

1 STATE OF NEW YORK : COUNTY OF MONROE
2 SUPREME COURT
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3 ROBERT OWEN LEHMAN FOUNDATION, INC., :
:
4 Plaintiff, :
:
5 -versus- : Index No.
: E2019008883
6 ISRAELITISCHE KULTUSGEMEINDE WIEN, :
MICHAEL BAR, ROBERT RIEGER TRUST, :
7 JACOB BARAK, AS TRUSTEE OF THE ROBERT :
RIEGER TRUST, SUSAN ZIRKL MEMORIAL :
8 FOUNDATION TRUST AND MICHAEL D. LISSNER, :
AS TRUSTEE OF THE SUSAN ZIRKL MEMORIAL :
9 FOUNDATION TRUST, :
:
10 Defendants. :
-----x
11 MICHAEL BAR, ROBERT RIEGER TRUST, JACOB :
BARAK, AS TRUSTEE OF THE ROBERT RIEGER :
12 TRUST, :
:
13 Third-Party Plaintiffs, :
:
14 -versus- :
:
15 ROBERT OWEN LEHMAN, :
:
16 Third-Party Defendant. :
-----x BENCH TRIAL

Hall of Justice
Rochester, New York 14614
May 7, 2024

B e f o r e : THE HONORABLE DANIEL J. DOYLE
Supreme Court Justice

R e p o r t e d B y : Meredith A. Bonn, RPR, CRR, CSR
Official Court Reporter

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 17 ("The Maylander Heirs")
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1 (Plaintiff's Exhibits Nos. 1 through 118 - marked for
2 identification.)

3 (Maylander Exhibits M-A through M-FFF - marked for
4 identification.)

5 (Rieger Exhibits Nos. R-1 through R-57, R-59 through R-79,
6 R-81 through R-112 and R-114 through R-117 - marked for
7 identification.)

8 THE COURT: This is the matter of Robert
9 Owen Lehman Foundation vs. Eva Zirkl, Michael Bar, and
10 the Robert Rieger Trust.

11 Note that we have Mr. Stauber.

12 MR. BRIAN: Aaron Brian, your Honor.

13 THE COURT: Mr. Brian.

14 MR. STAUBER: Our colleague Zach Osinski is
15 on his way. He is bringing --

16 THE COURT: Doughnuts?

17 MR. STAUBER: -- Mr. Robin Lehman,
18 doughnuts, coffee, and Marie Rolf.

19 THE COURT: Okay. On behalf of the
20 Maylander heirs and Eva Zirkl, we have Mr. Warshavsky
21 and --

22 MS. USITALO: Michelle Usitalo, your Honor.

23 THE COURT: I'll get that eventually. By
24 the last day of trial, I will be able to pronounce
25 that.

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MS. USITALO: No problem.

MR. WARSHAVSKY: Your Honor, our colleagues Tatiana Markel and Victoria Stork will be here on occasion throughout the case.

THE COURT: When you give them permission, Mr. Warshavsky? Is that how it's working?

MR. WARSHAVSKY: They might say that, but no.

THE COURT: On behalf of the Rieger heirs, which is Michael Bar and the Robert Rieger Trust, we have Mr. Dowd and Ms. Jaffe.

MS. JAFFE: Thank you.

THE COURT: Two names I can pronounce relatively easily.

MR. DOWD: Good morning, your Honor.

MS. JAFFE: Thank you.

THE COURT: Good morning.

I'll handle some preliminary matters. I understand that everyone has been meeting for over a day to review exhibits that can be stipulated to. I'd like all the exhibits that have been agreed to to be admitted into evidence to be placed on the record by the party who is proffering the exhibit.

You can start.

MR. STAUBER: There was an email that was

1 circulated by the Court last night. Our colleague
2 Zach Osinski, who has the keys to that kingdom, is
3 bringing the witness up, and once he's here, we can
4 read that email into the record if you give us a
5 minute. It's just a matter of coordinating with
6 Mr. Lehman, who is in a wheelchair.

7 THE COURT: Let's move on to Mr. Warshavsky
8 or whoever is going to be --

9 MS. USITALO: Good morning, your Honor.

10 THE COURT: Usitalo? Is that --

11 MS. USITALO: Usitalo, yeah. It's
12 Finnish.

13 THE COURT: Finnish. All right.

14 MS. USITALO: Not Italian.

15 THE COURT: Not Italian.

16 MS. USITALO: That's what people assume.
17 Yes, your Honor. Yesterday, the parties
18 agreed to admit and mark received as Maylander
19 Exhibits M-D, M-L, M-BB, M-GG, M-II, M-JJ, M-SS, M-TT,
20 and M-CCC.

21 THE COURT: Well, first of all, does
22 everyone understand what those exhibits relate to? I
23 don't -- I don't have the list, the full exhibit
24 list.

25 MR. DOWD: Your Honor, we are working on

1 renumbering ours because we were initially assigned
2 letters, and we pivoted to numbers to make it clearer
3 for the Court. So we are not entirely sure. We are
4 working through it.

5 THE COURT: You don't understand what was
6 just placed on the record by Ms. Usitalo?

7 MS. JAFFE: No. I think we do understand
8 what Ms. Usitalo described to the Court. Exhibits
9 were marked yesterday. We had discussion with
10 counsel, Mr. Stauber and Ms. Usitalo. We are aware of
11 that.

12 THE COURT: And you agree to those exhibits
13 being received in evidence that she just listed?

14 MS. JAFFE: We do. They were common to the
15 parties.

16 THE COURT: Are we still waiting for Mr. --

17 MR. STAUBER: No. We agreed yesterday, your
18 Honor.

19 THE COURT: Those exhibits just put on the
20 record by Ms. Usitalo can be marked as received.

21 (Maylander Exhibits M-D, M-L, M-BB, M-GG, M-II, M-JJ, M-SS,
22 M-TT, and M-CCC - received in evidence.)

23 MS. JAFFE: And, your Honor, for the Rieger
24 heirs, the court reporter marked exhibits with me
25 yesterday, and were emailed to all counsel as they

1 were marked but not yet received. I'm not sure the
2 timing of that or why --

3 THE COURT: That's why I am doing it right
4 now. She doesn't have the authority to receive them.
5 I do.

6 MS. JAFFE: Well, they were not -- thank
7 you.

8 THE COURT: Marked received until -- she's
9 not going to mark them received until I say they are
10 received.

11 Right, Meredith?

12 (There was a discussion held off the record.)

13 THE COURT: I understand there are many
14 exhibits you don't agree on. That's fine. I'm just
15 trying to get the ones that have been agreed to on the
16 record right now so I can say they are received, and
17 then Meredith can take a couple minutes and mark them
18 as received.

19 MS. JAFFE: We agree with what Ms. Usitalo
20 presented to the Court.

21 THE COURT: Are there any exhibits that you
22 have proffered that have been agreed to by the other
23 parties to be received into evidence?

24 MS. JAFFE: No, your Honor.

25 THE COURT: None?

1 MS. JAFFE: They haven't been presented for
2 them to receive. We have marked them, and there was
3 never a conversation, do you all agree to these, they
4 didn't.

5 Mr. Stauber's colleague, Mr. Osinski, said
6 he had an issue with one document, the provenance
7 chart, and that we could perhaps work that out. He is
8 trying to understand how we accumulated the
9 information on that chart, but I think that is the
10 only one that he expressly --

11 THE COURT: Okay. At one of the breaks
12 today, if you could take a few minutes and go through
13 the exhibits that you have that you are seeking to
14 admit into evidence or do it with the other attorneys
15 to see if they will agree to them being received into
16 evidence --

17 MS. JAFFE: We will be glad to.

18 THE COURT: -- it will just help to move
19 things along.

20 MR. WARSHAVSKY: Your Honor, I had
21 suggested -- I think there's a little bit of a break
22 tomorrow, and I was wondering if we could use some of
23 the morning tomorrow and maybe some of the early part
24 of the afternoon to try to get through a bigger chunk
25 of them. I don't know if today is very exhibit-heavy,

1 but I think the other days may be. I didn't know if
2 that would be acceptable.

3 THE COURT: That's fine by me. I'm just
4 trying to --

5 MR. WARSHAVSKY: To assist my colleagues.

6 THE COURT: The more that everybody can
7 agree to so that I don't have to listen to a
8 first-year law student's rendition of foundation.

9 MR. WARSHAVSKY: Thank you, your Honor.

10 MR. STAUBER: I can assure you, your Honor,
11 our objections are limited to maybe two documents of
12 an entire body of documents for this trial. It's just
13 a matter of they need to be presented to us so we can
14 review them and confirm what they are before we check
15 off.

16 There were a few documents that one or the
17 other defendants produced after discovery within the
18 last week or so. We just haven't had an opportunity
19 to review those and understand why they are being
20 proffered, but we will work together with the parties
21 to get there.

22 THE COURT: Wonderful.

23 So for right now, until Mr. Osinski gets
24 here, we will proceed just with those documents that
25 the Maylander heirs have.

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MR. WARSHAVSKY: We can provide Mr. Stauber with a copy of the email so he can read it in.

MR. BRIAN: Are you ready?

Plaintiff Exhibits Nos. 1, 9, 13, 34, 38, 61, 71, and 81.

THE COURT: Any objection to those exhibits being marked as received into evidence?

MR. WARSHAVSKY: Not from the Maylanders, your Honor.

MS. JAFFE: Your Honor, I just want to check the list because telling me the number doesn't tell me what the document it is.

THE COURT: Go ahead. You can double-check it.

MR. DOWD: No objection to Plaintiff's 1.

No objection to Plaintiff's 9.

No objection to Plaintiff's 13.

MS. JAFFE: No objection to 34. I just want to confirm that it's the full copy, but we have no objection to this coming in.

No objection to 38, your Honor.

No objection to 61; although, your Honor, if I could say, 61 is an excerpt here, and I believe that the Maylander heirs' counsel produced the entire Schiele catalogue. But we have no problem with an

1 excerpt coming in.

2 MR. WARSHAVSKY: Is there any objection to
3 the whole catalogue going in?

4 THE COURT: Off the record.

5 (There was a discussion held off the record.)

6 MR. DOWD: No objection to Plaintiff's 71.

7 MS. JAFFE: No objection to 81.

8 And that's everything we understood.

9 THE COURT: Those documents will be -- or
10 any objection from anybody in relation to those
11 documents? Everybody is all in agreement?

12 MR. STAUBER: Yes.

13 MR. WARSHAVSKY: Yes, your Honor.

14 THE COURT: I know that was a compound
15 question.

16 MR. STAUBER: In agreement.

17 THE COURT: Those documents can be marked as
18 received.

19 (Plaintiff Exhibits Nos. 1, 9, 13, 34, 38, 61, 71, and 81 -
20 received in evidence.)

21 THE COURT: Another thing in terms of
22 proceeding, my expectation is there's going to be one
23 attorney that handles each witness. I don't care
24 which attorney it is, but I don't want tandem efforts
25 during a single witness. Whether it is in terms of

1 asking questions or making objections or making legal
2 arguments, just one attorney per witness. And if you
3 could please just let me know who is going to be
4 handling direct or cross of that particular witness
5 before you begin your questioning, I would appreciate
6 it.

7 Any issues that need to be addressed before
8 we move to openings from plaintiff's standpoint?

9 MR. STAUBER: Just to let the Court know
10 that the order of our witnesses today will be
11 Mr. Robin Lehman, Guy Jennings, and then Marie Rolf.

12 Mr. Lehman is being brought here now. As we
13 apprised the parties and the Court, Mr. Lehman is
14 legally blind, so he is here to testify. We won't be
15 showing him any documents. If you show him a
16 document, all he sees is a blank page. But he should
17 be here shortly.

18 Our colleague Mr. Zach is bringing him up.
19 We don't intend to give a opening, and we invite the
20 parties to do as they wish.

21 MR. WARSHAVSKY: Your Honor, we are fine
22 with everything that Mr. Stauber said. From the
23 Maylander heirs' perspective, tomorrow we do expect to
24 go a little bit out of order, as we discussed last
25 week, to present Mr. Jandrisovits, who is a

1 handwriting expert in Vienna, to take advantage of the
2 German translator. He will testify remotely, firstly,
3 because of the six-hour time difference.

4 We also do not plan to give an opening, your
5 Honor.

6 MS. JAFFE: Good morning, your Honor. I do
7 plan to give an opening. As we said in our conference
8 the other day, we do. And our witnesses are not going
9 to be coming until next week.

10 THE COURT: Any other issues you need to
11 address?

12 MS. JAFFE: I don't believe so, your Honor.

13 THE COURT: Okay. The only other issue I
14 have to raise is I have an appointment I have to go to
15 that begins at noon, which means I need to end the
16 morning proceedings by twenty of 12. I apologize for
17 the late notice on that. What I would like to do is
18 break at twenty of 12 and then resume at 1:15.

19 MR. STAUBER: We will be bringing our second
20 witness remotely. So everything lines up. We will be
21 done with Mr. Lehman by your break and then bring in
22 our witness. He's also time difference, but he's
23 flexible. So whatever time we end up with him, he
24 will be available.

25 I should also note we discussed sequestering

1 of witnesses, and at least for today, the parties are
2 in agreement that all witnesses can be present in the
3 courtroom.

4 MR. WARSHAVSKY: Agreed. We have no
5 objection throughout the trial to any witnesses
6 showing up, your Honor.

7 MS. JAFFE: We have no objection, your
8 Honor, if it's amenable to the Court.

9 THE COURT: I typically issue an order of
10 sequestration, but if the parties all agree to allow
11 people to be present -- and I can understand in this
12 case. I don't anticipate there's too many secrets in
13 this case.

14 MR. STAUBER: No. But, again, it's your
15 courtroom, however you want to do it. I know, at
16 least for today, that's how we discussed it.

17 THE COURT: I'll leave it open for any party
18 to make an application somewhere down the road in
19 terms of sequestering witnesses.

20 MS. JAFFE: Your Honor, if we could, when a
21 witness does come to the courtroom, I would appreciate
22 if counsel alerted us to the fact that the witness is
23 present because we don't know who everybody is.

24 THE COURT: Everybody in agreement with
25 that?

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MR. STAUBER: Yes.

MR. WARSHAVSKY: That's fine, your Honor.
Just so all counsel knows, Professor Natter will come in -- I don't want to interrupt testimony -- just to see what the courtroom looks like, and he'll probably leave ten minutes later, but --

THE COURT: Do you want to give some secret signal?

MR. WARSHAVSKY: I can't divulge, your Honor.

THE COURT: All right. With that, let's proceed into openings. Plaintiffs have waived. The Maylander heirs have waived.

Ms. Jaffe, you wish to make a --

MS. JAFFE: I do, your Honor.

THE COURT: You can proceed.

MS. JAFFE: Your Honor, with the configuration we have, does the Court have any constraints on where I can go or where I can be when speaking?

THE COURT: My preference is that you keep your voice up loud enough for everybody in the courtroom to hear. This courtroom seems to suck up noise quickly. So, often, people won't be able to hear if your voice drops.

1 So if you are able to project well enough, I
2 don't mind if you are moving around, but if your voice
3 doesn't project well enough, I'd ask that you use the
4 microphone.

5 MS. JAFFE: And where is the microphone?

6 THE COURT: There's one right in front of
7 you.

8 MS. JAFFE: I'm going to put this, if I may,
9 over to the side.

10 (There was a discussion held off the record.)

11 MR. STAUBER: Your Honor, I was remiss. I
12 didn't introduce our colleague Heidi Gutierrez will be
13 with us here in court some times.

14 THE COURT: Hi, welcome. She was hiding
15 behind the big TV.

16 Off the record.

17 (There was a discussion held off the record.)

18 THE COURT: All right. Ready to proceed,
19 Ms. Jaffe?

20 MS. JAFFE: I'm ready, your Honor.

21 THE COURT: Go ahead.

22 MS. JAFFE: Thank you.

23 Your Honor, before I go any further, you
24 have seen all the counsel who are here. I just wanted
25 the Court to know that, besides the gentleman and the

1 ladies in the back I don't recognize, we have Dr. Graf
2 here. Dr. Graf represents the IKG, which used to be a
3 party in the case and no longer is officially a party
4 in the case.

5 Your Honor, we spoke the other day -- excuse
6 me. May it please the Court, I'm Claudia Jaffe with
7 Dunnington Bartholow & Miller. And with me is my
8 colleague, Raymond Dowd. We represent the Rieger
9 heirs.

10 The Rieger heirs are the Robert Rieger
11 Trust, created by Robert Rieger, the son of
12 Dr. Heinrich Rieger. The trust was created in 1983,
13 and it provides housing for mentally ill, otherwise
14 homeless, people.

15 The second Rieger heir is Nava Bar. Nava
16 Bar is the widow of Michael Bar. Mr. Bar was the
17 great grandson of Heinrich Rieger. So that's who we
18 represent.

19 Your Honor, I have a few points I want to
20 bring to the Court's attention. I realize that there
21 have been many submissions in this case, and the Court
22 is aware of a lot of what transpired through the years
23 before your Honor came to this particular matter.

24 Five things to think about.

25 This case is about Robin Lehman preserving

1 the chance to still get money out of this artwork,
2 D.1908, *Portrait of the Artist's Wife*. In this case,
3 Mr. Lehman and ROLF have no pre-1964 provenance
4 information. They don't know who owned it, who had it
5 even, before Galleria Galatea in 1964. And without
6 that information, they cannot establish a chain of
7 title -- a chain of legal title into ROLF.

8 They need that chain of title to establish
9 the counts that they have alleged in this complaint,
10 the three of them being declaratory judgment, to quiet
11 title, and for injunctive relief. Without legal
12 title, they are not entitled to any of that relief.
13 And we, frankly, don't have to put on a case if they
14 don't make theirs.

15 The third point, your Honor, concerns the
16 Maylanders. The Maylanders' case is not here in
17 Rochester. The Maylanders' case should be heard in
18 Vienna because the Maylanders have not brought in
19 Helga Dichand. Helga Dichand is the person from whom
20 they got a statement after this case was commenced, a
21 hearsay statement, and tried to sow ambiguity about
22 which artwork went to Rudolf Leopold under 1960
23 contract.

24 Helga Dichand, if she were called, she would
25 probably tell you, your Honor, what Elisabeth Leopold

1 said, that's right. That picture we got from the
2 Leopolds in 1977, that's D.2225. So if the Maylanders
3 had a case for a picture that was transferred under
4 the 1960 contract, No. 5 under that contract, that
5 case is against Helga Dichand and the Dichand family
6 collection. It's not here.

7 Your Honor, the fourth and final point
8 concerns laches. Robin Lehman knew -- when he and his
9 father went to the Marlborough Gallery in 1964, they
10 knew from the catalogue of the exhibition that the
11 works that were being sold there in many instances
12 came from the homes of murdered Jews; Jews who were
13 killed, exiled, persecuted, forced to sell, forced to
14 surrender their artworks. It says so, plain English,
15 the 1964 catalogue.

16 So Mr. Lehman and his father, one of the
17 most sophisticated business people in the world at the
18 time and an avid art collector of three thousand-some
19 works that he donated to the Metropolitan Museum, they
20 surely knew it was written on the page. The whole
21 world knew it was written on the page.

22 In fact, your Honor, the day that they
23 purchased -- that Mr. Lehman agreed to purchase this
24 artwork, *The New York Times* had a front-page article,
25 big picture of President Eisenhower in the salt mines

1 showing the artworks. They knew stuff was coming out
2 of Europe, and it was dirty, and they didn't care.

3 And this is a caveat emptor state. You buy
4 it, you better check title. It's not on other folks
5 to guess. When you are the buyer, you have the best
6 opportunity to investigate. They don't have a laches
7 argument.

8 Besides that, if ROLF is trying to assert a
9 laches argument, I'm confounded by it. Even if --
10 even if what I just told you hadn't been the case,
11 ROLF says it received the artwork pursuant to a deed
12 of gift, a transfer of paper dated March 29, 2016.
13 ROLF and Christie's papers tell you that, by
14 March 31st, ROLF already knew that there was an issue
15 of provenance.

16 Christie's had already identified two works
17 from the Rieger collection that matched a description
18 of this one, *Portrait of the Artist's Wife*.

19 Christie's further knew that there was a picture in a
20 claim that the Maylander heirs had asserted about a
21 *Portrait of the Artist's Wife* or *Portrait of Edith*.

22 So if ROLF got any interest from Mr. Lehman
23 in March of 2016, two days later, it knew it was
24 bogus. There was no delay. There's no prejudice to
25 them in two days. So they have no laches argument.

1 Furthermore, even if they had a laches
2 argument, laches doesn't give them title. Laches is
3 an affirmative defense, can't be used to obtain
4 affirmative relief, equitable relief, as sought by the
5 party here.

6 So as far as we can see it, your Honor, the
7 Maylanders' case doesn't belong in Rochester. Lehman
8 has no grounds for title, can't prove anything before
9 '64.

10 So those are the big pictures.

11 If I can, your Honor, I want to flesh a
12 little bit of this out so that, when the evidence
13 comes before you, you will hear it with educated
14 ears.

15 As to the first point about Mr. Lehman
16 keeping open his opportunities to get money out of
17 this transaction. Mr. Lehman -- Mr. Lehman said, in
18 1964, his father purchased this artwork, and on
19 December 31st, he got it -- Mr. Lehman got it as a
20 Christmas present on December 31st. I don't believe
21 him.

22 Mr. Lehman says he had the artwork. He was
23 married at the time to Aki Lehman, his second wife.
24 They separated. He told Aki she could take certain
25 things to Paris where she was going. And then for

1 years after, he didn't know where it was, and Aki said
2 she didn't know where it was.

3 So for 37 years, he says, "I don't know
4 where it is. I think it's stolen." And guess what?
5 Ridiculous situation. Apparently this very valuable,
6 beautiful picture shows up under Aki Freeman's bed --
7 Aki Lehman's bed.

8 Mr. Lehman flies to Paris, brings it home,
9 doesn't tell customs when he brings it in.

10 He brings it in in 2013. 2015, he makes a
11 loan to the Metropolitan Museum of Art, and on the
12 loan agreement, he indicates -- or he signs a loan
13 agreement that indicates the picture is worth
14 \$3 million for insurance purposes. So that's
15 \$3 million in August of 2015.

16 Come around spring of 2016, Mr. Lehman
17 decides he wants to sell this picture. So what does
18 he do? He contacts Jane Kallir. And who is she? She
19 is the author of this big book, the catalogue
20 raisonné, all the works of Egon Schiele that
21 Ms. Kallir could identify.

22 Excuse me a second, your Honor.

23 So Mr. Lehman knew about this picture being
24 stolen. He contacted Jane Kallir, who was an art
25 dealer, who ran the Gallery St. Etienne, her

1 grandfather Otto Nirenstein, later called Otto Kallir,
2 had created. And Robin Lehman contacted Jane Kallir
3 and said, "I'd like to sell this picture."

4 And what does Jane Kallir do? She tells
5 him, "Oh, I think you could get this for it. Here's
6 my estimate of what it's worth."

7 Mr. Lehman characterized Ms. Kallir's
8 representation to him as presenting an offer so
9 incredibly low that he rejected it. He didn't go to
10 Kallir anymore. He's got to go to Plan B.

11 And what's his Plan B? He goes to
12 Christie's. Christie's is a great place. Fine firm,
13 of course; right? Why wouldn't you go there in the
14 first place? Maybe you know something.

15 He goes to Christie's in late March.
16 Doesn't present the work to Christie's but tells them
17 it's coming. And who does he go to? He goes to
18 Stephen Lash who is the chairman or chairman emeritus
19 of Christie's.

20 Mr. Lash -- according to Robin Lehman,
21 Mr. Lash is his very good friend, and Mr. Lash says,
22 great. Let's take this consignment. Let's sell this
23 picture for you. And Mr. Lash, following Christie's
24 protocol, starts to have his team investigate the
25 artwork to see if it's possible to sell it.

1 They have a provenance team. After 1998 and
2 the passage that's called the Washington Principles,
3 museums and curators and dealers tried to implement
4 procedural rules and rules of fairness so that people
5 who lost artwork during the Holocaust had a fair
6 opportunity to present their case.

7 So Christie's tells them about this problem.
8 I don't know. If my good friend saw a problem, I
9 would hope that he would tell me. Christie's tells
10 Mr. Lehman there's an issue about the Maylander claim
11 and the Rieger claims.

12 And what does Mr. Lehman do? He gets a
13 brainstorm. He gets a big idea. He can make a
14 deduction -- he can take a deduction on his tax
15 returns, his and Marie's, and he's going to do that.
16 So he says, I'm going to give it to ROLF. And quick,
17 he's sending off emails to his accountant, and he's
18 telling them, ere's-a form I signed. Here, I'm
19 signing this. Robin Lehman, I'm signing this as I'm
20 going to give this artwork to ROLF, my family private
21 foundation.

22 And he signs -- Mr. Lehman, wearing his
23 other hat, signs another form in acceptance. He signs
24 it as the president ostensibly. Signs it as the
25 president of ROLF. So he gives it from the right hand

1 to the left. Nothing else changes.

2 There's a snag. There's a snag in his plan.
3 Mr. Lehman talks to his accountant, Brian Gloznek, and
4 his accountant tells him, you are not going to get a
5 deduction for that.

6 See, back in 2012, Mr. Lehman had to offload
7 some dirty artwork. He had what's called a Benin
8 Bronze. They came out of modern-day Nigeria. They
9 were raided from the treasury of the Kingdom of Benin.
10 Slaughter, theft; huge, huge theft out of Benin. And,
11 nowadays, people know about it.

12 So Mr. Lehman had this -- it's called a
13 Leff, L-e-f-f, head, worth ten million or more. And
14 he donates it to the Museum of Fine Arts in Boston.
15 And it's such a big donation that he can't take his
16 deduction all at once based on his income over the
17 years. So he has to stagger it over a five-year
18 period to collect that deduction.

19 Because Mr. Lehman made that donation of
20 what the Museum of Fine Arts says is a stolen --
21 clearly stolen artwork -- Victoria Reed, the head of
22 this provenance group at the Museum of Fine Arts, says
23 that because he donated a stolen artwork worth so
24 much, he couldn't get a deduction if he actually made
25 a real-live legitimate donation to ROLF in 2016.

1 Mr. Lehman is running a sham transaction
2 here. Mr. Lehman fakes a gift to ROLF because
3 Christie's is about to tell him stuff is going to hit
4 the fan. He puts it over into ROLF right away. Then
5 his accountant says, you can't do that. You won't get
6 a deduction. And Mr. Lehman sits there and says, what
7 the heck? I just gave away the store, and I got
8 nothing to show for it.

9 So what does Mr. Lehman do? He does
10 nothing. He doesn't act like he's a president of a
11 foundation that received a gift. He acts, actually,
12 to screw it up.

13 If you are a private foundation, if you are
14 a charity, you have obligations under New York law.
15 If you are a private foundation and you receive a gift
16 or a donation, you have to list it on a tax return,
17 Form 990-PF. Mr. Lehman knows about these forms. He
18 actually filed one, a 990, for the year 2016.

19 Now, grant you, he didn't file it until
20 January 2018. Bygones. But he filed one, and on that
21 2016 Form 990, he lists some other artworks that he
22 gave. He lists 30 Kirchner drawings, Ernst Kirchner,
23 K-i-r-c-h-n-e-r.

24 So Lehman knows he's supposed to declare
25 this. He and ROLF don't declare it. They don't

1 declare it for 2016. They don't do a fix-up
2 correction for 2017, '18, '19, '20, '21, '22, '23.
3 Never fixed it. Never told the government, I received
4 this artwork. I, ROLF, received this artwork. He
5 thinks it didn't happen.

6 Mr. Lehman contacts the FBI. Mr. Lehman
7 contacts the U.S. Attorney's Office, and he tells them
8 in writing -- not cavalier, casual speech. He tells
9 them in writing, I am the present owner of the
10 artwork. I have been the present owner of the artwork
11 since the 1960s.

12 This is going on for four years after the
13 alleged gift. Mr. Lehman, in that instance, might be
14 telling the truth. Maybe he thought he was the owner.
15 He's not the legal owner, but it's between him and
16 ROLF. He knows he didn't give it up.

17 So ROLF's conduct tells you that either no
18 gift was made, it was a sham gift, or Lehman started
19 to make a gift and then backed off of it. He's
20 revoked it, effectively. He's represented to the
21 world nothing happened.

22 You know, the corporate books would tell
23 you that no gift was made, except they don't keep
24 corporate books. In a normal foundation or
25 corporation that were legitimate, you would have board

1 minutes saying, our donor has generously agreed to
2 contribute this to us, and we received his gift.

3 There's no acknowledgment in ROLF. There's
4 no board meeting voting to affirm this gift. There's
5 no approval of Mr. Lehman wearing his hat -- allegedly
6 wearing his hat as president, accepting the gift on
7 ROLF's behalf.

8 Mr. Lehman's accountants, the Glozneys --
9 Mr. Glozney's firm, they even admit that there's no
10 filings. They say there's no evidence anywhere of any
11 return reflecting ROLF receiving this gift, because it
12 didn't happen.

13 When Mr. Glozney's firm tries to prepare a
14 trial balance showing Mr. Lehman, who doesn't seem to
15 know what was going on in this instance in terms of
16 recordkeeping, telling him what donations has ROLF
17 made over the years, he does a trial balance for them.
18 And for the year 2016, he says, oh, there's a gift
19 there, but there's an asterisk next to it, your Honor.

20 I get suspicious when I see asterisks. You
21 have got a baseball record that has an asterisk next
22 to it, you know something is not quite kosher.
23 There's an asterisk on trial balance dated
24 December 31st, 2016, because it says -- according to
25 Mr. Glozney, it says "fair market value unknown."

1 That is a document from May of 2020. They
2 said they still don't know the value of this artwork.
3 But you settle the score. If you make a gift, you
4 find out what it's worth. Maybe you don't do it on
5 the very day, but you do it the next week. You get it
6 appraised. You know what you have given to the
7 recipient. They never did this. They didn't want to
8 know. Okay?

9 When I questioned Mr. Gloznek about this, I
10 said, "Why don't you show the value? Even if you
11 underestimated it, couldn't you correct it?"

12 He said, "Well, we think that the best
13 evidence of the value is when you actually sell it.
14 And then you know what you gave up."

15 That's not what the law allows. This is a
16 charity. They have to record what they received.
17 They recorded nothing because they got nothing, your
18 Honor.

19 Now, let me wrap this up, this point. Why
20 did they do this? Mr. Lehman did this because he was
21 trying to protect his right to get money out of this
22 artwork. He had no deduction. He tries to stretch
23 this out into years after the five-year recognition of
24 the prior Benin Bronze deduction would be paying out.
25 He's trying to protect his turn. He's saving his shot

1 for later. It's a sham. It's a sham.

2 To talk to the second point, your Honor,
3 even if we didn't have all this mysterious
4 shenanigans, gifting, not gifting, regifting,
5 ungifted, not reporting, misreporting -- even if we
6 didn't have any of that going on, Mr. Lehman and ROLF
7 cannot show legal title. As Mr. Warshavsky said in
8 his papers previously, you have to show a voluntarily
9 conveyance all the way back.

10 So we are talking about a 1917 drawing by
11 Egon Schiele. ROLF can only take you back to 1964.
12 My math is not good, but I know 64 and 17, there's a
13 big gap there. They have nothing. They have no
14 evidence of prior ownership.

15 If they don't believe the Maylander heirs'
16 claim, if ROLF doesn't believe the Rieger heirs' claim
17 as to where this artwork went, who had it, who do they
18 think had it? They are not telling me some little old
19 lady had it. They're not telling me some museum had
20 it. They are saying, I know nothing. It's like
21 Sergeant Schultz. I know nothing.

22 If they can't show ownership by anybody back
23 before the war they can't get title here. We don't
24 have to make a case. They cannot make their case.
25 They have three causes of action: declaratory

1 judgment, quiet title, injunctive relief.

2 For declaratory judgment, in their favor,
3 they have to show there's an actual controversy. They
4 have to show an actual stake in this. ROLF can't do
5 that, again, as I said, there's no real gift. But if
6 they don't have title, they can't make that
7 declaratory judgment in their favor.

8 They can't get quiet title. Again, they
9 have no ownership.

10 And injunctive relief has four elements.
11 They don't satisfy them. ROLF would have to show
12 irreparable harm. ROLF would have to show monetary
13 damages wouldn't cut it. ROLF would have to show a
14 balancing of the equities weighs in their favor, but
15 it doesn't. The fourth one would be if there's a
16 public harm that would result. ROLF can't make that
17 case.

18 So because they can't show legal title
19 because they haven't offered any other path, that
20 ownership could travel to ROLF, they lose.

21 Third point, the Maylanders' case is not
22 here. The Maylanders' whole case rests on a 1960
23 contract that they tell us is between Etelka Hofmann,
24 someone who somehow knew Karl Maylander, who died in a
25 Jewish ghetto during the Holocaust -- that Etelka

1 Hofmann somehow ended up with Karl Maylander's art
2 collection.

3 And in 1960, she approached Rudolf Leopold,
4 who was a very big collector of Schiele's and Austrian
5 works generally. And Etelka Hofmann had a No. 5 --
6 fifth listed item of Schiele's was a picture of *Edith*
7 *Schiele Sitting* in watercolor. That's an interesting
8 theory.

9 And I'll tell you, counsel has admitted --
10 everybody's experts have opined on this -- it's very
11 difficult to identify Egon Schiele's works because he
12 used the same subjects so frequently. His wife is a
13 free model. She lives with him. He can draw her
14 sketch. His wife's sister is close to the family. He
15 can draw a sketch of her. His former girlfriend,
16 Wally Neuzil, plenty of drawings of her.

17 So if you have an artist who does a lot of,
18 for example, nudes or a lot of women sitting or nude
19 facing left and nude facing right, it's very
20 ambiguous, very difficult to prove unless you have
21 pictorial evidence from the time. Okay.

22 So the Maylanders think that the one under
23 the 1960 contract is this picture we are talking
24 about. I'm sorry, your Honor. I wish we had a
25 picture here right now to show you, but they think

1 that the 1960 contract No. 5 is theirs.

2 If that's so, there's one party that would
3 help provide information about it. That's Helga
4 Dichand. The reason Helga Dichand matters is because
5 the Maylander heirs are trying to say that sworn
6 testimony, admissible testimony from Elisabeth
7 Leopold, wife of Rudolf Leopold, who purchased the
8 Drawing No. 5 under the 1960 contract -- they are
9 trying to tell you Elisabeth Leopold doesn't know what
10 she's talking about.

11 I'd laugh at this one. They said, she did
12 not sign the contract. I'm sorry. If my husband
13 showed up with an elephant in the driveway, I think I
14 would know. If my husband showed up with a painting
15 and put it in my home, I think I'd know. My name
16 doesn't have to be on the contract for me to know.

17 Beyond that, Elisabeth Leopold is a
18 knowledgeable witness, not just firsthand knowledge
19 about the particular facts, but she's an expert to
20 Schiele too. She and her husband had one of the
21 largest collections of Egon Schiele's works in the
22 world. And in 1994, they arranged for that collection
23 to pass into a private foundation, the Leopold Museum
24 Private Foundation.

25 They received Leopold's collection. They

1 got money from the Austrian bank. They got a
2 legislation pact actually called the Leopold Act.
3 They created the ability to build a museum to house
4 this collection.

5 Elisabeth Leopold is not arm candy. She's a
6 knowledgeable, educated woman, who has written books
7 on Egon Schiele, and she's telling us, the picture
8 that we got is 2225. And, you know, I actually
9 remember it because we fought about it. I didn't like
10 it quite so much. She liked the more daring things
11 that Schiele did earlier in his career when he was
12 more provocative and edgy.

13 This is a lovely, beautiful picture of
14 Schiele's wife, but it's not to Elisabeth's taste, and
15 she fought with her husband over it. And eventually
16 they sold it to Karl to -- to Hans Dichand, who owned
17 the Wurthle Galerie.

18 So that's what ROLF established. That's
19 what we established on examination of Elisabeth
20 Leopold.

21 But the Maylanders say, wait a minute,
22 disregard everything that this woman has said since
23 2008 about which picture came to their family.
24 Disregard all that in favor of a hearsay statement
25 from Hans Dichand's widow.

1 They, ROLF -- no, excuse me. They -- the
2 Maylander heirs get a statement from Mrs. Dichand
3 after the case has already started, and she says, you
4 know, we didn't get 2225 from the Leopolds.
5 Mrs. Dichand doesn't say where it came from, 2225.
6 She doesn't say, oh, we don't have that in our
7 collection. She says, I don't agree, effectively,
8 with what Mrs. Leopold says.

9 So do me a favor. Bring Ms. Dichand here,
10 ask her the question. Ask her, what did you get? If
11 not this, then what did you get?

12 Now, counsel has said -- counsel for the
13 Maylander heirs has said, you know, don't blame me.
14 The lady lives in Austria. No surprise.

15 MR. STAUBER: Excuse me, your Honor.
16 Objection.

17 MS. JAFFE: Excuse me. Excuse me. Excuse
18 me, your Honor. Excuse me.

19 THE COURT: Hold on. If he's making an
20 objection --

21 MS. JAFFE: I didn't realize he was. I
22 didn't know what he was doing. I apologize.

23 THE COURT: If an attorney stands up during
24 a proceeding, I think everybody can safely assume that
25 there's either an emergency or an objection, usually

1 the latter.

2 MS. JAFFE: Thad.

3 MR. STAUBER: Objection. I think the
4 opening statement has blurred into a closing
5 statement. And we do have a witness here, who we'd
6 like to start getting put on in relatively short
7 order. Thank you, your Honor.

8 THE COURT: Ms. Jaffe, I would ask you to --
9 much of what you said is more argument than explaining
10 to the Court the evidence that you anticipate is going
11 to be elicited during the trial.

12 So I would ask that you please limit your
13 comments to what you anticipate the testimony or the
14 evidence to be.

15 MS. JAFFE: I'll try to.

16 THE COURT: And it's -- yeah.

17 MS. JAFFE: Thank you.

18 THE COURT: Thank you.

19 MS. JAFFE: Certainly.

20 So, your Honor, we think that the evidence
21 here is from Elisabeth Leopold, and it makes clear
22 which artwork was No. 5 under the contract. The
23 evidence will show that, and there's nothing rebutting
24 that.

25 On the fourth point, your Honor, on laches,

1 the 1964 Marlborough Exhibition Catalogue -- evidence
2 will show it -- says Wolfgang Fischer, who organized
3 that exhibition, wrote an essay. And he told people
4 who attended the exhibition that the works of Egon
5 Schiele were not widely collected. They didn't --
6 this is a combination between what's in the Kallir
7 catalogue and what's in the Marlborough 1964
8 Exhibition Catalogue.

9 The 1964 catalogue tells you the primary
10 collectors, the early visioners of Schiele's work and
11 prominence were the Jews of Vienna. These are the
12 same people who were targeted by the Nazis. They were
13 persecuted. They were shipped to concentration camps.
14 They were murdered or they were exiled. If they
15 lived, they had to give up their collections anyway.

16 So Mr. Lehman and Mr. Lehman's father knew
17 all that in 1964. And the whole world knew it from
18 that point. They had notice.

19 Your Honor, the evidence will show that, in
20 years following the war, the Riegers continued to look
21 for the entire collection, including *Portrait of the*
22 *Artist's Wife*.

23 There is a major case. It's in our
24 exhibits. We have argued about it in our papers. The
25 *Portrait of Wally* case. The *Portrait of Wally* case

1 concerns a seizure by the District Attorney's Office
2 of Manhattan. That same Rudolf Leopold I mentioned
3 earlier, when he and his wife transferred their
4 collection to this private foundation, the collection
5 came to New York for an exhibition, December 1997 to
6 January 1998.

7 And shortly before that exhibition closed,
8 representatives of two Holocaust victims, Eva
9 Bondy-Jaray, whose business was taken, the Wurthle
10 Galerie, she and representatives of the heirs of Fritz
11 Grünbaum asked the DA to get involved and seize some
12 artworks that were part of the 1997/1998 exhibition,
13 and the DA of Manhattan did so.

14 The sponsor of the Leopold collections
15 exhibition at the MoMA was Robert Lehman Foundation.
16 That's Mr. Robin Lehman's father's foundation. Robin
17 Lehman sits on the board of that foundation. Robin
18 Lehman knew there was a problem when the DA seized
19 these artworks.

20 It was in all the papers. I'm sure it's in
21 the *Democrat & Chronicle*. I know it's in *New York*
22 *Times*. It's in the art newsletters. Everybody knew
23 about that.

24 And in that case, in *Portrait of Wally*, the
25 judge recognized that there was confusion about which

1 picture was *Portrait of the Artist's Wife* that
2 belonged to Heinrich Rieger.

3 So, from 1998, when that case began with the
4 seizure and continued, for nine years anyhow,
5 Mr. Lehman knew about it. If Mr. Lehman wanted to do
6 anything to investigate provenance, he was on alert
7 back in 1998. Don't let him deceive you. I asked him
8 the question in his deposition.

9 So the evidence is before the Court -- it
10 will come before the Court, excuse me, that the Rieger
11 heirs were searching for the artwork, searched for
12 years. ROLF has no laches claim against the Rieger
13 heirs.

14 And for that reason, your Honor, we think
15 that, at the end of the day, the Rieger heirs should
16 go home with this artwork.

17 THE COURT: Thank you, Ms. Jaffe.

18 Mr. Stauber, are you ready with your first
19 witness?

20 MR. STAUBER: If you don't mind, your Honor,
21 can we take a quick five? I'll go out and get the
22 witness, bring him in, and get it set up.

23 THE COURT: We will take a five-minute
24 recess.

25 MR. STAUBER: Thank you, your Honor.

1 (Recess taken at 10:34 a.m.)

2 THE COURT: Mr. Stauber, call your first
3 witness.

4 MR. STAUBER: Thank you, your Honor. I'd
5 like to call Mr. Robin Lehman to the witness stand.

6 COURT SECURITY DEPUTY: Sir, raise your
7 right hand, face the court clerk, and be sworn.

8 ROBERT OWEN LEHMAN
9 called herein as a witness, having been duly sworn,

10 testified as follows:

11 THE CLERK: Please state and spell your name
12 for the record.

13 THE WITNESS: Robert Owen Lehman,
14 L-e-h-m-a-n, but I'm known as Robin.

15 THE COURT: Good morning, Mr. Lehman.
16 How are you?

17 THE WITNESS: I'm good. How are you? Thank
18 you for being here.

19 THE COURT: I'm happy to be here.
20 Have you ever testified before?

21 THE WITNESS: Yes.

22 THE COURT: I'm just going to give you a
23 couple of instructions. Okay?

24 THE WITNESS: Okay.

25 THE COURT: You are going to be asked a

1 number of questions today, and I want to make sure
2 everyone is able to understand and hear your
3 testimony. It sounds like you have a good, strong
4 voice, but if you could please utilize the microphone.
5 I want to make sure everybody is able to hear you.
6 Okay?

7 THE WITNESS: Okay.

8 THE COURT: Also, there is someone seated in
9 front of you, who is taking down everything that is
10 being said. I want to make sure we have as accurate a
11 record as we can possibly get. So I'd ask that you
12 please wait for an entire question to be put to you
13 before you give your answer.

14 THE WITNESS: Okay.

15 THE COURT: There may be times where you're
16 going to know what the next question is. Even in
17 those circumstances, I'd ask that you please just
18 wait, let the whole question be put to you, and then
19 give your response. Okay?

20 THE WITNESS: Okay.

21 THE COURT: In everyday, normal
22 conversations, often we abbreviate, or we will use
23 something less than a full answer or full words in our
24 answers. Examples are uhm-uhm, unh-unh, that type of
25 thing. That can get confusing and is not as clear as

1 a complete verbal response.

2 So I'd ask that you -- for each question
3 that is put to you, please give a complete verbal
4 response to each question. Okay?

5 THE WITNESS: Yes.

6 THE COURT: Last item is, if you hear one of
7 the attorneys object, I'd ask that you please stop
8 wherever you are, give me a moment to make a ruling,
9 and I'll let you know whether or not to continue with
10 your answer. Okay?

11 THE WITNESS: Okay.

12 THE COURT: Thank you.

13 Mr. Stauber.

14 MR. STAUBER: Thank you, your Honor. With
15 your permission, I'd like to approach the witness.

16 THE COURT: You can proceed.

17 MR. STAUBER: Thank you.

18 DIRECT-EXAMINATION

19 BY MR. STAUBER:

20 Q. Good morning, Robin.

21 A. Good morning.

22 Q. How are we doing today?

23 A. Good.

24 Q. Why don't you share with the Court a little bit
25 about your background. I mean, who is Robin Lehman?

1 A. Okay. I went to a boarding school, hated most of
2 it, but when I got towards my senior year, I began to
3 comprehend learning and really enjoyed it a lot.

4 And I painted, and actually I got a term off to create
5 paintings and so on. And as part of the process, I shared
6 records with my roommates, et cetera, all popular music,
7 Percy Faith & His Orchestra and that kind of thing.

8 So I was painting happily away, and an event came that
9 changed my life. I put on this record, and holy cow. What
10 is that? It turned out to be Tchaikovsky, unlike anything
11 I had ever heard before.

12 And that changed my life because, from that moment on,
13 I sought out classical music, heard as much as I could
14 possibly hear. And when I went to Yale, I actually started
15 to learn the piano. I rented a room off campus. Music
16 became a very large part of my life.

17 During my beginnings, I thought I was going to be a
18 portrait artist and continued that for quite some time, and
19 through fortuitous circumstances, I was recommended to go
20 study music composition with Nadia Boulanger.

21 Nadia Boulanger is no longer with us, but she was up
22 until 1960. I don't quite remember when she died. The
23 foremost music conductor and music -- "teacher" is the
24 wrong word, but I'll go with "teacher." Honored and
25 recognized. And she taught Aaron Copeland and many other

1 names that you might be familiar with.

2 And when I went to her, I really had no knowledge of
3 music, and I wrote her a letter saying, "I hear music. I
4 want to learn how to compose. I have no training at all."
5 She gets this letter and opens it and was astonished.
6 Every other letter she ever got was I have ten degrees, and
7 I have written ten symphonies. What is this guy? He must
8 be kidding me. So let's have him come over?

9 When I came over, it turns out that was the
10 truth. And so she said, Okay. You are here for the
11 summer. Let's see how it goes. You can begin to have ear
12 training with these people. Okay. These people were
13 five-year-olds from schools. So here was I,
14 twenty-something, learning ear training with the
15 five-year-olds, who, by the way, were much better than I
16 was.

17 To make a long story short, in this part of my
18 life, I stayed on for ten years. I got very involved with
19 music. I began to hear. It was a wonderful experience.

20 Then I had a new adventure by complete accident.
21 I happened to have a 16-millimeter camera. You know, back
22 in those days, you didn't have video. And a friend of mine
23 was going to make a film about a film -- Kirk Douglas, Yul
24 Brenner, somewhere in the south -- I can't remember -- on a
25 pirate ship and so on.

1 So I went along. I thought it would be fun. And
2 they gave me a camera. Just set me loose. And I had such
3 fun just roaming around the set, talking to all these
4 people, and actually became known as "Cyclops" because
5 there was never a time I didn't have the camera. Anyway, I
6 was having such a blast.

7 And we went home, and I saw the footage of the
8 professionals, of what they did, and I saw what I did. And
9 I decided then and there I should have a go at film.

10 So I started making films. Make a long story
11 short, I was lucky enough to have three Academy nominations
12 and won two Academy Awards and made films very different
13 from other people because my films didn't have words. They
14 had pictures only.

15 Q. Robin, if I might?

16 A. Yes. Am I going on too much?

17 Q. No, no, no, no, no, not at all. But what I
18 wanted to make sure that the Court understood -- because we
19 are talking about visual. Unfortunately, in the last year
20 or so, your ability to see has been greatly diminished.

21 Yes?

22 A. Well, I've had macular degeneration going on
23 since Covid struck, you know, and everything stopped. And
24 in my present state, I really can't see you. I see a head,
25 and I see dark where the eyes are, and I see you have

1 something dark on.

2 THE COURT: It's to your benefit,

3 Mr. Lehman.

4 THE WITNESS: What did you say?

5 THE COURT: That's to your benefit.

6 THE WITNESS: Maybe it is, and maybe it
7 isn't. Maybe it's to your benefit that I can't see
8 you.

9 BY MR. STAUBER:

10 Q. So, Robin, I want to ask you, given all your
11 travels in your life, what is it that brought you to
12 Rochester?

13 A. Oh, that's very simple. I fell in love, and
14 nothing stands in the way of love. Oh, my God. I fell in
15 love with this person, courted her for seven years.

16 She lived on her own. And during the wintertime, it
17 snowed, and she'd come home and get plowed in. So what
18 could I give her as a gift? What could I give her as a
19 gift to win her heart? A snowblower. She loved it. What
20 could I also give her as a gift to win her heart? An
21 answering machine for the telephone.

22 So I courted her for a long time, and she finally said
23 yes. And that was 35 years ago? Something in that region.
24 And I wake up every day more in love, more appreciative,
25 and happier to be able to share my life with this person.

1 It just gets better every day.

2 Q. And who is this young lady?

3 A. Marie Rolf.

4 Q. Okay. And is she in the courtroom with you here
5 today?

6 A. Yes.

7 Q. Okay. Now --

8 A. I don't know where she is. Don't ask me.

9 Q. You can't see her, unfortunately.

10 A. Yeah.

11 Q. But I assure you she's here.

12 With -- with her, did you form a foundation?

13 A. Yes.

14 Q. What is that foundation that you formed?

15 A. Robert Owen Lehman Foundation.

16 Q. And what is the purpose or mission of that
17 foundation?

18 A. To further the education, which is a big word, of
19 music. Mostly classical music is our heading but music in
20 general. That could involve performance. That could
21 involve education. Anything that would help a person in
22 need.

23 Q. Okay. And how do you fund that foundation?

24 A. It was originally funded by a number of paintings
25 my dad gave me. Kirchner. I had about 20 or 25, which I

1 sold over the years. And those paintings funded the
2 foundation. And there were a few small donations from
3 other people, but it's a very small foundation in the world
4 of foundations, a few hundred thousand dollars as opposed
5 to a few hundred million dollars.

6 But that's, I think, the answer to your question, I
7 suppose.

8 Q. Sure.

9 Did you give the drawing that is the subject of this
10 lawsuit to the foundation at some point in time?

11 A. Yes, I did.

12 Q. And why did you do that?

13 A. I thought the benefit -- I thought the foundation
14 would benefit more from having this drawing and the
15 proceeds from the drawing than it benefited me to have it
16 on the wall.

17 Q. Okay. Let's talk a little bit, step back a
18 second, about the drawing. And we are talking about Egon
19 Schiele's *Portrait of the Artist's Wife*, 1917; correct?

20 A. Yes.

21 Q. And you know this as a work identified in the
22 Jane Kallir catalogue raisonné as D.1908?

23 A. Yes. Two. Two catalogue raisonnés.

24 Q. Which ones are those?

25 A. Both. She made two catalogue raisonnés.

1 Q. In 1990 and 1998?

2 A. Something like that, yes.

3 Q. Okay. Tell us about the facts and circumstances
4 surrounding the acquisition of the work in 1964, if you
5 recall.

6 A. Well, I was living in London then, and my dad was
7 visiting. And there was a show at the Marlborough Gallery,
8 whom I knew because one of my best friends worked there,
9 and it happened to be Schiele. And I liked Schiele, and I
10 said, "Let's go and have a look."

11 And we went and had a look and saw the portrait of
12 Edith, and I just thought it was such a magnificent work of
13 art. I just fell in love with it. And --

14 Q. And?

15 A. -- the rest of the story is --

16 Q. Did you buy it? Who bought it at that time? You
17 fell in love with it.

18 A. Yes. My dad bought it.

19 Q. Okay. Let's be clear.

20 A. From the gallery.

21 Q. Okay. Let's make sure we don't talk over each
22 other because she's good but not that good.

23 So let me make sure I finish my question first, Robin.

24 A. Sorry.

25 Q. That's okay. Now you are in good hands. You are

1 just like my daughter, who talks over me.

2 But, Robin, who is your father? Who is your father?
3 What is his name?

4 A. Okay. Robert Lehman.

5 Q. Right. Okay. And this is -- when you refer to
6 your father, this is the gentleman you were with in 1964.

7 A. Yes.

8 Q. Okay. So who acquired the work in 1964 at the
9 Marlborough Gallery?

10 A. He did.

11 Q. Okay. Do you recall what he paid for it?

12 A. 2,000 pounds.

13 Q. Okay. And how did you come to acquire the work
14 yourself?

15 A. Well, I spent Christmas with him no matter where
16 I lived. I went back to New York and spent Christmas with
17 him, and he gave me the Schiele as a Christmas gift.

18 Q. Okay. So the work is in New York. You are
19 living in London, if I recall correctly.

20 A. Correct.

21 Q. And where does the work go? Does it go back with
22 you to London?

23 A. I took it back with me to London and put it on
24 the wall.

25 Q. Okay. Were you married at this time?

1 A. Yes.

2 Q. And who was your wife then?

3 A. Aki, Aki Lehman. A-k-i.

4 Q. Can you recall where the work, shall we say,
5 resided after that, 1964 and forward? Was it in the home
6 in London?

7 A. Yes. But, afterwards, there was a move to go to
8 Paris.

9 Q. Okay.

10 A. And during that London time, I was constantly
11 elsewhere making films. I made mostly nature films. So I
12 traveled all over the world, places we would be terrified
13 of going now, by the way. But anyway -- and by the way,
14 the people were wonderful, and I suspect that people are
15 still wonderful in these places with so many problems.

16 And now I lost my train of thought. I'm so sorry.

17 Q. It's okay.

18 So we are in London. You told us, at some point, you
19 went to Paris. But you are traveling a lot. You are doing
20 films.

21 A. Right.

22 Q. Somewhere in that path, did you get divorced or
23 separated from your former wife?

24 A. Well, first of all, she moved to Paris, and I
25 left all the paintings on the wall for the benefit of the

1 kids. I didn't want to just take everything away.

2 So she moved to Paris and brought all the art with her
3 and resided in Paris; at which point, over a long period of
4 time, we had a divorce.

5 Q. Okay. Now, when you got divorced, were there any
6 court orders or subsequent legal proceedings that declared
7 you to be the owner of the drawing relative to your wife?

8 A. Yes.

9 Q. Okay. And what efforts, if any, did you make to
10 try to recover the artwork from your wife?

11 A. Well, there were and still are organizations who
12 will handle problem works of art that have been -- are
13 disappeared, and you can send these organizations your
14 information. And then they will publish it on a timely
15 basis, on a regular basis, and keep their eyes open for
16 whatever work it is you sent them.

17 And so I gave that information to two organizations,
18 but I can't remember their names right now.

19 Q. And did you come up with any hits, or did anybody
20 or any entity or organization tell you where the artwork
21 was?

22 A. No. It seemed to have completely vanished.

23 Q. Okay. So from 1964 until the time you recovered
24 the work from your ex-wife, did anyone ever approach you or
25 make an adverse claim to the artwork?

1 A. No.

2 Q. Okay. How did you ultimately come to reacquire
3 possession of the artwork?

4 A. Well, when my wife, Aki, died, my daughter --
5 excuse me -- my daughter found the artwork under her, Aki's
6 deathbed.

7 Q. And where was this? In --

8 A. In Paris.

9 Q. Okay. And your daughter -- who is your
10 daughter?

11 A. Kate Lehman.

12 Q. And this is your daughter by virtue of Aki.

13 A. Yes.

14 Q. And do you recall in or around when this was in
15 period of time?

16 A. Oh, God.

17 Q. A number of years ago?

18 A. A long time ago.

19 Q. So when your daughter Kate made you aware of the
20 artwork, you then retrieved the artwork and brought it back
21 to New York, if I recall correctly?

22 A. Yes.

23 Q. And did you then send the artwork to the
24 Metropolitan Museum of Modern Art -- not Modern Art -- the
25 Metropolitan Museum of Art in New York?

1 A. Yes, just to store it, to keep it there. I had
2 other work -- other work there that they had previously
3 stored.

4 Q. So you and your family have a long relationship
5 with the Met.

6 A. Yes.

7 Q. Okay. And this artwork is a drawing -- yes? --
8 on paper?

9 A. It's a drawing, but it has color in it.

10 Q. Is it fragile?

11 A. Probably. I would say so, yes.

12 Q. Okay. All right. Now, in addition to sending it
13 to the Met, did you discuss the possible sale of this
14 artwork with Jane Kallir?

15 A. Yes.

16 Q. And who is Jane Kallir, and why would you discuss
17 it with her?

18 A. Jane Kallir is somebody we met. I can't really
19 quite remember why, but we have known her for quite some
20 time. And she was a dealer and also the author of these
21 two comprehensive catalogues of Schiele. And so she had
22 her own gallery, and I thought it would be an appropriate
23 person to approach and consider a sale.

24 Q. Okay. And are you identified in her catalogue
25 raisonné 1990 and 1998 as the owner of this Schiele

1 artwork?

2 A. Yes.

3 Q. Why didn't you go with Jane, or Ms. Kallir, to
4 sell the work?

5 A. Well, the price that she estimated for sale was
6 so low as to be undesirable. Put it that way.

7 Q. Okay. All right. Now, at some point, you
8 decided to gift this work to your foundation, to the ROLF
9 foundation; correct?

10 A. Yes.

11 Q. Why did you do that? Can you refresh us about
12 that?

13 A. Yes. After long thought and deliberation, I
14 decided that the foundation could make better use of this
15 asset than me hanging up on my wall, and so I gave it to
16 the foundation.

17 Q. Okay. Do you recall in your individual capacity
18 signing a deed of gift?

19 A. Yes.

20 Q. Okay. And then did you, in turn, in your
21 capacity as president of the ROLF foundation, sign an
22 acceptance deed of gift?

23 A. Yes.

24 Q. Okay.

25 MR. DOWD: Objection to the forms of the

1 questions. If you could caution counsel. These are
2 leading questions, your Honor.

3 THE COURT: I'm going to allow some leeway
4 just so that -- I mean, we are -- it appears
5 Mr. Stauber is covering chunks of time, literal time,
6 and is redirecting to try to keep the testimony
7 relevant to it -- to this proceeding, but --

8 MR. STAUBER: I understand, your Honor.

9 THE COURT: -- the objection, Mr. Stauber --

10 MR. STAUBER: Fair enough.

11 THE COURT: -- I'll allow what's happened.
12 I'll overrule the present objection but with that in
13 mind.

14 MR. STAUBER: Right. And understanding,
15 your Honor, we are not presenting this witness with
16 any exhibits because he can't see them. So -- and
17 many of these exhibits, if not all, have been admitted
18 into evidence. But I appreciate the objection.

19 BY MR. STAUBER:

20 Q. So, Mr. Lehman, we now are in a spot and place
21 where you testified that you, in your individual capacity,
22 signed the deed of gift; then, in your capacity as
23 president of the foundation, signed an acceptance of the
24 deed of gift.

25 You've shared with us that you explored a sale with

1 Jane Kallir and her gallery, St. Etienne, and decided not
2 to do that and that the work is at the Met.

3 What happens next?

4 A. I approached Christie's, and it seemed like a
5 good place to sell this. So I authorized Christie's to
6 come and collect the work from the Met. They came and took
7 it. By then, we had an agreement, a -- I don't know what
8 you would call it.

9 Q. A consignment agreement?

10 A. A consignment agreement, an agreement that they
11 take it for possible sale, whatever it was.

12 Anyway, they came and took it. Period.

13 Q. Okay. So you entered into a consignment
14 agreement on behalf of ROLF with Christie's; correct?

15 A. Yes.

16 Q. And do you have a prior relationship with
17 Christie's? In opening here, we've heard counsel talk
18 about Stephen Lash.

19 Who is Stephen Lash?

20 A. Stephen Lash became an extremely good friend of
21 mine. I would occasionally buy something at auction, like
22 an Egyptian -- a small Egyptian sculpture or other things
23 of -- antiquities, call it. And he would always let me
24 know when the antiquity sale was, and I would come and have
25 a look.

1 We just had a very good relationship. He seemed like
2 a very likeable, straightforward chap. So we developed a
3 friendship much beyond Christie's.

4 Q. So ROLF consigns the artwork to Christie's,
5 Christie's takes the artwork, and now you are sitting in a
6 chair eight years later in a courtroom.

7 How did that happen? What happened next? What did
8 Christie's alert you to, and what did you tell Christie's
9 to do?

10 MR. DOWD: Objection to the form of the
11 question.

12 THE COURT: I'm going to allow it.

13 You can answer it.

14 THE WITNESS: Okay. The first thing I heard
15 from Christie's was we have a possible claimant, and
16 there's possibly a connection with the Holocaust and
17 confiscated artwork. Do we have your permission to
18 investigate this? To which I said "Yes."

19 And they started investigating. And very
20 shortly afterwards, if my timeline is correct -- and
21 forgive me if I'm wrong -- then came our friends the
22 Riegers, who claimed ownership to the artwork.

23 And I seriously considered the claim. It
24 seemed plausible. And actually, at the time, it
25 seemed the right thing to do, for me to make some sort

1 of arrangement with these people, who came out of the
2 woodwork.

3 BY MR. STAUBER:

4 Q. When you say "these people," you are referring
5 both to Maylander --

6 A. No, no, no.

7 Q. -- and Rieger? No?

8 A. No. Just the Riegers.

9 Q. Just the second one that came?

10 A. No.

11 Oh, the Maylanders. I'm sorry. I'm sorry. I get
12 mixed up. I'm wrong.

13 Q. Okay.

14 A. It's the Maylanders who came first as a claim.
15 And there was a period of time when Christie's knew there
16 was a claim. Maylanders were investigating it. And I was
17 thinking of, you know, what would be the fair thing to do
18 with this claimant? It seemed like a valid claim to me at
19 the time.

20 So it took me some months to mull it all over. And
21 during that period, then the Riegers appeared and made
22 another claim, at which point I came to the conclusion that
23 possibly two claims can't be correct. And I spent a good
24 year trying to get those two parties and myself together to
25 make some sort of equitable, fair division of the artwork.

1 And the two parties refused to meet with each other,
2 and it just became totally impossible; at which point,
3 reluctantly, I called Thad, and the rest is history.

4 Q. But before you called Thad, did you also have any
5 actions with any law enforcement?

6 A. Oh, yes.

7 Q. Share with us what interactions you might have
8 had with the FBI or the U.S. Attorney's Office.

9 A. I received, out of the blue, a call from the FBI.
10 I can't remember her name, but I do remember how polite and
11 cordial she was. She told me that the Riegers have
12 introduced some documents claiming ownership and so on, and
13 what was my side of the story.

14 So I simply photocopied my whole file and sent it to
15 her. And she then got back to me and said, we -- we are
16 getting -- we are getting out of this dispute. We are not
17 going to continue this dispute. You are on your own. And
18 that was the end of the FBI.

19 Q. What about the U.S. Attorney's Office? Do you
20 recall having a conversation with anybody from the
21 U.S. Attorney's Office in New York City?

22 A. Well, I think I'm sort of mixing it all up
23 together.

24 Q. Maybe you are.

25 A. Isn't -- is the U.S. Attorney's Office the FBI?

1 Q. No. The FBI is separate from the U.S. Attorney's
2 Office.

3 A. Okay. Then I'm forgetting --

4 Q. Okay.

5 A. -- that conversation, I guess.

6 Q. Okay. If you'll recall, there was a
7 U.S. Attorney that you sent an email to or a letter to that
8 you typed up.

9 A. I'm sorry. I'm forgetting.

10 Q. That's okay.

11 Did you, with respect to any law enforcement that you
12 spoke with, cooperate with them?

13 A. Yes.

14 Q. Okay.

15 A. With everybody.

16 Q. And with respect to Christie's, you instructed
17 them to do their provenance research; correct?

18 A. Pursue, pursue, find out what the story is.

19 Q. Okay. And what about Jane Kallir? Did you ask
20 her to do any investigation?

21 A. Yes. I asked her to do some investigation
22 also.

23 Q. Okay. And did you share the results of any of
24 these investigations with either or both of the claimants?
25 Did you prevent Christie's from sharing what they found

1 with anybody?

2 A. No.

3 Q. Okay. Now, why are we here today, then? What is
4 it you are asking this Court to do?

5 A. Well, there's two folks who claim to own the
6 work. I owned it, having bought it. So, to that degree, I
7 owned it. And I'm asking your Honor to hear the evidence,
8 of which there's much, and make a decision as to who is the
9 rightful owner.

10 Did I answer your question?

11 Q. I think so. That is what I -- why I want to know
12 why -- why would you go through all this for eight years?
13 This started in 2016.

14 A. Well, in retrospect, by hook or by crook, by
15 arresting these two claimants and sticking them in a cell
16 along with me and somehow coming to an agreement that --
17 I'm sorry.

18 Q. I understand your --

19 A. That would have been the better route.

20 Q. But --

21 A. After so many years -- I had no clue it was going
22 to go on for so many years, and I had so many new gray
23 hairs.

24 Q. Well, I have grown a gray beard in that time.

25 A. I lost my train of thought. I'm sorry.

1 Q. Let me ask you a question. Did you own any Egon
2 Schiele artworks before the drawing?

3 A. Yes, I did.

4 Q. Okay. And what did you do with those Egon
5 Schieles?

6 A. Well, for a time, I fell in love with Egon
7 Schiele, partially seduced by my good friend, who worked at
8 Marlborough, and I had eight or ten or so drawings of his
9 some years prior. I can't remember exactly the years, but
10 there came a time -- full halt for a second.

11 I became an avid collector of music manuscripts,
12 Beethoven, Mozart and such things. And as you might
13 assume, they were rather expensive, and I just came to the
14 conclusion I couldn't collect Schiele and music at the same
15 time, and so I basically divested myself of all the
16 Schiele. This is some years before the visit to the
17 Marlborough Gallery where I met Edith.

18 Q. I see.

19 And did anyone, at any time, ever make any claims to
20 those Schieles while you owned them?

21 A. No.

22 Q. Is there anything else you'd like to share with
23 the judge?

24 THE COURT: Relating to the case.

25 MR. STAUBER: Relating to the case, I mean,

1 aside from a good music or food recommendation.

2 BY MR. STAUBER:

3 Q. We will have an opportunity on rebuttal, Robin.

4 A. I just don't know what to say because, for so
5 many years, I have been boiling mad when I went to sleep
6 and couldn't sleep at night. And then at some point, it
7 was like, you know, whatever is going to happen is going to
8 happen. So now, at least, I get a good night's sleep.

9 But it's outrageous that --

10 Q. Robin -- Robin --

11 A. Am I answering you?

12 Q. Go ahead.

13 A. It's outrageous that one of two parties obviously
14 never owned this and are just fabricating a case.

15 Q. But you don't -- Robin, you don't know which one,
16 if either of them, has a valid case?

17 A. No, no.

18 Q. And you relied upon Christie's, Jane Kallir, the
19 various experts to research it and share that with the
20 Court?

21 A. Absolutely.

22 MR. STAUBER: Okay. I don't have any
23 further questions at this time, your Honor. Cognizant
24 of the Court needs to break at 12:20, which is in --

25 THE COURT: No. 11:40.

1 MR. STAUBER: 12:40.

2 THE COURT: 11:40.

3 MR. STAUBER: Oh, I'm sorry. 11:40.

4 So do you need to take a -- if we can go off
5 the record for a second?

6 THE COURT: We can go off the record.

7 (There was a discussion held off the record.)

8 THE COURT: Let's go back on the record.

9 Who is going to be handling the cross-examination?

10 MR. DOWD: I am, your Honor, Raymond Dowd.

11 THE COURT: Thank you, Mr. Dowd.

12 You can proceed.

13 Let me -- Mr. Lehman, I'm just going to give
14 you a little further direction in regard to your
15 testimony on cross-examination.

16 Often on cross-examination, attorneys try to
17 make an effort to phrase their questions in a form
18 that seeks a yes or a no answer. What I'd ask you to
19 do is, if a question is put to you in a way that's
20 seeking a yes or no answer, please answer yes or no,
21 if you can.

22 If you believe that you cannot give an
23 honest answer simply by saying yes or no, then I'd ask
24 that you tell the attorney that you can't answer
25 honestly yes or no, and then it will be up to the

1 attorney to ask a different question.

2 And, also, advise you that sometimes I know
3 it gets frustrating for witnesses when they are
4 limited to yes or no answers, and they want to explain
5 more. It's a natural tendency. I'd ask that you
6 withhold from just providing spontaneous additional
7 information, and remember that your attorney will have
8 the opportunity to come back and ask you further
9 questions on redirect. Okay?

10 Go ahead, Mr. Dowd.

11 MR. DOWD: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. DOWD:

14 Q. Good morning, Mr. Lehman.

15 A. Good morning, Mr. Dowd.

16 Q. Please let me know if you don't understand a
17 question, and I'll be happy to rephrase it for you.

18 A. Okay.

19 Q. You were 28 years old when you purchased D.1908?
20 When your father did. I'm sorry.

21 A. Yeah. When my father did.

22 Q. By that time, you had bought and sold multiple
23 Schieles; is that correct?

24 A. Yes.

25 Q. When you went to that gallery at age 28,

1 Marlborough Gallery, 1964, did you read the catalogue?

2 A. I suppose I did. I actually don't even know if I
3 had a catalogue.

4 Q. You were there at the opening night party;
5 correct?

6 A. Well, are you asking, was I mailed a catalogue
7 and had one in hand?

8 Q. At any time.

9 A. The answer to that is no.

10 If I picked up a catalogue when I was there, the
11 answer is yes.

12 Q. Do you recall reading it?

13 A. No, I don't recall reading it.

14 Q. Now, I'm just going to read an excerpt of it that
15 is Plaintiff's Exhibit 34 in evidence and ask you if it
16 reflects your recollection.

17 A. Okay.

18 Q. And it's a bit long. So I'll read slowly for the
19 court reporter.

20 "The fate of Schiele's work was as tragic as his
21 untimely death. In 1938, a few daring private collectors
22 and connoisseurs of his work such as Erich Lederer,
23 Dr. Oskar Reichel, Dr. Otto Kallir, Professor Otto Benesch,
24 and others - mostly members of the Viennese Jewish *haute*
25 *bourgeoisie* - were exiled, imprisoned or killed by the

1 all-powerful Nazi element of the time. Their Schieles -
2 'decadent art' - suffered a similar persecution and fate
3 and were likewise dispersed. It is a haunting thought that
4 possibly Hitler's ideological ravings could have been
5 kindled by a Schiele, which he might well have seen during
6 his youth in the gutters of Vienna..."

7 Do you recall having read or seen that language around
8 the time?

9 A. No. I don't recall.

10 Q. Did you, any time since that exhibition, have
11 occasion to read the Marlborough 1964 catalogue?

12 A. I don't recall reading that.

13 Q. Now, you do know that most of Schiele's
14 collectors were Jewish; correct?

15 A. Yes.

16 Q. And you do know that most of them were Viennese
17 Jews; correct?

18 A. Yes.

19 Q. And you do know that Viennese Jews were --

20 A. Excuse me. Did you say, did I know or do I know?

21 Q. Do you know?

22 A. Yes. As I'm sitting here, yes, I do know.

23 Q. Did you know it in 1964?

24 A. I -- not that I -- I'm not sure.

25 Q. At Yale, did you study anything to do with the

1 Holocaust?

2 A. No, I don't think so.

3 Q. How about at boarding school?

4 A. No.

5 Q. What boarding school did you go to?

6 A. Brooks School.

7 Q. When did you learn that Hitler had murdered
8 European Jews?

9 A. I don't know. At some point, I learned it. I
10 can't really answer with any precision.

11 Q. Do you think it was prior to age 28?

12 A. I don't know is the real answer.

13 Q. Did your father ever discuss the Holocaust with
14 you?

15 A. No.

16 Q. When did you first donate an artwork for charity?

17 A. The Kirchner artworks I donated to the
18 foundation. Maybe five years prior to when the Schiele was
19 donated. I can't give you a precise answer.

20 Q. So about 2011?

21 A. I can't give you a precise answer but somewhere
22 in that time period.

23 Q. And that was the first charitable donation of an
24 artwork that you had made in your entire life?

25 A. I donated a manuscript to the Morgan Library, if

1 you call a manuscript an artwork, and the answer is
2 probably, yes.

3 Q. So let's focus on that Morgan Library donation.

4 How did that donation happen of the manuscript?

5 A. I can't give you any background because I just
6 don't remember.

7 Q. Do you recall roughly when the donation was?

8 A. Not even roughly when. I'm sorry.

9 Q. Do you think it was within the last 20 years?

10 A. I would say possibly.

11 Q. And do you recall the process of how the donation
12 was made? Was there a deed of gift?

13 A. I think what happened is I gave them the
14 manuscript, and they gave me a receipt. A formal deed of
15 gift, I'm not sure.

16 Q. And did they give you a tax deduction?

17 A. I believe I did get a tax deduction.

18 Q. Do you recall, aside from the Kirchners and the
19 Morgan Library manuscript, making any other donations of
20 charitable -- of -- sorry -- of artworks to charities?

21 A. I just don't recall any.

22 Q. Now, ROLF made donations to the Morgan Library;
23 is that correct?

24 A. I think so, yes.

25 Q. Why?

1 A. I don't remember who the recipient of the
2 donation was, but the foundation -- the purpose was to
3 basically enhance music: composition, performance, theory,
4 study of, and so on.

5 Q. At the Morgan Library.

6 A. Yes -- no, no. In general. That's the purpose
7 of the foundation.

8 Q. ROLF --

9 A. I can't remember why I gifted the Morgan,
10 specifically. Guess I should say, I can't remember why the
11 Lehman Foundation, Robert Owen Lehman Foundation, gifted
12 the Morgan, but no doubt there was a reason. I just can't
13 remember it.

14 Q. Now, aside from the Morgan Library donation, the
15 Kirchner drawings, and D.1908, do you have any recollection
16 of making any other charitable donations in your lifetime?

17 THE COURT: Let me -- just so we are clear,
18 you are not talking, like, donations everywhere? Cash
19 to churches? Are you talking about everything or
20 talking about artwork?

21 MR. DOWD: That's a fair point, your Honor.
22 Let me withdraw the question.

23 THE COURT: Okay.

24 MR. DOWD: And I will reask.

25 BY MR. DOWD:

1 Q. I just want to focus, if I may, Mr. Lehman, on
2 donations of artworks.

3 You testified that you had the Morgan Library
4 manuscript, and that was a donation. You testified the
5 Kirchner drawings. That was a donation.

6 Did you make any other donations of artworks in your
7 lifetime?

8 A. Not that I recall.

9 Q. Mr. Lehman, do you recall testifying earlier as
10 to -- withdrawn.

11 A. As to what?

12 Q. I'll start again.

13 Did there come a time when you donated a Benin Bronze
14 to the Robert Owen Lehman Foundation?

15 A. Oh, I'm sorry. I forgot that. Yes, yes,
16 definitely.

17 Q. Okay. How did that donation happen?

18 A. Close to 60 years ago, I formed a significant
19 collection of Benin Bronzes, and they were stored in a
20 warehouse. I didn't really have place in my house to store
21 these things, many of them masterpieces. And I thought it
22 was really a pity that these were not enjoyed by the
23 public.

24 And so to make a long story short, I approached the
25 Museum of Fine Arts Boston, if I am getting it right -- I

1 seem to be nervous enough that I forget things, but
2 anyway -- and made an arrangement with them. They would
3 build a room for display of the Benin art, of which there
4 were roughly 30 items.

5 And as part of the agreement, I would gift a piece to
6 the museum periodically, having to do with taxes. And so
7 they built the showroom, call it. The Benin artwork was
8 installed there. And over a period of time, I proceeded,
9 more or less every two or three years, to make a donation
10 of a Benin piece, which the museum themselves would own.

11 I owned all the rest that was there, and I would
12 simply donate such and such a piece to the museum in a
13 formal letter, and they would give a letter of acceptance.
14 It did not in any way change the way things were displayed.

15 So that proceeded over a number of years.

16 I don't know if I answered your question.

17 Q. I think you did, Mr. Lehman. Thank you. I have
18 some follow-up questions.

19 When you said when you formed the collection of Benin
20 Bronzes and it was in a warehouse, do you mean you
21 purchased them?

22 A. Yes.

23 Q. Okay. Where did you purchase them?

24 A. Mostly London.

25 Q. And when you used the words -- in answering the

1 question, you said it was having to do with taxes.

2 What did you mean by that?

3 A. Well, if I donated a Benin plaque to the MFA, the
4 plaque would be valued at X-amount. And then I would let
5 my attorney know what the -- what the plaque was valued at,
6 and he would help me with whatever tax deduction might be
7 applicable.

8 Q. And who was your attorney?

9 A. Brian Gloznek.

10 Q. And how long has Mr. Gloznek represented you?

11 A. Gees, I don't know. Since I was 22 or something
12 like that. A long time.

13 Q. Now, you said that Museum of Fine Arts Boston, or
14 the MFA, that they would build a room for display.

15 Did this room have your name on it?

16 A. Yes.

17 Q. And when you got a tax deduction for making a
18 timed donation, what did you do with that deduction?

19 MR. STAUBER: Objection, vague.

20 THE COURT: Perhaps you can rephrase the
21 question.

22 MR. DOWD: Sure, sure.

23 BY MR. DOWD:

24 Q. Did you use the tax deductions to defray income
25 tax?

1 A. Yes.

2 Q. So during the entire period that you were
3 donating Benin Bronzes, did you pay income tax?

4 A. Yes.

5 Q. How much?

6 MR. STAUBER: Objection.

7 THE COURT: I guess I'm not immediately
8 seeing what the relevance would be.

9 Sustained.

10 MR. DOWD: Thank you, your Honor.

11 BY MR. DOWD:

12 Q. When you had income, you used the tax deduction
13 against the income to lower your taxes; correct?

14 A. Yes.

15 Q. So for a period of 20 years, you took deductions
16 for donations of the Benin Bronzes; correct?

17 A. I don't know if it's 20 years but certainly over
18 a time period, yes.

19 Q. Do you know how many years it was? Like --

20 A. I don't remember, but the tax deduction -- the
21 works of art were much more valuable than my income, and so
22 it was spread over a couple of years. So I would give this
23 item to the Museum of Fine Arts, and then Brian would help
24 me. And this year, I have so much that I can take, and
25 next year, I can carry some over and so on.

1 And so it worked. And then when this item -- I'm
2 sorry. When this item was, tax-wise, used up, then I would
3 give them another Benin piece, and the same process would
4 proceed.

5 Q. So if the deductions were more valuable than your
6 income, did you take the deduction in that year?

7 A. You said if the tax deduction was more valuable
8 than my income?

9 Q. Yes.

10 A. It was not. So I'm not answering your question,
11 but the question is inapplicable. I don't know how to
12 proceed.

13 Q. So the deductions were always less valuable than
14 your income?

15 A. Yes.

16 Q. Okay. And did there come a time that the Museum
17 of Fine Arts Boston informed you that one of the Benin
18 Bronzes was stolen?

19 A. No, the museum did not inform me of that.

20 Q. Did *The New York* -- do you recall *The New York*
21 *Times* reporting the Museum of Fine Arts Boston disputing
22 the provenance of one of the Benin Bronzes?

23 A. I don't recall that, but in any case, that's
24 false.

25 Q. Did you -- do you recall the Museum of Fine Arts

1 Boston expressing concerns at any point about the
2 provenance of one or more of the Benin Bronzes that you
3 donated?

4 A. Yes. We had discussions after quite a few
5 articles in *The Boston Globe*. I can't remember. There
6 must have been five or six. And, yes, we had
7 discussions.

8 Q. And what were the sum and substance of those
9 discussions?

10 A. The substance of the discussion was to try and
11 approach the Nigerians and to find some way so the museum
12 could keep the works on display and at the same time
13 satisfy the Nigerians, plural, several different people and
14 several different entities, would satisfy their ownership
15 concerns.

16 Q. And what are their ownership concerns?

17 A. There were -- you know, I can't really answer
18 that question because I don't know.

19 Q. You have no idea?

20 A. Well, I can speculate.

21 Q. Don't want you to speculate.

22 No attorney ever told you what the Nigerians' concerns
23 were?

24 MR. STAUBER: Objection.

25 THE COURT: Sustained.

1 BY MR. DOWD:

2 Q. The Museum of Fine Arts Boston, did they ever
3 tell you what the Nigerians' concerns were?

4 A. I think the sticky wicket here is your use of the
5 word "concerns," which I don't understand in this context.

6 Q. You used the word "ownership concerns" in
7 response to an earlier question.

8 A. Okay.

9 Q. I'm trying to understand what you meant by
10 "ownership concerns."

11 Can you explain when you said --

12 A. Well, we --

13 Q. -- they had ownership concerns?

14 A. The Nigerians had quite a few different entities
15 vying for trying to get this artwork back. And each one
16 was different from the other, and each one disrespected the
17 other. So it was total mud as far as I was concerned.

18 Q. Were you boiling mad about it?

19 A. No.

20 MR. STAUBER: Objection, your Honor.

21 THE COURT: I'm going to sustain it. I
22 don't see what the relevance of this would be.

23 MR. DOWD: There was earlier testimony that
24 he was boiling mad about the current situation. I was
25 just trying to understand if he had the same emotional

1 response to the Nigerians' ownership concerns.

2 THE WITNESS: No. The difference --

3 THE COURT: I still don't see whether his
4 anger levels have anything to do with --

5 THE WITNESS: I can answer.

6 THE COURT: Mr. Lehman, as I indicated to
7 you before, if there's an objection, I need to make a
8 ruling.

9 THE WITNESS: I'm sorry. I'm sorry.

10 THE COURT: And I'll let you know whether or
11 not to answer.

12 I'm going to sustain the objection.

13 BY MR. DOWD:

14 Q. What was your emotional response to the
15 Nigerians' expression of ownership concerns?

16 MR. STAUBER: Objection.

17 THE COURT: Sustained.

18 BY MR. DOWD:

19 Q. When you testified just now that you thought the
20 situation was total mud, did you express that opinion to
21 anyone other than the Court now?

22 A. Oh, I must have, yes.

23 Q. Did you express your concerns to the Museum of
24 Fine Arts Boston?

25 A. I think they knew that.

1 Q. How did they know that?

2 A. Well, the Museum of Fine Arts and I had periodic
3 conversations about this topic of restitution and
4 ownership, et cetera.

5 THE COURT: Mr. Dowd, I'm sorry. I'm going
6 to need to stop right now.

7 Mr. Lehman, I apologize as well. It is
8 11:40. We are going to -- as I indicated before, we
9 are going to recess for the lunch hour. I'd like to
10 resume at 1:15. So if everybody can make arrangements
11 to be ready to go right at 1:15, I'd appreciate it.

12 Court will be in recess until then.

13 Thank you.

14 Mr. Lehman, you can step down if you like.

15 THE WITNESS: Thank you.

16 MR. DOWD: Thank you, your Honor.

17 (Recess taken at 11:42 a.m.)

18 THE COURT: In the matter of Robert Owen
19 Lehman Foundation, Incorporated versus Eva Zirkl,
20 Michael Bar and Robert Rieger Trust, ready to continue
21 with the trial?

22 I note that Mr. Lehman has resumed the
23 stand, and I'll remind Mr. Lehman you are still under
24 oath.

25 We left off during the cross-examination by

1 Mr. Dowd.

2 Mr. Dowd, are you ready to continue?

3 MR. DOWD: Yes, your Honor.

4 THE COURT: You can proceed.

5 MR. DOWD: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. DOWD:

8 Q. Good afternoon, Mr. Lehman. Welcome back.

9 A. Good afternoon, Mr. Dowd. Welcome back, also.

10 Q. Thank you.

11 Earlier you testified that you were on the board of
12 the Robert Lehman Foundation, am I right about that?

13 A. You said if I'm on the board?

14 Q. Yes.

15 A. Yes, that's correct.

16 Q. Okay. Can you tell me how that came about?

17 A. Well, my wife and I decided to form a foundation
18 and had some advice as to how to form it and what format
19 and did so.

20 Q. So that's the Robert Owen Lehman Foundation,
21 correct?

22 A. Yes.

23 Q. But I thought you testified that there's a Robert
24 Lehman Foundation, am I correct about that?

25 A. That's correct. Is that what your question was

1 originally?

2 Q. Yes. Yes, sir.

3 A. Oh, I misunderstood. Sorry.

4 Q. No. It's okay. So how did it come about that
5 you became -- as I understand it, it was your father's
6 foundation, correct?

7 A. Correct.

8 Q. Can you explain how it came about that you got on
9 to that foundation?

10 A. I was very close to my dad. And when he died,
11 the other trustees on the foundation voted me in.

12 Q. Was this following a lawsuit?

13 A. No.

14 Q. You didn't sue your father's estate?

15 A. That's something entirely different.

16 Q. Were you included on the board of the Robert
17 Lehman's Foundation in your father's Will?

18 A. I don't think so, no.

19 Q. So when were you voted on to the board of the
20 Robert Lehman Foundation?

21 A. Heavens. I really can't remember. A long time
22 ago. Sorry.

23 Q. Was it after your father's death?

24 A. Yes.

25 Q. And was this a foundation, Robert Lehman

1 Foundation, created by your father's Will?

2 A. I think so. I'm not quite sure how it was
3 created though.

4 Q. When you joined, could you describe what your
5 role and duties were on the board?

6 A. Did I describe to them?

7 Q. No. Can you describe for us now what your role
8 was? Was this in the 1970s?

9 A. I suppose so. My role was, amongst other folks
10 on the board, to review applications for donations. And as
11 a group, some of us like one thing and some of us liked
12 another. And we would sit around a table a couple of times
13 a year, go through all of the proposals and come up with
14 donations to whichever ones we all agreed on.

15 Q. Did you have any other roles as a board member?

16 A. No.

17 Q. Were there minutes kept of your board meetings?

18 A. Yes.

19 Q. And were there books and records kept of the
20 foundation?

21 A. Were there what?

22 Q. Books and records.

23 A. I can't answer because I'm not sure I understand
24 the question. I'm not equipped to understand the
25 question.

1 Q. Did the foundation have an audit committee?

2 A. I don't know if this is the answer you are
3 searching for, but there were minutes to the board
4 meetings. Is that what you're looking for?

5 Q. You have answered that.

6 A. Okay.

7 Q. But did the Robert Lehman Foundation have an
8 audit committee?

9 A. I'm not sure.

10 Q. Did the Robert Lehman Foundation prepare tax
11 returns?

12 A. Yes.

13 Q. And how do you know that?

14 A. Well, my accountant, Brian Gloznek, also worked
15 for the Lehman Foundation and prepared their tax returns.

16 Q. And from what period approximately to what
17 period?

18 A. A very long time. I'm sorry. And until now for
19 certain.

20 Q. Okay. So Mr. Gloznek still prepares the
21 Form 990s for the Robert Lehman Foundation?

22 A. Yes.

23 Q. What do you understand a Form 990 to be?

24 A. I suppose it's what donations have been made,
25 what donations to the foundation, if any, have been giving,

1 basically a summary of the workings of the foundation for
2 the year.

3 Q. And you list any sales of the foundation?

4 A. Not from the Robert Lehman Foundation. They
5 didn't really make sales.

6 Q. And why was that? What were the assets of the
7 Robert Lehman Foundation?

8 A. The Robert Lehman collection.

9 Q. Just artworks that never got sold?

10 A. They weren't for sale.

11 Q. And were there other assets other than artworks?

12 A. I don't think so.

13 Q. So when you said you were -- as a board member,
14 you made donations. What were you making donations of?

15 A. The foundation had a sum of money which was
16 invested, and they -- they had to by law give away
17 10 percent. And sometimes they gave away 10 percent.
18 Sometimes they gave away more and carried over that
19 accounting to the next year; sometimes not, depending on
20 the proposals that were submitted to the foundation.

21 Does that answer your question?

22 Q. Yes, sir.

23 A. Okay.

24 Q. As a board member, did you get regular financial
25 reports about the foundation's assets?

1 A. Well, it wasn't regular but pretty much a couple
2 of times a year, basically stocks owned and gains and
3 losses and what cash is available.

4 Q. And did those documents show professional fees?

5 A. Yes, I'm sure. I don't remember specifically,
6 but they must have had professional fees -- or been charged
7 for professional fees.

8 Q. And when Form 990s are filed, they disclose
9 professional fees, don't they?

10 A. I don't know.

11 Q. Have you looked at a Form 990?

12 A. I might have. I'm not sure.

13 Q. Now, at one point in time, you testified that you
14 wanted to sell D.1908; is that correct?

15 A. Yes.

16 Q. And you offered it to Jane Kallir; is that
17 correct?

18 A. Well, I met with her to see what she had to say,
19 but an offer is a little too much to say. But she's an
20 expert, and I approached her to explore her expertise in
21 this matter.

22 Q. And what did she say?

23 A. She gave it a low estimate. I can't remember the
24 exact figure, but it was -- it was not an estimate that we
25 considered appropriate is the right word.

1 Q. Was it less than a million dollars?

2 A. No.

3 Q. Was it more than \$2 million?

4 A. Yes.

5 Q. Was it less than \$3 million?

6 A. No.

7 Q. So somewhere between 2 and \$3 million?

8 A. Actually I must have answered incorrectly. Just
9 to clear it up, I think her estimate was somewhere around 3
10 to 4 million.

11 Q. Three to four.

12 A. In that range.

13 Q. And this was -- you found this to be incredibly
14 low; is that accurate?

15 A. I -- I could phrase it in that manner, yes.

16 Q. Now, you testified that you signed a deed of
17 gift; is that correct?

18 A. Yes.

19 Q. Where did the deed of gift come from?

20 A. What do you mean by "come from"?

21 Q. Who created it?

22 A. I don't remember. I think Brian Gloznek or a
23 lawyer. I can't remember which.

24 Q. So Brian Gloznek said he didn't prepare it. Does
25 that --

1 A. Okay. So then it must have been a lawyer.

2 Q. What lawyer?

3 A. I'm not sure.

4 Q. Did you check your records to see who prepared
5 it?

6 A. Did I check my records?

7 Q. Yeah. Before coming here today.

8 A. I don't -- no, I did not.

9 Q. Did you have a deposition in this matter?

10 A. I don't think so.

11 Q. You were not deposed by counsel in this action?

12 A. Well, I -- excuse me, when you say, "this
13 matter" --

14 Q. Yes. This action, where we are today. I'm not
15 trying to confuse you.

16 A. No. I thought when you said "this matter," I
17 thought you meant the matter that you were talking about a
18 second earlier.

19 Q. I apologize. I'm jumping around.

20 A. Yes.

21 Now, that I'm with you, this matter being the reason
22 why we're here?

23 Q. Yes, sir. Yes.

24 A. Okay. Did I have a deposition? Yes.

25 Q. Okay. Now, at that deposition, we asked you who

1 prepared the deed of gift and you didn't recall.

2 Do you recall making -- having that testimony?

3 A. No, I don't recall.

4 Q. Okay. And at that deposition, you said you
5 didn't have any records of who prepared the deed of gift.
6 Is that still the case?

7 A. Well, my recollection was that Brian may have
8 prepared the deed of gift. As I recall, it's like a
9 sentence or two.

10 Q. It's not a lengthy document. I can show it to
11 you, if that would help. I guess, it wouldn't.

12 A. No. I'm aware of it. It's just a sentence or
13 two. You can read it, if you want. It's very short.

14 Q. Sure. That's a great idea actually.

15 Since it is very brief, I'm reading -- showing counsel
16 this is ROLF's trial exhibits, Volume 2. Exhibit 66
17 through 100 is the binder, and I'm referring to Exhibit 74,
18 which is listed as deed of gift. This deed of gift --
19 well, I'm sorry. Let me start. Now, I'm reading from the
20 document at the top --

21 THE COURT: One second. I just want to
22 confirm, is this one of the exhibits that has been
23 agreed upon to be admitted into evidence?

24 MR. DOWD: No, your Honor.

25 THE COURT: Is there any objection to having

1 it marked received at this point being that --

2 MR. STAUBER: We certainly don't think so.

3 MR. DOWD: Our concern, your Honor, is that
4 we don't know who created it, how it was created. And
5 we're trying to establish a foundation that we were
6 not able to establish through a deposition or
7 otherwise.

8 THE COURT: So you don't want to admit it
9 into evidence? Your ultimate goal is not to admit it?

10 MR. DOWD: It's a cross-examination.

11 THE COURT: No, I understand. But you are
12 about to read from the document. That's why I'm
13 asking. That's why I brought it up.

14 MR. DOWD: The reason -- on
15 cross-examination, ordinarily I wouldn't do this. But
16 the witness is visually impaired, and I wanted to be
17 sympathetic to ensure that whatever recollection --

18 THE COURT: Mr. Dowd, I just -- it's my
19 mistake. I just assumed that, perhaps, it was a
20 document you were looking to admit at some point, and
21 I figured we could save ourselves a little time now.
22 I just wasted more time by bringing it up, so you go
23 ahead.

24 MR. OSINSKI: We premarked Mr. Lehman's
25 prior deposition transcript and all the exhibits to be

1 read into evidence, and we haven't received any
2 objections to that. And I think it's past the
3 deadline, so we would request to move this as well as
4 those exhibits into evidence.

5 THE COURT: I'll let you make that request
6 when it's on redirect or some other time, but I'm
7 going to let Mr. Dowd complete his cross-examination
8 first.

9 MR. OSINSKI: Understood.

10 THE COURT: Go ahead, Mr. Dowd.

11 MR. DOWD: Thank you, your Honor.

12 BY MR. DOWD:

13 Q. So, Mr. Lehman, I'm looking at what's been marked
14 by your counsel as deed of gift, titled deed of gift:

15 "This Deed Of Gift dated as of 29 March 2016
16 (hereinafter referred to as this 'Deed') is
17 hereby made from Robert Owen Lehman, having an
18 address at 3487 East Avenue, Rochester,
19 New York..."

20 ZIP code:

21 "... (the 'Donor'), to Robert Owen Lehman
22 Foundation, a New York corporation having an
23 address at 3487 East Avenue, Rochester,
24 New York..."

25 Same ZIP code:

1 "... (the 'Donee').

2 "Whereas, the Donor owns the original painting by
3 Egon Schiele, the gouache portrait of his wife,
4 Edith dated 1917, whereas, the Donor wishes to
5 give the Work to the Donee as a gift;

6 "Now, therefore, the Donor and Donee hereby agree
7 as follows:

8 "1. The Donor, as a gift and for no
9 consideration, hereby irrevocably assigns,
10 transfers, grants and conveys to the Donee the
11 Egon Schiele painting as of the date hereof.

12 "2. The Donor and Donee each hereby covenant and
13 agree to perform such acts and execute,
14 acknowledge and deliver such other instruments as
15 may reasonably be required in order to effect the
16 transfer contemplated hereby.

17 "3. This Deed and the rights and obligations
18 hereof of the Donor and the Donee shall in all
19 respects be governed by, and construed and
20 enforced in accordance with, the laws of the
21 State of New York (without giving effect to
22 New York's principles of conflicts of law).

23 "In witness whereof, the Donor and the Donee have
24 caused this Deed to be executed and delivered as
25 of the date first above written."

1 And below, we see donor is Robert Owen Lehman and the
2 donee is Robert Owen Lehman Foundation, Inc. and each bears
3 a signature.

4 Now, do you recall that deed of gift?

5 A. Yes.

6 Q. Do you recall who drafted it?

7 A. No, but I couldn't possibly have written that
8 legalese. I did not write it but a lawyer certainly did.
9 I don't remember who.

10 Q. So this is dated as of 29 March 2016. Do you
11 know why that date?

12 A. Because, I suppose, that's when it was signed.

13 Q. It doesn't say that it's dated 29 March 2016. It
14 says as of. Do you think there's a distinction to be made?

15 A. If so, it's a little bit beyond my meager gray
16 cells.

17 Q. Okay. Now, on or around 29 March 2016, do you
18 remember the circumstances that you wanted to give this
19 gift?

20 A. I think so.

21 Q. So you had a conversation with Stephen Lash,
22 correct?

23 A. Yes.

24 Q. And what was the sum and substance of that
25 conversation?

1 A. I -- I really don't recall. I don't want to make
2 something up.

3 Q. He told you you had a problem, didn't he?

4 A. I did?

5 Q. Lash told you that you had a problem, didn't
6 he?

7 A. No, that's after the fact. Excuse me, but you're
8 skipping some time. The artwork was given to the
9 foundation, and the foundation then had Christie's take
10 possession of it. And then, what happened is what you're
11 talking about. So --

12 Q. So do you know what the time frame was? Was it
13 two days later that Lash gave you a call?

14 A. Oh, no, it must have been much longer. Are you
15 referring to a call where Lash said, oh, there's a possible
16 claim or something?

17 Q. Any -- let's start with any conversation you had
18 with Lash --

19 A. Okay.

20 Q. -- about this artwork.

21 A. Very simple. Yes, we'd like to sell it.
22 Conversation went.

23 Q. So that was prior to this deed of gift?

24 A. Yes.

25 Q. Okay.

1 A. What are you referring to, "deed of gift"?

2 Q. This document we just read into the record and
3 I'm asking you questions about.

4 A. Okay. Well, I'm a little confused. The deed of
5 gift being my deed of gift to the foundation?

6 Q. Correct.

7 A. Is that what you're referring to?

8 Q. Yes.

9 A. Okay. It's a little bit confusing. Excuse me.

10 So my deed of gift signifies that I gave the Schiele
11 painting to the foundation. Subsequently, I contacted
12 Christie's sometime after -- fairly soon, you know, weeks,
13 or more or less -- and they had somebody come and collect
14 the artwork from the Metropolitan, basically, a storage
15 area and brought it to their premises.

16 At which point, quite a while later -- and I can't
17 tell you whether we're talking a month, or two, or three,
18 or a few weeks, or whatever -- I get a call from
19 Stephen Lash, which is probably what you're referring to.
20 But prior to that, Christie's contacted me and said, is it
21 all right if we investigate the Schiele for pedigree, or
22 whatever you might call it. To which I said, yes.

23 Subsequently, Stephen called me and said, oh, there's
24 a possible claim. I don't remember exactly what he said.
25 But if the conversation I'm remembering is correct, there's

1 a possible claim of ownership to do with the Schiele.

2 Does that bring us up to present tense where you
3 are?

4 Q. Yes.

5 A. Okay.

6 Q. Yes. So your understanding is the conversation
7 with Lash about potential claims arose after the deed of
8 gift?

9 A. Oh, yes, quite a while after.

10 Q. Now, the deed of gift, did you sign it in front
11 of any witnesses? There's no witness -- just so you know,
12 I'm looking at the page -- there's no witnesses there.

13 A. I don't think so.

14 Q. Okay. So no one from Robert Owen Lehman
15 Foundation board witnessed this, no notary witnessed this,
16 nobody?

17 A. No.

18 THE COURT: You are pausing. I believe he
19 said, no, while you were still finishing your
20 question.

21 MR. DOWD: Oh, I apologize, your Honor.

22 BY MR. DOWD:

23 Q. Is the answer no, sir?

24 A. Yes. No.

25 Q. Thank you.

1 Now, I'm turning to Plaintiff's Exhibit 75, bearing
2 the Bates No. ROLF000038. And this says it's an acceptance
3 of gift.

4 Do you recall executing an acceptance of gift?

5 A. Yes, on behalf of the foundation.

6 Q. And do you recall who drafted that document?

7 A. No. The same problem as the previous problem in
8 that regard.

9 Q. Okay.

10 MR. DOWD: With the Court's permission if I
11 may read this very short document in and then ask a
12 series of questions.

13 BY MR. DOWD:

14 Q. I am now reading from Bates No 38, ROLF 38:

15 "The Robert Owen Lehman Foundation acceptance of
16 gift.

17 "This charitable organization acknowledges that
18 it is a qualified organization under
19 Section 170(c) and that it has received the
20 following donated property:

21 "Egon Schiele *Portrait of the Artist's Wife*
22 gouache and black crayon on paper signed and
23 dated Egon Schiele, 1917 (lower right).

24 "The Donee hereby accepts this gift on behalf of
25 the Robert Owen Lehman Foundation.

1 Donee, Robert Owen Lehman Foundation with a signature.
2 Then, it says under the signature "Robert Owen Lehman,
3 President" in type. Below that, we see a date 29 March
4 2016.

5 Do you recall that acceptance?

6 A. I -- I do recall, yes.

7 Q. Okay. And do you believe that's your
8 signature?

9 A. I -- I would suppose so.

10 Q. And you believe -- do you believe that you
11 executed it on March 29th, 2016?

12 A. If it says so, yes.

13 Q. Okay. And similarly, to the prior exhibit,
14 there's no witness. Since I read the text of the
15 acceptance of gift into the record, do you have any
16 recollection refreshed about what date this could have been
17 or whether or not there were witnesses?

18 A. No.

19 Q. Okay. Do you believe -- it says here 29 March
20 2016. So you signed it on that date, correct?

21 A. I suppose so, yes.

22 Q. Okay. And, again, you -- you don't recall who
23 crafted this?

24 A. Well, it must have been a lawyer with a brain
25 beyond mine.

1 Q. Okay. And besides Brian Gloznek, do you have any
2 lawyers with brains in your life, who could have possibly
3 crafted this?

4 A. At the time I had a lawyer, you know, permanently
5 for Wills and such things. And it might have been him or
6 somebody different, because it was an entirely different
7 type of matter. So I absolutely don't recall.

8 Q. So who was your lawyer for Wills?

9 A. Bob. I can't remember his last name. He's been
10 my lawyer for a long time and then he retired.

11 Q. Was he with White & Case?

12 A. No, a different law firm.

13 Q. Okay.

14 A. Which I don't recall.

15 Q. We will maybe come back to that.

16 A. Yeah.

17 Q. If you recall, just please speak up. Thank you.

18 A. Okay.

19 Q. Now, on the next exhibit, which is ROLF
20 Exhibit 76, we see an email to Brian Gloznek with the
21 acceptance of gift and the deed of gift that we have seen
22 previously. And with the Court's permission, if I could
23 read this very brief exhibit in and then ask a series of
24 questions?

25 THE COURT: Any objection?

1 MR. STAUBER: No objection.

2 MR. WARSHAVSKY: No objection, your Honor.

3 THE COURT: Please proceed, Mr. Dowd.

4 BY MR. DOWD:

5 Q. Thank you. So this is ROLF 76 bearing the
6 Bates No. 2GLOZNEK000762. And the E line -- I'm sorry --
7 the email header states from Robin,
8 rlehman2@rochester.rr.com, sent 3/29/2016, 10:15:04 p.m. to
9 Brian Gloznek, bgloznek@hertzherson.com; subject, ROLF
10 foundation gift.

11 Attachments: Schiele acceptance of gift 29 March
12 2016; jpeg deed of gift.doc; Kierchner acceptance of gift
13 001.jpeg; Kirchner deed of gift 001.jpeg.

14 And the body of the email reads:

15 "Dear Brian:

16 "Attached please find:

17 "Schiele deed of gift to the rolfoundation."

18 That's one word:

19 "Schiele deed of acceptance from the
20 rolfoundation."

21 One word:

22 "Kirchner deed of gift to have the rolfoundation.
23 Kirchner deed of acceptance from the
24 rolfoundation.

25 "I will mail a hard copy of each of these for

1 your records.

2 "Thanks for your help. Robin."

3 Mr. Lehman, you sent this email to Mr. Gloznek at
4 10:15 in the evening, correct?

5 A. I suppose so, if that's what it says.

6 Q. Do you recall staying up late at night to do
7 this?

8 A. I normally stay up late at night.

9 Q. And we have an Exhibit 77, which shows that you
10 mailed this -- these documents to Hertz Herson, LLP. Does
11 that accord with your recollection?

12 A. Well, I don't really recall, but it's -- I think
13 it's correct, yes.

14 Q. Now, moving forward to ROLF Exhibit 78, we have
15 another email, we have another email from Robin Lehman
16 dated March 29, 2016 at 4:14 p.m. to Brian Gloznek;
17 subject, donation. Attachments: Schiele deed of gift.

18 And the email says:

19 "Hi Brian: As discussed, please find attached my
20 part of the donation form for the Schiele
21 painting for ROLF, which I propose signing.

22 "Thanks, Brian. Robin."

23 And that's Gloznek Bates No. 767.

24 And turning to the following two pages, we see a form.

25 And it says:

1 "Deed of gift. This deed of gift, dated as of
2 blank, 2015 (hereinafter referred to as this
3 'Deed')..."

4 Do you recall having considered making a gift in
5 2015?

6 A. I don't specifically recall.

7 Q. Do you know why you would have this form, deed of
8 gift, with the date of 2015 in it?

9 A. No.

10 Q. Do you recall speaking to an attorney about
11 making -- wanting to potentially make a gift in 2015?

12 A. I don't recall.

13 Q. Do you recall speaking to Mr. Gloznek about
14 wanting to make a potential gift in 2015?

15 A. It's likely, but I don't recall.

16 Q. Do you recall speaking to anyone else -- a family
17 member, board member of ROLF or anybody else -- about
18 making a potential gift in 2015?

19 A. Very likely I spoke to my wife, Marie Rolf.

20 MR. STAUBER: Excuse me, counsel. We have
21 been going for about 40 minutes. Is this a good spot
22 for you to take a break and him to take a ten-minute
23 break?

24 MR. DOWD: Absolutely. No objection, your
25 Honor.

1 THE COURT: I'll take a brief recess.

2 MR. STAUBER: Thank you, your Honor.

3 THE COURT: Mr. Lehman, you can step down.

4 THE WITNESS: I'm very comfortable. Thank
5 you, your Honor.

6 (Recess taken at 1:55 p.m.)

7 THE COURT: Counsel approach, please.

8 (There was a discussion held off the record at sidebar.)

9 THE COURT: Now, that everybody has returned
10 to the courtroom, Mr. Lehman is still on the stand.

11 I remind you, you are still under oath
12 Mr. Lehman.

13 THE WITNESS: Yes.

14 THE COURT: Mr. Dowd?

15 MR. DOWD: Thank you, your Honor.

16 BY MR. DOWD:

17 Q. I'm turning to Exhibit 81, ROLF Exhibit 81. And
18 it appears to be -- it's labeled as a consignment agreement
19 between Christie's and the Robert Owen Lehman Foundation on
20 page -- Bates numbered ROLF 1400, there's an asterisk. And
21 it says: To be insured for \$10 million.

22 Mr. Lehman, do you recall in this consignment of
23 D.1908 having an insurance of \$10 million?

24 A. Well, I was requesting Christie's to do that.

25 Q. So that's your handwriting there, do you

1 recall?

2 A. I can't tell you unless I see it. If you want to
3 give it to me here this close, I can tell you if it is or
4 not.

5 MR. DOWD: Well, if I could ask counsel,
6 perhaps.

7 Would you mind having him verify that, that
8 that is his handwriting?

9 MR. STAUBER: I object, your Honor. He has
10 testified and we represented to the Court that his
11 ability to see is not there. So I would humbly
12 suggest that we do not present documents to him.

13 THE COURT: He just indicated that if you
14 put it up close, he'd try to see if he could recognize
15 it.

16 MR. DOWD: I'll do it with the Court's
17 permission.

18 THE COURT: Give him that opportunity, and
19 we will hear what he says.

20 THE WITNESS: First of all --

21 BY MR. DOWD:

22 Q. It's a big heavy book.

23 A. If you held it, it would be good.

24 Q. Yes, sir.

25 A. Where is this asterisk?

1 Q. No, it's handwriting. That handwriting. There's
2 an asterisk there. It says to be insured for \$10 million.
3 Is that your handwriting?

4 A. I think so.

5 Q. Thank you.

6 Now, why did you write \$10 million?

7 A. Can you clarify the question, please?

8 Q. Certainly. There's an asterisk. It says to be
9 insured for \$10 million. Why did you write the number
10 \$10 million?

11 A. Okay. I suppose, because I thought the fair
12 market value of that would be in that range.

13 Q. And based on what?

14 A. Well, I looked at -- I followed Christie's and
15 Sotheby's and other sales rooms online, just as a matter of
16 interest. And they were often major, major, major sales
17 with major, major, major works. I followed all these
18 things as a matter of personal interest.

19 Q. And when Jane Kallir gave you that lowball
20 estimate of 3 or \$4 million, did you show her comparables
21 saying, hey, look it's worth more than that? Did you argue
22 with her at all?

23 A. No.

24 Q. You just said no?

25 A. I just left.

1 Q. And were you there in person at her gallery?

2 A. I think so but I can't really remember.

3 Q. On 57th Street, Gallerie St. Etienne?

4 A. Yes.

5 Q. And were you a frequent visitor there?

6 A. No.

7 Q. Had you met Otto Kallir?

8 A. Yes, I had.

9 Q. So you met him back in 1964 at the
10 Marlborough Gallery?

11 A. No, years and years and years ago. I can't
12 remember when, but I definitely met Otto Kallir.

13 Q. So you met him before 1964?

14 A. I -- I don't know.

15 Q. Okay. And in 1964 at the Marlborough Gallery,
16 Otto Kallir was present at the big party, right?

17 A. I guess so.

18 Q. Who did you say your friend was who worked for
19 the Marlborough Gallery?

20 A. James Kirkland.

21 Q. And how did you know him?

22 A. I visited the Marlborough, because they had
23 interesting paintings. And somehow we were on the same
24 wavelength and enjoyed each other's companies. And so I
25 saw him socially as well. He was a very nice chap and

1 still is.

2 Q. And he is still around?

3 A. Yes.

4 Q. And so when all this came up with this lawsuit,
5 did you ask him about this?

6 A. I must have, but I can't really recall, no.

7 Q. And where does he live?

8 A. Well, he lives in London, but he also goes to
9 Mexico for six months a year. So he lives here or there,
10 put it that way.

11 Q. He was at the Marlborough exhibition in 1964,
12 right?

13 A. Yes.

14 Q. And you stayed in touch with him ever since,
15 right?

16 A. Ever since.

17 Q. And what did he tell you about the provenance of
18 D.1908?

19 A. The reason why I'm hesitating is I'm not sure I
20 discussed it with him. You know, provenance from the
21 gallery was self-evident from what the gallery itself said,
22 so I don't think I discussed provenance with him.

23 Q. And when this unpleasantness -- recent
24 unpleasantness came up, did you share that with him?

25 A. Share the unpleasantness?

1 Q. Yes.

2 A. Oh, as a matter of friend, I suppose I might have
3 said something to the effect that there's some pains in the
4 ass happening.

5 Q. And that you were boiling mad?

6 MR. STAUBER: Objection, "boiling mad".

7 THE WITNESS: I actually --

8 THE COURT: I'll allow it. I'll allow the
9 cross-examination to continue. Overruled on that
10 specific objection. He's relaying a conversation.

11 THE WITNESS: Yes. "Mad" wasn't the right
12 word. But as things developed, frustrated was the
13 right word. You will recall I said when Maylander
14 first raised their head, my reaction was to examine
15 the evidence and think about it and definitely make
16 some sort of agreement.

17 The Holocaust was a terrible thing, and
18 these people were connected to it and possibly the
19 Schieles. So I was very open to making some sort of
20 arrangement. However, when Rieger surfaced and then
21 various things hit the fan, I became upset would be
22 the right word.

23 BY MR. DOWD:

24 Q. You said one of the groups was fabricating
25 something, right? That's what you testified earlier

1 today?

2 A. I didn't hear exactly what you said.

3 Q. You testified earlier today that one of these
4 groups of heirs must be fabricating something, right?

5 A. That's fair to say.

6 Q. Okay. And you said it. So did James Kirkland
7 tell you that one of these groups of heirs must be
8 fabricating things?

9 A. No, my infinitely meager IQ told me that.

10 Q. And did you have any evidence that one of the
11 groups of heirs fabricated any evidence?

12 A. Well, you have the evidence before you. The
13 painting can't be in two places at once, at least not to my
14 knowledge.

15 Q. Aside from your IQ, do you have any other
16 indication that any of the groups of heirs fabricated any
17 evidence?

18 A. I can't speak to that because I think it's more
19 for the lawyers to answer that question properly.

20 Q. Now, you referred to pains in the ass. Was it
21 James telling you that these claimants were pains in the
22 ass, or was it you saying it to him?

23 A. I'm not sure if I said it to him or not, but they
24 definitely were a problem. And you probably can quote me
25 on that.

1 Q. And did you ask James, do you have any evidence
2 from that era?

3 A. No.

4 Q. Did you ask James if he recalled the eight to ten
5 Schieles that he had sold you and purchased back?

6 A. No.

7 Q. Does he know what Schieles those were?

8 A. Yes.

9 Q. And why didn't you ask him?

10 A. I'm a little confused.

11 Q. Why didn't you ask him: Hey, do you recall what
12 those Schieles were that you sold me all those years ago?

13 A. Why would I do that?

14 Q. Did you ask him whether he had any
15 Marlborough Gallery records from that era?

16 A. We -- after it really got into it with the three
17 claimants, the foundation being one of them, I think my
18 lawyers tried to find the records. And as I recall -- and
19 tried to talk to people in person. And the founder, who
20 would have been the person present at the time that this
21 all happened, had died. So it was a bit of a dead end.

22 I don't know if that answers your question.

23 Q. Did you tell your lawyers that James Kirkland,
24 your friend and eye witness, was there at
25 Marlborough Gallery?

1 A. I don't recall if I did or not.

2 Q. Did you tell your lawyers that there was an eye
3 witness still living who might have evidence about the
4 provenance of this artwork?

5 MR. STAUBER: Objection.

6 THE COURT: Attorney-client privilege, is
7 that what your -- the basis?

8 MR. STAUBER: Yes.

9 THE COURT: I'm not seeing how asking him
10 what he told his attorney would be an attorney-client
11 privilege, necessarily. I'm willing to listen.

12 MR. STAUBER: I'm fine with him answering
13 this. I'll withdraw the objection.

14 THE WITNESS: Okay. Could you just repeat
15 the question, please?

16 MR. DOWD: Perhaps, I can ask the court
17 reporter.

18 THE COURT: Yes, please.

19 (Record read.)

20 THE WITNESS: No, I did not tell them that,
21 because James was not an eye witness who might have
22 knowledge of the provenance of that art. He was an
23 employee who sold the pieces of art to various clients
24 who might walk in the door.

25 BY MR. DOWD:

1 Q. What was his title?

2 A. He was not privy to any of the stuff that you are
3 referring to. And by the way, at the time the artwork was
4 purchased, there was no hint of any of that stuff you're
5 now referring to. No hint at all.

6 Q. What was James Kirkland's title at the
7 Marlborough Gallery?

8 A. I don't know that.

9 Q. And when your father came to London, was it your
10 idea that he go to the Marlborough Gallery?

11 A. I can't remember.

12 Q. You had already bought eight to ten Schieles from
13 James Kirkland at the time. Kirkland was somebody you knew
14 socially?

15 A. Yes. And at the time -- quite -- quite a bit
16 before that I had sold all of those Schieles that you're
17 referring to.

18 Q. And did your father have a separate interest in
19 Schiele before 19 --

20 A. Not particularly. I liked the artist. And for
21 financial reasons, I decided it would be a good thing to
22 sell the ones I had. And so it was probably: Hey, dad, do
23 you want to go have a look at the Schiele show? And I
24 would imagine his answer was: He's not an artist I'm
25 particularly interested in, but let's go and we'll have

1 dinner.

2 Q. So he did it for you?

3 A. Yes.

4 Q. Turning to ROLF Exhibit 55 -- and, Mr. Lehman,
5 I'll represent to you that -- and this is Bates number
6 ROLF004700.

7 A. This is Bates number, what?

8 Q. I just read in a Bates number. That's just how
9 we mark things.

10 A. An identifying marker?

11 Q. Yeah, that's all. I'm not asking the question
12 yet.

13 A. Thank you.

14 Q. So I have here a letter from a woman named
15 Vivienne Garfinkle dated October 3rd, 1990. And it's to
16 LaserNet, Laser Communications Ltd. in London, England.

17 Do you recall what this letter is about?

18 A. No, I don't.

19 Q. Okay.

20 MR. DOWD: May I quickly read it into --

21 THE COURT: Any objection?

22 MR. STAUBER: No, not at all.

23 MR. WARSHAVSKY: Not from Maylander.

24 MR. DOWD: Thank you.

25 BY MR. DOWD:

1 Q. Recall October 3rd, 1990:

2 "Dear Sirs: I represent Robert Owen Lehman who
3 has been declared to be the rightful owner of the
4 enclosed works of art.

5 "This declaration of Mr. Lehman's rightful
6 ownership was made by a Federal District Court
7 judge in a suit against Aki Lehman, who claimed
8 that she was the rightful owner. Despite this
9 adjudication, Mrs. Lehman has stolen these
10 artworks and they are nowhere to be found.

11 "Any help that you can provide in recovering
12 these works of art will be greatly appreciated.

13 "Should you acquire further information, please
14 feel free to contact me."

15 Now, that's what this document says. I'm going to ask
16 you a few questions.

17 A. Okay.

18 Q. So who is Vivienne Garfinkle, do you recall?

19 A. She was my, then, lawyer.

20 Q. Okay. And was there a divorce proceeding?

21 A. Yes.

22 Q. Okay. And as part of that, was there a
23 declaration that you were the rightful owner of D.1908?

24 A. Yes.

25 Q. Okay. Do you have a copy of that?

1 A. I don't know. I just don't know.

2 Q. Now, it says Mrs. Lehman has stolen these
3 artworks. Do you believe that is true?

4 A. Yes.

5 Q. Okay. And what's your basis for that?

6 A. Well, the artworks were in her possession in
7 London. She moves to Paris. And lo and behold, the
8 artworks all disappeared. And I say, hey, Aki, where is
9 the artworks? She says, I don't know.

10 So what is a person supposed to think?

11 Q. So you left D.1908 with her, with Aki
12 voluntarily, correct?

13 A. Yes. As I explained earlier it was a way -- I
14 was away making movies in various places, and I didn't want
15 to disturb the household for the kids. And so I left the
16 artwork amongst other things on the walls, so that their
17 household would not be disturbed while I was away. Then
18 Aki took all that stuff to Paris.

19 Q. Okay. With or without your permission?

20 A. With my permission.

21 Q. So at what point did you ask for D.1908 to be
22 returned to you by Aki?

23 A. Sometime after she moved. I don't recall.

24 Q. Was it many years before 1990? Do you recall
25 generally?

1 A. I don't recall. When was the lawsuit that you
2 cited?

3 Q. All that I know -- hold on one second.

4 A. Well, just call it years before.

5 Q. Mr. Lehman, we understand you were divorced in
6 1976?

7 A. Yes.

8 Q. Does that sound right?

9 A. Yes.

10 Q. Okay. So sometime after the divorce but prior to
11 1990, it looks like you asked for this artwork to be
12 returned, correct?

13 A. Correct.

14 Q. Okay. Do you recall how long after the divorce
15 you asked for her to give it back?

16 A. No, I don't recall.

17 Q. Okay. And you listed D.1908 with LaserNet, which
18 was a database for searching stolen artworks; is that
19 accurate?

20 A. Yes.

21 Q. And how long did you list it as stolen?

22 A. I don't know the exact time period. It's quite a
23 long time ago. I mean, you pay for the service over X
24 number of years. I can't remember what I did.

25 Q. Okay. And there were items beyond D.1908 that

1 you claimed were stolen, correct?

2 A. Yes.

3 Q. So we have at ROLF4707 a list of 16 items.

4 Number 7 is Schiele Guache of portrait of his wife, Edith.

5 So with the Court's permission, I just want to go through

6 quickly what these items are, not each one.

7 THE COURT: Items that were allegedly taken
8 by his former wife, Aki?

9 MR. DOWD: Correct.

10 THE COURT: Any objection?

11 MR. STAUBER: No objection.

12 MR. DOWD: Thank you.

13 THE COURT: I'll take a shrug as "no."

14 MR. WARSHAVSKY: No.

15 BY MR. DOWD:

16 Q. Mr. Lehman, I'm representing to you that this is
17 what this exhibit says, and I just want to see if it
18 generally accords with your recollection.

19 Dellarobia Woman and Child. Benin Ivory Box. Benin
20 Terracotta Head. Two Embracing Figures in Stone.
21 Marquesas Island. Tiepolo Drawing of Woman and Dog. Cross
22 Watercolor of Landscape.

23 We mentioned already Schiele Guache of Portrait of his
24 wife, Edith. Montegna Small Portrait of a Man in Ink.
25 Tinteretto Drawing of Reclining Nude. Daumier Drawing of

1 The Lawyer. Goltzius Drawing of Blind Musician.

2 Tinteretto of St. George and the Dragon in Ink.

3 Watteau Donkey Drawing in Chalk. Reliquary, Verre

4 Eglomise. Gothic Diptych. Benin Gold Shell Necklace.

5 Do you recall that those are the items that you
6 believe that Aki had stolen from you?

7 A. Yes.

8 Q. Were you able to recover any of these items
9 besides the drawing that we're speaking of today?

10 A. Yes.

11 Q. Which items -- or generally which items? I won't
12 hold you to an exact.

13 A. Generally, I recovered most everything on the
14 list except for the gold necklace. And there was an ivory
15 box on the list, do I recall?

16 Q. Yes, Benin ivory.

17 A. The gold necklace, the Benin ivory box and the
18 Schiele were never recovered.

19 Q. How did you recover the other items?

20 A. I really can't remember. I think friends of mine
21 or maybe even -- I just don't remember how I got possession
22 of them, but it wasn't a lawsuit-type thing. It was
23 somebody went there and got them for me.

24 Q. From Aki?

25 A. Yes.

1 Q. Okay. So it wasn't like found in a pawn shop or
2 anything like that?

3 A. No.

4 Q. Okay. So Aki, it turns out, she had many of the
5 items that you had claimed were stolen?

6 A. Correct.

7 Q. And only about three roughly you didn't -- you
8 recall not getting back?

9 A. Correct.

10 Q. Okay. Now, moving to ROLF Exhibit 103. And the
11 Bates number is ROLF000196.

12 MR. STAUBER: Ray, can you give us a chance
13 to catch up with you, counsel?

14 MR. OSINSKI: We are good.

15 MR. DOWD: Are you okay?

16 MR. STAUBER: Thank you.

17 MR. DOWD: Thank you.

18 BY MR. DOWD:

19 Q. So we have here an email -- or a letter that you
20 sent to Ms. Meridith Savona of the FBI. Do you recall that
21 at all. It says 21 March 2017?

22 A. I -- I recall the circumstance, yes.

23 Q. Okay. And in that correspondence, you list as an
24 involved party Robin Lehman, the present owner of the
25 painting since the 1960s. Did you believe that to be

1 accurate at the time?

2 A. Yes.

3 Q. And you're still the present owner in your
4 belief, correct?

5 A. No, my friend.

6 Q. Who owns it?

7 A. The foundation.

8 Q. Now, in the brief history, it reads:

9 "I consigned the painting to Christie's
10 approximately a year ago to benefit the
11 Robert Owen Lehman Foundation in the Spring of
12 2016."

13 Did you believe that to be accurate at the time you
14 wrote it?

15 A. Yes.

16 Q. Do you believe it to be accurate today?

17 A. I think so.

18 Q. Moving to ROLF Exhibit 106 bearing the
19 Bates number of ROLF000200, this correspondence from you to
20 Kiersten Fletcher. And it appears to be an email with
21 something at the bottom from Sandra Cobden.

22 THE COURT: What exhibit number is that
23 again?

24 MR. DOWD: I apologize, ROLF Exhibit 106.

25 THE COURT: Thank you.

1 BY MR. DOWD:

2 Q. So do you recall who Kiersten Fletcher is?

3 A. Very well.

4 Q. Can you describe who she is?

5 A. I can describe her as very pleasant and very nice
6 to deal with on the phone.

7 It's established that she is an FBI person, correct?

8 You did --

9 Q. It says in the document descriptions U.S.
10 Attorney's office.

11 A. Yes, she was -- I don't know what position she
12 held. She was an FBI person assigned to untangle the
13 Schiele business.

14 Q. Okay. I'm not trying to trip you up, but the
15 other woman, Meridith Savona, it says FBI. And
16 Kiersten Fletcher, your counsel has put in the list that
17 it's U.S. Attorney's office. So --

18 A. I don't recall who -- I think one took over the
19 other's job. I just don't recall. They were both from
20 FBI.

21 Did I answer your question?

22 Q. Yes, you did. Thank you.

23 MR. STAUBER: Counsel, could I approach the
24 witness just to check on how he's doing?

25 MR. DOWD: Yeah. Yeah, absolutely.

1 (There was a discussion held of the record between witness
2 and Mr. Stauber.)

3 THE COURT: You can proceed, Mr. Dowd.

4 BY MR. DOWD:

5 Q. Here, I will refer to Rieger Heirs exhibit, and
6 this has been marked as R-57.

7 MR. STAUBER: Give us a minute, please.

8 MR. BRIAN: Mr. Dowd, can you say that
9 number again?

10 MR. DOWD: Yeah, sure: R-57. I'll show it
11 to you.

12 THE COURT: Off the record.

13 (There was a discussion held off the record.)

14 MR. STAUBER: Hold on a minute here.

15 MR. DOWD: R-EEE.

16 THE COURT: That's what you are referring
17 to?

18 MR. DOWD: It's the same thing the Court
19 asked us to put numbers instead of letters, so it
20 wouldn't be confusing.

21 THE COURT: Now we have two sets.

22 MR. OSINSKI: Mr. Dowd, D or E?

23 MR. DOWD: I apologize, R-EEE, as in
24 everybody.

25 THE COURT: Thank you for accommodating that

1 request, Mr. Dowd. It does make it easier.

2 MR. DOWD: That's why we're here.

3 May I, your Honor?

4 THE COURT: Everybody all set? Are we all
5 set?

6 MR. STAUBER: Proceed.

7 THE COURT: All right.

8 MR. DOWD: Thank you.

9 BY MR. DOWD:

10 Q. So, Mr. Lehman, I have here a document marked
11 LEHMAN00088 that was provided by your counsel. And it's in
12 handwriting, and it says:

13 "Hi, dad. Here is the original cardboard that
14 probably was on the back of the Schiele. Sending
15 you lots and lots of love. K."

16 Just the initial with a period.

17 Do you recall getting that communication?

18 A. I don't recall specifically, but I guess K is
19 Kate.

20 Q. And who is that?

21 A. My daughter.

22 Q. Okay. And you don't recall getting a original
23 cardboard that was on the back of the Schiele?

24 A. Not specifically. I do not recall.

25 Q. Would it help if I showed you the document? May

1 I?

2 A. I don't think it will help. I don't dispute the
3 document but I just don't remember.

4 MR. DOWD: All right. May I, your Honor,
5 just show him the back?

6 THE COURT: You can proceed.

7 MR. DOWD: Okay. Thank you.

8 BY MR. DOWD:

9 Q. Mr. Lehman, I'm going to approach and just show
10 you Kate's note and the two pages that she says is the
11 cardboard that probably were on the back of the Schiele.

12 A. Okay.

13 THE COURT: Okay. Let's take it out of the
14 binder though, so we are not lugging the whole binder
15 around.

16 MR. DOWD: Yes, sir. Smart.

17 THE WITNESS: Am I looking at handwriting?

18 BY MR. DOWD:

19 Q. Yes. Can you see it?

20 A. That says what you said?

21 Q. Yes.

22 A. Okay. See it is generous. It's quite light, but
23 I -- I see it but not very well.

24 Q. Okay.

25 A. Is that what you're asking?

1 Q. Yes, yes.

2 A. Okay.

3 Q. Do you recall getting that note from Kate?

4 A. No, I don't recall it.

5 Q. Okay. And let's then turn to the next page.

6 A. Okay. Stapled, is it?

7 Q. Yes, it's stapled.

8 A. Okay.

9 Q. Now, there's a brown thing on there. Are you
10 able to read it?

11 A. I can read the Egon Schiele part because it's
12 larger, but I can't read the rest.

13 Q. Do you recall seeing this before?

14 A. I don't recall, no.

15 Q. Okay. Let's turn to the next page. It's the
16 last page.

17 A. It's yellow paper and writing on it that I cannot
18 see.

19 Q. Do you recall ever getting the original of this,
20 an old piece of cardboard in the mail?

21 A. No, I don't recall.

22 Q. Do you recall having conversations with anybody
23 about somebody finding the cardboard back of the Schiele?

24 A. No, I don't recall.

25 Q. Now, when you bought the Schiele, do you recall

1 there being a cardboard back on it?

2 A. I don't recall. No.

3 Q. Now, looking at Lehman Bates Number 89, there's a
4 small brown image that says:

5 "Marlborough Fine Art Limited, 39 Old Bond
6 Street, London W1, Egon Schiele paintings water
7 colors, drawings, October to November 1964,
8 Catalogue Number 78."

9 Does that refresh your recollection about having seen
10 this before?

11 A. No, it doesn't refresh my recollection but it
12 sounds right.

13 Q. And on the following page, LEHMAN000090, there's
14 another piece of paper -- what appears to be paper. And it
15 says Galleria, that's G-a-l-l-e-r-i-a, d'Arte, D
16 apostrophe, A-r-t-e. Then, there's a word that starts with
17 gala, but you can't read it. And it says via Vela, V-e-l-e
18 -- V-e-l-a. I'm sorry. Torino.

19 Schiele 1114. And in Italian, it says, quote,
20 Ritratto, R-i-t-r-a-t-t-o, new word, D-I, new word, Edith,
21 E-d-i-t-h.

22 1972 -- 1917 and what looks like tempura and Riolio in
23 Italian and some measurements.

24 Do you recall on the back of D.1908 seeing this
25 label?

1 A. No, I don't recall.

2 Q. And do you recall any conversations with
3 James Kirkland or anyone else that the Schiele that you
4 purchased had come from Galleria Galatea?

5 A. I don't recall.

6 Q. Did you have -- when you bought it in 1964, do
7 you recall there was anything on the back from Italy
8 whatsoever?

9 A. I don't recall.

10 Q. Did you ask anyone at the time, hey, where did
11 this artwork come from?

12 A. No.

13 Q. Now, I'd like to move to R-62, which is just a
14 few exhibits further. And the letters are R-III. It's
15 just about four exhibits -- or a few ahead. It'll take a
16 second to find.

17 (Discussion held off the record between counsel.)

18 THE COURT: Why don't we take a break at 3?

19 MR. STAUBER: We will continue.

20 THE COURT: We will take a break at 3.

21 MR. STAUBER: Okay. Break in ten minutes,
22 Robin. Thank you.

23 MR. DOWD: I only have four more. If we
24 take the break now, I can make sure everybody has them
25 all.

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THE COURT: That's fine.

MR. DOWD: Because I only have, like, four more exhibits.

MR. STAUBER: That's great. Let's take a break now, Zach.

THE COURT: Okay. Court will be in recess for -- I don't know how long.

(Recess taken at 2:50 p.m.)

THE COURT: Continue with the trial.

Mr. Dowd, you can continue.

MR. DOWD: Thank you, your Honor.

BY MR. DOWD:

Q. We are at Exhibit R-62, which is a Metropolitan Museum of Art departmental loan agreement.

Mr. Lehman, do you recall making a loan to the Metropolitan Museum of Art on or around August 4th, 2015?

A. I remember the document. And the purpose of the document was actually not a loan. I don't know if you care.

Q. I do. If you could explain.

A. I can explain. The Metropolitan Museum has a very good restoration department. Take restoration, porcelain, everything, you walk into this incredible room, you see a statute here and a painting there. And everybody is working on their thing. And so I wanted them to take a

1 look at the Schiele.

2 The document I'm looking at is described as a
3 departmental loan agreement, and you appear to have signed
4 it. It's Bates Number MMA No. 2, and attached to it is a
5 very substantial list of works. I don't know how many.
6 There's about three per page. And it's from page MMA3
7 through MMA51. So over a hundred artworks are depicted
8 here. Are these artworks that belong to you?

9 A. Yes. And to back up a second, I didn't realize
10 that you were talking about what you're now talking about.
11 I thought you were referencing the Schiele, which this
12 document is not.

13 My dad gave me a number of beautiful drawings over the
14 years, and I just didn't feel good about hanging them in
15 sunlight because it basically destroys the drawing. So
16 although I possessed these things, as a favor to me the Met
17 or the Lehman Foundation stored them for me. And that's
18 what you are looking at.

19 Q. Right.

20 A. Did I answer?

21 Q. Under the -- where it says, lenders, it says
22 Robin Lehman. And below that it says, address Robert Owen
23 Lehman and Marie Lehman, 3487 East Avenue, Rochester,
24 New York, ZIP code USA.

25 So all of these, over a hundred artworks, are they

1 your personal artworks?

2 A. Well, they are my property. I didn't create
3 them.

4 Q. They are your property?

5 A. Yes.

6 Q. Okay. You are not the artist?

7 A. Unfortunately, not.

8 Q. Okay. So I'll just take you through one artwork.
9 It says:

10 "honoray domier French Marseilles 1808 to 1879.
11 Lawyer, French, there are some dimensions.
12 Country of France. Country of origin is France.
13 Lender inventory number TR 1421.2013 insurance
14 value U.S. currency \$20,000.

15 Do you recall owning an artwork matching this
16 description?

17 A. Very well.

18 Q. Okay. So it's a lawyer.

19 A. Yes, it was. Engrained in my brain.

20 Q. You like pictures of lawyers?

21 A. No, but this one is so ironic. It's a perfect
22 portrait. Excuse me.

23 Q. Okay.

24 THE COURT: I'm assuming it doesn't look
25 like you, Mr. Dowd.

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THE WITNESS: No.

MR. DOWD: Well, it's a famous caricature of a French lawyer. We are known to bloviate and go on and on. And I think that image captures it perfectly.

BY MR. DOWD:

Q. So we have in this, as I say, it looks to me like over a hundred artworks, lots of different artists and all of these are your personal collection, right?

A. Yes.

Q. Okay. Now, looking at page MMA0000029, we have the D.1908. And there, it says: The lender inventory number is TR.345.69.2013. And the insurance value is \$3 million. Why is that listed as \$3 million?

A. Well, I made the insurance values of these myself. And I suppose I thought that was an accurate value at the time.

When was this document created?

Q. Well, the two cover pages that I see is signed by you on August 4, 2015. I do see that up top they seem to have a loan agreement number. It's 2015.68.1-1.39. So it looks like it was created by The Met in 2015.

A. Okay. So the question was why that figure?

Q. Correct.

A. I guess, completely out of my head. I'm not sure. But I needed -- in order to have this loan agreement

1 with The Met, I needed to put numbers on these things.

2 Q. So you told Christie's to insure it at
3 10 million?

4 A. Yes.

5 Q. And The Met to insure it at 3 million?

6 A. Yes.

7 Q. How do you account for that difference?

8 A. Well, one is for storage and unmoving. Another
9 is, perhaps, wishful thinking. And to elaborate, I'm not
10 going to bring a valuable artwork to a sales house and give
11 them the lowest possible estimate. The idea is to do the
12 reverse and work from there. I think that's probably the
13 answer to your question.

14 Q. Thank you. Yes.

15 I'd like to turn now to R-63. Mr. Lehman, I'm looking
16 at -- is everybody on the same page?

17 At Defendant's R-63, which is a 2016 return of a
18 private foundation Form 990 of the Robert Owen Lehman
19 Foundation, Inc. Do you know who prepares --

20 A. When you say, "return," I presume you mean tax
21 return.

22 Q. Yes, I'm sorry.

23 A. Who prepared that? Brian Gloznek.

24 Q. Correct. It's actually produced under a Gloznek
25 Bates Number 0111.

1 In 2016, there's -- the form said that there's no
2 legal fees paid. Do you believe that to be accurate?

3 A. No.

4 Q. So you think that ROLF --

5 A. What was the date?

6 Q. It's a 2016 Form 990.

7 A. I can't remember the date when all this hell
8 started. Forgive me.

9 Q. Moving to Exhibit R-64, we have a 2016 list of
10 itemized deductions, Schedule A. It's Bates numbered
11 GLOZNEK0085. And it says that the total gifts to charity
12 of Robert O. Lehman and Marie Rolf are -- there's two of
13 them -- \$1,278, \$500. And in line 18, there's a carry over
14 from prior year of \$13,364,553.

15 Does that appear to be accurate to you?

16 A. I would guess so. I think any document from
17 Brian would be accurate. Let me stipulate that, if that's
18 the right word.

19 Q. Okay. So the only gift that you had here then
20 was over -- it says -- line 16 gifts by cash or check. If
21 you made any gift of \$250 or more, see instructions. And
22 your response was 1,278. That was your entire charitable
23 giving for the year 2016?

24 A. Yes. If that's what it says I'll stand by that.

25 Q. Okay. And line 17, it says: Other than by cash

1 or check, if any gift of \$250 or more, see instructions.

2 You must attach Form 8283 if over \$500. See statement 15.

3 And it says: \$500.

4 Do you believe that to be accurate?

5 A. Yes.

6 Q. And line 18, carry over from prior year,
7 \$13,364,553. What do you believe that number to represent?

8 A. A donation of Benin art to the MFA.

9 Q. And that was a carry over from 2015?

10 A. Well, from the previous year, yes.

11 Q. Okay. So this was a personal gift --

12 A. Yes.

13 Q. -- of the Benin Bronzes that you made?

14 A. Yes, one -- one artwork only.

15 Q. Okay. One Benin Bronze. You got a 13 million
16 dollar personal tax deduction?

17 A. Well, I don't quite know how the tax deduction
18 worked. But it gets carried over and then carried over.
19 And then finally it gets extinguished because the ultimate
20 value of the gift exceeds the possibility of taking a
21 deduction.

22 Does that make sense?

23 Q. Yes.

24 And when did you learn that any possible donation of
25 D.1908 would not be a deduction that you could use to

1 offset your personal income?

2 A. I didn't learn that.

3 Are you -- may I put words in your mouth?

4 Q. Please.

5 MR. STAUBER: Objection. No, you may not.

6 Let him ask the questions. You are here to do the

7 answer.

8 THE COURT: Woah, woah, woah. We have too

9 many people talking at one time.

10 I'd ask you to just to wait for a question,

11 Mr. Lehman.

12 THE WITNESS: Sorry.

13 BY MR. DOWD:

14 Q. Was my question unfair?

15 A. Can you repeat it again?

16 MR. DOWD: Madam Court Reporter?

17 THE COURT: The unfair question? No, move

18 on to another question. Come on.

19 MR. DOWD: If I confused him, I would just

20 like the record to be clear.

21 THE WITNESS: No, you didn't confuse me.

22 THE COURT: Hold on. Ask a question.

23 MR. DOWD: Okay.

24 THE COURT: If we start asking him about

25 questions that are unfair to him or not, then this

1 trial will go --

2 MR. DOWD: I'm almost done.

3 THE COURT: -- until Thanksgiving.

4 MR. DOWD: Point taken, your Honor.

5 BY MR. DOWD:

6 Q. I'd like to move forward to R-65. The third page
7 in is CHR000823. And we have an email from Jessica Fertig,
8 sent on 31 March 2016.

9 MR. WARSHAVSKY: Your Honor, or Mr. Dowd,
10 are you offering this exhibit into evidence right now,
11 or just asking the witness about it?

12 MR. DOWD: Just asking the witness.

13 MR. WARSHAVSKY: I apologize.

14 BY MR. DOWD:

15 Q. Do you know who Ms. Fertig is?

16 A. You know, the name is very familiar, but I can't
17 quite place it.

18 Q. From her email, it looks like she's at
19 Christie's.

20 A. Okay.

21 Q. I'm just going to read a brief portion and then
22 ask some questions.

23 So on March 31st, 2016, she writes: Dear all -- and
24 just so I'm not confusing anything, this does not appear to
25 be addressed to you:

1 "Dear all. Stephen Lash spoke with the owner,
2 and they have given us the okay to conduct
3 further research, including contacting
4 Marlborough Gallery and Kallir. I mentioned
5 Monica's reticence about contacting her. And he
6 said the owner will want an explanation as to why
7 she will not be our port of call, if that is our
8 position. I told Stephen we will need
9 clarification, if we have approval to conduct all
10 outside research. What will be helpful is to
11 provide a list of research we will undertake.
12 He stressed that the client will want to have
13 constant progress updates and will want to hear
14 back as we go. If there is a way to keep this in
15 the sale, that would be phenomenal. Let's all
16 touch base tomorrow. Thank you for all the
17 preliminary quick research you completed. It is
18 really fantastic. Thanks, Jessie."

19 Do you remember on or around March, 2016 -- again,
20 this email wasn't directed at you -- discussions with
21 Stephen Lash about conducting further research into the
22 provenance of these works?

23 A. Yes. It must have been by phone, had a
24 conversation with Stephen. However it was conducted, by
25 phone or otherwise, I gave Christie's permission to go at

1 it and do as much research as they could to find the
2 rightful owner.

3 Q. Moving to Respondent's Exhibit 79 -- sorry --
4 R-79, Rieger 79, which is a 2018 return of a private
5 foundation for the Robert Owen Lehman Foundation.

6 Mr. Lehman, in 2018, there's no legal fees listed on
7 the Robert Owen Lehman Foundation, Inc.'s Form 990. Do you
8 think that's accurate?

9 A. For the foundation, yes.

10 Q. Correct. And we looked at the 990s and didn't
11 see any legal fees. Why is that?

12 MR. STAUBER: Objection.

13 THE WITNESS: I paid already.

14 MR. STAUBER: Objection. Robin --

15 THE WITNESS: Sorry.

16 MR. STAUBER: Objection.

17 THE COURT: Basis?

18 MR. STAUBER: Legal fees for what? Vague.

19 Ambiguous. Could he put some --

20 THE COURT: I'm going to allow the question.

21 MR. STAUBER: Okay.

22 THE COURT: If he's able to answer.

23 Mr. Lehman, you can go ahead.

24 THE WITNESS: Okay. I didn't have the
25 foundation pay legal fees. I paid the legal fees

1 myself.

2 BY MR. DOWD:

3 Q. From what period to what period?

4 A. Since the beginning of my acquaintance with these
5 wonderful gentleman, who represent me, up until very
6 recently when I began to split the legal fees between the
7 foundation and myself, which seemed to -- a better idea.

8 Q. So when did you start splitting the legal fees
9 with the foundation?

10 A. Oh, I don't know. This year. Very recently.

11 Q. We looked at your Form 990s and didn't see
12 anything.

13 A. Well, then it hasn't been filled out yet.

14 Q. So the foundation's legal fees relating to D.1908
15 were paid by whom?

16 A. By myself, until very recently, when they were
17 split. However, I always paid the legal fees myself on
18 behalf of the foundation, if that splitting of hairs makes
19 a difference. I didn't pay the legal fees for me for the
20 legal fees. I paid the legal fees out of my pocket on
21 behalf of the foundation, because the foundation didn't
22 have enough assets to afford such a exorbitant luxury.

23 Q. From 2016 until the present, the foundation's tax
24 returns say it didn't spend money on legal fees. Is that
25 truthful?

1 A. Yes.

2 MR. STAUBER: Objection, asked and answered.

3 THE COURT: Sustained.

4 BY MR. DOWD:

5 Q. Now, you tried to sell the artwork through
6 Jane Kallir?

7 MR. STAUBER: Objection, misstates
8 testimony.

9 THE COURT: Well, let's let him finish the
10 question.

11 BY MR. DOWD:

12 Q. Did you try to sell the artwork through
13 Jane Kallir?

14 A. May I answer?

15 THE COURT: You can answer that question.

16 THE WITNESS: Yes.

17 BY MR. DOWD:

18 Q. And you tried to consign it through Christie's,
19 through this gift with the foundation and that was
20 unsuccessful so far, correct?

21 A. I'm not sure what you're asking.

22 Q. Well, you haven't sold it, have you?

23 A. No.

24 Q. So have you had discussions with anyone else
25 about trying to sell the artwork?

1 A. You mean Jane Kallir and Christie's?

2 Q. Or Ronald Lauder or anybody?

3 A. No, no, no.

4 Q. So have you had any discussions about how the art
5 might ultimately be sold?

6 A. With Christie's.

7 Q. And is there an agreement in place?

8 A. Yes.

9 Q. And what's the agreement?

10 A. That they accept the artwork and would offer it
11 for sale.

12 Q. And it's to be auctioned or sold through private
13 sale --

14 A. Auction.

15 Q. -- if this lawsuit is successful, is that your
16 understanding?

17 A. Oh, I'm sorry, forgive me. You are mixing things
18 up. This is apples and oranges what you are throwing at
19 me. We were discussing how the artwork was consigned
20 originally. Now, you're talking about present day
21 pretending that it's in the same sentence, which I object
22 to.

23 Q. And what is your -- do you have any current
24 understandings about how the artwork is to be sold if you
25 are successful in this lawsuit?

1 A. If I am successful? That is the premise. I
2 haven't actually decided which way to go, whether private
3 or through sale. I haven't made up my mind.

4 Q. Have you had any discussions about private
5 sales?

6 A. No.

7 Q. No one has approached you about private sales?

8 A. No.

9 Q. Have you retained any litigation financing to
10 finance your legal bills?

11 A. Have I what?

12 Q. Obtained any financing to pay your legal bills --

13 A. No.

14 Q. -- in this action?

15 Now, you say you made a gift in 2016, and that gift is
16 not recorded on your Form 990, the Robert Owen Lehman
17 Foundation's Form 990?

18 A. Correct.

19 Q. Why haven't you amended that Form 990 to reflect
20 the gift?

21 A. Because there has to be a sum, a price, a value
22 listed on this form. And until something is sold, artwork
23 which is variable -- we are not talking about milk, right,
24 you don't have a value.

25 And so Brian Gloznek, my accountant, and I approached

1 the entire donation of artwork to ROLF in the same manner.
2 And so I gave ROLF a bunch of Kirchner drawings, and over
3 time they were sold. At the time they were sold for X
4 amount of dollars. Then, Brian listed them, price X amount
5 of dollars on the tax return. But until you have an actual
6 value, you cannot put the figure down. And so we operated
7 that way without any objection from the IRS, I might add,
8 for the entire period.

9 Does that answer your question?

10 Q. Brian Gloznek asked you for an appraisal to
11 support the donation of D.1908, didn't he?

12 A. If he did, he did.

13 Q. Did he?

14 A. I don't remember.

15 Q. Brian Gloznek said, if you make this donation,
16 you will have to by law give 5 percent of the value in
17 donations based on the value of D.1908, if you make this
18 donation. Didn't he tell you that?

19 A. That was not our procedure as I just described.

20 Q. Did he tell you that if you made a donation of
21 D.1908, you would have to start making distributions
22 representing 5 percent of D.1908's value?

23 A. And what value would that be?

24 MR. DOWD: May I have the question read
25 back? I'm entitled to a yes or no.

1 THE COURT: Hold on a second.

2 Mr. Lehman, we are getting into that
3 category I talked about before. Sometimes a question
4 will be posed in a way that seeks a specific answer.

5 THE WITNESS: Okay.

6 THE COURT: If you are able to answer, I'd
7 direct you to please do that.

8 THE WITNESS: Okay.

9 THE COURT: If you can't answer in the form
10 put to you, then tell the attorney that you don't --
11 you can't answer in the form that's put. And he'll
12 rephrase it if he can.

13 THE WITNESS: I'm sorry.

14 THE COURT: It's all right. We are
15 getting -- it's getting a little late in the day.

16 THE WITNESS: I cannot answer that question.
17 And the modus operandi used by my accountant excluded
18 pricing an artwork until it was sold, and then there
19 was an actual price. And only then would that be
20 listed on the tax return. And that was the modus
21 operandi.

22 And it held true for many other drawings,
23 Kirchner's, I suppose, 20 or so. And over the years,
24 I would sell one. I'd have a sales receipt from the
25 gallery. I'd turn it over to Brian, and we would

1 incur -- I'm losing my train of thought.

2 We would declare that object as having been
3 given to the foundation, and this is the value of that
4 object.

5 BY MR. DOWD:

6 Q. You are talking, sir, about your personal
7 donations, correct?

8 A. No, donation from the foundation.

9 Q. From which foundation?

10 A. Robert Owen Lehman Foundation. The artwork
11 was -- belonged to the Robert Owen Lehman Foundation. You
12 are talking about the tax returns of the Robert Owen Lehman
13 Foundation, are you not?

14 Q. There's -- it's not listed as an asset in the
15 Robert Owen Lehman Foundation's tax return.

16 A. Exactly. And I told you why.

17 Q. And your lawyer told you, didn't he, that if the
18 foundation wanted to exclude the value of the artwork, it
19 had to be part of the foundation's mission to actually show
20 the artwork? Didn't he tell you that?

21 A. No.

22 MR. STAUBER: Objection, asked and
23 answered.

24 THE COURT: It's a little bit different.
25 I'm going to allow it.

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MR. STAUBER: Okay.

THE COURT: Meredith, why don't you repeat the question?
(Record read.)

MR. STAUBER: Objection, your Honor, if it was his attorney, then it is attorney-client privilege.

THE COURT: Overruled.

THE WITNESS: May I answer?

THE COURT: You can answer if you are able.

THE WITNESS: No.

MR. DOWD: No further questions. Thank you.

MR. WARSHAVSKY: Maylander heirs have no questions, your Honor.

THE COURT: Any redirect?

MR. STAUBER: Given the lateness of the day and the energy we'd like to reserve the ability to redirect, but I would suggest to counsel I don't think we will have any. If we do, we will discuss it with counsel.

Is that okay, your Honor?

THE COURT: That is fine.

MR. STAUBER: Thank you, your Honor.

THE COURT: Mr. Lehman, you are free to

1 go.

2 THE WITNESS: Thank you for your time, your
3 Honor.

4 THE COURT: Thank you. And have a good rest
5 of the day.

6 THE WITNESS: Thank you. And you too.

7 THE COURT: Thank you. Off the record.

8 (There was a discussion held off the record.)

9 (There was a pause in the proceedings to setup Teams link.)

10 THE COURT: Let go back on the record. Call
11 your next witness.

12 MR. BRIAN: The Plaintiff calls
13 Guy Jennings, your Honor.

14 THE COURT: Good afternoon, Mr. Jennings.
15 How are you?

16 THE WITNESS: I'm fine. Thank you very
17 much. Yes, yes.

18 THE COURT: You can hear me okay?

19 THE WITNESS: I can hear you.

20 THE COURT: Is it muted at all? Do you hear
21 me clearly?

22 THE WITNESS: I hear you clearly. Can you
23 hear me?

24 THE COURT: I sure can.

25 I want to test to make sure you are able to

1 hear the other attorneys who are in the courtroom in
2 case there's an objection. Okay?

3 MR. DOWD: Testing, testing.

4 THE COURT: Can you hear that?

5 THE WITNESS: It's a bit muffled.

6 THE COURT: Do you have a microphone?

7 MR. DOWD: We do not. May I borrow one?

8 THE CLERK: There's one right here.

9 MR. DOWD: Maybe one of Oren's. Testing,
10 testing.

11 THE COURT: Can you hear that?

12 THE WITNESS: Testing, yeah, I can hear
13 that.

14 THE COURT: If there is going to be an
15 objection, Mr. Dowd, perhaps, you can just make sure
16 that you are speaking into the microphone so that he
17 can hear.

18 MR. DOWD: And, perhaps, Mr. Warshavsky,
19 there's another mic. Do you want to test that just in
20 case in the unlikely event you object?

21 MR. WARSHAVSKY: Testing, testing.

22 THE COURT: There we go.

23 And, Mr. Brian, you will be conducting this
24 examination, I presume?

25 MR. BRIAN: I will, your Honor.

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THE CLERK: Swear him in?

THE COURT: Yes, swear in the witness,
please.

THE CLERK: Okay. Here I come. Please
raise your right hand. Can he hear me?

GUY JENNINGS

called herein as a witness, having been duly sworn,
testified as follows:

THE CLERK: Please state and spell your name
for the record.

THE WITNESS: My name is Jennings,
Guy Jennings.

MR. BRIAN: Can you spell your last name
Mr. Jennings?

THE WITNESS: J-e-n-n-i-n-g-s.

THE COURT: Mr. Jennings, with you
testifying remotely, I would just ask that, please,
wait until the entire question is put to you before
you give an answer. It seems like there's a little
bit of a delay in terms of you responding to
questions.

There may be points where an attorney
objects. If you hear an attorney object, just please
stop talking wherever you are and give me a moment to
make a ruling and I'll let you know whether or not to

1 continue.

2 Okay?

3 THE WITNESS: I understand.

4 THE COURT: Go ahead, Mr. Brian.

5 DIRECT-EXAMINATION

6 BY MR. BRIAN:

7 Q. Hello, Mr. Jennings.

8 A. Hello.

9 Q. Can you please give the Court just a brief
10 background of your education and professional experience?

11 A. Yes. I studied history and history of art in the
12 late '70s at Oxford University in England. Then, in the
13 September of 1980, I joined Christie's auction house in
14 London, where I was in the Impressionist and modern picture
15 department. And I remained at Christie's for some 18 years
16 until 1998.

17 Thereafter, I worked for Sotheby's auction house. I
18 then worked for my own business, Theobald Jennings for a
19 while. And then, I rejoined Christie's for a few years in
20 New York. And then, since 2014, I have been at The Fine
21 Art Group in London.

22 And during all of that time, in addition to lots of
23 administrative and other jobs that go with the territory,
24 my essential job was the valuing of works of art, the
25 valuing of Impressionist and modern works of art, including

1 Germany and Austrian Expressionist works of art.

2 THE COURT: One second.

3 Meredith, are you okay with how it's going?

4 COURT REPORTER: Yes, Judge.

5 THE COURT: Okay. Go ahead.

6 BY MR. BRIAN:

7 Q. And how long have you been at The Fine Art Group
8 now, Mr. Jennings?

9 A. Some 10 years. I joined in April 2014.

10 Q. And describe for the Court the process you go
11 through in valuing fine art and Impressionist works and the
12 other kinds of artworks you described before. If you can,
13 just give a little explanation how you go through that
14 process.

15 A. Yes. We, if called upon -- and I have been
16 called upon in my career -- to value works of art for a
17 variety of different purposes. And that could be for
18 auction estimate. It could be for insurance purposes. It
19 could be probate and estate tax. It could be collateral
20 for loans. And it, also, is occasionally historic fair
21 market values or valuations.

22 The prices doesn't really differ depending on the
23 purpose of the valuation. It's really -- one tries to make
24 a form of comparative analysis. So one is looking for
25 comparable works to the work in question that have been

1 sold at or about the time currently, or whatever it may be.
2 And it's, essentially, a form of comparative analysis.

3 No two works of art, of course, are identical. And so
4 it's not like the price of a barrel of oil or the stock
5 market, where a share of one share is equal to the value of
6 another share, and you can have a precise value on a
7 certain day by looking at the record.

8 So it is a question of assessment, balance, analysis
9 and comparison to try to arrive at what, eventually, is
10 only an opinion. It's not an absolute fact.

11 MR. DOWD: Objection to any further
12 testimony, your Honor.

13 The witness is not qualified to testify, has
14 no USAA certification, not qualified in the
15 United States, and no foundation has been laid.

16 THE COURT: Aren't we still in the process
17 of laying a foundation?

18 Are you still laying a foundation?

19 MR. BRIAN: I'm going through his
20 background, his education, his work history, the kinds
21 of things he has done before. So I think that I am.

22 THE COURT: Have you finished it?

23 MR. BRIAN: No.

24 THE COURT: Why don't you wait until he's
25 done?

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MR. DOWD: Withdrawn, your Honor.

BY MR. BRIAN:

Q. Mr. Jennings, the process you just described in trying to determine fair market value analysis, is that something that you've been doing since you began your post-educational work first at Christie's and then at the other firms you identified?

A. Not, not for 40 years. It's come more recently in my career when I gained experience and wisdom and been open to a variety of different objects and, et cetera, et cetera. I mean, originally, I was simply valuing works of arts for current auctions, present day values, what estimates should be put on for a work that was going to be sold at auction. But very quickly one gets absorbed into doing valuations for insurance, for probate, for a variety of different reasons. And this builds up over time and experience and this, essentially, is what I have spent 40 years doing day-to-day.

My job is evaluating and estimating works of art. And I have done that for literally thousands of works of art over the last 45 years.

Q. And have you had experience testifying in matters like this, in litigation or other kinds of dispute, testifying as an expert witness for one party or another?

A. Yes. I first testified in a high court in London

1 nearly 30 years ago concerning the value of an Edgar Degas
2 pastel, which was severely damaged in a fire. And there
3 was a dispute as to its relative value and what the
4 insurance payout should be.

5 For -- in 2015, I wrote a report for a leading firm of
6 London lawyers concerning the value of a major oil painting
7 some \$30-odd million by Claude Monet. In 2018, I wrote a
8 report for a firm of U.S. lawyers concerning a historic
9 fair market value of an oil painting by Camille Pissarro.

10 In 2020, I wrote a report for a firm of New York
11 lawyers concerning the historic fair market value of two
12 works on paper by Egon Schiele. And subsequent to this, my
13 testimony being submitted to the Court in 2022, I did a
14 historic fair market value for a major United States museum
15 concerning a Pissarro that had been sold in the 1940s.

16 So, yes, I have some experience of doing this. And I
17 recently had to do a valuation for probate where the person
18 died, but they had lost the records of the 1990s. So I had
19 to try to do retrospective fair market value for the 1990s.
20 It's something I do. I'm not saying all the time, all day
21 every day. But I do it quite often, yes.

22 Q. And in those matters you have just mentioned, are
23 you testifying as an expert witness?

24 A. I'm not a party to the trial. I'm a witness,
25 yes.

1 Q. And I understand in the United Kingdom, they
2 don't have a similar certification process for appraisal
3 experts; is that accurate?

4 A. That's correct. One is really judged by one's
5 peers, by one's experience in the market, by the longevity
6 of one's surface, and by the cumulative quality of one's
7 work.

8 Q. And in your work on litigation matters, matters
9 that go to court or other forms of dispute, have you ever
10 had an expert witness report or testimony excluded by the
11 tribunal?

12 A. No.

13 MR. BRIAN: I would offer Mr. Jennings as an
14 expert on performing historical fair market value
15 analysis.

16 MR. DOWD: Objection, your Honor. May I
17 voir dire the expert?

18 THE COURT: Yes.

19 MR. DOWD: Or proposed expert?

20 MR. BRIAN: Mr. Jennings, Mr. Dowd is going
21 to ask you some questions now.

22 THE WITNESS: Very good.

23 VOIR DIRE EXAMINATION

24 BY MR. DOWD:

25 Q. Thank you, Mr. Jennings.

1 Do you have any credentials to issue appraisals in the
2 United States?

3 A. I do not.

4 Q. Did Egon Schiele have a market in the
5 United States in 1964?

6 A. Not --

7 MR. DOWD: Sir, if I may, can I ask the
8 Court for an instruction on yes or no questions?

9 THE COURT: Well, let's wait. Ask -- hold
10 on, hold on.

11 THE WITNESS: It begs the question --

12 THE COURT: Woah, woah, woah, woah.

13 When there's an objection, just wait,
14 Mr. Jennings.

15 I'm going to -- Mr. Jennings, if a question
16 is put to you in the form that seeks a yes or no
17 answer, what I'd ask to do is, if you are able to
18 answer yes or no in response to the question, I'd ask
19 that you please do that.

20 If you are unable to provide a yes or no
21 answer, it wouldn't be accurate or wouldn't be an
22 honest answer, then I want you to tell the attorney
23 that you are unable to answer the question in yes or
24 no. And then they will do their best to rephrase it.
25 Okay?

1 THE WITNESS: I understand.

2 THE COURT: Go ahead, Mr. Dowd.

3 MR. DOWD: Thank you, your Honor.

4 BY MR. DOWD:

5 Q. There was a market in 1964 for Schieles in the
6 United States, wasn't there?

7 A. A small market, yes.

8 Q. And Otto Kallir was the leading dealer in the
9 United States at that time, correct?

10 A. Leading, I don't know. He was one of the
11 dealers, yes.

12 Q. Who were the others?

13 A. I don't know. I'm not familiar very much.
14 There's a very small market in America in the early '60s
15 for Schiele.

16 Q. And what investigation did you do to look into
17 the American market for Schieles?

18 MR. BRIAN: Your Honor, I would just object
19 to relevance. The market --

20 THE WITNESS: I didn't do any --

21 THE COURT: Mr. Jennings, when there's an
22 objection -- maybe you didn't hear it -- I need you to
23 use the microphone.

24 THE WITNESS: I apologize. I apologize.

25 THE COURT: It's okay. We have an

1 objection. So I'm going to sustain just as to the
2 form.

3 Mr. Dowd, if you could put a time frame in
4 that question.

5 BY MR. DOWD:

6 Q. 1964.

7 THE COURT: Why don't you ask it with the
8 time frame, so we have a clear question to
9 Mr. Jennings?

10 MR. DOWD: Yes.

11 BY MR. DOWD:

12 Q. In 1964, how many art dealers in the United
13 States were active in trading works by Egon Schiele?

14 MR. BRIAN: Objection, relevance.

15 THE WITNESS: I don't know, but I would
16 expect very few.

17 THE COURT: It's overruled anyway,
18 Mr. Brian.

19 MR. BRIAN: If I could be heard on this.
20 The market is not the United States. So I think we
21 are drifting away from the opinion that's at issue.

22 THE COURT: He's doing a voir dire of his
23 qualifications. So I'm going to allow him some leeway
24 to find out what he's an expert in.

25 Next question.

1 BY MR. DOWD:

2 Q. What level of activity was there in Schiele sales
3 in 1964 in the United States?

4 A. I don't know precisely, but I suspect very
5 little.

6 Q. And how much investigation did you do into that
7 market, that is Schieles in 1964 in the United States,
8 before you put together your opinion?

9 A. I didn't investigate in the United States,
10 because the sale took place in London.

11 Q. Do you know the reasons that the Schiele market
12 was so limited?

13 A. One can speculate. But to some extent, it was
14 supply. To some extent, it was enthusiasm, demand,
15 interest. He wasn't terribly well known at the time
16 outside Austria, southern Germany, German-speaking
17 Switzerland, except with a minority of collectors who
18 possibly had emigrated from Germany or from that part of
19 the world in previous years. So the American collectors
20 tended to be of European -- from recent arrivals from
21 Europe.

22 Q. When you say, "emigrated," you are referring to
23 Viennese Jews, correct?

24 A. Not specifically, but amongst others, yes.

25 Q. So do you believe that there were people other

1 than Viennese Jews collecting Schiele actively prior to
2 1964?

3 A. Yes.

4 MR. DOWD: Move to have his testimony
5 excluded, your Honor.

6 THE COURT: Based on?

7 MR. DOWD: There's no methodology. He's got
8 no knowledge of the United States.

9 He professes no knowledge as to the market.
10 He said he could speculate as to what the U.S. market
11 is. I haven't seen any methodology presented that
12 would follow USPAP certification.

13 There's two appraisal organizations in the
14 United States that are certified to testify in court
15 as to these issues, that's U.S. Appraisers Association
16 and the Appraisal Association, and he's got neither
17 qualification. And the historic fair market value
18 methodology presented in this is a few emails to a few
19 people in one country involving artworks that emanated
20 from Austria.

21 It's not a methodology that has any
22 relevance. It's not scientific, and it doesn't --
23 can't lead to any probative evidence.

24 THE COURT: Overruled, but I'll note your
25 exception.

1 MR. DOWD: Thank you, your Honor.

2 DIRECT-EXAMINATION CONTINUED

3 BY MR. BRIAN:

4 Q. Okay. Mr. Jennings, were you asked to prepare
5 historical market value analysis of the Egon Schiele
6 artwork known as *Portrait of Artist's Wife* D.1908 in the
7 Kallir catalogue?

8 A. I was.

9 Q. And as you have described before, this is
10 something that you have done in other cases, but it's also
11 something you've done in connection with probate matters,
12 tax matters, insurance matters as well, correct?

13 A. Yes.

14 Q. And specific to your analysis of this artwork and
15 its historical fair market value as of 1964, what process
16 did you go through to determine the fair market value of
17 that date?

18 A. My first steps were to consult people who had
19 been active in the market in the early 1960s in London,
20 where the work was sold in 1964 and the guidance they gave
21 me. But then I consulted the public records of all auction
22 prices worldwide for 1963 to 1965 and looked at every
23 Schiele watercolor work on paper, drawing, et cetera, that
24 had come up at auction in public auction between 1963 and
25 1965. The majority of these came up in either Switzerland,

1 or Germany, or Vienna -- Austria, southern Germany or
2 Switzerland.

3 Q. And in going through this process, is there any
4 other source of publicly available material for sales
5 prices of objects from that time frame that were available
6 for you to review?

7 A. I came across a catalog of an exhibition that was
8 held in 1956 in Switzerland with a list of prices, but they
9 were very, very low. And I deemed -- not auction prices,
10 gallery prices. But I didn't submit it because I deemed
11 that it was too far distant, too -- eight years prior to
12 the time in question and not relevant.

13 Q. In reviewing materials, generally, in your
14 experience, is there a fluctuation in prices as you move
15 forward in time depending on -- I think, you mentioned the
16 demand, supply, interest and enthusiasm. Is there a shift
17 in prices in artworks as time moved forward?

18 MR. DOWD: Objection, leading.

19 THE COURT: I'm going to allow it to -- in
20 an effort to direct the witness to get to the point at
21 issue.

22 But, Mr. Brian, at some point you need to
23 back off the leading.

24 MR. BRIAN: Okay.

25 THE COURT: Go ahead.

1 THE WITNESS: Yes. If you look at the
2 report that I submitted to the Court, there was a
3 marked leap forward in the late 1960s circa 1970, but
4 there was only gradual, if at all, increase in price
5 from the late '50s, you know, through the early '60s.
6 But certainly -- and now there's been a monumental
7 leap forward, and the price of these objects, these
8 Schiele watercolors is millions of dollars, rather
9 than just a couple of thousand.

10 BY MR. BRIAN:

11 Q. In connection with the work you did in this case,
12 did you author a written report containing your work and
13 your opinion?

14 A. Yes.

15 MR. BRIAN: Okay. And I've made a binder
16 for your Honor. This is also Exhibit 112 and in the
17 exhibit binders. It's a six- or seven-page report
18 with three attached exhibits.

19 BY MR. BRIAN:

20 Q. Mr. Jennings, do you have a copy of this there
21 with you as well?

22 A. I do.

23 Q. And in this report -- well, I'll just let you
24 walk through your analysis, your findings and what you did
25 to arrive at your final opinion in this matter.

1 A. Thank you.

2 In section 4 of my report, I set out my methodology.
3 And as I have said already, but I will repeat, I consulted
4 specialists who were active in the London auction market in
5 the early 1960s. And namely, John Lumley --
6 (Proceedings interrupted by the court reporter.)

7 MR. BRIAN: Slow down just a second. We
8 have the court reporter trying to keep up with you.

9 THE COURT: Can you redo the three names
10 that you just stated, Mr. Jennings, and slow it down a
11 little bit?

12 THE WITNESS: John Lumley.

13 THE COURT: Go ahead.

14 THE WITNESS: David Ellis Jones. And I
15 didn't speak to Michel Strauss, but I consulted his
16 published autobiography. As a guide, Lumley said to
17 me that --

18 MR. DOWD: Objection. Your Honor, this
19 entire line of questioning is hearsay. And usually,
20 an expert may testify using hearsay if it's from a
21 generally-accepted authority, such as a learned
22 treatise, such as a scientific work that is generally
23 accepted by experts in the field.

24 Never, never may an expert testify as to
25 emails that he got from other people whose credentials

1 aren't established. So this entire --

2 THE COURT: Is that true, Mr. Dowd?

3 MR. DOWD: I believe so.

4 THE COURT: You believe so?

5 MR. DOWD: Yes.

6 THE COURT: Isn't it true that the standard
7 is if it's something that's reasonably relied upon in
8 the field?

9 MR. DOWD: Yes. Yes, that's -- your Honor,
10 emails -- emails from friends is not reasonably relied
11 upon.

12 THE COURT: I don't think that's what he
13 said. I don't think he said it was friends, did he?

14 MR. DOWD: Well, that's what we have, these
15 people. Your Honor, I can look to a treatise that
16 says, you know, something scientific. And if it's
17 generally accepted by doctors, then I, as an expert,
18 can testify to that. Not an email from some doctor
19 not subject to cross-examination as to what he thinks
20 about a certain patient, for example.

21 THE COURT: Mr. Brian, do you wish to be
22 heard?

23 MR. BRIAN: He's testified that this is what
24 he's done in -- throughout his career is consult the
25 available information, publicly-available information.

1 I can ask him more questions about who these people
2 are and why he reached out to them, if you would
3 like.

4 THE COURT: I'm going to overrule the
5 objection.

6 The Court -- it goes to the weight of the
7 evidence, not in terms of the admissibility. And,
8 obviously, I'll grant you some leeway in regard to
9 cross-examination, Mr. Dowd.

10 MR. DOWD: Thank you, your Honor.

11 THE COURT: And your exception is noted to
12 the ruling.

13 Go ahead.

14 Next question, please.

15 BY MR. BRIAN:

16 Q. Sure. Let me just give you another question,
17 Mr. Jennings.

18 You were describing section 4 of your report and the
19 individuals that are listed there. Can you pick up with
20 the rest of your discussion about your methodology in
21 formulating an opinion on the historic fair market value?

22 A. Well, I then consulted the publicly-available
23 records for auction prices in the period '63 to '65. I
24 then, using these records, I managed to find illustrations
25 of every single one of the works sold between '63 and '65

1 in the Kallir catalog raisonné of Schiele's works on paper,
2 and then looked at individual objects, compared to the
3 object in question, looked at them in terms of composition,
4 in terms of size, in terms of media used, et cetera, et
5 cetera.

6 And based on that comparative analysis, I came to my
7 conclusions using publicly-recorded prices of the period.

8 Q. And then, in addition to the publicly-recorded
9 prices from the period, you identify some individuals you
10 reached out to. And can you explain for the Court why you
11 reached out to those -- those individuals?

12 A. I reached out to them because they were learned
13 and esteemed predecessors of mine now retired, who had
14 spent many, many years working in the art world. And they
15 were living and working at the time that the sale of the
16 watercolor in question took place in London. I wanted to
17 get from them a sense of what the market was like, how many
18 pieces were being traded in London, what was the nature of
19 the market? How expansive were the records.

20 I didn't ask them for evidence. I just asked them for
21 guidance as to the state of market. The evidence that I
22 presented is publicly-recorded auction sales.

23 Q. And based on your review of the publicly-recorded
24 auction sales and the other information you've described in
25 your report and for us today, did you reach a conclusion or

1 an opinion on the historical fair market value of D.1908 at
2 the time of the 1964 purchase at the Marlborough Gallery?

3 A. I did.

4 Q. And what was your opinion?

5 A. My conclusion was, as I've said, that -- I would
6 like to just quote what I've said -- was a good, firm price
7 in the light of market conditions prevailing in 1964.

8 Q. And for us Americans, can you -- can you
9 translate what a "good, firm price" means?

10 A. In the period 1963 to 1965, no single work of art
11 on paper by Schiele sold for more than 2,000 pounds, which
12 is the price paid for this watercolor. One would expect to
13 pay a slightly higher price buying from a dealer than
14 buying at auction, so this doesn't surprise me. But
15 Marlborough had a reputation for asking full prices and
16 often getting them, and they were never knowingly
17 undersold.

18 And it seems to me that in the retail market where --
19 the beginning of the market, a very early market in London,
20 this seemed to me a fair price in the prevailing market of
21 1964.

22 Q. And then does that price -- is there anything
23 suspicious about that price that would draw attention as to
24 the provenance of the artwork?

25 A. I don't understand the question.

1 Q. Oh, sure.

2 Is there anything -- you said it's a "good, firm
3 price" -- is there anything about that price being asked or
4 paid in 1964 that would draw suspicion about the provenance
5 of the artwork?

6 A. I don't believe so.

7 MR. BRIAN: I have no further questions,
8 your Honor.

9 MR. WARSHAVSKY: As indicated, your Honor,
10 the Maylander heirs stipulated to the exhibit.

11 THE COURT: Mr. Dowd?

12 MR. DOWD: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. DOWD:

15 Q. Mr. Jennings earlier said that there was a --
16 there were other collectors of Schiele outside of murdered
17 Jews from Vienna. Do I have it right, that that's what you
18 testified to earlier?

19 A. Well, murdered Jews, by their nature of having
20 been murdered, are not collectors.

21 Q. Oh. So let me dive into that a bit. So you
22 think that people who were murdered who had art collections
23 were not collectors?

24 A. No, what I mean is if they are dead, then they
25 are no longer collecting. So in 1964, they had been

1 murdered. They were not collectors.

2 Q. Okay.

3 A. Collectors were the survivors.

4 Q. So how many of Schiele's collectors were murdered
5 Jews, do you know?

6 A. I have no idea.

7 Q. Did you -- you are talking about prevailing
8 market conditions in 1964. I'm trying to figure out how
9 much you factored into in determining what a good, firm
10 price is and what the market was, what was the source of
11 product? Where did the dealers get these artworks, do you
12 know?

13 A. They came from a variety of different sources.
14 So Marlborough bought this from a gallery in Milan.

15 Q. And where did the --

16 A. Trading --

17 Q. Where did the gallery in Milan get it, do you
18 know?

19 A. It's unclear, but there's no provenance prior to
20 Galleria Galatea listed in Kallir.

21 Q. And how does someone who buys an artwork without
22 a provenance, how does that factor into your opinions on
23 fixing good, firm prices?

24 A. Since 1990, the whole issue of restitution has
25 thrown a much stronger spotlight on to the provenance of

1 works of art that didn't necessarily prevail in 1964. At
2 this level of the market, where works of art are selling
3 for a few hundred or possibly a thousand dollars, \$2,000.

4 Q. So did you ever hear of the heirs of Heinrich
5 Rieger -- withdrawn.

6 Did you ever hear of Heinrich Rieger, do you know who
7 that is?

8 A. I -- I know the name. I'm not familiar,
9 particularly, with -- but I know the name.

10 Q. And do you know how many Schieles he collected
11 prior to his being murdered by the Nazis?

12 A. I don't know precisely. But by report, a great
13 many.

14 Q. And what about Karl Maylander, do you know how he
15 died?

16 A. Specifically, no, I don't.

17 Q. And do you know how many Schieles he collected?

18 A. Reportedly a great many.

19 Q. And what about Fritz Grünbaum, have you heard of
20 him?

21 A. I have indeed.

22 Q. How many Schieles did Grünbaum have before he was
23 murdered?

24 A. Reportedly -- I don't know if there are any
25 precise lists available -- but reportedly a great many.

1 Q. And what about --

2 A. There were many, many. There were many, many
3 watercolors that Schiele executed and they're not really
4 disseminated very widely, so one tended to see quite large
5 groups in amongst a few individuals.

6 Q. What about Oskar Reichel?

7 MR. BRIAN: Objection.

8 THE COURT: Basis?

9 MR. BRIAN: Relevance. We are beyond the
10 scope of the report.

11 THE WITNESS: I'm not familiar --

12 MR. BRIAN: Hold on.

13 THE COURT: Overruled.

14 Were you able to get the response there,
15 Meredith?

16 COURT REPORTER: I got, "I'm not familiar,"
17 Judge.

18 THE COURT: Ask the question again.

19 MR. DOWD: Thank you, your Honor.

20 BY MR. DOWD:

21 Q. Are you aware of the collector Oskar Reichel?

22 A. I'm not familiar with that name.

23 Q. What about Fritz Long?

24 A. Yes, I have heard that name.

25 Q. And do you know what happened to his Schieles?

1 A. Precisely, no, I don't.

2 Q. Now --

3 A. They have emerged on to the market.

4 Q. Now, when you buy an artwork of provenance coming
5 from Europe that was in the Nazi Reich any time from 1933
6 to 1945 and you don't see a provenance, does this affect
7 the price?

8 MR. BRIAN: Objection.

9 THE WITNESS: Today, very much so, yes.

10 THE COURT: Hold on. We had --

11 MR. BRIAN: I'll withdraw it.

12 THE COURT: Okay.

13 BY MR. DOWD:

14 Q. And you believe that a lack of provenance didn't
15 affect the price in 1964?

16 A. People were much less stringent about these
17 things in the early '60s than they are today.

18 Q. That wasn't my question.

19 MR. DOWD: Can we read back the question?

20 THE COURT: Go ahead.

21 (Record read.)

22 THE WITNESS: I have given an answer. The
23 answer is people were much less stringent about
24 provenance in 1964.

25 BY MR. DOWD:

1 Q. Did it affect the price?

2 A. People were much less stringent about provenance
3 in 1964.

4 Q. Which people?

5 A. Buyers, dealers, the market, the auction
6 houses.

7 Q. And when you say "less stringent," what do you
8 mean?

9 A. I mean what I say, less stringent.

10 Q. What does that mean, "less stringent"?

11 A. People today are much more careful about these
12 things than they were in the early 60s.

13 Q. In 1945, world headlines showed that Jews had
14 been murdered and all of their property stolen from them,
15 including art collections, correct?

16 A. Yes.

17 Q. And everybody in England in 1964 remembered
18 World War II, didn't they?

19 A. I would imagine so.

20 Q. And even in England, they knew about the artworks
21 that Hitler's soldiers had taken and put in the salt mines,
22 didn't they?

23 A. Not everybody.

24 Q. Weren't there major magazine articles about it in
25 England?

1 A. There were articles in the newspapers. There was
2 reference to this. It generally dealt with old master
3 paintings, names that were familiar to the general public.
4 And you know, in many respects, Schiele was a very esoteric
5 and much -- not much known young Austrian who died young
6 and a lot of his work was considered obscene and
7 pornographic. And most people who were reading these
8 articles referring to stolen works of art from Jewish
9 families and collectors would not have associated Schiele
10 with that, but they would have associated that with
11 paintings by artists like Rembrandt or other much greater
12 better known more master paintings. But the dealer world,
13 the actual market world would have known about it.

14 Q. Who were the people that sold artworks or were
15 the source of the artworks in the 1964 Marlborough Gallery
16 show, do you know?

17 A. No. Unfortunately, the records as -- if you look
18 at the last page of the -- what's been submitted to the
19 Court, the Marlboroughs say they have no records. They
20 have all been destroyed for that period.

21 Q. Have you looked at Jane Kallir's catalog
22 raisonné?

23 A. Many times.

24 Q. Who is the co-author of that catalog raisonné?

25 A. I'm sorry. I still -- I have it in my house, but

1 I don't have it with me at the moment. Remind me.

2 Q. So according to Jane Kallir, Wolfgang Fischer is
3 her co-author.

4 A. Right.

5 Q. This is an essay by Wolfgang G. Fisher. Do you
6 know who Wolfgang Fischer was?

7 A. Yeah, I mean, he is a dealer in London.

8 Q. And Jane Kallir said she compiled her catalog
9 raisonné based on the Fisher archives that were all of the
10 records of the Marlborough Gallery at the time
11 Wolfgang Fischer ran it. Did you know that?

12 A. Fisher worked at Marlborough, but Marlborough
13 says that the records have been destroyed -- their records
14 have been destroyed. But if Fisher's records have been
15 transcribed into Kallir's catalog, then so much the better.

16 Q. So did you look at Fisher's records before you
17 came up with your report?

18 A. I looked at Kallir, which gives Gallery Galatea
19 as the source and Gilbert Lloyd in his letter of 2020
20 confirms that they bought the drawing -- the watercolor
21 from Galleria Galatea in Turin.

22 Q. Did you call Jane Kallir and ask her about
23 Wolfgang Fischer's records?

24 A. I did not.

25 Q. Why did you not call Jane Kallir and ask her that

1 question?

2 A. Because I was trying to establish whether the
3 price paid was a fair and reasonable price, not whether her
4 published records were accurate.

5 Q. Now, Otto Kallir was a dealer of Schiele in 1964,
6 correct?

7 A. Yes.

8 Q. And Jane Kallir is the granddaughter who
9 inherited the Gallerie St. Etienne, Otto Kallir's gallery,
10 correct?

11 A. Yes.

12 Q. So why didn't you call her to establish the 1964
13 retail price?

14 A. Because I was looking at a London price in a
15 London market.

16 Q. Did somebody tell you not to call Jane Kallir?

17 A. No.

18 Q. Now, who is Gilbert Lloyd, who you cite in your
19 report?

20 A. He is the son of Frank Lloyd. And Frank Lloyd
21 set up the Marlborough Gallery. And then, subsequently,
22 Gilbert Lloyd took over the Marlborough Gallery and has run
23 it for many, many years.

24 Q. And who is Frank Lloyd?

25 A. Frank Lloyd was an émigré German who came to

1 London and became an art dealer in London.

2 Q. And Frank Lloyd was around in 1964, correct?

3 A. Yes.

4 Q. And what was his role in 1964?

5 A. He was one of the partners of the
6 Marlborough Gallery.

7 Q. So Gilbert Lloyd who you cite here is the son of
8 Frank Lloyd, who is an Austrian émigré, correct?

9 A. I'm not sure if he's Austrian. I believe he's
10 German. But you may -- you may be right about that.

11 Q. He was from Vienna, wasn't he?

12 A. If you say so. I thought he was from Germany.
13 But if he's from Vienna, I stand corrected.

14 Q. So 1964, Frank Lloyd from either Germany or
15 Austria, an émigré, puts together a show that has Dead City
16 III in it that had been owned by Fritz Grünbaum, right?

17 A. I'm sorry, you lost me.

18 Q. So you looked at the Marlborough 1964 catalog,
19 correct?

20 A. It's not available.

21 MS. JAFFE: Exhibit 34, I believe.

22 MR. DOWD: Exhibit 34. Has this been
23 provided to our expert?

24 THE WITNESS: I asked the Marlborough
25 Gallery for it, and they said they haven't got a copy.

1 MR. DOWD: Your Honor, I move to exclude all
2 of his testimony. He hasn't even seen the Marlborough
3 1964 gallery. None of this is persuasive or probative
4 in any way, shape or form. This man is not an expert.
5 He doesn't know the market. He has nothing to do with
6 what the prices were, even at that time in 1964.

7 We know that Jane Kallir has been offered by
8 counsel as the world expert. She had -- her
9 grandfather had a gallery going in 1964 in New York
10 just a few blocks away from where the Lehman's lived.
11 How is this possibly not relevant to the market
12 analysis?

13 We just can't see that any of this should be
14 admissible.

15 THE COURT: Mr. Brian, do you wish to be
16 heard?

17 MR. BRIAN: Your Honor, the analysis that
18 Mr. Jennings did was to look at the historical fair
19 market value that was paid to determine whether or not
20 it matched up with the prices that were being paid at
21 the time. He has walked through the
22 publicly-available information he found, including
23 auctions from all over the world.

24 He has talked about the additional catalogs
25 he found from the mid-50s as a comparative point.

1 He's talked about the people he spoke with who were
2 there at the time. He's talked about his methodology,
3 his process. He has been accepted as an expert by
4 numerous courts in this country and in England.

5 The question isn't whether or not he's
6 familiar with every piece of art that was sold at a
7 particular exhibition. It's this artwork that was
8 bought at this price and how that lines up with the
9 market at the time.

10 THE COURT: If I understand correctly, there
11 were materials relating that were sold at the
12 Marlborough Gallery that relates to the time that the
13 subject litigation was also sold. Is that true?

14 MR. BRIAN: I'm not sure I follow, your
15 Honor.

16 THE COURT: My understanding, based on the
17 questioning and the proffer by Mr. Dowd, is that
18 materials existed or exist relating to artwork sold by
19 Marlborough Gallery, which is where the Schiele
20 drawing that is the subject of this litigation was
21 sold, correct?

22 MR. BRIAN: We don't know that, your Honor.
23 The Dowd -- Mr. Rieger -- Mr. Dowd, on behalf of the
24 Riegers, had some discovery requests out to Jane
25 Kallir about this issue.

1 We, as you see in the letter from
2 Gilbert Lloyd, attempted to find out what might be
3 available from that era. We were told that nothing is
4 available. Mr. Dowd has made arguments that things
5 are available. We don't know that that's true or not.

6 THE COURT: I'm going to overrule the
7 objection. I'll note your exception, Mr. Dowd.

8 MR. DOWD: Thank you, your Honor.

9 No further questions.

10 THE COURT: Any redirect?

11 MR. STAUBER: Can we take a minute?

12 (There was a pause in the proceedings.)

13 MR. BRIAN: We have no redirect, your
14 Honor.

15 THE COURT: Mr. Jennings, thank you for your
16 testimony. Have a great rest of the night. You are
17 done.

18 THE WITNESS: Not much of it left. Thank
19 you very much.

20 MR. BRIAN: Thank you, Mr. Jennings.

21 THE COURT: It's 4:45. The Court is going
22 to stop proceedings for the day.

23 We will be in recess until tomorrow at 9:30.
24 Hope everybody has a good night. See you tomorrow
25 morning.

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Certified to be a true and accurate transcript.

Meredith A. Bonn

Meredith A. Bonn, RPR, CRR, CSR

Official Court Reporter