

THURSDAY, DECEMBER 11, 2003

(Proceedings commenced at 9:30
a.m.)

THE COURT: Good morning.

Counsel, I have given you two
more ex parte communications that came in this
morning's mail. I don't intend to comment upon them,
other than have the record reflect that I have passed
them on, which is my understanding of my obligation.

MR. WELLINGTON: Thank you, Your
Honor.

THE COURT: Mr. Wellington.

MR. WELLINGTON: Thank you.

The Barnes Foundation calls
Rebecca Rimel.

PETITIONERS' EVIDENCE

- - -

REBECCA RIMEL, having been duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELLINGTON:

Q Good morning, Ms. Rimel.

A Good morning.

Q Tell us your current professional position.

1

2 **A** I'm the President and Chief Executive Officer of
3 the Pew Charitable Trusts based in Philadelphia.

4 **Q** And what are the Pew Charitable Trusts?

5 **A** They're made up of seven individual trusts
6 started by the two sons and two daughters of Joseph
7 Newton Pew, who founded what is today known as Sunoco
8 or Sun Oil.

9 We make grants nationally, and,
10 in some cases, internationally, and we have a strong
11 commitment to the Philadelphia community.

12 **Q** Give the Court the benefit of your educational
13 and professional background.

14 **A** I grew up and was educated in Charlottesville,
15 Virginia. In 1973, I graduated with distinction from
16 the University of Virginia with a Bachelor of Science
17 degree in nursing. I went on to receive advanced
18 training as a nurse practitioner. I subsequently, in
19 1981, was appointed to the faculty and the Department
20 of Neurosurgery; the first nurse to be appointed to a
21 faculty position in the medical school.

22 In 1983, I came to Philadelphia
23 after receiving my Master's in business
24 administration, and, in '83, I joined the Pew
25 Charitable Trusts.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And when did you become President of the Pew Trusts?

A I became Executive Director in 1989 and President in 1993.

Q What are your responsibilities as President of this Foundation?

A Well, I guess you can think of it as sort of soup to nuts. I'm responsible for all of the operations and management issues related to the Trust. I oversee all of our grant making activities. I'm responsible for reporting to the Board on all matters related to the activities of the Trust, which are quite diverse, actually, and I would be happy to describe that.

Q Do you serve as a member of the Board, as well?

A I do.

Q Do you serve on any other, either profit or nonprofit, Boards?

A I do. I serve on the Board of the Deutsche Bank Scudder Funds. Until two weeks ago, I served as Vice Chair of the Thomas Jefferson Foundation, which owns and operates Monticello. I stepped down after ten years of service on that Board.

I also serve on the Executrix

1
2 Committee of the Philadelphia Chamber of Commerce. I
3 was recently appointed, by President George W. Bush,
4 to serve on the Commission for Public Service and
5 Civic Engagement.

6 Q Are you a member of any other organizations that
7 are public charities or public organizations?

8 A I am. The Council on Foundations, the American
9 Philosophical Society, the College of Physicians of
10 Philadelphia, and there may be others.

11 Q In your experience, Ms. Rimel, what is the
12 approximate or average size of the nonprofit Boards
13 on which you have served?

14 A My Board is currently 14. It will be 15 next
15 year. The range of the Boards that I'm familiar
16 with, I am hard pressed to think of any much under
17 12. So 12 to 25, but I would say the average is 15
18 to 20.

19 Q You gave us a brief description of the Pew
20 Charitable Trusts, and, in that description, you
21 mentioned that it has been a supporter of a number of
22 institutions or organizations in this region. Could
23 you tell us about the magnitude of the support of the
24 Pew Charitable Trusts in this region over its time?

25 A We recently had our 50th birthday, and so it

1
2 gave us a chance to look back at commitments that the
3 institution has made over the years. We have
4 provided approximately 1.4 billion dollars in support
5 to organizations in the Delaware Valley throughout
6 our history. Today, about one-third of the
7 activities of the Trust are focused on the
8 Philadelphia region; two-thirds national.

9 Our national work is quite
10 different than our local work. Our national work is
11 focused on providing information to the public and
12 the policy makers, information on timely issues,
13 which the policy makers and the public are wrestling,
14 and we also have a range of public policy
15 initiatives, from looking at the issues facing foster
16 care to genetically modified foods to campaign
17 finance reform, in which we've been involved for the
18 last seven years.

19 Our local work is focused more on
20 traditional philanthropy. We have two funds for
21 health and human services that provides about 15
22 million dollars a year to front line service
23 providers taking care of adults and children.

24 We have a major arts program in
25 the Delaware Valley, and we are also engaged in

1
2 special initiatives, like the renovations of
3 Independence Mall, the restoration of the Waterworks,
4 and a range of other activities.

5 Q What are the considerations that Pew goes
6 through to decide whether to contribute to an
7 organization?

8 A Well, it is different when we are looking at
9 policy work. There, we're looking at whether an
10 issue is right and whether we have the type of skills
11 to bring to the table to address that.

12 Q Let's focus on the other more traditional types
13 of organizations that you described.

14 A Well, maybe using our work here in the Delaware
15 Valley related to cultural institutions and other
16 organizations.

17 We have fairly stringent
18 criteria, and those criteria are based on our notions
19 of our stewardship responsibility. Our resources are
20 public trusts, and we take that quite seriously, and
21 we feel that the distribution of those resources has
22 to be not only done well, but wisely.

23 So our criteria include the fact
24 that an organization is well governed, that it has a
25 Board, that it's diverse in experience and is capable

1 of carrying out their stewardship responsibilities.

2 We require that organizations
3 have a balanced budget. We require that they're not
4 carrying a large deficit, or even a medium size
5 deficit for that matter. We require that
6 organizations see themselves as a public trust and
7 have brought access to the people that they are to
8 serve, and we require rigorous reporting, both
9 financial and programmatic.
10

11 We apply those criteria evenly to
12 every organization, and we've come under some
13 criticism periodically for not supporting large
14 institutions because they have failed to meet those
15 criteria, as well as small ones.

16 Q Now, it's fair to say, Ms. Rimel, is it not,
17 that Pew has become a leader in an effort to develop
18 financial support for the Barnes Foundation if the
19 changes requested by this petition are granted by the
20 Court; is that correct?

21 A It's true and it's been a privilege to follow
22 Doctor Watson and his Board's lead in this.

23 Q In Pew's decision to become potentially involved
24 in agreeing to raise the substantial funds, what
25 standards did the Pew Trust use to evaluate that this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

was an organization that it should become involved in trying to support?

A Well, I think, by any measure, this is an international treasure, and to see an international treasure that was facing the difficulties that have been articulated here, perhaps even to the point of bankruptcy or seeing the collection distributed in some form or fashion, to me and to my Board seemed a travesty and to many other people that understood what was at stake.

So the issue was compelling and it was because the issue was so compelling that we made exception to virtually every policy we have with respect to our criteria of supporting organizations, and we did it knowingly, of course, but we thought that the need was so great and the opportunity so compelling that we really had no choice.

Q Now, first of all, from your words, describe what the commitment is that Pew has been willing to make.

A First and foremost, we understood, based on our discussions with Ms. Camp and Doctor Watson and also from the audits, that the financial situation was dire, and so we've agreed to provide what we refer to

1
2 as bridge financing -- 3.1 million dollars over two
3 years starting with the agreement of September of
4 '02. That really was to make sure that the
5 collection remained safe and secure and that the
6 institution continued to carry out its mission.

7 Secondly, we agreed to cover all
8 of the legal expenses related to the filing of this
9 petition and seeing it through until the Court
10 determined the outcome.

11 Third, we agreed to use our best
12 efforts to raise 150 million dollars; a hundred
13 million for a capital campaign to build a new home,
14 if the petition was approved, and 50 million dollars
15 for an initial endowment.

16 Q Now, as I understand it, the commitment to use
17 your best efforts to raise this 150 million dollars
18 is conditional upon the approval of the petition; is
19 that correct?

20 A That's correct.

21 MR. WELLINGTON: Your Honor, we
22 need to have something turned on so I can use this,
23 and while Ms. Rosen is getting this warmed up, may I
24 approach Ms. Rimel?

25 THE COURT: Sure.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. WELLINGTON:

Q I'm going to show you a copy of Petitioners' Exhibit 27, Ms. Rimel, and ask whether or not this is the September 13th agreement that Pew has entered into?

A It is.

Q And if we go to the back of this document, does it bear your signature, on Page 24, on behalf of the Pew Charitable Trusts (indicating)?

A Yes (indicating).

Q Now, Ms. Rimel, the Lenfest Foundation is also a signator to Exhibit 27, is it not?

A That's correct.

Q And at some point, the Annenberg Foundation became involved?

A That's right.

Q Can you tell us a little bit about how the Annenberg Foundation became involved?

A We've had many very successful partnerships with the Annenberg Foundation, and it was in early September of '02 that we were approached by the Annenberg Foundation because they understood the importance of this initiative and they volunteered that they would like to join the Lenfest Foundation

1
2 and the Pew Trusts in this endeavor. So there is a
3 letter of understanding between the three donors.

4 Q I want to go back to the beginning of this
5 involvement with the Barnes and Pew and Lenfest and
6 ask you to describe for the Court how this began.

7 A Well, I should actually go back to the very
8 beginning to say that one of the very first people I
9 met, in 1983, when I moved to Philadelphia, was
10 Doctor Watson. He was President of the William Penn
11 Foundation and was revered by the nonprofit
12 community, and many told me that he would be a wise
13 counselor and perhaps a mentor. So I sought him out
14 and he was all of those things. So we had a
15 preexisting relationship, though our paths have not
16 crossed a lot in recent years.

17 I believe it was in May of '01
18 that we got together, and we talked about many
19 things, including issues in the City and the like,
20 and only briefly about his role at the Barnes.

21 At that time he did say to me
22 that they were appreciative of the first grant that
23 we had made to the collection assessment project
24 because he and Ms. Camp were deeply concerned about
25 the preservation and conservation and the security of

1
2 the collection. They saw that as their primary
3 mandate second to none, and so they were relieved
4 that, in fact, now they would be able to fulfill that
5 important responsibility.

6 Q And how much was that initial grant for the
7 collection assessment?

8 A Five hundred thousand dollars, and I believe it
9 was sometime in 2000.

10 Q I interrupted you. Please continue with the
11 story.

12 A As Doctor Watson testified, he and Ms. Camp were
13 going to talk with virtually everyone that would give
14 them an audience about trying to raise funds for the
15 Barnes, and they were running into a lot of
16 difficulty, as he described in his testimony, for all
17 of the reasons that donors had clear expectations
18 about the collection and the educational program and
19 the broader access to the public to fill the public
20 trust and the public interest. He really said that
21 the Board had been deliberating long and hard, and
22 that they were very concerned about the future.

23 He also, during that fall,
24 approached Mr. Lenfest, and they had a similar
25 conversation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mr. Lenfest called me and said,
"This is an international treasure. We just can't
sit by."

I said, "I couldn't agree more.
Why don't the three of us get together," and we did
in December of '01, and it was a very important
meeting.

Doctor Watson was quite candid
and direct about conditions of the Barnes, about the
Board's absolute mandate that this remain an
independent institution, with which we totally
concurred, and we talked a lot about the mini
scenarios that they had pursued.

It was at that meeting that he
indicated what kind of support the Barnes's Board
would need if they were to move forward in looking
for what I believe he called the long-term solution,
not a band-aid and not something that was going to
work for three years and then, yet again, another
crisis at the Barnes. We told him that that was the
only type of, in essence, effort that we could
justify because we really didn't feel that short-term
fixes were in anyone's best interests.

It was at that meeting, with a

1
2 handshake, that we said that we would stand with him,
3 obviously, if his Board, most importantly, concurred
4 and our Board concurred, and it was early in January,
5 I believe, that we met with Judge Arlin Adams and
6 proceeded with developing not only a memorandum of
7 understanding, but the Board at the Barnes proceeded
8 very actively with their due diligence, which has
9 been described by others.

10 Q When you say, "due diligence," are you referring
11 to looking at other options that Doctor Watson
12 testified to?

13 A Other options, getting more detail, financial
14 analysis about the various scenarios that were
15 discussed and really looking at every option open to
16 them and what the five to ten-year outcome of those
17 options would be because, again, no one involved in
18 this wanted to see a three-year fix.

19 First of all, it would not be
20 compelling for donors because donors have to look at
21 the long term because they think about the deployment
22 of their scarce resources.

23 Q You described to the Court, Ms. Rimel, the
24 international treasure that the Barnes is. What do
25 you and Pew Trusts understand the Barnes Foundation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to be?

A It is, first and foremost, an educational institution. It is an educational institution with an extraordinary treasure. I think my interpretation is much as I understand Ms. Camp discussed; that it is education for a broad range of people.

An education comes in many forms and fashions. Education can be a traditional degree granting program. An educational program can be something that meets twice a week for two years or three years. But education comes in other ways as we all know. It comes from being exposed to something that inspires and enlivens and educates.

So I take the interpretation of education as I understand it from what I have read about Doctor Barnes, and what I have learned from hearing from Ms. Camp, that it is education first and foremost, but education in its broadest sense.

Q Is there any desire or intent by the Pew Trusts to change the educational mission of the Barnes Foundation?

A None whatsoever. In fact, that is part of the most compelling reason that we're involved.

Q Is there any effort or intent by Pew Trusts, as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a quid pro quo for assisting or providing their best efforts to raise funds, to change the way in which the permanent gallery collection is displayed?

A None whatsoever, and, in fact, I believe, in the agreement and subsequent support of the petition, we made that clear.

Q Is there any intent or effort by the Pew Trusts to limit or undermine or restrict or change in any way the educational program offered by the Barnes Foundation?

A None whatsoever.

Q There have been recent articles in various of the media that have suggested that the Pew Trusts wants to take control or take over the Barnes Foundation. How do you respond to that?

A Well, I have used all my best efforts to basically address concerns that people have -- and allow me to take just a moment or two to discuss this.

I think that our application to become a public charity to the Internal Revenue Service well over a year ago has, in some way, been construed as an effort for us to control Barnes.

Well over a year ago, we

1
2 approached the Internal Revenue Service to change our
3 governance structure. In fact, we also approached
4 the Court and other regulatory bodies. We did this
5 because it better meets our needs as an organization
6 that is working in the public interest -- and I'll be
7 happy to go into all of the benefits to us.

8 In that application, we were
9 asked for four examples of things that we could do
10 that we can't do now. "Just give us examples. It
11 doesn't mean you would. It doesn't mean that you
12 might even want to."

13 We discussed our role in
14 Independence Mall where we played, arguably, an
15 important one in assisting with the flow of funds and
16 fundraising and also planning. We talked about our
17 role with respect to launching the Greater
18 Philadelphia Tourism Marketing Corporation, as an
19 example, and we also talked about our role with
20 support for the National Constitution Center, among
21 other projects.

22 We did speak of our role with the
23 Barnes and that, if the application was approved and
24 the donors and the Barnes found it acceptable, we
25 would be in a position -- I believe is how it's in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the application -- to administer the funds.

Q Tell it was that means.

A For those who don't work in our field or perhaps who aren't large donors, there may be some impression that it's like that television show, The Millionaire, where a person shows up at your door and gives you a check and that's it.

The way it works is donors make a pledge or a commitment. They see that as binding, but then they develop what's called a grant agreement or contractual letter, and that letter lays out the terms of how the funds will be dispersed. It lays out any restrictions on funds. It lays out the program reporting that's required, and the financial reporting, and they can be quite detailed, and a donor does this because it is their fiduciary responsibility to make sure that the funds are deployed in a way that the Board intended. Virtually every donor, and certainly every foundation donor, does this.

So with respect to the Barnes, there are really three scenarios -- and this is about the capital now. I'm going to separate the hundred million from the 50 million because I think there's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

been some confusion.

There are really three choices for the Barnes -- and, again, this is all assuming that the petition is approved and we move forward.

Number one would be that each donor could decide to administer their funds separately. Let's say we ended up with a hundred donors. I hope it would be two hundred, but let's say we ended up with a hundred donors. They would have a hundred different reporting requirements, a hundred different reports to send in and a hundred different cash flows coming into the project, and it would probably be weary making and very costly to the Barnes to administer a project of this magnitude in that manner.

Q Is it also not the way these things are done in this world?

A No, it's not, because it's just highly inefficient and it's crushing to the recipient. You can imagine the amount of time writing a hundred reports practically every quarter. It would be almost cruel punishment for a grantee to do that.

The second option is for one institution to administer the funds. Administer

1
2 means that we administer our grants. We don't tell
3 them what kind of building to build. We don't tell
4 them who should be working in it. Administer is
5 basically a cash management and an accountability
6 tool. One organization could be asked to administer
7 all of the funds for the donors if the donors are
8 willing and it was felt to be efficient.

9 If asked, and the donors wished
10 it and the Barnes, we would do that for free as a
11 community service. If another organization did it
12 based on our experience, the cost to the project
13 would be roughly four to four and a half million
14 dollars.

15 Q The cost of the administrator for the project?

16 A Right.

17 Q And that four and four and a half million would
18 come out of donated funds to the Barnes?

19 A Right. It's an overhead fee that is justified
20 that goes to the organization administering because
21 of costs for accounting and the like.

22 Q So the Pew offered, as another option, that it
23 would, for free, do this if asked by the Barnes?

24 A That's right, and the donors found it acceptable
25 because, obviously, donors have to feel comfortable

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

as well. It is their funds.

Well, that is it in a nutshell. I think somehow or another that got portrayed as our efforts to control the project.

I think there were unfortunate reports also that implied that somehow our public charity status depended on the Barnes's petition being approved -- or us playing this role, I should say.

Q Please address that because I was going to ask you that.

A First of all, the Internal Revenue Service does not give rulings based on what could be or may be or even should be. They base their rulings on facts and circumstances, and they approved our application not based on anything that may or may not happen with the Barnes. It was a highly presumptuous and very risky business.

Number two, our Board made a major decision to change their governance structure after 50 years of operation. They wouldn't have done this based on, shall we say, a hope and a prayer or something less than certain.

So if the Barnes's petition is

1 not approved, our public charity status is just fine.
2 It has no implications whatsoever. We have many
3 partners that we're already working with in the area
4 of campaign finance reform, ocean work that we're
5 doing, foster care, genetically modified foods and
6 the list goes on.
7

8 So we have already met or will
9 meet, in no uncertain terms, any representations we
10 made to the IRS. The Barnes is irrelevant for that
11 purpose. It's not irrelevant to us for other
12 reasons, obviously.

13 Q Does to administer the funds -- and I'll use
14 that phrase the way we have -- apply to the endowment
15 funds that would be raised as well?

16 A Thank you.

17 The way the capital projects
18 generally work is donors pay out the funds on an
19 invoice basis or a cash needed basis, much like a
20 construction loan. So you go to the bank to get a
21 construction loan and you lay out when you need the
22 cash and they pay it out in increments. That's
23 generally the way capital projects are done, and
24 that's how I anticipate that this would move forward.

25 Endowment grants are different.

1
2 Again, assuming approval, once the Board was in place
3 and they demonstrated that they had investment
4 expertise available to them, then the endowment funds
5 would be released directly to the Barnes because it
6 is the Barnes's Board that should be administering
7 and overseeing their own endowment.

8 Q If -- and I emphasize "if" -- the Pew Trusts
9 were asked by the Barnes and the donors to administer
10 the capital funds for the construction of a new
11 gallery, would that mean that the Pew Trusts would
12 have any influence in how that gallery building was
13 designed and how the art was hung in it?

14 A None whatsoever. We administered the funds for
15 the National Constitution Center. We worked with
16 Annenberg in administering the funds for the new
17 Liberty Bell Pavilion. We had absolutely no
18 conversations with architects. We didn't meet with
19 the Board to discuss design. We had nothing to do
20 with the programs that occurred in them. The grantee
21 kept us advised as part of their reporting, but
22 that's the decision and purview of the Board and
23 management of the organization. That's not what
24 administering funds is about.

25 Q I don't know if you can see this well enough, so

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I'm going to pull it up.

This is Paragraph 1.1 of Exhibit 27, which is the agreement with Barnes, Pew and Lenfest, and it reads, "Pew and Lenfest agree to support the continued independence of The Foundation and its mission for the promotion of the advancement of education and the appreciation of the fine arts as expressed in its Certificate of Incorporation and Bylaws."

Does the Pew Trusts still stand behind that commitment?

A Totally, and it has my signature and my verbal endorsement.

Q "Furthermore, Pew and Lenfest agree to support before Dr. Barnes' goals and objectives for The Foundation expressed in the Bylaws."

Is Pew still behind that commitment?

A Completely.

Q "The Board of The Foundation has recommitted itself to the mission and goals and objectives established by Dr. Barnes with the support to be provided by Pew and Lenfest expressed in this Agreement."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Do you personally have confidence that the Board is so committed?

A I have total confidence with the Barnes and the Board, and it's only grown since this agreement was signed.

Q Now, as part of the petition and the agreement, the Pew and Lenfest Foundations do have the right to approve four of the initial members of the expanded Board.

Can you tell us why that was an important consideration in agreeing to use your best efforts to raise the additional funds?

A There's nothing more important to the health and well being of an organization than the quality and commitment and the stewardship of their Board. Everything flows from there and their top management. It's true for every nonprofit. It's certainly true also in the corporate world.

Given that this was a major change, given that we would be asking donors to make major investments, we needed to give them the assurance that the Board was going to be of absolute exceptional quality and up to the task of managing a very complex institution -- this is a complex

1
2 institution by any measure -- and it was because of
3 that that we wanted to know and wanted to be able to
4 assure other donors who didn't have the kind of
5 firsthand knowledge that we did of Doctor Watson and
6 his intentions and the like to have a world class
7 Board. So we needed that assurance.

8 Q Did you ask for the right to continue to approve
9 Board members beyond this first expanded Board?

10 A No. It's one time only and that's very
11 important because the Board needs to self govern.
12 The Board needs to be independent. The Board needs
13 no outside interference. That prevents huge
14 conflicts of interest, and the independence of this
15 Board was vitally important.

16 Q I'm putting aside for a moment the commitment
17 set forth in Exhibit 27, but you mentioned that Pew
18 began providing some funding to the Barnes
19 Foundation, I think, in 2001, with a half a million
20 dollar grant for the archival project?

21 A It was 2000.

22 Q And was there a subsequent grant, as well, for
23 that project?

24 A Yes. Our total support for the collection
25 assessment project is a million dollars. I believe

1
2 the Mellon Foundation commitment is roughly that as
3 well. The Luce Foundation is nine hundred thousand,
4 maybe closer to a million, and there are three or
5 four other donors of smaller amounts.

6 Q Now, these were not just grants for operating
7 expenses?

8 A No. This was specific support for the
9 collection assessment project that was launched by
10 Ms. Camp and was done so to understand what is in the
11 collection and to secure it and to conserve it and
12 preserve it.

13 Q If you're concerned about the Barnes's financial
14 situation, why doesn't Pew just give money to cover
15 the shortfall in the operating expenses?

16 A Well, we've agreed to do that for this two-year
17 period until a long-term solution can be determined,
18 but going back to our criteria for supporting
19 organizations, this violates absolutely every point
20 in our policy.

21 So if a long-term solution is not
22 forthcoming, we couldn't do it because we would be in
23 violation of our own policy and every other
24 organization in the Delaware Valley would ask for the
25 same kind of dispensation; major deficits, not able

1
2 to balance their budgets, not a fundraising program
3 that's been successful, not able to earn revenue. To
4 earn revenue is just as important as contributed
5 income -- and perhaps I could even say more about how
6 organizations of similar types support themselves, if
7 that would be useful.

8 Q Please, and I'll come back to it. Go ahead.

9 A These are sort of generalizations, so,
10 therefore, there are many exceptions, but alike
11 organizations generally supports themselves from
12 three sources of support.

13 Organizations that are able to
14 support their annual operating budget for 25 to 30
15 percent with their endowment is considered to be very
16 healthy.

17 The second is earned revenue, and
18 that doesn't just come from people who buy a ticket;
19 it comes from all kinds of activities, such as the
20 bookstore and -- for instance, at Monticello, we have
21 a very active catalog business that earns us revenue.

22 The final third is from
23 contributed income. These are people who have a love
24 and a loyalty to an institution. Often alumni are
25 very important through an educational program,

1
2 universities and others. So having access to an
3 organization, and having, if you will, a relationship
4 with an organization, is critical for contributed
5 income. People contribute when they feel a closeness
6 to an organization. So it also involves fundraising
7 events as long as it goes into contributed income.

8 So from where we sat, the Barnes
9 has access to none of the three. It has virtually no
10 endowment. Its earned revenue sources are severely
11 curtailed for all of the reasons that others have
12 discussed better than I could, and as far as
13 contributed income, it's very hard for them to
14 develop that kind of loyalty among a donor base that,
15 each year, among the many competing demands, are
16 going to write a check to the Barnes because they
17 don't feel that it's an institution that is broadly
18 accessible to the public, and that's generally what
19 motivates donors to give.

20 Q Ms. Camp testified that, after she arrived in
21 late 1998, she actually added some people to the
22 staff of the Barnes to create an inside professional
23 development staff, even though that increased, to
24 some degree, the operating expenses of the Barnes.

25 For that third that you just

1
2 described that produces contributed income or revenue
3 to an organization, is that generally as a result of
4 organizations having inside good development staffs?

5 A Well, a good development staff matters, but
6 that's really the icing on the cake. The way
7 fundraising works is through personal friendships and
8 through loyalty to institutions. Graduates give to
9 the school where they were educated. Board members
10 have professional contacts where they can go and say,
11 "I have a compelling story," and then someone finds
12 that story compelling.

13 Generally, also, the way
14 fundraising works is with small handfuls of very
15 large contributors, and it works very much -- and I
16 think you discussed this -- as a pyramid.

17 While institutions are absolutely
18 dependent on all sources of support, large and small,
19 you can't build a pyramid from the bottom up. I
20 don't know of any institution that's had a successful
21 fundraising campaign that has been able to do it.

22 Q The two-year support that you referred to that
23 Pew has committed to the Barnes, is that what's been
24 called, in this courtroom, the bridge financing?

25 A I believe so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And how much is that bridge financing?

A 3.1 million dollars over 24 months, and the way that number was derived is basically a discussion with Doctor Watson, his Board and Ms. Camp about what it would take to keep the operation solvent for two years until an outcome from this petition could be determined. So it really was bridge financing or a way to make sure that things stayed solvent during that period of time.

Q Is the Pew Charitable Trusts willing to extend the bridge financing for an additional year to keep Barnes solvent if this petition is not granted?

A Well, as I said, we have very rigorous criteria for organizations, such as balanced budgets -- and I don't think I probably need to repeat them. The best I can tell, it would be virtually impossible for the Barnes to meet our criteria for what we call our Philadelphia Cultural Leadership Program. Therefore, we would not be able to support them because they don't meet the criteria. They certainly would be open to apply, but I can't imagine, given their set of circumstances, that they would be able to compete successfully.

Q Turning to the commitment in Exhibit 27, you

1
2 have testified that it's a commitment to use the best
3 efforts to raise 150 million dollars in the future.

4 Now, you've already testified
5 that a hundred of that is sort of roughly thought to
6 be a capital part and 50 for the endowment.

7 A Correct.

8 Q Where does the estimate of a hundred million for
9 the construction of a new gallery come in?

10 A Well, it's always difficult to have estimates,
11 and I'm a firm believer that one should always be
12 very conservative because I don't like surprises and
13 I have no doubt that the Barnes's Board and their
14 management won't like surprises either. So we erred
15 on the side of a generous amount of money.

16 The way we came to that is, in
17 looking at the 30 organizations that have gallery
18 space that have built new facilities around the
19 United States, the cost per square foot is
20 approximately 450 dollars to 750 dollars a square
21 foot. We decided to make our estimate even higher
22 and put it at a thousand dollars a square foot. The
23 current space at the Barnes, if I'm not mistaken, is
24 around 23 thousand square feet. Again, being
25 generous in the estimate, if one built a hundred

1
2 thousand square foot facility and every square foot
3 cost a thousand dollars, that's where the hundred
4 million dollars came from.

5 Now, I honestly believe that that
6 may be an over estimate, but I would rather have over
7 estimated, in my discussions with Doctor Watson, than
8 under estimated.

9 So obviously, with a smaller
10 facility, less expensive space, those are resources
11 that could be deployed elsewhere for other capital
12 needs or for other programmatic needs.

13 Was your question also about the
14 endowment?

15 Q Where did the 50 million estimate for the
16 endowment come from?

17 A Well, it's like many things. You can never have
18 enough endowments. Let me say that right up front.

19 The way we backed into that is
20 you have to reach an assumption of what the annual
21 operating budget might be for the Barnes, and that's
22 very hard to do, and I think Doctor Watson testified,
23 again, "We didn't want to be presumptuous of the
24 Court and didn't want to spend money unnecessarily."
25 So these, again, are estimates, but perhaps providing

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

some other institutions would help.

The Pennsylvania Academy of Fine Arts, which is a fairly complex organization, has a degree granting educational program. It has extensive gallery space. In 2001, their operating budget was about ten and a half to 11 million dollars for everything that they do.

If you look at the Philadelphia Museum of Art, just their main building is over four hundred thousand square feet, and they have many other buildings, and their annual operating budget is 40 million dollars.

I think, currently, the Barnes's operating budget is about three and a half million. So if one assumed more than a doubling of their annual operating budget, seven and a half to eight million, and one assumed that you wanted to cover one-third of their operating budget, back to what I discussed earlier, from their endowment, the general rule in nonprofits is a five percent draw on endowments.

Q Why five?

A A study has been done of endowments across the country by Cambridge Associates, which is an

1
2 organization that oversees investments for
3 nonprofits, and over the last 30 years, on average,
4 an endowment will earn between eight and a half and
5 nine percent. Now, right now, that seems like a lot,
6 but they were earning 20 percent in the late '90s.
7 But, on average, over the last 30 years, eight and a
8 half to nine percent.

9 Well, you say, "Why don't they
10 spend eight or nine percent?" Basically, you don't
11 want to eat your seed corn. In other words, your
12 endowment has to stay even with inflation. So if you
13 spend five percent out of it and inflation is three
14 or three and a half, you need to make, on average,
15 eight or nine. So that's why the five percent.

16 So virtually every nonprofit I
17 know has a draw on their endowment of somewhere
18 between four and a half and six percent, but five
19 percent is considered the gold standard.

20 So a 50 million dollar endowment,
21 with a five percent draw, would give you two and a
22 half million a year from your endowment. So with two
23 and a half million on a seven and a half million
24 dollar budget, you can see that it was felt that that
25 really was healthy, but not overly ambitious, and,

1
2 obviously, one of the primary responsibilities of the
3 Board, in addition to making sure it's invested well,
4 would be to add to it. That's what Boards need to do
5 so that their successors have even a larger cushion.

6 Q Ms. Rimel, since Pew has been providing bridge
7 financing, are you getting financial reports from the
8 Barnes?

9 A We are.

10 Q Have you determined whether the Barnes's
11 expenditures are excessive in Pew's view in the last
12 year or two since you've been providing bridge
13 financing?

14 A Well, they're absolutely not excessive in my
15 opinion, and I sometimes think -- and I just had a
16 conversation about this with my Board about our own
17 institution -- that, if times get tough, you just cut
18 back absolutely to the bone. So, for us, if we're
19 running a two hundred million dollar a year grant
20 budget, we need a certain size staff, but if we were
21 running a hundred million dollar grant budget, we
22 can't just cut the staff in half. There are certain
23 positions where there's only one person in it.
24 You've got to have a person in benefits. You've got
25 to have a receptionist. There are economies that

1
2 allow you, when you get bigger, to be more economical
3 in your operations.

4 I visited the Barnes on a couple
5 of occasions, and I would think that the Board and
6 management there must have some restless nights
7 because the security there is limited -- and, again,
8 I think this is a financial issue. Most galleries
9 that one would visit, there would be security in each
10 room of the gallery, particularly with precious
11 assets. Barnes doesn't have the resources to do
12 that, and I have no doubt that not putting the
13 security and health of their collection first must
14 give them some great anxiety.

15 So the notion that you would
16 maybe cut back the number of visitors or cut back the
17 size of the educational program, if you could cut it
18 back proportionately, in terms of their operations,
19 wouldn't be true for any organization -- certainly
20 not mine or any other that I know. There is a basic
21 cost of doing business and short of closing your
22 doors, you have a responsibility to make sure those
23 things are fulfilled.

24 Q Ms. Rimel, I'm going to turn to the best efforts
25 commitment that Pew and Lenfest have made.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I realize, as you do, that this petition has not been approved and that we're in the process in court of addressing that issue, but can you give the Court some indication of the response to the efforts that have been made so far in trying to get commitments towards this 150 million dollars?

A Well, I can preface my statement with an accolade to the enormous civic minded individuals in the Philadelphia community. This has been a difficult road for the Barnes. It has received an enormous amount of press coverage. Many would have said, "Put me on the sidelines and get back to me when the dust settles."

My indication to them was that we will need to demonstrate, first and foremost, to the Barnes Board, that we can deliver, and certainly to the Court and to others.

So it's been a real honor and privilege to see so many people standing up to be counted. They're individuals, corporations and institutions, and we have pledges from 23 different organizations or individuals for a hundred million dollars should this go forward.

Q If this petition is approved, do you believe

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that the intended goal of 150 million dollars can be achieved?

A All of that money has been raised from the Philadelphia community.

Q All of the one hundred?

A All of the hundred million dollars has come from the Philadelphia community, and with some effort, taking this campaign national and international, I have great hopes that the number will exceed 150 million dollars.

MR. WELLINGTON: Thank you very much, Ms. Rimel.

Your Honor, I have no further questions.

THE COURT: Mr. Barth.

MR. BARTH: Thank you, Your Honor.

CROSS-EXAMINATION

Q Good morning, Ms. Rimel.

A Good morning, sir.

Q Pew Charities, as I understand it, has a current value of approximately 3.5 billion dollars?

A I'm pleased to report it's four.

Q With four billion dollars, Ms. Rimel, why not

1
2 simply give the Barnes Foundation 50 million so it
3 can stay where it is?

4 **A** Well, first of all, it would not meet the
5 criteria I outlined that we have for organizations.
6 It is not running a balanced budget. It has
7 significant deficits.

8 Your argument might be, "Well,
9 couldn't the 50 million offset that? That was
10 invested in an endowment."

11 No. It only deals with one-third
12 of the operating needs, but really more importantly,
13 and to your point, we see the trust as a public
14 trust, and we see everything we do as serving the
15 public interest, and with the limitations currently
16 placed on the Barnes, in terms of access and that its
17 educational programs cannot be expanded because of
18 cost constraints and other constraints, we do not
19 feel that it is there now serving its full potential
20 as a public trust -- that is the Barnes -- and so I
21 do not believe that my Board would be willing to
22 provide a 50 million dollar level of support.

23 **Q** So if you didn't provide that support to the
24 Barnes Foundation, given its current difficulties,
25 that would be, to a certain extent, an abdication of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

your own mission?

A We would see it that way.

Q That money is currently used, I suppose, to support other charitable enterprises in the area?

A This year, 160 million, with about a third of that going into the Philadelphia community, and these are tough times for nonprofits. We have over five thousand applicants a year. These resources are very much in demand. They always are, but with the downturn in the economy, these are tough times for nonprofits. It's a tough time to raise money. Donors have pulled back.

So the call on our resources, how we see our mission and mandate, and the fact that Barnes would not be capable of meeting our criteria, all three would not allow us to move forward.

Q Is there an element of using your funds to meet as wide a portion of the population in the Delaware Valley that enters into that computation in terms of the Barnes's Foundation mission?

A Well, first and foremost, we want to see the collection preserved, as I said, and conserved.

Secondly, we want it to carry out its educational mission in the most thoughtful way

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

possible, and we believe that it is going to be distracted from doing that because of its financial difficulties and also its locational difficulties.

So we don't see any way that it can achieve its mission, and do it successfully over the long run, without a permanent fix to its problems, and that's why, at the very beginning, I totally concurred with Doctor Watson; a short-term fix here, a three year band-aid, and let's see if something else doesn't happen, or as I believe Mrs. Camp has said, as sort of the angel of mercy, a 150 million dollar endowment is provided for the Barnes, so that they are not dependent on contributed income, not dependent on earned income, but can, in essence, live off of the income from that endowment.

I think that's highly unlikely, given the efforts that they have put in to date, and so a permanent long-term solution that allows the institution to carry out its educational mission is really what prompted us down this road.

Q Is the fact that it would be able to reach a greater number of people in Philadelphia add to your commitment to it?

A Certainly.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Now, regarding your decision to support this application, you indicated that you did certain due diligence before you entered into the agreement.

Do I take it then that your own financial staff looked at the Barnes Foundation books and projections?

A Yes. We look at audits from all of the organizations that we support. It's a requirement that every organization have an audit and that they submit that as part of their application process.

So the due diligence that I was actually speaking to was the research that we did to determine the need for the hundred million for the capital campaign and the 50 million for the endowment campaign.

Q Now, regarding the changes to the Barnes's Board and the Pew's right to approve or pass upon the nominees, has the Barnes Foundation suggested any potential nominees to you as yet?

A No. Doctor Watson and I have talked about that. He thinks that is premature. I certainly concur, obviously, but that is his decision.

However, we have had conversations about the kinds of individuals, their

1
2 characteristics, the qualities that they would bring
3 to the Board, the access that they would have to
4 expertise, and I have no doubt that he and his Board
5 will reach out to individuals who will be sterling
6 examples of the kind of individuals that you would
7 want to have on such a Board. I have no doubt about
8 that at all.

9 Q You also indicated the policies that the Pew
10 Charitable Trusts use in order to determine a proper
11 grant recipient. As you referred to them several
12 times, they include a well-governed institution, a
13 capable Board, a balanced budget and no deficit.

14 Are those policies that are also
15 used by other grant making institutions in the area
16 in your experience?

17 A Well, it's interesting. What we call our
18 Philadelphia Cultural Leadership Program has now been
19 emulated by probably five to ten other foundations
20 around the country because they found the due
21 diligence we undertake and the criteria we have to be
22 so compelling. Not every donor adheres to that, but
23 it is, I think, more common practice than not. There
24 may be some differences on some criteria.

25 Q Would you find it surprising then that the

1
2 Barnes Foundation, according to the testimony of
3 Doctor Watson, has been unable to attract grants from
4 other grant making institutions over the two or three
5 years that he has been attempting to find that money?

6 **A** I don't find it surprising at all, and I can
7 imagine that it was both frustrating and weary
8 making, but I think the response he received from the
9 donors, on whose door he knocked, would be repeated
10 tenfold over if they visited a whole other range of
11 donors.

12 It is the concern about the
13 broader public mission of the institution. It is the
14 concern about the financially precarious situation in
15 which they find themselves. It is a concern about
16 not adhering to what is considered best governance
17 practice.

18 **Q** Finally, Mr. Watson spoke with you about a
19 hundred million dollar investment for the capital
20 portion of the 150 million dollars that Pew and
21 Lenfest expects to raise. You indicated that was
22 based upon an estimate using the criteria of square
23 footage and experience and things like that.

24 Would you expect that a formal
25 study, after architectural plans have been finalized,

1
2 should the Court grant the first phase of the
3 petition, would yield a much more hard number for the
4 cost of the new building?

5 A Absolutely. What would likely occur, again
6 assuming an approval, first of all, the programs that
7 will be carried out within the facility have to guide
8 the architectural plans. To have an architect design
9 something without the programmatic input is really
10 foolish.

11 So once the programmatic needs of
12 the institution were determined, an architect would
13 be hired, directions would be given, design would be
14 developed, and then that would be costed out, and,
15 hopefully, those costs should be practically to the
16 dime, and the Board should demand that, because a
17 Board is also held to having something built on time
18 and on budget, so they should have a very clear
19 understanding, and they would have to make some trade
20 offs. "We would like to have an auditorium for
21 school children, perhaps, but we might trade that off
22 against something else."

23 But to your question, absolutely,
24 and, secondly, the operating numbers would have to be
25 fine tuned. In essence, what would be called a pro

1
2 forma or five-year business plan; what the reasonable
3 expectations are for earned revenue, and that's
4 usually done with a worst case/best case scenario,
5 and most institutions actually prepare themselves --
6 well run ones -- for the worst case hoping for the
7 best case, and have contingency plans, if, for
8 instance, visitation falls or tuition for educational
9 programs would fall.

10 Many institutions had a huge down
11 tick in their earned revenue after the events of 911,
12 and they had to be prepared for that.

13 Q So accepting everything you said, of course, but
14 at least in terms of the capital project, you would
15 anticipate that the Court would be presented with a
16 firm estimate of the costs of construction when the
17 petition is returned here for phase two of this
18 hearing?

19 A Yes, and then it really is not just the costs,
20 but I think exactly what the programs are and how the
21 programs fit into the physical space, but you can't
22 get to the cost estimates until you do the other two.

23 Q Now, in your experience in raising this money,
24 is it fair to say that the potential donors have a
25 degree of confidence in the Pew Charities that they

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

might not in the Barnes Foundation, given its history in the past, especially before this current Board came on Board?

A Well, it's always dangerous to draw comparisons, but I'll speak only to my own institution.

We come out of a very rigorous corporate culture. We have former CEO's on our Board. We have members of the family. In fact, half of our Board is made up by members of the Pew family, and they take their stewardships very, very seriously. So we run, as they say, a tight ship, which is how we're known. Probably some of our grantee partners wonder why they have to send in so many financial reports, but I think our reputation in the community is one of good due diligence, high compliance and running a good tight ship.

Q So your administration of funds would encourage people, knowing that, with your stringent policies, the money would be well managed and maintained until it was turned over to the construction phase or to the Barnes for endowment?

A I think people would have that assurance, yes.

Q Just one last question about the agreement that was entered into.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I believe the agreement was signed before the second amended petition was presented to this Court, which encompasses changes regarding its agreement with Lincoln University?

A Right.

Q So that agreement has changed somewhat from, I believe, what was introduced to the Court.

Does the Pew Charities nevertheless still support it as modified by the terms of the agreement with Lincoln University?

A Completely.

MR. BARTH: Thank you.

No further questions.

THE COURT: Mr. Kline.

BY MR. KLINE:

Q Good morning, Ms. Rimel.

A Good morning.

Q Ms. Rimel, you said that the Barnes Foundation was essentially irrelevant -- I think that was your word -- in your application for tax exempt status in order for the Pew Charitable Trusts to become a public charity.

Is it fair to say that your work was irrelevant?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It was irrelevant to the decision making of the Internal Revenue Service.

Q In determining a public charity, however, isn't it true that, if a charity receives more than 30 percent of its support, broadly speaking, from the public, it gets automatic public charity status, from the Internal Revenue Service, under Section 501(C)(3)?

MR. BARTH: Your Honor, I would object to this line of questioning as completely outside the area that Your Honor specified in allowing them to participate.

THE COURT: I take it that you're joining in that?

MR. WELLINGTON: Yes, your Honor.

THE COURT: Mr. Kline, I am going to ask you to outline for me where you expect to take this because, although there may be issues that are relevant or within the fair scope of the direct examination, I don't really understand how it would impact the role that's been outlined for you.

MR. KLINE: Your Honor, we are trying to lay the foundation to show whether the Pew Charitable Trusts and the trustees have considered

1
2 alternatives that would protect the educational
3 program of the Barnes Foundation, and, in some sense,
4 that goes to the motive of the engagement or the
5 agreement between the Pew Charitable Trusts and the
6 trustees.

7 **THE COURT:** I would let you do
8 that, but I can't see at the moment how that last
9 question, relating to a percentage of support
10 yielding automatic charitable status, impacts that
11 motive.

12 **MR. KLINE:** Well, Your Honor --

13 **THE COURT:** And for your benefit,
14 Mr. Kline, you should know that, to the extent that
15 Ms. Rimel already alluded to the fact that the Pew
16 Charitable Trusts approached the IRS and the Court --
17 and this Court was one of those that was approached.
18 This Court is familiar with the Pew Charitable
19 Trusts, has more than a passing familiarity with
20 them, and this Court was consulted -- and I don't
21 mean to suggest, in any way, inappropriately by
22 attorneys, to give it a heads up as to its plans in
23 terms of effecting certain changes, which I can
24 assure you are almost, if not solely, for the purpose
25 of saving certain taxes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. KLINE: Your Honor, the amici do not really challenge the Pew Charitable Trusts' right to use the Barnes Foundations fundraising efforts essentially to qualify for a public charity status. That's really not the point.

THE COURT: In fairness, I'm not sure that the Pew Charitable Trusts have used the Barnes fundraising efforts to support its goal to become a public charity -- I think that's an overreaching statement -- but I'm going to sustain the objection to the last question and allow you to pursue the direction you indicated you wanted to.

MR. KLINE: Thank you, Your Honor.

BY MR. KLINE:

Q Well, let me rephrase that then, Ms. Rimel.

Did your agreement with the Barnes Foundation -- the fundraising activities -- have any implications at all in the broad public support that the Pew Charitable Trusts required under Internal Revenue Service Code 501(C)(3)?

A No, it didn't.

MR. WELLINGTON: Same objection, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: I will allow that question, and it's been answered. The answer was, "No."

BY MR. KLINE:

Q Ms. Rimel, would you please turn to Petitioners' Exhibit Number 27, which I believe is in a book in front of you.

A Which page?

Q Turn to the bottom of Page 2.

A Okay.

Q Now, if you look at that bottom paragraph, it says, "The Foundation desires to continue to carry out the purposes set forth in the Certificate" --

A I'm sorry. The bottom of my Page 2 says, "Donor will, at the same time, convey" --

MR. KLINE: Off the record.

- - -

(Discussion off the record.)

- - -

BY MR. KLINE:

Q Now, if you look at the last paragraph on Page 2 of the agreement between Pew and Lenfest and the trustees, you will see that it starts with the sentence, "The Foundation desires to continue to

1
2 carry out the purposes set forth in the Certificate
3 of Incorporation," and so on and so forth, but if you
4 go down to the middle of that paragraph, I want to
5 read the following words to you.

6 It says, "Furthermore, The
7 Foundation's Bylaws severely limit The Foundation's
8 flexibility in meeting its needs in numerous areas,
9 such as the inability to move or loan its artwork,
10 the inability to construct buildings at the Merion
11 Facility, limiting the uses of the Merion facility,
12 the limited number of days and hours it is open to
13 the public, the number of trustees permitted to serve
14 on the Board and limits on who can serve as a
15 trustee, the limits on holding fundraising events at
16 the Merion Facility, and low entrance charges to
17 visitors to the gallery at the Merion Facility."

18 Would it surprise you to learn
19 that all of the things that are set forth in this
20 agreement that the Pew and Lenfest representatives
21 and the trustees of the Barnes Foundation show as
22 alternatives or obstacles are specific prescriptions
23 that are set forth in Doctor Barnes's 1922 Indenture
24 of Trust?

25 A I'm not familiar with the actual Indenture, as

1

2 you say, from the 1950's. It's my understanding that
3 there has been many changes over the time and that
4 Doctor Barnes allowed access to the gallery on many
5 different days, at many different times, and that he
6 didn't feel these limitations, in fact, would be
7 placed in different ways on different days. That's
8 my understanding, but, again, I'm not the expert.

9

Q So it's your understanding that these items that
10 I just read to you were not prescriptions in the 1922
11 Indenture of Trust of Albert Barnes?

12

A As I said, I'm not familiar with that Indenture.
13 It's my understanding that these things exist today
14 and, therefore, have limited the Barnes ability to
15 carry out its full mission and mandate.

16

Q When you met with Doctor Watson and
17 representatives of the Barnes Foundation, was there
18 any consideration of the prescriptions that were set
19 forth in the 1922 Indenture of Trust or the Bylaws of
20 the Barnes Foundation?

21

A Doctor Watson was quite clear that carrying out
22 the intentions of Doctor Barnes was first and
23 foremost in the minds of the trustees.

24

I really resonate with this
25 because I oversee a family trust as well, and half of

1
2 my Board is made up of members of the founding
3 family. I have a son of donors, and I am blessed to
4 have grandchildren and other members of the family,
5 and, if you'll allow me, we spend a lot of time in
6 talking about donor intent, and I remember a very
7 difficult discussion we were having about a new topic
8 that the Foundation was to pursue.

9 The eldest member of our Board,
10 the son of one of the donors, said, "You know, 75
11 percent of the things that we're dealing with today
12 didn't even exist when the donors were alive. They
13 put us to be the wise stewards. They gave us that
14 responsibility about what they cared about and that
15 we should do the best we can in exercising our
16 stewardship responsibility," and I believe that's
17 exactly what the Barnes's Board is trying to do, and
18 I understand it because it's what I try to do every
19 day on my own job as does my Board.

20 Q Now that you raise that issue, can I ask you
21 whether, if there is a provision in the trust of the
22 Pew Charitable Trusts, for example, that represents
23 the donors' intent, you would adhere to the intent of
24 that donor?

25 MR. WELLINGTON: Objection, Your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Honor.

THE COURT: I'm going to sustain the objection not because it's not on point, but I don't think, from what I've heard this witness testify, that it will be her call with respect to this matter. She's not the one that will be overseeing the adherence to the intent. She is from the organization that's supplying the funding.

Q But do you agree, Ms. Rimel, that respecting the intent of the donor is important in any charitable giving?

A I think the responsibility of the Board that's charged with the stewardship of the institution is to determine that and carry it out.

Q On Tuesday, Kimberly Camp, the Executive Director of the Barnes Foundation, said that the Barnes Foundation had done no feasibility study on the financial impact of moving the Barnes Foundation to the City of Philadelphia.

In connection with the Pew and Lenfest agreement, have the Pew Charitable Trusts done a feasibility study?

A I don't believe I would call it a feasibility study. We work with hundreds of organizations, both

1
2 around the country and in the Delaware Valley, and as
3 I was hopefully explaining in my testimony,
4 understanding the potential size of a new facility
5 that was contemplated, the extent of the educational
6 programs as they are currently carried out, and
7 perhaps expanded, and visitation, and in looking at
8 like organizations, our estimate, based on our
9 knowledge in working with a lot of organizations,
10 would be an operating budget that might be in the
11 range of eight to ten million dollars annually, but,
12 again, no detailed feasibility analysis because
13 Doctor Watson thought that doing anything like that
14 would have been presumptuous until a determination is
15 reached about the future course.

16 Q So you would agree then, Ms. Rimel, that the
17 operation of three campuses in Chester County and in
18 Merion and in Center City, Philadelphia, there's been
19 no feasibility study as to whether there would be
20 sufficient funds to cover the expenses of all of
21 those campuses?

22 A I can't agree with your statement as stated. We
23 currently know what the operations are costing in
24 Merion. We have some sense of what it costs to
25 operate facilities of a certain size, and the Board

1
2 would have to determine, obviously, how expansive a
3 program would be, and no doubt it would expand over
4 time as resources became available, but I don't want
5 to leave the impression that there hasn't been
6 thinking about this, but to your question as to
7 whether there has been a detailed feasibility
8 analysis, the answer is no.

9 Q Now, if you would, refer to the bottom of Page 3
10 of Exhibit Number 27, Ms. Rimel, and this paragraph
11 says, "The Foundation's Board undertook an
12 analysis" -- and that would mean the Barnes
13 Foundation Board -- "undertook an analysis of the
14 steps necessary to continue to serve the primary
15 purposes and goals and objectives of The Foundation,
16 improve the Foundation's finances, and ensure The
17 Foundation's long-term survival."

18 It concludes by saying, "This
19 analysis included an evaluation of the options for
20 accomplishing these goals."

21 Can you tell me whether the
22 options for accomplishing these goals were discussed
23 with the Pew Charitable Trusts and the Lenfest
24 Foundation? In other words, the various options that
25 were reported this week in this hearing, for

1
2 instance, was there any discussion with you about
3 increasing fees at the Barnes Foundation so that it
4 might be feasible to maintain the Barnes Foundation
5 where it is?

6 A Doctor Watson shared with us that the Board had
7 spent numerous hours looking at solutions to their
8 problems, and that all of these solutions led to, at
9 best, some short-term fixes. He did not go into
10 detail with me about them -- I didn't think it was
11 appropriate -- and let me also indicate that, given
12 the restrictions that currently exist, the severity
13 of the financial situation, and the need to tap into
14 resources in each of those three areas I talked
15 about -- contributed income, endowment and earned
16 income -- any solutions would have had to have been
17 fairly radical, but he did not go into the Board's
18 deliberative process just as I wouldn't with him
19 about my own.

20 Q So options, such as the sale of assets or
21 Ker-Feal, were not discussed with you with respect to
22 the agreement between Pew and Lenfest and the
23 trustees?

24 A No, they weren't. I perhaps should say -- I
25 know you referred a couple of times to the sale of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

assets, and I assume that means paintings.

Q Paintings and/or the farm at Ker-Feal. Was that discussed with you?

A No. Neither was.

Q Just two more questions, Ms. Rimel.

If Judge Ott denies the trustees' request to move the paintings from Montgomery County to the City of Philadelphia, and instead directs the Barnes to pursue other alternatives to solve its money problems, would the Pew Charitable Trusts consider any sort of financial support for this international treasure at the Barnes Foundation, including support for its educational program?

A If they complied with our policies, as I outlined earlier. We apply those policies absolutely equitably across every organization that we fund.

If they have a well governed and broadly representative Board, that is in terms of their competency in bringing about a balanced budget and a healthy endowment to support their operations, broad access in terms of their educational programs so that it is serving a very diverse constituency, both in terms of age, as well as areas of interest and the like, and broad access to its collection,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

yes, of course, if they met those criteria, we would be honored to have them as part of our Philadelphia Cultural Leadership Program.

Q One last question.

If Judge Ott permits the move of the paintings from Montgomery County to the City of Philadelphia, but requires that the Foundation or the new facility be closed on four days of each week, to be used solely and exclusively for educational purposes, would the Pew Charitable Trusts still support and stand by its agreement to help to raise the 150 million dollars for the Barnes Foundation?

A I think the question is whether the Barnes Foundation could have a viable business model, if you will, to sustain itself, if that was a restriction placed upon it.

Going back to my one-third, one-third, one-third, endowment is one thing, and the second is earned revenue, and the earned revenue is in many sources, but you have to have access to have earned revenue, and you have to have access to have contributed income. People are not going to support an international treasure as grand as this is if they don't believe that their resources were serving the

1
2 public good and serving the public interest.

3 An organization that is
4 exclusionary and closed to the public, it's very hard
5 to justify the case to donors that they should
6 support it. So I would be very concerned, as I trust
7 so would the Barnes's Board, that there is a business
8 model, if you will, that could sustain it, if the
9 restrictions were so significant.

10 Q So if Judge Ott ordered that the facility in
11 Philadelphia, if approved, must be closed and used
12 solely and exclusively for educational purposes in
13 Philadelphia four days a week, and if the trustees
14 could not show that they could raise enough money
15 doing it that way in Philadelphia, did I hear you
16 correctly to say that, at that point, the Pew
17 Charitable Trusts and the Lenfest Foundation would
18 not honor its agreement with the trustees of the
19 Barnes Foundation?

20 A I think the first question is whether the
21 Barnes's trustees would feel that they could pursue a
22 course of action that didn't have a fairly certain
23 positive outcome for the institution. So, are there
24 other business models that could generate the
25 one-third, one-third, one-third? Perhaps, but I am

1
2 hard pressed, given my 20 years of experience in this
3 business, to know of one.

4 So I think the question is, would
5 the Board of the Barnes, let alone the donors, in
6 carrying out their fiduciary responsibilities, be
7 responsible in pursuing a course of action where they
8 were fairly certain that the outcome was not going to
9 be a sustainable, healthy, viable institution to
10 serve Doctor Barnes's wishes, which was to educate
11 about fine arts and be available, as Doctor Watson
12 said so many times, to the plain people?

13 Q And you will admit that no feasibility study has
14 been done with respect to the move to Philadelphia;
15 is that correct?

16 A Well, I want to take the words, "feasibility
17 study," as I did. There's been a lot of thinking,
18 discussion and an enormous amount of understanding,
19 not only within our own institution, but other
20 donors, about what it would take from an operational
21 standpoint. Certainly, Ms. Camp and her colleagues
22 have thought about this as well.

23 If your question is whether a
24 McKenzie and Associates or someone else has been
25 hired to do a line by line five-year pro forma

1
2 projection, the answer is no, because you can't do
3 that until you know the entirety of your programs,
4 the size of the facility you need to house your
5 programs, your educational opportunities for school
6 children and for current students, no doubt for
7 others, as well as also what you need to have access
8 to for the plain people.

9 So you cannot answer your
10 question for a line by line analysis until the Court
11 makes its ruling about whether they are open to
12 pursuing that course of action.

13 Q If the Court determines that the move can go
14 forward, but the facility in Philadelphia must be
15 used four days a week solely and exclusively for
16 educational purposes, and if the trustees of the
17 Barnes Foundation, after they determine that they
18 cannot raise sufficient public funds without being
19 open six or seven days a week, would that impact on
20 the agreement between the Pew Charitable Trusts, the
21 Lenfest Foundation and the trustees; in other words,
22 if they couldn't meet these requirements that you
23 said are rigid and that the Pew Charitable Trusts
24 follow with respect to all cultural organizations?

25 A I want to make sure I understand your question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

If the Board determines that they could not maintain a robust budget and be solvent, given the restrictions placed upon them, would we still pursue this?

Q Yes.

A Absolutely not, and let me just explain. If it is a solution that is going to lead to a detrimental outcome, and knowing that at the beginning the model is not sustainable because the revenue can't be produced, you would think us irresponsible and any other donor, let alone the Barnes's Board, to pursue a course of action that would clearly lead to a detrimental outcome.

MR. KLINE: Ms. Rimel, thank you for your patience.

THE COURT: May I suggest that this is a good time to take a break?

MR. WELLINGTON: I have no redirect, Your Honor.

THE COURT: Well, I have a few questions for Ms. Rimel myself.

MR. WELLINGTON: I apologize, Your Honor. It's a good time for a break.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Recess)

- - -

BY THE COURT:

Q Good morning, Ms. Rimel.

A Good morning, sir.

Q You began your testimony with an explanation, I think, and I don't know that you used the term, "confusion," but I think what you were saying was that you wanted to address confusion created in certain media accounts about the intention of the Pew Foundation in seeking control of the operations of the Board because of certain articles that may have appeared, and I think I understand very well what you mean by your need to administer the funds.

Would a fair analogy be a small employer that outsources the administration of any health insurance claims for its employees to a Highmark or some facility that charges a small percentage usually to handle all of the claims and submit them for payment?

A I think that's a good analogy.

Q The only difference being you don't charge money for that?

A Well, we've agreed not to in this case.

1

2 Q I think my understanding of the administration
3 of an endowment is similar to yours -- and, by the
4 way, were you present for the earlier testimony
5 that's occurred in this trial?

6 A I was here on Monday only, Your Honor.

7 Q So you heard Doctor Watson?

8 A I did.

9 Q You didn't get to hear Ms. Camp and I discuss
10 certain things?

11 A No, sir, I didn't.

12 Q All right. What I had suggested to Ms. Camp,
13 and I think it's really no different from your model,
14 is that my understanding of endowments or trusts, for
15 that matter, is that they generally are invested to
16 attain both income and growth?

17 A Usually, Your Honor, for what is called total
18 returns.

19 Q Yes. I'm familiar with the term.

20 I suggested that the income
21 aspect of that model, generally, expects to receive
22 something like four percent in annual income. You
23 would take five, and I accept that, but, in any
24 event, I think we can agree that the 50 million
25 dollar endowment is invested pursuant to standard

1
2 means with standard goals and plans, and we're
3 looking somewhere around two and a half million
4 dollars; right?

5 A Correct.

6 Q I understood your model for one-third,
7 one-third, one-third, which would, of course, assume
8 a seven and a half million overall operating budget.
9 I heard you say later in your testimony that, in one
10 of the models that you foresaw, you thought it might
11 be as much as eight to ten total; right?

12 A Looking at all of the campuses and all of the
13 needs, but, again, that's based on a lot of
14 assumptions.

15 Q I'm not holding you to any of those numbers, but
16 we have to talk about something so we're going to
17 talk about that.

18 You're obviously familiar that
19 the three campuses involved are Ker-Feal in Chester
20 County, the Merion campus, and, of course, the third
21 would be the subject of this petition.

22 The discussion of Ker-Feal, I'm
23 going to use the term, is essentially a mothball
24 campus at the moment -- and that's my word, not
25 theirs -- but the truth of the matter is that not a

1
2 whole lot is being done, other than just trying to
3 maintain status quo.

4 Is that your understanding?

5 A My understanding is that it doesn't have really
6 any public access or educational programs because of
7 the security and space. It's quite a small facility.

8 Q My impression -- and I think it's a fair one --
9 is that it would take a fair amount of capital to get
10 that up and running to where it might approach the
11 level of what we've been talking about on the other
12 campuses; agreed?

13 A That would be a fair assumption.

14 Q Let's talk about the bridge financing. I
15 understand that's a 24-month period. Can you tell me
16 when that 24-month period started?

17 A The day the agreement was signed, which was
18 September 13th, '02.

19 Q So it would expire September 13th, '04, unless
20 extended?

21 A '05. It's for two years.

22 Q Well, '02 goes to '04; right?

23 A That's correct. The agreement was signed and it
24 extends for -- I think there's about nine months
25 left.

1

2 Q Okay. That's what I needed to know.

3

4 Now, here's my question -- and
5 let's do a lot of assumptions.

6

7 Let's assume I approved this
8 petition today and then you want to Phase 2. There
9 has to be a certain amount of time involved in
10 getting the necessary plans together, and architects
11 have to be retained, and perhaps McKenzie has to be
12 retained. A number of people would be retained to do
13 a lot of studies so that we can put some flesh on
14 these bones; agreed?

15

16 A Agreed.

17

18 Q Then we have to get to the point where that gets
19 approved. Let's assume that the approval of that is
20 instantaneous, and then the architects go to work,
21 and we start to engage City Council and Philadelphia
22 city politics in approving a giveaway of public land.
23 That takes some time; right?

24

25 A Yes, sir.

26

27 Q And then we have to talk about what construction
28 time is involved for a process like this, and perhaps
29 it's not just construction, but razing some building
30 to make room for it; right?

31

32 A Right.

1

2 Q Do you agree with me that, under the most
3 optimistic of scenarios, we're probably at least
4 three years away from opening any doors on the
5 Parkway?

6 A Three is ambitious. Four is realistic.

7 Q Three is ambitious, is it not?

8 A Yes.

9 Q But I want to be ambitious for the sake of our
10 discussion.

11 Your model, as I understand it,
12 and your discussions with Doctor Watson, and what's
13 being proposed here in its entirety, assumes an up
14 and running Board, a functioning facility with access
15 to the public and a number of other things which
16 obviously can't happen right away?

17 A Correct.

18 Q If history is prologued, then for at least the
19 next three years, one has to expect that this
20 Foundation will be operating at a deficit as it has
21 before; agreed?

22 A Not necessarily.

23 Q Tell me why it changes during that three to
24 four-year period we're discussing.

25 A Because its whole future is different. I

1
2 believe their ability to raise funds for general
3 operations will go up exponentially because people
4 will understand the long-term plan and the stability
5 that this institution will have and the educational
6 programs that it will be able to offer.

7 I have at least three donors in
8 the wings who have a particular interest in
9 educational programs for youth and said, "We would
10 like to increase our pledge to fund the programs and
11 the like."

12 So I believe, if there is a clear
13 future, that the ability then to finance the bridge
14 to that future will be -- and I won't say easy
15 because it's never easy -- but super promising.

16 I should also say that many
17 donors are already eager to start paying on their
18 pledges. Donors have reasons they want to start
19 paying pledges, such as for tax planning purposes and
20 pay out problems, and that money would be put into an
21 interest bearing account and very conservatively
22 invested. All the interest on those funds would be
23 available to cover architectural fees, McKenzie
24 reports, and all of these kinds of things because
25 they all are part and parcel of the planning for this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

project.

So I believe, if there's a clear mandate, and the ability to get donors more enthusiastic, and the ability then for the Barnes to develop -- and I think they already have this -- but maybe a more robust Friends of the Barnes's Group, which is a fundraising tool that is used for people who want to give annual pledges and the like, I have a great sense that that would expand.

Q And your optimism may be well placed, but I think you would concede, at least at this point, it's speculative; agreed?

A Yes.

Q Let's assume the other for the sake of carrying out our discussion.

That however rosy the future would look, three to four years down the line, in the interim period, there is not a significant increase in operating revenues, are the Pew Trusts willing to make a commitment to extend bridge financing as necessary should that scenario ensue?

A If the course was clear and the future was such as is laid out in the petition, I would use my very best efforts with my own Board, because this is not

1
2 my pledge to make, as well as with other donors, to
3 help continue bridge financing until the Barnes is
4 relocated, the educational programs expanded and they
5 have their full endowment and sources of earned
6 revenue available.

7 Q I would imagine you couldn't make a more
8 definitive statement than that, except I'll ask you
9 this.

10 If you used your best efforts --
11 and you know your Board -- are you optimistic that
12 they would respond positive?

13 A I have had a long and hopefully successful
14 tenure at the Trusts, and that's partly been by not
15 preempting my Board.

16 Q You're as smooth as they get, but I think that's
17 a yes or no question.

18 A I think it's a self preservation answer.

19 Q So is the answer yes or no?

20 A The answer is I better not get out in front of
21 my Board.

22 Q You refuse to answer?

23 A Well, I think prudence would dictate that.

24 Q Let's go to that question about the pledges.

25 You indicated you have a hundred

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

million in pledges.

A Right.

Q Obviously, this is not the first project that began with pledges as opposed to direct contributions that you've been involved with; agreed?

A That's correct.

Q Tell me what your history or experience is in terms of yield on pledges as opposed to gifts?

A I know each one of these individuals personally, and, in a fundraising campaign -- and you're correct -- there are some pledges that aren't realized. Given my knowledge of these individuals, I think the chances of anyone defaulting on a pledge is highly unlikely. I would say that, if that would occur, because things happen, I believe that our opportunity for fundraising is vast on the national stage. So I am optimistic and hopeful that our best efforts would be rewarded.

Q That was an artful dodge also. I was really looking for a percentage number to the extent that you would be comfortable putting it on that.

Are you telling me you think it's a hundred percent?

A Because I know these individuals and I have

1
2 personally talked with each one of them, that's
3 different than, let's say, a university campaign
4 where you have thousands of donors and some of
5 them --

6 Q I understand. It's not a church either.

7 A No. Exactly. There may be circumstances that
8 intervenes in one of these person's lives that makes
9 them unable to honor a pledge, but --

10 Q That possibility always exists.

11 A Yes.

12 -- if you're looking for a
13 number, five percent or less.

14 Q You're not willing to discount it more than five
15 percent?

16 A Right.

17 Q Okay. That's all I wanted to hear you say.

18 Does the Pew Trusts intend to
19 make itself available on a consulting basis to the
20 Board of the Foundation if the Board of the
21 Foundation seeks the advice of Pew?

22 A Absolutely. We do this for any number of our
23 partners, and if we have experience to bring or
24 expertise or knowledge, we would be delighted.

25 Q It gets into operation three to four years from

1
2 now. Let's take your eight to ten million dollar
3 figure because I think it's as good as any that we're
4 going to come up with in this scenario. It's
5 realizing 2.5 million from the endowment. That means
6 it's got to come up, from the other two areas that
7 you've defined, with another five and a half to seven
8 and a half million; right?

9 A Right.

10 Q One of those would be revenues that it can enjoy
11 from admissions, sales of books, paperweights or
12 whatever?

13 A Catalogs, on-line opportunities.

14 Q So I imagine it takes a while to get to the
15 level of sophistication as the Thomas Jefferson
16 Foundation's catalog and the sales related thereto.
17 That didn't happen overnight.

18 A No, but there are many institutions with that
19 type of sophistication in Philadelphia that I know
20 would be happy, on a pro bono basis, to offer that
21 kind of quick learning curve to the Barnes.

22 Q Based on -- and probably the model that exists
23 is no model at all because we are talking apples and
24 oranges -- and I understand that -- and I'm just
25 trying to be somewhere in the ballpark of what to be

1
2 expected there, but is a million, at the start, an
3 unrealistic number to assign to those revenue
4 producing things?

5 A I think it would be much higher.

6 Q You do?

7 A I do.

8 Q What's your thought?

9 A Well, I think that has to do with how much
10 public access the gallery has and, obviously, the
11 price of admission, and I have no way of sort of
12 conjecturing how many people or how much, but, you
13 know, on the back of the envelope, one could sort of
14 come up with a number that I think would have you
15 higher than a million with that combined gift shop
16 and book sales and --

17 Q Two million?

18 A I would figure at a minimum.

19 Q Okay. Let's use it.

20 Now, they have to come up with
21 three and a half to five and a half million in
22 contributions; right?

23 A Correct.

24 Q That's the only other category left?

25 A Right.

1

2 Q Your opinion as to the feasibility of that?

3 A We just hosted a fundraising event for our
4 marine work in Los Angeles, and nine hundred thousand
5 dollars was raised in one evening just from people
6 buying a ticket and saying, "Count me in as a friend
7 of the organization."

8 Q It's hard to compare organizations and their
9 events and then translate that into future
10 predictions, you would agree, because the variables
11 are so many and it varies itself; right?

12 A That's true. Given the international reputation
13 of the Barnes, its collection, its very unique
14 educational program, I really believe, with this type
15 of repositioning of this wonderful institution and
16 carrying out that dual mission for education -- and
17 I'm normally quite conservative in my estimates and
18 in my statements -- I feel certain that the
19 contributed income and the earned income will exceed
20 the projections of a third and a third.

21 Q Let's talk uncertainties then. Let's assume the
22 worst case scenario occurs for whatever reason.

23 Ms. Camp is not there. Doctor
24 Watson isn't there. They're not replaced by equally
25 adept folks -- whatever -- a downturn in the economy,

1
2 world wars -- call it what you want, pick your
3 travesty.

4 They have a two and a half
5 million dollar endowment income. They pick up a
6 million or two on their own revenue, but they can't
7 generate any better than they generate now.

8 However unlikely that event
9 occurs, what happens?

10 A Well, there are organizations that find
11 themselves in that situation, and there are a whole
12 range of options open to them. It's a temporary
13 problem. They can get a line of credit. In essence,
14 banks give --

15 Q Banks give lines of credit based on history;
16 right?

17 A No. They base it on --

18 Q And financial statements?

19 A And on future earning opportunities, and banks
20 give concessionary loans very frequently to
21 nonprofits, interest free or one percent or two
22 percent. So certainly a line of credit is a
23 temporary --

24 Q If it were a temporary problem?

25 A Correct.

1

2 Q Let's suppose that they're open for at least two
3 years --

4 A And no one comes?

5 Q Well, people will come, but let's -- people want
6 to come now. We're still operating in the red. So
7 whether they want to come or not, and whether they
8 get in or not, it's operating in the red. What
9 happens?

10 A Well, if I could, I would just go back to this
11 four or five-year pro forma that needs to be
12 developed and it needs to show ranges. It needs to
13 look at, just as you say, the most conservative or
14 the most disappointing scenario and the most
15 positive, and it needs to have contingency planning
16 in it.

17 Temporary problems can be
18 addressed. If you have a structural problem, which
19 is what the Barnes has now, it's not temporary, but
20 structural. We've said it many times. It's their
21 location, their constraints and whatever.

22 If you're developing scenarios
23 and it's structural, that gives you serious concern,
24 and what I know about institutions like this, should
25 they be given the latitude they are requesting, they

1
2 don't have a structural problem, but what I think
3 this Court would want to see is a five-year pro forma
4 or scenario laid out -- best case/worst case -- and
5 the actual specifics built into that, with a
6 combination of best case/worst case on contributed
7 income, how that's going to be done, best case/worst
8 case on earned, and what if the sales fail.

9 This is the type of thing that
10 Boards of nonprofits do all the time. They update
11 these on a three-year rolling basis. That's why you
12 need someone on the Board that has a business
13 sophistication and knows how to run a business. You
14 need someone with investment sophistication that's
15 managed money and invested it, and I believe these
16 kinds of individuals -- they do a lot of scenario
17 planning in their own businesses, so this is not new,
18 particularly to well run larger nonprofits, but that
19 is certainly the kind of work that needs to be done
20 so that that one-third, one-third, one-third -- you
21 get the ranges on it and you make sure that this is
22 an organization that is going to be financially
23 solvent, and, in fact, I would argue better than
24 solvent, but in a very good position to carry out its
25 mission.

1

2 Q To the extent that you've done analyses -- "due
3 diligence," I think was the phrase you used -- I've
4 already gathered that Ker-Feal was not in that
5 equation. It's mothballed and you're not dictating
6 or assuming any change in that status.

7

Let's talk about the Merion
8 campus. It's obviously now the focal point because
9 that's where the gallery is and that's where most of
10 the artwork is that the public is interested in.

11

If the gallery is moved to the
12 Parkway, there has been some discussion about what
13 would happen to the building in Merion. It's an
14 expensive building to maintain. It's obviously a
15 unique building, and its location and the problems
16 related thereto have been well documented and spelled
17 out previously.

18

Have you given any thought to
19 what happens in terms of your analysis and due
20 diligence with that building and how it fits into
21 your model?

22

A Not specifically, but I would offer several
23 cautions. Whether it's a for-profit or a nonprofit
24 that gets too far away from its mission in terms of
25 what it pursues, you're pretty sure of a less than

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

successful outcome. What do I mean by that?

It would seem to me -- and, again, this is not my decision to make -- that the building in Merion should be used to further the mission of the Barnes Foundation. There would be many options open to it, and the Board would have to look at this as an educational facility, a place for art historians to come and study and the functions in the building that could be revenue generating. It wouldn't cover the total carrying costs, but they would fulfill the mission and use the facility for its broader intended purposes. It could generate some income, but the carrying costs for Merion, no doubt, is, in large part, because of the visitation and the programs, and, obviously, if there was a different purpose for it --

Q I'm not entirely sure, but I think what I'm hearing you say is that it would be a lot easier to maintain the use consistent with the mission than it would be to make that building cost effective; agreed?

A Correct.

Q The fact the building isn't even close to being cost effective, we know that; right?

1

2 A Yes.

3 Q Ms. Camp told me it costs 3.6 million dollars a
4 year to maintain it. Fixed costs. Those costs won't
5 go down, I imagine, a great deal, if any. So we've
6 got that drag on the overall equation; right?

7 A Well, I understand, but, obviously, she would be
8 the expert, that their budget annually is close to
9 four million a year, and I assume in that budget it
10 is for carrying out all of the activities within the
11 building, as well as deferred maintenance on the
12 building.

13 Q I think you may be right because we didn't get
14 into that kind of detail. That was just a number
15 that was used.

16 A So if the programs were moved out of the
17 facility -- many of the programs -- the cost of that
18 facility would go down because you don't have a
19 gallery in it.

20 Q You don't know how many of the employees are
21 considered administrative staff versus faculty, but,
22 obviously, the faculty would go there, but my guess
23 is that the faculty would still have offices in
24 Merion, and maybe not.

25

What I'm saying is that that

1
2 becomes, however you calculate it, a financial drain
3 to a degree; right? It is now. It has to be then?

4 A Well, probably the way the Board would look at
5 it is less as two independent sites. They would say,
6 "We have one operating budget. We have this mandate
7 and these expenses to cover. Let's look at the most
8 cost effective way in terms of where we put
9 administration and where we put programs."

10 Q Agreed.

11 A So it's a little hard for me to imagine that
12 they would budget for just one or the other, and,
13 obviously, there would have to be trade off decisions
14 to your question.

15 Q Well, I was trying to make the point that, from
16 my experience, every time you try and do a single
17 operation from two separate locations, it's, to a
18 certain degree, cost inefficient?

19 A That's true.

20 Q Putting it in one place always makes it easier,
21 and whatever that extra cost is, whether it's two
22 million, three million or whatever that number is, it
23 can make a difference between being able to fit
24 within that one-third, one-third, one-third model
25 that we talked about; right? It's a possibility?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A There is no doubt that having more than one facility is more expensive, and that's exactly what this five-year pro forma would have to look at.

Q Is the fall back plan, if it doesn't work, coming back to Court and petitioning to sell the Merion facility?

A A, I would have no knowledge, and, B, that would really be --

Q That wouldn't be your call?

A No, not at all.

Q Okay. Let me ask it more appropriately.

Has that been discussed between you and either Doctor Watson or other members of the Board?

A No. I would only say that he and the Board are very committed to the arboretum, to the facility, and he has never ever raised that issue.

Q In an ideal situation, you're committed to everything; right? Ker-Feal?

A Correct.

Q Botanical gardens?

A Right. Every Board faces this. "How much can we do? We've got to be responsible. Let's balance this out. Let's develop scenario planning, but what

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. BARTH:

Q Ms. Rimel, Judge Ott has just posited many unfortunate circumstances and possible bad outcomes that may befall the Barnes Institution.

To your knowledge, are any of them worse than the current situation that the Barnes Foundation faces, especially if the cost of building a new facility is borne by funds outside of the Barnes Foundation?

A Let me see if I understand it. First of all --

Q Could it be any worse?

A Yes. A lot worse. It could all be over. That's probably worse.

Nonprofits would jump for joy to be in a situation that the Barnes would be in should all of this move forward. First of all, they would have a facility that was debt free. Most nonprofits are paying down debt on their facilities. You name it in Philadelphia -- the Kimmel Center or any other organization -- they don't raise all of the money. They have debt that they incur and they have to pay that debt off. So they would be debt free, number one.

Number two, they would have a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

healthy endowment which could be built upon. They would have a very unique asset, both in terms of the art and the educational program, and we know there is enormous demand for it, both educationally and in terms of access to it from statistics that have been provided.

That's about as good as it gets for a nonprofit. Most nonprofits either don't have an endowment, they're encumbered with debt, and they have a product that very few people might want, so the ability to earn income is really diminished.

So at least in our sector, the deck they would be dealt would be about as promising as you could get.

Your question, though, was, could things get worse? They could get horribly worse. I think, if the Board determined that they could not insure the safety and well being of the collection, they would be compelled to limit much, much further access, and I believe there were some scenarios that were presented during Doctor Watson's testimony. Then a public trust would be unavailable to citizens of the Commonwealth or anyone else. That would be, it seems to me, a travesty.

1
2 I guess, obviously, this Court
3 could determine other outcomes that would also, in my
4 opinion, be very unfortunate. The breaking up of the
5 collection or the collection being put into private
6 hands, even on a very limited basis. These would
7 just be, I think, terribly unfortunate because it's a
8 public asset and a public trust. So I think all of
9 those scenarios are quite bleak, and I try not to
10 think about them a lot.

11 Q But from what you say, it's less bleak, from
12 your perspective, if the move is accomplished and 150
13 million dollars is raised than if it were to stay in
14 place facing the difficulties it does without that
15 opportunity of rescue?

16 A Well, based on the numbers that I have seen and
17 the testimony that I have heard, I don't believe As
18 is is an option for the Barnes. I really believe,
19 without the bridge financing provided by Annenberg,
20 Lenfest and Pew, they would have been faced a year
21 ago with curtailment of access and curtailment of the
22 educational program. I don't believe that wishing
23 and hoping that things will get better is a
24 responsible option for the Barnes's Board. More
25 importantly, Doctor Watson and the Board don't think

1
2 that. That's probably more important.

3 Q I have one last question which is an outgrowth
4 of Mr. Kline's questions for you earlier.

5 Would Pew and Lenfest continue to
6 support the underlying basis of the agreement if this
7 Court were to mandate that there be no diminution in
8 the sole educational access for the gallery from the
9 current levels?

10 A No. In fact, we support the Barnes. As Doctor
11 Watson and I believe Ms. Camp both said, there will
12 be no diminution in the exclusive access for the
13 educational programs -- and this is not unique.

14 The Isabelle Gardner Stewart
15 Museum in Boston has times set aside for access for
16 students and for educational purposes where it is not
17 open for the public. Many institutions around the
18 country have this as part of their dual purpose.

19 So I have assumed, and I think
20 everyone has assumed, that these are meant to be sort
21 of dual mandates that go forward together, but,
22 again, I think in my testimony I said that we imagine
23 education as a broader concept, and I don't want to
24 indicate that those that are coming during the public
25 times won't be being educated as well. So I think

1
2 education really will go on whenever the museum has
3 access to anybody.

4 MR. BARTH: Thank you. No
5 further questions.

6 THE COURT: Thank you, Ms. Rimel.
7 You may step down.

8 - - -
9 (Witness excused.)

10 - - -
11 THE COURT: Mr. Wellington.

12 MR. WELLINGTON: Judge Allen.

13 - - -
14 JACQUELINE F. ALLEN, having been
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WELLINGTON:

18 Q Good morning, Judge Allen.

19 A Good morning again.

20 Q What is your professional position?

21 A I am a Judge of the Court of Common Pleas,
22 Philadelphia County.

23 Q And is that an elected position?

24 A It is.

25 Q And when were you first elected to the Court?