

**TESTIMONY OF GILBERT S. EDELSON  
ADMINISTRATIVE VICE PRESIDENT AND COUNSEL  
ART DEALERS ASSOCIATION OF AMERICA**

**Before the**

**SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL  
MONETARY POLICY, TRADE AND TECHNOLOGY  
OF THE  
HOUSE COMMITTEE ON FINANCIAL SERVICES**

**July 27, 2006**

I am the Administrative Vice President and Counsel of the Art Dealers Association of America (“ADAA”), on whose behalf I appear today. I am a lawyer and counsel to the firm of Katten Muchin Rosenman LLP in New York City. I appreciate the opportunity to appear before the Committee, and I hope that my testimony will be helpful to you.

ADAA is a not-for-profit association of art dealers founded in 1962. Its purposes are to promote the highest standards of connoisseurship, scholarship and ethical practices within the profession and to increase the public awareness of the role and responsibilities of reputable art dealers. ADAA has approximately 165 members in more than 20 cities throughout the United States who deal in works of fine art, that is painting, sculpture, and works on paper from the Renaissance to the present.<sup>1</sup>

Membership in ADAA is selective; it is by invitation of the board of directors after consultation with the membership. The requirements for membership are that the dealer be in business for at least five years, that the dealer has established a reputation for honest and ethical dealing and for financial stability, that the works offered by the dealer are of high quality within their field (although not necessarily expensive), that the dealer have an expert knowledge of the works of the artists or the period in which he or she deals, and that the prospective member makes a contribution to the cultural life of the community. It is fair to say that ADAA is an organization of the nation’s leading dealers in works of fine art.

ADAA and its members are especially sensitive to the issues now before the Committee. Many art dealers and their families, including past and present ADAA members, were victims of Nazi persecution. Some perished, some were imprisoned, some were able to come to the United States where they have made important contributions to the cultural life of this nation.

ADAA's first President was Alexandre P. Rosenberg of Paul Rosenberg and Company which had galleries in New York and Paris. His father, Paul, was head of the firm that represented Picasso, Braque and other important French artists. In 1940, when France fell, Alexandre was a student at the Sorbonne. He made his way to England, joined the Free French army and rose to be an infantry officer. In 1944, when Paris was about to fall, the Germans attempted to bring to Germany many of the works of art which they had looted. Alexandre led the French detachment that stopped the train carrying the looted art. But the Germans succeeded in looting many works belonging to Paul Rosenberg and Company that were in the Paris gallery. As a consequence, the Rosenberg family is still searching for many of those works.

ADAA's position is straightforward. All traffic in Nazi-looted art should be ended and looted works should be returned to their rightful owners. No ADAA member will knowingly buy or sell such a work.

Wholly apart from moral and ethical considerations, these are good, practical reasons why no responsible dealer would want to buy or sell a stolen work -- and looted works are stolen. Sooner or later, the fact that a work is stolen is likely to come to light. However innocent or careful the dealer may have been, there is then the prospect of a controversy with a very disappointed and unhappy client, and the possible damage to a dealer's reputation. And no responsible dealer wants to be a defendant in a lawsuit in which it is alleged that he or she sold a stolen work of art.

In 1998, after consultation with its membership, ADAA issued its Guidelines Regarding Art Looted During the Nazi Era. I have been asked to describe this document. Rather than summarizing it, I attach the Guidelines and request that they be included as a part of my testimony.

The second question put to me concerns the methods used by dealers to conduct provenance research when a relevant work is received for sale.

First, a word about provenance. Provenance is a record of the prior owners of a specific work of art, and should properly include the dealers or auction houses through which a given work passed. Originally, provenance was not used in connection with title. It was, rather, a tool in establishing the authenticity of a work by an Old Master -- that is one usually created before 1800. The idea was to trace ownership back to the artist, is possible. Only recently has provenance become important in establishing a chain of title. But it is an imperfect tool.

Many works do not have a complete chain of title for good reasons. For example, provenance has not routinely been recorded for works of modest value, including many works by contemporary, relatively unknown, artists, as well as works on paper, such as watercolors, prints and drawings. As the values of some of these works has risen, provenance has become a matter of increased interest. But because there was no record in the beginning, there is a gap which may never be filled.

Gaps also exist because many collectors prefer to remain anonymous. Thus, the provenances of many works will contain phrases such as “Private Collection -- New York” or “Private Collection -- London,” etc.

It is customary for a dealer’s invoice to list the provenance of the work being sold. And such an invoice could be an important source of information. But invoices are frequently lost over the years, or can contain erroneous information. For these reasons, in many cases it is not possible to establish a complete and accurate record of the prior ownership of a given work.

Nevertheless, a responsible dealer will make an effort to research the provenance of a work to determine whether a work made prior to 1945 was looted during the Nazi era. The nature of the research will vary depending upon the individual work and the available information. It should be emphasized that the research is directed at ascertaining who had possession of a given work more than 50 years ago. In researching a work, the dealer may refer to prior invoices, catalogues of auction sales, catalogues of exhibitions in which the work was included, labels of other dealers on the stretcher or the back of the frame of a work, the catalogue raisonné of an artist (a scholarly work including the entire oeuvre of an artist and including some provenances ), other dealers through whose hands the work has passed, family inventories, appropriate government records, etc. Frequently, there is no definitive answer because there is no evidence that a work has been looted or not looted.

The ADAA Guidelines deal with the situation where a dealer has reason to believe that a work has been looted during the Nazi era. Paragraphs A-4 of the Guidelines states: “If evidence of looting is discovered and there is no evidence of restitution, the dealer should not proceed to acquire or sell the object, and should notify the seller. Depending on the circumstances of the particular case, additional steps may be prudent or necessary, such as notifying appropriate government authorities or

other interested parties of the dealer's findings. However, dealers are not law enforcement agents and dealers may also have a duty to protect their clients.”

The Guidelines cover the method for handling potential claims by Holocaust victims and their heirs, as follows:

1. The ADAA urges dealers to handle claims of ownership that may be asserted in connection with objects in their custody, or that they have sold in the past, promptly and with openness, seriousness and respect for the dignity of all parties involved. Each claim should be considered on its individual merits.
2. The dealers should request evidence of ownership from the claimant in addition to conducting his or her own research.
3. If the dealer determines that a work which he or she presently owns was looted during the Nazi era, the dealer should seek to resolve the matter in an equitable, appropriate and mutually agreeable manner. The object should be withdrawn from sale until such time as the matter is resolved.
4. If the dealer is presented with a claim for a work presently on consignment, the work should immediately be withdrawn from sale and the owner informed of the claim. The dealer should not offer or sell the work until questions about its ownership have been resolved, and should return the work to the client if so requested.
5. If a dealer is presented with evidence that a work he or she previously sold may have been looted, the dealer should endeavor to make available any records which may serve to clarify the history of the work in question. However, dealers are not empowered or qualified to take sides in disputes of title, which must ultimately be independently adjudicated.
6. When reasonably practical, dealers should seek equitable methods other than litigation to resolve claims that an object was looted during the Nazi era.

From my personal experience I can testify that it is best for all parties to avoid litigation if at all possible. Litigation is time-consuming. It has considerable problems of proof. And it can be very expensive for both sides. There are alternative means to resolve these disputes. For example, I have mediated several cases in which the parties reached settlements quickly and relatively inexpensively.

I would strongly recommend that disputes over possible Nazi-looted art be resolved through mediation by a knowledgeable person.

The last question put to me is whether I can identify areas where progress can be made in the future to assist in the return of Nazi-era art. In response, I can quote from my previous testimony before the Committee.

“We should do now what should have been done many years ago. There should be a central registry and data base where claims for the recovery of looted works could be registered, kept on file and where the information would be made available to all interested parties.

Such a registry and data base would serve a number of purposes:

If I represented a Holocaust victim or the family of a victim who are searching for works seized by the Nazis, I am not sure where I could turn for help, how I could inform the art community that there is a claim for the recovery of certain works. The central registry would be such a place.

At the same time, museums, collectors, dealers, auction houses and law enforcement agencies would have important information available to them. Dealers and auction houses, for example, would be able to learn quickly whether there is an outstanding claim for the recovery of a work which appears on the market. In addition, the registry would be useful in defining the extent and magnitude of the problem with which we are dealing.

The usefulness and importance of the registry is apparent. Before we can adjudicate claims, we must know that they exist.

It is important that the establishment and operation of a registry be a collaborative effort among the organizations involved in the problem of works looted during the Holocaust. It is important that there be one unified effort, that all information is shared and that the funds available be efficiently employed in a single effort and enterprise.

There should, in sum, be a single registry and not duplicative efforts.

It is also important that any registry be staffed by trained art professionals who know art and the art community, who know which questions to ask, what data is

important and who can do the research necessary to fill gaps in the information provided.

In addition, it is important that the registry employ the best and most advanced computer technology such as that which is now used by The Art Loss Registry, to respond quickly to inquiries.

The registry which we suggest will not solve all the problems. There remains, for example, the matter of the adjudication of claims. But it would be a beginning and a foundation for further action.”

Some years have passed and there is still no central registry. I suspect that the reason is that there is a lack of the necessary funding.

I very much appreciate the opportunity to appear before this Committee and I thank the Committee members and the staff for their courtesy.

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<sup>i</sup> ADAA’s members do not deal in works of the decorative arts, such as antique furniture, rare books, rugs, porcelain, antique jewelry and similar objects. Or do they deal in antiquities, Asian art or tribal art.

ART DEALERS ASSOCIATION OF AMERICA

GUIDELINES REGARDING

ART LOOTED DURING THE NAZI ERA

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Between 1933 and 1945, an untold quantity of art was looted by the Nazi regime. While some of this art was retained by Hitler or other top Nazi officials for their own collections, many other items were sold for hard currency. After World War II, the Allied powers endeavored to round up this looted art. These works were returned to their respective countries of origin, each of which was responsible for ensuring that the works were given back to their rightful owners. However, no such process existed to track and return the many works that had already entered the art market. Nor was there any central registry where claims could be recorded and made internationally accessible to collectors, museums and the art trade. As a result, dealers in the past often lacked the resources necessary to identify unrestituted looted art.

In an attempt to redress the horrendous wrongs of the Holocaust, greatly increased scrutiny is today being given to provenance. The Art Dealers Association of America supports these efforts wholeheartedly, while also recognizing that many art works do not have complete chains of provenance and never will. Sellers of works of art through the years have often, for perfectly legitimate reasons, chosen to remain anonymous. And provenance has not routinely been recorded for works of relatively low value, including many contemporary works, watercolors and drawings and most prints. As the value of these works has risen, provenance has become a matter of increased interest and concern. However, the inability to conclusively establish the ownership of a work during the Nazi period does not necessarily mean that the work in question was looted.

The Art Dealers Association of America represents the highest standards of connoisseurship, scholarship and ethical practice within the profession. As such, ADAA supports the attempt to identify unrestituted looted art and, whenever possible, to assist in its return to its rightful owners. To this end, ADAA has established the following guidelines.

## A. Sales and Consignments

ADAA recommends that dealers take all reasonable steps to ensure that they do not purchase, accept on consignment, or sell unrestituted looted art.

1. A dealer should, wherever reasonably possible, obtain from all sellers and consignors as complete a provenance as is available to that owner, as well as a written warranty of title and an indemnification.
2. Where the Nazi-era provenance is incomplete for a given work, the dealer should consult appropriate sources of information, including available and reasonably accessible records and outside databases with information concerning Nazi-looted art.
3. In the absence of evidence of looting, the object may be presumed not to have been looted and the sale may proceed.
4. If evidence of looting is discovered and there is no evidence of restitution, the dealer should not proceed to acquire or sell the object, and should notify the seller. Depending on the circumstances of the particular case, additional steps may be prudent or necessary, such as notifying appropriate government authorities or other interested parties of the dealer's findings. However, dealers are not law-enforcement agents, and dealers may also have a duty to protect the confidentiality of their clients.
5. To the extent that it is known, the dealer should include the provenance on all invoices for sold art works. But, in accordance with long industry practice, because of the difficulties and uncertainties involved, dealers cannot and should not warrant provenance.

## B. Claims

1. The ADAA urges dealers to handle claims of ownership that may be asserted in connection with objects in their custody, or that they have sold in the past, promptly and with openness, seriousness and respect for the dignity of all parties involved. Each claim should be considered on its individual merits.
2. The dealers should request evidence of ownership from the claimant in addition to conducting his or her own research.

3. If the dealer determines that a work which he or she presently owns was looted during the Nazi era, the dealer should seek to resolve the matter in an equitable, appropriate and mutually agreeable manner. The object should be withdrawn from sale until such time as the matter is resolved.
4. If the dealer is presented with a claim for a work presently on consignment, the work should immediately be withdrawn from sale and the owner informed of the claim. The dealer should not offer or sell the work until questions about its ownership have been resolved, and should return the work to the client if so requested.
5. If a dealer is presented with evidence that a work he or she previously sold may have been looted, the dealer should endeavor to make available any records which may serve to clarify the history of the work in question. However, dealers are not empowered or qualified to take sides in disputes of title, which must ultimately be independently adjudicated.
6. When reasonably practical, dealers should seek equitable methods other than litigation to resolve claims that an object was looted during the Nazi era.