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The Role of New York's Lauded Looted Art Unit Is Challenged in Court

The fight is over an Egon Schiele drawing held by the Art Institute of Chicago that the Manhattan district attorney's office seized as Nazi loot. But it has wider implications.



“Russian War Prisoner,” a drawing by Egon Schiele from 1916 that is now held by the Art Institute of Chicago. Credit...via Manhattan District Attorney



By [Graham Bowley](#)

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In what has been a celebrated effort to right old wrongs, the Manhattan district attorney's art trafficking unit has [returned](#) more than 4,600 artifacts and artworks to countries and heirs after finding they had been looted.

That tally includes 11 works by the Expressionist [Egon Schiele](#) that were — until recently — held by five important American museums and four private collections around the country. All agreed to return them after the unit presented evidence that their Schieles had been seized by the Nazis from an Austrian cabaret artist murdered because he was Jewish.

But one of America's most respected museums, the Art Institute of Chicago, has refused the unit's efforts to seize a Schiele it holds. It is instead waging, in court, a sustained and very public battle to challenge the trafficking unit's authority.

In a sprawling hearing that extended over four days in recent weeks, the museum argued that the investigators are not only wrong on the facts, but also lack any jurisdiction in this case, and by extension, many others.

"This is an unprecedented, extraordinary, and we submit both legally and factually baseless effort by the Manhattan D.A.'s Office to overextend New York criminal law and to insert itself into a civil property dispute over a work that has been lawfully owned and possessed in another state for decades," Edward B. Diskant, a lawyer for the institute, argued in New York Supreme Court last month.

Matthew Bogdanos, the prosecutor who leads the investigative unit, characterized the Art Institute's efforts as an existential threat to his unit's efforts.

"What they're really arguing for is a return to the good old days, to the halcyon days of a collector's paradise, in which nobody, nobody, nobody was investigating possession of stolen antiquities," he told the presiding judge, Althea Drysdale.

"They're asking this court to set back the clock 50 years ago," he continued, adding, "they're saying disband this problematic antiquities trafficking unit."



The Art Institute of Chicago bought the Schiele drawing in 1966 from an Illinois gallery. Credit...Jakub Porzycki/Nurphoto, via Associated Press

The stakes are evident in the crowd of experts, investigators, invested heirs and art lawyers who have been drawn to witness the proceedings in a Manhattan criminal courtroom. Though museums and collectors sometimes return artifacts on their own initiative or in response to court claims, the district attorney's unit, aided at times by federal investigators, has evolved into the leading U.S. agent for the restitution of stolen artworks.

“This is hugely important for the rest of us,” said Michael McCullough, an art market lawyer, who has been following the unit’s work. “Does the district attorney’s office have authority over an object that’s not in New York?”

Judge Drysdale said she would reconvene the case in January, when she is expected to issue a ruling.

The drawing in question, “[Russian War Prisoner](#),” was once owned by a New York art dealer but was acquired by the museum in 1966 from a gallery in Chicago. All parties agree it had been owned by Fritz Gruber, a renowned Viennese cabaret artist who was arrested by the Nazis in 1938 and sent to his death in a concentration camp.

After the arrest, his collection, which included many Schieles, was inventoried by a Nazi appraiser. Gruber’s wife, Lilly, then consigned the artworks to a storage and shipping company. New York investigators say this was tantamount to surrendering them to the Nazis, who they say controlled the facility. In court papers, they say that Hitler had placed multiple Nazi officials on the company’s board.

The museum has argued that while the storage company was “affiliated” with the Nazi regime, it also provided legitimate storage and moving services to Jewish families, including Lilly Gruber’s two sisters, who used it to flee Austria for Belgium.

“Let me be very clear: This work was not looted by the Nazis,” Mr. Diskant said. “Period.”

Also disputed is what happened to the drawing after the war. Eberhard Kornfeld, a Swiss art dealer [who died last year](#), insisted he bought the work and others from Gruber’s sister-in-law, who ended up in possession of Gruber’s collection.

The investigators say the dealer concocted that story to cover for the fact that he procured the works from the Nazis or their henchmen.

Judge Drysdale must now confront not just those two very different accounts of what occurred more than 60 years ago, but also two completely contrary arguments about whether a matter like this belongs in criminal court. Prosecutors have invoked New York’s statutes on the criminal possession of stolen property to claim jurisdiction in this and many other cases. The museum argues that disputes like this are civil matters and New York criminal law has no place in the discussion.

Some facts are not in dispute. After World War II, “[Russian War Prisoner](#)” and other Gruber Schieles surfaced in the 1950s at a gallery run by Kornfeld. From there they entered the art market and were bought and sold by museums and collectors around the world.



Fritz Grønbaum, a celebrated Jewish cabaret performer and art patron known for his criticism of Nazism, was arrested in 1938 and sent to the Dachau concentration camp in Germany. Credit...Atelier Jacobi/ullstein bild, via Getty Images

In his account, Kornfeld asserted that he had bought the works from the Grønbaum sister-in-law, Mathilde Lukacs, and put forward detailed letters, ledgers and receipts to document their business relationship.

Investigators dispute that. They say the documents were doctored, claiming, for example, that Lukacs's signatures on receipts did not match and were forged.

Mr. Bogdanos told the court that Kornfeld likely concocted the story of buying the Schieles from Lukacs because he had already purchased several other works from her.

"These were reverse engineered," he said, referring to documents Kornfeld put forward. "They were fabricated."

To buttress their argument, prosecutors noted that Lukacs's name was not listed in the provenance for the work when it was originally put up for sale at Kornfeld's gallery in 1956. Prosecutors said Kornfeld only began mentioning Lukacs as his source several decades later.

Mr. Bogdanos asked why the Art Institute is "digging its feet in" and clinging to a "fiction that's held together by gossamer strings."

But the institute pointed to the fact that Kornfeld listed Lukacs as a former owner of a Grønbaum Schiele in a 1973 catalog, when Lukacs was still alive.

"That would have been quite a chance for him to take if he was making this up," Mr. Diskant said, "to say they came from her, with her still alive to refute it."

The museum's broader challenge to the seizure springs from the argument that New York investigators have no jurisdiction to go into another state and, citing criminal law, seize an artwork that has been in Chicago for 60 years. The district attorney's office has based its seizure of artifacts in multiple cases on New York's law barring the possession of stolen property.

“In New York, once stolen, always stolen,” Mr. Bogdanos told the court.

But the institute’s lawyers argued it was wrong to invoke a criminal statute to determine what is in essence a private property dispute and should be a straightforward matter for the civil courts.

“The issue of property ownership, disputes about title, are resolved through civil law, through civil claims,” Mr. Diskant said.



Matthew Bogdanos Credit... Vincent Tullo for The New York Times

Image



Edward Diskant Credit... via Mcdermott Will & Emery

The Grønbaum artworks have already been the subject of considerable civil litigation.

In 2018, a New York Supreme Court [ruled](#) in the case of two other Schiele drawings that Grønbaum never sold or surrendered any works before his death, and that they were indeed looted by the Nazis, making his heirs their true owners.

But in two other civil cases – one directly involving the Art Institute’s “Russian War Prisoner” – federal courts have ruled on procedural grounds that the Grønbaum heirs came forward too late to lay claim to the works. One of the federal judges also described Kornfeld’s account as credible.

The trafficking unit entered the dispute as the latest federal civil court case was unfolding. The unit claims jurisdiction in the matter because the works were bought by the New York gallery from Kornfeld, before being sold off in 1957. The institute argues there is no basis for a New York jurisdiction in its case, noting that the drawing had three other owners – in Connecticut, Louisiana and Illinois – before the museum bought it in 1966.

The Art Institute routinely displayed the work during its many years at the museum until it was [seized in place](#) by investigators last year on the basis of a warrant signed by Judge Drysdale. The institute complains that, by being compelled to turn over the work without a civil or criminal trial, it is being thrust into unknown legal territory, denied access to evidence collected by investigators and denied the ability to call witnesses – all powers it would have under standard criminal or civil proceedings.

Mr. Diskant told the hearing the looting unit had created a legal “ho man’s land.”

“The People,” he said, “are using this illegal process to go after artworks of people, individual collectors, who have art in their home, in their family for decades under the threat of criminal indictment; force an individual who paid good money for a work of art decades ago in another state to just give over the work, without trial or procedural safeguards, or risk being labeled by the district attorney’s office, without charges or a trial, a criminal.”

The Art Institute referred to three other challenges to the trafficking unit’s power. These include recent suits, still outstanding, in federal court in Ohio and California brought by the [Cleveland Museum of Art](#) and [a private collector](#) over the unit’s efforts to seize from them ancient bronze statues it says were looted from [a site in Turkey](#) in the 1960s.

Despite the rarefied topic and the prestige of the two institutions involved, there was a bare-knuckle quality to the debate. The Art Institute accused the district attorney’s office of holding back evidence, of ignoring the law and of being needlessly intimidating by suggesting that those who disagreed with investigators risked being labeled criminals.

Mr. Diskant was blunt in describing the museum’s mission.

“They have taken our property,” he said. “We want it back.”

Mr. Bogdanos accused the museum of trying to turn back the clock to a time when few institutions or major collectors felt the need to even ask questions about where their artworks had come from. These museums and the people challenging him acted like they were entitled, he said, and “used to always getting their way.”

“They don’t like,” he said, “being on the receiving end of justice.”