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Museums

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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



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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



COURTESY OF MAREI VON SAHER

ART AND THE LAW Howard Spiegler, standing left, and Lawrence Kaye help clients retrieve art, like Jan Steen's "Sacrifice of Iphigenia," from the Netherlands for a private client.

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, reaffirmed 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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H E R R I C K

2 Park Avenue
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