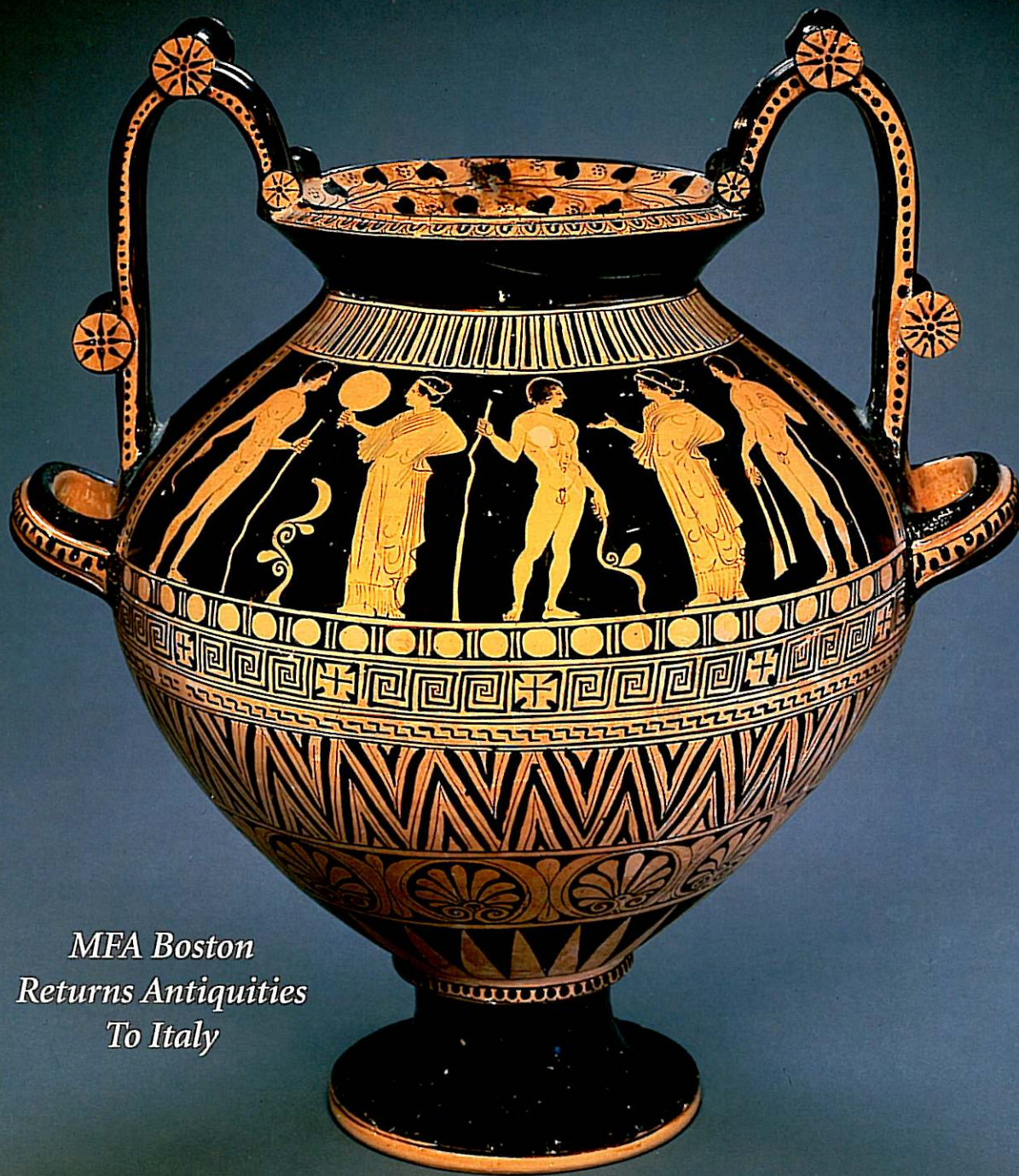


IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

VOLUME 9 NUMBER 1 2006



*MFA Boston
Returns Antiquities
To Italy*

HENRY ADAMS ON THOMAS HART BENTON FAKES
KLIMT RESTITUTION — THE INSIDE STORY
DAMAGE TO MUNCH'S SCREAM

INCORPORATING **STOLEN ART ALERT**

THE RECOVERY FROM AUSTRIA OF FIVE PAINTINGS BY GUSTAV KLIMT

AN IFAR EVENING WITH THE NEUE GALERIE
JULY 31, 2006

E. RANDOL SCHOENBERG*

EDITOR'S NOTE:

On July 31, 2006, IFAR held an extraordinary IFAR Evening at — and with — the Neue Galerie in New York where E. Randol Schoenberg, grandson of the composer Arnold Schoenberg and attorney for Maria Altmann, described his successful eight-year battle with the Austrian government to recover five paintings by Gustav Klimt that had belonged to Mrs. Altmann's uncle, Ferdinand Bloch-Bauer, before WWII. The most famous of the paintings, "Adele Bloch-Bauer I," had just been purchased by the Neue Galerie, and the other four were temporarily on exhibit, prior to sale at Christie's. IFAR's guests were treated to a private viewing of the works and an elegant reception in the Galerie's Cafe Sabarsky. The Evening was so popular that Mr. Schoenberg agreed to give a second talk the same day, but IFAR was still unable to accommodate all who wished to attend. We are grateful to the Neue Galerie for making their lovely space available to us and to Chubb Personal Insurance for their underwriting support of the event. The following is an edited version of the talk and Q&A.



I would be pleased to speak about this case anywhere and anytime, but it is a special pleasure for me to be at the beautiful Neue Galerie, in such close proximity to the famous gold portrait of Adele Bloch-Bauer (Fig. 1) and the four other recovered Klimt paintings (Figs. 2–5), and to relay the long saga of how they came to be here. The very first time that I saw the painting of Adele Bloch-Bauer, I was just eleven years old, on my

first trip to Vienna. My mother brought me to the Austrian Gallery Belvedere and said, "Do you see this picture? It shows Adele Bloch-Bauer, the aunt of your grandmother's friend, Maria Altmann." Little did I know that thirty years later I would be responsible for bringing the painting out of that museum and here to New York for permanent display. I couldn't be happier.

Let me start this story a hundred years ago with a history of the paintings. Gustav Klimt (1862–1918) was the leading painter in Vienna at the turn of the

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FIGURE 1. Gustav Klimt. *Adele Bloch-Bauer I*, 1907. Oil, silver, and gold on canvas. 138 x 138 cm. Neue Galerie, New York. Photo: Erich Lessing / Art Resource, NY.

last century, when there was an enormous outpouring of intellectual development in just about every field, whether Sigmund Freud in psychology or Gustav Mahler and my grandfather, Arnold Schoenberg, in music. Art was no exception. The wonderful exponents of that art are in this museum. Viennese arts patrons included a number of recently wealthy Jewish families, among them the Bloch-Bauers. The Bloch-Bauers were actually two brothers named Bloch who married two sisters named Bauer, and the families became Bloch-Bauer. The older ones, Gustav and Theresa Bloch-Bauer, had five children, the youngest of which, Maria Altmann, is now ninety years old and was my principle client and my grandmother's good friend. She is the last surviving Bloch-Bauer, if you will. Her uncle and aunt, Ferdinand and Adele Bloch-Bauer, did not have children. Perhaps as a result of that they turned to collecting art.

Ferdinand's job as the president of one of the largest sugar manufacturing companies in central Europe helped them acquire their paintings. Sugar is important to the diet in that part of the world so this sugar baron, as he was known, Ferdinand Bloch-Bauer, had the ability to buy quite a number of artworks. He bought not only these paintings by Klimt, but also an enormous collection of older Austrian works, including works by 18th and 19th century masters. He had nine paintings by Ferdinand Waldmüller (1793-1865), whom no one knows today, but who at the time was the favorite Austrian painter of a young art student in Vienna named Adolf Hitler. The Bloch-Bauers also had a three-hundred-piece porcelain collection, which was the largest and most wonderful of its time. Perhaps thanks to Adele Bloch-Bauer, they commissioned two portraits from Gustav Klimt.



FIGURE 2. Left: Gustav Klimt. *Adele Bloch-Bauer II*, c.1912. Oil on canvas. 190 x 120 cm. Estates of Ferdinand and Adele Bloch-Bauer. Photo: Erich Lessing / Art Resource, NY.

FIGURE 3. Above: Gustav Klimt. *Apple Tree I*, 1912. Oil on canvas. 110 x 110 cm. Estates of Ferdinand and Adele Bloch-Bauer. Photo: Erich Lessing / Art Resource, NY.

ADELE AND THE PAINTINGS

Maria Altmann characterizes her aunt Adele as a Socialist socialite — extremely wealthy and yet very civic-minded. She supported orphanages and workers and was a big fan of the leading Socialist politician at the time, Karl Renner. She also liked modern art and, being somewhat of an intellectual but not having gone into any field, she surrounded herself with the intellectuals and artists of the time including Klimt, the composer Richard Strauss, and various writers and politicians. Adele must have been the one who convinced her husband to commission the two wonderful portraits of herself (Figs. 1 and 2) on exhibit, and to buy the other three landscapes on exhibit (Figs. 3–5).

Ferdinand Bloch-Bauer purchased two other Klimt paintings: one was a landscape of a beautiful castle, *Schloss Kammer am Attersee III* (Fig. 6), which I'll discuss, and then, in the 1920s, another portrait of

a family friend, *Amalie Zuckerkandl* (Fig. 7). So at one time Ferdinand Bloch-Bauer had seven Klimt paintings. There were, I think, only three collecting families that had that many Klimt paintings; all of them happened to be Jewish. In addition to the Bloch-Bauers, there was the Zuckerkandl family, which had eight or nine Klimts at various times; another was the Lederer family, with about ten or more Klimts. So these three families were responsible for a large proportion of Klimt's overall output. He died in 1918 leaving behind perhaps 80-100 major works, of which these five are representative.

Adele and Ferdinand Bloch-Bauer displayed the two portraits of Adele and four landscapes by Klimt in a room in their home in Vienna. Unfortunately, Adele died very suddenly of meningitis in 1925. She left a handwritten will that she had penned two years earlier when her mother had died. In that will she made a number of bequests to orphanages and the workers of Vienna, and she then added a paragraph that says:



FIGURE 4. Gustav Klimt. *Birch Forest*, 1903. Oil on canvas. 110 x 110 cm. Estates of Ferdinand and Adele Bloch-Bauer. Photo: Erich Lessing / Art Resource, NY.

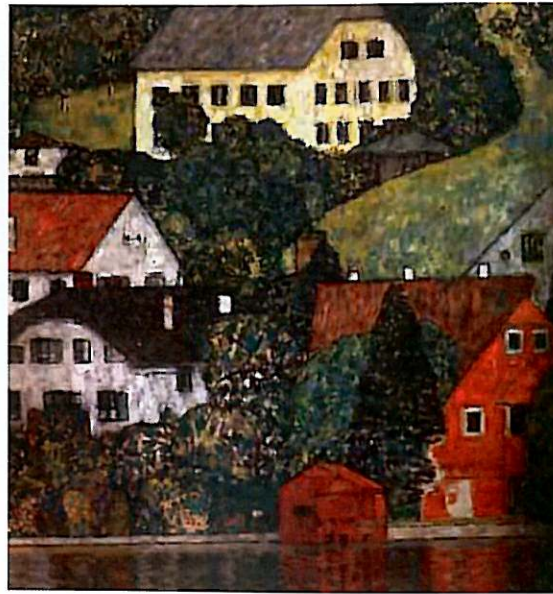


FIGURE 5. Gustav Klimt. *Houses at Unterach on the Attersee*, c.1916. Oil on canvas. Estates of Ferdinand and Adele Bloch-Bauer.

*I ask my husband to give my two portraits
and the four landscapes by Gustav Klimt to
the Austrian Gallery upon his death.*

How was that will seen at the time? In 1926 Maria Altmann's father, Gustav Bloch-Bauer, who was the executor of Adele's estate and also the lawyer for the family, filed the document in the Viennese court. The filing describes Adele's will and says that she makes various bequests which do not have the binding character of a testamentary request. In other words, the will, he says, is just a wish. But Adele's husband, Ferdinand, dutifully promises to fulfill her wishes. Gustav Bloch-Bauer added: "It should be noted that the Klimt paintings were not her property but his." So the circumstance in 1925, when Adele died, was that the paintings were Ferdinand's property; she left a request in her will, and he, at that time, intended to fulfill her wishes and donate these paintings to the Austrian Gallery. In fact, in 1936 before he died, he donated the missing landscape, *Schloss Kammer am Attersee III*

**"So the circumstance in 1925,
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the Austrian Gallery."**

(Fig. 6), to the Austrian Gallery and replaced it in the same room in his home with a portrait of himself by Oscar Kokoschka (Fig. 8). So he was left with the five Klimt paintings on exhibit (Fig. 1–5) and the *Portrait of Amalie Zuckerkandl* (Fig. 7), which hung in a different room. According to Maria Altmann, the Klimt paintings were set apart in the house in what they called a memorial room, where there were always fresh



FIGURE 6. Gustav Klimt. *Schloss Kammer am Attersee III (Wasserschloss)*, 1910. Oil on canvas. Österreichische Galerie im Belvedere, Vienna, Austria. Photo: Erich Lessing / Art Resource, NY.



FIGURE 7. Gustav Klimt. *Amalie Zuckerkandl* (unfinished), 1917-18. Oil on canvas. 128 x 128 cm. Österreichische Galerie im Belvedere, Vienna, Austria. Photo: Erich Lessing / Art Resource, NY.

flowers, and Ferdinand, apparently, could go and think about his deceased wife and look at the paintings.

THE WAR

In 1938 everything changed for Austrian Jewish families. In March of that year the Nazis annexed Austria and Hitler returned to his homeland triumphantly. Jews like Ferdinand Bloch-Bauer were high on the list of targets of the Nazis even before they entered, and so Ferdinand fled from Vienna in 1938, on the eve of the Anschluss, first to his castle — really a large estate — outside of Prague, Czechoslovakia, where the family would spend summers. Maria Altmann also spent many summers there, and I think Klimt actually visited that castle about twenty years before. From Czechoslovakia Ferdinand escaped to Zurich, Switzerland where he remained until the end of the war. As an interesting aside, his castle then became the home of Reinhard Heydrich, who was known as the *Reichsprotektor* of Bohemia and Moravia. Heydrich was the architect of the final solution; he held the Wannsee Conference. Thus, the extermination of the Jews of Europe was presumably plotted from within Ferdinand's home in Czechoslovakia.

Meanwhile, in Vienna, Ferdinand's home was ransacked and liquidated. Ferdinand hired a Nazi lawyer with the unfortunate name of Dr. Eric Führer to fend off the Nazi efforts at liquidating his estate, but that was unsuccessful, and Dr. Führer turned into the liquidator himself, selling off all of Ferdinand's assets to pay taxes that the Nazis had levied against him. This included the home where the paintings were once housed. That home was used as the headquarters for the German railroad in Vienna. So, while Heydrich was planning the extermination of the Jews from Ferdinand's home outside Prague, the deportations of 60,000 Austrian Jews was probably handled from Ferdinand's home in Vienna.

What happened to his paintings? As I mentioned, Ferdinand's collection attracted the immediate attention of the Nazis. Hitler himself was a huge fan of Waldmüller, and Ferdinand had one of the finest Waldmüller collections in Vienna, with nine of them up for the taking. Hitler ended up with several of them, and several were purchased for his planned Führer Museum in Linz, Austria, near his birthplace. Goering was given a couple of them by a friend who bought them from Dr. Führer, and the others were



FIGURE 8. Oskar Kokoschka. *Portrait of Ferdinand Bloch-Bauer*. Kunsthaus Zurich. © 2006 Artists Rights Society (ARS), New York/ProLitteris, Zürich.

dispersed. The Klimt paintings, however, were a little too modern for the taste of the top Nazis, so they went primarily to local Austrian museums. The Austrian Gallery obtained the gold portrait (Fig. 1) and the *Apple Tree* (Fig. 3) from Dr. Führer in exchange for the return of the castle landscape, *Schloss Kammer am Attersee III* (Fig. 6), which Ferdinand had already donated in 1936, so Dr. Führer got *Schloss Kammer am Attersee III* back. He then sold that castle landscape to an illegitimate son of Gustav Klimt named Gustav Uccicky, a famous Nazi film director who liked to collect paintings by his father. Uccicky bought not only the landscape that Ferdinand had donated to the Austrian Gallery, but at least three others that have recently been returned to Jewish families, including one that was returned to the family of Maria Altmann's brother-in-law, Bernhard Altmann.

The Austrian Gallery bought the standing portrait of Adele Bloch-Bauer (Fig. 2) in 1943 from Dr. Führer, so the Gallery ended up with three of the paintings by the end of the war. The *Birch Forest* (Fig. 4), an early landscape, was purchased by the City Museum of Vienna, and Dr. Führer himself kept *Houses at*

Unterach on the Attersee (Fig. 5) along with eleven other works from Ferdinand's collection. Thus, at the end of the war, the Austrian Gallery had three of the Klimt paintings, the two portraits and *Apple Tree*; the City Museum had *Birch Forest*; and *Houses at Unterach on the Attersee* was with Dr. Führer.

THE ALTMANNS

What happened to Ferdinand's family? Ferdinand's sister was killed, but the children of his brother Gustav managed to survive. Maria Altmann, the youngest, came to Los Angeles, California. Her story is a fascinating one. She married at age 21 at the end of 1937, so she had been married just a few months when the Anschluss took place in March of '38. Her husband, Fritz Altmann, was the much younger brother of Bernhard Altmann, the famous sweater manufacturer. Bernhard, like Ferdinand Bloch-Bauer, was very high on the list of Nazi targets, and he fled immediately before the Anschluss, but because he was in the textile business, he was able to tell his customers in other countries not to send their checks to the Vienna office. Rather, he would pick them up. So he went to Paris and London and Rome, picked up checks from his customers, and was able to set up shop in England. The Nazis responded by selling basically the entire contents of his home in June of 1938. Then they arrested his younger brother Fritz, Maria's husband, and sent him to Dachau. They held Fritz as ransom until Bernhard agreed to return the receivables and sign over his sweater company to the Nazi "Aryanizer," which Bernhard did. Bernhard then arranged the escape of Maria and Fritz (still under house arrest) through Germany, up into Holland, and then to freedom in England. On the eve of war, they managed to go to the United States, first to Fall River, Massachusetts, and then to Hollywood.

In Hollywood Maria and Fritz reconnected with Fritz's longtime friend, my grandfather on my mother's side, Eric Zeisl, also a composer. The Zeisls and the Altmanns became very close friends, and my mother essentially grew up with the Altmann children, which will explain how I get involved with the situation a little bit later. So, at the end of the war, Maria

and her siblings escaped. Most of the others ended up in Canada. One sister who ended up in Croatia, where her husband was executed after the war by the communists for being a capitalist, ultimately escaped to Canada also. So, Ferdinand's nieces and nephews were outside of Austria, and Ferdinand was in Switzerland. He lived to see the end of the war, but died in Zurich in November 1945. Because he hadn't recovered any of his property, he left behind a very short will. Not surprisingly it did not leave any paintings to the Austrian Gallery. Rather, Ferdinand left his entire estate, consisting only of restitution claims, to his two nieces and one of his nephews. It fell on those three heirs to locate Ferdinand's prop-

"The [Austrian government] would deny export permits for large portions of the restituted collections and coerce families into making donations of the artworks."

erty and to recover as much as possible. Maria's older brother Robert, who had changed his name to Robert Bentley in Vancouver, hired a family friend, Dr. Gustav Rinesch in Vienna, and Dr. Rinesch was given the task of locating and recovering Ferdinand's property. For a while I didn't understand why it took so long to do this type of work, but now, with the recent example of Iraq, we see what chaos follows regime change, if you will, and war. Vienna was no different than Baghdad today in that respect.

POST-WAR AUSTRIA

It took three years, from the end of the war until 1947–48, for the first restitution laws to make restitution possible for Jewish families. The entire Nazi period in Austria lasted only six years. It wasn't until the end of 1947, early '48, that Dr. Rinesch began making inroads in finding Ferdinand's collection. A number of the paintings, as I mentioned, although not the Klimts, had been collected by Hitler and Goering and for the Führer Museum.

It is helpful to understand the restitution procedures. The Allies, principally the American government, set up an Art Collecting Point in Munich, where they collected the paintings that had been recovered from various Nazi storage facilities. But individuals were not allowed to go to the Munich Art Collecting Point and just pick up their artworks. Rather, only governments could recover artworks: the policy was to return paintings to their countries of origin. So, if a painting had been taken out of the Louvre and ended up in Goering's collection, it would be brought to the Munich Art Collecting Point, the French government would make an application, and the Munich Art Collecting Point would return the painting to France. For collections such as the Bloch-Bauer collection from Vienna, Dr. Rinesch would have to apply to the Austrian government for it to ask the Allies at the Munich Art Collecting Point to return the paintings to Austria. Then he would have to ask the Austrian government to return the paintings to him on behalf of the heirs.

This meant that the paintings were in Vienna, but the heirs were in Canada and the United States. Thus, in order to remove the paintings, Rinesch would have to apply for export permits. This procedure gave Austria an opportunity for extortion with many Jewish families, not just the Bloch-Bauers. They would deny export permits for large portions of the restituted collections and coerce families into making donations of the artworks. Let's say you applied to export twenty paintings. The government would say: "Eight of these are too important to Austria, you cannot get them out." If someone tried to appeal, the government would say: "If you would donate five of eight paintings that we say are important to our Austrian museums, we will let you take the other three out of the country." By this procedure Austria enriched its museums at the expense of many Austrian Jewish families — the Austrian Rothschild family for example, and many others.

Dr. Rinesch was aware of this procedure in 1948 when he wrote to the Austrian Gallery and asked about the Klimt paintings. The response from the Austrian Gallery was a very aggressive one. It said

that the paintings belonged to the Austrian Gallery through the will of Adele Bloch-Bauer already in 1925, and that Ferdinand Bloch-Bauer was allowed to keep them during his lifetime, but the three works the Gallery currently had (Figs. 1–3) belonged to them, and Dr. Rinesch, on behalf of the heirs of Ferdinand Bloch-Bauer, was responsible for returning the other three that they didn't have. The latter included *Houses at Unterach on the Attersee*, which Dr. Rinesch had recovered from the Führer's collection, *Birch Forest*, in The City Museum of Vienna, and *Schloss Kammer am Attersee III*, which was in Gustav Uccicky's apartment. Thus Austria took a very aggressive approach. There is even correspondence between the director of the Austrian Gallery and the state attorney preparing for lawsuits in this case.

Meanwhile the director of the Austrian Gallery wrote to the Federal Office for Protection of Historical Monuments in April of 1948, after having viewed some of the collection that was recovered, and asked the Federal Monuments Office to delay the export permit procedure for tactical reasons related to the Klimt paintings. Therefore, Dr. Rinesch made a decision. He met with the director of the Austrian Gallery just one week later on April 10, 1948. Incidentally, this was the first day that Rinesch actually saw the will of Adele Bloch-Bauer. The very next day he wrote to his clients, and concluded, as Adele's executor Gustav Bloch-Bauer had, that the will itself did not give the Austrian Gallery a right to the paintings, but he thought that the promise that Ferdinand had made in 1926 might have. So he met with the Austrian Gallery director, and he made a deal. He said, the heirs would acknowledge the will of Adele Bloch-Bauer: We will leave the paintings in the museum. We will even help you get the other ones back, and through that we hope to get your cooperation in getting export permits for other paintings, namely, the Waldmüller and other old Austrian paintings, the porcelain, the drawings, and things like that. That worked. Not without some difficulties, but it worked.

Over the next year and a half, Dr. Rinesch was successful in exporting most of the rest of the collection with the exception of sixteen Klimt drawings and nine-

teen porcelain settings, which were also donated in the process of getting export permits. So if you had asked Maria Altmann between 1948 and 1998 what happened to *Adele Bloch-Bauer I*, she would have said: "It's too bad; my aunt willed it to the museum, and we never got it back." That was the story that came down to her from the lawyer. She had no idea that there was a possibility of making a claim for the painting.

TURN OF EVENTS IN 1998

But that changed in 1998. At the end of 1997, Judith Dobrzynski wrote a story for the *New York Times* on an Egon Schiele painting — *Portrait of Wally* — that was on loan to the Museum of Modern Art in New York from the Leopold Museum in Austria. The article said that a family was claiming that Schiele painting, whereupon the district attorney in Manhattan, Robert Morgenthau, filed a lawsuit to seize the painting. That developed into litigation, which is still ongoing.

The Austrian government was outraged by the litigation. The Minister of Culture and Education, Elizabeth Gehrer, made a statement effectively saying it was all absolutely ridiculous; we don't have any looted paintings in Austria; we gave everything back after the war; and we can't be accused of these types of things. Whereupon Hubertus Czernin, a wonderful journalist who recently passed away — not incidentally, the same journalist who uncovered the Kurt Waldheim story ten years before — decided to take up the minister's challenge. He looked up the provenances of the various paintings, in government archives, for example. In looking up the gold portrait of *Adele Bloch-Bauer I*, which had been featured in a recent book published by the Austrian Gallery, the provenance said: "Donated 1936 by Ferdinand Bloch-Bauer." Czernin uncovered the trade that Dr. Führer had made in 1941, when he traded the gold portrait and *Apple Tree* for *Schloss Kammer am Attersee III* in a letter signed "Heil Hitler." Czernin also uncovered the documents showing the post-war extortion, and the various internal documents that demonstrated the aggressive position the Austrian government had taken vis-à-vis the Bloch-Bauer heirs. He wrote an

exposé, not just regarding the Bloch-Bauer paintings, but also concerning the Austrian Rothschild family, the Lederer family, and many others.

NEW AUSTRIAN RESTITUTION LAW

The exposé caused a bombshell in Austria. The Austrian minister established a provenance commission, and, ultimately, in September of 1998, she proposed a new art restitution law for Austria,¹ which was designed to return artworks from federal collections that had been donated in exchange for export permits or that had been looted during the war and then obtained, perhaps in good faith, by an Austrian museum after the war. Let us say a museum had bought a painting from a private collector which turned out to be one that had been looted by the Nazis. If the artwork was in a federal collection, the Austrian government was given the ability by this law to return it. The law didn't have any teeth to it. It did not allow a private right of action; it did not allow claimants to participate in the procedure; it just said that the government would set up an advisory committee, and if the government decided that it wanted to, it could return a painting.

In September 1998, Maria Altmann got a call about this new law from a man in Vienna named Peter Moser, Austria's former general consul in Los Angeles and later its ambassador to the United States. As she had no idea what he was talking about, she did what she normally did under those circumstances, she tried to call my mother, to see if my mother could call me, to see if I could find out. But my parents, as it happened, were in Vienna at the time for an event at the Schoenberg Center with my grandfather's archives. By coincidence, I had looked on-line at the Austrian newspapers and had seen the headlines about this new art restitution law, including a discussion of the famous gold portrait and the Bloch-Bauer collection. So when Maria called me and said, "Randy, I got this call," I said, "I know what it is about." We got together and decided to work on it. I was thirty-one

years old, just shy of my thirty-second birthday. There wasn't much to do initially other than wait for the Austrian law to go into effect, and see what the advisory committee would do. It was set up, if you can believe it, without any members of the Jewish community; just bureaucrats and art historians, none of them particularly fans of restitution. This committee was given the task of advising the minister which paintings should be returned. At first, with much fanfare, they returned hundreds of artworks. The number may be misleading because it included coins, and each coin, for example to the Rothschild family, was considered a separate artwork.

In 1999 the committee considered the Bloch-Bauer family. I had sent the commission several legal opinions that I had obtained from an Austrian lawyer, Dr. Andreas Lintl, about Adele Bloch-Bauer's will, which, I figured, would be the real issue. I later found out that the head of the commission did not share the opinions with all the other members. I called one of the lawyers on the commission, Dr. Manfred Kremser, to offer to come to Vienna and meet with him to discuss whatever issues they might have. I was told that they decided not to have any external discussions. I said that sounded a little unfair; I was not just somebody, I was the lawyer for Maria Altmann and shouldn't she have a right to participate? He said, "No, we are doing this all internally." He added: "Mr. Schoenberg, you can come and meet with me at any time, but we cannot talk about the case." So that is where things stood.

In June of 1999, not surprisingly, I think, given that attitude, Austria decided not to return the Klimt paintings to the Bloch-Bauer heirs. They did return the porcelain and drawings, which were at issue, but none of the Klimt paintings. As an excuse they gave the will of Adele Bloch-Bauer, the same story that the Austrian Gallery had given in 1948, namely that Adele had willed the works to the Gallery. Thus, their claim of title had nothing to do with the Nazi era. I disagreed. I believed that Adele Bloch-Bauer's will was a wish. In lawyers' terms, we would call it precatory, and, therefore, that the title to the painting was only transferred in 1948 by Dr. Rinesch when he acknowledged the will in exchange for export permits.

¹ Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections, dated 4 December 1998, Federal law Gazette 1 No. 18111998.

I thought that this exchange should fall under the new Austrian restitution law. So I wrote a long letter to the Minister of Culture and Education pointing out the mistakes that were made and the evidence that we had. I suggested that we resolve what was essentially a legal dispute about a will not with her advisory committee, which was made up mainly of bureaucrats and art historians, but with arbitration. They would pick one arbitrator; we would pick an arbitrator; and those two arbitrators would pick a third. The arbitrators in Austria would decide under Austrian law whether the will gave Austria the right to the paintings. The minister's response said: If you disagree with our decision, your only remedy is to go to court.

LEGAL ACTION

I'm a lawyer, that is what I do. At the time I was working in the Los Angeles office of Fried Frank Harris Shriver & Jacobson, a large New York firm, and I very naively looked into the possibility of suing. At first I thought that the obvious place to sue was Austria. An Austrian lawyer, Dr. Stephan Gulner, was willing to look into the case. The new law didn't create a right to make a claim, but he thought there was an equal protection argument and another argument that he might be able to make, and he prepared a complaint. It was very well written. I thought we should file it. He said, "You know, in order to file a complaint in Austria, you have to pay filing fees." I said, "Okay, we can probably pay a few hundred dollars, that's no problem." He said, "No, you don't understand. The filing fees in Austria are calculated as a percentage of the value at stake in the litigation. In this case, it would cost about two million dollars just to file the complaint." That was out of the question. Maria Altmann and two of the other heirs who were going along at this stage did not have that type of money. They all lived relatively modest, middle-class lives and did not have two million dollars to spend on a speculative lawsuit in Austria. Our lawyer suggested we apply to the court to reduce the filing fees. So Maria Altmann filed a declaration of her assets, not unlike the one she had to fill out in 1938 when the Nazis came in, listing everything that she owned. We submitted that to the court, and

the court decision said you are correct; you do not have to pay so much *more* than your entire estate to file a lawsuit in Austria, you just have to pay *all* of your available assets. She would have had to pay basically everything but her home in order to go ahead with the lawsuit, several hundred thousand dollars. This was not possible. But the Austrian government actually appealed that decision, and said that she should pay more, including the value of drawings and porcelain that the Austrian government hadn't yet returned to her. At that point I looked at the possibility of suing in the United States. After all, Maria Altmann was in Los Angeles, like me, and she had lived there since 1942. So I looked in the code book that every lawyer has on his shelf to see how you can sue a foreign state in the United States.

FOREIGN SOVEREIGN IMMUNITIES ACT

The Foreign Sovereign Immunities Act, passed in 1976, regulates when you can and cannot sue a foreign state. Not surprisingly, it says you *cannot* sue a foreign state, except in certain situations. One of these exceptions, which is rarely used, is:

- 1) when the property was taken in violation of international law — I thought the Bloch-Bauer claim fit that;
- 2) the property is owned or operated by an agency or instrumentality of a foreign state. Here the property — the art — was owned or operated by a museum, the Austrian Gallery, which is an agency of a foreign state; and
- 3) the agency or instrumentality is engaged in a commercial activity in the United States.

If you meet all these criteria, then you can sue.

On that third hurdle, I asked myself, what do they do in the United States? They sell books; they advertise their exhibits; they have U.S. tourists come and use their American credit cards. Arguably, there might be enough of a nexus. I relied on a case from the Ninth Circuit in California that had to do with a Jewish family from Argentina that had lost a hotel. The court held that the family members could

sue Argentina because that hotel had advertised in the United States and attracted U.S. tourists. With that precedent, I decided that it would be possible for Maria Altmann to file a lawsuit in the U.S. Unfortunately, my law firm was not so keen about the idea, so I left and opened up my own office in 2000. One of the first things I did was file a lawsuit for my grandmother's old friend, Maria Altmann.² It didn't cost two million dollars. It cost two hundred-fifty dollars to file the complaint. We were not overly optimistic about our chances. In an old e-mail I even refer to my filing as a public relations stunt, something to keep the case alive. That is what happened. We kept the case alive. Austria responded to the complaint by hiring the Jewish law firm of Proskauer Rose, which sought to dismiss the claim on eight different grounds, one of which was sovereign immunity. They argued that the Foreign Sovereign Immunities Act of 1976 could not be applied to events that took place prior to that. Fortunately, we had a terrific district court judge, Florence Cooper, who rejected Austria's motion. She denied it in its entirety and, in May of 2001, said that we could proceed with the lawsuit. It was a huge surprise.

We were not yet out of the woods, however. Austria had a right to appeal because it was a sovereign immunity question. It appealed to the Court of Appeals for the Ninth Circuit. I argued in the Ninth Circuit and, in December 2002, the Ninth Circuit unanimously ruled in our favor, affirming the district court. At this point things were looking very good because, usually, the Court of Appeals is the last word on any appeal. But then the U.S. government got involved. I think they were receiving calls from various governments concerned about the precedent we had just set in the Ninth Circuit. There were a lot of pending class action suits asserting historical claims against Poland, Austria, Japan, Mexico and France, and these actions were not making our foreign allies (countries who are *now* our allies) very happy. They asked the State Department to intervene, so the State Department, through the Solicitor

General's office, filed a brief asking the Ninth Circuit to reconsider its decision, which, thankfully, it did not do. In May 2003 that decision became final. But then Austria petitioned the U.S. Supreme Court, and the Supreme Court decided to take up the case.

THE U.S. SUPREME COURT

We were not so happy anymore. The Ninth Circuit does not fare well in the Supreme Court. Its decisions are almost always reversed. This case seemed to be headed for a reversal as well. If you had asked anybody following the case, lawyers especially, whether we had a chance to win, they would have said without hesitation, "No." I might not have disagreed. But I did my best in preparing the brief that was submitted, and then I prepared for the oral argument. To prepare for oral argument in the Supreme Court, especially if, like me, you've never done it before, you do practice sessions, called moot court sessions. I did one at the University of Southern California Law School, my alma mater, one at Santa Clara University, and one at Georgetown. Professors and lawyers pepper you with questions pretending to be Supreme Court justices, so that by the time you go before the Supreme Court, you are prepared for anything.

I went to the Supreme Court in February 2005 with my family and Maria Altmann and her family, determined to do the best that I could. My goal at the time, I think, was to get one justice on our side so someone would write our side of the story. I certainly did not expect to win. I just wanted to do the case right and not fall on my face.

Austria's lawyer spoke first, and then the U.S. government's lawyer because I had won in the Ninth Circuit. By the time I stood up, it seemed to me that some of the justices may have read my brief, perhaps even agreed with what I was saying. You do not prepare a speech in the Supreme Court; you get interrupted with questions. I had prepared a very short introduction with an outline of what I wanted to say. I started off saying "There are four grounds for affirming the Ninth Circuit, one is . . .," and, boom, I got inter-

² *Altmann v. Republic of Austria*

"I went to the Supreme Court in February 2005. . . .
I certainly did not expect to win. . . . Three months later . . .
the phone rang. . . . 'You won six-three'."

rupted by Justice David Souter. He speaks with a New England drawl that's difficult to understand. He had a long convoluted question that went on and on and on and on, and on and on. All of the sudden he ended the question, and he looked at me and I looked at him, and I had not the slightest idea what he had just said, not a clue. You can read it in the transcript. It says, "Well, umm...", as they are waiting for me to say something. Everyone was waiting. This was the first question. I said the only thing that I could think of saying; I said, "I'm sorry your honor, I don't think I understood the question. Please rephrase it." There were gasps in back of me from the audience as if I were a skater who fell during the first jump at the Olympics. But all the other justices smiled at me as if to say, "Oh, don't worry, he does that all the time," or, "Thank goodness you asked because none of us understood either."

It turned out to be such an honest moment. Justice Souter rephrased the question, and I answered it. They realized that I wasn't going to make things up. I was just going to do the best I could, and answer the questions as best I could. As a result, the rest of the argument went like a dream, like a conversation about this case that of course I had already been dealing with for six years. It finished, after thirty minutes, and I sat down. Everything ended and everybody started to leave. I thought, "Oh my goodness, did that just happen? We actually have a chance of winning." I went outside, and everybody was excited. My dad, who is a retired judge and never thought we had much chance, was excited and said, "You know, this really went well." Maria was so happy.

I returned home to Los Angeles and opened the *Daily Journal*, our legal newspaper. The headline was: "Court Likely to Reverse Altmann Case." It was a long article about how we were going to lose because of this and that. I called the journalist, David Pike, and

asked: "Why did you write this? Everybody thought it went so well." He said, "Trust me. I have been reporting on the Supreme Court for thirty years. You do not have a chance. The body language was against you." I said: "Some of the justices didn't even open their mouths." He said: "Trust me. It's all over." I said, "Well, okay, that is what everybody is expecting anyway. Do me a favor. Here is my home number. When you find out, give me a call." The journalists find out first. You do not get advance warning when they make a decision in the Supreme Court.

Sure enough, three months later, I was making breakfast for the children (it's three hours earlier in Los Angeles) and the phone rang. The voice said, "Hello, this is Dave Pike." I said, "Okay, give me the bad news." He responded saying, "No, not bad news. You won!" I almost dropped the phone. I said, "You're kidding right?" He said, "No, you won six-three. Justice Stevens wrote the opinion, dissent by Justice Kennedy. You won. I guess I was wrong." I said, "Thank goodness you were."

We were just elated. It was one of the great moments in my life. I finally reached Maria Altmann, because, of course she was getting phone calls too. We were so ecstatic and happy. After a little while, we came down to Earth and realized what we had just won. The paintings were not on a plane back; we had just won the right to *start* the lawsuit in Los Angeles. So we went back down to the district court in California and entered what I lovingly describe as "discovery hell," where the lawyers basically torture each other with various interrogatories and discovery requests.

BACK TO AUSTRIA

That lasted for about a year until there was a required, court-ordered mediation. Until this

time Austria had not shown any willingness to discuss a resolution of the case. Thus, I thought the mediation was just going to be a formality. I told the Austrian lawyers to pick the mediator, "Whoever you want," because I did not really expect anything to happen. They picked Professor Dieter Binder, a historian from Graz, Austria with no legal background, to be the mediator. "This is going to be interesting," I thought. He turned out to be a great guy. He came to Los Angeles with Austria's lawyers and met with Maria Altmann and me. He said: "You know, I get the sense in speaking to all of you that you would really like the case to be over with." I said: "After seven years and my client being eighty-nine years old now, yes, I would like the case to be over with." The Austrians agreed, although I think they had a different view of what "over with" meant at the time. Professor Binder said: "I have an idea. Why don't we do an arbitration in Austria? You pick one arbitrator; they pick the other, and those two pick a third." This sounded familiar to me. But I didn't say, "That was my idea." I said, "Let me think about it for a moment. Let me talk to my client." So I brought Maria over to the side and I said, "Maria, this is really good. This is the break we have been waiting for. We will be able to resolve the case." And she said, "Are you crazy? We just spent five years going to the Supreme Court and back to have this wonderful Judge Cooper decide our case. Why would we want to go to Austria and have three Austrian arbitrators decide it?" I said: "Maria, if you want this case decided in your lifetime, we have to take this chance. I really think we need to do it." There were endless procedural appeals that could be made in the court case in the United States. Even if we had won, there was a question of enforcement of the judgment. We could get rid of all of that by just going into an arbitration in Austria and having the case revolve around the question of Adele Bloch-Bauer's will. I was confident we could win that issue.

I prevailed upon her. My father was also against arbitration, but I was able to persuade everybody that it was the right move. Thankfully, Maria Altmann trusted me, and we agreed to do an arbitration in Austria. So in September 2005, I went to Austria and had a full day of arbitration. All in German. I had a translator with me, but, fortunately, I could

understand and speak most of it myself in German. It was an exhausting day. There were no live witnesses in this case. It was all about the documents. Even Maria Altmann was just a sidelight witness. It was all about what the documents said, and what did they mean? Where did they come from?

We had a lengthy full-day discussion and submitted the matter to the arbitrators. Then we waited. Per our agreement the arbitrators were supposed to decide in October 2005. They didn't. November came around, and also no decision. December, no decision. I was worried that we might not get a decision before Maria's ninetieth birthday, which was in February of this year. But sure enough, in mid-January, I returned home after a late night Sunday poker game. I had an e-mail from the chief arbitrator in Vienna, where it was Monday morning. The attachment was in convoluted German, and it was a full opinion. I read through it and realized we had won — *unanimously!* All three arbitrators, including the one selected by Austria, ruled in our favor and determined that Maria Altmann was entitled to recover the five Klimt paintings under Austria's 1998 art restitution law. They rejected Austria's claim that Adele Bloch-Bauer's will had determined that the paintings must go to the Austrian Gallery, and agreed with us that it was really only in 1948 that title was exchanged in return for export permits.

It was of course a great and very unexpected day for us, after the seven and a half years of working on the case, to finally have recovered the paintings. They were not in our possession yet; they were still in the Austrian Gallery Belvedere, and Austria had required, as part of the arbitration procedure, that we enter into an option agreement that gave them the right to buy the paintings. After about two weeks, however, they decided to abandon that option. In February, we had the luxury of having to decide what to do with these five amazing paintings. I had received a number of inquiries from many museums throughout the world, and the two that seemed to me the most fitting to show the paintings were the Los Angeles County Museum of Art, where Maria Altmann and I live, and the Neue Galerie here in New York. We set up the

exhibitions in a matter of weeks and had the paintings transferred to the Los Angeles County Museum. Then we announced that the Neue Galerie was purchasing the magnificent gold painting of Adele Bloch-Bauer and that the other four would be on loan to the Neue Galerie for several months over the summer, so that New Yorkers could also get a chance to see them.³

I am so pleased and proud to be at the Neue Galerie to tell you about this long saga. It is very rare when

you talk about the Holocaust that you actually have a “sort of” happy ending. We have to remember that, in the scheme of things, the looting of art ranks very low in terms of the crimes that were committed by the Nazis. It is not surprising that the recovery of art was not given high priority after the war. It is completely understandable. But it is very nice that now, so long after the war has ended, sixty years later, we can have a modicum of justice and return paintings like these to their rightful owners.

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Q&A

Q Why do you think the Austrian government did not use its option to purchase the paintings?

A E. RANDOL SCHOENBERG: It became clear to me very early on that they weren’t going to do that. Politically, the Austrian minister responded to the decision by saying, “I don’t have enough money in my budget to pay for it.” So as soon as it became a question of using money out of their budget, money that might go for schools, hospitals, police, fire, it was clear the paintings were going to lose out. Culture always loses out to those types of things if you make it a one-for-one deal. If she had said, “It’s very sad. We will either have to give up these assets or perhaps find some other assets to give up instead,” I think she could have built up the public will in Austria for a repurchase. But once they started talking about tax dollars, the writing was on the wall.

Q What was the rationale for the Ninth Circuit not accepting sovereign immunity?

A There were many arguments, almost too complicated to answer briefly. Essentially, the Ninth

Circuit agreed that it wasn’t impermissibly retroactive to apply the Foreign Sovereignty Immunities Act to these events. To use a legal term, immunity is an act of comity that one government grants toward another government. A government can remove that immunity at any time, and then it is not a question of retroactivity. That is the argument that prevailed in the Ninth Circuit and the Supreme Court.

Q Are the current frames on the Klimt paintings the ones that were on the paintings in Austria?

A These are all the original frames as far as I know. Photographs of the gold painting (*Adele I*), from an exhibit I think in 1908, show this frame, which was done by Josef Hoffman, one of the Wiener Secession artists. No one knows why there is a blank space below the painting. This is one of only three gold paintings by Klimt. There is also *The Kiss*, which is perhaps his only painting more famous than this, and *Judith and Holofernes*, which may be patterned on *Adele Bloch-Bauer I*. It has a very similar face. I’ve been told that of the gold paintings, *Adele* is in the best condition. *The Kiss* has been very damaged by a restoration attempt, and the gold is much darker, whereas *Adele* has much of the original color. So this is really one of the finest existing gold portraits.

³ Subsequent to the talk, it was announced that the four Klimt paintings would be auctioned at Christie’s New York on November 8, 2006.

Q Why was the L.A. County Museum not interested in these paintings?

A I think everybody is interested in them. . . . I don't know what happened. I brought in another lawyer, Steven Thomas, to handle the transactional details. I, fortunately, have not had to be involved and reinvent myself as an art transactional lawyer. He handled all the loan negotiations with the museums and the sale of the gold portrait, so he would have to speak to that.

Q Who were the Austrian arbitrators?

A I picked a youngish man named Dr. Andreas Nödl, a lawyer in Vienna. Austria picked a professor, the dean of the University of Vienna Law School, Walter Rechberger, and the two of them picked a professor in Linz, Austria named Peter Rummel. He's actually German born but a very famous Austrian professor. So it was two professors and one lawyer.

Q Do you know the status of the ownership claim for *Portrait of Wally* by Egon Schiele?

A Not really. I'm not involved in that case. I know it is still going on here in New York, but I don't know the current status. It's really a shame that it has dragged on this long. It is one of the difficulties with these types of cases — they do tend to drag on. I think we showed in our case how quickly they can be resolved if there is a willingness of the parties to get down to the real legal issues and not hide behind procedural difficulties.

Q Do you not think that the world-wide fame of *Adele Bloch-Bauer I* positioned it better for this outcome than if it had been a less important painting? In other words, was it not more important for the arbitrators to carefully consider and correctly decide this than if it had been a less important painting?

A That is partly true. The reason we were in this mess eight years, however, is because of the fame of the paintings. I think they latched onto the issue of the will because of that. . . . They wanted to look for



FIGURE 9. Gustav Klimt. *Portrait of a Lady*, c.1898-99. Restituted in 2004 to the heirs of Bernhard Altmann.

any excuse not to return them. When it came to the arbitration, our side was right on the law, so it would have taken a lot of effort for them to get around that. They realized it. I had obtained an opinion four years ago — and it's not improper for me to disclose this, actually Ronald Lauder's Commission for Art Recovery helped pay for part of it — from the chairman of the Institute for Civil Law in Vienna, Professor Rudolf Welser, an expert in inheritance law. He wrote a 140-page opinion with his colleague, Professor Christian Rabl, on the question of the will, going into every possible nuance and detail. I think that was just too much for the other professors to get around. Here was one of their colleagues, the expert in Austria, giving his opinion that we were correct. It would have been very difficult for them to get around that opinion.

Q There's been a very positive response here in the States to the outcome. Can you summarize the popular opinion in Austria about the government's decision not to acquire these paintings once the legal opinion had been rendered by the arbitrators?



FIGURE 10. Left: Pablo Picasso. *Femme en Blanc*, 1922. Oil on canvas. © 2006 Estate of Pablo Picasso/Artists Rights Society (ARS), New York.

FIGURE 11. Above: Canaletto. *Santa Maria della Salute*, 1727. Oil on canvas, 45 x 60 cm. Strasbourg, Musée des Beaux-Arts (Inv. no. 987-1-1). 1987 purchase made permanent in 2005 in accordance with B. Altmann's inheritors and the help of the State, the general and regional council and the patronage of Würth, France and the Coop-Alsace.

A In Austria, very much like here, people latch onto a winner. As soon as we won, of course, everyone had been on our side from the beginning. I think the converse would have been true here too. Everyone would have said, "I told you so." In terms of public opinion, I heard that people were generally supportive. We had resolved this in an Austrian way, through arbitration. I think that helped. If we had had a U.S. judgment saying these paintings have to come back, there would always have been a question about those crazy Americans trying to stick it to us. They don't understand us, and they don't understand our language and our documents and things. But to have three Austrians say that we were right had a real impact. Maria Altmann said that she heard from a friend who was in a café when it was announced over the radio that the paintings were going to be returned that the people spontaneously cheered and clapped. . . . I don't think, however, that everybody was very happy about it. Certainly, people in the art world there were very concerned about losing these paintings, but there are some pros and cons to that also.

Q You mentioned another landscape that Ferdinand owned. What happened to that painting?

A That painting was returned to the Austrian Gallery in 1961, when Gustav Uccicky died, along with three other paintings, one of which, an early Klimt portrait (Fig. 9), was restituted in 2004 to the heirs of Bernhard Altmann, whom I also represent. There was also the *Portrait of Amalie Zuckermandl* (Fig. 7), which I didn't get to talk about. We had a separate arbitration hearing on that, but it's too long to go into. The Zuckermandl family also claimed it, saying that Ferdinand Bloch-Bauer, from his exile in Switzerland, managed to give that painting to them, and then they sold it, supposedly under duress. The woman in the painting, Amalie Zuckermandl, was ultimately killed. Her non-Jewish son-in-law sold it. It was a very complicated case. That arbitration followed the arbitration over the five Klimt paintings on view at the Neue Galerie, and the arbitrators decided that there wasn't enough proof of our claim as to how the painting left the estate of Ferdinand Bloch-Bauer, even though we knew it was part of his estate at least until 1939, when he was in exile. Therefore, the arbitrators did not give the painting back to us. They also rejected the claim of the other family, and so that painting, unfortunately, is staying in the Austrian Gallery. I think the decision is wrong. But sometimes you

win, and sometimes you lose. It is hard for me to say that about these types of cases because I take it very personally, and I think justice should always be done. I should add that another decision around the same time, from a different arbitration panel under a different Austrian law, gave back the home of Ferdinand Bloch-Bauer in Vienna, which the heirs are recovering this year. There has been quite a lot of activity.

Q Did you do this kind of legal work before the Maria Altmann case? Is restitution what you specialize in now?

A I had no experience in art restitution before this. I have handled several other cases as a result of the notoriety of this case. One is the famous case concerning a Picasso, *Femme en Blanc* (Fig. 10),⁴ which was resolved last year with a collector in Chicago, Marilyn Alsdorf, who agreed to repurchase the painting from my client. It's a very long and interesting story that will have to wait for another day. Another case concerns a nice Canaletto (Fig. 11) in the museum in Strasbourg that was repurchased by the museum from the heirs of Bernhard Altmann. So I've handled quite a number of other cases — those are the most prominent ones — through this. It's become a field

that I like and that, I guess, I've been relatively successful at.

Q In your opinion do you think this case would have any kind of impact, in a positive way, on the Leopold Foundation case? Positive depending on which way you look at it.

A There's a lot of water under the bridge in the Egon Schiele *Portrait of Wally* case, so I'm not sure that anything from the outside will determine that. But in the broader sense, I think, the victory that we've had in this case has to have an impact. It has to give museums and collectors pause when they're confronted with claims because we've shown, against all odds, that if you clear away all the procedural hurdles, and you get down to the merits of the case — Was this painting stolen or not? Was it looted or not? Should it be returned or not? — that the claimant can be right, even sixty-five or seventy years later. I think that's important. I hope these cases will not go into arbitration or litigation but will be resolved, because collectors, when faced with claims and when faced with evidence, will realize it's not worth fighting for five, six, seven years. Rather, we should sit down and resolve the claim.

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⁴ For more about this case, *Bennigson v. Alsdorf*, see *IFAR Journal*, Vol. 7, nos. 3 & 4, pp. 5–7.

SCENES FROM AN IFAR EVENING



Left to right: Monica Dugot, Herbert Hirsch, Jo Backer Laird, and Peter R. Stern.



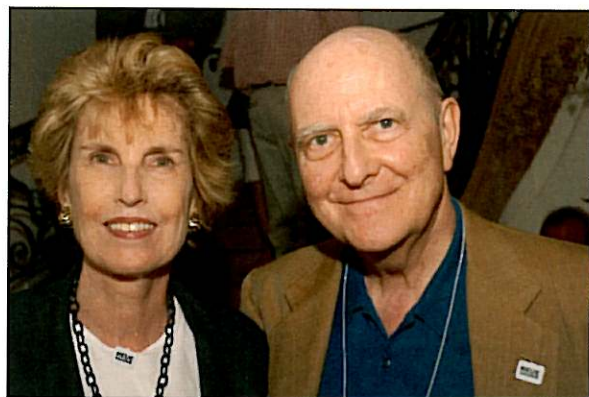
Jeremy G. Epstein and Constance Lowenthal.



Left to right: Shelby White speaking with E. Randol Schoenberg; Lucille Roussin in the background.



Donna Torrance and Thomas Jaffe.



Catherine Cahill and William Bernhard.



Left to right: Gertje Utley, Annette Blaugrund, Lee MacCormick Edwards, and Michael Crane.