

# International Cultural Property

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## I. Introduction

The year 2002 saw several new additions to the States Parties of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>1</sup> (UNESCO Convention) and continued bilateral agreements between the United States and other countries pursuant to the Convention on Cultural Property Implementation Act (CPIA).<sup>2</sup> In the courts, there were significant decisions in two major lawsuits involving Holocaust era artworks, as well as a controversial conviction of a New York City antiquities dealer. Significant international repatriations of artifacts also occurred, and several prominent museums issued a joint statement addressing their concern over the increasing number of international repatriation requests.

## II. New States Parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

Parties to the UNESCO Convention agree to adopt the necessary measures to protect cultural property, such as preventing their museums from acquiring cultural property which has been illegally exported from its country of origin, prohibiting the import of cultural property stolen from a museum, public monument, or site, and recovering and returning any such cultural property, if requested. In 2002, two of the largest markets for arts and antiquities, the United Kingdom and Japan, ratified the UNESCO Convention.<sup>3</sup>

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1. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Apr. 24, 1972, 823 U.N.T.S. 231.

2. Convention on Cultural Property Implementation Act, 19 U.S.C. § 2601 (2001).

The United Kingdom, the second largest art market in the world, became a party to the UNESCO Convention on November 1, 2002.<sup>4</sup> According to its Arts Minister, Alan Howarth, the United Kingdom joined the UNESCO Convention in reaction to a “disturbing” level of illicit trafficking in antiquities occurring in that country.<sup>5</sup>

Japan ratified the UNESCO Convention and became a State Party on December 9, 2002.<sup>6</sup> After repeated requests, Japan agreed to the UNESCO Convention’s terms due to increasing international exchanges of cultural assets, and, in part, due to the appointment of Japanese Ambassador Koichiro Matsuura as Director-General of UNESCO.<sup>7</sup> The countries of Albania, Barbados, and Bhutan also ratified the UNESCO Convention in 2002, raising the total number of parties to ninety-seven.<sup>8</sup>

### III. Cultural Property Implementation Act Developments

The CPIA, enacted in 1983 to address concerns regarding the import into the United States of looted and stolen archaeological and ethnological materials, represents a limited ratification of the UNESCO Convention.<sup>9</sup> The United States has entered into bilateral agreements pursuant to the CPIA in an attempt to reduce the number of illicitly exported works that enter the United States. These bilateral agreements can last for a maximum of five years, but can be renewed an indefinite number of times.<sup>10</sup>

In 2002, three existing bilateral agreements with Guatemala, Mali, and Peru were renewed for a second five-year term.<sup>11</sup> One existing bilateral agreement with Canada was not renewed and expired in April.<sup>12</sup> The agreements with Canada and Peru covered a broad range of designated archaeological and ethnological materials, while the agreements with Guatemala and Mali covered only archaeological materials.<sup>13</sup>

One new bilateral agreement with Cyprus was finalized in July 2002.<sup>14</sup> This agreement covers designated archaeological materials of the Pre-Classical through Classical periods

3. UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: List of the 97 States Parties*, available at [http://www.unesco.org/culture/laws/1970/html\\_eng/page3.shtml](http://www.unesco.org/culture/laws/1970/html_eng/page3.shtml) (last visited Mar. 13, 2003) [hereinafter *List*].

4. See Press Release, U.K. Department of Culture, Media and Sport, Government Signs up to UNESCO Convention to Tackle Illicit Trade in Art and Antiquities (Aug. 1, 2002), available at <http://www.culture.gov.uk/heritage/search.asp?Name=/pressreleases/heritage/2002/dcms161> (last visited Jan. 7, 2003).

5. *Id.*

6. See Press Release, UNESCO Calls for Universal Ratification of the 1970 Convention, Following the Example Set by Key Art Market Countries (Sept. 9, 2002), available at <http://www.unesco.org/bpi/eng/unes-copress/2002/02-64e.shtml> (last visited Jan. 7, 2003).

7. See Eiji Yamamori, *Smuggler's blues: Japan will sign a convention to return stolen artifacts, but cultural affairs officials are skeptical*, INTERNATIONAL HERALD TRIBUNE/ASHAI SHIMBUN, Nov. 22, 2002, available at <http://www.asahi.com/english/national/K2002112200295.html> (last visited Jan. 7, 2003).

8. *List*, *supra* note 3.

9. 19 U.S.C. § 2602 (2003).

10. *Id.*

11. See U.S. Dep’t of State, *U.S. Protection of Pre-Columbian Archaeological Materials*, available at <http://exchanges.state.gov/culprop/gtfact.html> (last visited Sept. 30, 2002) [hereinafter *Guatemala*]; U.S. Dep’t of State, *U.S. Protection of Archaeological Material from the Region of the Niger River Valley and Bandiagara Escarpment*, available at <http://exchanges.state.gov/culprop/mlfact.html> (last visited Sept. 30, 2002) [hereinafter *Mali*]; U.S. Dep’t of State, *U.S. Protection of Archaeological and Ethnological Material*, available at <http://exchanges.state.gov/culprop/pefact.html> (last visited June 6, 2002) [hereinafter *Peru*].

12. See U.S. Dep’t of State, *U.S. Protection of Archaeological and Ethnological Materials*, available at <http://exchanges.state.gov/culprop/cafact.html> (last visited Apr. 19, 2002) [hereinafter *Canada*].

13. *Canada*, *supra* note 12; *Peru*, *supra* note 11; *Guatemala*, *supra* note 11; *Mali*, *supra* note 11.

(approximately eighth millennium B.C. to 330 A.D.).<sup>15</sup> Since April 1999, emergency import restrictions have been imposed on designated Cypriot Byzantine ritual and ecclesiastical ethnological materials of the fourth through fifteenth centuries A.D.<sup>16</sup> Absent an export permit or satisfactory evidence of export prior to the date of designation, importing designated materials into the United States is illegal.

#### IV. Recent Cases or Controversies Involving Cultural Property

##### A. *ALTMANN v. REPUBLIC OF AUSTRIA*

In *Altmann v. Republic of Austria*, the Ninth Circuit Court of Appeals affirmed a California district court's ruling that The Austrian Gallery (Gallery) and Austria (with the Gallery, collectively referred to as Austria) could be sued in California for appropriations of Nazi-era artworks in Austria.<sup>17</sup>

*Altmann* involves a Jewish family's claims of ownership of six Gustav Klimt paintings held by the Gallery, which are valued at approximately \$150 million. The Nazis seized the property of the plaintiff's uncle, Ferdinand Bloch-Bauer, when he left Austria in 1938. The Nazi lawyer who liquidated Ferdinand's estate initially kept the six paintings at issue in this suit, and through various transactions over the years, the paintings ended up at the Gallery. Ferdinand died a few months after the war ended.<sup>18</sup> Ferdinand's wife, who died in 1925, left a will "kindly" requesting that Ferdinand donate his paintings to the Gallery upon his death, but Ferdinand never did so.<sup>19</sup>

In 1947, Ferdinand's heirs attempted to recover the paintings. The Gallery claimed that Ferdinand's wife had bequeathed the paintings to the Gallery upon her death, although the Gallery knew it had no documents supporting that claim.<sup>20</sup> An Austrian official told the heirs' lawyer that donations to the Gallery were necessary in order to procure export licenses for any of Ferdinand's collection, and the lawyer was pressured into agreeing to donate the Klimt paintings in exchange for export licenses for the remainder of Ferdinand's estate.<sup>21</sup>

In 1998, after the seizure of two Egon Schiele paintings in New York, Austria opened the Gallery's archives in response to allegations that the Gallery held artworks stolen by the Nazis.<sup>22</sup> Documents found in the archives revealed the questionable circumstances surrounding the Gallery's acquisition of the Klimt paintings in 1948.<sup>23</sup> Austria also created a committee of government officials and art historians to assess whether certain works of art were stolen and if they should be returned, however, political pressure led the committee to recommend that the six Klimt paintings not be returned.<sup>24</sup> The plaintiff initially intended

14. See U.S. Dep't of State, *U.S. Protection of Pre-Classical and Classical Archaeological Material*, available at <http://exchanges.state.gov/culprop/cyfactpc.html> (last visited July 19, 2002).

15. *Id.*

16. See U.S. Dep't of State, *U.S. Protection of Byzantine Ecclesiastical and Ritual Ethnological Materials*, available at <http://exchanges.state.gov/culprop/cyfactb.html> (last visited July 19, 2002).

17. *Altmann v. Austria*, No. 01-56003, 2002 U.S. App. LEXIS 25517 (9th Cir., Dec. 12, 2002).

18. *Id.* at \*7-8.

19. *Id.* at \*6.

20. *Id.* at \*8.

21. *Id.* at \*9.

22. *Id.*

23. *Id.*

24. *Id.* at \*9-10.

to file suit in Austria, but because of the \$135,000 filing fee, the plaintiff filed suit in a U.S. federal court in California.<sup>25</sup>

Austria moved to dismiss the suit, arguing that it fell within the doctrine of sovereign immunity, and contested both the jurisdiction and venue of the court.<sup>26</sup> The plaintiff alleged that the taking of her family's paintings violated international law and thus falls within an exception to sovereign immunity.<sup>27</sup> The district court agreed and denied Austria's motion on May 4, 2001.<sup>28</sup>

Austria appealed, but the Ninth Circuit Court of Appeals affirmed the denial of Austria's motion. First, the court explained that the Foreign Sovereign Immunities Act<sup>29</sup> (FSIA) provides the only basis upon which U.S. courts may obtain jurisdiction over a foreign state and its agencies and codifies exceptions to sovereign immunity.<sup>30</sup> The court rejected Austria's argument that the FSIA exceptions to sovereign immunity could not be applied retroactively to conduct that occurred before 1952.<sup>31</sup> Prior to that time, the U.S. State Department granted sovereign immunity on a case-by-case basis as a matter of "grace and comity."<sup>32</sup> Since Austria could not legitimately have expected to receive "immunity as a matter of grace and comity for the wrongful appropriation of Jewish property" before 1952, applying the FSIA exceptions did not impair any of Austria's substantive rights.<sup>33</sup> Thus, it was not impermissible to retroactively apply the exceptions to sovereign immunity in this case.

Secondly, the Court of Appeals ruled that the plaintiff had properly alleged a violation of international law within the expropriation exception of the FSIA and that Austria was engaged in commercial activity in the United States.<sup>34</sup> A valid taking under international law (1) would have served a public purpose, (2) would not have singled out aliens for regulation by the state, and (3) would have required the state to pay just compensation for the taking.<sup>35</sup> However, in this case, it was alleged that (1) the appropriation of the property did not serve a public purpose; (2) Ferdinand was not a citizen of Austria, but was a Czech whose property was taken because of his religious heritage; and (3) the taking was without compensation.<sup>36</sup> Additionally, the Gallery engaged in commercial activities in the United States, including authoring, editing, and publishing in the United States two books that contained photographs of the stolen paintings, and advertising in the United States the exhibition of these paintings in Austria.<sup>37</sup>

The Court of Appeals also rejected Austria's personal jurisdiction and due process arguments, finding that personal jurisdiction exists pursuant to the terms of the FSIA, and any due process concerns had been satisfied by the plaintiff's allegations of Austria's commercial activity in the United States.<sup>38</sup>

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25. *Id.* at \*10.

26. *Altmann v. Austria*, 142 F. Supp. 2d 1187 (C.D. Cal. 2001).

27. *Id.* at 1195.

28. *Id.*

29. 28 U.S.C. § 1602 *et seq.* (1994).

30. *Altmann v. Austria*, 317 F.3d 954, 2002 U.S. App. LEXIS 25517, at \*12 (9th Cir., Dec. 12, 2002).

31. Courts examining the retroactivity of the FSIA date its origin to a 1952 proclamation from the U.S. State Department. *Id.* at \*12.

32. *Id.* at \*13.

33. *Id.* at \*24.

34. *Id.* at \*35.

35. *Id.* at \*36.

36. *Id.* at \*23.

37. *Id.* at \*24–25.

Finally, the Court of Appeals rejected Austria's improper venue and *forum non conveniens* argument. Venue was appropriate in the Central District of California because the publications and advertisements that supported jurisdiction over Austria were distributed in that district.<sup>39</sup> However, on the *forum non conveniens* issue, the Court of Appeals disagreed with the district court's opinions that Austrian courts did not provide an "adequate alternative forum" because of its excessive court filing fees, and that the Austrian thirty-year statute of limitations may have barred plaintiff's claim.<sup>40</sup> Nonetheless, the court ruled that the plaintiff's choice of forum should not be overruled unless "the balance is strongly in favor of the defendant."<sup>41</sup> Citing the plaintiff's advanced age, the need for travel, the costs of litigating in Austria, and the lack of any significant conflicts of law, the court ruled that Austria could not show that it would suffer any "oppression and vexation" out of proportion with plaintiff's convenience.<sup>42</sup>

#### B. *U.S. v. PORTRAIT OF WALLY*

Reversing his earlier decision, in 2002 Judge Michael Mukasey of the Southern District of New York ruled that the U.S. government may seek forfeiture of an Egon Schiele painting ("Portrait of Wally") alleged to be stolen property that was illegally imported into the United States.<sup>43</sup>

The United States alleged that the original owner of the painting was Lea Bondi Jaray (Bondi), an Austrian Jew who, in 1938, lost her Viennese art gallery to a Nazi named Welz as part of the 1938 Nazi "Aryanization" program. Welz also demanded that Bondi give him "Portrait of Wally," which was part of Bondi's private collection in her home. Allegedly under duress and wanting to leave Austria, Bondi gave him the painting. After the war, Welz was arrested as a war criminal, and his property—including the painting—was seized by U.S. armed forces. The United States returned the painting to the Austrian government agency designated to receive stolen artwork. Subsequently, the painting was erroneously shipped to the Austrian National Gallery (Gallery) as part of another Austrian Jew's estate.<sup>44</sup>

Bondi made unsuccessful attempts to recover the painting after the war. Around 1953, the United States alleged that Bondi asked Dr. Rudolph Leopold, a collector of Schiele paintings, to help her re-acquire "Portrait of Wally" from the Gallery, but instead Dr. Leopold obtained the painting for himself. A few years later, Bondi learned of Dr. Leopold's acquisition and she retained a lawyer who contacted the Gallery and Dr. Leopold and informed them of Bondi's claims; however, he was told that the painting came from another Austrian Jew's estate. Bondi decided at that time not to sue, and then died in 1969. In 1994, Dr. Leopold sold the painting to the Leopold Foundation (Leopold), an Austrian museum of which he is "Museological Director for life."<sup>45</sup>

38. *Id.* at \*25–27. The court also rejected Austria's argument that the other heirs to Ferdinand's estate were necessary and indispensable parties within the meaning of Fed. R. Civ. P. 19(a). *Id.* at \*28.

39. *Id.* at \*45–46.

40. *Id.* at \*47.

41. *Id.* at \*30–31.

42. *Id.*

43. *United States v. Portrait of Wally*, No. 99 Civ. 9940 (MBM), 2002 WL 553532 (S.D.N.Y. Apr. 12, 2002) [hereinafter *Portrait of Wally II*].

44. *Id.* at \*1–2.

45. *Id.* at \*3.

In 1997, the Museum of Modern Art in New York (MoMA) borrowed the painting from the Leopold as part of a temporary exhibition of the Leopold's collection of Schiele paintings. When the exhibition ended in January of 1998, the Manhattan District Attorney subpoenaed the painting as evidence in a grand jury investigation into whether the painting was stolen. The painting was not returned to the Leopold Foundation, but instead was kept in storage at MoMA. MoMA's motion to quash the subpoena was eventually granted by the New York Court of Appeals on September 21, 1999.<sup>46</sup> However, that same day, a U.S. Magistrate Judge issued a seizure warrant for the painting. The next day the United States filed a forfeiture action, claiming that the painting should be forfeited because the Leopold transported it in foreign commerce knowing that it was stolen, which was a violation of the National Stolen Property Act (NSPA).<sup>47</sup> MoMA and the Leopold successfully moved to dismiss the suit, arguing that pursuant to the "recovery doctrine" the painting was no longer stolen because after World War II U.S. forces recovered the painting as an agent of the true owner.<sup>48</sup> The court allowed the United States to file an amended complaint, and MoMA and the Leopold again filed motions to dismiss.

After finding that MoMA had standing to move to dismiss the forfeiture action,<sup>49</sup> the court rejected the Leopold's arguments that the act of state, international comity, and political question doctrines and the Austrian State Treaty of 1955 warranted dismissal of the forfeiture action.<sup>50</sup> However, in the most notable portion of the opinion, the judge reversed his own earlier ruling on whether the painting was stolen property within the meaning of the NSPA.<sup>51</sup> Based on the U.S. government's new allegations, the judge now ruled that the recovery doctrine was inapplicable. The U.S. armed forces merely collected all property and were not charged by law with holding any property, such as the stolen painting, on the original owner's behalf. The U.S. forces merely sorted all seized property and transferred it to the Austrian authorities. The lack of knowledge and duty negated any possible agency relationship and thus precluded any application of the recovery doctrine.<sup>52</sup>

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46. *In re Grand Jury Subpoena Duces Tecum Served on the Museum of Modern Art*, 719 N.E.2d 897 (1999). The motion to quash was based on section 12.03 of New York's Arts and Cultural Affairs Law, which, at that time (it has since been amended), provided that:

No process of attachment, execution . . . or any kind of . . . seizure shall be served or levied upon any work of fine art while the same is enroute to or from, or while on exhibition or deposited by a nonresident exhibitor at any exhibition held under the auspices or supervision of any museum, college, university or other nonprofit art gallery, institution or organization within any city or county of this state.

N.Y. ART & CULT. AFF. LAW § 12.03 (McKinney 2002).

47. The NSPA provides that:

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud . . . [s]hall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 2314 (1997). The forfeiture provisions for violation of the NSPA arise from 18 U.S.C. § 545, 19 U.S.C. § 1595(a)(C) and 22 U.S.C. § 401(a).

48. *United States v. Portrait of Wally*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000) [hereinafter *Portrait of Wally I*].

49. *Portrait of Wally II*, *supra* note 43, at \*5.

50. *Id.* at \*6-9.

51. *Portrait of Wally I*, *supra* note 48, at 294.

52. *Portrait of Wally II*, *supra* note 43, at \*12-13.

The Leopold also argued that either the Gallery or Dr. Leopold acquired good title to the painting through the Austrian law of prescription, and therefore the painting was no longer stolen at the time it was imported into the United States. Acquiring title through prescription requires both possession for a statutory period of time and the possessor's belief that the possession is lawful. However, the court again ruled for the United States, which alleged that both the Gallery and Dr. Leopold were aware of Bondi's claim and had reasons to doubt their rights to the painting.<sup>53</sup> The court also rejected the Leopold's arguments that Bondi's claims had expired, that the complaint failed to properly allege the elements of conversion or scienter, and that the vagueness of Austrian law made application of the NSPA unfair.<sup>54</sup> Therefore, the complaint contained allegations that were sufficient to withstand the motion to dismiss.

### C. SIGNIFICANT RETURNS AND REPATRIATIONS

In April of 2002, two Khmer artifacts that had been donated to the Honolulu Academy of Arts and that were later discovered to have been looted from Cambodia were returned. Following the objects' publication in *One Hundred Missing Objects* by the International Council of Museums in 1996, it was discovered that the artifacts' provenances had been fabricated.<sup>55</sup> A carved stone jaguar head, seized by police from a Brooklyn garage in November 1999, was returned to Guatemala. It is believed that the 500-pound sculpture was hacked by looters from a site in Guatemala's Pacific coastal highlands.<sup>56</sup>

In July, the Princeton University Art Museum announced that it would voluntarily return to Italy a fragmentary Roman marble funerary monument in the form of a pediment, with a Latin inscription and a bust in high relief representing a deceased, bearded man named Aphthonetus. The monument dates from the reign of Hadrian (117–138 A.D.).<sup>57</sup> Also in July, the Michael C. Carlos Museum at Emory University announced that it would return to Egypt a male mummy that scholarly evidence suggests is that of the missing pharaoh Ramesses I.<sup>58</sup> Finally, in November, French customs returned to Mali sixteen terracotta statues (thirteenth through fifteenth centuries) from the Niger River Delta that were originally seized in 1996.<sup>59</sup>

### D. CONVICTION AND APPEAL OF ART DEALER—RECEIVING AND POSSESSING ARTWORKS STOLEN FROM EGYPT

In early January 2002, Judge Rakoff of the Southern District of New York denied<sup>60</sup> defendant Frederick Schultz's motion to dismiss his indictment by the U.S. government for

53. *Id.* at \*13–15.

54. *Id.* at \*15–17, 19–21.

55. See Honolulu Academy of Arts, *Academy Repatriates Sculptures to Cambodia*, available at [http://www.honoluluacademy.org/about/guild/news\\_s2002\\_p3.htm](http://www.honoluluacademy.org/about/guild/news_s2002_p3.htm) (last visited Mar. 13, 2003).

56. See Roger Atwood, *Straight Outta Brooklyn*, 55 *ARCHAEOLOGY* 3 (May/June 2002), available at <http://www.archaeology.org/magazine.php?page=0205/newsbriefs/brooklyn> (last visited Jan. 17, 2003).

57. See Press Release, Resnicow Schroeder, *Princeton University Art Museum Voluntarily Returns Ancient Sculpture to Italy* (July 1, 2002), available at <http://www.resnicowschroeder.com/news/prince.html> (last visited Feb. 4, 2003).

58. See Press Release, Emory University, *U.S. State Department, Recent Reports* (July 2002), available at <http://exchanges.state.gov/culprop/recent.html> (last visited Mar. 13, 2003).

59. See Press Release, Emory University, *U.S. State Department, Recent Reports* (Nov. 2002), available at <http://exchanges.state.gov/culprop/recent.html> (last visited Mar. 13, 2003).

60. *United States v. Schultz*, 178 F. Supp. 2d 445 (S.D.N.Y. 2002).

conspiring to receive and possess antiquities stolen from Egypt in violation of the NSPA.<sup>61</sup> Until shortly before his indictment, Schultz was the President of the National Association of Dealers in Ancient, Oriental, and Primitive Art. He allegedly conspired with British conservator, Jonathan Tokeley-Parry, to remove antiquities that were subject to Egypt's national ownership law and then to attempt to sell them to collectors and museums in the United States. Schultz's motion to dismiss the indictment argued (1) that antiquities that had never been in the actual possession of the Egyptian government were not considered stolen property under U.S. law; (2) that the CPIA was the total expression of U.S. policy and law on stolen antiquities, at least in the international arena; and (3) that the Egyptian law was not truly an ownership law, but rather was in reality an export control.

Judge Rakoff's opinion rejected these arguments, holding that enactment of the CPIA had no effect on the NSPA, which could apply to antiquities stolen abroad. The opinion further held that there was no reason to exempt such stolen antiquities from the NSPA merely because Egypt had chosen this method to help in protecting its archaeological sites and artifacts, and that the Egyptian law was, in fact, an ownership law enforced domestically within Egypt, as well as externally. Judge Rakoff wrote:

As for defendant's second argument—to the effect that American law does not, or should not, recognize the kind of “special” property interest created by “patrimony” laws like [Egypt's] Law 117 . . . —it should first be noted that . . . [the NSPA], which expressly refers to foreign commerce, has consistently “been applied to thefts in foreign countries and subsequent transportation into the United States,” . . . an implicit recognition of the interest of the United States in deterring its residents from dealing in the spoils of foreign thefts. In effectuating this policy, why should it make any difference that a foreign nation, in order to safeguard its precious cultural heritage, has chosen to assume ownership of those objects in its domain that have historical or archeological importance, rather than leaving them in private hands?<sup>62</sup>

Judge Rakoff relied on an earlier Fifth Circuit opinion, *United States v. McClain*,<sup>63</sup> which affirmed the conviction under the NSPA of several dealers for conspiring to possess and sell Pre-Columbian antiquities stolen from Mexico in violation of Mexico's national ownership law.

Shortly after the denial of Schultz's motion, the case went to trial. Schultz was convicted and later sentenced to thirty-three months in jail and ordered to pay a fine of \$50,000 and to return a relief still in his possession to the Egyptian government.

Schultz has now appealed his conviction to the Second Circuit Court of Appeals. On appeal, Schultz has argued primarily that the NSPA should apply only to ownership of objects that fit the common law definition of property ownership and that the NSPA should be restricted to objects that fit the CPIA's concept of “stolen cultural property,”—which are objects “documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party.”<sup>64</sup> Schultz also raised

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61. The NSPA makes it a crime to “receive[], possess[], . . . sell[], or dispose{ } of any goods, wares, or merchandise . . . of the value of \$5,000 or more, . . . which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken. 18 U.S.C. § 2315 (2003).

62. *Schultz*, 178 F. Supp. 2d at 448–49.

63. *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977); *United States v. McClain*, 593 F.2d 658 (5th Cir. 1979).

64. 19 U.S.C. § 2607 (2003).



questions concerning the jury instruction given on “conscious avoidance” and various other aspects of the trial proceedings.

E. MUSEUMS’ STATEMENT REGARDING REPATRIATION OF ARTIFACTS

In December of 2002, several prominent museums from around the world issued a joint declaration addressing what the British Museum refers to as “the threat to the integrity of universal collections posed by demands for the restitution of objects to their countries of origin.”<sup>65</sup> The declaration states that “[a]lthough each case has to be judged individually, we should acknowledge that museums serve not just the citizens of one nation but the people of every nation,” and “[t]he objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that are not comparable with current ones.”<sup>66</sup>

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65. See The British Museum, *Newsroom*, available at <http://www.thebritishmuseum.ac.uk/newsroom/current/universalmuseums.html> (last visited Feb. 4, 2003).

66. *Id.*

