

When Politics Shows its Face, It's Not Pretty

by Evelyn Yaari

"The world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing." Albert Einstein

On June 10 a delegation from Friends of the Barnes Foundation went to Norristown to meet the County Commissioners, our former allies in the effort to preserve the Barnes Foundation in Merion. During the course of the hour and a half meeting, it became apparent that the politics that had made the Barnes cause useful for election purposes had run its course. Commissioners Hoeffel and Matthews, previously totally committed to doing everything reasonable to preserve the Barnes, were caving in right before our eyes. Both spoke against filing a Notice of Appeal, for reasons having nothing to do with the merits of the matter. The situation called for scrappy fighters, but we had instead a couple of whimps.

It might be helpful to review the basic course of events. The County's petition was filed in September 2007 seeking a re-opening of the Barnes hearings. That filing was followed by Preliminary Objections from the Pennsylvania Attorney General and the Barnes Foundation, asking that the whole business of the petitions be thrown out, including the predictable accusations that the claims therein were "scurrilous."

The County responded to the Preliminary Objections with a Brief in February of 2008. The basic argument was that significant changes in circumstances will allow the Barnes trustees to administer Albert Barnes's Trust in accordance with the Donor's well-known intent for the Foundation to remain in Merion. In addition, the Brief explained the County's "substantial, direct, and immediate" interest in the matter that, it was

argued, should qualify the government body to intervene in the matter. The Brief can be found at http://www.barnesfriends.org/download/legal_matters_022908_montco_brief.pdf

Then, in March Deputy Solicitor Carolyn Carluccio, Esq. presented the County's stance on the matter in Oral Arguments before Judge Ott, which included new information about the financial conditions of the Barnes Foundation that should have invited a forensic audit. Oddly, none of the County Commissioners were present for the Oral Arguments. While their absence was noted, it not fully appreciated as a foreshadowing of the betrayal to come.

On May 15, 2008, the County's petition seeking to re-open hearings on the Barnes was dismissed as Judge Ott jettisoned the matter from his Court in an eight-page Memorandum that barely mentioned the reasoning behind the many months of monumental effort involved in this brave attempt to reverse the disastrous Court decision of 2004. Devoting all of 24 lines of his eight-page Memorandum to the topic of the County's position, Judge Ott put the government of Montgomery County on the same footing as two individuals who had sought standing in a Commonwealth Court case. The County, he wrote, does not have the required "special interests" to establish its standing to legitimately intervene in place of the Attorney General's office. That would be the same Attorney General's office who Judge Ott himself chastised during the 2004 Barnes hearings for *not* doing its job.

Montgomery County Commissioner Bruce Castor, Esq. repeatedly urged filing a Notice of Appeal, noting that it is the County's absolute right under the law. Former Commissioner Tom Ellis, Esq. attended both the Oral Arguments in March and the recent Commissioners' open meeting, speaking out strongly in favor of a County appeal

of the dismissal. Friends of the Barnes Foundation heard from many other attorneys who stated that the County's dismissal left ample room for a spirited appeal.

This was the only opportunity currently available for an attempt at justice for the Barnes and the two men who lead the County government blinked, or was it winked, and then turned away. The back-of-the-hand treatment by Judge Ott called out for a ringing challenge. Instead, Hoeffel and Matthews responded with a dull thud.

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