way, there is a piece of work called the

6 Lipchitz Bather.

7 MR. WELLINGTON: Your Honor, I will

8 object to any questioning about this. It is not a

9 valuation of nongallery art. It's a gallery piece that

10 his appraiser threw in. It's not assessed by the
11 Masterson Gurr Johns and it is inappropriately
12 appraised.

13 I object, as well, to the questions
14 about Ker-Feal with this witness as being completely
15 beyond the scope. It's inappropriate to have that
16 value of that painting here in the courtroom or that
17 sculpture here in the courtroom.

18 THE COURT: Do you wish to be heard
19 on this, Mr. Cyr?

20 MR. CYR: I would.

21 THE COURT: I must confess, I'm not
22 familiar with this term.

23 MR. CYR: Your Honor, our expert
24 provided a valuation of the Lipchitz sculpture, which
25 we do not understand to be part of the gallery

1 VON HABSBURG - CROSS 47

2 collection.

3 THE COURT: And you understand it

4 to be?

5 MR. WELLINGTON: It was part of the

6 building, Your Honor. Lipchitz was commissioned by

7 Dr. Barnes to do a substantial part of the building

8 itself. Because of preservation reasons, that

9 particular sculpture had been brought inside several

10 years ago because of some preservation issues. It was

11 on loan to the Philadelphia Museum of Art as part of

12 the Lipchitz Exhibition. That's where his client

13 decided to do an appraisal of it. It's not part of --

14 THE COURT: So, what we have here

Volume II

15 is a dispute about whether or not this represents a
16 legitimate constituent element of the nongallery art?

17 MR. WELLINGTON: Very much so, Your
18 Honor.

19 THE COURT: All right. Then, fair
20 to say that in any event, you didn't appraise that
21 item?

22 THE WITNESS: We did not appraise
23 that item.

24 THE COURT: All right.

25 And for the purposes of this

1 VON HABSBURG - CROSS 48

2 witness, I'm going to sustain the objection, asking her
3 questions about that which she did not look at.

4 MR. WELLINGTON: Thank you, Your
5 Honor.

6 THE COURT: That's not a ruling
7 about this item of art generally. It's a ruling as to
8 your right to ask this witness about it as she --
9 neither she nor the people she's responsible for --

10 MR. CYR: Okay.

11 THE COURT: -- evaluated it.

12 MR. CYR: Just so the record is
13 clear, Your Honor, this witness was not asked to
14 appraise the Lipchitz Bather, correct?

15 THE COURT: That's correct. That's
16 what she just said.

17 MR. CYR: Okay.

18 BY MR. CYR:

19 Q Were you concerned, Ms. von Habsburg, during the
20 evaluation when the second go-around came in so much
21 higher than the first one?

22 A Concerned? Explain what you mean.

23 Q Were you concerned about the accuracy of the
24 overall appraisal?

25 A No. I was concerned about those particular items,

1 VON HABSBERG - CROSS 49

2 as I said, and that's why I went back to check to see
3 how many items we had seen in person, because I felt
4 very strongly comfortable about the items we saw in
5 person. So, when I found that we saw 74 percent of the
6 items in person, I felt very happy about our overall
7 number.

Volume II

8 Q Well, you brought Ms. Harrison to do the second
9 valuation. Why didn't you use Mr. Ruzicka?

10 A Because Mr. Ruzicka has now taken a different job.
11 He is running a museum in the Mid Atlantic.

12 THE COURT: Mr. Ruzicka was not
13 employed by you at the time of the supplemental
14 appraisal?

15 THE WITNESS: That's correct. And
16 he was not employed by us in the beginning. He was our
17 consultant specialist.

18 THE COURT: And he was no longer
19 your consultant specialist?

20 THE WITNESS: That's correct.

21 THE COURT: All right.

22 BY MR. CYR:

23 Q You don't regard yourself an expert in Twentieth

Volume II

24 Century American or European art, correct?

25 A That's correct.

1 VON HABSBURG - REDIRECT 50

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

3 have at this time.

4 THE COURT: Will there be redirect,

5 Mr. Wellington?

6 MR. WELLINGTON: Yes. A little

7 bit, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WELLINGTON:

10 Q Ms. von Habsburg, we've pulled out of our files

11 from the last hearing the full document of the one page

12 that Mr. Cyr showed you. Do you remember he showed you

13 a page that said Ker-Feal collection and asked you

14 about something that says valued at more than

15 4 million? Do you see that?

16 A Yes.

17 Q You had not seen this document before, have you?

18 A No, I haven't.

19 Q Would you look at this as a professional art

20 appraiser and tell me whether or not -- take a look at

21 that. Tell me whether or not that constitutes an

22 appraisal of art.

23 THE COURT: While she's looking at

24 it, Mr. Wellington, for the record, can you identify

25 what that document is? You cannot? Does it have a

1

2 title?

3

MR. WELLINGTON: Yes. I'm sorry.

4

Let me read the title into the record. It says Second

5

Draft Request for Proposal, Your Honor, May 30, 1996,

6

and it looks like something that somebody perhaps at

7

the Barnes created.

8

THE COURT: All right.

9

MR. WELLINGTON: But it says

10

Request for Proposal.

11

THE COURT: Okay.

12

MR. WELLINGTON: And the

13

objective -- it talks about a planning study.

14

THE COURT: And this is Exhibit 30,

15

correct?

16

MR. CYR: This is their exhibit --

17 THE COURT: Petitioner's Exhibit

18 30.

19 MR. WELLINGTON: -- from the

20 December trial.

21 THE COURT: Yes, from the December

22 trial.

23 THE WITNESS: Counsel, do you want

24 me to read the whole document or just get a sense of

25 it?

1 VON HABSBURG - REDIRECT 52

2 BY MR. WELLINGTON:

3 Q Look through it and get a sense of it. I just

4 want to know, does that constitute an appraisal of

5 works of art in your experience?

Volume II

6 A It's certainly not a tangible personal appraisal

7 properly --

8 Q And your --

9 A Property appraisal.

10 Q I apologize. If you were to be told that that in

11 fact was a document prepared by a consultant and

12 submitted to Lincoln University, trying to get work for

13 a planning study, would that surprise you?

14 A It wouldn't surprise me. I wouldn't know what it

15 is.

16 Q But it does not represent what you conclude --

17 A Absolutely not.

18 Q -- to be appraisals of any objects at Ker-Feal?

19 I think you've made it clear, but I

20 want to reiterate, of the 4,500 items, how many were

21 personally evaluated the first time through and how

22 many were reviewed on digital image?

23 A Approximately 75 percent were looked at in person

24 and approximately 26 percent were viewed and appraised

25 from digital images.

1 VON HABSBURG - RE CROSS 53

2 MR. WELLINGTON: I have nothing

3 further, Your Honor.

4 MR. BARTH: Your Honor, I have

5 several questions, if I may.

6 RE CROSS-EXAMI NATION

7 BY MR. BARTH:

8 Q Ms. von Habsburg, I want to just return originally

9 to counsel's original cross-examination regarding

10 Ker-Feal. There are a number of objects, I think 2,700

11 objects that you valued at approximately \$725,000, I

12 believe. Correct me if I'm wrong.

13 A That's correct.

14 Q Now, is it fair to say that all of those objects

15 were not what perhaps a layman might consider to be art

16 or furniture?

17 A Can you state that again?

18 Q Is it fair to say that not all of those objects

19 would be classified as art in laymen's terms, something

20 of significant value or artistic accomplishment?

21 A Art is a big word. We usually use the word

22 tangible personal property for this sort of item, which

23 includes furniture, decorative objects, fine art.

24 Q I have had the benefit of being able to tour

25 Ker-Feal, and when we went into the kitchen, I saw

1 VON HABSBURG - RE CROSS 54

2 things in the glass cabinets that I described as jelly
3 glasses. They looked like glasses. They had inventory
4 tags on them. Were those included in your appraisal?

5 A I would have to check, because I wasn't personally
6 at Ker-Feal. Two of my colleagues were.

7 Q There was a question regarding the use of the
8 images and whether or not the digital images, whether
9 or not they disclosed the condition of a piece of art.
10 Is it fair to say that you assume anything about
11 condition that's held in the professional capacity by
12 some art institution? In other words, do you consider
13 the condition to be good or poor when you look at a
14 digital image?

Volume II

15 A You don't necessarily. It depends on the item.

16 You do try to look at it through a magnifying glass and

17 see if you can see any conditions issues with it that

18 you can't see with the naked eye looking at the image.

19 But you can't assume, because institutions maintain

20 different conditions for their objects.

21 Q Is there anything in the documentation that was

22 provided to you which would make a commitment or

23 representation of the condition of the artifact?

24 A No.

25 Q Now, you were also asked about the fact that there

1

VON HABSBURG - RE CROSS

55

2 may have been other valuations such as that exhibit

3 which may not have actually been an appraisal and

4 whether or not you had the opportunity to view them
5 ahead of time. Do you take -- when coming to your own
6 conclusion as an art appraiser, do you necessarily look
7 to other valuations to determine what your opinion is
8 of the valuation of a piece of art?

9 A No. Usually, we ask not to see other valuations.
10 If someone wants us to do an updated insurance
11 appraisal and we have an old insurance appraisal, we
12 often ask them to take the values off. We'd rather not
13 be shown that.

14 Q So it wouldn't surprise you if the Barnes
15 Foundation did not provide you with any valuation?

16 A It would not surprise me at all.

17 Q And, indeed, it was probably easier for you to
18 maintain your objectivity by not seeing them; is that

19 correct?

20 A By not seeing them. And also by not telling us

21 that there was some level that she wanted, yeah.

22 Q Now, you also testified about the use of digital

23 images and the fact that you did not initially at least

24 decide to view the pieces personally. Did you -- well,

25 I assume that you would have preferred initially to

1

VON HABSBURG - RE CROSS

56

2 have seen them in person if you could, simply because

3 it's probably a better way to view them and it would

4 probably yield greater fees to your firm?

5 A Well, I think that's quite unfair.

6 THE COURT: Which of those two do

7 you want her to answer first?

8 THE WITNESS: The fee part is
9 really unfair. I would say from a professional
10 standpoint, we prefer to look at the items in person.

11 BY MR. BARTH:

12 Q Okay. Well, let me ask you this, then.

13 THE COURT: But that would be more
14 expensive?

15 THE WITNESS: It would be
16 definitely more expensive. In this situation, it would
17 be more expensive.

18 BY MR. BARTH:

19 Q Okay. Fine. And did you understand the reasons
20 why you were asked to view and appraise the art in
21 digital form in this particular case?

22 A Yes. We understood that there were budgetary
23 constraints.

24 Q Are you aware generally of Barnes Foundation's
25 budgetary situation and who was paying the bills, in

1 VON HABSBURG - RE CROSS 57

2 fact?

3 A We didn't know who was paying the bills at all,
4 but we did observe when we were down there some
5 conditions.

6 Q One final question. You indicated to Mr. Cyr's
7 questioning that the appraisal as to the 19 works of
8 art increased from approximately 10 million to \$15
9 million after you had the opportunity to actually view
10 them. Could it be that that divergence was because of
11 the fact that the initial appraisal was made by one
12 appraiser and the supplemental appraisal was made by a

13 different appraiser?

14 A Well, in a small way, yes, because each appraiser,

15 each person, each specialist usually comes in with

16 different values. It's not a precise science. You

17 have to use your best professional abilities to come up

18 with a value. So there would be some fluctuation

19 between any two appraisers.

20 Q And it is fair to say that there were two separate

21 appraisers that did each study?

22 A That's correct.

23 MR. BARTH: I have nothing further.

24 THE COURT: Mr. Cyr?

25 MR. CYR: Thank you.

1

2 BY MR. CYR:

3 Q Ms. von Habsburg, did I just hear you testify that

4 the best practices are that you do not view another

5 appraisal before you conduct your own appraisal?

6 A It's not the best practice. We prefer it because

7 we know things come in with a completely objective

8 value.

9 Q Well, why is it then when you brought Ms. Harrison

10 down to Philadelphia to have a physical inspection of

11 those 19 paintings did you then provide her with

12 Mr. Feigen's report and Ms. Force's report?

13 A It's what -- you're saying why? We were provided

14 it together at the same time while we were down here.

15 Q Okay. But as I understood it, the best practices

16 or the ideal --

Volume II

17 A It's not ideal.

18 Q -- world is not to look at another valuation,

19 correct?

20 A It's not anyone else's ideal. It's our ideal in

21 our firm. We like to be very objective and do our own

22 work. If we see another valuation, we're professionals

23 and we don't use that valuation as our own. We do our

24 own comparables. We come up with our own research.

25 But it makes it cleaner, perhaps, to not have anything

1

VON HABSBURG - RE CROSS

59

2 else beforehand.

3 Q But in this case you deviated from that, correct,

4 because you did look at the Feigen and Force report

5 before you did the second report, correct?

Volume II

6 A Deviated from?

7 Q Your general practice of not looking at other
8 valuations?

9 A Yeah. We did see another valuation before we put
10 our numbers on, if that's what you're asking.

11 Q Why did you deviate?

12 A Because it was handed to us and we looked at it.

13 Q Well, you could have told them we don't want to
14 see that until we've done our --

15 A But it's not going to change our values. It's
16 just that if it isn't -- it's not there in front of us.

17 We don't necessarily need to see it. It's not going to
18 change our values. We're professionals. We've been in

19 the business for a long time. We can handle any

20 situation that comes up. It's not nice to have them,

21 it's nice to have them. We prefer not to so that we do

22 not have any ulterior influence on us. It's not going
23 to change our values. You can see in Nancy Harrison's
24 appraisal that she came up with her own comparables.
25 Your appraisers did not provide any comparables. So

1 VON HABSBURG - RE CROSS 60

2 you can see she made up her own mind. She's a
3 professional.

4 Q Now, you said that appraisal is not a precise
5 science. Is that the term that you used?

6 A That's correct.

7 Q Now, so you would agree with me that it's not a
8 precise science because there is a variety of factors
9 you look at? You look at conditions, you look at

10 comparables, and you ultimately make a judgment,

11 correct?

12 A That's correct.

13 Q Now, you have no reason to dispute the judgment of

14 Mr. Feigen and Ms. force with respect to their

15 valuations; is that correct?

16 A I would have to defer that to Nancy Harrison since

17 she was that one that did this value.

18 Q Well, are you aware of any reason that you would

19 not accord professional respect for their opinions?

20 A No.

21 MR. CYR: Thank you.

22 THE COURT: Anything further,

23 Mr. Wellington?

24 MR. WELLINGTON: Thank you.

25 MR. BARTH: One question from me,

1 VON HABSBURG - FURTHER RECROSS 61

2 Your Honor?

3 FURTHER RECROSS-EXAMINATION

4 BY MR. BARTH:

5 Q The mere fact that you would allow professional
6 respect to another appraiser doesn't mean that you
7 think yours is less valid, isn't it?

8 A No, and it doesn't mean that I agree with their
9 values. But I agree that they're professionals.

10 MR. BARTH: Thank you.

11 THE COURT: I, too, had the tour of
12 Ker-Feal. Do I understand correctly from what you said
13 earlier, a lot of that pottery, ceramics, whatever,
14 would be characterized as common?

15 THE WITNESS: That's a good
16 characteri zati on, yes.

17 THE COURT: Not necessari ly
18 val uabl e.

19 THE WITNESS: That's correct.

20 THE COURT: Very good. Thank you.
21 The wi tness i s excused.

22 (Wi tness excused.)

23 - - -

24 MR. WELLINGTON: Next wi tness, Your
25 Honor?

2 THE COURT: Yes.

4 please.

5 - - -

6 NANCY HARRISON, having been duly

7 sworn, was examined and testified as follows:

8 VOIR DIRE EXAMINATION

9 BY MR. WELLINGTON:

10 Q Good afternoon, Ms. Harrison. Let's get you

11 seated first.

12 A Okay.

13 Q All set?

14 A Okay.

15 Q First of all, a copy of your resume appears up

16 here. Well, let me ask you, is that a copy of your

17 current resume?

18 A It is indeed.

19 Q And could you give us -- using this, if you wish,
20 referring to give us a brief history of your
21 professional experience?

22 A Right. I'm a BA and an MA and a Master's and a
23 Bachelor's degree in Art History. And my primary years
24 in my career were spent at Sotheby's. I was there from
25 1974 to 2000. I was Senior Vice President and Head of

1 HARRISON - VOIR DIRE 63

2 the Nineteenth Century European Painting, Drawing, and
3 Sculpture Department.

4 In the last four years since I left
5 Sotheby's, I've been a fine arts consultant primarily
6 for Masterson Gurr Johns.

7 Q As head of Sotheby's -- excuse me -- Senior Vice

Volume II

8 President and director of Nineteenth Century paintings,
9 did you have any experience in the sale of works of
10 art?

11 A I did indeed. Thousands a year.

12 Q And do you have an area of particular expertise or
13 specialty in the appraisal field?

14 A I'd say my strong suit, since I was head of that
15 department, was Nineteenth Century European paintings,
16 drawings, and sculpture. However, over the course of
17 my career at Sotheby's, 26 years, I was also at a
18 branch called PB84 where I was a generalist. I was
19 also in London in Old Master paintings for several
20 years. And then of course the Nineteenth Century
21 Department, I was a general appraiser for them. Even
22 when I was there, I covered South America and other
23 territories. So I have a broad background.

Volume 11

24 Q Have you had experience over the years,

25 Ms. Harrison, in appraising and/or selling paintings by

1 HARRISON - VOIR DIRE 64

2 some of the artists who were included in those 19 works

3 that you looked at at the Barnes?

4 A Yes, indeed. I have.

5 Q What are some of the artists in that collection

6 that you've had prior experience with?

7 A Well, I would say because of my 17 years doing

8 Nineteenth Century European paintings, Courbet, for

9 example, Gustave Courbet, the French artist, Barbizon

10 artists, was one of the primary artists that I dealt

11 with. He was one of the stars of my field. But I have

12 dealt with all of them and I've appraised, in the

13 course of my years as an appraiser, all of those
14 artists.

15 Q Have you been qualified as an expert appraiser in
16 any courts before?

17 A Not in any courts, but I am a USPAP appraiser,
18 Uniform Standards of Professional Appraisal Practice.
19 I also teach appraisal methodology and courses in
20 connoisseur and collecting at New York University. I
21 don't think that's there, but I do that. But I am a
22 USPAP member. I am a member of the Appraisers
23 Association of America. And, what can I say?

24 Q My daughter would --

25 A I'm a board member of the Vassar College Art

1

2 Gallery.

3 Q My daughter would be most impressed that you're an

4 appraiser on the PBS Antique Roadshow.

5 A People love it. Yes, I've done it.

6 Q Is that fun?

7 A It's great fun. It's wonderful.

8 MR. WELLINGTON: Your Honor, I

9 would offer Ms. Harrison as an expert appraiser in fine

10 arts with a specialization in Nineteenth Century

11 European paintings.

12 THE COURT: All right.

13 Mr. Barth, any questions?

14 MR. BARTH: No questions.

15 THE COURT: On qualification,

16 Mr. Cyr?

17 MR. CYR: Just briefly.

18 BY MR. CYR:

19 Q Ms. Harrison, you're a specialist in Nineteenth
20 Century European art, correct?

21 A That was my field at Sotheby's. That was the
22 department I directed. But I am more of a generalist,
23 perhaps, than other colleagues at Sotheby's. I handled
24 a wider variety of territory. I did geographic areas
25 for them, Canada, South America. So I have a broader

1 HARRISON - VOIR DIRE 66

2 perspective. And because I worked in many other
3 departments before I joined Nineteenth Century, I
4 considered myself an all-around fine arts expert,
5 everything from Old Masters through Twentieth Century

Volume 11

6 through Contemporary art, in fact.

7 Q You would agree with me, would you not,

8 Ms. Harrison, that the Courbet is the only Nineteenth

9 Century European piece in that group of 19 most

10 valuable paintings, correct?

11 A That's the only Nineteenth Century French painting

12 in that group, yes. But that is not by any means my

13 only specialty. And I have -- since I left Sotheby's,

14 for example, have done almost 3,000 appraisals of -- 60

15 appraisal documents per year, and 3,000 in the last

16 year of lots, as we'd said, of fine arts property in

17 all fields. So I wouldn't say that that's my niche

18 specialty. It's perhaps my strongest card, but I don't

19 think it's my only card.

20 Q But you would agree with me, would you not, that

21 those others are Eighteenth Century paintings or

Volume II

22 Twentieth Century American and European paintings,

23 correct?

24 A I'd have to look at the list, but they're all

25 different fields. There is Latin American. There is

1 HARRISON - VOIR DIRE 67

2 American. It's a variety.

3 Q They're all Twentieth Century, though, correct?

4 A They're Twentieth Century, correct.

5 Q Okay. And you don't consider yourself an expert

6 or a specialist in that area, correct?

7 A I consider myself a generalist fine art expert in

8 all of those fields.

9 Q At Sotheby's you worked with Ms. Force, correct?

10 A No. She was never a colleague of mine. She was
11 at Christie's.

12 Q At Christie's. Okay.

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

15 MR. WELLINGTON: I would renew my
16 motion, Your Honor.

17 THE COURT: You may proceed.

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

20 THE COURT: Actually, do you know
21 what, Mr. Wellington, it might be a good time to take a
22 short break here and then right into the substance of
23 this. All right?

24 MR. WELLINGTON: That's great.

25 - - -

1 HARRISON - DIRECT 68

2 (Recess, 2:40 - 2:51 p.m.)

3 - - -

4 DIRECT EXAMINATION

5 BY MR. WELLINGTON:

6 Q Ms. Harrison, Ms. von Habsburg has already
7 testified while you were here in the courtroom that you
8 were asked to come down to the Barnes Foundation and
9 appraise 19 specific works that Amici had requested the
10 opportunity to have some people look at; is that a fair
11 summary?

12 A Umm-hmm.

13 Q And did you do so?

14 A I did.

Volume II

15 Q And did you produce a supplemental report on

16 Masterson Gurr Johns letterhead?

17 A I did indeed.

18 Q A copy of which I will represent to you the cover

19 page I've placed here?

20 A Um-hmm.

21 Q I think we have here an exhibit or do we have that

22 in front of you? If we can find it here.

23 A Yes.

24 Q Now, you had not participated in the original

25 valuation of these 19 works by digital image, correct?

1

HARRISON - DIRECT

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2 A No, I did not.

3 Q Can you explain the methodology you utilized in
Page 121

4 your professional appraisal of these works?

5 A All right. This was given to me as a project that
6 was a fair market value, which Ms. von Habsburg spoke
7 of, indeed which we delve into the open market, which
8 we consider primarily the auction market in this case,
9 where we're looking for comparables for each picture
10 and placing them in the same way that the real estate
11 appraisers are, pluses, minuses, size, condition, all
12 factors considered in this particular case to come up
13 with our fair market value.

14 Q And in the process -- excuse me.

15 Does the exhibit that you have in
16 front of you, the supplemental report, did you provide
17 comparables for the works of art that you individually
18 appraised?

19 A Yes, I did.

20 Q And are you satisfied to a reasonable degree of
21 professional certainty that the appraisal values that
22 you have provided in this report are fair and
23 reasonable within your area of expertise?

24 A Yes.

25 Q Now, Mr. Cyr asked some questions of

1 HARRISON - DIRECT 70

2 Ms. von Habsburg regarding the original appraisal
3 values on these 19 paintings and, in fact, of the 19,
4 12 of the values went up, 4 of them went down, and 3 of
5 them stayed the same; isn't that correct?

6 A I believe so, that's how it broke out.

7 Q And the total value, I think that Mr. Cyr

Volume II

8 mentioned that the total value of the appraisal for
9 those 19 works did go up about \$4,700,000?

10 A Umm-hmm.

11 Q Is that fair?

12 A Yes.

13 Q Eighty percent of that value was in three
14 particular paintings that you looked at, correct?

15 A Um-hmm.

16 Q And of that -- you need to say "yes" or "no" to us
17 to help the court reporter.

18 A My pleasure.

19 Q And of that, I think it's already been mentioned
20 most of that value or substantial part of it was in a
21 single Courbet?

22 A Yes. That's correct.

23 Q And you know Ms. Deborah Force who appraised I

Volume II

24 think 11 of those 19 works, correct?

25 A I do know Deborah, correct.

1 HARRISON - DIRECT 71

2 Q And did you review her appraisals of those works?

3 A I was given them, but I tried to -- I didn't allow
4 them to influence me. I was totally objective in this
5 project.

6 Q The total value of those 9 or 11 works that you
7 appraised came out to \$9,065,000, correct?

8 A Of the American paintings?

9 Q Yes. The ones that Ms. Force --

10 A I am sure you're correct in that.

11 Q And Ms. Force's appraisal was \$9,665,000 for those
12 same paintings, correct?

13 A Sounds correct.

14 Q Do you consider that margin of difference between

15 the two of you, both experts appraising art, to be

16 surprising, significant?

17 A I think it's pretty typical that there will be,

18 just on the basis of our own opinions, our own, you

19 know, preferences. Sometimes there are slight

20 differences based on an experience that you have with a

21 certain type of paintings or knowing a certain client

22 or knowing the comparables. There are variations.

23 It's just human nature that we all have opinions. But,

24 for the most part, going to the comparables, Ms. Force

25 and I are going to the same comparables to be able to

1

2 place that value.

3 Q And your appraisals came out within five percent

4 of each other?

5 A Sounds about right.

6 Q Now, Mr. Feigen, do you know Mr. Feigen?

7 A I do.

8 Q Is he considered in the art world to be an

9 appraiser or a dealer?

10 A I would say he's a very successful dealer.

11 Q And on the nine works that he looked at, they

12 were -- would we refer to those as the European works

13 or nonAmerican works?

14 A He did a Matta. He did Latin American work. The

15 nonAmerican works were done by Richard Feigen.

16 Q And his appraisal was \$9,320,000 for his 9 works

17 that he appraised. And yours was \$5,700,000 for those

18 works?

19 A Was that his original figures or --

20 Q That was before Friday.

21 A Okay.

22 Q We'll get to after Friday.

23 Did you view that as a significant

24 difference between people appraising fine works in

25 your --

2 A It was somewhat significant, yes. I found it

3 significant.

4 Q And then Friday night we all received a letter

5 that I faxed to you from Mr. Feigen raising the value

Volume II

6 of his appraisal by another \$5 million, correct?

7 A That's correct.

8 Q And which painting was that?

9 A That was the Gustave Courbet painting.

10 Q And do you remember the numbers that Mr. Cyr put

11 up on the screen a few minutes ago with the Amici's

12 numbers? I think they included the new figure for the

13 Courbet.

14 A Yes.

15 Q You've seen it.

16 You already testified that you are

17 comfortable that your opinion is within a reasonable

18 professional range of fair market value. Let me ask

19 you a question about the potential impact if at all if

20 these 19 paintings were sold en masse as a mini Barnes

21 collection. Does that have an impact -- up, down,

22 whatever -- on the value of these 19?

23 A Because they are from the Barnes Foundation?

24 Q Yes.

25 A Oh, very much so. Obviously, it's a highly

1 HARRISON - DIRECT 74

2 important name in the art world. There would

3 definitely be reverberation in terms of the provenance.

4 THE COURT: In terms of the?

5 THE WITNESS: Provenance. The

6 Barnes name would give a cache.

7 BY MR. WELLINGTON:

8 Q Appropriately marketed, could that create some

9 increase in the value by selling them en masse?

10 A Yes, it could. It wouldn't be my ideal choice of
11 a selection as an auctioneer. In my auctioneer's hat,
12 it would not be my ideal selection. But if it was put
13 together with the Barnes name, it would definitely have
14 a cache because of the Barnes name.

15 THE COURT: Would you clarify for
16 me, Mr. Wellington, are you asking this in the context
17 of making all 19 paintings one lot?

18 MR. WELLINGTON: Yes, Your Honor.

19 THE WITNESS: Not one lot. One
20 sale.

21 MR. WELLINGTON: One sale, but
22 separately, right? Each one separately?

23 MR. WELLINGTON: Yes, but being
24 offered as -- instead of just one painting, Your Honor.

25 THE COURT: A sale of 19 separate

1 HARRISON - DIRECT 75

2 paintings?

3 MR. WELLINGTON: From the Barnes.

4 THE COURT: I just wanted to make

5 sure I understood what you were asking. I wanted to

6 make sure she understood what you were asking.

7 THE WITNESS: Okay. I think I do

8 understand.

9 BY MR. WELLINGTON:

10 Q Because I understand these paintings have been

11 appraised individually for fair market value, and the

12 Court has inquired how much money could you possibly

13 raise by selling art if they were all sold as a

14 blockbuster mini Barnes? Does that affect the value?

Volume II

15 A Most definitely.

16 Q And, if so, what percentage might it affect?

17 A Well, in fact we put together -- Mrs. von Habsburg

18 and I put together some figures on some other one-owner

19 sales of some particular note, for example the Whitney

20 Greentree offering that was just at Sotheby's this

21 spring, and other sales like that with significant

22 names. And there is between a 25- and a 50-percent

23 average plus factor for a major collection. Obviously,

24 there are some that are skewed totally the other way

25 and some that are skewed less, but we have averaged it

1

HARRISON - DIRECT

76

2 to be 25 to 50 percent, depending on many other factors

3 as well as just the same, and what is being sold,

Volume II

4 obviously.

5 Q Now, isn't there -- there are in this -- in the

6 nongallery art group that we're talking about, there

7 are several paintings by Glackens, several by

8 Prendergast, several by Soutine, correct?

9 A Yes.

10 Q Is there something in the art world known as a

11 blockage discount --

12 A Yes.

13 Q -- that can have a market impact?

14 A Indeed.

15 Q And if so, can you explain that to us and how that

16 might impact the value in the market?

17 A I'll try to. I think when we have several works

18 by the same artist that are sort of competing with each

19 other in a single sale -- for example, some of the
20 Prendergast, the group that I was asked to appraise for
21 the 19 are very, very similar, I mean, there are just
22 slight modifications. One may have better condition.
23 One may have a few more figures, a few more boats.
24 But, for the most part, they're very, very similar.
25 And those would potentially fight with one another in a

1

HARRISON - DIRECT

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2 sale. You can't be positive that the market can absorb
3 that many works. Certainly, Soutine, it's not a very
4 broad market. To put that many in a sale, to put four
5 similar works from the same period in a sale could
6 actually deflate the market or bring the levels of
7 those sale prices down rather than help each other.

Volume II

8 Q And is it possible, sitting here today, to predict
9 how the market responds to those two factors, a Barnes
10 cache or a blockage discount?

11 A I think they might, you know, somewhat outweigh
12 each other. I think the Barnes name probably carries
13 more weight than the blockage discount in this case,
14 but there still, you must -- we've given you some
15 statistics on blockage that's been applied and certain
16 instances where you have estate matter where you have
17 many works by the same artist like the Warhol estate,
18 for example, but all coming on the market at the same
19 time, I think there would be some blockage that could
20 be taken in this, and we have noted that to you that
21 it's perhaps about the 25 percent level that could,
22 where if you had one work it would do better than
23 having four works. You're actually fighting yourself.

24 Q Now, the Courbet that has been focused on,

25 Mr. Feigen, I guess, appraised that at three and a half

1 HARRISON - DIRECT

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2 million dollars, didn't he?

3 A Originally, yes.

4 Q And what was your appraisal of that work?

5 A I believe it was \$2 million.

6 Q Now, may I hand you a document --

7 Has this been marked as an exhibit?

8 MR. WELLINGTON: This is your --

9 can you tell us what your exhibit number is?

10 MR. CYR: Which?

11 (Discussion off the record between

12 Mr. Wellington and Mr. Cyr.)
Page 137

Volume II

13 MR. CYR: Yeah, it's 58.

14 BY MR. WELLINGTON:

15 Q I'm going to refer to Amici 58 and ask is this

16 something I faxed over the weekend --

17 A Yes. I got it late Friday.

18 Q And this represents a reappraisal by Mr. Feigen of

19 the Courbet, raising it by \$5 million.

20 A Apparently, it is.

21 Q And my first question is in your experience, do

22 you have a reaction to this now current market value of

23 this Courbet?

24 A Yeah. I think it's absurdly high.

25 Q Have you looked at the sales of Courbets in recent

1

2 years? I think he actually references in his letter,

3 the last sentence here I want to note, "Prices have

4 actually risen substantially in the last six years."

5 Do you see that?

6 A I do.

7 Q Have you done an AMR index service by my request

8 yesterday to determine what the sale prices of Courbets

9 in the last years have done?

10 A Yes. My initial reaction to this was surprise

11 because I feel that the Nineteenth Century market has

12 been particularly flat and the Courbet market for this

13 particular type of picture has been very flat. And we

14 did run some figures and this chart shows he's

15 basically talking about a picture that sold in 1998 at

16 Christie's for \$2.2 million in a sale which I used as a

17 comparable also, and he's saying that prices have risen
18 substantially in the past six years. And he's citing
19 that this picture was in fact sold, resold to a museum,
20 which is sort of out of my parvenue because I'm dealing
21 with fair market value.

22 But, nevertheless, we've pulled
23 from 1998 to 2003, which is all the material that they
24 have available. We've noted in fact that there is a
25 28-percent dip in the market for Courbet rather than

1 HARRISON - DIRECT 80

2 what he says prices have risen substantially in the
3 past six years.

4 (Photocopy of AMR Index Service:

5 Index Display Gustave Courbet in USD marked

6 Petitioner's Exhibit 117 for identification.) pg 80

7 BY MR. WELLINGTON:

8 Q And what is the understanding of the market value
9 where it says up there top 25 percent?

10 A We ran this just to represent the top, because
11 obviously this is a major -- the Barnes picture is a
12 major Courbet and there is no point in giving you sort
13 of a snapshot of something that's minor. We were
14 looking at the major pictures because this is in that
15 category of the top 25 percent.

16 Q Do you have any understanding as to the basis for
17 why Mr. Feigen this weekend would have raised the value
18 of this painting by \$5 million?

19 A Well, his argument is that he saw a picture that
20 was being offered at the Paris Biennale, which is a big
21 art fair in Paris, that was being offered at one of the

Volume II

22 stands by one of the European dealers. I think it's
23 Jan Krugier. And he saw that picture and I guess he
24 inquired what the picture was being offered at and, in
25 fact, apparently Mr. Krugier was offering that picture

1 HARRISON - DIRECT 81

2 for \$12 million on his stand.

3 Q Now, that's actually been offered for sale for
4 several months, has it not?

5 A It's been around. It's a picture that's not
6 authenticated a hundred percent, but it has been around
7 and one certainly has read about it.

8 Q And it's not sold either, has it?

9 A No, it's not sold. No. It may not be sold.

10 THE COURT: When you say
11 authenticated, you mean for sure that it's by Courbet?
12 THE WITNESS: Well, it's not in the
13 Fernier catalogue raisonne, which is sort of the
14 standard text catalogue raisonne of Courbet. It is not
15 currently in that book. So it's still sort of
16 open-ended. It's being billed as a discovery, a
17 rediscovery that's not even in the catalogue raisonne
18 which was written in the early part of the century.
19 But, nevertheless, you know, it may be perfectly
20 genuine, but it is being offered at this very, very
21 high dealer retail level.
22 Q Ms. Harrison, how do you explain the difference of
23 \$4,700,000 in your appraisal of the 19 works from
24 Mr. -- the individual at Masterson who appraised the --
25 A Oh, Joe Ruzicka?

1 HARRISON - CROSS 82

2 Q Yeah. The name slipped me.

3 A That's okay.

4 Q I'm sorry.

5 A His name is Dr. Joseph Ruzicka. How do I explain
6 them? I think he was working with -- you know, he
7 didn't see all of those pictures, I guess, and maybe he
8 didn't know what the provenance was on that particular
9 picture. I don't know what his thinking is. I really
10 can't speak to it.

11 Q Okay. But as you pointed out, essentially the
12 difference was over three paintings, a Courbet and,
13 let's see, a Glackens, I believe, that you increased
14 value on?

Volume II

15 A Um-hmm.

16 Q And actually two Glackens increased the values on.

17 A Um-hmm.

18 Q Those constituted most of the difference.

19 A Right.

20 MR. WELLINGTON: I have nothing

21 further. Thank you very much, Ms. Harrison.

22 THE COURT: Mr. Barth?

23 CROSS-EXAMINATION

24 BY MR. BARTH:

25 Q Ms. Harrison, during your examination you

1 HARRISON - CROSS

83

2 indicated that Mr. Feigen was considered more an art

3 dealer than an art appraiser?

4 A That's certainly how I've always known him, yes.

5 Q As a dealer. Is there any reason why his status,

6 assuming it's correct, of a dealer and yours as an

7 appraiser or Masterson Gurr Johns would yield a

8 different value? Is there anything --

9 A Well, I would say it's a matter of methodology,

10 following a very strict methodology for fair market

11 value, which is looking at the marketplace, the auction

12 marketplace for your comparables, not out there in the

13 retail world where people can ask whatever. Whether

14 they get whatever, we don't know what they get. I have

15 no way of knowing, in some cases. It's not verifiable.

16 It's not the open market. It's, you know, a private

17 market. And it's not what the IRS accepts as fair

18 market value. I mean, if this was a donation

19 appraisal, it wouldn't hold up. They would throw it
20 out. The art panel would throw it out because there
21 are not comparables, they're not in -- they're not from
22 the auction world. You just can't throw out a retail
23 price that, you know, sort of someone is asking and use
24 that to justify a fair market value.
25 Q And I take it, then, that that type of analysis or

1 HARRISON - CROSS 84

2 that type of valuation perhaps of a dealer's optimism
3 is the type that you think Mr. Feigen used?

4 A I don't know what his rationale is. I do know

5 that there is code of ethics for doing appraisals. We
6 all state that we have no vested interest in buying or
7 selling a certain piece. We are trying to be totally
8 objective and approach it scientifically. We're not
9 then going to perhaps want to buy it or -- it's a
10 separate process. And we certainly look to the -- as I
11 say, there are strict guidelines for doing a fair
12 market valuation.

13 MR. BARTH: All right. Thank you.

14 THE COURT: Mr. Cyr?

15 BY MR. CYR:

16 Q Ms. Harrison, how did you get involved with the
17 appraisal?

18 A I was asked by Elizabeth von Habsburg to come down
19 to the Barnes and do this appraisal a couple of weeks

20 ago.

21 Q Do you recall the approximate date of that?

22 A I can't. I don't recall when we -- but it's been

23 a fairly short window between her asking me, my going

24 down was only Friday before last, and my producing the

25 document.

1

2 Q Okay. Were you employed by Masterson Gurr Johns

3 back in May, June, July?

4 A I'm not an employee per se. I'm a consultant,

5 which means that I'm an independent contractor and I do

6 various jobs for them when they call upon me.

7 Q Were you a consultant with Masterson Gurr Johns

8 back in May, June, and July of 2004?

Volume II

9 A Yes.

10 Q Were you involved in any aspect of the appraisal
11 of the Barnes nongallery art involved with the second
12 appraisal?

13 A No. No.

14 Q Okay. Do you know why you were consulted?

15 A No.

16 Q And you were contacted by Ms. von Habsburg. What
17 did she tell you exactly?

18 A She told me that there was, you know, a call to do
19 these 19 works and would I come down and look at them.

20 Q Okay. And what were you given as far as
21 information prior to the time that you went down to
22 Philadelphia?

23 A I believe it was a fairly sketchy list. There was
24 some kind of listing that I believe was provided by the

25 Barnes with digital images.

1

HARRISON - CROSS

86

2 Q Okay. Did Ms. von Habsburg tell you that an

3 appraisal had been done by Mr. Ruzicka?

4 A Yes, she did.

5 Q Did she give you a copy of that?

6 A No. I don't know whether I had a copy. I don't

7 think I had a copy. I sort of knew that -- I don't

8 think I had a copy, no. I don't believe I had a copy.

9 Q Okay. Did you ever see the prior appraisal done

10 by Mr. Ruzicka?

11 A No. I never saw the completed appraisal. I

12 really was not part of the process. I think there was

13 a feeling to keep as few people involved in it. There

Volume II

14 was a lot of interest in keeping this project to only
15 people who needed to know. And I was not involved in
16 it, so I didn't have a lot of foreknowledge of
17 anything. I was presented, I think, with some kind of
18 computerized list or typed list, and that was what I
19 came armed with, which I wrote my ancillary comments
20 on --

21 Q Okay. And who --

22 A -- when I was down.

23 Q And who provided you with that list?

24 A Mrs. von Habsburg.

25 Q Okay. And were there values on that list?

2 A There might have been handwritten values by

3 Mr. Ruzicka. I'm not a hundred percent sure, frankly.

4 Q Now, you heard Ms. von Habsburg testify that

5 ideally or best practices are that you don't look at

6 other valuations when you're conducting an appraisal.

7 Do you agree with that?

8 A I think it's -- you know, very often we get them,

9 sometimes we don't. I don't let them influence me. I

10 do my own thing because I'm a professional and I do my

11 own research. And if we have them, we have them.

12 Sometimes there is additional information on someone

13 else's document, you're very happy to have it.

14 But in terms of the value, I'm

15 always checking into the current marketplace for that

16 particular object in finding my own, making my own

17 opinion. Because at the end of the day, that's what my

18 representation's based on.

19 Q Well, do you make a point of telling the person, I

20 don't want to see other appraisals?

21 A No. There would be no reason to do that,

22 necessarily. It's not like there is any negative to

23 seeing them. If we have it, you have it; if you don't,

24 you still do your own work.

25 Q So you would disagree with Ms. von Habsburg that

1 HARRISON - CROSS

88

2 it's not ideal?

3 A I've never found that it swayed me in any way or

4 influenced me in any way. I have come to it totally

5 objectively.

6 Q But we can agree in this case before you rendered

Volume II

7 your final valuations, you did have the information

8 from Mr. Ruzicka as to his opinion?

9 A I think I did, yes. I think it was marked on

10 there. But as I said, I was doing my -- I was looking

11 with independent eyes.

12 Q Did you look at the digital images that

13 Mr. Ruzicka looked at at that time?

14 A They might have been -- I think they were on that

15 sheet, but since I was going to see them anyway, I

16 wasn't paying a whole lot of attention until I saw the

17 work.

18 Q And you've heard Ms. von Habsburg testify that

19 when they went down to Philadelphia they were provided

20 with the report from Mr. Feigen and Ms. Force, correct?

21 A Yes.

22 Q And did you see those reports prior to that time?

Volume II

23 A I think when we arrived, we were handed them and I
24 put them in my file, but it wasn't until I got back and
25 started doing my research that -- yeah, they were in my

1 HARRISON - CROSS 89

2 file. But it's not -- it's not a significant factor,
3 let's put it that way, in my valuation.

4 Q Backing up, did you reach any conclusion as to
5 Mr. Ruzicka's value of the art prior to the time you
6 went to physically inspect it?

7 A No.

8 Q You didn't have an opinion one way or the other?

9 A I didn't -- you know, I was asked to go down, so
10 I -- my meter started running when I saw the pictures.

Volume II

11 I didn't do a lot of advanced work on the project.

12 Frankly, I had other fish to fry and when I went down I

13 was concentrating on the pictures, doing my own

14 independent research, and analysis and visuals.

15 Q You mentioned your meter. Let me ask a question.

16 How much does your meter cost?

17 A Wait. For the whole entire project, this

18 particular --

19 Q Yes.

20 A It was \$2,500.

21 Q Okay. And you charged by the hour?

22 A I charge by the hour.

23 Q And how long were you down physically examining?

24 A I was down there for a full day. And then I had

25 the research to do when I got back, and I had a short

1 HARRISON - CROSS 90

2 window of time to produce a document with full
3 comparables in my -- you know, the document I produced.

4 A couple of days to do it.

5 Q How did you go about examining the paintings?

6 A Examining them?

7 Q Yes.

8 A I was shown them each one individually. And where
9 it was possible to look at the back or look at the --
10 then I looked at it. If it was not possible to get the
11 work down from the wall, then I didn't. You know,
12 obviously, in some cases, it was possible; in some,
13 not.

14 Q Did you use a black light?

15 A In some cases where it was necessary. Where I

Volume II

16 felt that it might be relevant, I used it, yes.

17 Q Did you reach any opinion as to the authenticity

18 of any of those paintings?

19 A Yes. I'm always thinking about that when I'm

20 viewing a work of art. Yes, I did. I mean, anything I

21 put in bold type, if I put it in bold type here means

22 that I think it's by the artist.

23 Q Well, did you find any of the paintings to be not

24 authentic?

25 A The only work that's not by -- the Bellotto, for

1

HARRISON - CROSS

91

2 example, is not, in my opinion, by Bellotto. I've

3 called it a follower of. Because I believe it's to be

4 slightly later in date than, but in his style. I

5 wouldn't call it nonauthentic, though. In fact, it is
6 a very standard kind of practice for Old Masters.

7 THE COURT: What is the standard
8 practice?

9 THE WITNESS: Well, I mean, there
10 are artists who would have had a studio and followers
11 and who would do similar works to his. It's not even
12 signed by Bellotto, so it's not like it's an
13 intentional forgery. It's just simply a slightly later
14 work in his manner. And with the Old Masters, that's
15 how they learned. That's how they would paint in
16 another artist's manner. It's not untoward or it's not
17 a cause for alarm in any way. It's just simply how
18 artists learned and how their working methods and the
19 commercial market.

20 Q Ms. Harrison, I'd like to go through some of the

21 valuations here. The Apple Eater by Matta was

22 originally appraised for 350,000, was it not, by

23 Mr. Ruzicka?

24 A You say it does, I guess so. Yeah. I don't know

25 that for a fact.

1

HARRISON - CROSS

92

2 Q But you did review that information?

3 A Yeah, but I don't remember it. But if you're

4 telling that me that it is, I'm accepting that that's

5 correct.

6 Q Okay. And Mr. Feigen appraised it at 450,000,

7 correct?

8 A Once again, I'm sure you're right.

Volume II

9 Q Okay. And you decided that it was worth 500,000,

10 correct?

11 A Yes.

12 Q So in that case, you were higher than Mr. Ruzicka

13 and you were also higher than Mr. Feigen?

14 A In that case, yes.

15 Q So you don't have any qualms with Mr. Feigen's

16 valuation there, other than it's lower?

17 A Right.

18 Q Okay. Then the Soutine Landscape was originally

19 appraised by Mr. Ruzicka at 350,000. Mr. Feigen

20 valued it at 700,000, correct?

21 A That's correct.

22 Q And you had that information at the time you

23 appraised it, correct?

24 A Umm-hmm.

25 Q And you appraised it at 600,000, correct?

1 HARRISON - CROSS 93

2 A Um-hmm.

3 Q Now, there is a difference between Mr. Feigen and
4 yourself of \$100,000, correct?

5 A Um-hmm.

6 Q Would you agree that that's a nonmaterial
7 deviation in the range of values for that painting?

8 A Well, I suppose it's material if you were going to
9 put it up for sale.

10 THE COURT: It's material if you're
11 paying for it.

12 THE WITNESS: But in the great
13 scheme of things, you know, it's a \$100,000 difference.

Volume II

14 I don't know how to --

15 BY MR. CYR:

16 Q Well, I guess my question is Ms. von Habsburg

17 testified that appraisal is not an exact science; do

18 you agree with that?

19 A Yes.

20 Q And it involves some subjectivity, correct?

21 A Yes. That's correct.

22 Q Would you agree that Mr. Feigen's appraisal at

23 seven hundred and yours at six hundred are within the

24 same ballpark of reasonableness?

25 A Yeah. They're the same ballpark with a \$100,000

2 difference.

3 Q So professionals can disagree and in this case,
4 you would think the difference is within that sort of
5 professional degree of --

6 A Yeah. Right.

7 Q Okay. Thank you.

8 Then we have the Paul Signac.

9 Signac. And Mr. Ruzicka appraised it at 600,000 and
10 Mr. Feigen appraised it at 1.8 million and you
11 appraised it higher than Mr. Ruzicka, but lower than
12 Mr. Feigen; is that correct?

13 A That's correct.

14 Q And I take it you take issue with Mr. Feigen's
15 appraisal?

16 A I think it's very high.

17 Q But you disputed Mr. Ruzicka's opinion as being

Volume II

18 Q too low, correct?

19 A Yes.

20 Q Next we have a Soutine that Mr. Ruzicka valued as

21 400,000, correct?

22 A Um-hmm.

23 Q And you appraised it at 650,000, correct?

24 A Um-hmm.

25 Q That was an increase, again, over what Mr. Ruzicka

1 HARRISON - CROSS

95

2 had appraised that at, correct?

3 A Um-hmm.

4 Q Now, Mr. Feigen appraised it at 800,000, correct?

5 A Umm-hmm.

6 Q There is a \$150,000 difference there. Would you

Volume II

7 agree with me that that's within the bounds of a
8 reasonable range for an appraisal of the Soutine?

9 A It's not terribly far off, given all things
10 considered, but it's a difference.

11 Q But, again, can we agree that it's in the same
12 ballpark of a reasonable deviation of appraisal value
13 for that painting?

14 A It's certainly not a cause for super alarm, but
15 there is a deviation. I mean, obviously it's
16 different, as I say. But, anyway, there is a
17 difference, but it's not a huge difference.

18 Q All right.

19 A Yeah.

20 Q And you would agree with me a lot of times,
21 appraisals are done of fair market value and then
22 they're put up for auction, correct?

23 A Yes.

24 Q And in several and many instances, they often go

25 for a higher price than what's listed at the appraisal

1 HARRISON - CROSS 96

2 value, correct?

3 A They can go for higher or they can go for lower.

4 That's for sure. Or they cannot sell.

5 Q Right. They cannot sell, correct.

6 And in your report you cite some

7 examples where paintings were valued and brought a

8 significantly higher value at auction, correct?

9 A Yes. And I also cited times when something made a

10 high value in one sale and then two years later was

11 brought back and made significantly less. So it

12 happens that way, too.

13 Q Next here is the Courbet. Now, Mr. Ruzicka, for

14 the first go-around valued that at 400,000, correct?

15 A Yes.

16 Q Mr. Feigen ultimately valued it eight and a half

17 million, but had valued it at three and a half million

18 at the time that you reviewed the artwork, correct?

19 A Um-hmm.

20 Q And you valued it at \$2 million, correct?

21 A Yes.

22 Q Okay. You would agree with me there is a

23 significant deviation between Mr. Ruzicka's valuation

24 and yours, 1.6 million, correct?

25 A Yes, that is a significant deviation.

1 HARRISON - CROSS 97

2 Q Right. Would you include Mr. Ruzicka's original
3 valuation of 400,000 within the reasonable range of
4 appraised value for that painting?

5 A I mean, obviously, it's significantly lower than
6 mine. That's all I can say. Significantly lower.

7 Q If we went to the three and a half million dollar
8 figure that Mr. Feigen first presented, would you agree
9 that that is within the reasonable range of deviation
10 of appraisal value for the Courbet?

11 A I think it could be -- you can argue the
12 interpretation that it could conceivably make that, but
13 I think it's still, once again, very high and very
14 risky for that picture to ever be entered in any
15 auction sale with that kind of price. I think you

16 would really run the risk of it being unsold. As an
17 auctioneer, I would have been very, very unhappy to see
18 that estimate.

19 Q There aren't a lot of Courbets that are sold,
20 correct?

21 A No. Well, no, actually that's -- there are a lot
22 of Courbets. There is a lot of mediocre Courbets.

23 Q But large ones such as this, there aren't that
24 many, correct?

25 A No. I cited a large one as my comparable, would

1 HARRISON - CROSS 98

2 be Gust of Wind. That was the other large landscape
3 which is relevant to compare to the Barnes picture.

4 Q Now, Mr. Feigen increased his valuation in part
Page 171

Volume II

5 based upon his observation which we discussed on direct
6 examination of this Courbet, a gypsy with her child,
7 and we compare it, it's 183 inches times 75 inches,
8 correct?

9 A That's what he says.

10 Q It's currently being offered at an asking price of
11 12 million, correct?

12 A So he says. I don't know that for a fact.

13 Q Are you familiar with that painting?

14 A Not really. I've never examined it, so I can't
15 really speak about it.

16 Q Would you consider that comparable to the Courbet
17 that's included in the Barnes collection, the
18 Shepherdess?

19 A A, I've never seen it. B, it's never been sold,

20 so I can't really use it as a comparable. Because for
21 my methodology of fair market value, that is irrelevant
22 since it's never come up. It has never been tested at
23 auction, so I would not be able to use that as a
24 comparable.

25 Q Okay. Well, if we assume it sold for \$12 million,

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HARRISON - CROSS

99

2 would you consider it comparable in terms of its size
3 and period and compensation?

4 A That's way too much of an assumption for me to
5 make. I'm sorry. I can't even entertain it. It's
6 just an assumption. The price is -- until I examine
7 the picture, until the picture is sold, until -- it
8 can't be even discussed as a real price. It's just a

25 classical Barbi z on Landscape. So I disagree. I really

1 HARRISON - CROSS 100

2 have not seen the picture, so I do not want to opine

3 about it.

4 Q Next we have the Chi ri co Bellotto.

5 A Um-hmm. Chi ri co.

6 Q And Mr. Ruzicka appraised that at 165,000 and

7 Mr. Feigen appraised it at 500,000. You increased

8 yours to 250,000, correct?

9 A I didn't increase it. I put 250.

10 Q I see. Increased it over Mr. Ruzicka's.

11 A Fine.

12 Q Would you consider Mr. Feigen's appraisal at 500

13 and yours at 250 to be within the same range of

Volume II

14 reasonable appraisals for that piece?

15 A That's probably the wildest card in the

16 collection, you know, in the sense of that group of

17 pictures, because it is a portrait of Mr. Barnes. So,

18 how that is going to be received by the marketplace

19 is -- you know, obviously his import as a collector is

20 very great, but then again, it is a portrait of a man

21 and it has all the things that I discussed in my

22 report. There are pros and cons. There is two ways of

23 looking at it. As a far market value, though, based on

24 comparables of other portraits -- I've given it a bit

25 of a Barnes factor, because of the sitter.

2 Nevertheless, the comparables all come way under 250 of
3 past sale precedence of other portraits. So I've
4 raised it because it is Mr. Barnes, but at the same
5 time, I think there is a ceiling.

6 Q Okay. But, as I heard your testimony, there is a
7 large unknown factor with respect to that piece and
8 that there would be a wide range of values for that
9 piece in order for it to be sold, correct?

10 A As I say, I'm not shocked by this particular
11 figure on the part of Mr. Feigen, but as I say, I still
12 have to go by standard methodology and put a more
13 conservative figure, based on past sale precedent.
14 Although I do feel, you know, that it's important. I
15 can't imagine why the Barnes would ever want to sell
16 it, but that's neither here nor there.

17 Q I guess we'll skip over the Bellotto.

18 THE COURT: Perhaps it would depend

19 on the buyer.

20 THE WITNESS: Perhaps. But, I

21 mean, it would seem to be a cornerstone, something that

22 should never leave the Barnes. But I suppose that

23 that's not part of my testimony. I'm sorry.

24 BY MR. CYR:

25 Q Right. Well, that's subject for another day, I

1 HARRISON - CROSS

102

2 suppose.

3 A Okay.

4 Q The Bellotto, is that the one that we discussed

5 that --

6 A Yes. That's the Old Master that's in the

Volume II

7 manner -- I have called it a follower of Bellotto.

8 Q Okay. So you don't think it's a Bellotto?

9 A It's not a Bellotto. If it was, we would add
10 several zeros. But it's not, in my opinion. But I do
11 think it has a certain decorative appeal, and I think
12 it's worth more than Mr. Feigen has said.

13 Q You think it's more than his \$20,000 appraisal?

14 A That's right, but by \$30,000.

15 Q Okay. And do you know what Mr. Ruzicka had
16 appraised it at?

17 A I don't. I'm sorry. I don't.

18 Q The next is a Soutine. Mr. Ruzicka had appraised
19 it at 300, and you had 300, and Mr. Feigen at 800,
20 correct?

21 A That's right.

22 Q Would you agree that Mr. Feigen's appraisal of
Page 179

23 800,000 is within the range of reasonable appraisals

24 for that piece?

25 A I feel that the Soutines are definitely --

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HARRISON - CROSS

103

2 although it wasn't in our report, I think it's part of

3 the blockage argument and one could really say that

4 those pictures, if all offered together, would fight

5 with one another. I think you have to be conservative.

6 And I think that was the least attractive of all the

7 Soutines, of the four Soutines that I looked at. And I

8 valued it for the lowest amount.

9 Q Okay. So, did you -- your value of 300,000, did

10 you use this term blockage to discount that number from

11 some other number?

12 A We submitted a separate document within the report
13 to discuss the issue of blockage.

14 Q But I guess my question, though, is if that
15 Soutine were sold just by itself, not with respect to
16 the other Soutines, would you expect it to be a higher
17 number than your 300,000?

18 A Possibly. Possibly. And I've been a little bit
19 conservative based on the fact. But I think it's a
20 mediocre picture, frankly.

21 Q So if Mr. Feigen priced it at 800,000 as an
22 individual painting, would you agree that that would be
23 a reasonable range?

24 A I don't know what a reasonable range is. To me,
25 it's a \$500,000 difference. I would be hard-pressed to

1 HARRISON - CROSS 104

2 be hanging out with an extra 500,000 to achieve if it's
3 in a sale. Actually, that's quite a wide range for
4 that artist.

5 Q Another Soutine. Mr. Ruzicka had valued at 350 --

6 A Actually, that's the one that I think is actually
7 lesser. That, I have at 500. I'm sorry. I don't have
8 them all in front of me. So I put 500, yes. That's
9 the one I think was the weakest of the four.

10 Q The weakest one?

11 A The weakest of the four. I believe the one we
12 just looked at was 600.

13 Q No. The last one, you valued at 300,000.

14 A Okay. I'm sorry. All right.

15 Q That's the landscape with houses, and this is --

Volume II

16 A A lot of figures going down here. Okay. Sorry.

17 But that was my figure, and whatever you have there.

18 Q So the Winding Road is not the weakest?

19 A That's right.

20 Q That's a stronger piece, correct?

21 A That's correct.

22 Q And again, we have Mr. Ruzicka at 350, you're at

23 5-, and Mr. Feigen is at 750, correct?

24 A Yes.

25 Q Again, the same question. Would you agree with me

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HARRISON - CROSS

105

2 that Mr. Feigen's appraisal is within the reasonable

3 range of that Soutine?

4 A It's on the higher end of some kind of range, I

5 suppose.

6 Q The sculpture, I take it you didn't look at?

7 A No. We were not asked to look at it.

8 Q All right. Next we have a Glackens, and that's

9 Mr. Ruzicka was at 250,000, Ms. Force decided it was

10 worth 600,000, and you're at 700,000, correct?

11 A Yes.

12 Q You would agree with me that you and Ms. Force are

13 within the reasonable range of values; in fact, you're

14 higher on that one, correct?

15 A Yes, I am higher on that one. I thought it was a

16 fabulous picture.

17 Q But you certainly disagreed with your colleague,

18 Mr. Ruzicka?

19 A Yes.

20 Q Did you consider his to be within the reasonable

21 range?

22 A No. It was too low.

23 Q Another Glackens.

24 A Actually, that was excluded because that had been

25 originally a typo on our original report, I believe,

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HARRISON - CROSS

106

2 and it was excluded. So I only looked at 19 works.

3 And that was off. This was a typo. Everybody was at

4 the same level, 15,000. It's a draw. Just to correct

5 the record.

6 Q By the way, did you examine these 19 paintings

7 that our experts took a look at, Ms. Force and

8 Mr. Feigen? Did you take the opportunity while you

Volume II

9 were down there to compare any of the other works that

10 Mr. Ruzicka had examined?

11 A No.

12 Q Is there any reason you didn't?

13 A I wasn't asked to. It didn't occur to me. It was

14 not part of the process. I was trying to, in a very

15 short amount of time, turn around a very good document

16 of my own.

17 Q Well --

18 A That was my brief.

19 Q Weren't you concerned in light of the fact that

20 many of your valuations are significantly higher than

21 Mr. Ruzicka as taking at least a spot-check on the

22 other paintings that he had?

23 A I assumed that Ms. von Habsburg had done that.

24 She said that she had looked over the rest of the

25 documents. I was not concerned because I was trying to

1 HARRISON - CROSS 107

2 get this correct.

3 Q Next we have a Glackens. Mr. Ruzicka is at 600,

4 you're at 600, and Ms. Force is at 500; is that right?

5 A Um-hmm.

6 Q Again, reasonable range?

7 A Totally reasonable range in this case.

8 Q In the Glackens, Mr. Ruzicka decided was worth

9 800,000, but both you and Mrs. Ms. Force decided it was

10 worth significantly more at \$2 million, correct?

11 A Right.

12 Q Do you know how Mr. Ruzicka arrived at that

13 800,000 figure?

Volume II

14 A I have no idea.

15 Q Next we have a Glackens. Mr. Ruzicka was at

16 550,000, Ms. Force appraised it at 1.5 million, and

17 you're at 1.25 million, correct?

18 Q You and Ms. Force are within the same ballpark; is

19 that right?

20 A Yes, I think very much so.

21 Q You wouldn't have any dispute with the value that

22 she reached as well within the reasonable range,

23 correct?

24 A They're quite close.

25 Q But again, when you consider Mr. Ruzicka's

2 valuation at 550,000, within the reasonable range?

3 A It's obviously far lower than I put.

4 Q We have a Lawson down there. Mr. Ruzicka is at

5 175,000, you're at 400,000, Ms. Force is at 300,000.

6 You and Ms. Force are, again, within the same

7 reasonable range?

8 A Yes. It's a matter of interpretation. I thought

9 there were some condition issues with that particular

10 piece.

11 Q And why did you think it was more valuable than

12 Ms. Force had appraised it at 300,000?

13 A Because I think it's still a big important work by

14 him and it's rare and I think it's a wonderful

15 composition.

16 Q In the interest of time, Ms. Harrison, I'll skip

17 through most of the others, but there is one, that

Volume II

18 Prendergast that Mr. Ruzicka valued at a million

19 dollars. Do you see that up there?

20 A Yes, I do see that.

21 Q And you cited Prendergast. What was the

22 differences or the reason for the deviation downward in

23 this particular case?

24 A I have no idea. I can't answer that. I was not

25 privy to the process in any way.

1

HARRISON - CROSS

109

2 Q Do you know Mr. Ruzicka at all?

3 A I do. I do.

4 Q Do you know him by professional representation?

5 A I do.

6 Q Did you speak to him after you had worked your

Volume II

7 valuation?

8 A No.

9 Q Is there any reason you didn't speak to him?

10 A I guess he's off in another job, you know,

11 wouldn't be appropriate to speak to him about this

12 necessarily. And, obviously, my brief is to speak to

13 very few people about this. I understand there is a

14 confidentiality issues and other issues.

15 Q Now, as I heard your direct testimony, you also

16 spoke about the Barnes cache -- well, you didn't use

17 the word "cache," but the provenance associated with

18 the Barnes name; is that correct?

19 A That's correct.

20 Q And you said in this circumstance, the name is

21 part of the lineage so to speak or the provenance of

22 the painting, that that could increase the value

Volume II

23 anywhere from 25 to 50 percent; is that correct?

24 A It could, but it really depends on how the

25 whole -- if there was a sale, how we would we market

1 HARRISON - CROSS 110

2 it. I mean, it really depends on what is the type of

3 the marketing, if there was such a sale, how it could

4 be curated, how it would be promoted. We don't know

5 that. That's such an X factor that we really can't --

6 the reason we didn't put it actually into the report is

7 there is no way of knowing what the answer to those

8 questions are at this point. All we can do is look at

9 the work itself. And, obviously, it has excellent

10 provenance and we are factoring that excellent

11 provenance in. But it is totally speculative if there
12 was to be a sale, how it would be organized and how the
13 name would be used and what potential it would have on
14 the price. You know, obviously it is excellent
15 provenance. No one in the art world would say anything
16 other than that.

17 Q And so the values that you listed in here,
18 depending upon this Barnes provenance, could increase
19 the values another 25 to 50 percent?

20 A Possible. If it was promoted in a certain way.
21 But we don't know what that would be or if it would be.

22 MR. CYR: Thank you. That's all I
23 have.

24 THE WITNESS: Thank you.

25 THE COURT: Redirect?

1 HARRISON - REDIRECT 111

2 MR. WELLINGTON: Just a little

3 redirect.

4 THE WITNESS: Yes.

5 REDIRECT EXAMINATION

6 BY MR. WELLINGTON:

7 Q Ms. Harrison, is it appropriate under USPAP to use

8 as comparables paintings that have never been sold?

9 A Absolutely not.

10 Q And that's what Mr. Feigen has done in his

11 \$5 million increase on Friday night?

12 A I would have to think so. Correct. Um-hmm.

13 Q Does he cite any other reference other than a

14 painting that's been unsold other than that one in 1998

15 for \$2 million?

Volume II

16 A No. That's the other one he cites.

17 Q Would a proper certified appraiser use a nonsold
18 painting as a comparable?

19 A I can't imagine how they could feel that that
20 could hold water, frankly.

21 Q Mr. Cyr just took you through I think 13 -- I was
22 trying to count -- of the paintings, the 12 of them
23 where you had an increase in value over Mr. Ruzicka and
24 1 where you had a decrease?

25 A Um-hmm.

1

HARRISON - RE CROSS

112

2 Q But there were others -- I think all of the
3 others, in fact, you valued lower than Mr. Ruzicka did
4 or at the same value; is that correct?

Volume II

5 A Um-hmm. That's correct.

6 MR. WELLINGTON: That's all I have.

7 THE COURT: Mr. Barth?

8 MR. BARTH: Yes.

9 RE-CROSS-EXAMINATION

10 BY MR. BARTH:

11 Q Mr. Cyr asked you about Dr. Ruzicka's reputation?

12 A Umm-hmm.

13 Q He didn't ask you what you thought of it or what

14 it was. What is your impression of his reputation as

15 an art appraiser?

16 A He has a stellar reputation. He's been in a

17 number of very important institutions, the Museum of

18 Modern Art. He was at the Paris Art Museum, I believe.

19 He's currently a museum director. He has a Ph.D. from

20 the Institute of Fine Arts at NYU.

21 As far as his commercial

22 credentials, he I believe worked at Christie's for

23 several years. I believe he also worked at artnet.com,

24 which was a commercial site on the Internet, one of the

25 best selling art sites on the Internet. So he has a

1

HARRISON - RECROSS

113

2 lot of experience in valuing art, as well as being a

3 very prominent art historian. And he's currently a

4 museum director in a Mid Atlantic institution. I'm not

5 sure.

6 Q Do you regard the difference between the values

7 you ascribed and those he ascribed as being something

8 sinister or just a difference of opinion between two

9 qualified professionals?

10 A Obviously, he did not have the advantage I did to
11 see the works. That could account for some of it. And
12 just I don't know what the time constrictions were for
13 him, but obviously, I had the ultimate advantage of
14 actually coming and seeing the works. I believe my
15 figures are sound ones, because I came and I looked at
16 things very carefully.

17 MR. BARTH: Thank you.

18 BY MR. CYR:

19 Q Ms. Harrison, is there any prescription in the art
20 appraisal world to using unsold works of art for
21 purposes of appraisal?

22 THE COURT: For purposes of? I
23 couldn't hear what you said.

24 MR. CYR: For purposes of

25 performing an appraisal.

1 HARRISON - RE CROSS 114

2 THE COURT: Meaning as a

3 comparable?

4 MR. CYR: Or any information used

5 in arriving at an appraised value.

6 THE WITNESS: I mean, if something

7 is being offered by a dealer or traditionally makes a

8 certain amount at a dealer, you can go into the retail

9 marketplace when you're doing certain kinds of

10 appraisals.

11 For example, if you're doing a

12 retail replacement appraisal for insurance, you need to

13 know exactly what that person might have to pay if they

14 had to run out and buy another one on Bond Street or on
15 Madison Avenue or on 57th Street. They're going to
16 have to pay retail. So that is one type of appraisal
17 where it does make a lot of reasonable sense and is
18 totally credible to go into the retail marketplace.
19 But not if you're doing a fair market value appraisal.
20 According to the IRS guidelines, that is absolutely not
21 legitimate.

22 BY MR. CYR:

23 Q You mentioned the Uniform Appraisal Standards. Is
24 there a prescription in there against that?

25 A Yes.

2 Q Could you tell me where it is?

3 A I can't quote you chapter and verse, but all our

4 training is that fair market valuation has got to have

5 something based in reality, something that has

6 transacted, since that's the original question you

7 asked me. So it's not just someone's offering price.

8 It's something has actually sold. And it's the auction

9 comparables are considered the open marketplace.

10 Q Okay. Are you testifying that it was

11 inappropriate of Mr. Feigen to make a reference to that

12 piece in Paris that's been submitted for \$12 million?

13 A It's not part of the standard methodology.

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

15 have.

16 THE COURT: Ms. Harrison, I have

17 just a few questions, if I may.

18 THE WITNESS: Yes.

19 THE COURT: I want to follow up on
20 that last line of questioning. You were talking about
21 a retail price.

22 THE WITNESS: Um-hmm.

23 THE COURT: And I got the
24 impression that you distinguished that from a price at
25 auction. Do you?

1 NANCY HARRISON 116

2 THE WITNESS: In some cases, yes.

3 THE COURT: You don't consider
4 auction prices between a willing buyer and seller as
5 being retail?

6 THE WITNESS: We don't call it

7 retail. No.

8 THE COURT: You call that fair

9 market value?

10 THE WITNESS: We call that fair

11 market value. That's correct.

12 THE COURT: All right. One of your

13 criticisms of using the idea as an asking price as a

14 comparable is that anyone can ask anything they want.

15 THE WITNESS: That's correct.

16 THE COURT: Let's suppose that

17 there was a verifiable or a documented sale by a dealer

18 to someone who walked into his or her shop and paid an

19 asking price. Is that a legitimate comparable?

20 THE WITNESS: It's a legitimate

21 comparable for a retail replacement figure, but it's

22 not for fair market value.

Volume II

23 THE COURT: All right. That's the
24 distinction that you make?

25 THE WITNESS: Yes.

1 NANCY HARRISON 117

2 THE COURT: I have seen catalogs
3 from auction houses where an estimated price is shown
4 for an item. You're familiar with that?

5 THE WITNESS: Yes. Of course.

6 THE COURT: What relationship if
7 any is there between that number, however it's
8 calculated, and what you would be doing in the course
9 of trying to place numbers on these?

10 THE WITNESS: Very similar, Your

11 Honor. Same methodology. You're looking at past
12 comparables and projecting what this picture, this plus
13 or minus against those past comparables. It's a very
14 similar methodology.

15 THE COURT: Okay. What you're
16 saying is an auction house, a Sotheby's or a
17 Christie's, when they get a work like this to sell,
18 they do what you did, they do what Mr. Ruzicka did or
19 Mr. Feigen or anyone, and they try to come to, the best
20 of their ability, applying the methodology by accepted
21 standards, and that's a number that they come to?

22 THE WITNESS: That's right.
23 They're trying to give an educated guess of what that
24 might make, based on everything they know.

25 THE COURT: Would you agree with me

1 NANCY HARRISON 118

2 that that number is not necessarily related to the
3 ultimate selling price when it goes to auction?

4 THE WITNESS: There are --
5 obviously, things go for more and things go for less.

6 THE COURT: Do you note any trend
7 -- I mean, for instance, have you ever seen a
8 statistical study that reflects whether the actual
9 sales realized are a certain percentage more or less on
10 average?

11 THE WITNESS: I couldn't -- every
12 field probably has its own statistics, and obviously we
13 used to run stats like that for Sotheby's in the past
14 just to show how accurate we were being in our
15 forecasting. But every field is different, every

Volume II

16 market is different, and it really depends on what's on
17 offer.

18 THE COURT: What was your
19 experience, for instance, in this field, Nineteenth,
20 Twentieth Century art at Sotheby's?

21 THE WITNESS: Once again, we try
22 to -- it depends on the rarity of the item, but you try
23 to pitch it with all of the -- with a fully educated
24 opinion behind you. And what makes -- well, obviously
25 the marketplace ultimately decides, but at the same

1 NANCY HARRISON 119

2 time, you know, you're giving them some of that
3 information of what they're going to have to pay.
4 You're telegraphing what they're going to have to pay.

5 THE COURT: Right.

6 THE WITNESS: Because there is a
7 reserve behind each work.

8 THE COURT: I think sometimes there
9 is a sense that that estimated number, what you say is
10 being done here, is artificially low so as not to
11 disappoint a seller. Do you think there is anything to
12 that?

13 THE WITNESS: Well, I think
14 sometimes there are -- it can work the other way.

15 THE COURT: Perhaps artificially
16 low is an unfair phrase.

17 THE WITNESS: Right. You have
18 to -- you won't get the property if you don't satisfy
19 the seller. So you ultimately have to -- it's a

20 push/pull to try to get the right number. And very
21 often the auction houses don't have the ultimate say.
22 They have to -- you know, they would like you to be
23 more conservative. Sometimes they'll look at it and
24 they'll say, well, there is a good shot that this is
25 going to sell. We're going to give it a chance.

1

NANCY HARRISON

120

2 Especially depending on the client, depending on the
3 picture, if they feel there is a chance that it's going
4 to sell. You have to weigh it, like anything else.

5

THE COURT: Can you refresh my

6 recollection about the Barbizon school? Am I saying
7 that properly?

8

THE WITNESS: Yes.

9 THE COURT: It's referenced in some
10 of your appraisals.

11 THE WITNESS: It's a field in the
12 Nineteenth Century where artists, primarily French
13 artists, but later American artists as well went to
14 work outside the forest of Fontainebleau in the
15 plaine-aire to produce proto-Impressionist paintings.
16 And it's mostly pastoral scenes, mostly windswept
17 forest or Fontainebleau --

18 THE COURT: So it is descriptive of
19 a genre?

20 THE WITNESS: A genre.

21 THE COURT: Okay.

22 THE WITNESS: Usually peasants,
23 animals, in the area of the environs of France, of
24 Paris.

25 THE COURT: Okay. Thank you.

1 HARRISON - FURTHER RECROSS 121

2 Does that prompt anything from you?

3 MR. BARTH: It's prompted one by

4 me, Your Honor.

5 FURTHER RECROSS-EXAMINATION

6 BY MR. BARTH:

7 Q Masterson Gurr Johns is an auction house?

8 A No. No. It's an appraisal company.

9 Q So you don't offer paintings?

10 A Me, personally?

11 Q No.

12 A I'm not an appraiser for them.

13 Q I'm talking about Masterson Gurr Johns. They do

14 not sell paintings?

15 A They broker paintings if they're asked to. They
16 will act as a middleman, but they don't own inventory,
17 as far as I know.

18 Q And they don't conduct auctions?

19 A That's correct.

20 Q So what His Honor suggested in terms of pitching a
21 price to not disappoint a seller would not apply in the
22 case of your appraisals because you have no seller to
23 satisfy or disappoint; is that correct?

24 A I'm not quite sure I understand your question.

25 THE COURT: I'm not exactly sure he

2 fairly characterized what I was suggesting, but that's
3 all right.

4 MR. BARTH: Well, then --

5 THE COURT: It's a fair question.

6 I don't have any problem with it.

7 THE WITNESS: I can only say in the
8 cases where Masterson acts as a consultant. They are a
9 middleman and they are acting as a broker and the work
10 is on commission and they are usually funneling certain
11 collections into auction houses, et cetera.

12 But that is not a big part of the
13 business that I am involved in. I'm more of an
14 appraiser. You'll have to ask Mrs. von Habsburg.

15 BY MR. BARTH:

16 Q Well, the appraisal that you did --

17 A Yes.

18 Q -- is not made to create or satisfy any

19 expectation in terms of a seller --

20 A This?

21 Q -- and the success of an auction?

22 A My document? Absolutely not.

23 MR. BARTH: That's all I have.

24 THE COURT: This represents your

25 best attempt to come up with what would be a fair sale

1 NANCY HARRISON

123

2 price between a willing buyer and a willing seller --

3 THE WITNESS: That's right.

4 THE COURT: -- in the market as you

5 know it right now?

6 THE WITNESS: That's what I

7 intended to do.

8 THE COURT: And attempting to
9 quantify that cache that you talked about, it being
10 Barnes, or without attempting to quantify that blockage
11 discount --

12 THE WITNESS: That's right.

13 THE COURT: -- to the extent that
14 there is one, right?

15 THE WITNESS: We've noted --

16 THE COURT: You just know that
17 they're out there?

18 THE WITNESS: That's right. We've
19 noted those in separate appendices that we had given to
20 Mr. Wellington or that we've put in because we felt
21 that there were too many variables that we were not
22 privy to and --

23 THE COURT: But you wanted to
24 acknowledge the existence of?

25 THE WITNESS: That's right.

1 NANCY HARRISON 124

2 Absolutely.

3 THE COURT: All right. I

4 understand.

5 Anything else?

6 MR. CYR: No thanks, Your Honor.

7 THE COURT: Thank you,

8 Ms. Harrison.

9 (Witness excused.)

10 - - -

11 THE COURT: What's your pleasure,

12 Mr. Wellington?

13 MR. WELLINGTON: I'm happy to forge

14 on with one more witness, Your Honor.

15 THE COURT: Go ahead.

16 MR. WELLINGTON: Is that your

17 preference, as well?

18 THE COURT: Yeah. That's fine.

19 Fine.

20 MR. WELLINGTON: Your Honor, the

21 Barnes Foundation calls Harry Perks to the stand.

22 THE COURT: All right.

23 (Photocopy of Harry Perks'

24 Curriculum Vitae marked Petitioner's Exhibit 65 for

25 identification.)

1 PERKS - VOIR DIRE 125

2 - - -

3 HARRY PERKS, having been duly

4 sworn, was examined and testified as follows:

5 VOIR DIRE EXAMINATION

6 BY MR. WELLINGTON:

7 Q Good afternoon, Mr. Perks.

8 A Good afternoon.

9 Q Where do you live, sir?

10 A I'm sorry?

11 Q Where do you live, sir?

12 A Where do I live?

13 Q Yes.

14 A My home address?

15 Q Just what city.

Volume II

16 A In Medford.

17 Q New Jersey?

18 A Yes.

19 Q And by whom are you employed?

20 A Perks Reutter.

21 Q It bears your name, does it not, sir?

22 A Yes, sir.

23 Q I'm going to put up here Exhibit 65. We're not

24 going to read through this, but this is a document that

25 lists for the Court and others who wish to read it some

1

PERKS - VOIR DIRE

126

2 of your background and experience, does it not, sir?

3 It lists some of your background and experience?

4 A Yes, it is.

Volume II

5 Q How long have you been with Perks Reutter

6 Associates, Mr. Perks?

7 A Eleven years.

8 Q And tell the Court what Perks Reutter does,

9 please.

10 A We manage capital programs for clients and we also

11 do design work and in a general category of public

12 works, which would include roads, water treatment and

13 distribution systems, waste water collection and

14 treatment systems.

15 Q Does that organization and do you personally or

16 have you personally had responsibility for some

17 building construction projects in this region?

18 A Yes, sir.

19 Q Would you please identify some of them for us?

20 A On the Avenue of the Arts, I was responsible for
21 managing the design and construction of the Kimmel
22 Center, the Academy of Music renovations recently, and
23 a small project, the Cleft Club. I've been responsible
24 for several projects at the zoo, including the PECO
25 Primates Center. I've been responsible for renovations

1 PERKS - VOIR DIRE 127

2 to about 50 of the city's branch libraries.

3 Q Were you also responsible for managing the
4 construction of the Pennsylvania Convention Center in
5 Philadelphia?

6 A Before I was a Perks Reutter employee, yes, sir.

7 Q Is Perks Reutter also the construction manager for
8 Camden's Campbell Field?

Volume II

9 A Yes, they were.

10 Q And before -- I think you just mentioned before

11 you joined Perks Reutter, you were the Executive

12 Director of the Pennsylvania Convention Center?

13 A I was.

14 Q For how many years, sir?

15 A For three and a half years.

16 Q And what were your responsibilities in that

17 position, Mr. Perks?

18 A I was responsible for the design and the

19 construction of the new facility.

20 Q What was the total construction budget of the

21 Pennsylvania Convention Center?

22 A \$523 million.

23 Q How far over budget and beyond time were you?

24 A We were on time and we built it within the

25 \$523 million.

1 PERKS - VOIR DIRE 128

2 Q Before you were with the Pennsylvania Convention
3 Center, Mr. Perks, what was your professional position?

4 A I was the Streets Commissioner of the City of
5 Philadelphia.

6 Q And for how many years did you do that?

7 A Four years.

8 Q Who was mayor at the time that you were Streets
9 Commissioner?

Volume II

10 A Mayor Goode.

11 Q How was it that you were asked to be Streets

12 Commissioner? Did the mayor call you?

13 A Yes, sir. He did.

14 Q Had you met the mayor before?

15 A No, sir. I did not.

16 Q But he twisted your arm to do that?

17 A I wouldn't say he twisted my arm, no, sir. He did

18 call me and say that they had some problems that I was

19 recommended to him that I might be able to solve.

20 Q And before your service as Philadelphia Streets

21 Commissioner, where were you, sir?

22 A I was President of Day and Zimmerman.

23 Q And what is Day and Zimmerman?

24 A It's an international design and construction

25 company.

1 PERKS - VOIR DIRE 129

2 Q And did you also manage construction projects at
3 Day and Zimmerman?

4 A Yes, sir.

5 Q Just give us an idea of some of the types of
6 projects that you managed there.

7 A In Philadelphia, we were in joint ventures in
8 managing the commuter tunnel. We did a lot of the
9 incinerators for Philadelphia. We did research
10 facilities along the Schuylkill Expressway,
11 manufacturing plants.

12 Internationally, we did housing in
13 Saudi Arabia, schools in Guatemala, and manufacturing
14 plants in Taiwan and Mexico.

Volume II

15 Q Have you received any acknowledgements or
16 commendations over the years, Mr. Perks, for the
17 service that you've rendered?

18 A Yes, sir.

19 Q Try not to be too modest. Tell us a few of them.

20 A I had a Lifetime Achievement Award from the
21 American Society of Public Administrators. Community
22 Service Award from the Philadelphia Committee for City
23 Policy. I had several commendations, citations, and
24 resolutions from elected officials including Mayor
25 Goode and City Council, House of Representatives, the

1

PERKS - VOIR DIRE

130

2 Senate, Governor Casey.

Volume II
And professionally, I've been

3

4 elected or nominated or selected Civil Engineer of the

5 Year by the American Society of Civil Engineers, in

6 1993. In 1995, I was selected Engineer of the Year.

7 Q Are you currently involved, Mr. Perks, with the

8 expansion to the Philadelphia Convention Center?

9 A Yes, I am.

10 Q And what's your responsibility there?

11 A I'm responsible for the design and construction.

12 MR. WELLINGTON: Thank you.

13 Your Honor, the Barnes Foundation

14 offers Mr. Perks as an expert on construction and

15 project management.

16 THE COURT: Mr. Barth, questions on

17 qualifications?

18 MR. BARTH: No.

Volume II

19 THE COURT: Mr. Cyr?

20 MR. CYR: No questions.

21 THE COURT: Very well.

22 You may continue, Mr. Wellington.

23 MR. WELLINGTON: Thank you, Your

24 Honor.

25 (Capital Cost Analysis for a New

1 PERKS - DIRECT 131

2 Facility for The Barnes Foundation marked Petitioner's

3 Exhibit 64 for identification.) pg 131

4 DIRECT EXAMINATION

5 BY MR. WELLINGTON:

6 Q When were you contacted, Mr. Perks, about the

7 project on behalf of the Barnes Foundation?

Volume II

8 A My best recollection is I was contacted on January
9 the 30th.

10 Q And --

11 A I mean the 20th, actually.

12 Q And who contacted you, sir?

13 A It was a joint telephone call, as I recall,
14 between Dr. Watson, Rebecca Rimel -- I don't know
15 whether there were any attorneys on the phone or not.
16 Perhaps Judge Allen (ph).

17 Q Did you know Dr. Watson before, sir?

18 A Yes, sir.

19 Q Tell us how you knew Dr. Watson before.

20 A He and I worked at the school district together
21 and I worked at the Convention Center when he was a
22 board member. I worked on the expansion when he was a
23 board chairman.

24 Q What is it they asked you to do when you were
25 contacted?

1 PERKS - DIRECT 132

2 A They asked me if I would evaluate whether
3 \$100 million was sufficient to build a new Barnes
4 facility on the Parkway and to estimate how many square
5 foot could be built with that \$100 million.

6 Q Did you believe that such a project was within
7 your capability and experience, sir?

8 A Yes, sir.

9 Q There was some testimony this morning from
10 Mr. Wood and Mr. Perry that you also called them or
11 that you talked to them about doing real estate

12 appraisals at Ker-Feal. Were you also asked to

13 supervise that project?

14 A Yes, I was.

15 Q Tell us, first of all, what you did with respect

16 to the Ker-Feal property.

17 A I wrote a specification for what would have to be

18 done for an appraisal of the property. I canvassed

19 appraisers and recommended to the Barnes Foundation

20 that they award contracts to Wilson and Perry.

21 Q Wood and Perry?

22 A Wood and Perry. I'm sorry.

23 Q And did you participate personally in their

24 appraisal work?

25 A Not really.

1

2 Q But you got them engaged and asked them to prepare
3 a report, sir?

4 A Yes. I called several attorneys that do real
5 estate work in Chester County and got recommendations
6 from them and interviewed them, selected them,
7 negotiated the price, wrote the specification, and
8 recommended their selection to the Barnes Foundation.

9 Q Now, I want to turn back to the analysis of
10 whether the foundation could construct a gallery on the
11 Parkway within a \$100 million budget. Did you prepare
12 a report and submit that to the Barnes Foundation on
13 that finding, on those findings?

14 A Yes, I did.

15 Q Can you turn in front of you to Exhibit 64, sir?
16 Would you look at that exhibit and tell us whether that

Volume II

17 is the report that you submitted on the project you

18 were asked to undertake for the Barnes?

19 A Yes.

20 Q On a general question, Mr. Perks, of whether an

21 appropriate gallery could be constructed for

22 \$100 million, what did you conclude?

23 A I concluded it could.

24 Q Did you conclude the range of size of such a

25 facility that could be constructed within that budget?

1

PERKS - DIRECT

134

2 A Yes, I did.

3 Q And what did you conclude with respect to the size

4 range?

5 A I estimated they could build a facility between

Volume II

6 120- and 150,000 square foot.

7 Q How does that size compare currently with your
8 understanding of the size of Merion facility?

9 A The gallery at Merion, the gallery building is
10 about 28,000 square foot. I would estimate the gross
11 square foot in Merion to be about 40,000.

12 Q How did you undertake this analysis? Start with a
13 general description, Mr. Perks, we'll delve into it a
14 little bit.

15 A \$100 million capital budget covers all expenses
16 involved in the design and building and, therefore,
17 there are a lot of expenses in addition to the actual
18 construction. I listed eight or ten of those items and
19 made estimates or reasonable allowances for all of
20 those and subtracted them from the 100 million to see

21 how much we had for the building construction, which I

22 estimated to be 60 million.

23 Q I want to turn, first, to Page 2 of your report --

24 well, excuse me. Let's look at Page 1 first. Excuse

25 me.

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2 Let's look at Page 1. Page 1 says,

3 under the Scope of Work, that you were commissioned by

4 the Barnes Foundation to determine whether a new

5 gallery could be constructed on the Parkway with a

6 budget of 100 million and to estimate the size of such

7 a facility.

8 That was your understanding as

9 you've just testified to, sir?

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10 A Yes, sir.

11 Q And the conclusion that you've just testified to
12 is summarized in the next paragraph?

13 A Yes.

14 Q If you would turn to the next page, is this a
15 summary page of the first part of what you were just
16 describing, namely the capital cost that would be fixed
17 in trying to build such a building?

18 A Yes. They are the things that would have to be
19 paid for in addition to the building of a new facility.

20 Q In addition to the cost of constructing --

21 A Yes.

22 Q -- the building?

23 Can we look at the first subject

24 area, the New Parkway Facility? Just describe, there

25 is four elements there and a \$17 million subtotal. Can

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2 you tell us what those elements are and how you arrived
3 at that figure?

4 A Well, the first item, Site Preparation, two
5 million two, there is two sites under consideration,
6 both have extensive expenses in order to prepare the
7 site for new construction. One has a building on it
8 that has to be demolished. Another has a very large
9 water pipelines that would have to be removed or
10 relocated. And I estimated what the costs would be in
11 both those cases, and that \$2.2 million represents the
12 maximum of that.

13 The furniture and fixtures, they
14 usually run from five to ten percent of the

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15 construction building costs. I used seven and a half
16 percent of the sixty million. And, in addition, this
17 had some very special requirements for audio visuals,
18 and I allowed an additional million and a half dollars
19 for those audio visual capital expenses.

20 The Didactic exhibit, Ms. Camp
21 described an area where people waiting to attend the
22 gallery exhibit would have an opportunity to be
23 acquainted with the Barnes philosophy, and that would
24 involve some exhibits, some perhaps interactive items
25 that need to be redesigned, and that's an allowance for

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2 that expense.

3 The architectural and other
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4 consulting fees I estimated to be 12 percent of the
5 construction costs, for a total of \$17 million.

6 Q And let's look at the next category, the Merion
7 Facility, and explain to us the numbers that you have
8 there.

9 A The scope as defined to us was that the Merion
10 facility was going to stay as far as the physical plant
11 intact, and they would have programs there including
12 their library archives visiting scholar program, that
13 there would be required some modifications to the
14 buildings there in order to accommodate those new
15 programs, and that we estimated to be a million six.

16 Q And, finally, the other costs. Please take us
17 through that column.

18 A Well, the move to the Parkway for art of this
19 value is a very complex process. In addition to

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20 deinstalling, packing, and reinstalling, there is the
21 shipping costs, security costs, the insurance costs,
22 the assessment before the art is taken down and when
23 it's put back. And, in this case, we would have to
24 build an air conditioned loading dock so that the art
25 could be taken from the building onto an air

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2 conditioned or climate conditioned truck for the trip
3 into the City. And those expenses, we estimate, to be
4 two million four.

5 Administration. There is always
6 legal expense, insurance expense, program management
7 expense. We estimate that to be three million four.

8 I was given the five million six by
9 the Deloitte Touche as the cost that would be incurred
10 as a result of the shutdown or as a result of the
11 capital expansion. The shutdown would be substantial,
12 eight months or more. And that was five million six.
13 And then I felt it reasonable for establishing a budget
14 at this stage. In any project, there ought to be a
15 substantial contingency put aside for any errors in
16 estimating or items that were not included that should
17 have been -- or price deviations when the design was
18 actually further along.

19 Q Is a 10-percent contingency on a construction
20 project at this stage high, low, conservative?

21 A I think it's reasonable.

22 Q Now, at this stage -- you've used that phrase a
23 couple of times. At this stage, that has not been any

24 architectural plans designed as to what this building
25 would have looked like, correct?

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2 A No, sir. There have not.

3 Q In the other projects that you've been involved
4 in, Mr. Perks, the Kimmel Center or the Academy of
5 Music restoration, public libraries, et cetera, is the
6 process that you've gone through in this report a
7 similar process to that process that you've done in
8 those?

9 A Yes. I would say on every capital project, a
10 similar process goes on. In all the projects that I
11 mentioned that I have been involved in since I've
12 worked for Perks Reutter, I've actually made those

13 original projections on the Convention Center where I
14 was the executive director in charge of the design and
15 construction, that work was done before I took over.

16 Q Now, would this estimate be sufficient to in fact
17 embark on a construction project, or is there another
18 step -- if there was approval to move with the gallery,
19 is there another step of design in more detail?

20 A I'm sorry. I don't understand.

21 Q It's my problem, because it's a bad question. I
22 apologize.

23 What would be the -- let's assume
24 there was a decision by the Barnes Foundation and the
25 Court had authorized it to construct a gallery

2 downtown. What would be the next step from the
3 construction design process after this initial report?

4 A To write a program for what the facility would
5 ultimately include. And usually, on projects, the
6 development of the program and a set of schematic
7 drawings are done in the same cycle so that at the end
8 of the program, there is something physical that can be
9 estimated and that requires schematic drawings.

10 Q What would be the range of cost involved in doing
11 that next stage that you've just referred to?

12 A The architectural fees are usually 15 percent of
13 their total fees. In this case, it would be close to
14 \$1 million.

15 Q So that's not been undertaken at present with
16 respect to this project, has it?

17 A No, sir. It's not.

18 Q I want to go back to the first page of your report

19 for a second. And under where it says Process,

20 Mr. Perks, there is a phrase that -- the sentence says

21 "The potential size and suitability of the new facility

22 was discussed at a charrette, consisting of two

23 consecutive all-day meetings with the Foundation

24 department managers and executive director and CEO."

25 Were you at that charrette?

1

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2 A Yes, sir.

3 Q What is a charrette?

4 A A charrette is an architectural term where the

5 client and the design team gets together in a seminar

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6 kind of atmosphere to talk about what the new facility
7 might include and visions of the future, if you will.

8 Q And what is the purpose of it at this stage? What
9 is the purposes of that?

10 A Deloitte Touche and ourselves were not familiar
11 with the Barnes or their requirement. That charrette
12 gathered together all the department heads who each
13 could describe what they had at the Barnes now and what
14 they felt was an improvement or what they would like to
15 see. The decision as to what would be done with Merion
16 after the new facility was built was discussed and
17 explained to us.

18 It became clear that the charge
19 that we had was not only to move the 2,800 square foot
20 gallery, but to provide a lot of auxiliary spaces that
21 don't exist now to add to the educational element of

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22 the space, to have a visiting gallery to have people
23 coming back because there would be something changing
24 all the time, that there would be food service, the
25 didactic space which I discussed before. All those

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2 things came out at the charrette that made us aware
3 that we weren't talking about a 2,800 square foot
4 duplication of what exists there.

5 Q So this information assisted you in concluding
6 whether the kinds of needs that the Barnes Foundation
7 was looking for in this new building could be done
8 within a \$100 million project?

9 A It was to help us to acquaint with what they hoped
10 could be done within a \$100 million project.

11 Q We've gone through Table 1 with the fixed costs
12 that you've assessed. Did you then -- I think you said
13 you then set out to determine the size of the building
14 that could be constructed with the remaining roughly
15 \$60 million funds; is that correct?

16 A Yes, sir.

17 Q Can you tell the Court the process by which you
18 undertook that analysis?

19 A The process was a relatively simple one, and that
20 was to get some sense of scale, some estimates, some
21 judgment about what a facility that would be worthy of
22 this collection and its location on the Parkway. We
23 concluded four to five hundred dollars a square foot
24 would be the right amount and divided that into sixty
25 million and concluded that we could build a 120- to

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2 150,000 square foot facility.

3 Q Now, did you then do some benchmarking to

4 determine whether those ranges that you were talking

5 about were reasonable in the Philadelphia construction

6 market?

7 A Yes, I did.

8 Q Can we turn to Exhibit C?

9 A Okay.

10 Q Do you have that, Mr. Perks?

11 A Yes, sir.

12 Q This is entitled Museum Construction Cost

13 Analysis, correct, sir?

14 A No. That's not what I'm looking at. Not Appendix

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15 C.

16 Q Okay. It's the chart attached to Appendix C. I'm

17 sorry. I directed you to the wrong thing.

18 And, Mr. Perks, for your

19 assistance, it's on the screen, too. Whichever is

20 easier for you. It's also on the screen beside you.

21 Whichever is easiest for you.

22 THE COURT: Mr. Wellington, let me

23 ask. It would appear to me that you're not going to be

24 able to finish Mr. Perks today.

25 Are you available, sir, to come

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2 back tomorrow morning?

3 THE WITNESS: Yes, sir.

4 THE COURT: You are.

5 In light of that, and it being 4:30

6 at this point --

7 MR. WELLINGTON: That's fine, Your

8 Honor.

9 THE COURT: -- does it make sense

10 to cut it here?

11 MR. WELLINGTON: Your Honor, that's

12 fine. I expect I have another 20 minutes with him on

13 direct and they're going to have some

14 cross-examination. So that's fine.

15 THE COURT: Sure. I think we all

16 might be fresher if we picked it up at 9:30 in the

17 morning, so why don't we do that.

18 (Discussion off the record.)

19 MR. WELLINGTON: In terms of moving
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20 exhibits into evidence, it would generally be my
21 intention at the end of the day to do that, unless Your
22 Honor has a different preference.

23 THE COURT: I let the lawyers
24 decide how they want it. Some lawyers like to do it
25 with each one as they go. Some like to do it at the

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2 end of their case. You're suggesting an interim
3 approach. It doesn't matter to me.

4 MR. WELLINGTON: Your Honor, let me
5 collect them. We'll do it first thing in the morning
6 for yesterday, and then we'll pick it up from there.
7 Thank you.

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THE COURT: Okay. 9:30, then.

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(At 4:29 p.m., proceedings were

10 adjourned until Wednesday, September 22, 2004, at 9:30

11 a.m.)

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C E R T I F I C A T E

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I hereby certify that the

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proceedings and evidence are contained fully and

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accurately in the notes taken by me in the above cause

7

and that this is a correct transcript of the same.

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Amy Beth Boyer, R. P. R.

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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