

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

PETITION TO REOPEN THE MATTER BASED ON NEWLY DISCOVERED EVIDENCE
OF IMPROPER CONDUCT NOT KNOWN DURING THE TIME OF TRIAL
BY THE ATTORNEY GENERAL OF PENNSYLVANIA AND
THE GOVERNOR OF PENNSYLVANIA

Samuel C. Stretton, Esquire, on behalf of the below
Petitioners, hereby seeks to reopen the captioned matter on
behalf of students, citizens and other interested persons and on
behalf of Friends of the Barnes Foundation and Barnes Watch, for
the following reasons:

1. The Petitioner, Friends of the Barnes Foundation, is a
non-profit corporation registered pursuant to the laws of the
Commonwealth of Pennsylvania with an address of 7615 St. Martins
Lane, Philadelphia, Pennsylvania 19118. The Friends of Barnes
has the purpose of keeping Dr. Albert Barnes' art collection in
the Lower Merion Township setting, where they were intended by
the donor, Dr. Albert C. Barnes, to remain in perpetuity.

2. The Petitioner, Evelyn Yaari, is a citizen and
resident of the Commonwealth of Pennsylvania with an address of
35 Overhill Road, Bala Cynwyd, Pennsylvania 19004. Ms. Yaari is

a member of Friends of the Barnes Foundation and is a resident of Lower Merion Township in Montgomery County, Pennsylvania, where the Barnes Foundation is located.

3. The Petitioner, Sandra G. Bressler, is a citizen and resident of the Commonwealth of Pennsylvania. She is a Director of Barnes Watch, a founding member of Friends of the Barnes Foundation, and a longtime student in both the Barnes Foundation's Horticultural and Art Programs. Her address is 816 South 10th Street, Philadelphia, Pennsylvania 19147.

4. The Petitioner, Hope Broker, is a citizen and resident of the Commonwealth of Pennsylvania and a founding member of Friends of the Barnes Foundation as well as a student at the Barnes Foundation. Her address is 200 Locust Street, Philadelphia, Pennsylvania 19106.

5. The Petitioner, Richard Feigen, is a citizen and resident of the state of New York with an address of 34 East 69th Street, New York, New York 10065. Mr. Feigen was a member of the Barnes Foundation Art Advisory Committee and the Lincoln University Board of Trustees. He was dismissed from both positions after he protested a proposal to sell paintings from the Barnes art collection to fund operations at the Barnes Foundation.

6. The Petitioner, Sidney Gecker, is a citizen and resident of the state of New York and a founding member of

Friends of the Barnes Foundation and a longtime student of the Barnes Foundation. His address is 226 West 21st Street, New York, New York 10065.

7. The Petitioner, Dr. Walter Herman, is Vice President of Barnes Watch and is a retired physician and founding member of Friends of the Barnes Foundation. He is a neighbor of the Barnes Foundation living directly across the street from the Foundation in a house owned by Dr. Albert Barnes from 1911 until 1913. He is the husband of Nancy Clearwater Herman. His address is 275 North Latch's Lane, Merion, Pennsylvania 19066.

8. The Petitioner, Nancy Clearwater Herman, is a citizen and resident of the Commonwealth of Pennsylvania and a Director of Barnes Watch and a founding member of Friends of the Barnes Foundation. She is an artist and lives directly across the street from the Barnes Foundation in Lower Merion Township, Pennsylvania, and is the wife of Dr. Herman. Her address is 275 North Latch's Lane, Merion, Pennsylvania 19066.

9. The Petitioner, Sue Hood, is a citizen and resident of the Commonwealth of Pennsylvania and a Director of Barnes Watch. Ms. Hood has been a student of the Barnes Foundation and was granted Amicus Curiae status in the captioned litigation previously. Her address is 110 East Chestnut Hill Avenue, Philadelphia, Pennsylvania 19118.

10. The Petitioner, Julia Bissell Leisenring, is a citizen and resident of the Commonwealth of Pennsylvania and a graduate of the Horticultural Program at the Barnes Foundation and a personal friend of Dr. Barnes' wife, Laura Leggett Barnes. Her address is 300 Leopard Road, Berwyn, Pennsylvania 19312.

11. The Petitioner, Robert Marmon, is a citizen and resident of the Commonwealth of Pennsylvania and resides directly across from the Barnes Foundation. He is the husband of Toby Marmon. His address is 339 North Latch's Lane, Merion, Pennsylvania 19066.

12. The Petitioner, Toby Marmon, is a citizen and resident of the Commonwealth of Pennsylvania. She is the wife of Robert Marmon and lives directly across from the Barnes Foundation. Her address is 339 North Latch's Lane, Merion, Pennsylvania 19066.

13. The Petitioner, Costa Rodriguez, is a citizen and resident of the Commonwealth of Pennsylvania. He is the Secretary/Treasurer of Barnes Watch and a founding member of Friends of the Barnes Foundation as well as a student at the Barnes Foundation. His address is 7615 St. Martins Lane, Philadelphia, Pennsylvania 19118.

14. The Petitioner, Barbara B. Rosin, is a citizen and resident of the Commonwealth of Pennsylvania. She is a founding member of Friends of the Barnes Foundation and is a landscape

painter and art educator with an address of 120 West Meade Street, Philadelphia, Pennsylvania 19118.

15. The Petitioner, Barnes Watch, is a 501(c)(3) non-profit corporation dedicated to preserving the art education program and to maintaining the historic and aesthetically significant arrangements of artwork in the Paul Philippe Cret-designed galleries in Lower Merion, Pennsylvania, with an address of 275 North Latch's Lane, Merion, Pennsylvania 19066.

16. All of the above Petitioners have been actively involved in volunteer efforts to prevent the transfer of Dr. Albert C. Barnes' art collection to Philadelphia and to have it instead remain in the historic arboretum setting in Lower Merion, Pennsylvania, which Dr. Barnes designed and planned and in which the collection has remained for approximately 85 years. This location is consistent with the comments of Dr. Barnes in his Last Will and Testament and the Barnes Foundation Indenture of Trust.

17. The Petitioners are attempting to reopen the captioned matter and be given standing so evidence can be presented as to the reasons why the art collection of Dr. Albert Barnes should not be removed from its historic Lower Merion setting and transferred to Philadelphia, but instead should remain at the location of the Barnes Foundation where it has been for the last

approximately 85 years. That address is 300 North Latch's Lane, Merion, Pennsylvania.

18. The Petitioners are well aware of the previous decisions by this Honorable Court and believe that there is important new evidence that would clearly justify the reopening of the matter and standing for the Petitioners.

19. A recent documentary movie entitled The Art of the Steal contains direct statements of then-Attorney General Michael Fisher and then-Governor Edward Rendell. These statements were not known during the prior proceedings before this Honorable Court. In the documentary, then-Attorney General Fisher and then-Governor Rendell discussed their activities that directly affected the decision by the Board of Lincoln University to drop their petition opposing the Barnes Foundation's petition in the above-captioned matter.

20. In the documentary, then-Attorney General Michael Fisher, states as follows:

"I'm sure I saw the letter (from Richard Glanton, warning the Barnes would be 'run into a brick wall.') I'm not going to say that his predictions were accurate *per se*. But once he left, there was not the same level of drive with those who remained. And in the long run, I thought that was going to continue to drag the Barnes down."

"It was pretty clear to me they (the three foundations championing the move) weren't just going to give 50, 70, 100 million dollars without getting control of the Barnes board."

"I don't know that we were ever as direct as saying (to Lincoln University), 'We can take this (the Barnes Foundation) away from you.', because that would take a court to do that, but I had to explain to them that, you know, maybe the Attorney General's office would have to take some action, involving them that might have to change the complexion of the board. And, whether I said that directly or I implied it, I think they finally got the message."

"And when they say...you mentioned...that it was portrayed that I was the bad cop and the Governor was the good cop, the Governor had the money and the Governor had some money he was willing to add onto it. So that automatically made him a good cop."

"There was some money proposed for Lincoln to offset some of the perhaps perceived losses that they might have."

21. The statement by Michael Fisher, who is now a Judge in the United States Court of Appeals for the Third Circuit, is most disturbing since it indicates that Mr. Fisher threatened the Board of Lincoln University with action by the Attorney General's office to change the complexion of the Board. It also indicates that state taxpayer funds were to be used to induce Lincoln University to cooperate with the Governor and Attorney General's preference; i.e., to further the cause of transferring the Barnes art collection to a Philadelphia location. The statements also indicate that private monies could be raised that would result in transfer of the control of the Barnes Board and remove of the Barnes' art collection to Philadelphia. The Attorney General, in his statement, clearly threatened the Board of Lincoln University because the Board was opposed to the

transfer of the art collection to Philadelphia. Mr. Fisher admitted that he was going to play the role of the bad cop and the Governor was to play the role of the good cop. He was aware that then-Governor Rendell was going to make sure that Lincoln received money to off-set the perceived losses. This statement and actions by then-Attorney General Fisher is shocking since it was never disclosed at any time during the proceedings before the Honorable Stanley Ott in the captioned case. The Attorney General, during these proceedings, had the duty and purpose to ensure this charitable collection was preserved and to act in what was in the best interest of the public. The Attorney General is an indispensable party in matters involving charities in the Commonwealth of Pennsylvania by established case law. The Attorney General has oversight responsibilities, legal standing, and, as a result, standing is generally denied to individuals because of the Attorney General's responsibilities. The Attorney General has *parens patriae* responsibilities to enforcing the law applicable to charitable trusts.

22. But the Attorney General cannot fulfill this role for the Court if the Attorney General of Pennsylvania, without disclosure to the Court, was involved in forcing the change of the Barnes Board to allow the transfer of the art collection from Lower Merion to Philadelphia. The Attorney General absolutely violated his fiduciary duties by taking an improper

role and without advising this Honorable Court of this role. The Attorney General forfeited his neutrality and *parens patriae* role by his direct involvement in forcing the Board to drop its opposition to the change of the Barnes Board.

23. This Honorable Court, during the previous hearing, was led to believe the Attorney General was going to fulfill his fiduciary obligations and represent the public interest when, in fact, he was an active participant. As a result, this Court denied standing to students and other persons who wished to participate and present evidence opposing the transfer of the art collection.

24. This Honorable Court was grossly misled by the Attorney General's Office, almost to the point that the conduct of the Attorney General's Office was fraudulent because the Attorney General failed to disclose that he was not acting in his traditional role, but instead had taken an active and serious role in undermining the Lincoln University Board, working to threaten that Board and working to ensure the transfer of the Barnes art collection elsewhere. The minutes of the September 20, 2003 Lincoln University Board meeting reflect the presence of the Attorney General (see Exhibit "A"). This further reinforces his direct involvement and conflict of interest.

25. In the same documentary, The Art of Steal, there were statements by then-Governor Edward Rendell.

"As I recall, it was about 40 million dollars. And I said, 'You tell me what you want to spend the forty million dollars on.'"

"They weren't blackmailed into agreeing with this at all. If you ask the Board, I made it abundantly clear - Mr. Scott and others - that they were getting this money regardless."

"The foundation became fiscally impossible to sustain in its current location. I think it was three or four executive directors came in and tried to make the Barnes financially sustainable in Lower Merion. They failed."

"You've got this magnificent collection being hidden away from the world. Down in Philadelphia, ten times more people a day can be able to see it. And then it's too small, its too small, the building is too small."

"And then you have the secondary benefit of what this would do to continue Philadelphia's drive to be a great tourism and destination city."

"If you were to add the Barnes to the Parkway, there isn't a couple in the United States or in Europe or in Asia who's interested in arts and culture who wouldn't come to Philadelphia for at least a long weekend."

"This collection should be shown to as many people as humanly possible in the best, easiest to get to setting that we can do. This was always a no-brainer for me. It wasn't a tough decision at all."

"You can't get enough people in because of the restrictions and the parking problems. They couldn't get enough people in to the Barnes to see it, to make it even close to financially workable."

"It was going down the tubes and there was no soluble answer to its problems."

"A man by the name of Ray Perelman, who was then, I think Chairman of the Board of the Art Museum, came to see me, probably in the middle of my eight years as mayor and suggested that I get active in trying to convince the state to move the Barnes, for - the Art Museum wanted to - obviously - run it and, the benefits to the City of Philadelphia, etcetera, etcetera, etcetera. So that was probably '95, '94, '96 - in that area."

26. Mr. Rendell's statements about the sustainability of the Barnes Foundation in its historic Merion setting are totally inaccurate. He stated that the foundation became fiscally impossible to sustain in its current location. But, this is absolutely false. It is now known that public monies were being set aside by the former Governor of Pennsylvania to facilitate the transfer. These funds that Governor Rendell initially had set aside were in the amount of \$107 million in an appropriation bill. This information was not presented to this Honorable Court on a timely basis. A tiny fraction of the \$107 million, if there was going to be public appropriations, could have easily supported the historic Merion location of the Barnes Foundation. These were public funds. This Honorable Court was grossly misled during these proceedings that the Barnes Foundation was fiscally unable to maintain its Lower Merion address when, in fact, the Governor had already set aside substantial funds of public monies to support the transfer of the collection to Philadelphia County, including the building of a new facility in Philadelphia. Attached and marked as Exhibit

"B" is the September 15, 2003 Lincoln President's meeting setting forth approximately \$120 million in public monies promised by Governor Rendell to Lincoln University. This confirms his use of public monies to cause the Board to not oppose the transfer of the paintings.

27. The \$107 million appropriation was in appropriations bills in 2002 and that was not presented or made known to this Honorable Court on a timely basis. Further, from recent news articles, it appears that other public funds are also being utilized. These same funds could have been used to maintain the Barnes Foundation at its current location. This Honorable Court was misled. Further, the monies referred to in paragraph 29 and Exhibit "B" were not revealed to Judge Ott during the hearing.

28. The major reason to reopen this matter is the fact that this Court was misled as to the role of the Attorney General and misled as to the availability of public funds. Without the Attorney General being able to play its traditional role, there was no one present to protect the public's interest. In a change of this nature, it is only fair that people have standing to raise all of the important issues, including the misconduct of the Attorney General and the fact that there were sufficient funds for the Barnes Foundation to remain in Lower Merion and the fact that there is going to be substantial public monies utilized for what was presented as a private-sector

endeavor. The Petitioners are prepared to demonstrate that the Barnes Foundation had sufficient revenue to maintain itself at the Lower Merion location. They are also prepared to demonstrate that the Barnes Foundation in its historic Merion setting is far more stable and sustainable and far less precarious than the facility in Philadelphia. Since the Petitioners did not have standing, this issue could not be fully explored. The Petitioners also note that substantial government funds are being utilized to pay for the move and the new building, all of which also was not known at the time.

29. The Attorney General in fact was a co-conspirator and major player to undermine this charitable trust of Dr. Barnes and in forcing the Lincoln University Board, which was initially against any move of the collection and against changing the specific directions of Dr. Barnes, to drop their opposition. The Attorney General never revealed this gross conflict of interest. The hearings were a sham since the Attorney General didn't do its job, but instead performed a completely indefensible role in the matter. Acts of serious professional misconduct have occurred before this Honorable Court, which could well result in significant sanctions and professional discipline for those who participated in misleading this Honorable Court. The deceit to this Court clearly contributed to the lack of standing of others such as some of the

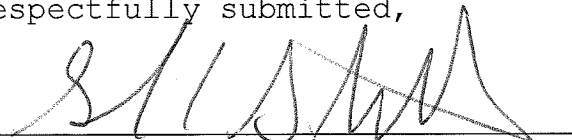
Petitioners. Clearly, standing could have been established under a private Attorney General theory if the Attorney General's conduct had been known to the Court.

30. The Petitioners, all of whom have been involved with efforts to prevent the dismantling of the Barnes Foundation, are respectfully requesting that this Honorable Court reopen these matters from the beginning, so the Petitioners can then present evidence as to the misconduct of the Attorney General and the fact that the Barnes Foundation, including its art collection, should remain intact in Lower Merion and, in fact, there are sufficient means to do so.

WHEREFORE, the Petitioners, by their counsel, Samuel C. Stretton, Esquire, respectfully request this Honorable Court act in an extraordinary fashion to reopen the matter because this

Honorable Court was grossly misled by the actions of the
Attorney General.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'S. C. Stretton', written over a horizontal line.

Samuel C. Stretton, Esquire
Attorney for Petitioners
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney I.D. No. 18491

VERIFICATION

I, Evelyn Yaari, hereby verify that the facts set forth in the attached Petition are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date:

February 16, 2011

Evelyn Yaari
Evelyn Yaari

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the
Petitioners' Petition to Reopen the Matter upon the following
persons in the manner indicated below.

Service by First Class Mail addressed as follows:

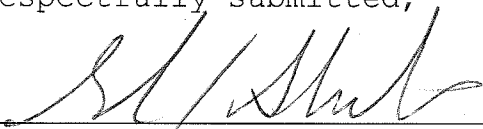
1. Honorable Stanley R. Ott
Montgomery County Courthouse
P.O. Box 311
Norristown, PA 19404-0311
2. Barry M. Miller, Esquire
Montgomery County Solicitor
One Montgomery Plaza
Suite 800
Norristown, PA 19404-0311
3. Lawrence Barth, Esquire
Senior Deputy Attorney General
Commonwealth of Pennsylvania
Office of the Attorney General
Charitable Trusts & Organizations Section
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
4. William H. Ryan, Jr., Esquire
Acting Attorney General
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

5. Brett Miller, Esquire
The Barnes Foundation
300 North Latch's Lane
Merion, PA 19066
6. Ralph G. Willington, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
7. Sheryl L. Auerbach, Esquire
Dilworth Paxson, LLP
3200 Mellon Bank Center
1735 Market Street
Philadelphia, PA 19103
8. Mark D. Schwartz, Esquire
P.O. Box 300
Bryn Mawr, PA 19010
9. Eveyln Yaari
35 Overhill Road
Bala Cynwyd, Pennsylvania 19004

Respectfully submitted,

2/17/11

Date



Samuel C. Stretton, Esquire
Attorney for Petitioners
301 S. High Street
P.O. Box 3231
West Chester, PA 19381
610-696-4243
Attorney I.D. No. 18491

LINCOLN UNIVERSITY BOARD OF TRUSTEES MINUTES

Saturday, September 20, 2003

The Lincoln University Board of Trustees met on Saturday, September 20, 2003, in the Student Union Building. Chairman Frank C. Gihan called the meeting to order at 9:00 a.m. Dr. Valerie Tate Green gave the opening prayer. Secretary Powelson called roll:

Trustees present: Dr. Robert L. Albright, Mr. Kent Amos, Dr. William E. Bennett, Dr. Leonard L. Bethel, Christopher R. Booth Esq., Ms. Carol Ann Campbell, Mr. Warren R. Colbert, Ms. Andrea L. Custis, Bishop David G. Evans, Mr. Frank C. Gihan, Hon. Levan Gordon, Mr. Tracey Hunter Hayes, Dr. David E. Knox, Dr. Ernest C. Levister, Mr. Gregory C. Miller, Dr. Calvin S. Morris, Dr. Donald L. Mullett, Mr. Robert F. Powelson, Mr. Donn G. Scott, Mr. Dwight S. Taylor, Hon. W. Curtis Thomas, Mrs. Phyllis G. Woolley-Roy; Ex-officio Trustees Mr. André V. Duggin for Governor Edward G. Rendell, Dr. William Larkin for Secretary of Education Vicki L. Phillips, Dr. Ivory V. Nelson, Hon. Edward G. Rendell*; Student Trustee Mr. Nosakhare A. Griffin-El. Quorum of 12 satisfied. Faculty Representative Dr. Lennell R. Dade; Emeritus Trustees Mr. Walter D. Chambers, Dr. Frank T. Coleman, Rev. Leroy Patrick, Mr. Theodore Robb.

Trustees absent: Mr. Barry Cooper, Mr. William B. Ingram, Hon. Dominic F. Pileggi, Mr. David E. Warr, Hon. LeAnna M. Washington, Hon. Sherman F. Wooden; Emeritus Trustees Dr. James A. Parker, Mr. William A. Robinson, Dr. Kenneth M. Sadler; Honorary Trustee Mr. Julius Rosenwald.

Chairman Gihan acknowledged special guests PA Attorney General Mike Fisher and Ms. Marilyn Ware, Ware Family Offices.

Chairman Gihan welcomed new trustees Mr. Kent Amos, Christopher R. Booth Esq., Ms. Andrea L. Custis, Mr. André Duggin, Hon. Levan Gordon, Mr. Nosakhare A. Griffin-El, Dr. William Larkin, and Dr. Donald L. Mullett.

Ms. Andrea Custis presented Lincoln University with a \$10,000 check from Verizon Foundation for the LASER Program.

TRUSTEES, DEGREES AND NOMINATIONS COMMITTEE

Mr. Frank C. Gihan, Chair, Trustees, Degrees and Nominations Committee, offered the following resolutions for Board approval:

APPOINTMENT OF ALUMNI TRUSTEE

Exhibit "A"

RES151_092003

WHEREAS, Article II, Section 2, of the Lincoln University By-Laws (revised November 20, 1999) stipulates that upon the expiration of the term of any Alumni Trustee, the Board shall elect an Alumni Trustee for a term of four years from nominations submitted by the Alumni Association; and

WHEREAS, The Alumni Association has nominated The Honorable Levan Gordon, '58 to serve as an Alumni Trustee for a four-year term to expire June 30, 2007; and

WHEREAS, The Alumni Association has duly notified the Board of Trustees of said nomination; now, therefore be it

RESOLVED, That the Board of Trustees hereby approves the nomination of the Alumni Association for the appointment of The Honorable Levan Gordon as Alumni Trustee to serve in accordance with Article II, Section 2 (C) of the University By-Laws.

Motion made by Mr. Hayes; seconded by many.

Favor: 19

Oppose:

Abstain: 2

Motion carried.

APPOINTMENT OF ALUMNI TRUSTEE

RES152_092003

WHEREAS, Article II, Section 2, of the Lincoln University By-Laws (revised November 20, 1999) stipulates that upon the expiration of the term of any Alumni Trustee, the Board shall elect an Alumni Trustee for a term of four years from nominations submitted by the Alumni Association; and

WHEREAS, The Alumni Association has nominated Dr. Donald L. Mullett, '51 to serve as an Alumni Trustee for a four-year term to expire June 30, 2007; and

WHEREAS, The Alumni Association has duly notified the Board of Trustees of said nomination; now, therefore be it

RESOLVED, That the Board of Trustees hereby approves the nomination of the Alumni Association for the appointment of Dr. Donald L. Mullett as Alumni Trustee to serve in accordance with Article II, Section 2 (C) of the University By-Laws.

Motion made by Mr. Hayes; seconded by Dr. Bethel.

Favor: 21

Oppose:
Abstain: 1

Motion carried.

**STUDENT REPRESENTATIVE
RES153_092003
TO THE BOARD OF TRUSTEES**

WHEREAS, Article I, Section 2 (D) of the Lincoln University By-Laws (revised November 20, 1999) provides that one of the eighteen University Trustees shall be a student representative who shall serve for a term of one year; and

WHEREAS, By Resolution dated February 19, 2000, the Board of Trustees approved the Student Government Association (SGA) process of determining the student representative to the Board of Trustees; and

WHEREAS, The process approved provides, pursuant to the Constitution of the SGA, that the SGA President will be the student representative to the Board of Trustees; and

RESOLVED, That Mr. Nosakhare A. Griffin-El is hereby appointed Student Representative to the Board of Trustees in his capacity as President of SGA, for a term expiring June 30, 2004.

Motion made by Dr. Nelson; seconded by Mr. Taylor.

Favor: 23
Oppose:
Abstain:

Motion carried.

Chairman Gihan introduced Ex-officio Trustee Pennsylvania Governor Edward G. Rendell. Governor Rendell provided remarks regarding the Commonwealth's support of Lincoln University and the Barnes Foundation.

EXECUTIVE SESSION

Chairman Gihan convened an Executive Session. The open Board meeting resumed after thirty minutes.

EXECUTIVE COMMITTEE

Chairman Gihan offered the following resolution for Board approval:

AGREEMENT BETWEEN LINCOLN UNIVERSITY RES154_092003 AND THE BARNES FOUNDATION

WHEREAS, On September 24, 2002, the Barnes Foundation filed a Petition to Amend its Charter and Bylaws in the Orphans' Court Division of the Montgomery County Court of Common Pleas and filed an Amended Petition in June 2003; and

WHEREAS, Among the amendments sought by the Barnes Foundation were amendments to the governing structure of the Barnes Foundation, which amendments would affect Lincoln University's right to nominate Trustees of the Barnes Foundation Board of Trustees; and

WHEREAS, Lincoln University is a party to the litigation regarding the Barnes Foundation's Petition and Amended Petition (hereinafter the "Barnes Litigation") and filed an Answer to each Petition opposing certain changes in the governance provisions of the Barnes Foundation's Bylaws; and

WHEREAS, The Executive Committee of the Board of Trustees met via teleconference on Friday, September 12, 2003 and at that meeting unanimously voted to recommend to the full Board of Trustees at its September 20, 2003 meeting "that Lincoln University accept five designated trustees to the Barnes Foundation Board that cannot be unreasonably denied; and

WHEREAS, A settlement agreement regarding the Barnes Litigation, a copy of which is attached to this Resolution (hereinafter the "Agreement"), was presented to Board Chairman Frank Gihan and University President Ivory V. Nelson; and

WHEREAS, Pennsylvania Governor Ed Rendell and Attorney General Mike Fisher were involved in the negotiation of the Agreement and each of them gave their assurances to Board Chairman Frank Gihan and University President Ivory V. Nelson that they would ensure that the University's interests in the Barnes Litigation would be protected by Attorney General Fisher in the event the University were to withdraw from the Barnes Litigation as required by the Agreement; and

WHEREAS, Governor Rendell and Attorney General Fisher further assured Board Chairman Frank Gihan and University President Ivory V. Nelson that the language included in Paragraph 1 of the Agreement which states ♦ The election of such persons nominated by Lincoln University shall not be unreasonably withheld ♦ is intended to apply not only to the nomination of three additional Designated Trustees to be added to the Barnes Board immediately following Court approval of the Amended Petition, but to the nomination and election of all Trustees by Lincoln University pursuant to Sections 5.4 and 5.5 of the proposed Bylaws and to the removal of Trustees pursuant to Section 5.8 of such Bylaws; and

WHEREAS, In accordance with the spirit of the vote of the Executive Committee, on Friday, September 12, 2003, and based upon the assurances of Governor Rendell and Attorney General Fisher, Board Chairman Frank Gihan executed the Agreement; and

WHEREAS, The Board of Trustees, based upon the continued assurances of Governor Rendell and Attorney General Fisher made to the Board at this meeting, desires to accept the recommendation of the Executive Committee and to approve the Agreement and settle the Barnes Litigation on the terms set forth in the Agreement on the condition that the proposed Bylaws as presented to the Court are amended (1) to provide in Section 5.3 of such Bylaws that Lincoln University shall designate three (3) Trustees for election to the Board as part of the process of increasing Board membership to fifteen (15) and that the election of the individuals designated by Lincoln shall not be unreasonably withheld without good cause; (2) to provide in Sections 5.4 and 5.5 of those Bylaws that nomination and election of individuals nominated by Lincoln University to serve as Trustees of the Barnes Foundation will not be unreasonably withheld by the Nominating Committee of the Barnes Board of Trustees or by the Barnes Board itself without good cause; and (3) to provide in Section 5.8 of those Bylaws that no Trustee shall be removed from office without good cause; and

WHEREAS, the Attorney General has proposed amendments to Sections 5.4, 5.5 and 5.8 of the Bylaws which incorporate the changes to those sections of the Bylaws upon which the Board of Trustees desires to condition its approval of the Agreement, a copy of which is attached to this Resolution; now, therefore it is hereby

RESOLVED, That the Agreement is approved on the condition that the proposed Bylaws as presented to the Court are amended (1) to provide in Section 5.3 of such Bylaws that Lincoln University shall designate three (3) Trustees for election to the Board as part of the process of increasing Board membership to fifteen (15) and that the election of the individuals designated by Lincoln shall not be unreasonably withheld without good cause; and (2) as set forth in the amendments to Sections 5.4, 5.5 and 5.8 of the Bylaws proposed by the Attorney General, which are attached hereto; and further

RESOLVED, That this Resolution shall be maintained as part of the permanent records of the University.

Motion made by Dr. Morris; seconded by Mr. Colbert.

Favor: 16

Oppose: 1
Abstain: 5

Motion carried.

2003-04 Board Goals

By a vote of 19 in favor, the 2003-04 Board Goals were approved.

2003-04 Committee Assignments

Committee assignments were amended as follows:

Educational Policy and Academic Affairs Committee
Add: Mr. Nosakhere Griffin-El

Evaluations Committee
Omit: Dr. Kenneth Sadler, Emeritus Trustee

Information Technology and the Library Committee
Add: Staff Liaison

Student Affairs Committee
Add: Mr. Larry Woods, Staff Liaison

By a vote of 19 in favor and 1 opposition, the 2003-04 Committee Assignments were approved as amended.

MINUTES

Secretary Powelson offered the April 19, 2003, June 30, 2003, and August 27, 2003 Board of Trustees meeting minutes for Board approval. Motion made by Secretary Powelson; seconded by Mr. Miller.

Favor: 18
Oppose:
Abstain:

Motion carried.

CHAIRMAN'S REPORT

The Chairman's Report was accepted as information.

PRESIDENT'S REPORT

The President's Report was accepted as information.

TREASURER'S REPORT

The Treasurer's Report was accepted as information.

STANDING COMMITTEE REPORTS:

BUSINESS AFFAIRS COMMITTEE

In the absence of Mr. Donn G. Scott, Chair, Business Affairs Committee, Mr. Colbert offered the following resolution for Board approval:

COLLECTIVE BARGAINING AGREEMENT

RES155_092003

(DISTRICT COUNCIL 88)

WHEREAS, The collective bargaining agreement between the Lincoln University Board of Trustees of the Commonwealth System of Higher Education (the University), and District Council 88, American Federation of State, County and Municipal Employees ♦ AFL-CIO (the Union) expired June 30, 2003, and

WHEREAS, The representative of the University and the Union met and bargained in good faith; now, therefore be it

RESOLVED, That the collective bargaining agreement negotiated by the two parties providing for among other things, base wage increases of 3.5%, 4.0%, 4.0%, 4.0%, 4.0%, 4.5%, and 4.5%, during the seven (7) year term of the agreement (July 1, 2003 ♦ June 30, 2010), is approved; and be it further

RESOLVED, That the legal sufficiency review letter provided by legal counsel is incorporated by reference to this resolution.

Motion made by Mr. Colbert; seconded by Dr. Albright.

Favor: 22

Oppose:

Abstain:

Motion carried.

SESQUICENTENNIAL COMMISSION

The oral report provided by Dr. Patricia A. Nelson, Co-chair, Sesquicentennial Commission, and the Commission report provided in the board book, were accepted as information.

PLANNING AND DEVELOPMENT, INVESTMENT, AUDIT, BUILDINGS & PROPERTY, and the INFORMATION TECHNOLOGY AND THE LIBRARY COMMITTEE reports, provided in the Board book, were accepted as information.

EXECUTIVE SESSION

Chairman Gihan convened an Executive Session. The open Board meeting resumed after fifteen

minutes.

There being no further business, Chairman Gihan adjourned the meeting at 11:45 a.m. EST.

* After addressing the Board, Governor Rendell left the meeting. Governor Rendell did not participate in the voting process.Back to Board of Trustees Minutes
Back to Board of Trustees

**Minutes
President's Cabinet Meeting
September 15, 2003**

Attendees: President Ivory V. Nelson, Vice President Michael B. Hill, Vice President William B. Bynum, Vice President Howard E. Merlin, Vice President Grant D. Venerable and Ms. Diane M. Brown

Minutes of the September 9, 2003 Cabinet Meeting were approved.

Board of Trustee Meeting, Saturday, September 20, 2003

Due to the anticipated interest in items on the upcoming Board meeting agenda, the location of the meeting has been changed to the Multipurpose Room of the Student Union Building (SUB).

Capital Projects

Governor Ed Rendell has approved the following capital projects over a three (3) year period, subject to appropriate legislative authorization:

- Allocation of up to \$50 million for the construction of a Science/General Classroom High Technology Building and the International Cultural Center
- Allocation of \$30 million over the next three years for the following:

2003-2004

- Ware Center \$ 3,500,000
- University Hall \$ 3,000,000
- HVAC Systems & Controls \$ 2,000,000
- Roof Upgrades \$ 1,200,000
- Asbestos Abatement \$ 300,000

(Funding for the renovation of the Ware Center and the University Hall projects has been released. The HVAC Systems and Controls and Roof Upgrades projects will be released in December 2003 and the Asbestos Abatement project will be released in March 2004.)

2004-2005

- Grim Hall (Life Sciences) \$6,500,000
- Student Union Building \$4,000,000

2005-2006

- Wright Hall (Physical Sciences) \$6,000,000
- Urban Center \$1,500,000
- Langston Hughes Memorial Library \$2,000,000

Lincoln University Capital Budget Procedures

The Cabinet approved the Capital Budget Procedures for fiscal year 2003-2004.

The Cabinet meeting was adjourned at 11:15 AM.

Diane M. Brown
Assistant to the President

Exhibit "B"