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News for Associates and Young Lawyers

## The Art Theft Experts

*Herrick, Feinstein Duo Has Long, Distinguished Career in Recovering Looted Works*

BY THOMAS ADCOCK

**A** COUPLE of boys from Brooklyn," as attorney Lawrence M. Kaye describes himself and his colleague Howard N. Spiegler, this month cemented their roles as pre-eminent players in high-class intrigue and a law practice specialty much in the international press of late.

The two Herrick, Feinstein partners, part of the firm's four-member art law practice, won a far-reaching victory in the Netherlands on Feb. 6. The Dutch Ministry of Culture approved the return of 202 art treasures held by government-owned museums to the sole heir of Jacques Goudstikker, a renowned collector who died in May 1940 while fleeing the German invasion of his country during World War II.

It was perhaps the most significant of the Herrick duo's successes in recovering stolen art for owners—so many restitutions over the past 30 years that Mr. Kaye said he has lost count—and the largest such return in Dutch history.

According to the Kaye-Spiegler team and Dutch lawyers involved in the case, the Hague decision paves the way for the restitution of paintings looted by Nazis and now held by some 17 Dutch museums.

The decision was eight years in coming, and was preceded by unsuccessful litigation and pleadings before Dutch bureaucracies by Goudstikker's heirs.

Even so, the Hague decision did not provide the full inventory of artworks confiscated in wartime to Mr. Goudstikker's heir—Marei von Saher, the widow of his only child. Dozens more artworks, located variously in the United States, Germany and elsewhere, remain to be returned to Ms. von Saher, according to Messrs. Kaye and Spiegler. Beyond this, about 1,000 other works from the Goudstikker collection were never found.

"We're considering all options," Mr. Kaye said in an interview this week on potential further action.

Justice is slow to come in art theft cases, and often, as in the Goudstikker matter, only partial. Reluctance to do the right thing involves money—collections can be worth tens of millions of dollars—and considerable efforts by sophisticated global smuggling rings, their beneficiaries in galleries and museums, and society's upper and lower crusts.

"Art theft is the third largest illicit trade in the world," said Mr. Kaye,



NYLJ PHOTO/RICK KOPSTEIN

**Herrick attorneys, from left, Mari-Claudia Jimenez, Lawrence M. Kaye, Frank K. Lord IV, Howard N. Spiegler display documents from their most recent case.**

"following drugs and guns."

The neatly bearded Messrs. Kaye and Spiegler, casually known in Herrick's Park Avenue offices as the Smith Brothers, have recently expanded the firm's niche practice by hiring two associates with art credentials in addition to law licenses: Frank K. Lord IV, a graduate of Columbia Law School who holds a Ph.D. in art history from the University of North Carolina; and Mari-Claudia Jimenez, an art history major at Williams College in Massachusetts who worked at museums and auction houses before earning her JD at Fordham University School of Law.

"I tried to find places that had an art group," said Ms. Jimenez, who landed her Herrick job in 2004. "A few firms do, but no one seemed to have what Herrick did—a restitution practice. Not only Holocaust restitution, but also involving theft from art-rich

countries like Turkey, Egypt and Guatemala."

At the moment, Ms. Jimenez said she is working on a midwestern "art heist, a very Thomas Crown affair." She said the matter involves "all sorts of people," including FBI agents and a prominent member of St. Louis society in cahoots with other workers at a local warehouse.

Intending at first to make his career in academia, Mr. Lord became interested in the legal issues of art theft during the Holocaust when so many high-profile claims hit the courts here and abroad in the 1990s—including cases handled by Messrs. Kaye and Spiegler. He joined Herrick a year before Ms. Jimenez, and likewise appreciates what he called the "murky" and "never dull" world of art thievery.

"On some levels it's genteel," he said. "But certainly the link between more genteel parts of society and the less genteel is there. The amount of space that divides them can become quite small."

Among the cases Mr. Lord read about as he switched his career focus to law involved the Metropolitan Museum of Art, in which Messrs. Kaye and Spiegler, counsel for the Turkish government, forced museum officials to give up the fabled Lydian Hoard antiquities—a culturally significant collection stolen in Turkey, then spirited to New York.

According to the Turkish investigative journalist Özgen Acar, with whom the lawyers worked, a group of wealthy Met patrons purchased the stolen antiquities in the late 1960s for \$1.7 million. The collection lay hidden in the museum's basement for more than 25 years, according to court papers.

In a legal journal article following settlement with the Met in 1993, Mr. Kaye wrote:

Notwithstanding the recent suggestions by the museum that all of this came as some sort of shocking revelation, it is the museum's own documents that make clear that the true provenance was known to it at the time of the acquisitions—the most damning of these being the minutes of the acquisitions committee.

Last week, Met director Philippe de Montebello completed negotiations with the Italian government to return another long-time holding—the celebrated Euphronios krater, an enormous vase that has been a central attraction since the 1970s.

"It now appears that the piece came to us in a completely improper way—through machinations, lies, clandestine night digging," said Mr. de Montebello in an interview with *The New York Times*. "As the representative of an honorable institution, I have to say no, this is not right."

To be sure, Mr. Spiegler agreed.

"It was not considered abnormal for there to be a don't-ask-don't-tell policy in the art world," he said. "But I think now there is a greater sensitivity and respect for cultural heritage. Taking something without authorization is stealing. That's a concept that's been a long time coming."

Historically, however, Dean David Rudenstine of the Benjamin N. Cardozo School of Law noted that many important public collections of international antiquities—such as that of the British Museum in London and the Musée du Louvre in Paris—came about through less than criminal means, if not quite legitimately.

"To the extent you think of thieves as people working in the middle of the night trying to be undetected to avoid contemporary norms, I'd probably back off from calling them thieves," said Mr. Rudenstine, who is completing a book on the famously disputed Elgin Marbles, sculptures from the ruins of the Parthenon, circa 432 B.C., acquired by Scottish Lord Elgin in the 19th century for the British Museum—and, to this day, strenuously claimed by the Greek government.

"The Europeans did it in broad daylight," said Mr. Rudenstine, "largely with the cooperation of local officials, although that doesn't mean the



**Adolf Hitler and Nazi propaganda minister Joseph Goebbels (both standing) look at Dutch paintings stolen during World War II (left); Art dealer Jacques Goudstikker (right); his notebook inventory detailing his large collection (below); and "The Sacrifice of Iphigenia" by Jan Steen, a 1671 painting recovered by Goudstikker's ancestors from Amsterdam Rijksmuseum (bottom).**



populations were behind it."

He added, "The interesting question sometimes isn't the legality. Take the Elgin marbles. What motivated people to move tons and tons of stone across deserts and thousands of miles of sea? There was a great deal of emphasis on an art collection as a kind of symbol of status. If you were a wealthy person, your status rose if you had artifacts. If you were a rising nation, you needed national museums of artifacts representing world civilizations."

Plundering by any name, said Mr. Spiegler, seems to be a handmaiden of war. Two years ago, the international press was full of stories about the looting of museums in Iraq—some of the contents of which has largely disappeared.

In talks before law school audiences, Mr. Spiegler likes to explain his personal motivation for a career in recovering artworks, especially those stolen during the Holocaust.

"Recovery of Nazi-looted art is [not] simply an area of law that involves interesting and complicated legal issues that would make for an excellent law school examination question or a moot court exercise," Mr. Spiegler has written and often said in lectures.

He then quotes from an essay by New York art critic and historian Eric Gibson: The Nazis weren't simply out to enrich themselves. Their looting was part of the Final Solution. They wanted to eradicate a race by extinguishing its culture as well as its people. This gives these works of art a unique resonance, the more so since many of them were used as barter for safe passage out of Germany or Austria... The objects are symbols of a terrible crime; recovering them is an equally symbolic form of justice."

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## ART LAW PRACTICE

Herrick, Feinstein is extremely proud to have developed one of the pre-eminent practices in art and cultural property law. We handle all types of art litigation and alternate forms of dispute resolution, as well as actively represent and counsel clients in corporate and commercial art law matters.

Our art litigation practice is broad-based, ranging from basic contract disputes to complex domestic and international actions. In addition to the art recovery cases described in the attached article, we handle a variety of cases dealing with trademark and copyright infringement, defamation, moral and visual rights, breach of warranty, misattribution, tax and trust matters, valuations, appraisals, experts, auctions and the like.

Our commercial art practice is an equally important part of our work. Our attorneys regularly counsel museums, art galleries, auction houses, dealers, artists, collectors and owners (both private and corporate, including estates, trusts, banks and financial institutions) and other clients on a variety of art-related issues, including contract, copyright, VARA, financing, authentication, insurance, title, attribution, trust, and tax and estate planning.

We represent clients in all types of art transactions, including the purchase, consignment, sale and auction of major works of art, domestic and international loans of significant objects of art and art collections, organizing and implementing major museum and private exhibitions, organizing and structuring business entities, preparing contracts involving emerging technologies and a variety of other activities. We also advise clients on criminal matters and international trade issues, including treaty questions and export, import and customs matters.

As leading experts in the field, our attorneys regularly lecture around the world and write for leading legal and art journals and magazines on a variety of art law issues and have served on the Art and Cultural Property Committee of the International Bar Association and the Art Law Committee of the New York City Bar Association.

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