

Straight Talk Appearances

"Opening Statement to the Committee on Art & Cultural Property Presidential Advisory Commission on Holocaust Assets in the United States"

April 12, 2000

Good afternoon, Chairman Bronfman, Chairman Singer, and Members of the Committee on Art and Cultural Property. I am pleased to appear today, at your invitation, to testify on the restitution of art and cultural property to victims of the Holocaust. In particular, I have been asked to address two questions:

What actions I have taken in seeking or accomplishing the restitution of art to victims of the Holocaust; and

What recommendations I might have pertaining to the restitution process.

I would like to introduce myself more generally, and then respond directly to these questions.

For more than eleven years, as an attorney in private practice, I have represented victims of looting or other theft of art and cultural property in recovering their stolen property. This representation began in 1989, with my representation of the Autocephalous Greek-Orthodox Church of Cyprus and the Republic of Cyprus in recovering mosaic fragments that had been stolen from a church in the Turkish-occupied area of Cyprus. After that, I represented the Church of Quedlinburg, Germany, in recovering medieval religious treasures that had been stolen by an American Army officer in the closing days of World War II.

In these first two cases I learned—at the very least, I hope—two important lessons. The first is that looting, theft, damage and destruction of priceless art and cultural objects attends all war. The second is that art theft victims who diligently seek the recovery of their stolen property—if they have sufficient resources—can lay claim to their property and get it back, under our legal system. The first truth—that art theft attends all war—is now accepted as self-proving, but I will elaborate on it in a moment in the context of the Holocaust. My second initial observation, that our legal climate facilitates the recovery of stolen art and cultural property by a diligent and resourceful claimant I base on the success my clients had in these two prominent cases in recovering art or cultural property that had been stolen years earlier.

The success of these claimants was, I believe based on a number of factors: (1) their resolve in searching for their stolen property and claiming the items promptly when found; (2) the receptiveness of U.S. courts to claims by theft victims and the fairness and openness of our procedures; (3) the laws we have that make such recoveries possible, particularly the various doctrines, such as the discovery rule, that mitigate what could otherwise be a harsh application of statutes of limitation; and, finally, (4) my observation that, with these elements present, claims can be pressed successfully to conclusion, or the current possessors of stolen art can be compelled to negotiate a suitable compromise resolution of such a claim, if a claimant has sufficient resources to mount a credible claim. I mention these points because I do not believe that our legal system needs tinkering with in the interest of advancing claims by Holocaust art theft victims; meritorious Holocaust-related art theft claims can be brought and pursued to satisfactory result under our system, if backed by sufficient resources.

Over the decade since I handled these first two cases, I have represented numerous victims of the looting and other theft of art and cultural property. I have represented and continue to represent German cultural institutions, including public and private museums, a university and others in recovering art stolen by Americans or Soviets. Directly pertinent to today's inquiry, I have also represented families and others who were the victims of the systematic art looting that was one of the hallmarks of Nazi Germany's conquest of much of Europe. It bears repeating, in this context, that it was both policy and program of Nazi Germany to steal art from their victims, particularly from Jews. Lest we think about this problem too narrowly, however, let me emphasize that the Nazis stole from individuals who did not consider themselves to be Jews and from institutions, as well. Nazi Germany actuated civilian, military and police organizations to steal art, and to assist the thieves. Much of the stealing was carried out by Ph. D. art historians, and, at the fringes of the Nazi looting, formerly reputable art dealers launched a barter trade in looted art, moving the type of objects favored by Hitler and his inner circle to Germany and facilitating the movement of art the Nazis viewed as decadent into the international art market.

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As a result, large volumes of art began to move, sometimes through the German diplomatic pouch into Switzerland, or otherwise, and often re-entered the art market. This movement into and through the art market did not end in 1945 with the liberation of Europe and the conquest of Germany. Nor were all looted objects returned to their rightful owners after the War. As a result, countless objects found their way into the art market and onto our shores.

Once here, the further movement of this art was facilitated by the "ask-me-no-questions-and-I'll-tell-you-no-lies" method of operation in the art market. For decades the art market has opposed regulation and scrutiny, and has argued that imposing a duty of reasonable diligence on art dealers would cripple the art business. It has continued to operate on the basis of a wink and a nod, and as a direct result, stolen art has moved freely into major private collections and our most prestigious museums, where claimants find it today. The other side of this problem, as can be readily appreciated, is that many art theft victims perished in the Holocaust—the theft of property and destruction of lives being part of the same process—and will never be able to bring their own claims.

In the cases I have handled on behalf of Holocaust victims I have proceeded in the same manner as I would in any other case concerning stolen art or cultural property: researching the background of the theft and the strength of the victim's claim to ownership, making claim on the current possessor and attempting to arrange an amicable settlement without litigation, and, if necessary, filing suit. The claims of Holocaust victims have been greeted by suspicion, hostility and lack of sympathy and the cases have, in truth, been difficult to pursue and very hard to settle. I believe that, until very recently, Holocaust art theft claimants were viewed as opportunists trying to capitalize materially on their ancestors' misery by bringing questionable and unverified claims on trusting and well-meaning collectors and museums. I have, for example, been asked why a claimant whose grandparents died in the camps could not produce a bill of sale for a painting. In one celebrated case, the collector is reliably reported to have spent over a million dollars resisting a claim before settling. In another case, an art dealer sought to profit from the sale of a painting by promoting it as having been stolen by the Nazis. In a third case, an auction house claimed that title to the painting had transferred to the current possessor through a good faith purchase in another country. On closer inspection, it appeared that the good faith purchase in another country had been arranged by the same auction house, and the catalogue in that good faith transaction stated that painting had been in the Polish national museum and then was subsequently in a private collection in Germany. In truth, I have had a far easier time settling cases that I bring on behalf of German cultural institutions than on behalf of the heirs of Holocaust victims.

The first recommendation I have, not in jest, is that Holocaust art theft claimants need a more receptive atmosphere in which to bring their claims. While the Committee on Art and Cultural Property—and the President himself—cannot dictate mood, it does appear that the atmosphere for Holocaust claims has been improving bit-by-bit. I do credit the Seattle Art Museum for launching this improved mood by returning a Nazi-looted painting to the Rosenberg family. The Seattle Art Museum falls right on the cusp, because it first gave every signal that it would litigate to the bitter end with the Rosenberg family in order to preserve its claim against the art dealer who sold the looted painting to the person who donated it to them. After two years of legal jockeying, the Seattle Art Museum returned the painting and is appropriately taking the litigation risks in its suit against an art dealer.

The North Carolina Museum of Art also deserves credit for being more prompt than Seattle and for settling without litigation, although that museum required prodding from several fronts and, at least at first, showed signs that it might dig in its heels.

I believe these cases demonstrate that Holocaust art theft claimants require financial assistance in pursuing their claims and my second recommendation is that such assistance should be provided. Although we have foundations to support deserving claimants in many areas, there is presently no organization or entity that provides material support for Holocaust art theft claimants. I have no argument with those who say that other Holocaust claimants have a greater need for resources than art theft victims. I simply observe that such claims can only be pursued seriously with financial backing—or with strong organizational support such as the New York State Banking Commission provided to the claimants in North Carolina. While it may not be politically fashionable to suggest that the Federal government spend money to solve a problem, I see no other solution. Art theft claimants who have been diligent in pursuing their property and who have good records can prevail in recovery litigation, but they need the financial wherewithal to do so.

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Finally, we must never forget that we find ourselves in this predicament—that is, with major private and museum art collections compromised by unprovenanced and suspect works—because of two wrongs: first, the original looting, and second, the free movement of looted works for five decades because of an absence of standards for due diligence in the art market and abysmally low standards for museum due diligence on acquisitions, particularly in the case of donations. Virtually every case I see contains one or both of these elements: movement of looted art through the art market in one way or another, and, in the case of museum collections, virtually no due diligence, especially in the case of donations. While I applaud the recent developments in museum openness, improved museum acquisition policies and the adoption of Holocaust claims policies, particularly the recent announcement of the American Association of Museums new policy, these developments appear to be coming very slowly, given the urgency of the problem. What is needed is that meaningful standards of diligence be applied consistently in the art market and in museum acquisitions.

I believe the best contribution the federal government can make to Holocaust art theft victims would be to create a permanent commission that would oversee the establishment of standards for the art market, just as they exist in other markets that affect interstate commerce, and also to look over the shoulder of museums, to ensure that they open up their records and follow more sensible policies.