

## **KEYNOTE ADDRESS**

*Stolen Artworks and the Lawyers Who Reclaim Them*, Carol Kino, The New York Times, March 28, 2007

*Judge Revives Case of Nazi-Looted Art*, Celestine Bohlen, The New York Times, April 27, 2002

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## Stolen Artworks and the Lawyers Who Reclaim Them

By CAROL KINO

BARELY a week seems to go by without news of another case involving the restitution of looted antiquities or of art appropriated during the Nazi era. In part this is because of a climate newly sensitive to such claims. But these cases also owe a debt to the lawyers who helped pioneer cultural property law.

Among recent cases, a museum in Vienna agreed to restore five Klimt paintings to the heirs of their owner, who was forced to relinquish them to the Nazis. The Metropolitan Museum of Art and the Museum of Fine Arts in Boston have negotiated settlements with Italy to return dozens of disputed artifacts without litigation.

Just last month, one of the largest Holocaust-era restitution cases on record drew to a close when the Dutch Ministry of Culture sent back 202 artworks, which had been gathered from state museums in the Netherlands, to the heirs of the Amsterdam art dealer Jacques Goudstikker.

The lawyers who helped Goudstikker's heirs recover the works are Lawrence M. Kaye and Howard N. Spiegler, partners in the New York firm Herrick, Feinstein. With the late Harry I. Rand, who started Herrick, Feinstein's art law practice, Mr. Kaye and Mr. Spiegler have worked on some of the most prominent restitution cases.

In 1993, they helped Turkey secure the return of a trove of precious objects, the Lydian Hoard, from the Metropolitan Museum of Art — a resolution that began with what Mr. Kaye believes is the first lawsuit brought by a foreign government against a major American institution.

More recently, they represented Egypt throughout the Justice Department's criminal prosecution of the New York dealer Frederick Schultz, who in 2001 was found guilty of conspiring to steal Egyptian artifacts — a case that sent a chill throughout the antiquities community.

They are also helping the heirs of the Austrian art dealer Lea Bondi Jaray, who are trying to recover [Egon Schiele](#)'s "Portrait of Wally" from the Leopold Museum in Vienna. The portrait, which her heirs assert was confiscated from Ms. Jaray by the Nazis, is the subject of a suit pending in federal district court in New York.

"Their work has been very significant in having U.S. courts recognize the unique value of cultural objects," said Patty Gerstenblith, a professor at the [DePaul University](#) College of Law who specializes in cultural heritage law. In general, she explained, restitution law applies standard laws, like those pertaining to fraud, theft and commerce, to cases involving much less standard property, like antiquities and artwork.

"At this point, there are a few other people who are doing similar work," she said, and the work of Mr. Kaye and Mr. Spiegler "goes back longer than pretty much anyone else."

The New York dealer Jane Kallir called them "the gold standard." She is an expert witness for the United States government in the "Portrait of Wally" case. "You want to believe that the law is a tool for justice and not a tool for coercion," she said. "I think that Larry and Howard keep sight of the law to use it for the purpose it's intended."

Neither Mr. Kaye nor Mr. Spiegler envisioned specializing in the field. "In those days, there weren't really art lawyers," Mr. Spiegler said. Mr. Kaye said, "Howard and I learned on the job."

The job that got them started was a case involving two 1499 portraits by Albrecht Dürer. Owned by the Kunstsammlungen zu Weimar in Germany, they had been hidden in a castle during the war and disappeared while American troops were billeted there. More than 20 years later, they turned up in the home of a Brooklyn personal injury lawyer, Edward I. Elicofon, who bought them from a former soldier in 1946.

Mr. Elicofon was eventually sued by West Germany and the Grand Duchess of Saxe-Weimar-Eisenach, who contended that her husband's family owned the work. At first, East Germany, where the museum was located, could not sue because it was not officially recognized by the United States.

Mr. Rand, then practicing commercial law at Botein, Hayes & Sklar, now defunct, was retained in 1969 to negotiate on the museum's behalf. (It was finally allowed to enter the lawsuit after 1974, when East Germany was officially recognized.)

The case sputtered on for well over a decade. Mr. Kaye, now 61, began working on it as a summer associate in 1969, while studying at St. John's University Law School. Mr. Spiegler, 58, cut his teeth on it, too, after arriving at the firm in 1974 with a newly minted Columbia University law degree. It was still going on in 1981, when he returned to the firm after five years as a Legal Aid lawyer. It was resolved in 1982, with the paintings returned to East Germany.

"It was an interesting case for a young lawyer," Mr. Kaye said, "because it had all of these things you study in law school — the statute of limitations, state succession, who inherited the rights to the Third Reich, sovereign immunity and other things. But it ended up being resolved on the basis of the New York statute of limitations."

While the defendant, Mr. Elicofon, argued that the statute had expired in 1949, three years after the theft, the lawyers argued that it did not start to run until there was a demand for the work to be returned. The point had been discussed in an earlier case, but never tested by litigation so extensively. The decision, in East Germany's favor, confirmed the principle that an owner should have the chance to find lost artwork before the statutory period starts to run.

The suit made many restitution cases, including Holocaust cases, possible — although lately some defendants have tried to limit its effect. "If we're experts in nothing else it would be the statute of limitations," Mr. Spiegler said. "Most of our cases are brought decades after the original theft."

Their next major client was Turkey, which in 1987 hired the firm to help retrieve stolen artifacts, most notably the Lydian Hoard, the largest collection of Anatolian treasures gathered in one place. It includes hundreds of sixth-century B.C. gold and silver objects looted from tombs and smuggled from Turkey in the mid-1960s. The Metropolitan bought it in batches from 1966 to 1970 — the last gasp of an era that the museum's director at the time, Thomas Hoving, later referred to as "the age of piracy."

The case included incriminating evidence in the museum's acquisition committee minutes, thieves who were willing to give evidence against each other and a ringleader known as Ali Baba.

Most crucially, in 1906, Turkey passed a patrimony law, which established its ownership of the artifacts. (Early in the 20th century, many such laws were passed by art-rich countries like Italy and Greece; they generally affirm that newly discovered artifacts found within a country's borders belong to the state.)

Though the matter was resolved out of court, the case helped confirm the legal principle underpinning most successful antiquities restitutions today: that another nation's concept of ownership can form the basis for bringing recovery claims and prosecutions in United States courts.

In 1990, Mr. Kaye and Mr. Rand moved the practice to Herrick, Feinstein when Botein closed shop, and Mr. Spiegler left again. He then rejoined them in 1994. Four years later, they took on their first Holocaust-related case, recovering “Portrait of Wally.” The suit is still going on.

Nonetheless, Mr. Spiegler said, “The Wally case itself led to a lot of hand-wringing and examination.” By then, he added, several important books about Holocaust-era art crimes had been published. Later in 1998, the Association of Art Museum Directors urged its member institutions to review their collections for artworks with tainted provenance, and the United States convened a conference of 44 nations in Washington to lay down principles about how to handle Nazi-related claims. The International Council of Museums later issued guidelines, and a few countries, including the Netherlands, enacted laws consistent with the conference’s recommendations. “That’s what led to the Dutch examination of the Goudstikker matter,” Mr. Spiegler said, “which led to this remarkable return.”

As for antiquities restitutions, the Justice Department’s criminal prosecution of Mr. Schultz, whose guilty verdict was upheld in a New York federal appeals court in 2003, reconfirmed the conclusions of the Lydian Hoard case — that a foreign country’s ownership laws may be used to prosecute stolen property claims in the United States.

Many in the art world view this conviction — together with the current antiquities smuggling trial of the former Getty Museum curator Marion True in Rome — as having helped prompt the Metropolitan and the Museum of Fine Arts in Boston to be so cooperative about returning work to Italy.

To Mr. Spiegler, these agreements represent “a wonderful turning point, where things are resolved without litigation and where the ownership in the source country is recognized by the museums.” Or, as Mr. Kaye put it, “I think there has been a new recognition that claims for the return of property stolen at any time have to be dealt with seriously.”

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## Judge Revives Case Of Nazi-Looted Art

By CELESTINE BOHLEN

The chief judge of the Federal District Court in Manhattan has revived a much-disputed case involving art looted by the Nazis, opening the way for court proceedings to determine the ownership of "Portrait of Wally," a 1912 painting by the Austrian painter Egon Schiele. The work was seized in 1998 while on loan for an exhibition at the Museum of Modern Art.

In an opinion issued two weeks ago, Judge Michael B. Mukasey ruled that the painting, which had come to New York from a private Austrian museum, was stolen property and that a trial should be held to determine which of two competing claimants is the rightful owner.

The case has been seen as a sign of a new determination in the United States and elsewhere to address the wrongs committed by the Nazis when they expropriated art and other property from European Jews before and during World War II, and, when possible, to bring about restitution.

But it has also stirred controversy, particularly among museum directors and others involved in the art business who believe that the "Wally" case is essentially an ownership dispute that never warranted intervention by prosecutors. They also argue that this case -- now in its fourth year -- is making foreign museums and collectors wary of lending artworks to American institutions.

To experts who closely follow the history of Nazi-looted art, the wrangling over the "Wally" painting -- with its slow pace and high profile -- is an example of how not to resolve such disputes. They note that in recent years, a number of similar cases have been resolved more quietly, without judicial proceedings.

"I believe it is a pity, because of all the time, energy and money wasted on this, by all sides," said Hector Feliciano, author of "The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art." "It should be solved in a quicker manner." The history of "Wally," a mournful portrait Mr. Schiele painted of his mistress, is long and twisted, matched in complexity by the case itself.

The painting was taken in 1938 from the Vienna apartment of Lea Bondi Jaray, a Jewish gallery owner, by an Austrian Nazi who had already "Aryanized" her art gallery. After the war, "Wally" was handed over to the Belvedere, the Austrian National Gallery, after being mistakenly identified as part of another art collection that had also been confiscated by the Nazis.

From there, it was acquired in 1954 by Dr. Rudolf Leopold, a passionate collector of Schiele's works, who gave the Belvedere another Schiele painting in exchange. Ms. Bondi, who in 1949 recovered her other stolen artworks through the Austrian Restitution Commission, claimed that Dr. Leopold knew that the painting belonged to her, and had even agreed in 1953 to help her get it back.

The main issue before Judge Mukasey was whether the painting was still stolen property. In an earlier opinion, filed in July, he had ruled that it could no longer be considered stolen, since it had been recovered after the war by the United States armed forces. But in his second opinion, issued on April 11, Judge Mukasey reversed himself and found that the United States armed forces had neither the responsibility nor the duty to retribute looted works of art, only to retrieve them.

Now the case moves to the forfeiture process, in which the two claimants -- the about 40 heirs of Lea Bondi, who died in 1969, and the Leopold Foundation, which holds Dr. Leopold's collection -- make their

claims before Judge Mukasey. Most lawyers expect that process to take a year or more; during that time the painting will remain out of view, in the custody of the Modern.

The judge's ruling was a relief to Bondi's heirs, who now see an end to the decadeslong fight to retrieve the painting. "The family is very gratified," said Howard N. Spiegler, their lawyer.

"Wally" arrived in the United States in 1997 as part of an exhibition of Schiele paintings lent to the Modern by the Leopold Foundation. Soon after the show closed and just before the paintings were to be returned to Austria, Manhattan District Attorney Robert M. Morgenthau issued a grand jury subpoena, effectively blocking the painting from leaving the country, because of the claim by the Bondi heirs.

Mr. Morgenthau's subpoena was later invalidated by an order of the New York State Court of Appeals, which found the painting came under New York's 1968 Arts and Cultural Affairs Law, which prevents the seizure of works of art by the state. Soon after, the office of Mary Jo White, then the United States attorney in Manhattan, brought its own case, which claimed the painting had been illegally imported under the National Stolen Property Act.

The Modern has joined the Leopold Foundation against the federal government, arguing that its obligation was to return the work to the institution that had lent it.

But the Modern is also concerned about the chilling effect the case is having on loans from foreign museums and collectors. "It is always difficult to persuade individuals and institutions to lend art, and this is just another factor that will discourage them" said Stephen W. Clark, associate general counsel for the Modern.

"No one is going to say they are not going to lend because we have overreaching, overzealous prosecutors," he said. "They are just going to say the works are not available."

Other American museums have filed friend-of-the-court briefs, arguing that it should be treated as a civil dispute between the Bondi family and the Leopold Foundation and not as a matter for the government's time or money.

They see each other when Pippa infrequently visits Hobie in New York City. Theo's father resurfaces just as the Barbours are set to adopt Theo. Unaware that a trust fund was set up for him, Theo obeys, but the lawyer denies Theo's request. Shortly after, Theo's father is killed in a car accident, which may or may not have been intentional. He reads about a group of people who, during the confusion of the museum bombing, stole artwork and have now been arrested for trying to sell them. Out of concern for himself, Hobie, and Pippa, Theo rents a storage locker and hides the painting there. Theo and Boris travel to Amsterdam to reclaim the painting. During a chaotic and frantic series of events that include a shootout, Theo shoots and kills a man.