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"Legal Issues Relating to the Recovery of the Quedlinburg Treasures"

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When I was first approached about the Quedlinburg treasures in early 1990, the story of their disappearance had the quality of a myth: by apocryphal accounts, the "Quedlinburg box" had vanished from storage in the closing days of the war. Willi Korte came to me—because of my experience with the recovery of the Kanakaria mosaics for Cyprus⁽¹⁾—with historical records showing that the Altenburg cave near the German city of Quedlinburg had been under guard by United States forces at the time of the disappearance of the famous box. Dr. Korte signed me up to assist his efforts, but my role was that of an attorney and not a treasure hunter. I left that work to Dr. Korte and to Bill Honan of the *New York Times*. My job was to ensure that nothing was done in the hunt that would jeopardize the making of a lawful claim to the treasures.

After the German Kulturstiftung der Länder (Cultural Foundation of the States) reached agreement to purchase the Samuhel Gospels (see Lowenthal, above, pages 148-49 and colorplate 9) in May 1990,⁽²⁾ Dr. Korte continued his work and found the remaining missing Quedlinburg treasures—at least the vast majority of them⁽³⁾—and Bill Honan identified the Meador heirs who possessed them.⁽⁴⁾ On behalf of the Quedlinburg church, Dr. Korte and I made claim on the bank that held the treasures and attempted to reach a quick settlement that would resolve all issues before the astonishing levels of publicity overwhelmed our efforts. The family, however, reneged on an agreement to let us photograph the objects and place them in safekeeping pending further discussions. Instead, they insisted on moving the objects to Switzerland before there could be further talks.

The church then had no choice but to litigate to prevent the Quedlinburg treasures from disappearing. Dr. Korte and I believed the church lacked sufficient information to make a criminal complaint, and we could not wait for government wheels to grind. Settlement negotiations broke down late on a Friday night in June 1990, and we filed suit at 9:00 a.m. the following Monday morning.⁽⁵⁾ By 1:30 p.m. or so, the court entered a temporary restraining order preventing the movement of the treasures and allowing us to inventory them.⁽⁶⁾ Under applicable law, obtaining the order required a showing of imminent harm—in this case the likely disappearance of movable property—and some likelihood of success on the merits, that is, that the church had a strong claim of ownership. These presentations were made by sworn affidavit from Dr. Korte, attaching documents showing the church's original ownership of the treasures. Thereafter, we obtained an order setting the terms for photographing the objects, and proceeded to document them. (We also defeated an effort by the family to have a protective order, or "gag rule," applied to the litigation and thereby protected the public's right to be informed about proceedings in the case.)⁽⁷⁾ In the course of photographing the objects, we learned that the family had moved some of them early in the morning on the day we filed suit, before the temporary restraining order was in place.⁽⁸⁾ We then obtained an order from the court allowing expedited discovery of the history of the movement of the objects, so that we could satisfy ourselves that the family had produced all the objects from Quedlinburg they still possessed.⁽⁹⁾

We took the testimony of a number of members of the family and were able to establish that two of the missing treasures that had been held by the late Joe Meador, the original thief, were no longer in the possession of the family (figs. 72 and 73; see editor's note, above, page 149). During the course of these events, the family changed counsel and, through their new lawyers, offered to settle the case. In Germany, a team was assembled to handle decision making in the case, with representatives of the church of Quedlinburg, the Interior Ministry, and the Cultural Foundation of the States. I assumed representation of the foundation in the United States in its dispute with the Meador heirs and made claim on them for return of the funds already paid under the initial agreement for the purchase of the Samuhel Gospels.⁽¹⁰⁾ At this point, the active litigation ceased and the case proceeded on a path to settlement.

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As has already been mentioned, before the lawsuit was filed, when the Meador heirs were negotiating anonymously through numerous intermediaries, the Cultural Foundation of the States agreed to pay \$3 million for the Samuhel Gospels alone. Our record of litigation successes put the Quedlinburg church in a position of strength, which enabled it to obtain a settlement for the return of all the Quedlinburg treasures still in the possession of the Meador heirs for less money than the family had originally agreed to for the sale of the Samuhel Gospels.⁽¹¹⁾

The *Quedlinburg* case is just one of a number of instances in which victims of cultural-property theft have brought claims and pursued them to settlement on favorable terms or to success in United States courts. These cases have concerned stolen art and cultural property from Poland,⁽¹²⁾ Cyprus,⁽¹³⁾ Turkey,⁽¹⁴⁾ Greece,⁽¹⁵⁾ and other countries as well.⁽¹⁶⁾ Most of these cases concerned disappearances and thefts that occurred long ago. I have handled one of these recent cases on behalf of the Bremen Kunsthalle, an institution with considerable wartime losses, as Dr. Werner Schmidt has indicated above (see page 97).⁽¹⁷⁾

This case concerned three drawings stolen from the Bremen Kunsthalle at the end of World War II. An individual offered them to a number of art dealers in New York City, one of whom reported him to Dr. Constance Lowenthal of the International Foundation for Art Research. The FBI seized the drawings and, ultimately, the United States government commenced a civil lawsuit to determine ownership of the drawings. Dr. Korte and I collaborated on this case together. I am pleased to report that under order from a federal judge in New York City these three drawings were returned to the Bremen Kunsthalle in March 1995.⁽¹⁸⁾ Three more prisoners of war have now gone home. Our litigation victory in the *Bremen Kunsthalle* case, the settlement of the *Quedlinburg* case from a position of strength, and other recent successes provide important lessons that theft victims must learn.

While there have been some voluntary returns of stolen property based on individual acts of goodwill, and law-enforcement efforts have been responsible for some recoveries, civil lawsuits remain the last refuge of the victim of theft. Because of this, I would like to discuss the reasons for the recent successes and review the lessons of these cases for theft victims who must litigate questions of ownership in United States courts. First and foremost, I must stress that under United States law, a thief cannot pass title to a stolen object. Almost without exception, the United States does not allow a transfer of stolen property to a good-faith acquirer to create title. Nevertheless, three significant issues will affect legal claims for the recovery of stolen art and cultural property in U.S. courts: initial ownership, theft, and the passage of time.

Initial ownership can be established in cultural-property cases the same way it would be done in any other type of litigation, that is, both by documentation of ownership and through the testimony of living witnesses. Frequently, initial ownership is proven by showing that the objects before the court are genuine and are, indeed, the same ones described or depicted in historical literature. In the *Quedlinburg* case, scholars had documented the church's treasures before they disappeared. With this documentation in hand, and with the testimony of living scholars, it would have been relatively easy to prove that the Quedlinburg church was the original owner of its treasures. Because of the need to prove initial ownership, I always advise museum and cultural officials and individual collectors of the importance of documenting their collections. With regard to historical losses, it is most important to gather and preserve the existing documentation (and also witness recollection) so that these records will be available in the future.

With regard to proof of theft, it is generally easy to establish theft in cases brought to recover art and cultural property looted during wartime. Typically, the circumstances of the disappearance of the objects indicate that they were not voluntarily given away, sold, or abandoned but were definitely taken without the consent of the owner. The Quedlinburg treasures, for example, had been placed in a cave for protection from the ravages of warfare and were under guard by United States forces at the time of their disappearance. Since an individual soldier may not lawfully seize artwork or other personal property during wartime,⁽¹⁹⁾ Joe Meador's appropriation of the treasures was-beyond question-a theft. We were able to make the same point forcefully in the Bremen Kunsthalle's recent case, since the historical documentation allowed us to show that the drawings in question had been placed in storage for safekeeping but were never returned. Again, a party seeking to recover stolen property in a United States court must prove the specific circumstances of the theft; therefore, it is imperative to preserve existing documentation and eyewitness accounts.

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The passage of time creates some of the most difficult issues in cases brought to recover stolen art and cultural property in the United States, and this was the primary legal issue in the Quedlinburg treasures litigation. In Texas, as in most states, the statute of limitations for recovering stolen property is quite short, especially by comparison with European statutes of limitations. Every U.S. state has a statute of limitations that is intended to cut off stale claims. Typically, the statutory period for bringing such a claim is only two to six years. In the *Quedlinburg* case, the Meador family—the brother and sister of the thief—admitted that the two-year Texas statute of limitations had not begun to run during the time the treasures were in the hands of their brother. They did claim, however, that the property became theirs two years after his death, whether or not the church knew of the thief's identity or the whereabouts of its property prior to his death.

There are a number of important principles applied by United States courts that mitigate the effect of these short statutes of limitations. In Texas, as would be the case under the law of most states, the church could have avoided the effect of the statute-of-limitations defense by proving that it had been diligent in pursuing the recovery of its property. Under this theory, generally referred to as the "discovery rule" or the "due diligence rule," the cause of action to recover the property does not accrue—and the statute of limitation does not begin to run—as long as the theft victim diligently searches for its property.⁽²⁰⁾ The discovery rule was the basis for success in the case I handled for the Greek-Orthodox Church of Cyprus, which recovered mosaics that had been missing for twelve years, even though the court applied the Indiana six-year statute of limitations.⁽²¹⁾ In each of these cases, the most critical issue with regard to the statute of limitations is the diligence of the theft victim in reporting its losses and conducting a search for its lost artwork. "Due diligence" efforts can include investigating the circumstances of the loss, reporting the loss to law-enforcement agencies and to recognized registries, and alerting art experts and the art world generally. If the victim has been diligent in trying to recover its losses, the statute of limitations will not begin to run. Once the theft victim has obtained information suggesting the identity and location of the thief, it must act promptly to make its claim and, if necessary, to bring suit.

New York law differs from that of most other states in this country and merits special mention because so many wartime and other losses appear on the art market in New York. Under New York law, the statute of limitations does not begin to run until the victim makes a demand for the return of the object and the demand is refused.⁽²²⁾ In New York, a claim can be brought many decades after the theft without being barred by the statute of limitations, as long as the theft victim acted promptly to sue after the demand is rejected by the possessor. This approach does not mean, however, that New York law allows a theft victim to be lax in searching for its property, or to delay unreasonably in making the demand. The theft victim must still be diligent, because the possessor has available the defense of "laches." The defense of "laches" is based on unreasonable delay by the victim in bringing the claim, which causes prejudice to the possessor, such as a change in position, during the period of delay.

Ultimately, the *Quedlinburg* case was settled out of court, and the various legal issues involved were never presented to the court or ruled upon. However, any claim for return of property made in United States courts would be analyzed along the lines I have discussed. I would like to add one comment, in response to Bernard Taper's question (see above, page 136), that I am not aware of any special fifty-year statute of limitations in the United States for claims relating to Nazi seizures.

I am, of course, very pleased that after the Quedlinburg treasures were found we were able to place them under the protection of the United States courts and to negotiate an acceptable settlement for the church. I am also pleased by our recent court victory for the Bremen Kunsthalle. I look forward to future successes, which will only be possible if theft losses are documented, and if the theft victims are diligent in making their losses known to the art world and pursuing their recovery. Footnotes:

1. In that case, the Church of Cyprus and the Republic of Cyprus brought a successful suit against Carmel, Indiana, art dealer Peg Goldberg. The mosaics, which are world-famous, had been stripped from the walls of a church in the Turkish-occupied area of Cyprus, and found their way to Indiana through a circuitous route that apparently included Munich and Geneva. The United States courts applied Indiana law to the question of ownership and returned the mosaics to Cyprus because—in Indiana as elsewhere in the United States—the statute of limitations had not run out, even though suit was brought many years after the theft, because Cyprus had been diligent in searching for its stolen property. *Autocephalous*

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 13. *Church of Cyprus*, *supra* note 1.
 14. David D'Arcy, "The Long Way Home," *Art and Antiques* 17 (April 1994): 65-69; Mark Rose and Özgen Acar, "Turkey's War on the Illicit Antiquities Trade," *Archaeology* 48 (March/April 1995): 44; *Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990).
 15. William H. Honan, "Greece Sues Gallery for Return of Mycenaean Jewelry," *New York Times*, 26 May 1993, C14.
 16. David D'Arcy, "Two New York Lawyers Who Fight the Illicit Trade in Works of Art-and Win," *The Art Newspaper*, May 1994, 25; David D'Arcy, "The Long Way Home," 64.
 17. *United States of America v. Yuly Saet*, No. 93 Civ. 8330 (PKL), 1995 U.S. Dist. LEXIS 23 (S.D.N.Y. Jan. 5, 1995).
 18. JoAnn Lewis, "The Art That Came Out of the Woodwork," *Washington Post*, 14 February 1995, B1.
 19. *Menzel v. List*, 49 Misc.2d 300, 267 N.Y.S.2d 804 (Sup. Ct. 1966).
 20. *O'Keeffe v. Snyder*, 416 A.2d 862 (N.J. 1980); *Erisoty v. Rizik Co.*, No. Civ. AQ.93-6215, 1995 WL 91406 (E.D. Pa. Feb. 23, 1995).
 21. *Church of Cyprus*, *supra* note 1.
 22. *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 567 N.Y.S.2d 623 (1991).