

Volume XI

VOLUME XI

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

- - -

IN RE: : NO. 58,788

THE BARNES FOUNDATION, :  
a corporation

:

- - -

Petition To Amend Charter and Bylaws

- - -

Courtroom A

Monday, September 27, 2004

Commencing at 1:15 p.m.

- - -

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

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- - -

BEFORE: THE HONORABLE STANLEY R. OTT, JUDGE

- - -

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COUNSEL APPEARED AS FOLLOWS:

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The Barnes Foundation

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for the Intervenors,

The Students of The Barnes Foundation

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2

I N D E X

3 INTERVENOR'S EVIDENCE

4 Witness                      Voir Dire Direct Cross Redr Recr

5 DEBRA J. FORCE                      2                      31

    By Mr. Wellington                      16                      36

6           By Mr Barth                      25

7 RICHARD L. FEIGEN                      38                      48

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E X H I B I T S

10

INTERVENOR' S

11

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1 FORCE - DIRECT 2

2 THE COURT: All right, Mr. Cyr.

3 MR. CYR: Thank you, Your Honor.

4 INTERVENOR'S EVIDENCE

5 - - -

6 DEBRA J. FORCE, resuming the

7 stand, was examined and testified as follows:

8 DIRECT EXAMINATION, CON'T

9 BY MR. CYR:

10 Q Ms. Force, I'd like to turn to another piece of

11 art that you appraised. I'd like to turn to the

12 Prendergast. Let me zoom in on this Landscape with

13 Figures. And similar to what you did before the break,

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14 if you could explain to the Court how you went about

15 appraising this particular piece?

16 A Well, again, I wanted to put it in context with

17 other paintings of the same period, and so I looked at

18 numerous examples. It was painted sometime between

19 1910 and 1915. This particular work is really a superb

20 example from his later period. And all of the Barnes

21 pictures that we're talking about are roughly after

22 1910 or 1907 or so, are considered the later work. The

23 earlier work is most of what people wanted,

24 watercolors, and he did mostly watercolors up to this

25 point.

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FORCE - DIRECT

3

2

But what makes this really  
Page 7

3 desirable is the fact that it has multiple figures in  
4 the foreground, which creates a sort of patterning  
5 effect. And then it's also along the waterside. And  
6 in these pictures, water seems to be very desirable as  
7 opposed to paintings that really have less evidence of  
8 water. It's also, I believe, a Massachusetts scene,  
9 and scenes painted there by Prendergast are quite  
10 desirable. And he did a lot of work on the coastline  
11 of Massachusetts, both in oil and watercolor.

12 This painting is also very  
13 important because it actually was in the Memorial  
14 Exhibition of Maurice Prendergast held at the Whitney  
15 in 1934. And retrospectives like that generally would  
16 include many of the artist's best works. And so of the  
17 group, as far as I know that I've been looking at



18 belonging to Barnes, this is the only one that was in  
19 that show, of the things I've seen. So that gives it  
20 somewhat more prominence and prestige.

21 Q Did you look at comparables for this particular  
22 painting?

23 A I did look at comparables.

24 Q Okay. Do you have any comparables that you'd like  
25 to show the Court?

1

FORCE - DIRECT

4

2 A Yes. I have two or three that I could show.

3 Q Okay.

4 A Now, this image is certainly faded out, because  
5 Prendergast's work, of course, is much more colorful  
6 than that routinely. This painting holds the record

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7 price for the artist for an oil. Keep in mind that one  
8 of his watercolors sold for almost \$4 million. A  
9 couple of years before 2003, when this was sold, for an  
10 oil, that was the top record. And you see that it  
11 realized a million nine.

12 Now, in comparing this with the  
13 Barnes picture, I mean, here, too, you do have multiple  
14 figures and they are along the waterside. But I think  
15 the elongated format, which is also frieze-like, is  
16 really less pleasing to most collectors than the size  
17 of the Barnes picture. So I find this somewhat less  
18 desirable.

19 And, two, its palette, even though  
20 this image is faded out, the palette is softer, the  
21 brushwork not as quite as intense as what we see in the  
22 Barnes picture. And so I would categorize the Barnes

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23 picture as actually being slightly better than this  
24 particular work, and certainly in the range. And so I  
25 valued it at \$2 million.

1 FORCE - DIRECT 5

2 Now, there is one that is actually  
3 more comparable to the Barnes'. You can see it has the  
4 same kind of compositional technique. There is a  
5 figure on a horse, which adds a little bit of a  
6 different element, and there is a wonderful sunset,  
7 which makes this painting much more dramatic than the  
8 Barnes picture. This piece actually sold in 1989 for a  
9 million eight, and that was the record for the artist  
10 at this time, and it certainly held the record until  
11 this recent sale. This picture today would probably

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12 make, I would think, close to double the price. So

13 again, that would give credence to the idea that the

14 Barnes picture is certainly worth around two.

15 Q Is there another one?

16 A Yeah, there is one more. This one is a less

17 desirable picture. And you can see, the figures are

18 very sketchy. It has a lot of movement to it, but it

19 seems a little frenetic and not nearly as pleasing to

20 view. And this particular piece, be that as it may,

21 made a million four in 1995. So, certainly the Barnes

22 picture is far superior to this one.

23 Q Now, we know that with respect to valuation on

24 this particular piece, this is the Prendergast

25 Landscape of Figures that was originally appraised for

1 FORCE - DIRECT 6

2 a million and a half, also appraised for a million and

3 a half by Ms. Harrison for the second appraisal, and

4 you've appraised it at \$2 million. How do you support

5 your \$2 million appraisal against the million and a

6 half submitted by both Ms. Harrison and Mr. Ruzicka?

7 A Well, I think my comparables show that this piece

8 should be in that range, from the description I just

9 did. Obviously, again, this kind of work is

10 subjective. I believe they put originally a million

11 and a half also on the other landscape beach scene

12 which is very, very similar, but which has somewhat of

13 a condition problem. I also find that that piece,

14 compositionally, is not as successful as this one. So

15 I did put that one at a million and a half. But I do

16 think this is a very strong picture, and it's very  
17 difficult to find paintings of this quality in today's  
18 market.

19 Q In the interest of time, Ms. Force, do you stand  
20 by the figures that are set forth in Exhibit A-53 as  
21 being the fair market value for the American art that  
22 you viewed in the Barnes collection?

23 A I do.

24 Q Do you have any interest in the appraised values  
25 of these pieces of art?

1 FORCE - DIRECT 7

2 A I do not.

3 Q If the Court were to order that these pieces of  
4 art be sold, over what period of time do you estimate

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5 that the pieces of art could be sold?

6 A Well, it depends on what method you use. There  
7 are basically two methods, either auction or through a  
8 private -- through a gallery or private dealer or  
9 agent. If we're dealing with a gallery or a private  
10 party, it could take a couple months, it could take a  
11 year, in terms of the American things. But, most  
12 likely, the gallery or the agent would have in mind  
13 certain collectors that would want these pieces.

14 But it's a kind of thing where  
15 there is no real way of knowing how long it might take.  
16 But since these are so desirable, and the provenance of  
17 the Barnes Foundation would definitely make it a lot  
18 easier than it would with other pieces.

19 Now, at auction what would happen  
20 is that once a decision would be made to sell them,

21 they would go into the next available major sale, most  
22 likely.

23 Q When would that be?

24 A Yes. Sotheby's and Christie's do their major  
25 sales at the end of May and the beginning of December

1 FORCE - DIRECT 8

2 every year. So, obviously, this season would not work,  
3 but if you were making a decision like this, the May  
4 auction would be the next one. And they usually like  
5 to have the pieces, you know, four or five months ahead  
6 so they can catalogue them properly, as well as  
7 advertise them adequately.

8 Q So, is it in following the auction, should it be



9 sold at auction in May of 2005, when would the proceeds  
10 be available to the Barnes?

11 A Thirty-five days after the sale. So basically  
12 towards the end of June.

13 And, of course, at auction, you  
14 know that all things are being offered that day and,  
15 hopefully, everything sells that day, you don't have a  
16 guessing game about how things are -- you know, how  
17 long it's going to take and that kind of thing.

18 Q Is auction the only way that this art could be  
19 sold?

20 A No. It would sell successfully either way, I  
21 think.

22 Q And the other way being --

23 A But I think that the auction market right now is  
24 very strong and, in fact, some of the prices being

25 realized at auction today are at retail or higher than

1 FORCE - DIRECT 9

2 retail. So -- and with the potential with the

3 provenance or the connection with Dr. Barnes, they

4 would have no problem selling and selling well.

5 Q Before I get to that, I omitted to introduce -- is

6 Exhibit A-91 a copy of your notes and comparables for

7 each of the particular pieces?

8 A Yes.

9 (Photocopy of notes and comparables

10 marked Intervenor's Exhibit A-91 for identification.)

11 BY MR. CYR:

12 Q Now, we've heard some discussion of something

13 called a blockage discount. Are you familiar with that

14 term?

15 A I am. It usually is in regard to large numbers of  
16 works by one artist, such as an artist's estate or when  
17 Warhol died, the number of Warhol pictures, so on and  
18 so forth. But it usually has to deal with more than I  
19 would say 15 or 20 pieces.

20 Q Should the Court order that the Barnes pieces are  
21 to be sold, do you believe that a blockage discount  
22 would have an impact upon the sale prices?

23 A I don't, because these are all very fine examples  
24 for the period. Although they are similar in some  
25 respects, the two big oils are similar, again I think

1

2 anyone who would be interested in these pictures would  
Page 19

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3 certainly pay whatever they had to in order to get a  
4 piece of Dr. Barnes' collection.

5 Q Are you familiar with any large sales where the  
6 blockage discount was of concern?

7 A Not so much in terms of the American art area. It  
8 happens frequently in Contemporary and -- mostly in  
9 Contemporary, I think.

10 Q Well, if we look, did you compile the DeMazia  
11 sale?

12 A Yes. As I mentioned earlier, I was the principal  
13 involved with the American works belonging to Violette  
14 DeMazia. And in that sale we had 24 pieces, and there  
15 were a number of works by Glackens and Prendergast. So  
16 there were seven works by Glackens, four by Maurice  
17 Prendergast, and three by Charles Prendergast.

18 Q Before we get to that, did you compile at my  
19 request a compilation of the DeMazia sale?

20 A Yes, I did.

21 MR. CYR: I will give one to the  
22 Court.

23 (Photocopy of Property from the  
24 Collection of Violette DeMazia marked Intervenor's  
25 Exhibit A-92 for identification.)

1 FORCE - DIRECT 11

2 BY MR. CYR:

3 Q And is P-92 a compilation of the DeMazia sale?

4 THE COURT: Can we stick with the  
5 same prefix, "A" for everything?

6 MR. CYR: I'm sorry, A-92.

7 THE WITNESS: Pardon?

8 BY MR. CYR:

9 Q Is this a compilation?

10 A Yes, it is.

11 Q And did you see any evidence of a blockage

12 discount applying to these particular pieces?

13 A I did not. It's true in the case of the Demuth

14 pieces, the realized prices were not quite as strong as

15 we had hoped. Demuth, at that time, was perhaps not

16 bringing the same kinds of sums that some of the other

17 artists were, but certainly in the case of Glackens and

18 the two Prendergasts, the prices realized were above

19 the high end of the estimate.

20 Q Now, there is one or two unsolds --

21 A Right.

22 Q -- on here. What caused these pieces to go

Volume XI

23 unsold?

24 A There was a Glackens work on paper called

25 Washington Square. It's Lot No. 327. That piece had

1 FORCE - DIRECT 12

2 considerable condition problems, I think that was the

3 issue. And with the condition problems, probably the

4 estimate was too high.

5 In the other case, with the Demuth,

6 it was hard to say. That was a rather nice Vaudeville

7 piece. We sold it after the sale. But, for some

8 reason, the DeMuths were not as collectible at that

9 point in time.

10 May I say something else?

11 Q Sure.

12 A Certainly in this case, too, although Violette  
13 DeMazia on her own would not be a known entity to most  
14 of America, the connection with Barnes I think had a  
15 great deal to do with how well the sale did.

16 Q Did you also compile sales from the Whitney  
17 estate?

18 A I did.

19 MR. CYR: Your Honor, I'd like to  
20 hand up the exhibit of A-93.

21 (Photocopy of Property from  
22 Collection of Mr. & Mrs. John Hay Whitney marked  
23 Intervenor's Exhibit A-93 for identification.)

24 BY MR. CYR:

25 Q Now, what is A-93?



1 FORCE - DIRECT 13

2 A We have here three John Singer Sargents that were  
3 sold this past May at Sotheby's, and belonging to  
4 Mr. and Mrs. John Hay Whitney. And although it's true  
5 that Sargent is a desirable artist in today's market, I  
6 think the Whitney provenance and the fact that they had  
7 been owned for such a long period of time really worked  
8 in their favor. And you can see that these are  
9 paintings that are in the seven-figure range, and three  
10 in the seven-figure range all sold to three different  
11 buyers, including Steve Wynn bought the Robert Lewis  
12 Stevenson. But it proves that no matter what the  
13 value, you can sell several paintings in the  
14 seven-figure range at one time.

15 Q Now, you mentioned that this was the Whitney

16 estate; is that correct?

17 A Yes.

18 Q Is it your understanding that the Whitney added to  
19 the cache or the provenance of these pieces?

20 A Yes, I feel that way.

21 Q And do you feel that the same affect would occur  
22 should the Barnes pieces be sold?

23 A I do.

24 Q Ms. Harrison estimated that the what I call the  
25 cache factor could increase the value anywhere from 25

1

FORCE - DIRECT

14

2 to 50 percent. Do you agree with that estimate?

3 A I do. And some of the pieces could do better.

4 Q Are familiar with the Potamkin sale?

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5 A I am. The Potamkins, of course, were from  
6 Philadelphia. They lived in Rittenhouse Square, and  
7 they were quite involved with the Philadelphia Museum  
8 as well as the Pennsylvania Academy. And both of them  
9 passed away -- well, Mrs. Potamkin was the last. And  
10 so although a number of pieces were given to  
11 institutions here in the Philadelphia area, the rest of  
12 the collection was sold at Sotheby's May of 2003.

13 Q Okay. And, again, was there a cache or enhanced  
14 provenance that added to the values of those paintings?

15 A Yes, because the Potamkins were known as being  
16 important collectors of the traditional American art,  
17 and they had acquired most of the pieces many, many  
18 years ago. Although they were still collecting towards  
19 the end, most of the things that Sotheby's sold were  
20 things that had been owned for a long period of time.



9 competence to appraise these works?

10 A It seems --

11 MR. WELLINGTON: Objecti on, Your

12 Honor.

13 THE COURT: Basi s?

14 MR. WELLINGTON: Wi thdrawn. I

15 don' t have a probl em. Wi thdrawn.

16 THE COURT: You may answer the

17 questi on.

18 THE WITNESS: Thanks.

19 Based on the resume only, it

20 appeared that hi s fi eld was really in prints. And it

21 seemed li ke he had substantial experience in the print

22 fi eld, and I don' t think anyone could questi on that. I

23 di d not see any evi dence that he really had experience

24 wi th painti ngs of any sort.

25 BY MR. CYR:

1 FORCE - CROSS 16

2 Q What's the difference between the print field and  
3 the painting field?

4 A Well, it's a whole different -- totally different  
5 area. Prints, of course, are often usually multiples,  
6 and it takes a certain expertise to evaluate those.

7 So, for example, I don't evaluate  
8 prints because it's not my field. It takes a person  
9 who has specific training in that range. And the same  
10 with paintings. They're different, although there is  
11 some similarities. Prints, of course, are all works on  
12 paper, and they're a different field.

13 Q Ms. Force, do you hold all of your opinions to a

Volume XI

14 reasonable degree of certainty in the field of art

15 appraisal for American art?

16 A Yes.

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

18 have.

19 THE COURT: Mr. Wellington?

20 MR. WELLINGTON: Thank you, Your

21 Honor.

22 CROSS-EXAMINATION

23 BY MR. WELLINGTON:

24 Q Good afternoon, Ms. Force.

25 A Good afternoon.

1 FORCE - CROSS

17

2 Q My name is Ralph Wellington. You know Nancy  
Page 31

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3 Harrison, don't you?

4 A I do.

5 Q She was sitting where you were sitting this past

6 Friday, and I commented to her that one of my

7 daughter's favorite shows is Antique Roadshow, which

8 she appears as an expert on, and I see that on your

9 resume as well, correct?

10 A Yes. I do it frequently.

11 Q Indeed, Friday night I go home, relaxing with my

12 daughter in the den. What do we do? We flip on the

13 Antique Roadshow, and who is on there, but Debra Force

14 in the Chicago --

15 A The Grant Wood, yeah.

16 Q A Grant Wood from the Amana Series? Do you

17 remember that?



18 A Yes, I do.

19 Q A porch scene?

20 A Yes. It was a backyard kind of thing.

21 Q And I saw you appraising that. I think your

22 appraisal was between thirty and fifty thousand dollars

23 for that.

24 A Right.

25 Q And I remember you commenting on that appraisal

1

FORCE - CROSS

18

2 that you knew a similar Grant Wood from that series

3 that was being offered for sale at the time at

4 \$110,000. Do you remember that comment?

5 A Well, I actually think it was one that was sold in

6 a small auction in the midwest, as I recall it.

7 Q Okay. Maybe I didn't --

8 A Because, the point being that sometimes works sold  
9 in the hinterland can actually make more money than  
10 works sold in New York, because people think they're  
11 getting a bargain. But that's my recollection.

12 THE COURT: Is everything outside  
13 New York the hinterland?

14 THE WITNESS: No. You do have  
15 Boston and Chicago.

16 BY MR. WELLINGTON:

17 Q Philadelphia is carefully omitted.

18 But, thank you, my daughter was  
19 very impressed when I told her I would be meeting  
20 Ms. Force on Monday.

21 A Well, thank you.

22 Q So you do know Nancy Harrison?

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23 A Yes.

24 Q And do you believe her to be a respected

25 appraiser?

1 FORCE - CROSS

19

2 A Yes, I do.

3 Q And do you know Elizabeth von Habsburg?

4 A Quite well, yes.

5 Q And do you consider her to be a respected

6 appraiser?

7 A Absolutely.

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8 Q And, in fact, you use them for appraisals on  
9 occasion, do you not?

10 A I have referred appraisals to them, yes.

11 Q And they use you sometimes?

12 A Yes, they do.

13 Q Is there a distinction in your profession  
14 between -- and I heard you use the word "retail value"  
15 today?

16 A Um-hmm.

17 Q Is there a distinction in your profession between  
18 an appraisal value and a retail value?

19 A Well, these days, I guess my reference had to do  
20 with auction prices that were exceeding what dealers  
21 might ask. So, in that case, those figures would be  
22 what somebody will pay on a given day, and that would  
23 be considered fair market value. I mean, I think there

24 are times when there are certain pieces that are sold  
25 at greater prices. And unless you have more

1 FORCE - CROSS 20

2 substantiation of other things selling in that range,  
3 it's hard to use those values.

4 Q And do you follow USPAP standards in your  
5 appraisal approach to fair market value?

6 A I do, in terms of the tenets of what is presented  
7 in that document. My form is somewhat different. It's  
8 based more on the form that I used to use when I was at  
9 Christie's.

10 Q Okay. In doing comparables -- and I noticed that  
11 you showed some that you had done for a couple of the  
12 paintings here. Is it appropriate to use asking prices

13 of unsold works?

14 A No. And the things that I used were for sold --

15 items that were actually sold.

16 Q These are items that have actually been sold?

17 A Right.

18 Q Actually brought a particular price?

19 A Yes. I mean, one had to do with the Glackens

20 estate, for which I did an appraisal. And some of the

21 pieces were ultimately given to a dealer in Palm Beach,

22 and I know precisely what he sold one or two of them

23 for.

24 Q You would --

25 A And I know the collectors that have them.

1

2 Q Excuse me. I'm sorry.

3 A Sorry. I said I know the collectors, too, who  
4 have them.

5 Q You would agree with me, wouldn't you, Ms. Force,  
6 that the 11 works you were asked to appraise are, on  
7 balance, pretty significant works by those artists?

8 A Yes.

9 Q For example, just the list of Prendergast and  
10 Glackens from the DeMazia collection which was sold  
11 about 12, 15 years ago, none of those works anywhere  
12 approach the values of the Glackens and Prendergast  
13 that are in the Barnes collection?

14 A That's absolutely correct.

15 Q And it's, frankly, a higher level of --

16 A Right.

Volume XI

17 Q -- of works from those?

18 You wouldn't refer to these works

19 as "junk," would you?

20 THE COURT: Which works?

21 MR. WELLINGTON: The 11 works that

22 she --

23 THE WITNESS: No, I wouldn't use

24 "junk," certainly.

25 BY MR. WELLINGTON:

1 FORCE - CROSS

22

2 Q How about "basement stuff"?

3 A Actually, believe it or not, in the auction

4 business, we do use the term "stuff." Like, "We have

5 to go look at the stuff at the warehouse." So, I don't



Volume XI

6 know.

7 Q But some of that --

8 A It may be disrespectful in the museum world, but

9 that's, you know, sort of what's done.

10 Q You were asked to appraise just 11 pieces of art,

11 were you not?

12 A That's correct.

13 Q And you're aware that -- excuse me. Maybe you're

14 not aware. Are you aware that Ms. von Habsburg and her

15 company were asked to appraise 4,532 pieces of art

16 objects?

17 A I recently learned that. I knew that they had

18 seen more paintings, and but I just recently learned

19 that they had that many.

20 Q And are you aware that they had a four- or

21 five-week time period in which to appraise all of those

22 pieces?

23 A I heard they had a time constraint. I wasn't

24 aware of the length.

25 Q And I think the testimony from Ms. von Habsburg

1

FORCE - CROSS

23

2 was where digital images were available, they were

3 asked to -- they used those first, and 4,000 items they

4 actually looked at, initially.

5 A Right.

6 Q But then are you also aware that they then came

7 down and evaluated the same paintings that you did on

8 an individual basis?

9 A Nancy did.

10 Q Nancy Harrison.

11 A Yeah.

12 Q And I want to turn to the difference between you  
13 and Ms. Harrison. The total value of the 11 works you  
14 appraised, I believe, was \$9,665,000?

15 A Yes.

16 Q That's in your report, correct?

17 A Yes. That's right.

18 Q And if I add it up correctly, the total value of  
19 those same 11 works that Ms. Williams (sic) appraised  
20 for Masterson Gurr Johns was \$9,065,000, I think within  
21 5 percent --

22 A Right.

23 Q -- of each other. You consider that to be, in  
24 this subjective business, pretty much equal fair market  
25 value overall?

1 FORCE - CROSS 24

2 A Yes. I mean, it's pretty much in sync. That's  
3 almost as close as you can get with two different  
4 people.

5 Q In fact, Mr. Cyr pointed out a couple to you of  
6 the paintings that you had a higher value in --

7 A Right.

8 Q -- than Ms. Harrison did, but there are many where  
9 she had a higher value than you did?

10 A That's true.

11 Q And, in fact, there are more where she had a  
12 higher value than you than -- the reverse. The  
13 principal difference between the two of you was the two  
14 paintings that Mr. Cyr showed you, wasn't it? A half a  
15 million dollars difference with the Prendergast, and a  
16 \$250,000 difference on a Glackens?

17 A Right.

18 Q And, on the others -- for example, this first  
19 Glackens here. I just filled in -- you can verify this  
20 if you wish, but I will represent to you I pulled this  
21 off of Ms. Harrison's report.

22 A Sure.

23 Q Her value of this particular Glackens which we  
24 didn't look at was 700, and yours was 600. Her value  
25 of this one was 600, and yours was 500. You both

1 FORCE - CROSS 25

2 appraised Sunday on the Marne at \$2 million, I believe.

3 Here is one of the differences that Mr. Cyr was

4 pointing out to you.

5 A Um-hmm.

6 Q But, overall, as I said, this adds up to pretty

7 much within -- the subjective business again, pretty

8 much -- very close appraisal?

9 A Very close.

10 Q Is that fair?

11 A Yes, it is fair.

12 Q Are you aware that the appraisal that Mr. Feigen,

13 the other person retained by them, is about 300 percent

14 of what Ms. Harrison evaluated, appraised?

15 A I knew it was higher, but I had no idea about the

16 percentage.

17 MR. WELLINGTON: Ms. Force, that's

18 all I have. Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Barth?

21 MR. BARTH: Thank you, Your Honor.

22 BY MR. BARTH:

23 Q Ms. Force, my first question I've been dying to

24 ask you since this morning.

25 A Okay.

1 FORCE - CROSS

26

2 Q What is the Ashcan School?

3 A Oh. The Ashcan School is a group of eight artists

4 who were rebelling against the artists who were more in  
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5 the Impressionist mode who had control of the National  
6 Academy of Design and would not allow anyone to really  
7 deviate from the type of art that they were doing. And  
8 Robert Henri was the leader of the Ashcan -- they're  
9 called Ashcan because they wanted to depict people as  
10 they are, including the common man, including backyard  
11 scenes and things of that sort. So they really wanted  
12 to show how people really lived. And their works were  
13 sometime objectionable because they weren't always  
14 pleasant scenes. I mean, they're people hanging wash  
15 or they were -- you know, the bowery with maybe someone  
16 drunk, or whatever. And they had that name. But I  
17 guess probably art, historically, The Eight is also  
18 what they were referred to.  
19 Q That's interesting. So these particular painters



20 were rebelling from I guess the orthodoxy?

21 A Of what most artists were doing at that time.

22 Q And they also wanted to depict the common man?

23 A Right.

24 Q Sounds sort of familiar to Dr. Barnes' philosophy.

25 A Yes.

1

FORCE - CROSS

27

2 Q You also described, I think, The Little Pier by

3 Glackens. That had a strong pallet?

4 A Right.

5 Q Something about a -- I forgive me because I'm not

6 quoting you exactly, but an interesting perspective,

7 strong brush strokes, complex composition?

8 A Um-hmm.

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9 Q Is that fair?

10 A Yes, I believe that's what I said.

11 Q Are all those attributes attributes that would  
12 make it an interesting subject for an educational  
13 study?

14 A Yes. Definitely.

15 Q And I have one last question. You talked about  
16 sales, auctions or sales by private gallery or agent.  
17 If those sales were to occur, and presumably they would  
18 occur at the estimates that you have given, to whom  
19 would such paintings likely be sold at those rates?

20 A Well, first of all, American artists generally  
21 only sold within the confines of the United States. We  
22 don't have any international collectors in this field.  
23 There are many, many collectors that have been at it  
24 for a long time, and almost every season we have new

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25 people who jump into it. And a lot of them do go to

1 FORCE - CROSS 28

2 auctions because it's the more public way and they

3 sometimes feel more comfortable that way.

4 On the other hand, there is some

5 people that need a dealer and they feel really

6 comfortable with that. So you have some of the

7 software types, I mean, certainly Bill Gates collects,

8 but he's not the only one out there. There are several

9 really heavy collectors for American Impressionism and

10 for material like this. Major collectors in New York.

11 They're all over, actually: St. Louis, Dallas. Quite a

12 breadth, and in all walks of life.

13 Q Well, you talked about -- you mentioned people and  
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14 collectors and individuals and Bill Gates and things  
15 like that. Are you saying, then, that for the most  
16 part, the people that buy these paintings generally at  
17 the prices that you have appraised them at would be  
18 individuals, or corporations?  
19 A Corporations are not really buying art right now.  
20 It was so popular in the seventies, and now it's  
21 something that's really fallen off considerably. So it  
22 would be mostly private people. It could be a museum,  
23 if the museum had enough warning and time that pieces  
24 were coming up and they had a chance to get their funds  
25 together. So I think certainly with several of these

2 pieces, museums might be possibilities. And it doesn't

3 preclude dealers from bidding on some things, as well.

4 It just depends on how the prices fall.

5 Q Well, you said that -- I believe in response to

6 one of Mr. Cyr's questions, you indicated, in terms of

7 the length of time it would take before these would

8 come out on the market, you gave a fairly short period

9 of time, less than a year, I believe?

10 A For auction, yes.

11 Q For auction. Do I understand you now to be

12 saying, at least insofar as museums are concerned, that

13 it would take a greater amount of time for a museum to

14 be able to meet the purchase or reserve price at such

15 an auction?

16 A Yes. That's true. And what the auction houses

17 often do these days, which they never did before, is

18 they actually do private sales. If they target a  
19 particular piece or maybe a couple of pieces as being  
20 suitable for museums, they would then do a private  
21 treaty sale, as opposed to putting up at auction. And  
22 a payment plan would be established and arrangement  
23 would be made that way. They also do private sales for  
24 individuals, but they would only do that if they could  
25 get the top price for the client.

1 FORCE - CROSS 30

2 Q And you also indicated that these sales would not  
3 necessarily be in this area, but it could be --  
4 although perhaps not internationally, it's very likely  
5 these American artists could be sold to collectors, be  
6 they museums or individuals throughout the country?

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7 A That's correct.

8 Q If, of course, those -- if such a thing did occur,  
9 that they were sold either outside the Pennsylvania  
10 area to a museum or individual or to any individual or  
11 corporation, would these paintings still be available  
12 to be used in the context of a Barnes Foundation  
13 course?

14 A Not in the same way unless, if a museum bought it,  
15 they used that as a teaching tool -- were able to use  
16 that as a teaching tool. They couldn't do it as  
17 extensively as the Barnes Foundation does, but they  
18 certainly would use it for some educational purposes.

19 A private collector, no. It would go to someone's  
20 home. They might lend it, on occasion, to an  
21 exhibition. They might ultimately leave it to a  
22 museum, but not all collectors do that.

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23 Q And, of course, they might leave it to a museum  
24 and it might very well not be the Barnes Foundation,  
25 and it would no longer be a part of the body of work

1 FORCE - REDIRECT 31

2 that Dr. Barnes did collect himself?

3 A I guess that's correct.

4 MR. BARTH: Thank you. I have

5 nothing else.

6 THE COURT: Redirect, Mr. Cyr?

7 MR. CYR: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. CYR:

10 Q Ms. Force, Mr. Barth just asked you about the



11 total value between your appraised values, which was  
12 roughly 9.9 million, and Ms. Harrison's value, which  
13 was about 900,000 below that at 9 million and some  
14 change. As I recall, your testimony was that that was  
15 a reasonable deviation, correct?

16 A Yes.

17 Q Okay. If I represent to you that the original  
18 valuation done by Masterson Gurr Johns by Mr. Ruzicka  
19 at 7.3 million, for a difference of approximately  
20 \$2,600,000, would you consider that a reasonable  
21 deviation?

22 A No.

23 Q Why not?

24 A Because the paintings are far more valuable than  
25 that. The quality is such that they -- they are

1 DEBRA J. FORCE 32

2 certainly more valuable than the original appraisal.

3 Q Mr. Barth asked you about who could purchase this

4 art, whether it be private collectors, museums,

5 corporations, and so forth. Do you have any opinion as

6 to the likely purchasers of these major pieces of art?

7 That is, would museums be more likely to purchase them

8 or individual collectors?

9 A I think probably individuals, but there are a

10 couple of pictures that I could see museums being

11 interested in, certainly at least two, if not more.

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

13 have.

14 THE COURT: The phrase "museum

15 quality," does that phrase connote a high level of

16 quality?

17 THE WITNESS: Yes.

18 THE COURT: I noticed that in some

19 of the comparables that you put on the view and on

20 Exhibit A-92 and A-93, there is an estimate range on

21 each.

22 THE WITNESS: Umm-hmm.

23 THE COURT: What do you understand

24 that estimate range to represent, and how is it set?

25 THE WITNESS: Well, it's actually

1 DEBRA J. FORCE 33

2 changed over the years, but the principle of the

3 estimate is to be a guideline for the buyer, and it's

4 to reflect somehow the value of the piece or the value



20 auction house really wants the piece of property, they  
21 might do that.

22 THE COURT: Not unlike a  
23 unrealistically high listing price --

24 THE WITNESS: Yes.

25 THE COURT: -- for real estate?

1 DEBRA J. FORCE 34

2 THE WITNESS: Exactly. Same thing.

3 THE COURT: I was going to  
4 follow-up by asking you is there a relationship or can  
5 one expect there to be a relationship between an  
6 estimate reasonably prepared --

7 THE WITNESS: Right.

8 THE COURT: -- and fair market

9 value?

10 THE WITNESS: The estimates these  
11 days are, I think, basically meaningless. I advise a  
12 few people who bid at auction and, you know, let's say  
13 we have a piece that's estimated at two to three  
14 hundred thousand, like I did I think in the spring, and  
15 we ended up paying close to nine hundred thousand.

16 THE COURT: All right. I imagine  
17 when you were at Christie's, you probably had -- well,  
18 I shouldn't assume that. Did you have some role in  
19 establishing the estimates within your category of  
20 expertise when you were at Christie's?

21 THE WITNESS: Yes. That was one of  
22 my main jobs.

23 THE COURT: And did you go about  
24 that in the same manner as you've described how you

25 went about appraising these items?

1

DEBRA J. FORCE

35

2

THE WITNESS: Well, in those days,

3

of course, we didn't have databases that we could use,

4

but there were printed guides that we used. And we

5

basically would go through and try to find the pieces

6

that were most comparable and see what they realized.

7

And usually, if you had, you know, one price that

8

realizes a certain amount but none of the others did,

9

then you wouldn't estimate it that high. You'd wait

10

until you got at least maybe two in that range. And,

11

again, the idea of making them more enticing in the

12

auction room.

13

THE COURT: If you were comfortable  
Page 63

14 with the appraisal numbers that you placed on these,  
15 would you expect that if they were placed at auction  
16 with an international house such as Christie's or  
17 Sotheby's, that the estimate would be in that range?

18 THE WITNESS: The estimate should  
19 be reflected somewhere. It may not be at the low end.  
20 It might be that if something's evaluated three  
21 hundred, they might say two or three hundred.

22 THE COURT: Okay. I follow you.

23 When Ms. Harrison was here and she  
24 was going through her credentials as you did, she  
25 talked about certain expertises that she held, but she



2 also said that she fancied herself a generalist. I

3 take it you don't fancy yourself a generalist?

4 THE WITNESS: I don't. No.

5 THE COURT: That's a term with a

6 specific meaning in the art world?

7 THE WITNESS: Well, it means that

8 you're able -- especially in the appraisal world, that

9 you look at a variety of things. I mean, presumably

10 she probably looks mostly at paintings. She might look

11 at prints. You know, there are people that do

12 everything -- furniture, whatever. But they generally

13 cannot be as up on the market for each individual

14 thing, and that's why they end up calling somebody like

15 maybe Nancy or myself to help them.

16 But she was more specifically

17 oriented in the Nineteenth Century European department

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18 at Sotheby's, but since she's left, I believe she's  
19 expanded. I don't know specifically, but I believe  
20 she's expanded.

21 THE COURT: Thank you very much.

22 I don't know if that prompts  
23 anything.

24 Mr. Cyr?

25 MR. CYR: Nothing, Your Honor.

1 FORCE - RE CROSS 37

2 THE COURT: Mr. Wellington?

3 RE CROSS-EXAMINATION

4 BY MR. WELLINGTON:

5 Q Talking about this range of appraisal, Your Honor

6 Judge Ott was asking you about --

7 THE COURT: Range of estimate.

8 BY MR. WELLINGTON:

9 Q -- another question. If this was acknowledged in  
10 the art world as a forced sale, in essence something  
11 directed by a Court or something the Barnes had to  
12 do --

13 A Right.

14 Q -- and within a short period of time --

15 A Right.

16 Q -- could they have an impact on values, in fact?

17 A Well, only if it were a distressed sale, that you  
18 really felt you want to sell at whatever cost. I don't  
19 believe, with the Barnes reputation, that that would  
20 occur in this case. But there are times when, if it's  
21 a Court ordered thing and they really just want to reap  
22 whatever they can reap, they would do it that way. But

23 not in this instance, at least in my opinion.

24 MR. WELLINGTON: Thank you.

25 That's all, Your Honor.

1 FEIGEN - VOIR DIRE 38

2 THE COURT: You can't imagine this  
3 being advertised as a distressed sale?

4 THE WITNESS: No. Certainly not.

5 THE COURT: Thank you.

6 (Witness excused.)

7 - - -

8 THE COURT: Mr. Cyr?

9 MR. CYR: At this time, the amici  
10 call Richard Feigen to the stand.



1 FEIGEN - VOIR DIRE 39

2 That's basically the formal education.

3 Q What's your present occupation?

4 A I'm president of Richard L. Feigen & Company, art  
5 dealers.

6 Q What is Richard L. Feigen & Company, what do they  
7 do?

8 A We're art dealers. We act as principals, agents  
9 and advisors in the basically primarily European art  
10 from about 1300 to the present. Also some American,  
11 but less.

12 Q In the course of your position at Richard L.  
13 Feigen & Company, do you regularly appraise art for the  
14 purchase and sale of art?

15 A We appraise art in the course of our business. We

16 don't do it as a business. We do it on a more or less  
17 pro bono basis, if it's, you know, an appraisal.

18 Q Are you the -- tell the Court your affiliation  
19 with any professional societies.

20 A I'm a Director of the Art Dealers Association of  
21 America.

22 Q And in conjunction with your position as a  
23 Director of the Art Dealers Association, do you perform  
24 any appraisals?

25 A Yes.

2 Q And could you tell me -- describe for the Court  
3 the instances in which you would perform an appraisal.

4 A Well, for the Art Dealers Association of America,  
Page 71

5 the member firms are asked to provide appraisals for  
6 certain areas in which they have expertise. Then they  
7 do a review of these, a combination of them for formal  
8 submission for things like the Internal Revenue  
9 Service. We are not permitted to do independent  
10 appraisals for the Internal Revenue Services purposes  
11 individually. We have to do it through the  
12 Association, and they charge for it.

13 Q And who would likely request an appraisal through  
14 the Art Dealers Association?

15 A I think primarily individuals donating things to  
16 museums and charitable institutions. I think we do  
17 some for museums themselves, but a lot of it's done for  
18 income tax purposes, sometimes for probate purposes,  
19 and so on.



20 Q Can you describe for the Court some examples of  
21 the appraisals that you have done for museums?

22 A Well, we are permitted to do appraisals for  
23 museums, and I can do appraisals for insurance and so  
24 on, on my own. In other words, we could be asked as an  
25 individual firm. However, if you wanted to give a

1 FEIGEN - VOIR DIRE 41

2 painting to a museum and you wanted to use the  
3 appraisal as a deduction from your taxable income, I  
4 would have to refer you to the Association. The  
5 request would go to them, and then they would refer it  
6 to the various members who have expertise in that  
7 field. And we would submit it back to the Association.

8 On the other hand, we are fairly

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9 frequently asked for appraisals directly by museums,  
10 for exhibition purposes, for U.S. Federal indemnities,  
11 and so on and so forth. That, we do with a certain  
12 amount of frequency.

13 Q Can you tell us any of the museums that you've  
14 done appraisals for?

15 A Yeah. Recently -- the most recent we've done for  
16 the Cleveland Museum, we just did one of seven  
17 paintings in August, 2004. The total value was  
18 \$78 million.

19 We did another one for Cleveland,  
20 November, 2003, for 54 million.

21 We did one for Cleveland Museum in  
22 January, '04, six paintings, for 216 million.

23 We did one of September, '02 for  
24 the Museum of Modern Art of 95 paintings, for

25 \$1,305,000,000.

1 FEIGEN - VOIR DIRE 42

2 We did another one for the  
3 Minneapolis Museum, February, '02, of 154 paintings,  
4 for \$336 million.

5 Those are just the last couple of  
6 years. I mean, we do these all the time.

7 Q Those appraised values that you're referring to,  
8 are those considered to be fair market value appraised  
9 values?

10 A We would consider them to be the fair market  
11 value. In many of these instances, obviously with  
12 paintings of this importance, we have to extrapolate, I  
13 have to guess what these things would bring in the

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14 marketplace, because such paintings do not, have not,  
15 or never will come on the market. So I have to use all  
16 kinds of comparables and extrapolations, because just  
17 as two works of art are never the same, unless they're  
18 an impression of a print or a cast of a sculpture. I  
19 have to extrapolate. And some of the things we are  
20 asked to appraise have no comparables. I mean, I just  
21 have to make as good a guess as I can.

22 Q And do you make that based upon your experience in  
23 the field?

24 A Yes.

25 Q And how long have you been operating in the art

2 dealing and art appraisal world?

3 A Forty or fifty -- wait a minute. About

4 forty-seven years.

5 Q Have you published any books in the art field?

6 A Yes.

7 Q And you're the author of the book called Tales

8 From the Art Crypt?

9 A Yes.

10 Q What was that book about?

11 A Well, that was a book about -- mainly a book of

12 essays and anecdotes. I mean, there was a chapter

13 about connoisseurship, a chapter of stories of

14 experiences with artists. There was even a chapter

15 about the Barnes Foundation.

16 Q Have you been associated with the Barnes

17 Foundation in the past?

18 A Yes.

19 Q And in what regard?

20 A Well, I was a trustee of Lincoln University, and  
21 they -- I was on that Board. And also in a capacity of  
22 advisor with respect to the Barnes to the then chairman  
23 of the trustees of Lincoln, and ultimately chairman of  
24 the trustees of the Barnes, Franklin Williams. And, in  
25 that capacity, I formed the Art Advisory Board for the

1

FEIGEN - VOIR DIRE

44

2 Barnes Foundation and gave him the list of prospective  
3 members, and served on it myself.

4 Q Mr. Feigen, do you consider yourself to have a  
5 specialty in the art world?

6 A Specialty is hard to define, because it spans

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7 about 700 years, but there are big gaps in which I am  
8 not particularly interested. So it does basically  
9 concern itself with European paintings, secondarily  
10 sculpture and drawings, but mainly paintings, European  
11 paintings, up to today, and mostly American things of  
12 recent years.

13 Q Mr. Feigen, are you being paid for your time in  
14 performing the appraisal, your time in court today?

15 A No.

16 Q You're doing it on a pro bono basis?

17 A Yes.

18 Q Why are you doing it on a pro bono basis?

19 A Because I feel that it is, frankly, in the public  
20 interest that the Barnes Foundation remain in its  
21 present building.

22 MR. WELLINGTON: Your Honor, I move  
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23 to strike. He's brought in here as an art appraiser.

24 MR. BARTH: Your Honor, I would

25 join that objection.

1 FEIGEN - VOIR DIRE 45

2 MR. WELLINGTON: Not to have an

3 opinion on something.

4 THE COURT: He would not be

5 permitted to give that opinion generally; however, I

6 think it apparently sounds to be responsive to the

7 question about why is he doing it pro bono. And, for

8 that purpose --

9 MR. WELLINGTON: Fair enough.

10 THE COURT: -- I will allow that



11 and overrule the objection. But that's not to be  
12 confused with anyone being allowed to come in here and  
13 advise the Court as to what the outcome should be.  
14 There is a difference on that.

15 MR. WELLINGTON: Thank you.

16 THE COURT: But the objection is  
17 noted and overruled.

18 I don't know that you had finished,  
19 Mr. Feigen, in what you were saying. You had gotten to  
20 the point where you said you thought this was a case of  
21 immense public interest and you thought the Barnes  
22 should stay where it is. Had you finished at that  
23 point?

24 THE WITNESS: Well, I could, you  
25 know, elaborate on why I think so.

1 FEIGEN - VOIR DIRE 46

2 THE COURT: Well, I think that  
3 might get into the areas that they objected to. But  
4 that was the reason that you were willing to do this at  
5 no cost?

6 THE WITNESS: That's correct.

7 THE COURT: Or no charge?

8 THE WITNESS: That's right, Your  
9 Honor.

10 THE COURT: Very well. Very good.

11 MR. CYR: At this time, Your Honor,  
12 I submit Mr. Feigen as an expert in the field of  
13 European art.

14 THE COURT: All right.

15 On qualifications, Mr. Wellington?

16 MR. WELLINGTON: I'll reserve, Your

17 Honor.

18 THE COURT: Mr. Barth?

19 MR. BARTH: I have a question, Your

20 Honor, if I may.

21 BY MR. BARTH:

22 Q Mr. Feigen, you indicated that you received a

23 Bachelor's of Arts degree. In what field, may I ask?

24 A It was basically in art history.

25 Q In art history. And your MBA, presumably, wasn't

1 FEIGEN - VOIR DIRE 47

2 in art history. What was that in?

3 A That was in business administration.

4 Q Just generally? Not finance, or any particular  
Page 83

5 aspect of business administration?

6 A No. The degrees at Harvard were just given in a

7 general way. However, at the time I was involved in

8 the art field across the river, a Harvard graduate

9 area, but I didn't get my degree in that.

10 THE COURT: You went to the

11 business school?

12 THE WITNESS: Yes.

13 THE COURT: When you go to the

14 game, for whom do you root?

15 THE WITNESS: If I went to those

16 games, I might have a problem. My allegiance has

17 shifted in recent years.

18 THE COURT: Fair enough.

19 BY MR. BARTH:

20 Q Mr. Feigen, do you remember a certain cheerleader

21 who had a Texas accent at one of those games?

22 A That would have been, unfortunately, far later

23 than I left Yale.

24 Q Fair enough.

25 THE COURT: I wish I knew to what

1 FEIGEN - VOIR DIRE 48

2 you alluded.

3 Oh, right.

4 My father-in-law, who was a Yale

5 man solid-through, never had difficulty determining

6 where he should sit or what he should say during that

7 game, notwithstanding that cheerleader you're talking

8 about.

9 THE WITNESS: But had he also  
10 attended Harvard?

11 THE COURT: He did not go to  
12 Harvard.

13 BY MR. BARTH:

14 Q Mr. Feigen, could we ask what your normal fee  
15 would have been to perform the appraisal that you have  
16 done pro bono?

17 A I have no idea because, frankly, I probably  
18 wouldn't have done it for a fee. And if I started  
19 charging fees, what would the billion and a half dollar  
20 appraisal have cost that we did for the Museum of  
21 Modern Art? I don't know. It wouldn't -- there is no  
22 figure. I don't know the figures. I'm not in the  
23 appraisal business, and I don't have any schedule of  
24 payments. I don't know.

25 MR. BARTH: That's all I have in

1 FEIGEN - DIRECT 49

2 this.

3 THE COURT: Proceed, Mr. Cyr.

4 DIRECT EXAMINATION

5 BY MR. CYR:

6 Q Mr. Feigen, what were you asked to do initially in

7 this case?

8 A Well, as I understood it, I was asked to come up

9 with values on a certain list of paintings that I

10 thought could realistically be realized for the benefit

11 of the Barnes Foundation. It wasn't an appraisal in

12 any kind of appraisers' association form. What did I

13 think these would bring if we went out and sold them?

14 And those were the values I tried to come up with.

15 (Photocopy of Report of Richard L.

16 Feigen in re nine works marked Intervenor's Exhibit

17 A-56 for identification.)

18 BY MR. CYR:

19 Q And for the record, you prepared a report, did you

20 not, that's been marked as A-56? Do you have your

21 report in front of you?

22 A Yes.

23 Q And the paintings that you were asked to look at

24 were the Matta Apple Eater, the Soutine, the Signac,

25 Soutine Landscape with House and Tree, the Courbet, the



2 Chirico painting of Dr. Barnes, the Bellotto, and two

3 other Soutines; is that correct?

4 A That's right.

5 Q And you were also asked to look at a sculpture,

6 correct?

7 A Yes.

8 Q You were originally presented with the prospect of

9 appraising these pieces of art by looking at digital

10 images. Do you recall that?

11 A I remember the digital images, yes.

12 Q Did you feel that the digital images provided you

13 with enough information upon which to render an opinion

14 as to their appraised value?

15 A I think in some of the cases, yes; in some of the

16 cases, no.

17 Q Why not in certain of the cases?

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18 A Well, first of all, assuming the condition was  
19 optimum, which I couldn't see from the digital images,  
20 let's say that the paintings hadn't been relined or  
21 restored or had suffered damage which I couldn't see  
22 from the digital images, some of the artists would be  
23 very difficult to judge. For instance, Signac would  
24 have been easy. Matta would have been easy. Soutine  
25 would have been very tough, because he used a very

1

FEIGEN - DIRECT

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2 informal technique and there is a lot of impasto stands

3 out from the canvas, and they look muddy in the digital  
4 images. So, with Soutine it would have been difficult.  
5 With the Lipchitz, it would have been easy. With the  
6 Courbet, practically impossible.

7 Q Do you have a copy of your report up there with  
8 you?

9 A No, I don't have my report here.

10 Q Why don't I give you this.

11 So, as a consequence, arrangements  
12 were made for you to perform a physical inspection of  
13 the artwork, correct?

14 A Yes.

15 Q Okay. Did you travel to Philadelphia on  
16 August 30, and could you tell the Court how you went  
17 about appraising the artwork?

18 A Well, I inspected all of these things physically,

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19 and I did -- I inspected the condition of them. And  
20 I -- I then -- so I had an image of the paintings  
21 themselves, I knew what they looked like, and then I  
22 went back and dug out the comparables of paintings that  
23 had been sold at auction. And then I went beyond that  
24 in at least one instance.  
25 Q Okay. And when you returned to your office in New

1 FEIGEN - DIRECT 52

2 York, did you look at comparable values?

3 A Yes.

4 Q Okay. And did you gather information from any  
5 other source other than comparables in helping you  
6 evaluate the value of these particular pieces?

7 A Yes. Well, as I say, sometimes there just isn't a

Volume XI

8 comparable. There is more or less something that  
9 relates to it or similar to it, the best example of  
10 which is the Courbet. Now, there hasn't been --

11 Q Well, we'll get to the Courbet in a minute.

12 A Okay. Okay.

13 Q So other than the database that has comparables of  
14 art that sold at auction, there is also information  
15 that you get from art sales; is that correct?

16 A Yes.

17 Q And how does one acquire that information?

18 A Well, I think you have to know the market and

19 what's been sold, what's gone where, and so on. I

20 think that's one of the reasons why I think we, in the

21 art trade, have access to information that isn't in the

22 records.

23 Q So-called word of mouth?

24 A Well, it's word of mouth. I mean, for instance --

25 well, I won't talk about the Courbet if you don't want

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53

2 me to.

3 Q We'll get to that.

4 A Okay. But, I mean, the fact is one knows what

5 happened to things after they appear in the public

6 record, how they got into the public record, what

7 really happened. A lot of that doesn't appear in these

8 comparables, nor does the condition appear in the

9 comparables. You have no idea what condition the thing

10 is in.

11 Q Why don't we talk about just a couple. The

12 Signac, you arrived at a figure of \$1.8 million. How  
13 did you arrive at that?

14 A Well, there is some pretty close comparables to  
15 the Signac. I mean, that was sort of a -- you know, an  
16 easy one, because there is a lot of related -- number  
17 of related works. I mean, we came up with a value of a  
18 million eight, which I think is a reasonable figure to  
19 expect that the Barnes could receive from the sale.

20 There were -- for instance, there  
21 was a comparable painting sold in 2003, but later,  
22 which makes it slightly less valuable, of a million  
23 six. There was another one slightly earlier, 1916,  
24 which brought, in 1990, \$2 million. And then there  
25 were four paintings that sold around 2.6 million, and

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2 two that sold between 3 and 4 million and three others  
3 that sold around 1.5 and another one at 2.6. I mean,  
4 there was a lot of Signac. He's a not uncommon artist,  
5 so there were a lot of comparables for that.

6

MR. WELLINGTON: Your Honor,

7 Mr. Feigen appears to be referring to a list of  
8 comparables. It's not something we've ever seen. And  
9 if you --

10

THE COURT: I think you're entitled

11 to it before you begin your cross-examination.

12

MR. WELLINGTON: Thank you.

13

THE WITNESS: Well, I have them

14 here if you want them.

15

THE COURT: We'll get there.

16

THE WITNESS: Okay.



17 THE COURT: He's not entitled to  
18 them yet.

19 THE WITNESS: I see.

20 THE COURT: He will be.

21 BY MR. CYR:

22 Q So, Mr. Feigen, the original valuation by  
23 Masterson was 600,000. The second was 850. And you  
24 were at \$1.8 million. Do you still stand by your  
25 evaluation of 1.8 for that piece?

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2 A Absolutely.

3 Q The Chirico of Dr. Barnes, how did you go about  
4 valuing that piece?

5 A Well, that was probably the most iffy of all the

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6 ones that I had to do. First of all, it's a relatively  
7 late de Chirico, '26, which is against it -- I mean, in  
8 other words, let's say, pre-1917 de Chirico would be of  
9 more value, a metaphysical de Chirico. A portrait  
10 would be theoretically less valuable. A de Chirico of  
11 1911 or 1912 could bring three, four, five million.

12 On the other hand, Dr. Barnes is an  
13 important personage in the history of art, and I just  
14 had to figure out, what would someone pay for this  
15 image of Dr. Barnes? I think that in itself would  
16 command a premium over a portrait of just anybody.

17 And then, if you ever conceived of  
18 a sale, let's say of an auction of works from the  
19 Barnes Foundation, which would have a tremendous  
20 glamour. I mean, everything would bring -- God

21 knows -- at least probably 30, 40, 50 percent more than  
22 its normal appraised value. That painting would have a  
23 particular cache in such a context. It would be the  
24 frontest piece of an auction catalog, or something like  
25 that. And I just felt, in my best judgment, that a

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2 half a million dollars was a fair price for that, that  
3 that price could be obtained.

4

(Report of Richard L. Feigen in re:

5 Lipchitz "Bather" marked Intervenor's Exhibit A-57 for  
6 identification.)

7 BY MR. CYR:

8 Q Now, you also appraised the Lipchitz sculpture,  
9 correct?

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10 A Yes.

11 Q Okay. And that's at Exhibit 57. You valued that  
12 at \$1.6 million, correct?

13 A Yes.

14 Q Okay. And how did you arrive at that value?

15 A Well, there was a Lipschitz bronze, a cast number  
16 four out of seven, so there is seven similar or almost  
17 identical ones, that sold for 1.5 million. There was  
18 another one, number three out of another cast of seven,  
19 that brought 1.435 million. There was another one,  
20 another cast that was sold -- and this was, again, a  
21 bronze, which would be less valuable than a carved  
22 stone -- which brought -- it was, again, two out of an  
23 edition of seven, and it brought \$776,000.

24 Another bronze edition of seven

25 brought \$731,000. Most of these were cast. There was

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2 one limestone that I felt was somewhat flukey that  
3 brought 650,000, but I just felt that this one, and the  
4 quality of it, in my best judgment, would have brought  
5 the -- where did I put that? It wasn't in my  
6 original --

7 Q 1.6.

8 A Yeah. I felt that that is what I believe it would  
9 bring.

10 Q Now, why don't we turn to the Courbet. There was  
11 a -- can you describe your physical inspection of the  
12 Courbet and your initial impressions of it?

13 A Well, the Courbet was a painting I had never seen.

14 And I was quite astonished by it, because it's a

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15 painting of enormous importance. Its reproduction in  
16 the Fernier catalogue raisonné is almost unreadable,  
17 it's so dark. The painting itself is very dirty.

18 And yet --

19 Q Where was it at?

20 A It was hanging up at a -- okay.

21 Q Forget it. Let's keep going. I misspoke.

22 Continue on with your assessment.

23 A It comes in a category of Courbet that almost  
24 hasn't existed in the marketplace.

25 THE COURT: Has or hasn't?

1 FEIGEN - DIRECT 58

2 THE WITNESS: It almost hasn't.

3 THE COURT: Hasn't existed?

4 THE WITNESS: Has not. I mean, in

5 other words -- and the only instance recently was this

6 painting called Le coup de vent, which is this big

7 landscape, that came up at auction and which brought

8 roughly \$2.3 million at Christie's in 1998. That was

9 six years ago. That painting, which was used as the

10 comparable because it was the only other large-scale

11 important Courbet --

12 BY MR. CYR:

13 Q Was that a comparable used by Nancy Harrison?

14 A Yeah. Apparently. I didn't know that when I did

15 this, but that was what they used.

16 Now, that painting was sold at

17 Christie's -- first of all, it's the kind of painting

18 you would not sell at auction, because it's too big for

19 any private person. And museums usually don't buy at  
20 auctions, so the real market for that painting didn't  
21 participate in that auction.

22 The painting was bought by a Zurich  
23 dealer on behalf of someone, and that someone did not  
24 pay and he couldn't pay, he couldn't afford it. So the  
25 painting reverted to Christie's. I think they still

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2 charged him for it, but he didn't pay it. So we got  
3 the painting to show to a client who happened to have  
4 this vast house with a huge wall.

5 Q And, again, you're speaking to the comparable that  
6 sold for 2.6?

7 A That's right. That's right. And, anyway, through



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8 a whole series of things, there was one expert, he had  
9 flown in to see it, and she said it wasn't by Courbet.  
10 She was wrong. But it was atypical. So the picture is  
11 atypical, for various reasons I won't bore you with.  
12 But the fact is that it wasn't typical and it was very  
13 unwieldy and no private person, except this one man who  
14 ultimately didn't buy it, could possibly hang.

15 So the painting came back to my  
16 place. And it was huge. I sent it back to Christie's.  
17 Christie's then sold it to another dealer, and that  
18 other dealer then sold it to the Houston Museum of Fine  
19 Arts. The Houston Museum of Fine Arts was asked  
20 \$9 million for it. Okay? I found out all of this  
21 after I made the \$3.5 million appraisal. All right?

22 Q So your initial appraisal of the Courbet was three  
23 and a half million dollars?

24 A It was three and a half, but I had nothing to go  
25 on except that one thing that wasn't really comparable,

1 FEIGEN - DIRECT 60

2 only vaguely comparable.

3 Then the Houston museum bought the  
4 picture. I asked the chief curator, who's a friend of  
5 mine. And he wouldn't tell me exactly what they paid,  
6 but they were asked nine million and they got it for  
7 something like six.

8 But again, although comparable in  
9 size, it wasn't comparable to the Barnes picture  
10 because the Barnes picture has a figure in it, and  
11 figure paintings by Courbet are much more valuable than

12 pure landscape.

13 Secondly, the Houston picture not

14 only is a pure landscape, but a very atypical one to

15 boot, and it had that auction history which somewhat

16 contaminated the sale. It didn't come out of a source

17 like the Barnes.

18 And then I went to Paris recently,

19 and I saw another figure painting by Courbet whose

20 authenticity has been questioned. I don't really

21 question it. I'm not sure, but it isn't in the Fernier

22 book, which is a deficit. The Barnes picture is in the

23 book. And the Barnes picture, in my view, is more

24 saleable and more valuable, and it's a painting that

25 one wouldn't put at auction, because the auctioneers

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2 have nothing to go on in terms of estimates, and  
3 museums don't buy at auction, and this is a museum  
4 picture. I would simply call up the Getty and sell  
5 them the picture, and I feel reasonably sure eight and  
6 a half million dollars would be a relative bargain.

7 Q So it's your professional opinion that the  
8 appraised value of this piece is eight and a half  
9 million dollars based upon all that research that you  
10 performed?

11 A I think that's conservative.

12 Q Mr. Feigen, do you have an opinion as to the cache  
13 value for the provenance that would attach to the value  
14 of the Barnes artwork, should it be sold if the Court  
15 orders such a thing?

16 A I think the cache is enormous. I say that not

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17 because I have any axe to grind. I really don't. I  
18 think it would be enormous. And I remember the sale of  
19 Violette DeMazia's picture down here. And it was not  
20 as direct a connection with the Barnes as these  
21 pictures, and they were relatively minor pictures. And  
22 the whole world -- I couldn't believe it. Everybody  
23 thought they were going to sneak off to this little  
24 auction house in Philadelphia on the sly, and I got  
25 down there and everybody in the world was there.

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2 Pierre Matisse was there to buy the Matisse. It was a  
3 -- you couldn't even get into the room. Such was the  
4 cache of the Barnes relationship.

5 So if you had a Barnes sale, I  
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6 think all of these -- all of these values would be low.

7 I think it would bring a -- have a worldwide audience.

8 You'd have the Soutines. You'd have the Russian

9 Oligarches flying in here, and everything else. The

10 Latin Americans would be up for the Matta. The thing

11 would be all over the press. It would be enormous.

12 Q Mr. Feigen, do you hold all of the opinions that

13 you've rendered today to a reasonable degree of

14 expertise in the field of Nineteenth Century art and

15 art appraisal?

16 A Do I?

17 Q Do you hold all of your opinions to a reasonable

18 degree of professional certainty in the field of art

19 appraisal?

20 A Yes.

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

22 have.

23 THE COURT: You do have your file

24 with you?

25 THE WITNESS: Yes, I do.

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2 THE COURT: You'd like to take some

3 time to look at that, right?

4 MR. WELLINGTON: Yes, Your Honor.

5 I would.

6 THE COURT: Why don't we take our

7 break a little bit early then, allow you to do that,

8 and then I'll have my crier check with you when you're

9 ready to go. All right?

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10 MR. WELLINGTON: Thank you, Your

11 Honor.

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13 (Recess, 2:32 p.m.)

14 - - -

15 (The next transcript is Volume

16 XII, reported by W. Byron Battle, R.P.R.)

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C E R T I F I C A T E

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I hereby certify that the

5

proceedings and evidence are contained fully and

6

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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Volume XI  
Received and directed to be filed

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

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Stanley R. Ott, Judge

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