



Volume V

- - -

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

- - -

BEFORE: THE HONORABLE STANLEY R. OTT, JUDGE

- - -

1

COUNSEL APPEARED AS FOLLOWS:

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

Volume V  
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

- - -

1

1a

2

I N D E X

3

PETITIONER'S EVIDENCE

4

Witness

Voir Dire Direct Cross Redr Recr

5

MATTHEW J. SCHWENDERMANN

34

By Mr. Cyr

5

38

6

- - -

7

8

E X H I B I T S

9

PETITIONER'S

10

Number

Volume V

11	P-62	Deloitte & Touche Operating Expense and Revenue Analysis (9/22 Vol. I)	61
12			
13	P-63	Matthew Schwendeman Curriculum Vitae (9/22 Vol. I)	61
14		- - -	
15	INTERVENOR'S		
16	76	Sensitivity Analyses - General Attendance at Barnes	27 --
17			
18	77	Sensitivity Analyses - Unrestricted Endowment of \$50,000,000	30 --
19			
20		- - -	
21			
22			
23			
24			
25			

1

2

THE COURT: All right. Mr. Cyr,

3

when we're ready.

4

MR. WELLINGTON: Your Honor, we

5

have a witness logistics issue.

6

THE COURT: Okay. You want to

7

discuss it?

8

MR. WELLINGTON: I already have,

9

and I think they're not inclined to do it. I need to

10

check with a witness.

11

THE COURT: Do you need a break?

12

Go ahead.

13

MR. WELLINGTON: Just if you will

14

give me just a moment?

15

THE COURT: Sure. No problem.

16

MR. WELLINGTON: Thank you, Your

17 Honor.

18 THE COURT: You're okay?

19 MR. WELLINGTON: All right.

20 THE COURT: When you're ready,

21 Mr. Cyr, go ahead.

22 MR. CYR: Thank you.

23 CROSS EXAMINATION, CON'T

24 BY MR. CYR:

25 Q Mr. Schwenderman, switching to another subject,

1 SCHWENDERMAN - DIRECT 3

2 you would agree with me that your financial model

3 anticipates raising more than -- more than \$50 million

4 is going to be required in endowment, correct?

5 A The model assumes \$50 million in unrestricted

6 endowment is available.

7 Q Well, what I'm referring to, if you would turn to

8 Page 13 of your report, where you talk about Bridge

9 Financing and you talk about, at the very bottom, "The

10 Foundation is left with a requirement of \$2.1 million

11 to be raised over three years." Isn't that in addition

12 to the \$50 million?

13 A Yes, but it's not endowment. It's unrestricted

14 annual giving.

15 Q Okay. So it's another 2.1 that's required from

16 some source?

17 A Correct.

18 Q Okay. And so we can agree, can we not, that the

19 fundraising requirement for your 3-campus model are \$50

20 million to be raised for unrestricted endowment,

21 correct?

22 A Correct.

23 Q \$100 million for the capital building budget,

24 correct?

25 A Correct.

1 SCHWENDERMANN - DIRECT 4

2 Q And another \$2.1 million for bridge financing,

3 correct?

4 A Correct.

5 Q All right. And then when you're open, post

6 opening -- so the total is actually 152.1, correct,

7 that has to be raised?

8 A Yes.

9 Q A hundred and fifty-two million.

10 THE COURT: Raised or contributed.

11 THE WITNESS: Contributed. To put

12 it into context, the 2.1 million, over a 3-year period,

13 is comparable to the 1.5 million annually that they're

14 receiving. So it actually is a reduction over a 3-year



15 period of 2.4 million.

16 THE COURT: Assuming --

17 THE WITNESS: Assuming the one

18 point --

19 THE COURT: -- the person who wants

20 to do that --

21 THE WITNESS: Correct.

22 THE COURT: -- is willing to

23 continue to do it?

24 THE WITNESS: That's correct. And

25 I believe we noted in there that they needed to receive

1 SCHWENDERMANN - DIRECT 5

2 that bridge financing in order to make this go.

3 BY MR. CYR:

4 Q And then going forward in the normalized years,

5 you project 4.25 million in annual development,

6 correct?

7 A Correct.

8 Q You have the quarter million dollars in there for  
9 the annual gala, correct?

10 A Yes. That's the gross number. I think for the  
11 annual gala we assumed that Barnes would only net  
12 probably about 40 percent or something of that. So if  
13 you were to replace it dollar-for-dollar, it would be  
14 more like 100,000.

15 Q All right. And then we have capital replacement  
16 budget and we talked about the fact that going forward,  
17 none of your calculations take into account anything  
18 that's required for capital replacement budget,  
19 correct?

20 A That's correct.

21 Q Changing exhibit budget, the same thing? There is

22 no calculation or specification in your model for funds

23 you need for that, correct?

24 A If it is needed, there is no assumption around

25 what that is, correct.

1 SCHWENDERMANN - DIRECT 6

2 Q Now, your model projects various visitor rates at

3 the three locations, correct?

4 A That's correct.

5 Q Okay. One of which is Ker-Feal, correct?

6 A Yes.

7 Q All right. And you don't have this listed in your

8 report, but you have assumptions in there about how you

9 can calculate the visitors, correct?

10 A That's correct.

11 Q All right. And you would agree with me, if you

12 could turn to -- well, have you found it in your report

13 where you go through the assumptions?

Volume V

14 A Yes.

15 Q All right. And you would agree with me the

16 assumptions listed here is that you'll have 6,240 at

17 Ker-Feal and 2,500 students at \$5 a head, and that's

18 going to generate \$43,700 in income, correct?

19 A That sounds about right.

20 Q All right. You'll have special events. You have

21 8 there, 2,000 a head for an event, for 16.

22 You don't have any specification

23 for education income.

24 You have some gallery shop income

25 listed there.

1 SCHWENDERMANN - DIRECT 7

2 A Well, I don't have any numbers in the assumptions

3 that you could calculate it on its own, but yes, we did

4 have an assumption for education income that I believe

Volume V

5 was somewhere in the neighborhood of maybe \$130,000.

6 Q And where is that located in the report?

7 A On Page 38, Income-Related Assumptions. It says

8 under Education, new programs include summer camps,

9 adult workshops, and informal programs. All are new

10 offerings. Programs assumed enrollment rate at 50

11 percent of capacity.

12 Q But you don't have any numbers there that could

13 calculate education income?

14 A Well, not that you could calculate from that

15 specific line item, but in the model there are

16 education related dollars to Ker-Feal.

17 Q All right. And, I'm sorry, could you give me a

18 number for what you thought that would be?

19 A I think it's relatively the same as the visitor

20 number, probably in the 75,000 to 100 range. But I

21 think that may include -- let me put it another way.

22 I think it includes the students as

23 part of the education number, and therefore the

24 education number is about 100, and the balance is about

25 50. Total revenues for Ker-Feal are somewhere in the

1 SCHWENDERMANN - DIRECT 8

2 \$150,000 range.

3 Q All right. So the total revenue from Ker-Feal is

4 about 150,000?

5 A That's correct.

6 THE COURT: Excuse my interruption,

7 but that number, that's in full operation?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 THE WITNESS: That's years two and

11 three.

12 THE COURT: Okay. Thank you.

13 BY MR. CYR:

14 Q In the model?

15 A Yes.

16 Q The model assumes that that starts in the second  
17 year.

18 A Actually, Ker-Feal starts in year minus one, so  
19 Ker-Feal, I think for the assumption of the model, is  
20 up in full capacity in the move year, year zero.

21 So, looking at the numbers in the  
22 move year, year zero, they are almost exclusively  
23 Ker-Feal and the arboretum. And I would say that in  
24 large part, it's about 50 percent Ker-Feal, 50 percent  
25 arboretum. The arboretum becomes a more significant

1 SCHWENDERMANN - DIRECT 9

2 factor the next year after that's open for a full year

3 and the gallery is in Center City.

4 Q We'll get to the arboretum.

5 Now, is it not true that there is

6 no place in the 3-campus model that allocates any

7 capital requirements for opening Ker-Feal, correct?

8 A The assumption is that Ker-Feal will open only as

9 certain unrestricted or contemplated capital funds are

10 actually received from the township and other sources.

11 So Ker-Feal, as it is modeled here, is an

12 as-the-money-is-available scenario. And, in fact, the

13 expenses associated with Ker-Feal are roughly 150,000,

14 as well.

15 So, you know, if we took it out of

16 the equation, it would certainly diminish the education

17 offerings of the organization, but it would not

18 materially impact the net number.



19 Q But you would agree with me that there are  
20 additional capital requirements to open Ker-Feal that  
21 aren't accounted for in the 150 or \$152 million  
22 projections, correct?

23 A Yeah. And I think the range of what was  
24 communicated to Deloitte was that in a 50- to \$150,000  
25 range, and that they were pursuing restricted grants

1 SCHWENDERMANN - DIRECT 10

2 for that.

3 Q And who told you that?

4 A Ms. Camp.

5 Q Did you verify that by looking at any cost  
6 projections or assessment of the physical plant?

7 A She referred to a study that had been done about  
8 some of the work that was needed there. But  
9 considering the fact that we were modelling Ker-Feal in

10 a near break-even position, we decided not to do any  
11 additional work.

12 Q Did you see that study?

13 A No, I didn't.

14 Q Then we have the Merion arboretum, correct?

15 A That's correct.

16 Q Right. And that, I did some more calculations.

17 And again, based upon your figures or your assumptions,

18 we'd have 16,320 adults, 1,500 students, \$5 a head,

19 that gives us roughly revenue of 89,000, correct?

20 A Give me a second to validate that.

21 Q Would you like a calculator?

22 A No. I want to make sure that 16,000 adults is

23 what I would remember it to be --

24 Q All right.

25 A -- based on the numbers that are here.

1 SCHWENDERMANN - DIRECT 11

2 That appears about right.

3 Q All right. That is the number of students and  
4 adult visitors, right, according to the assumptions?

5 A Yeah. They're certainly in order of magnitude,  
6 right.

7 Q And that would generate 89,000. We don't have a  
8 figure here for education.

9 A Well, similar to what we have for Ker-Feal. The  
10 horticulture program remains intact and we would add  
11 programs. The current horticulture program has

12 approximately 62 students enrolled. The estimate was  
13 that that would double. So you would have  
14 approximately 125,000 students, and I think they pay  
15 about \$1,000 per year. I'm not positive of that. And  
16 then there are additional programs on top of that. So  
17 education-related income at Merion is probably in the  
18 150- to \$200,000 range.

19 Q All right. Okay. Then we have parking lot income  
20 and gallery shop income. So if we add 150 to the 160,  
21 we would get about 310,000; is that right?

22 A 310,000 to 360,000 is the range.

23 Q Okay. Did you make any assessment as to how that  
24 would balance with the expenses associated with the  
25 Merion arboretum?

1 SCHWENDERMANN - DIRECT

12

2 A No, not a specific one.

Volume V

3 Q Can you make any type of assessment as to whether  
4 the expenses associated with running the facility in  
5 Merion would equal or come anywhere close to \$310,000  
6 in revenue?

7 A Just on, you know, general background in running a  
8 not-for-profit, that 310,000 represents earned income  
9 only, and therefore there is no development income of  
10 the 4.25 million in the model allocated to that, nor  
11 are no members allocated to that.

12 So some percentage of that would  
13 need to be added on top of the 350,000 to determine the  
14 total revenue associated with the arboretum and then  
15 compare it to an activity costing model, where we would  
16 actually have to take the cost of the Barnes in  
17 aggregate and allocate percentages to different  
18 locations. Based on scope and time considerations, we

19 did not do that.

20 Q So you don't know whether 310,000 comes anywhere

21 near to meeting the expenses associated with the Merion

22 facility?

23 A I believe that the 350,000 would cover the

24 incremental costs associated with adding new education

25 programs, because the methodology used is that

1 SCHWENDERMANN - DIRECT 13

2 education programs additional, visitor programs were

3 not added unless the revenue associated with it could

4 cover the incremental costs. So I'd feel pretty

5 comfortable that if we did that analysis, that that

6 would be the answer we'd find.

7 I also feel pretty comfortable that

8 if we allocated every operating cost to Merion just for

9 arboretum operations, that you would require some level

10 of fundraising income to balance -- and endowment  
11 income to balance those operations. And that was  
12 validated by the benchmarking we did with the four  
13 arboretums.

14 Q So in addition to all the other fundraising  
15 requirements, it's your testimony or your prediction  
16 that there would have to be additional fundraising  
17 necessary to keep the operations going in the Merion  
18 facility?

19 A No, that's not at all. My testimony is that on  
20 a consolidated 3-campus model, there is a requirement  
21 in the financial projection of 4.25 million in  
22 memberships and fundraising. If you were to strip out  
23 and assume Merion operated on a stand-alone basis only  
24 as an arboretum, some percentage of that 4.25 million  
25 would need to be raised by this separate arboretum

1

SCHWENDERMAN - DIRECT

14

2 facility to balance their operations.

3

In essence, you know, in my

4 opinion, having the 3-campus model shown the way it is,

5 you're, in likelihood, generating some level of synergy

6 for the administrative and overhead costs that would

7 run. If you wanted to strip Merion out separately and

8 run it as a scholarly research center and as an

9 arboretum as it's contemplated, it would need its own

10 executive director, it would need its own finance

11 staff, it would need its own security, et cetera. The

12 consolidated model assumes that they're all together,

13 that that management staff is running all three

14 facilities.

15 Q Okay.

16 A So the 4.25 million supports all three campuses.



17 Q Now, I've done some calculations here. If we  
18 compare the visitors that are currently, in 2003,  
19 according to your calculations on the consolidated  
20 financial statement, there were 56,834 visitors in  
21 Merion in 2003, correct?

22 A Yeah. That's about right.

23 Q Right. And there are 6,000 K-12 visitors,  
24 correct?

25 A Correct.

1 SCHWENDERMANN - DIRECT 15

2 Q And there were 168 students. All right. And then  
3 if we go --

4 A Formal education program students, correct.

5 Q In post-opening years, we have 200,760. And this  
6 is in the year after the opening?

7 A That's correct.

8 Q And that's if you add the Merion facility, the  
9 Ker-Feal, and the Center City location, correct?

10 A That's correct.

11 Q All right. And we have 20,000 visitors and we  
12 have -- so that's a substantial increase over what you  
13 currently have now?

14 A Yes. We actually have a chart in the report which  
15 shows those increases for visitors, K-12 visitors, and  
16 total education programs offered in main gallery access  
17 increases, all those percentage.

18 THE COURT: Which chart are you  
19 referring to?

20 THE WITNESS: Page 10.

21 THE COURT: Oh, your graph?

22 THE WITNESS: Yes. Sorry. Graph.

23 BY MR. CYR:

24 Q Now, again, just so we're clear, your calculations

25 were 200,760 visitors, correct?

1 SCHWENDERMANN - DIRECT 16

2 A Total general visitors for all three campuses.

3 Q All right. And I guess I wanted to see how you

4 got to that number.

5 A Okay.

6 Q All right. If we look at Page 30 of your

7 report -- I'm sorry. I'm sorry. Page 31.

8 That tells us the public visitation

9 was increased to 42 hours per week, and I will put that

10 up. So this is from your report, and you see public

11 visitation is 42 hours per week, right?

12 A That's correct.

13 Q And the gallery is limited to a hundred visitors

14 per hour?

Volume V

15 A That's 100 visitors are admitted per hour.

16 Q Right. And then in year two, you have 80 percent

17 of capacity, right?

18 A Correct.

19 Q All right. So if we -- why don't we do the

20 calculations. So, we have 42 hours times 52 weeks, 100

21 visitor limitation per hour?

22 A Umm-hmm.

23 Q Times 100, we get 218,400, right? Does that math

24 look right?

25 A That one, I would need a calculator for.

1 SCHWENDERMANN - DIRECT 17

2 Q Why don't I give you one so you can follow along.

3 I took this out of my son's bookbag this morning before

4 he went to school. That's the best I could do.

5 A Texas Instruments. That's good.

Volume V  
That math is 218. That's correct.

6

7 Q All right. So then if we take 218,400 visitors

8 times 80 percent, which is what your assumption says,

9 we should get what?

10 A That math is about 174,000.

11 Q 174,720?

12 A Um-hmm.

13 Q Is that right?

14 A Um-hmm.

15 Q Okay. Now, your model uses 200,760 visitors,

16 right?

17 A Umm-hmm.

18 Q And Merion has how many visitors?

19 A I believe the number you had was 16,320.

20 Q All right. Okay. And Ker-Feal had how many?

21 A Your number was roughly 6,300.

22 Q 6,240?

23 A Right.

24 Q And so we get what, 178,200?

25 A Umm-hmm.

1 SCHWENDERMANN - DIRECT 18

2 Q Okay. Is that right?

3 A Yup.

4 Q Okay. Well, that number, obviously, is different

5 than this number, correct?

6 THE COURT: You need a student

7 number.

8 THE WITNESS: Yes.

9 MR. CYR: Excuse me?

10 THE COURT: You need a student

11 number also.

12 MR. CYR: That includes the

13 students.

14 THE COURT: Does it?

15 MR. CYR: Yes.

16 BY MR. CYR:

17 Q So this number is different than that number,

18 correct?

19 A Yes.

20 Q So you would agree that your assumption is off by

21 approximately 4,000 visitors?

22 A No. What I would agree is that what's written in

23 the text doesn't accurately represent all of the

24 detailed calculations. The way we calculated the

25 attendance at Center City is the Barnes gave us a

1 SCHWENDERMANN - DIRECT 19

2 projected schedule which would have general visitor

3 hours and dedicated education hours and event hours.

4 They're likely that it would be across 51 weeks, the  
Page 31

Volume V

5 calculation, because there would be 5 days a year that  
6 the Barnes would be closed. There are particular times  
7 where they would be able to admit people -- there is  
8 changeover time between the education and the casual  
9 visitor time where they could admit people. And I am  
10 also not sure if the 222,000 includes the K-12 or not.  
11 The K-12, although it's represented as a separate  
12 attendance, does not necessarily have to happen at a  
13 separate time of the day because they could have  
14 classrooms, etc.

15 So, in general, I would say that to  
16 do the basic math that's there, yes, it's different by  
17 4,000 people. That, in total, could be something less  
18 than a \$50,000 deviation on the bottom line. If you  
19 wanted me, if I needed to, I could go back into the



20 very detailed capacity model that we worked up that got

21 to the 222,000 visitors.

22 Q Well, we did the math with, you know, the best

23 case scenario times 52 weeks, and we came up with

24 174,000. And the assumption is 178,000. So, if

25 anything, this number would be lower, leading to a

1 SCHWENDERMANN - DIRECT 20

2 wider disparity, wouldn't it?

3 A What I'm saying is the way the Barnes would queue

4 up individuals and the way they would potentially serve

5 the public would not impede upon the 80-percent

6 capacity, but could provide for I think our assumption

7 is about 179,000 visitors. So, potentially, 5,000 more

8 people over the course of 360 days.

9 Q Now, Mr. Schwenderman, I did the arithmetic and

10 I'll hand this up to you. But if we assume you were

11 off by 4,000 visitors, according to your assumptions,

12 you're losing about \$40,000 in income?

13 A Um-hmm.

14 Q In the interest of time, I won't go through all

15 these calculations. I'll just demonstrate we took

16 visitors at Ker-Feal, adults and students. We took the

17 total admission fee and generated revenue. We included

18 the audio tours in there. And we came up with a figure

19 of roughly \$2.2 million for all the visitors.

20 A Okay.

21 Q We did it on 4,000 more visitors. We generated

22 roughly -- we generate 2.271, with a \$40,000

23 difference.

24 A Um-hmm.

25 Q So, at least as the assumptions are stated, it

1

SCHWENDERMANN - DIRECT

21

2 appears that the model is off by \$40,000.

Volume V

3 A As your calculation goes, the model would differ  
4 by \$40,000 in gross income. There would be associated  
5 expenses that would bring that \$40,000 down, and again  
6 that's assuming that your calculation of attendance  
7 is --

8 Q Well, that's --

9 A -- the same as ours would be if we recalculated it  
10 in our capacity.

11 Q You agree that \$45,000 would wipe out the \$25,000  
12 and lead to a deficit, correct?

13 A Actually, if I -- I would have to, A, apply  
14 operating expenses. And if it did, in my opinion, if I  
15 took your analysis and went from a \$25,000 surplus in  
16 this report to a \$15,000 deficit in this report, I  
17 would consider that break-even operating conditions for  
18 the scope of this report and the considerations of this

19 report.

20 So, while for the purposes of this  
21 testimony I will work from your analysis, I don't think  
22 that would materially affect my report, nor would it  
23 change my assumption that this report represents  
24 break-even results.

25 Q You state your assumption is that there is a

1 SCHWENDERMANN - DIRECT 22

2 blended rate of \$9, and I believe you testified to  
3 that?

4 A In Center City, correct.

5 Q All right. And that blended rate would reflect a  
6 figure, sort of a sticker price of roughly 30 percent  
7 more?

8 A That's --

9 Q Are we talking about \$12 a ticket?

Volume V

10 A That would most likely be -- that is a market

11 range that we got out of our analysis, yes.

12 Q Okay. So that would be \$7 over the current price

13 of the ticket in the Merion location?

14 A Correct.

15 Q All right. Mr. Schwenderman, are you familiar

16 with something called a sensitivity analysis?

17 A I'm familiar with the term.

18 Q And that generally stands for the fact that if

19 some numbers change on a small magnitude, one part of a

20 financial model can lead to a large swing in another

21 part of the model?

22 A That's one way to describe a sensitivity analysis,

23 yes.

24 Q All right. It just so happens I did some

25 sensitivity analyses of some numbers here.

2 THE COURT: General question,

3 Mr. Cyr.

4 And I'll hear you in just a moment,

5 Mr. Wellington.

6 THE COURT: You've been using a lot  
7 of demonstrative exhibits that you have prepared. Of  
8 course there is nothing wrong with that, especially  
9 these points, as I understand it, they're simply taking  
10 figures from various exhibits used by the Foundation  
11 and putting them together for analysis purposes. No  
12 problem. But my question to you is, are the documents  
13 that you're using numbered exhibits in your binder?

14 MR. CYR: We'll be marking them,  
15 Your Honor. They're not in the binder currently.

16 THE COURT: Okay. And that's my

17 concern, because to the extent that the record will  
18 reflect that you're looking at something that hasn't  
19 been numbered, I have to worry about whether the record  
20 makes sense. Do you follow where I'm going?

21 MR. CYR: Okay. I understand.

22 THE COURT: And I have no problem  
23 with your using demonstrative exhibits that you've  
24 created from numbers cold from other exhibits. I do  
25 think, however, that when you're using them, we ought

1 SCHWENDERMANN - DIRECT 24

2 to have a number assigned, either a preassigned number  
3 or one that you're giving it now. So that when someone  
4 tries to read this transcript, they'll know what  
5 numbered exhibits you were looking at. Does that make  
6 some sense?

7 MR. CYR: Yeah. Point well-taken.

8 And I guess I can meet with the court reporter and we  
9 can go through and we'll assign numbers.

10 THE COURT: Well, you're talking  
11 about how you're going to deal with ones you've already  
12 used.

13 MR. CYR: Right.

14 THE COURT: Let's use this as a  
15 break point and begin assigning numbers to any new one,  
16 including the one I think you were just about to use.

17 Now, Mr. Wellington, I don't know  
18 if you're on your feet to address that very issue, but  
19 go ahead.

20 MR. WELLINGTON: I have two things  
21 to address, Your Honor. Thus far in this hearing,  
22 counsel has not provided us with any copy of any  
23 exhibit that they've shown to a witness on



24 cross-examination, and I would request that we now be  
25 provided with everything that they have used, as we're  
1 SCHWENDERMANN - DIRECT 25  
2 entitled to, and that in the future, they have to give  
3 us the professional courtesy of handing us a copy as  
4 they are using it with the witness.

5 THE COURT: Okay.

6 You will agree to that, will you  
7 not?

8 MR. CYR: Absolutely.

9 MR. WELLINGTON: Could I have a  
10 copy of this one?

11 MR. CYR: Sure. Absolutely.

12 MR. WELLINGTON: And, secondly, as  
13 Your Honor said, it's proper cross-examination for them  
14 to assemble certain numbers and question witnesses

15 about them. And that's fine, I have no objection to  
16 any of that. Where Mr. Cyr says that he has done a  
17 sensitivity analysis, we are now into counsel  
18 testifying.

19 THE COURT: Well --

20 MR. WELLINGTON: And so I have an  
21 objection to --

22 THE COURT: I understand the  
23 distinction that you're asking, however, I have an  
24 expert on the stand. And the rules for  
25 cross-examination of experts is, as you know, somewhat

1 SCHWENDERMANN - DIRECT 26

2 different from a lay witness. And so far, I haven't  
3 been at all convinced that Mr. Schwenderman can't  
4 handle himself with respect to anything that's asked.  
5 If there starts to be a debate between them as to the

6 proper use of terms, et cetera, I think we can deal  
7 with that. But regardless of how Mr. Cyr chooses to  
8 phrase his question, it's still no more than asking for  
9 a reply from the witness. The question doesn't create  
10 the evidence; the response does, right?

11 MR. WELLINGTON: I'm not sure about  
12 that last, but I understand where Your Honor is coming  
13 on this. Thank you.

14 THE COURT: I think we're okay. I  
15 don't want to chill you from objecting if you think we  
16 crossed a line, but I don't think he's crossed it yet.  
17 And until I think that the expert is being bullied,  
18 which I don't think is likely to happen here, I'm not  
19 worried.

20 MR. WELLINGTON: Thank you, Your  
21 Honor.

22 THE COURT: All right.

23 Go ahead.

24 MR. CYR: What is our last exhibit

25 number, so I can start?

1 SCHWENDERMANN - DIRECT 27

2 THE COURT: In the binder, it's 75.

3 MR. CYR: Okay. I'll make this 76.

4 (Photocopy of Sensitivity Analyses

5 - General Attendance at Barnes marked Exhibit 76 for

6 identification.)

7 BY MR. CYR:

8 Q Mr. Schwenderman, I have done some calculations

9 here and you would agree with me that your report

10 assumes the blended rate for \$9 for the Barnes's Center

11 City facility, correct?

12 A Yes.

13 Q And if we -- you would agree by virtue of the  
14 arithmetic that it takes 2,778 visitors to generate  
15 25,000 in visitor revenue, just based on the ticket  
16 price, correct?

17 A It takes 2,778 visitors to generate gross revenue  
18 of 25,000 off the ticket price.

19 The actual number of visitors  
20 required to generate the \$25,000 surplus is something  
21 different, because you need to take the entire per  
22 capital on the visitor, as well as the various expenses  
23 associated with that visitor.

24 Q And we can agree that your report assumes that the  
25 Barnes facility would be open 42 hours a week, 52 weeks

1 SCHWENDERMANN - DIRECT 28

2 a year, for an annual aggregate of 2,184 hours,

3 correct?

4 A Close enough.

5 Q All right. So if we divide the number of excess

6 visitors into the number of visitors, we come up with a

7 figure of 1.27 visitors per hour, which represent the

8 number needed to generate \$25,000 in income, correct?

9 A I'd be hard-pressed to agree with that as a

10 definitive number that would change the deficit or

11 surplus based on this calculation. I would also say

12 that you could take any individual line item in the

13 report and do a calculation like that, unlike

14 Mr. Perks' report which has a specific contingency

15 line. You know, there is a specific -- there is an  
16 amount of estimation, each individual line item in the  
17 analysis.

18 Q Well, I guess the point here is that if the  
19 analysis is off 1.27 visitors per hour, then the model  
20 doesn't break even, correct?

21 A And I think I've testified that I don't agree with  
22 that. I think I agree with the fact that if the model,  
23 if it's off 1.27 visitors per hour, the admissions  
24 revenue changes by \$25,000 per year, but the break-even  
25 scenario does not necessarily change.

1 SCHWENDERMANN - DIRECT 29

2 Q Okay.

3 THE COURT: For that to be the  
4 case, instead of all the other line items being  
5 estimates, they'd have to be actual numbers and be

6 exactly the same, right?

7 THE WITNESS: Right.

8 THE COURT: Then you'd agree with

9 what he says?

10 THE WITNESS: Correct.

11 BY MR. CYR:

12 Q The endowment income is based upon 5 percent of

13 \$50 million, correct?

14 A That's correct.

15 Q If that endowment income is slightly below 5

16 percent, then the endowment income will drop, correct?

17 A If the endowment income is less than 5 percent,

18 then the endowment income would drop?

19 Q I mean if the interest rate is applied to the

20 principal.

21 A If the Barnes selects a draw rate different than 5



22 percent, then 2.5 million would no longer be a valid  
23 number.

24 MR. CYR: The next exhibit will be  
25 77.

1 SCHWENDERMANN - DIRECT 30

2 (Photocopy of Sensitivity Analyses  
3 - Unrestricted Endowment of \$50,000,000 marked Exhibit  
4 77 for identification.)

5 BY MR. CYR:

6 Q Your report assumes that, as we just discussed,  
7 annual income at 5 percent on principal of 50 million,  
8 correct?

9 A That's correct.

10 MR. WELLINGTON: Mr. Barth didn't  
11 get a copy.

12 MR. CYR: (Handing.)

13 MR. BARTH: Thank you.

14 BY MR. CYR:

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

16 Mr. Schwenderman, if the interest rate dropped down to

17 not 5 percent, it was 4.94, just off by .06 percent,

18 the endowment income would be off \$550,000, correct?

19 A I would agree that your calculation is accurate

20 that if the draw rate is 4.94 percent and not 5

21 percent, that the difference would be what's

22 represented.

23 I guess what I'd like to make clear

24 is the 5 percent assumption is not an interest rate

25 generated by the endowment. The way the endowment

1 SCHWENDERMAN - DIRECT 31

2 process works is there is an unrestricted endowment of

3 \$50 million. The investment committee of an

4 organization establishes what that draw rate should be  
5 as a policy and then reviews that policy if not  
6 annually, on a quarterly basis, with their investment  
7 managers and with the Board. That takes into account a  
8 tremendous number of factors: The current market  
9 situation regarding investments; whether they're  
10 investing for a long-term appreciation, current income,  
11 or a combination; as well as the prospect of generating  
12 additional endowment gifts in the future.

13 So I think, in my opinion, that at  
14 this level of analysis, that it's not a detailed  
15 business plan, that it is a financial analysis. Using  
16 5 percent, which estimates a long-term approach to  
17 managing an endowment from a draw rate, is appropriate.  
18 And, in general, if you use long-term indicators of  
19 that, that would still, over a 20-, 30-year period,

20 provide somewhere in the 2- to 3-percent growth rate to  
21 the endowment, as well, which we have not assumed in  
22 here because I would not feel it was prudent to assume  
23 that the endowment would grow.

24 Q You raise an interesting subject. Are you aware  
25 of any studies that suggest that a 5-percent draw does

1 SCHWENDERMANN - DIRECT 32

2 not allow you to sustain the principal?

3 A No, I am not.

4 THE COURT: I'm sorry. I didn't

5 hear the end of that. Would not allow you to?

6 MR. CYR: To sustain the principal.

7 THE WITNESS: No, I'm not.

8 BY MR. CYR:

9 Q Are you aware of any statistics in that regard?

10 A No, I'm not.

11 Q So you don't know one way or the other whether a  
12 5-percent draw would allow you to maintain your  
13 original principal?

14 A What we used for the 5 percent was we used  
15 representation of the Barnes as to what they most  
16 likely thought they would use. We used the  
17 benchmarking numbers, as was shared with you earlier.  
18 And I applied my own experience in managing an  
19 endowment at the Zoological Society, at which we used,  
20 on average, a 5-percent draw.

21 Q And we need it to maintain the principal at a  
22 5-percent draw?

23 A Actually, during my tenure as vice president and  
24 senior vice president, the endowment grew, I believe,  
25 from 3.9 to approximately \$8 million.

2 Q And was that due to market conditions?  
Page 53

3 A It was due to a combination of market conditions  
4 and investing, gifts, and management of the draw rate.

5 THE COURT: And it was the  
6 nineties.

7 THE WITNESS: But we did have to  
8 move most of it --

9 THE COURT: And good management.

10 THE WITNESS: -- fixed management.

11 THE COURT: I heard you.

12 THE WITNESS: Thank you.

13 BY MR. CYR:

14 Q Well, Mr. Schwenderman, you would agree with me  
15 that if some or all of these projections are slightly  
16 off, that the \$25,000 surplus will turn into a deficit,  
17 correct?

18 A No, because they could be off in the other  
19 direction. What we attempted at that Barnes's request  
20 was to present an estimate that was more of a midpoint  
21 estimate and not an aggressive or a conservative  
22 estimate. So, you know, certainly if one of the  
23 expenses ended up being higher or the income being  
24 lower, that could increase the deficit. If the Barnes  
25 was able to raise \$5 million or was able to fill all of

1

34

2 their new education programs, their income would go up  
3 and their expense would not.

4 So what I feel comfortable in is  
5 that this is a reasonable estimate of the impact of  
6 adding a location and programming of the size that's  
7 currently contemplated with the detail that's available  
8 and what would happen to the revenues and expenses.

9

10 have.

11 THE COURT: Redirect,

12 Mr. Wellington?

13 MR. WELLINGTON: I have not much,

14 Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WELLINGTON:

17 Q Mr. Schwenderman, like Mr. Cyr, I'm a lawyer by  
18 default due to math deficiencies, but just tell me. On  
19 this last chart that he showed you, what I get is that  
20 0.494 would produce a \$30,000 difference in draw and  
21 that this is a different calculation down here to get  
22 the half a million?

23 A Yes.

24 Q So even the assumption here of the .06 wouldn't



25 reduce much in a draw rate, would it?

1

SCHWENDERMANN - REDIRECT

35

2 A No, it would not.

3 Q There have been -- rather than go back over all of

4 the visitor numbers, the difference between -- I think

5 you were right that the difference between the 52 weeks

6 is really one assumption of one week, 51 weeks, because

7 of certain closed days.

8 Are you still -- even after the

9 numbers that Mr. Cyr gave you, do you still continue to

10 believe that your estimates on attendance are

11 reasonable?

12 A Yes, I do.

13 Q And I want to go back to this document he started

14 with you on a little bit, the overview of the financial

15 condition in 2002. This is the cover page of that?

16 A Yes.

17 Q And we don't need to go through all of this, but  
18 tell us what was Deloitte's charge in preparing this  
19 analysis for the Foundation?

20 A The ultimate scope in charge was to give the  
21 Foundation a detailed analysis of their current cash as  
22 of approximately June, 2002, the current monthly burn  
23 rate of working capital, and how long their available  
24 cash would last. That yielded an estimate that they

25 would be out of cash somewhere in the neighborhood of

1 SCHWENDERMANN - REDIRECT 36

2 January, 2003, at which point they asked us to work  
3 with them in management to run that same analysis out  
4 two more years under three scenarios in which they  
5 provided us guidance on what we should include in the  
6 scenarios.

7 Q And if -- let me find the right page here. That

8 analysis at the time you prepared it in mid '02 showed  
9 that, did it not -- I'm looking at Page 17 of this  
10 report -- that in the current situation with the  
11 assumption that they were living with and had provided  
12 to you, the end of that year, they would be down to  
13 what?

14 A Zero.

15 Q Essentially. And was it this analysis in your  
16 understanding that prompted the Barnes Foundation to go  
17 out and try to do some things to avoid that situation?

18 A My understanding was the Barnes had been dealing  
19 with this issue and that this analysis prompted them to  
20 consider more significant initiatives than, you know,  
21 some of the general operating initiatives they were  
22 trying to make work at Merion under the current  
23 situation.

24 Q And this was before bridge financing had been  
25 achieved to keep them afloat?

1 SCHWENDERMANN - REDIRECT 37

2 A Yes. We were not aware of any -- we were not  
3 aware that any bridge financing was available. We were  
4 only asked to quantify what that might be.

5 Q And at Page 26 of this report under the as-is  
6 scenario, you were directed to assume that grant  
7 monies, collection assessment funds would end at the  
8 end of '02, correct?

9 A That's correct.

10 Q And, in fact, if we go to Page 29, we see  
11 collection assessments at 960 and the assumption of  
12 what there?

13 A Zero.

14 Q Do you know, Mr. Schwenderman, in fact, that the  
Page 60

15 Barnes was able to obtain some collection assessments

16 in 2003 that helped change that bottom line?

17 A My understanding -- and I'd have to go back and

18 verify through my records, but my understanding is that

19 they were able to maintain those grants, or at least

20 some portion.

21 Q And do you know whether or not, contrary to what

22 the prediction was here, that at this time they were

23 able to obtain some funding to relieve some of the

24 professional fees, to support some of those

25 professional fees?

1 SCHWENDERMANN - RE CROSS 38

2 A Yes.

3 Q Is there anything in this -- again, I ask you this

4 in general before Mr. Cyr worked with you on it for a

5 little while. Is there anything in this 2002,

6 September overview of its current financial condition  
7 that is in your view inconsistent with the Deloitte  
8 report that you testified to in this proceeding?

9 A No. Considering what we were asked to do, no.

10 MR. WELLINGTON: I have nothing  
11 further.

12 Thank you, Mr. Schwenderman.

13 THE COURT: Mr. Barth?

14 MR. BARTH: Nothing, Your Honor.

15 THE COURT: Mr. Cyr?

16 RE-CROSS-EXAMINATION

17 BY MR. CYR:

18 Q Mr. Schwenderman, there is nothing consistent with  
19 the forecast in the Deloitte report of \$2.3 million, it  
20 turned out not to be the case, correct?

21 A That's correct.

22 Q It turned out, as was demonstrated at length, to  
23 be \$1.2 million, correct?

24 A Actually, results for the year was \$1.2 million.

25 Q So the forecast was off by a million dollars,

1 MATTHEW J. SCHWENDERMAN 39

2 correct?

3 A I wouldn't necessarily agree to it that way, but

4 the results were not \$2.3 million loss.

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

6 have.

7 THE COURT: Mr. Schwenderman, I

8 have just a few questions for you.

9 It certainly seems clear to me at

10 this point, but I don't know that you were actually

11 asked this question. Are you the author of this

12 report?

13 THE WITNESS: A large portion. I  
14 had three other consultants from Deloitte working with  
15 me on this.

16 THE COURT: Is it fair to assume  
17 that of the people at Deloitte, you know more about  
18 this analysis than anyone else?

19 THE WITNESS: I believe that to be  
20 true.

21 THE COURT: All right. Fair  
22 enough.

23 Is it proper to characterize this  
24 report as a pro forma?

25 THE WITNESS: Not in the way that  
1 MATTHEW J. SCHWENDERMANN 40

2 Deloitte would use that phrase.

3 THE COURT: Tell me how you would



4 use it. What's your working definition of a pro forma  
5 report?

6 THE WITNESS: For my firm's working  
7 definition of a pro forma requires certain specific  
8 things to be done in accordance with the American  
9 Institute of Certified Public Accountants. So, in  
10 order for Deloitte to issue something with the phrase  
11 pro forma on it, there is a number of reviews and a  
12 number of detailed steps that we have to do because  
13 often, a pro forma is used for financing by an  
14 organization --

15 THE COURT: And a lending  
16 institution --

17 THE WITNESS: Right.

18 THE COURT: -- wants to be assured  
19 that the standards were applied?

20 THE WITNESS: Right. So, the  
21 reason we refer to it as a financial analysis and an  
22 estimate is largely for the terms of art that Deloitte  
23 uses.

24 The way the Barnes requested a pro  
25 forma and what types of things they felt needed to be

1 MATTHEW J. SCHWENDERMANN 41

2 in there to solve or to answer the Court's request, we  
3 would call a financial analysis.

4 THE COURT: All right. From a  
5 practical standpoint, setting aside the rigid  
6 terminology of the standard, this is, in essence, a pro  
7 forma --

8 THE WITNESS: I think in the way  
9 that it was asked for by the Court, yes.

10 THE COURT: All right. There are

11 two areas of your report that I want to ask about. I

12 think the others have been covered very, very clearly.

13 Would you look at Page 30, Table 1?

14 Mr. Wellington, would you be kind

15 enough to put that up on the screen for me?

16 MR. WELLINGTON: Yes, Your Honor.

17 THE COURT: Thank you,

18 Mr. Merenstein.

19 I want to ask you about the first

20 line item under Expense, designated Salary, Wages, and

21 Benefits. Do you see that, sir?

22 THE WITNESS: Yes.

23 THE COURT: Preopening year is the

24 same as the 2004 budget, 2.226 million, agreed?

25 THE WITNESS: Correct.

1

MATTHEW J. SCHWENDERMANN

42

2

THE COURT: Then in year minus one,  
Page 67

3 it jumped to 3.873.

4 THE WITNESS: Correct.

5 THE COURT: Assume, if you will,

6 that that represents a 43-percent increase. I just

7 quickly did that math.

8 THE WITNESS: Right. I think

9 that's about right.

10 THE COURT: What do you attribute

11 that 43-percent jump to in that year?

12 THE WITNESS: It's primarily

13 attributed with bringing on board the additional staff

14 that will be required to operate the Center City

15 location and the expanded operations.

16 THE COURT: I'm assuming that what

17 you're talking about is the extra personnel required to

18 go from a 2-campus to a 3-campus model. Fair

19 statement?

20 THE WITNESS: Yes. And some of the

21 programs in that are expanded beyond what the Barnes

22 does today.

23 THE COURT: How detailed were the

24 calculations that made that up? And when I ask you

25 that, what I'm interested in knowing is did someone, to

1

MATTHEW J. SCHWENDERMANN

43

2 your knowledge, actually attempt to quantify the number

3 of new positions, characterize them in terms of job

4 description, et cetera, and then assign a salary level

5 to that with a cost for benefits, et cetera, or was

6 this simply a percentage figure that was used? How

7 real was it, as opposed to speculative?

8 THE WITNESS: I think it's closer

9 to your first --

10 THE COURT: Then it is the second.

11 THE WITNESS: -- scenario. While  
12 there aren't completely individual positions, there are  
13 a number of positions and groupings of positions by  
14 department.

15 As we mentioned, in the  
16 charrette -- we talked about the charrette -- one of  
17 the things was what would the staffing look like or be  
18 required to operate this model and what types of roles  
19 does the Barnes not have and, you know, how much would  
20 education need to increase, in terms of staff to  
21 support a doubling of the programs.

22 What Deloitte did once we had  
23 numbers that were, you know, reasonable enough to work  
24 with, we used two surveys. We used two points of data,

25 the AAMD Salary Survey, which is the American Art

1

MATTHEW J. SCHWENDERMANN

44

2 Museum Directors -- Association of Art Museum

3 Directors, sorry -- and we used the Bureau of Labor

4 Statistics for the Philadelphia metropolitan area.

5 Because some of the positions aren't --

6 THE COURT: Well, that helps you

7 with the dollar amount assigned to the position.

8 THE WITNESS: Right.

9 THE COURT: It doesn't necessarily

10 help you with the number of positions, right?

11 THE WITNESS: Right. So we looked

12 at the aggregate number of positions, but for the most

13 part -- you know, against some of the benchmarks, but

14 what we did was look at the types of positions, did

15 that make sense, we ran out the dollars, and then

16 looked at the percentage of salaries, wages, and

17 benefits to the total operating budget, which I believe  
18 is about 53 percent, you know, industry-wide, that can  
19 run from as low as 40 to as high as 70. In this  
20 market, it tends to be more of a 50 to 65 percent of  
21 the budget. And, you know, historically the Barnes has  
22 been in the fifty-ish range.

23 THE COURT: Is it fair for me to  
24 conclude from that last statement, then, that the  
25 amount projected for the increase in the salaries was

1 MATTHEW J. SCHWENDERMANN 45

2 most tied to a percentage of the overall projected  
3 increase in the operating budget, as opposed to trying  
4 to define the new positions that would be required?

5 THE WITNESS: Actually, we used the  
6 percentage to make sure that what was provided in terms  
7 of the types of positions and the number of positions



8 wasn't --

9 THE COURT: -- out of order.

10 THE WITNESS: -- too high or too

11 low.

12 THE COURT: It was a check on --

13 THE WITNESS: But we actually --

14 THE COURT: It was a check on the

15 other estimate, if you will.

16 THE WITNESS: Right. The

17 \$6 million comes from an actual, you know, how many

18 department managers do we think we might have in these

19 types of departments in running that out.

20 THE COURT: Okay.

21 THE WITNESS: So, that being a very

22 large number, we took a lot of time with that number,

23 obviously.

24 THE COURT: If you follow it one  
25 more year out, year zero by your terminology, you're up  
1 MATTHEW J. SCHWENDERMANN 46  
2 to 4.937. That's another 22 percent increase over the  
3 previous year.

4 THE WITNESS: Um-hmm.

5 THE COURT: And then you get into  
6 year one of opening year.

7 THE WITNESS: Um-hmm.

8 THE COURT: You're up to 6.426,  
9 which is again a 23-percent increase over the previous  
10 year. And if you compare the 6.426 to the 2.26, it's a  
11 65-percent overall increase.

12 THE WITNESS: Um-hmm.

13 THE COURT: Was there actually an  
14 attempt to determine which positions would go into

15 effect of in each of those years, or again, was this  
16 something that you were required to simply work on a  
17 percentage basis using other checks within models for?

18 THE WITNESS: It was a blend of the  
19 two. So, for instance, for the 6.426 versus the six  
20 million and one, that's clearly driven by the seasonal  
21 positions that are needed to accommodate more  
22 attendance.

23 For the ramp up between 2.2 to 6.4,  
24 that's predominantly management level positions, as is  
25 norm with opening a newer facility, and folks who are

1 MATTHEW J. SCHWENDERMANN 47

2 needed for the design, development of programs, PR, et  
3 cetera.

4 However, to get to the particular  
5 number, because at this point we don't know what phase

6 of construction they'd be in, we don't know how long it  
7 would take to develop marketing materials or  
8 development materials, we did use a percentage  
9 increase. I then went back and I spoke with the Chief  
10 Operating Officer of the National Constitution Center  
11 which recently opened and I asked him, based on his  
12 experience, you know, what percentage of his staff came  
13 on both in numbers of people and dollar percentages.  
14 And I also related it back to my experience when we  
15 assisted in opening the aquarium.

16 So the number was calculated as a  
17 percentage in that case because I didn't feel we had  
18 enough detail to specifically identify positions.

19 THE COURT: From your analysis,  
20 would I be correct in inferring that the most difficult  
21 aspect of making this work is the increased cost of

22 going from a 2- to a 3-campus model, in terms of salary  
23 and things related thereto?

24 THE WITNESS: In terms of what  
25 management would have to deal with, that would be a

1 MATTHEW J. SCHWENDERMAN 48

2 significant item. I think the other element is this  
3 really is -- you're really transforming the  
4 organization.

5 THE COURT: Clearly.

6 THE WITNESS: So I don't think, in  
7 looking at those expenses for a 3-campus model, that  
8 \$11 million is unreasonable. So it's managing the  
9 growth from 4 million to 11 million. That's critical.

10 And then, you know, obviously one  
11 of the reasons we were talking about development is  
12 because the ability to raise funds on an annual basis

13 to support an organization determines a lot of the  
14 operating decisions you make programmatically. And,  
15 you know, as we had discussions with the Barnes about  
16 what they would need to do on the 4.25, they felt I  
17 think comfortable presenting this -- I don't mean to  
18 speak for them -- because of the expansion of the  
19 Board, the expansion of the access, some of the things  
20 that they've been talking about.

21 THE COURT: It is self-evident that  
22 you can't run three campuses as easily or as cheaply as  
23 you can run two, and I imagine there are other  
24 inefficiencies of scale to some degree that exist with  
25 an administration in one location and perhaps your

1 MATTHEW J. SCHWENDERMANN 49

2 greatest operation going on in another. Even though  
3 Merion and Philadelphia are geographically close, there

4 are traffic congestion issues and all the rest.

5 How comfortable are you with your

6 overall calculation going from a 4 to an \$11 million

7 cost figure, expense figure?

8 THE WITNESS: Yeah. I think at

9 this stage for the program, what we know of the

10 program, what we know of the financial history of the

11 Barnes, what we're able to glean from the industry, you

12 know, I think Deloitte, myself obviously, we're

13 comfortable with that \$11.3 million. It's a

14 significant budget, but it's one that is reasonable for

15 a 3-campus model. I didn't feel as if this is too high

16 or too low. It could be higher, it could be lower,

17 depending on how the planning process works and how

18 much programming expands or contracts. You know, we

19 talked about a capital, you know, reserve. The amount

20 of that reserve is dependent on the size of the  
21 building and how much capital is done.

22 There are some inefficiencies in  
23 running a 3-campus model, without a doubt. I have had  
24 the experience of having to be finance director for the  
25 zoo and the aquarium simultaneously, and that's a very

1 MATTHEW J. SCHWENDERMANN 50

2 hard thing to manage. But there are also organizations  
3 -- I can think of the Audubon Institute in New Orleans  
4 is one -- where three organizations that -- the zoo,  
5 the aquarium, and the natural preserve, you know, they  
6 generate synergies in some of the things, in terms of  
7 some of the senior management structure, some of the  
8 applications and receipt of research grants and  
9 funding, because of what they can do working together.  
10 In some cases, they can minimize their marketing and



11 advertising expense in the aggregate by branding  
12 themselves together and offering themselves to the  
13 public together.

14 So it's certainly an increased  
15 challenge over two campuses, but I think the  
16 opportunities are there as much as the risk is there.

17 THE COURT: In the calculation of  
18 your numbers, were you given any parameters at all from  
19 anyone at the Barnes in terms of targets?

20 THE WITNESS: In terms of targets,  
21 no.

22 THE COURT: How about otherwise?

23 THE WITNESS: Well, there were a  
24 number of assumptions in here that we relied on  
25 representations of management.

1 MATTHEW J. SCHWENDERMANN 51

2 THE COURT: As stated.  
Page 81

3 THE WITNESS: And so it generates  
4 out that number.

5 THE COURT: I understand.

6 THE WITNESS: You know, we  
7 obviously had discussions with the Barnes Board with  
8 this report and what it meant, so that they were aware  
9 of what it was beforehand. But we weren't given a  
10 number in advance of what they wanted it to be at all.

11 THE COURT: All right. Let me talk  
12 to you a bit about the attendance numbers here, and I'd  
13 like to get a bit of a handle on that a little bit  
14 better than I have now.

15 And, Mr. Merenstein, if you could  
16 put up Page 42, which is Table 7?

17 I'm looking at the total visitors

18 line at the top for Barnes, year plus three, 220,760.

19 I have a little trouble figuring out how that relates  
20 to the number of 200,760 that I see in the others. Or  
21 is that just added to the K-12?

22 THE WITNESS: Yeah, that includes  
23 K-12.

24 THE COURT: Okay. Right. Okay.

25 Let's take that. As I understand it from looking at

1 MATTHEW J. SCHWENDERMANN 52

2 Table 7, this is based on an 80-percent full range?

3 THE WITNESS: It's 80 percent  
4 capacity in Center City, 40 percent in Merion, against  
5 the current 1,200 visitor limit, and 40 percent at  
6 Ker-Feal, based on what they think the property can  
7 handle.

8 THE COURT: That's a more accurate  
9 statement. But you agree with me that the real driving

10 force on this number is going to be the Center City  
11 location?

12 THE WITNESS: Yes.

13 THE COURT: And to the extent that  
14 you're off on your 80-percent capacity number there,  
15 that's much more significant than being off a certain  
16 percentage at Ker-Feal or Merion, agreed?

17 THE WITNESS: Correct.

18 THE COURT: Let's talk about that,  
19 then. The only thing that I can see here that would be  
20 a comparative number is found under Custom Survey  
21 Median for visitors per total square foot where it's  
22 .87 versus 1.28.

23 THE WITNESS: Right.

24 THE COURT: Are there any other

25 objective criteria that are included in this model,

1

MATTHEW J. SCHWENDERMANN

53

2 whether it's this table or another table, that helped

3 you come up with that 80-percent figure?

4

THE WITNESS: Yeah. We looked at a

5 number of things. We looked at 80 percent -- I mean, I

6 think clearly we were uncomfortable perpetuating Barnes

7 running at capacity for the gallery. They're running

8 at capacity --

9

THE COURT: That capacity is for a

10 reason.

11

THE WITNESS: Right. They run at

12 capacity now largely because of external constraints.

13 We looked at the general attractiveness of the

14 collection to the public. And in addition to the

15 survey that was done, we talked to other professionals

16 in the field, we talked to Gail Harri ty, the COO at the

17 Philadelphia Museum of Art. We talked to other  
18 individuals. We talked to people at the PCVB. You  
19 know, what's the level of attractiveness of this  
20 against some of the other Philadelphia locations as  
21 well as nationally, internationally. And, obviously,  
22 what keeps coming back is this is extremely unique and  
23 extremely significant.

24 THE COURT: Which is both good and  
25 bad. The good part is if it's extremely unique and

1 MATTHEW J. SCHWENDERMANN 54

2 significant, more people, presumably, want to see it.

3 THE WITNESS: Right.

4 THE COURT: It also makes it more  
5 difficult to project what those numbers are, right?

6 THE WITNESS: Correct. So then we,  
7 in addition to the custom survey, we looked at

Volume V

8 respondents of the custom survey. And those  
9 organizations that we wanted to respond to the full  
10 survey that didn't, we went out and tried to find out  
11 just what their attendance number is. It's like the  
12 Isabella Garden Museum (ph).

13 THE COURT: Well, that's the one  
14 that you hear most often compared, is it not?

15 THE WITNESS: Yes. And they do  
16 approximately 200,000 visitors per year.

17 THE COURT: What's the size of  
18 their facility, if you know?

19 THE WITNESS: I don't know, off the  
20 top of my head. But again, it's similar comparison,  
21 similar mission, very unique.

22 We also looked at education  
23 oriented institutions like the Philadelphia Academy of

24 Fine Arts, which does about 80 -- you know, I think the  
25 number fluctuates, but again, in confirming with some  
1 MATTHEW J. SCHWENDERMAN 55  
2 other folks, they were thinking that that was around  
3 80-, 90,000 a year. But those same people said, "But  
4 you can't compare the collection." The Academy of  
5 Natural Sciences, which is a Parkway organization of a  
6 similar size, similar revenue budget, does I think  
7 about 189,000 a year.

8 So, you know, I think the 1.28 is  
9 largely a virtue of the fact that the gallery is going  
10 to be replicated exactly as it is. If you took the  
11 square footage and you laid it out the way the  
12 Philadelphia Museum of Art lays out their collection  
13 and you had your through-put be to the density that the  
14 Barnes would experience at 100 per hour, your visitors



15 per square foot wouldn't change, but your capacity  
16 would be probably 50 percent because of the uniqueness  
17 of that layout. And so 180,000 --

18 THE COURT: It hampers your  
19 capacity?

20 THE WITNESS: Right. So 180,000  
21 could be a much less -- if you want to characterize it  
22 as aggressive, it would be much less aggressive if the  
23 Barnes did not opt to replicate the installation of the  
24 collection the way it is today.

25 THE COURT: The need to do that  
1 MATTHEW J. SCHWENDERMANN 56  
2 limits your projection?

3 THE WITNESS: Right. But I think,  
4 on the flip side, it makes it unique, right? It makes  
5 it something to come see, because you can't see it

6 anywhere else that way.

7 THE COURT: You've taken into

8 account at least in part the fact that there will be

9 the greatest interest in the first year?

10 THE WITNESS: Yes.

11 THE COURT: I imagine that would be

12 true regardless of the venue or the source of the

13 attraction?

14 THE WITNESS: Correct.

15 THE COURT: It's said to be true of

16 Citizen's Bank Park for next year.

17 THE WITNESS: Yes.

18 THE COURT: Assuming the product

19 doesn't change?

20 THE WITNESS: Yes.

21 THE COURT: How do you come up with

22 a ratio, though, to go from 22 to 200? How do you  
23 determine how much of a drop-off there is going to be,  
24 because the people most desirous of seeing this are  
25 going to rush off in the first year?

1 MATTHEW J. SCHWENDERMANN 57

2 THE WITNESS: And I think that's  
3 one of the elements that you'll have a much more  
4 accurate feel as you can tell people what the program  
5 is and start comparing it to other museums, other  
6 venues that have opened. You know, the 17-percent --

7 THE COURT: I understand it will be  
8 easier to predict it in the future, but for now, when  
9 you reduce it from 220 to 200, just a number?

10 THE WITNESS: I forget the numbers  
11 that the Constitution Center said they experienced this  
12 year versus what they expect to experience next year.

13 And we -- you know, in general, I'm used to hearing  
14 about 20-percent drop-offs and things of that nature.  
15 This is about a 17-percent drop-off. But I think a  
16 large part of that drop-off depends on what, to your  
17 point at Citizen's Bank Park, what the product is that  
18 you're offering in the first year. If the product  
19 offering that first year meets or exceeds the  
20 expectation, the drop-off isn't going to be as  
21 significant. I've referenced the aquarium a couple  
22 times today. The aquarium greatly exceeded its  
23 attendance and capacity in its first eight months of  
24 operation. I think they ran at a \$2 million or  
25 something surplus. But because the product didn't

1

MATTHEW J. SCHWENDERMANN

58

2 match the expectations of people who had been to the  
3 National Aquarium in Baltimore, they had a much more

4 significant drop-off.

5 THE COURT: A nonrepeat rate?

6 THE WITNESS: Right. And, you

7 know, because the location in Camden did not have the

8 children's garden and some of the other things that are

9 there now, you know, helped add to that.

10 In our opinion, in using the 17

11 percent was that, you know, much has been written and

12 known about the Barnes, that the experience itself

13 would not, we don't think, appreciably disappoint, and

14 there is a number of synergies with being on the

15 Parkway that don't exist if they were, for argument's

16 sake, put on Penn's Landing, with no similar -- you

17 know, if they were put down by the ball stadiums with

18 no synergies with other organizations, you know, you

19 won't get any spill-over effect.

20 THE COURT: Was there a demographic  
21 component to your calculation for attendance? And by  
22 that I mean did you or someone attempt to determine  
23 what portions of the visitors would be local, as  
24 opposed to travelers in the Philadelphia area?

25 THE WITNESS: There was not a

1 MATTHEW J. SCHWENDERMANN 59

2 specific analysis done to that. That would be a  
3 component of what you would do in the detailed market  
4 survey. The only thing we did was anecdotally take  
5 into account representations of, you know, venues such  
6 as the Sofatell (ph), the Visitors' Bureau, who have  
7 indicated that this is the most requested and  
8 sought-after attraction by the European visitor base.  
9 But the level of analysis here is not yet at the detail  
10 that you would actually break down those 200. The next

11 step in a business plan with a market study, you'd have  
12 local, you'd have tour groups, you'd have visiting,  
13 you'd have free, you'd have different age demographics  
14 by ticket price that they would pay.

15 THE COURT: I would assume, for  
16 instance, that the National Convention Center in Center  
17 City would have those breakdowns for its visitors,  
18 right?

19 THE WITNESS: Yes.

20 THE COURT: You did not look at  
21 theirs or any other organizations that you thought  
22 might be similar?

23 THE WITNESS: No, we did not go  
24 into that level of detail.

25 THE COURT: That's all I have.

1

PETITIONER'S EVIDENCE

60

2

Anything from you, Mr. Wellington?  
Page 95

3 Mr. Barth?

4 Mr. Cyr?

5 MR. CYR: No, Your Honor.

6 THE COURT: Thank you,

7 Mr. Schwenderman.

8 (Witness excused.)

9 - - -

10 THE COURT: It might be a good time

11 to cut it. What do you think? Okay. 9:30 work

12 tomorrow morning?

13 MR. WELLINGTON: Yes, Your Honor.

14 I would like to move two exhibits

15 that were identified today, the Exhibit 62, which is

16 the report of Deloitte Touche, and Exhibit 63,

17 Mr. Schwenderman's Curriculum Vitae.



18 THE COURT: All right. Any

19 objection, Mr. Barth, to either of those?

20 MR. BARTH: No objection, Your

21 Honor.

22 THE COURT: Mr. Cyr?

23 MR. CYR: No, Your Honor.

24 THE COURT: All right. Sixty-two

25 and sixty-three are admitted by agreement.

1 PETITIONER'S EVIDENCE 61

2 (Petitioner's Exhibits 62 and 63

3 received in evidence.)

4 THE COURT: We are adjourned until

5 9:30 a.m. Thank you.

6 (At 4:30 p.m., proceedings were

7 adjourned until Thursday, September 23, 2004, at 9:30

8 a.m.)

9 - - -

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

62

2

C E R T I F I C A T E

3

4

I hereby certify that the

5

proceedings and evidence are contained fully and

6

accurately in the notes taken by me in the above

7

cause and that this is a correct transcript of the  
Page 99

8 same.

9

10

11

12 Amy Beth Boyer, R. P. R.  
Official Court Reporter

13

- - -

14

15 Received and directed to be filed

16 this day of , 2004.

17

18

19

20

21 Stanley R. Ott, Judge

22

23

24

25