

NOT FOR DISTRIBUTION**PRAGUE CONFERENCE ON THE HOLOCAUST****Four Different Paintings, Four Different Outcomes****Graham W. J. Beal, Director, Detroit Institute of Arts**

The Detroit Institute of Arts along with sister institutes of the Association of Art Museum Directors deplores the unspeakable atrocities suffered by the Jewish community during the Holocaust and recognizes the right of victims and their heirs to be reunited with their stolen property, even after more than 60 years.

Provenance Research

American art museums, through their membership in the Association of Art Museum Directors and the American Association of Museums, have adopted guidelines that require that all claims be handled as expeditiously as possible, that they be thoroughly researched and that all findings be made available on the museum's own web site as well as well as on the web site maintained by the American Association of Museums known as the Nazi-Era Provenance Internet Portal.¹ To date American art museums have researched and posted over 27,000 entries on the Portal, which includes all known provenance information on paintings, sculpture and Judaica.

For museums which hold even some of the approximately 20,000 European paintings that could have been in Europe between 1933 – 1945, gathering provenance information is an enormous undertaking, nonetheless, they have all taken upon themselves as much research as their resources permit. At the DIA we have spent in excess of \$800,000 on Holocaust related research, most of it on claims I shall detail below. In the aggregate, US art museums have spent well over five million dollars in direct costs researching works that could have been looted by the Nazis and an estimated two-and-a-half million in such indirect costs as staff time.

¹ *Report of the AAMD Task Force on Nazi Looted Art*, 1998, amended 2001

Guidelines and Resolution of Claims

As mentioned above the Association of Art Museum Directors drafted and passed their guidelines in 1998 and amended them in 2001. The AAMD guidelines served as the model for the *Washington Principles* passed late in 1998. In 1999 the American Association of Museum's passed *AAM Guidelines Concerning the Unlawful Appropriation of Objects during the Nazi Era*. Following the guidelines the US art museum community has researched, published and, in the recent past, resolved approximately 29 cases, of which 27 were resolved through negotiation.

Experience of the DIA in Holocaust Recovery

Today, I am going to recount four very different claims against the Detroit Institute of Arts with four very different outcomes. The first claim was made in 1949, immediately after the war when consciousness of the Nazi art looting was still high. The others have all occurred since 2000, after awareness had been revived by massive political changes.

Handing Back the Monet

In late 1948, the Detroit Institute of Arts acquired a painting of the Seine at Asnières by Claude Monet. It was purchased with museum funds from the New York dealership Fine Arts Associates through one of the principals, Otto Gerson. The museum was extremely pleased with the purchase as it was a fine work of art, representing a pivotal moment in the development of early Modernism and added to an already strong Modern collection.²

In February 1949, DIA curator Paul Grigaut wrote to Otto Gerson saying that he was writing an article on the painting for the museum's Bulletin and asked for the exact provenance. Gerson replied in writing that it had passed from the dealer Ambroise Vollard to a M. Victor Desfossés and had been published in the catalogue of his collection (cat. No.5) in 1899. He concluded his account of the provenance with, "The painting was owned for the last thirty years or more by the same family who wish to remain anonymous. This also explains the fact why the picture (sic) was not exhibited

² All supporting material that went in to the compilation of this account can be found in the Detroit Institute of Arts' curatorial, conservation and registration files

or reproduced lately.” The explanation is ambiguous and could just as easily refer either to continued ownership by the Desfossés family or changed ownership by different family. The ambiguity was rendered moot by a letter from Herbert H. Elfers of the New York branch of the French dealer, Durand-Ruel, asking if an enclosed photograph matched the DIA’s recent purchase and stating that the painting represented had been sold by their Paris house to a Mme F. Halphen in 1928 but had “stolen at the time of the German occupation of Paris.” It was, indeed, the same painting and, on being informed of this Gerson expressed “great shock” and asserted that “This painting was bought through one of our agents whom we consider most reliable and trustworthy. In buying paintings in Europe after the war, we were scrupulously careful not to touch any whose origin was in the least degree not quite beyond suspicion. In this particular case we had every assurance that the painting had never changed hands...since the early years of the century.”

Paul Grigaut’s guidance of Otto Gerson’s research into the history of the painting resulted in the discovery of a 1935 Durand-Ruel catalogue in the Frick Collection library where a Claude Monet painting entitled “Les Peniches” was listed and a “Mme Halphen” identified as the owner. Further research revealed that the painting had passed through Switzerland. The museum contacted the French Embassy asking for guidance and was soon in direct communication with Mme Halphen. In an amusing note, Mrs Halphen regretted the involvement of the French government and, indeed, despite the lady’s willingness to have the DIA “re-purchase” the Monet, the government insisted on the painting’s return to France as cultural patrimony. As far as I can tell from our files, neither the DIA nor the claimant had recourse to lawyers.

A small footnote to this episode was provided when, in my first visit to TEFAF in Maastricht after I became director of the DIA, I was offered the work by a London dealer. Mme Halphen had died and her estate had put the work on the market. We had it sent to Detroit where close examination by the curator and conservator revealed that the painting had been tampered with sometime after it left the DIA in 1950. The sky was different

and bollards had been added to the river bank. The picture no longer matched the photographs in our files from our earlier, brief possession of the work. With regret, I decided that the work must, for the second time, leave the DIA.

Plain Sailing? Buying the Seascape

One of the DIA's great assets is its collection of 17th-century Dutch painting. It was largely amassed under the German-born Rembrandt expert, William Valentiner, who was director at the DIA from 1925 to 1945. Although it lacks a Vermeer, it is a comprehensive collection and, with that one notable exception, covers the Dutch Golden Age very well. Perhaps because of Valentiner's well-known feeling that the Golden Age ended with the third quarter of the 17th-century, there was no great Marine painting by Willem van der Velde, a gap that the DIA's curator of European painting had been seeking to fill for some years. Although the DIA is fortunate among US art museums in having considerable endowments that provide funds for art purchases, the van der Veldes that came on to the market were out of our reach. So, in October 2000, it was with considerable excitement that one of the curators of European art told me of his discovery, in a London gallery, of a pristine seascape by Ludolf Backhuysen. It was in such good condition that all of the rigging – usually the first thing to go in the course of periodic cleanings and/or restorations – was intact. True, it wasn't a Van der Velde, but otherwise it was of high quality and filled our needs. Caught up in my colleague's enthusiasm, I agreed that the painting should be brought over for purchase consideration by the DIA's Collections Committee and, when it arrived, hung it in my office. It was in the course of discussing the intended presentation to the committee that I asked the question I should have asked in the first discussion: "what's the provenance?" Supplied with the answer, I realized immediately that the painting could well have been looted and called the museum's lawyer to ask what I should do. "Now you know," he said, "why a little knowledge is a dangerous thing because, now you have reason to suspect that it was stolen, it cannot leave the state [of Michigan]." Obviously we needed to start research but before we started that, and I had the pleasant task of calling the dealer in London to let him know that, while we were not in a position to buy the Backhuysen, we were not in a position to return it to him either. The dealer stated that he had been assured that the

work had been in a German family collection since early in the previous century but immediately agreed that the onus of research – and cost - was on his establishment and contacted The Art Loss Registry. Although the painting was not in the ALR's database, it did not take them very long to find a likely candidate within a collection that had been seized by the Nazis in exchange for exit visas. Following the war, the collector had returned to his home and, with one exception, regained his collection. The exception was a seascape by Ludolf Backhuizen. The heirs were quickly located and, because there were five of them, opted to sell the work of art. And here we had a little good fortune. Because the dealer had acquired the painting at an auction as “a copy or in the manner of” he had paid relatively little for it. He strongly suspected that it was authentic; a fact borne out by careful cleaning when, amongst other things, a signature characteristically placed, emerged from behind the gloomy varnish. With the ongoing assistance of ALR, a deal was quickly agreed. The heirs were willing to sell the painting to the DIA through the dealer, with the dealer gaining back, as commission, his modest outlay. However one may view the details of the deal, it was all arranged extremely quickly.

Nevertheless, the DIA could still not buy the painting because, for fiduciary reasons, we had to be absolutely sure that there were, in fact, no more heirs. Should one emerge, the DIA could be liable for damages for having bought something not wholly owned by the vendors. So, we then embarked on a rigorous search process involving the US and the original country to establish as firmly as possible that there were none, or to be able to say, should one emerge, that we had met the highest standards of due diligence and were not liable for suit for buying stolen property. The process of finding the heirs and striking an agreement took from November 2000 to May 2001. The process of due diligence lasted from April 2001 to August 2002. In other words, even when there was nothing but good will on the part of all parties it took a long time to clear all the hurdles – during which time the DIA could have been accused of dragging its feet. Such was not the case but, had a suspicious or hostile journalist enquired, we would not have been able to respond in any detail because the heirs themselves had requested complete anonymity – right to the extent that we were asked not to reveal their country of origin.

As we paid our “due diligence” legal bills (from a \$250,000 fund specifically for holocaust related provenance research that I had established soon after my arrival as director of the DIA in 1999) I told myself that the Backhuizen story would be a marvelous illustration to the world of a happy ending following good deeds by all. How I could have been so naïve? The response to our press release was a deafening silence and three publications ran the story: a paragraph in *The Art Newspaper* and a little more in *ARTnews*. The only journal to go into any detail was Detroit’s *Jewish News*. When it comes to US museums, the media it seems, prefers a good story with an actual or potential villain. The other lesson learned from this episode, though, was a good one and has served us well: not to allow our enthusiasm for a coveted work of art cause us to forget to ask about the provenance.

The Wrong Cezanne

In May 2003 I received a letter from a German lawyer claiming that an early Cezanne painting, *Head of a Man*, in our collection was the property of his client, a descendent of the “famous German actress, Tilla Durieux.” She had, according to the letter, fled to Switzerland in 1933 where she sold the painting “as far as is known, in Lucerne in early summer.” This sale, the lawyer claimed was “an unlawful act” and citing a series of post-war edicts, the Association of Art Museum Directors’ guidelines, and the Washington Declaration, asserted that “this is a proven case of a pursuit conditioned loss.” He would, he concluded, “be grateful if [the museum] could suggest a concerted solution.” He did not request the return of the painting. Attached were photocopies of a couple of documents purportedly ratifying his client’s descent from Tilla Durieux as well as a photocopy of the Cezanne now in the DIA’s collection.

The DIA had a complete provenance which included Tilla Durieux but asserted that she had sold the work much earlier – 1927 - through the Lucerne based Galerie Thannhauser and come to the US with a Czech refugee. We had, though, no proof of this and the two previous cases had demonstrated that a provenance could easily be fictional. But I was also concerned because the sale did not directly involve Nazi’s and did not relish the thought of negotiating such a murky but emotional area. As I was about to leave for

fairly extensive travel, I passed the material on to our chief curator who, in turn, passed it on to Evie Joselow, a professional researcher based in New York, whom we had engaged to investigate all of the museum's paintings for holocaust related links. In my haste to leave the country, I omitted to acknowledge the letter or to request any further proof he may have. The lack of acknowledgement earned me a reproachful letter from the lawyer that arrived soon after my return. Despite this lapse, our researcher soon tracked down in the library of London's Victoria & Albert museum, a rare copy of the 1927 Cassirer and Helbing auction catalogue in which, on page 17, the DIA's Cezanne is listed as lot number 38. A hand-written annotation indicates that Thannhauser was the buyer for 8,300 deutschmarks. In a letter of December 2005, I conveyed this information to the lawyer and suggested that this concluded his enquiry. I never received a reply. Again, the costs involved were not huge, but further depleted the special fund.

Retaining the Van Gogh

On May 11th, 2004 I received a letter from a New York attorney enquiring about the provenance of Vincent Van Gogh's 1889 painting, *The Diggers*, one of two works by this artist that came to the DIA as the gift of the estate of Detroit art collector Robert Hudson Tannahill in 1970. It had been published in the interwar years as being in the Nathan collection but what research we were able to do at the time the painting entered the collection foundered for lack of information from the dealers involved in the sale.

In accordance with the guidelines of the Association of Art Museum Directors, the DIA acknowledged the attorney's letter and immediately embarked upon research. To this end, we engaged attorney Thad Stauber, the same attorney who had assisted us in the happy resolution of the Backhuysen case, and Laurie Stein, a professional researcher with extensive experience in the area of art claims from holocaust victims or their relatives. As the same letter had been sent to the Toledo Museum of Art (TMA) with regard to their painting *Street Scene in Tahiti* by Paul Gauguin, that has, to all intents and purposes, the same provenance, the DIA and TMA decided to proceed together.

An absolutely critical factor in provenance research is access to information. With the fall of the Berlin Wall a host of new archives, hitherto inaccessible, became available. There remain however, a number of obstacles to gaining access to their holdings (as there are also in Western Europe) and, without such, the museum would be less likely to be able to validate a claim or not. Our research team repeatedly found the keepers of various archives unwilling to accommodate them, or willing to respond to only the most tightly focused enquiries, behavior that reinforced the need for regulations allowing greater freedom of access in the area of Nazi-looted art.

The research by Laurie Stein, conducted in several European countries as well as the US over 18 months, revealed, to me, a surprising set of circumstances. In his 1922 will, Hugo Nathan left the paintings to the Städl Museum in Frankfurt with the proviso that Mrs. Nathan would retain them for her lifetime and could sell them were she to need money. In February 1937, having paid the punitive fines applied to Jews and seen paintings in her collection seized by the Nazis, Mrs. Nathan moved to France, from where she organized the sale of her Frankfurt house and the transfer of her remaining property to Paris. A detailed inventory of this property was made that included such minor items as plum preserve. Neither of the two paintings appears in the inventory.

In December 1938 Mrs. Nathan instructed the prominent Paris-based dealer Georges Wildenstein to go to her family's bank (Dreyfus) in Basel, Switzerland to review the paintings she owned there (and which had been there as early as 1930), and let her know which ones he would buy from her. Wildenstein's subsequent list indicated four such works, including the paintings now in the Detroit and Toledo museum collections. These were bought by a consortium of dealers, two of whom were also German Jews who had left Germany following Nazi persecution. One of these was Justin Thannhauser who had featured in the provenance of the Cezanne. This consortium sold the paintings to the Toledo Museum of Art and Robert Tannahill for considerably more than he paid Mrs. Nathan but such "exploitation" of wealthy Americans was neither remarkable at this time nor at others before and since. We have independent expert opinion that, American prices notwithstanding, Mrs. Nathan received what was, at the time, a fair price for them.

Mrs. Nathan had moved to Basel before the fall of France from where, following the end of the war she systematically proceeded to recover losses, including the fines, the compensation offered by the German government, paintings seized by the Nazis and kept at the Städl, as well as the tiny residue of payment from the sale of her car. After her death in 1958, her brother and co-executor of her Estate, Willy Dreyfus, continued to pursue claims, including one in US courts (ultimately dismissed), until his demise in 1978. At no time did Mrs. Nathan pursue the paintings she had sold to the consortium and, indeed, we have evidence that she continued to work with one of its members – Thannhauser - as she subsequently disposed of her collection after the war.

As all the facts we had gathered clearly established that Mrs. Nathan considered the sale of the Detroit and Toledo paintings legitimate, the director of the TMA and I requested a meeting with representatives of the Nathan family. The meeting took place in New York in late January 2006 and had been preceded by one between our researcher and the claimants' lawyer. We had, all along, given the family's lawyer the results of our research and having recited our evidence, we asked the family if they had any evidence that would cause us to alter our position. They cited such things as the price differential and the hardship suffered by Mrs. Nathan but offered no additional evidence. Even so, the family's representatives declined to withdraw their claims. Presented with these circumstances and convinced that the sale had been recognized as legitimate by Mrs. Nathan, the Executive Committee of the DIA concluded that it was their fiduciary responsibility to protect the DIA's ownership, using all legal means available, including the statute of limitations and laches. In the DIA's case, for example, not to use all means to protect the property would open it to claims that the museum had not acted appropriately to protect assets ultimately belonging to the city of Detroit. Such a step would also bring to an end a lengthy and, for the museum, expensive process. The TMA's board came to the same conclusion and suits were filed in the museums' respective District Courts.

I have to say that, although I understood this action to be essential, I was personally disappointed that the rulings would now probably not focus on the circumstances of the sale. The one small consolation I had given myself as tens, then hundreds of thousands of dollars flowed out of the special fund I had set up (and then some more!), was that some kind of line might be drawn regarding what was and was not a forced sale. After all, the spurious claim I recounted earlier, had been based on the (purported) sale of a work of art in Switzerland.

The judges in both courts decided in favor of the museums. In Detroit's case the judge ruled narrowly on statute of limitations grounds. The Toledo judge decided similarly but chose to address in detail the circumstances of the sale and the issues of the claim. He concluded:

In the instant case, Martha Nathan pursued restitution and damages immediately after the war for property she had lost as a result of Nazi persecution, but did not file for the Painting. If she believed she had a claim to the Painting, she could have investigated and brought suit back then. Up to her death in 1958, twenty years after the alleged sale, she did not challenge the art dealers' purchase or the subsequent sale to the TMA. TMA did not try to hide its possession of the Painting and Martha Nathan knew better than anyone the facts surrounding her own purported sale.³

Earlier in his ruling he had written:

In short, this sale occurred outside Germany by and between private individuals who were familiar with each other. The painting was not confiscated or looted by the Nazis; the sale was not at the direction of, nor did the proceeds benefit, the Nazi regime.

³ Judge Jack Zouhary, US District Court for the Northwestern District of Ohio Western Division, Case No 3:06 CV 7031, December 28, 2006.

It is difficult – painful even – to be put in the position of denying a holocaust-related art claim and the DIA has an honorable history of dealing with such matters. To recapitulate: in the 1949/50 transaction the DIA became the first US museum to return a work of art (a painting by Claude Monet) to a Nazi victim; in 2000, my suspicions that the provenance of a Dutch marine painting under consideration for purchase might be holocaust-related led to the location of the heirs and the subsequent purchase of the work from them eighteen months later. In 2003 we promptly investigated a claim that turned out to have no merit whatsoever; in 2004 the DIA (in this case, along with a sister institution) initiated an extensive and expensive research campaign that established the actual circumstances behind the sale of works of art in 1938.

In conclusion, I believe that it is fair to say that the DIA's scrupulous and costly conduct is representative of US institutions. We take all claims seriously and, regardless of the demand on our resources, follow the mandate established through the AAMD. Those cases where declaratory judgment has been sought are very much in the minority and result from a true impasse between the museum and the claimants. Under US law, it is incumbent on the governing body to take appropriate legal steps and seek the opinions of a judge who is impartial and reasonable.