

THE CLEVELAND MUSEUM OF ART

**STATEMENT BY TIMOTHY RUB, DIRECTOR OF
THE CLEVELAND MUSEUM OF ART, TO THE SUBCOMMITTEE ON
DOMESTIC AND INTERNATIONAL MONETARY POLICY, TRADE AND TECHNOLOGY OF THE COMMITTEE ON
BANKING AND FINANCIAL SERVICES UNITED STATES HOUSE OF REPRESENTATIVES
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Good morning, Madame Chairwoman and distinguished members of the Subcommittee. I have come to testify before the Subcommittee on behalf of the Association of Art Museum Directors and the Trustees of The Cleveland Museum of Art, and I would like to express my thanks for the opportunity to share with you the significant efforts museums have undertaken since the Subcommittee first held hearings on this subject in February 1998.

Much progress has been made. All American art museums whose collections might have included art looted during the Holocaust are in the process of researching the provenance, or ownership history, of those objects. As you can well understand, provenance research is time-consuming and costly. Given the significance of this issue, all of these institutions have willingly devoted considerable resources to improving the documentation of their collections, for we recognize that the information that has been gathered in this way is essential if we are to respond in a responsible way to inquiries about our collections. This is important because American museums hold their collections in trust for the benefit of the public, and it is incumbent upon us to proceed in a deliberate fashion to address any concerns that may arise regarding their ownership.

In addition to conducting additional provenance research, American art museums have substantially increased the level of scrutiny they give to new acquisitions, whether these are made by gift, purchase or bequest. Art museums also carefully examine the provenance of works that are requested to be loaned for exhibition. In both cases, museums have committed not to accept or to exhibit works known to have been confiscated illegally during the Holocaust and not restituted after World War II. These practices have become standard among American museums as a result of their voluntary compliance with guidelines articulated in the AAMD's June 1998 *Report on the Spoliation of Art During the Nazi/World War II Era*.

Because provenance research is invaluable to our work in addressing concerns about the ownership of works of art that were created or changed hands during the Holocaust period, I will address this specific effort in greater detail. First, however, I would like to offer an observation about American art museums that may be useful to the Subcommittee. For a significant number of these institutions - perhaps as many as 50% - this is not an issue because they either do not have permanent collections or collect only contemporary art (that is to say, works created long after the Holocaust period). Still others acquire and present works of art - say, Native American art, Latin American art, or early American decorative arts - that were unlikely to have been found in European collections during the period in question.

Those museums whose collections might possibly have included art looted during the Holocaust period responded to the efforts of this Subcommittee and others in the latter part of the 1990s with a strong and deeply impressive commitment to investigate the provenance

of works of art in order to address any potential claims. For example, the AAMD surveyed its members in 1999 and determined that 100% of those whose collections included art that might have been looted during the Holocaust period had completed or were in the process of undertaking provenance research. Furthermore, in that survey, 100% of AAMD members indicated that access to their provenance records was open.

Provenance research is often difficult, time-consuming, and expensive. Unlike other forms of property like real estate or automobiles, the sale of works of art does not require a recorded chain of title. Even basic sales documentation, such as a purchase agreement or bill of sale, was not standard practice in art purchases until fairly recently. To the extent that documentation for the sale and transfer of title for works of art does exist, much of it has been lost or may be scattered among individuals and institutions that are located in various countries in files unknown to art historians, officials or others who might recognize the value of these records for provenance research. Dealers and auction houses that had useful records may have gone out of business or may be reluctant to open their records. And invaluable information may be hidden in records maintained for decades by countries behind the Iron Curtain that simply refused all requests to provide information of any type. These barriers make the job of provenance research complicated and more akin to the work of a detective than an art historian.

To put such an undertaking in some context, I would like cite as an example the extensive research conducted by The Cleveland Museum of Art on a single work of art. The CMA has largely completed a review of its holdings of European painting and posted the results of this provenance research on its website. This process has enabled us to identify approximately 373 paintings and 86 sculptures with one or more gaps in their provenance during the Holocaust period.

It is important for the members of the Subcommittee to understand that a gap in the provenance of a work of art during the Holocaust period *does not* mean that this work was seized illegally by Nazis or was the subject of a forced sale and not restituted. Rather, a gap in provenance indicates that we have been unable to find documentation or other evidence that allows us to determine the ownership of a particular work during a certain period of time. In other words, this means, quite literally, the absence of information on an object, not the presence of information that gives rise to, or constitutes justification for, a claim that it was illegally taken and not restituted.

Given the extensive research that has been done by American museums - without, it should not go unremarked, any appreciable public funding - the number of claims received by American museums is very small; and to date only 22 works have been restituted by American museums because they were looted by the Nazis and not returned to their rightful owners after the War. For those who claim that hundreds or thousands of spoliated works exist in American museums, the extensive efforts undertaken during the last decade simply indicate otherwise. In this regard, I would not suggest that the efforts undertaken to research the provenance of Holocaust-era works have been inappropriate or that they should be curtailed. But our experience indicates that the magnitude of this problem does not match the strongly emotional appeal made on occasion by those who seek to recover art that is believed to have been lost and not restituted.

One example of recent provenance research will help to illustrate the often complex story of individual works of art that were in Europe during the Holocaust period. Our institution is fortunate to have a wonderful painting by Henri Matisse called *Interior With An Etruscan Vase*. Before World War II, the great art dealer Paul Rosenberg had a gallery in Paris. Rosenberg is a legendary dealer who, during his long career, encouraged and collected modern art, a style that the Nazi leadership found deeply abhorrent. Although Mr. Rosenberg

fortunately escaped the fate of many of his fellow Jews during the Holocaust, his gallery and much of his collection captured the attention of the German authorities.

Apparently, the Matisse now in the CMA's collection was seized by the Nazis and came into the possession of Hermann Goering. Goering then used the Matisse, together with other paintings, to obtain a painting by Jan Brueghel in an "exchange" with a notorious dealer named Rochlitz. One of the great benefactors of The Cleveland Museum of Art, Leonard Hanna, saw the Matisse in New York in the early 1950s at the gallery of Pierre Matisse, the son of the painter. Pierre Matisse claimed that he had acquired the painting from a "private collection." The painting was sold to the Cleveland Museum of Art in 1952, and it has been in the Museum's collection ever since.

The Museum discovered a "gap" in the provenance of this work in the course of its own research, not as the result of any claim having been made. The painting had no provenance history between the outbreak of World War II and its ownership by Pierre Matisse in the 1950s. Working with a researcher at the National Gallery, a woman who has spent countless hours compiling a book considered the "gold standard" for Holocaust provenance research, the Museum obtained documents that confirmed the wrongful taking of this work by the Nazis. The documents indicated that the painting was taken after the War to the Munich collection point, the major repository for art illegally appropriated during the Holocaust period. The trail went cold beyond that point. However, through the subsequent efforts of the Commission for Art Recovery of the World Jewish Congress, the daughter-in-law of Paul Rosenberg was able to confirm to the Museum that this work had, in fact, been returned to Paul Rosenberg after the war and was later sold.

Had Mr. Rosenberg's daughter-in-law not been found or had she been unable to locate in her family's records that the Matisse was restituted to her father, the gap in provenance would have remained and it might well have appeared that the Museum's ownership was inappropriate, which was not the case. I recount this story as just one of many examples where a "gap" did not mean that our institution did not hold clear title to a work and to illustrate the fact that the effort to complete provenance research is extensive, time-consuming and involves a degree of luck and chance.

While The Cleveland Museum of Art enjoys a world-wide reputation for its comprehensive collection, the Museum has a relatively small number of works - no more than 40,000. Consider the enormity of the task of the provenance research that would need to be undertaken by museums with much larger collections such as The Metropolitan Museum of Art, which holds more than 2 million objects in its collection.

Research on inquiries and claims require persistence, patience and a responsible approach. Like other American museums, The Cleveland Museum of Art has received inquiries with respect to objects in our collection. The approach we have taken to respond to these inquiries - an approach which I believe is shared by all of the members of the AAMD when faced with such claims - has not been confrontational. Rather, we have attempted to obtain all the necessary information and to determine in good faith whether, in fact, an injustice has been done. These kinds of fact-intensive determinations require the skills of trained professionals who understand how to conduct provenance research and make educated judgments about these often difficult and tangled histories. Cooperative investigative efforts are, I believe, much more likely to lead to fair resolutions of claims than litigation.

Thankfully, there have been very few lawsuits involving claims for return of objects, and I hope that both claimants and museums continue to have a constructive and productive dialogue when questions do arise. At times, the Department of Justice may be asked to intervene in matters of Holocaust art, and I can only suggest to this Committee that such an approach generally is neither beneficial nor conducive to a speedy and just resolution.

While I have this opportunity to speak with you this morning, I must also point out to the Subcommittee that in many of the reports and recommendations made on this subject, the cost of research, the cost of maintaining websites, and other costs of sharing available information is invariably mentioned as a barrier to discovering the true history of works that might be questioned. To date, the overwhelming majority of the financial responsibility for provenance research and its publication has fallen on the museum community. We continue to incur substantial expenses to further this work that are significant and difficult to fund, especially in an era of reduced governmental support.

Finally, some critics have questioned the wisdom of continuing the federal immunity which is accorded works of art that are in the United States on loan to American museums and whether that protection should apply when there *might* be a Holocaust issue. Please note the emphasis I have placed on the possibility of a Holocaust-related issue, such as a gap, as opposed to an outstanding, valid but as yet unresolved claim. If this issue comes before the Subcommittee, I urge you to continue to support the federal immunity program. The immunity program is a time-honored and valuable instrument that enables American museums to present to the American public great works of art from around the world. Absent such protection, many foreign-owned works might not be made available to American museums because of the fear that such works will become encumbered with litigation in United States Courts. Furthermore, in making the application for immunity, Holocaust issues are thoroughly addressed as part of the application process.

Is it possible that a work of art for which a Holocaust claimant exists could find its way into an exhibition in the United States for which immunity has been granted? Yes. And, yes, immunity would prevent the claimant from recovering this work through a court proceeding in the United States while the work was under a grant of immunity. The absence of recourse to a United States court for any given object is, however, more than outweighed by the benefit to the American public of making thousands of objects accessible every year through loan exhibitions in American museums. Exhibiting a painting with a gap in its provenance can, in fact, help the process because the exhibition of the work in the United States can bring to the attention of a claimant its existence or make available information that the claimant needs in order to make a claim.

Madame Chairwoman and members of the Subcommittee, let me return to the beginning of my testimony and to the profound conviction that I know my fellow directors share: unlawful and unjustifiable spoliation of art during the Holocaust period should not be forgotten and American museums should sustain their efforts to discover works of art for which legitimate claims may exist. The eight years since the Subcommittee's first hearings on this subject have witnessed significant progress in the development of a broader knowledge of provenance information that has now been made available to potential claimants and the public at large. While the work is not yet complete, research regarding most of the works of art that may be at issue has certainly been undertaken, and America can be very proud of the leadership role that its art museums have played in this effort.