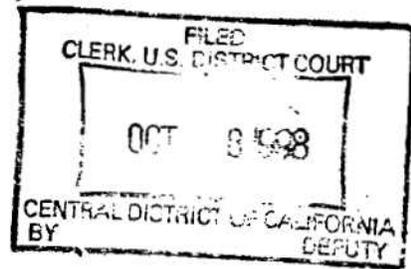


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NORA M. MANELLA  
United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division  
ROBERT I. LESTER (Bar No. 116429)  
Assistant United States Attorney  
300 N. Los Angeles Street  
Room 7516, Federal Building  
Los Angeles, CA 90012  
Telephone: (213) 894-2464  
Fax: (213) 894-7819



Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
230 ITALIAN ARTIFACTS; )  
DAVID HOLLAND SWINGLER; )  
AND THE REPUBLIC OF ITALY, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO.  
98-8220 CAS (JGx)  
COMPLAINT FOR INTERPLEADER



ALLEGATIONS

1  
2 8. On or about February 13, 1992, the United States Customs  
3 Service, pursuant to a search warrant, conducted a search of the  
4 residence of David Holland Swingler. The search warrant was  
5 pursuant to 18 U.S.C. § 2314 and the Treaty Between the United  
6 States of America and the Italian Republic on Mutual Assistance  
7 in Criminal Matters. The United States Customs Service seized  
8 226 artifacts from Swingler's residence which are allegedly  
9 cultural property of the Republic of Italy, and were illegally  
10 excavated and exported from the Republic of Italy. A list of the  
11 226 artifacts is attached as Exhibit "A."

12 9. On or about May 8, 1992, the United States Customs Service,  
13 pursuant to a Commissioner's Subpoena, seized four artifacts  
14 located at Caravan Consignments, Inc. of Atlanta, Georgia which  
15 are allegedly cultural property of the Republic of Italy, and  
16 were illegally excavated and exported from the Republic of Italy.  
17 These four artifacts were consigned to the Atlanta shop by  
18 Swingler. A list of the four artifacts is attached as  
19 Exhibit "B."

20 10. Defendant the Republic of Italy has informed the  
21 United States that the 230 artifacts are of artistic, historic  
22 or archaeological interest to the Republic of Italy, and were  
23 illegally excavated and removed from the Republic of Italy,  
24 and therefore are the exclusive property of the Republic of Italy  
25 by operation of Italian Law No. 1089. A copy of Italian Law No.  
26  
27  
28

1 1089 is attached as Exhibit "C." The Republic of Italy has  
2 requested the return of the 230 artifacts to the Republic of  
3 Italy.

4 11. Swinger, as well as his former counsel, have informed the  
5 United States that Swingler claims that the 230 artifacts belong  
6 to him, and requests that the 230 artifacts be returned to him.

7 12. The 230 artifacts are currently in the custody and control  
8 of the United States Customs Service; the 226 artifacts, in the  
9 Central District of California, and the four artifacts in  
10 Atlanta, Georgia.

11 13. By reason of the two conflicting claims, the United States  
12 is in doubt as to which party is entitled to possession of the  
13 230 artifacts.

14 PRAYER FOR RELIEF

15 WHEREFOR, the United States prays for a judgment:

16 1. That defendants be required to settle between themselves  
17 their rights to the 230 artifacts and that the United States be  
18 discharged from other and further liability.

19 2. That, before the United States Customs Service releases the  
20 230 artifacts, the prevailing claimant be required to satisfy the  
21 following conditions:

22 a. Pay all storage charges and seizure expenses incurred by  
23 the United States Customs Service.

24 b. Agree to hold the United States of America, the United  
25 States Customs Service, and its agents and employees harmless  
26 from any and all claims against it which may result from the  
27 release of the artifacts.

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3. That the United States be granted its costs of suit incurred herein;

4. For such other and further relief as this Court deems just and proper.

DATED: October 7, 1998

NORA M. MANELLA  
United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division

  
\_\_\_\_\_  
ROBERT I. LESTER  
Assistant United States Attorney

Attorneys for Plaintiff  
United States of America

US District Court LA 10/21/99 4:38: PAGE 002/6 RightFAX

1 ALEJANDRO N. MAYORKAS  
 United States Attorney  
 2 LEON W. WEIDMAN  
 Assistant United States Attorney  
 3 Chief, Civil Division  
 ROBERT I. LESTER (Bar No. 116429)  
 4 Assistant United States Attorney  
 300 N. Los Angeles Street  
 5 Room 7516, Federal Building  
 Los Angeles, CA 90012  
 6 Telephone: (213) 894-2464  
 Fax: (213) 894-7819

7 Attorneys for Plaintiff  
 8 United States of America

THIS CONSTITUTES NOTICE OF ENTRY  
 AS REQUIRED BY FRCP, RULE 77(d).

*Notes-6*

LOGGED  
 CLERK, U.S. DISTRICT COURT  
 OCT 18 1999  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *[Signature]*

FILED  
 CLERK, U.S. DISTRICT COURT  
 OCT 20 1999  
 CENTRAL DISTRICT OF CALIFORNIA  
 DEPUTY *[Signature]*

9 UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION

ENTERED  
 CLERK, U.S. DISTRICT COURT  
 OCT 21 1999  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *[Signature]* DEPUTY

13 UNITED STATES OF AMERICA,

14  
 15 Plaintiff,

16 -against-

17 230 ITALIAN ARTIFACTS;  
 18 DAVID HOLLAND SWINGLER  
 AND THE REPUBLIC OF ITALY

19 Defendants.  
 20

CASE NO.

98 Civ 8220 (CAS) ( Gx)

STIPULATION TO DISMISS  
 DEFENDANTS 230 ITALIAN  
 ARTIFACTS AND THE  
 REPUBLIC OF ITALY;

[PROPOSED] ORDER

21 THE REPUBLIC OF ITALY,

22 Cross-Claimant,

23 -against-

24 DAVID HOLLAND SWINGLER, an  
 25 individual; and DOES 1-10,  
 26 inclusive.

27 Cross-Defendants.  
 28

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
 FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL  
 (OR PARTIES) AT THEIR RESPECTIVE, MOST RECENT, ADDRESS OF  
 RECORD, IN THE MANNER AND ON THIS DATE:

DATE: OCT 21 1999

DEPUTY CLERK

*[Signature]* DOCKETED  
*[Signature]* MLD COPY PTYS  
*[Signature]* MLD NOTICE PTYS  
*[Signature]* JS-6

OCT 21 1999

ENTERED ON ICMS  
 OCT 21 1999  
 CV

*10/21/99  
 David Holland Swingler  
 Travel Agency (Fax)  
 Valerik, Esq. (Fax)  
 Mueller, Esq.  
 Customs*

1 IT IS HEREBY STIPULATED that:

2 1. Plaintiff United States of America shall dismiss defendants 230 Italian Artifacts and the  
3 Republic of Italy with prejudice.

4 2. The United States shall release to the Republic of Italy the objects (described in Exhibits  
5 "A" and "B" to the complaint in this action) which are believed to be cultural property of the  
6 Republic of Italy that were illegally excavated and exported from the Republic of Italy.

7 3. In return for this dismissal and the release of the 230 Italian Artifacts, the Republic of  
8 Italy and its assigns agree to reimburse, indemnify and hold harmless the United States of  
9 America, its agents, servants, and employees from any and all such causes of action, claims,  
10 liens, rights, or subrogated interests incident to or resulting from a further litigation or the  
11 prosecution of claims by anyone against the United States of America, its agents, servants,  
12 and/or employees relating in any way to the seizure, retention, litigation, and release to the  
13 Republic of Italy of any of the 230 Italian Artifacts that the United States Customs Service (and  
14 any other law enforcement agency) seized from David Holland Swingler and/or his assigns.

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1 4. The United States and the Republic of Italy will each bear their own attorney's fees,  
2 costs and expenses.

3 Dated: July 29, 1999

ALEJANDRO N. MAYORKAS  
United States Attorney  
LEON V. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division

*Robert I. Lester*  
ROBERT I. LESTER  
Assistant United States Attorney

Attorneys for Plaintiff  
United States of America

11 DATED: 10/4, 1999

RIORDAN & MCKENZIE  
A Professional Law Corporation  
KENNETH DLEIN  
AMY J. FRANKEL

*Amy J. Frankel*  
AMY J. FRANKEL

Attorneys for Defendant and  
Cross-Claimant  
THE REPUBLIC OF ITALY

REPUBLIC OF ITALY

By: *Ferdinando Salvo*  
Ferdinando Salvo  
The Ambassador  
Embassy of Italy  
Washington, D.C.

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**ORDER**

Pursuant to stipulation, IT IS HEREBY ORDERED that:

1. Defendants 230 Italian Artifacts and the Republic of Italy are dismissed as to the complaint with prejudice.
2. Plaintiff shall release to the Republic of Italy the 230 Italian Artifacts.
3. The United States and the Republic of Italy will each bear their own attorneys's fees, costs and expenses.

DATED: Oct 19, 1999

*Christina A. Sledge*  
UNITED STATES DISTRICT JUDGE



U. S. Department of Justice

*United States Attorney  
Central District of California*

*Robert I. Lester  
Assistant United States Attorney  
(213) 894-2464 (213) 894-7819 FAX*

*Federal Building, Suite 7016  
300 North Los Angeles Street  
Los Angeles, California 90012*

July 28, 2000

**VIA FAX 617-353-6800**

Ricardo J. Elia, Ph.D.  
Associate Professor  
Boston University  
Department of Archaeology  
675 Commonwealth Avenue  
Boston, MA 02215

Re: United States v. 230 Italian Artifacts, etc.  
Case No. CV 98-8220 CAS(JGx) (C.D. Cal.)

Dear Prof. Elia:

I apologize for the delay in responding to your letter of July 21, 2000.

This case arose after Italian law enforcement commenced a criminal proceeding against a man named Licio Di Luzio and his wife. The Italian authorities discovered a large number of archeological materials in the Di Luzios' home that originated mostly from Southern Italy, in particular from a region now known as Puglia. Subsequent investigation by the Italian authorities revealed evidence of links between Licio Di Luzio and David Holland Swinger, who was doing business as Holland Coins and Antiquities in Orange County (Southern California). Di Luzio had photos of some of the artifacts in Swinger's possession. Italian experts identified the Swinger artifacts as coming from the same region in Italy as the artifacts found at the Di Luzios' home. An Italian archeologist opined that these artifacts were of "remarkable archeological interest," had been removed during unlawful excavations in Italy, and they were exported without authorization. Italy took the position that pursuant to Italian public law 1089 (1939), it was the rightful owner of these excavated artifacts. Swinger reportedly transported the artifacts by automobile to Switzerland, and then they were shipped to the United States.

The Italian authorities made a mutual legal assistance treaty request to the United States to seize the artifacts in Swinger's possession and to question Swinger as to how he had obtained the artifacts from Di Luzio. Pursuant to a warrant, the Customs Service seized 226 artifacts from Mr. Swinger's residence, and four artifacts which were on consignment to a company in Atlanta.

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Ricardo J. Elia, Ph.D.  
July 28, 2000

Page two

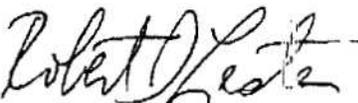
The United States eventually declined to charge Swingler with a crime, and apparently the artifacts were not needed as evidence for Italy's reported *in absentia* prosecution against Swingler. Therefore, the United States ultimately filed the above-captioned interpleader action against Italy and Swingler. A copy of the complaint is attached; copies of the Italian expert's report, as well as inventories of the 226 and four artifacts, are attached to the complaint. During the litigation, Italy, through counsel, filed a claim of ownership of the 230 artifacts. Swingler informed me that he would not, only because he did not have the resources to contest the ownership issue in court against Italy. Accordingly, we were able to obtain a court judgment that allows for the return of the artifacts to the Italian authorities. Because of the way this litigation was resolved, no party had to file a substantive brief.

In a ceremony on June 30, 2000, the Customs Service returned to the Italian Government the four artifacts that had been in Atlanta. The other 226 artifacts remain in the care of the Customs Service in Southern California; we wanted to minimize the amount of packing and shipping of the artifacts, because apparently they are delicate. (Additionally, my understanding is that, contrary to the press release, Italy has not yet picked up the other 226 artifacts remaining in Southern California, although I assume they will soon.)

If you need any further information, please feel free to contact me.

Very truly yours,

ALEJANDRO N. MAYORKAS  
United States Attorney

  
ROBERT I. LESTER  
Assistant United States Attorney

Enclosures

001225

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**FILED**

AUG 13 1996

KENNETH J. MURPHY, Cle  
COLUMBUS, OHIO

UNITED STATES OF AMERICA

Plaintiff,

vs.

ANTHONY MELNIKAS

Defendant.

**CR2 96 107**  
No. CR-2-96-  
JUDGE DLOTT

**JUDGE DLOTT**

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

On or about May 4, 1995, in the Southern District of Ohio, ANTHONY MELNIKAS, unlawfully received, possessed, and stored goods of a value of in excess of \$5,000, that is two fourteenth century pages or folios, namely folio page # 176 from manuscript #3 Causa XX of the Gratian DeCretum and folio #260 from manuscript #239, Causa XXIII of the Gratian DeCretum, which manuscripts are in the possession of the Biblioteca Capitulares, Catedral de Tortosa, Spain, which pages had crossed a State and a United States boundary after being stolen from the Biblioteca Capitulares Catedral de Tortosa, Spain, and ANTHONY MELNIKAS knew the pages or folios to have been stolen, unlawfully converted, and taken.

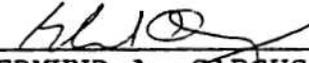
In violation of 18 U.S.C. §2315.

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COUNT 2

On or about March 26, 1994, and May 4, 1995, in the Southern District of Ohio, ANTHONY MELNIKAS, did on at least one occasion, knowingly sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange in interstate or foreign commerce an archaeological resource, consisting of works of artistic or symbolic representation, namely manuscript pages from the Library of the Biblioteca Capitulares, Catedral de Tortosa, Spain, that is two manuscript pages, folio page (#176) from manuscript #3, Causa XX of the Gratian DeCretum, and folio (#260) from manuscript #239, Causa XXIII of the Gratian DeCretum, and which manuscripts belonged to the Biblioteca Capitulares, Catedral de Tortosa, Spain; and page numbers 98 and 140 from a manuscript (Vat. Lat. 2193) that is in the possession of the Vatican Library, Vatican City; and page number 235, from a manuscript (manuscript 32-13) that is in the possession of Archivo y Biblioteca Capitulares, Catedral De Toledo, Toledo, Spain, which items are over 100 years of age and have a commercial or archaeological value in excess of \$500.00, and which archaeological resources having been excavated, removed, and transported, in violation of any provision rule, regulation or ordinance in effect under Ohio State law, to wit: O.R.C. §2913.04, unauthorized use of property.

In violation of 16 U.S.C. §470ee(c).

  
EDMUND A. SARGUS, JR. (0008400)  
UNITED STATES ATTORNEY

001227

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
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36 MAY 22 PM 5:35  
U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. COLUMBUS

UNITED STATES OF AMERICA

VS.

ANTHONY MELNIKAS

: No. \_\_\_\_\_  
18 U.S.C. §2315  
18 U.S.C. §545  
18 U.S.C. §2

SUPERSEDING  
INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1

On or about May 4, 1995, in the Southern District of Ohio, ANTHONY MELNIKAS, unlawfully received, possessed, and stored goods of a value of in excess of \$5,000, that is two fourteenth century pages or folios, page numbers 98 and 140, from a manuscript (Vat. Lat. 2193) that is in the possession of the Vatican Library, Vatican City, which pages had crossed a State and a United States boundary after being stolen from the Vatican Library in Vatican City, Rome, Italy and ANTHONY MELNIKAS knew the pages or folios to have been stolen, unlawfully converted, and taken.

In violation of 18 U.S.C. §2315.

COUNT 2

On or about May 19, 1995, in the Southern District of Ohio, ANTHONY MELNIKAS, unlawfully received, possessed, and stored goods of a value of in excess of \$5,000, that is one fourteenth century page or folio, page number 114, from a

001228

manuscript (Vat. Lat. 2193) that is in the possession of the Vatican Library, Vatican City, which page crossed a State and a United States boundary of Ohio after being stolen from the said Vatican Library in Vatican City, Rome, Italy and ANTHONY MELNIKAS knew the page or folio to have been stolen, unlawfully converted, and taken.

In violation of 18 U.S.C. §2315.

COUNT 3

On or about May 4, 1995, in the Southern District of Ohio, ANTHONY MELNIKAS, fraudulently and knowingly, did receive, sell, and conceal, and facilitate the transportation and concealment and sale, after importation, of two fourteenth century pages or folios, page numbers 98 and 140, from a manuscript (Vat. Lat. 2193) that is in the possession of the Vatican Library, Vatican City, which merchandise, ANTHONY MELNIKAS knew was imported and brought into the United States contrary to law, in that said pages or folios were stolen property, illegally possessed in violation of 18 U.S.C. §2315 and said pages or folios were transported and transferred in interstate and foreign commerce after ANTHONY MELNIKAS knew the same were stolen, converted, and taken by fraud in violation of 18 U.S.C. §2314.

In violation of 18 U.S.C. §§545 and 2.

COUNT 4

On or about May 19, 1995, in the Southern District of Ohio, ANTHONY MELNIKAS, fraudulently, and knowingly, did receive, sell, and conceal, and facilitate the transportation, concealment, and sale, after importation, of one fourteenth century page or folio, page number 114, from a manuscript (Vat. Lat. 2193) that is in the possession of the Vatican Library, Vatican City, which merchandise ANTHONY MELNIKAS knew was imported and brought into the United States contrary to law, in that said page or folio was stolen property, illegally possessed in violation of 18 U.S.C. §2315 and said page or folio was transported and transferred in interstate and foreign commerce after ANTHONY MELNIKAS knew the same was stolen, converted, and taken by fraud in violation of 18 U.S.C. §2314.

In violation of 18 U.S.C. §545 and 2.

COUNT 5

On or before March 26, 1994, the exact date(s) being unknown to the Grand Jury, in the Southern District of Ohio, ANTHONY MELNIKAS, unlawfully received, possessed, and stored goods of a value of in excess of \$5,000, that is one fourteenth century page or folio, page number 235, from a manuscript (manuscript 32-13) that is in the possession of Archivo y Biblioteca Capitulares, Catedral De Toledo, Toledo, Spain, which page had crossed a State and a United States boundary after being stolen from the Archivo y Biblioteca Capitulares, Catedral De Toledo, Toledo, Spain and ANTHONY MELNIKAS knew the page or folio

to have been stolen, unlawfully converted, and taken.

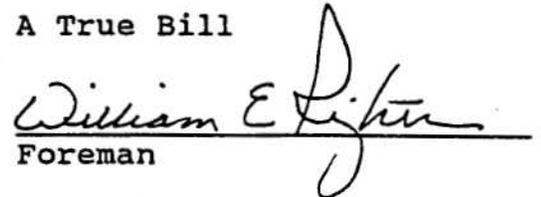
In violation of 18 U.S.C. §2315.

COUNT 6

On or before March 26, 1994, the exact date(s) being unknown to the Grand Jury, in the Southern District of Ohio, ANTHONY MELNIKAS, fraudulently, and knowingly, did receive, sell, and conceal, and facilitate the transportation, concealment, and sale, after importation, of one fourteenth century page or folio, page number 235, from a manuscript (manuscript 32-13) that is in the possession of Archivo y Biblioteca Capitulares, Catedral De Toledo, Toledo, Spain, which merchandise ANTHONY MELNIKAS knew was imported and brought into the United States contrary to law, in that said page or folio was stolen property, illegally possessed in violation of 18 U.S.C. §2315 and said page or folio was transported and transferred in interstate and foreign commerce after ANTHONY MELNIKAS knew the same was stolen, converted, and taken by fraud in violation of 18 U.S.C. §2314.

In violation of 18 U.S.C. §545 and 2.

A True Bill

  
Foreman

  
EDMUND A. SARGUS, JR.  
UNITED STATES ATTORNEY

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
KENNETH J. MURPHY  
CLERK

05 MAY 20 PM 3:49

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EASTERN DIVISION  
COLUMBUS

UNITED STATES OF AMERICA

Plaintiff,

:

No. CR-2-96-11  
JUDGE DLOTT

vs.

ANTHONY MELNIKAS

Defendant.

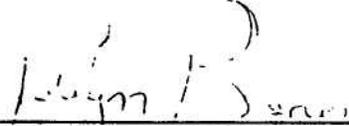
GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION  
TO DISMISS THE INDICTMENT UNDER RULE 12(b)(2)

Now comes the United States of America by and through Assistant United States Attorneys, J. Michael Marous and Robyn R. Jones, and hereby reply to the defendant's Motion to Dismiss the Indictment Under Rule 12(b)(2). The government asserts that this motion is without foundation in the law and should be summarily overruled. The reasons for the government's position are set forth in the attached Memorandum of Law.

Respectfully submitted,

EDMUND A. SARGUS, JR.  
United States Attorney

  
\_\_\_\_\_  
J. MICHAEL MAROUS (0015322)  
Assistant United States Attorney

  
\_\_\_\_\_  
ROBYN R. JONES (0022733)  
Assistant United States Attorney

001232

## MEMORANDUM OF LAW

### **Introduction**

The defendant is charged with violations of 18 U.S.C. § 2315 (Counts 1-2) and 18 U.S.C. § 545 (Counts 3-4). Specifically, the indictment alleges that during May 1995, defendant received, possessed and stored certain folios from a Vatican manuscript in violation of section 2315 and received, sold, concealed and facilitated the transportation, sale and concealment of these folios in violation of section 545.

The defendant reasons that even though he has not been charged with the theft of the folios, since the evidence will show he had access to and checked this manuscript out of the Vatican library in 1987, the "government's evidence will attempt to prove that [the defendant] was, in fact, the thief". The defendant then essentially asserts, without support, that whenever the evidence might tend to suggest the defendant is the "thief", the defendant cannot be charged with or convicted of receiving, concealing or withholding the stolen property. Defendant's argument is both logically and legally flawed.

### **A Thief Can Be Charged With Possession of Stolen Goods.**

The government could not locate, nor did the defense cite, any case holding that a "thief" cannot be convicted of violating 18 U.S.C. § 2315. Similarly, there are no cases suggesting the "thief" or importer cannot be charged with violating the second paragraph of 18 U.S.C. § 545. As explained below, in

1976, the Supreme Court, in dictum, rejected defendant's position. Therefore, it is appropriate to disregard any pre-1976 cases cited by the defendant. Based upon all post 1976 cases located by the government, the law is settled that a thief can be charged with either the theft or subsequent receipt/possession of the stolen goods, or both. The thief cannot, however, be convicted of both the theft and the receipt/possession of the stolen goods. To put this issue into perspective, a brief historical summary follows.

One of the earlier cases on point is Aaronson v. United States, 175 F.2d 41 (4th 1949). In Aaronson, the Fourth Circuit affirmed Aaronson's convictions for both stealing goods and receiving the stolen goods under 18 U.S.C. § 101, the predecessor to section 641.

Subsequently, the Supreme Court, in Heflin v. United States, 358 U.S. 415 (1959), held that one cannot be convicted and punished under 18 U.S.C. § 2113 for both robbing a bank and receiving the proceeds of the robbery. After Heflin, the Fourth Circuit revisited the issue under section 641 in Milanovich v. United States, 275 F.2d 716 (4th Cir. 1960), aff'd., 365 U.S. 551 (1961), and essentially set aside its earlier Aaronson decision. In Milanovich, the Fourth Circuit ruled, contrary to Aaronson, that the defendant could not be convicted and punished under section 641 for both stealing and receiving part of the stolen property.

The Supreme Court affirmed the decision in Milanovich, noting that the Fourth Circuit correctly relied upon Heflin even though Heflin involved a different statute, section 2113. The

Court explained that the question is one of "statutory construction" and it saw no real difference between 641 and 2113. (Note that both of these statutes proscribe both the theft and the possession of stolen property.) The Court concluded that the trial judge erred because he failed to tell the jury they could "convict of either larceny or receiving, but not both." (Emphasis added) 365 U.S. at 555.

Milanovich caused some confusion among the circuits, as pointed out by the Fifth Circuit in United States v. Minchew, 417 F.2d 218 (5th 1969). In Minchew, the defendant was charged with burglary under section 2115 and retention of stolen government property under section 641. The defendant argued he could not be convicted of retaining stolen property unless the jury found he was not the thief. The Fifth Circuit disagreed, noting that while Milanovich was somewhat unclear and might be read to prohibit convicting a thief for possession of stolen goods, it believed the decision only proscribed convicting a thief of both theft and possession. Then, since the defendant in the case before it was charged with burglary and receiving stolen property, not stealing and receiving the same property, the Fifth Circuit upheld both convictions.

Because of the "discordant views in the Circuits regarding the proper application" of Milanovich and Heflin, the Supreme Court attempted to clarify its position on these issues in United States v. Gaddis, 424 U.S. 544 (1976). In Gaddis, the Court upheld the Fifth Circuit's decision that a person convicted of

robbing a bank in violation of sections 2113(a), (b) and (d) cannot also be convicted of receiving or possessing the proceeds under section 2113(c).

The Court stated that when a defendant has been indicted on both offenses, the jury should be charged on both but cannot convict on both. In such a situation, the jury can only convict for the receiving/possessing count if there is insufficient proof that the defendant was a participant in the robbery. In footnote 15, the Court added the following dictum:

If, on the other hand, the indictment or information charges only a violation of section 2113(c) [receiving and possessing], it is incumbent upon the prosecution at trial to prove beyond a reasonable doubt only the elements of that offense, and the identity of the participant or participants in the robbery or theft is irrelevant to the issue of the defendant's guilt.

The above footnote was thereafter relied upon in a number of cases that held a "thief" can be convicted of either the theft or the receipt/possession of the stolen property, but not both. The government has not identified any post-Gaddis cases that specifically held a thief could never be convicted of the receipt, possession, or concealment of the stolen property. A few of the relevant cases, some of which were discussed by the defendant, follow.

1. Sixth Circuit

The defendant relies upon United States v. Solimine, 536 F.2d 703 (6th Cir. 1976), cert. denied sub nom., Sclafani v. United States, 430 U.S. 918 (1977), in which the defendants were convicted of both the theft and receipt/possession of the same

goods. The Sixth Circuit held, at p. 711, that the receipt/possession charge should have been dismissed against the defendant-thief since that portion of the statute did not apply to the thieves. However, in fn. 30, the court stated, relying upon Gaddis, that where the proof of theft is "dubious", the defendant can be charged with possession and:

Improper cumulation of convictions can be avoided, however, by instructing the jury that it may convict of either theft or possession, but not of both.<sup>1</sup>

The defendant also relies upon Gentry v. United States, 533 F.2d 998 (6th Cir. 1976). Gentry, however, held only that the defendant could not be convicted of both robbery under section 2113(d) and possession of the stolen goods under section 2113(c). The Sixth Circuit then vacated the possession conviction even though the sentences ran concurrently, on the theory that multiplicity impairs the opportunity for parole.

After Gentry, the Sixth Circuit did specifically address the issue at hand in United States v. West, 562 F.2d 375 (6th Cir. 1977), cert. denied, 435 U.S. 922 (1978), a case the defendant overlooked. In West, the defendant raised, in part, that he could not be convicted under section 922(j) for receiving and storing guns that he himself stole. The defendant relied upon Milanovich

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<sup>1</sup>United States v. Garber, 626 F.2d 1124 (3rd 1980), cited Solimine for the proposition that a defendant cannot be convicted of both theft from interstate shipment and of receipt and possession of the same property. Garber held that defendants could not be convicted under 659 for both theft from a foreign shipment and receipt and possession of goods stolen from a foreign shipment. The issue was viewed as one of multiplicity.

and the Sixth Circuit responded, at p. 379:

Finally, appellant's reliance upon Milanovich is misplaced. Contrary to his assertion, Milanovich does not hold that the thief of property may not be convicted for receiving the same property. Milanovich simply holds that ordinarily he may not be convicted for the offense of stealing and the offense of receiving.

## 2. Other Circuits

In United States v. Bracken, 558 F.2d 544 (9th Cir.), cert. denied, 434 U.S. 872 (1977), the defendants were convicted of buying, receiving or concealing stolen property under 662. The Ninth Circuit rejected the defendants' argument that since they stole the property, they could only be charged/convicted of 661 (theft). Court held a thief can be charged with both stealing and receiving the stolen property but can only be punished for one offense.

Similarly, in United States v. Trzcinski, 553 F.2d 851 (3rd Cir. 1976), cert. denied, 431 U.S. 919 (1977), the defendant participated in the theft of a government truck but was only charged with and convicted of receiving stolen government property (under section 641). The defendant contended that since the trial court believed he was the thief, he could not be charged with possession. The Third Circuit rejected this contention, holding that Gaddis only proscribed convicting a thief of both the theft and subsequent receipt/possession and explained that the underlying premise is to prevent pyramiding of punishment. The court noted that if only possession is charged, the identity of the thief is irrelevant.

The Fourth Circuit also addressed this issue in United States v. Bauer, 713 F.2d 71 (4th Cir. 1983). Bauer was charged under 641 with "concealing and retaining" stolen savings bonds but was not charged with the theft. The theft occurred between December 1978 and January 1979 but the bonds did not become "property of U.S." until June 1979. Bauer attempted to sell the bonds in 1982. Bauer argued, relying upon the "common law rule", that since he was the thief, he could not be convicted of "concealing or retaining" the bonds. The Fourth Circuit disagreed, citing Trzcinski, Gaddis, Milanovich, and reasoned:

1. The thief can be convicted of either the theft or receipt but not both.
2. An acquittal of theft does not preclude a conviction for receiving/retaining.
3. "Concealing/retention" is not necessarily identical to "receiving."
4. A contrary holding would create "loopholes": if the theft occurred more than 5 years ago and the thief could not be prosecuted for recent acts of concealing/retaining, the thief would be insulated from prosecution; and if only theft charges were allowed, Bauer could never be prosecuted since the bonds he stole were not U.S. property at the moment of the theft.

The Eighth Circuit addressed this issue in United States v. Lindsay, 552 F.2d 263 (8th Cir. 1977), in the context of convictions under 18 U.S.C. §1708 for theft and possession of

stolen mail. The court vacated the possession conviction and explained that although both possession and theft may be charged "when proof of possession is stronger than proof of theft and a jury might reasonably find the defendant guilty only of possession", it was improper to convict for both.

The defendant in United States v. Mavrick, 601 F.2d 921, 925 (7th Cir. 1979) was charged under section 659 with the receipt/possession of stolen goods. In fn. 2, the court stated:

Although the government's evidence tended to establish that the defendant himself stole the goods, he is charged only with possession, perhaps because the government believed that the evidence of his participation in the theft was weak. That the defendant may have stolen the goods, however, does not prevent his prosecution for possession. United States v. Sharpe, 452 F.2d 1117, 1119 (1st Cir. 1971).

Finally, in United States v. Richardson, 694 F.2d 251 (11th Cir. 1982). Richardson, similar to the defendant here, was charged only with possession of stolen goods. He contended that the proof at trial showed that if anything, he stole the item and thus, he could not be convicted for possession unless the jury found the item was stolen by someone else. The court rejected this contention stating, at p. 254:

"To hold otherwise would in effect require the Government, in every case arising under section 659, to prove the negative - that a defendant charged with possession did not steal the goods or, if charged with theft, that he did not possess the goods. This we decline to do. We will not restrict the Government's latitude at the charging stage by "add[ing] to or alter[ing] the statutory elements of the offense." Gaddis. 424 U.S. at 550, 551 n. 15, 96 S. Ct. at 1027 n. 15.

Applying defendant's reasoning to 18 U.S.C. § 2315, which is charged here, would mean that the government could never charge a thief under this section or any related provisions (sections

2111-2118) since these provisions only proscribe the sale, receipt, possession or transportation of stolen property, not the theft.

The government has not located any recent cases on point as the issue appears settled. The later cases deal primarily with related issues of multiplicity, or the proper remedy where the jury convicts of both possession and theft, etc. The cases no longer question the propriety of sending both theft and possession charges to the jury where the evidence is sufficient. See, e.g., United States v. Brown, 996 F.2d 1049, 1055 (10th Cir. 1993) ("Every appellate court decision since Gaddis has similarly concluded that a new trial is not required where the defendant is convicted for both theft and possession and both counts were properly submitted to the jury. [citations omitted]" ); United States v. DeCorte, 851 F.2d 948, 956 (7th Cir. 1988) (one can be charged with violating both 659 and 2314, as statutes are "aimed" at separate evils; sections 2311-2318 do not proscribe thefts.)

3. 18 U.S.C. § 545

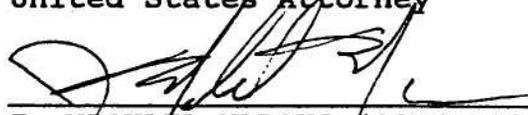
The defendant contends, without support, that since a thief cannot be charged with possession, by analogy an "importer" cannot be charged with the receipt or possession of the imported goods in violation of the second paragraph of section 545. This contention is specious and based upon a faulty premise. First, as explained above, a thief can be charged with and convicted of possession/receipt of the stolen goods. Therefore, by analogy, an importer could certainly be charged with and convicted of the subsequent concealment/transportation of the imported goods.

Second, the defendant has cited no authority requiring the court to apply to importation laws, the principles developed under the laws relating to stolen property. The government has not found any cases which even preclude a person from being charged and convicted of both importing and subsequently concealing/transporting the imported goods.

This Motion should be overruled.

Respectfully submitted,

EDMUND A. SARGUS, JR.  
United States Attorney



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J. MICHAEL MAROUS (0015322)  
Assistant United States Attorney



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ROBYN R. JONES (0022733)  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
KENNETH J. MURPHY  
CLERK  
96 MAY 20 PM 3:49

UNITED STATES OF AMERICA

Plaintiff, : No. CR-2-96-11  
JUDGE DLOTT

vs.

ANTHONY MELNIKAS,

Defendant.

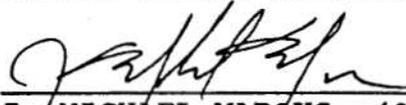
U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EASTERN DIVISION  
COLUMBUS

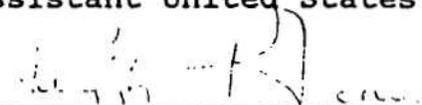
GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION  
TO DISMISS BASED UPON FAILURE TO INITIATE  
PROSECUTION WITHIN LIMITATIONS PERIOD

Now comes the United States of America, by and through Assistant United States Attorneys, J. Michael Marous and Robyn R. Jones, and hereby respond to Defendant's Motion to Dismiss Based Upon Failure to Initiate a Prosecution Within the Limitations Period. The government asserts that this prosecution was brought within the required limitations period. On the dates charged in the Indictment, the defendant was violating 18 U.S.C. §§545 and 2315. For the reasons more completely discussed in the attached Memorandum of Law, the defendant's Motion to Dismiss should be overruled.

Respectfully submitted,

EDMUND A. SARGUS, JR.  
United States Attorney

  
\_\_\_\_\_  
J. MICHAEL MAROUS (0015322)  
Assistant United States Attorney

  
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ROBYN R. JONES (0022733)  
Assistant United States Attorney

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## MEMORANDUM OF LAW

### INTRODUCTION

It should be understood that no one, save defendant, knows the exact time and circumstances of the actual theft of the Vatican pages involved in this case nor the actual time and circumstances of when they were imported into the United States. The defendant is not charged with the theft of the Vatican's property. However, the government will present evidence that in May 1995 the defendant was in violation of 18 U.S.C. §§545 and 2315.

Furthermore, few of the cases cited by defendant involve possession of contraband, stolen property, or situations where acts have been taken in furtherance of an ongoing conspiracy. None of the appellate cases cited in support of defendant's argument were on point. Thus, despite an exhaustive discussion of statute of limitations issues, little guidance is provided to this Court.<sup>1</sup>

In fact, the only Federal Court of Appeals to have recently and directly addressed the issue before the Court is the Fourth Circuit in United States v. Blizzard, 27 F.3d 100 (4th Cir. 1994). Blizzard will be discussed below and the government urges this Court to follow the logic and the reasoning set forth therein. Indeed, as the defendant admits, there have been no appellate

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<sup>1</sup>Defendant's cite to the 20 year statute of limitations for 18 U.S.C. §668 (Theft of Major Artwork) is equally unpersuasive. This section includes prohibitions for "stealing or obtaining by fraud," traditional non-continuing crimes. Congress's desire to expand the statute of limitations for discrete "theft" crimes does not lend credence to an argument that Congress did not intend traditional continuing-offense crimes to be so treated.

decisions addressing their claim with respect to 18 U.S.C. 545.

Finally, defendant is making a self-serving assumption about when the Vatican's property was illegally imported into the United States (more than five years ago). Defendant argues, in essence, that once smuggled property is in the United States more than five years, it becomes "legal" to conceal, buy, sell, or facilitate the transportation, concealment or sale of that property. This argument is not supportable. There is little evidence on the specifics of how and when the stolen merchandise came into the country and there are no cases which support defendant's argument.

**The Passage of Time Does Not Give the Defendant the Right to Possess, Conceal, Store, Barter, Sell, or Dispose of Stolen Property.**

In general, the limitation period in criminal matters starts to run when a crime is complete. Pendergast v. United States, 317 U.S. 412, 418 (1943), and a crime is generally deemed complete when each element of the crime has occurred. United States v. Smith, 740 F.2d 734, 736 (9th Cir. 1984). "An exception to this rule occurs in the case of continuing crimes", a distinction recognized by the Supreme Court in United States v. Toussie, 397 U.S. 112 (1970). A classic example is the crime of conspiracy. See Toussie. When a crime is determined to be continuing, the limitation period does not begin to run until the time of the last affirmative act in furtherance of the crime. See Fiswick v. United States, 329 U.S. 211 (1946).

The fact that the crime may be considered "complete" and therefore subject to prosecution, at some earlier point in time is immaterial. See United States v. Levine, 658 F.2d 113 (3rd Cir. 1981). Where acts of concealment occur as an integral part of a conspiracy, before its final objectives have been obtained, the government may rely on proof of such acts as extending the life of the conspiracy. See United States v. Howard, 770 F.2d 57 (6th Cir. 1985) (en banc) cert. denied 475 U.S. 1022, 106 S.Ct. 1213, 89 L.Ed. 2d 325 (1986) and United States v. Lash, 937 F.2d 1077 (6th Cir. 1991) a rehearing en banc, cert. denied September 3, 1991.

With respect to the possession, concealment, storage, sale, or disposition of stolen property, the Fourth Circuit has supported the government's position. In United States v. Blizzard, 27 F.3d 100 (4th Cir. 1994), the defendant was charged with receiving and concealing stolen government property in violation of 18 U.S.C. §641.<sup>2</sup> In 1981 and 1982, the defendant in Blizzard used government funds to obtain firearms. In October 1987, the firearms were seized in a search of the defendant's home. The defendant admitted that he took possession of the stolen property between May 1981 and October 1982. Subsequently, a bill of information was

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<sup>2</sup>That section provides in part: [w]hoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys, or disposes of any record, voucher, money, or thing of value of the United States, or any department or agency thereof, or any property made or being made under contract with the United States, or any department or agency thereof; or [w]hoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined, or converted. . .[shall be fined or imprisoned].

filed in November 1992 and eventually a statute of limitations issue was raised. The District Court held that the concealing and retaining of stolen property is a continuing offense and the statute of limitations had not run.

In analyzing the conduct of concealing and receiving stolen property, the Fourth Circuit was guided by Toussie v. United States, supra. The court noted that Toussie held that failing to register for the draft was not a continuing offense. Furthermore, despite the pronouncements in Toussie, there was no prohibition to the use of the continuing offense doctrine. Rather, the Toussie simply sets forth a two-part test:

[the] explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that congress must assuredly have intended that it be treated as a continuing one. Toussie, 397 U.S. at 115 and Blizzard, at 102.

The Blizzard court went on to say:

[i]n the Court's view, "[f]ailing to register is not like a conspiracy which the Court has held continues as long as the conspirators engage in overt acts in furtherance of their plot. . ." Toussie 397 U.S. at 122, 90 S.Ct. 864. Blizzard, supra, at 102.

Most importantly, Blizzard explains how the possession of contraband or stolen property is not analogous to situations involving a one-time act, such as registering for the selective service, stating:

[m]indful of Toussie's lesson that a criminal statute of limitations should be liberally applied in favor of repose, the nature of the offense of knowingly concealing and retaining stolen government property, nevertheless, convinces us that Congress intend for that offense to be a continuing one. Stolen government property is not unlike contraband. The passage of time does not give the defendant a license to possess it. The government may

prosecute a person who continues to possess unlawful drugs irrespective of the date he first possessed them. There is no reason to treat differently a person who continues to conceal and retain stolen government property. In either case, the defendant is not subjected to prosecution for acts in the far-distant past. Rather, he is subjected to prosecution for a possessory offense within the five-year statute of limitations. Blizzard, supra., at 102.

The Blizzard court also addressed other cases, including some cited by the defendant herein, and distinguished United States v. Irvine, 98 U.S. 450 (1879). In Irvine, supra., a discreet act, the failure of an attorney to pay a pensioner's benefits, occurred on a date certain. A federal statute at the time made it unlawful to withhold a pension from a pensioner. The obligation to pay arose in 1870 and the defendant was indicted in 1875. The general statute of limitations at the time was two years. The Supreme Court found that the offense was not a continuing one. The Court went on to note that the offense of "withholding" in Irvine does not require continuing possession. On the other hand, the Court stated that:

[I]n contrast [to Irvine] there is a temporal relationship between the offense of retaining and culpability - - the continued possession of stolen government property. Blizzard, supra., at 103.

The reasoning of Blizzard was also used by the District Court in Oregon in United States v. Fleetwood, 489 F. Supp. 129 (U.S. Dist. Ct. D. Ore. (1980)). In Fleetwood, the property was stolen in 1970. The defendant was shown to have been in possession of the stolen property in 1979, at which time the property was presumably seized by the government. The District Court held that

the five year statute of limitations began to run in 1979 on the last day all elements of the offense were present. See Fleetwood, supra., at pages 130-132.

After recognizing the test articulated in Toussie v. United States, supra., the Fleetwood Court went on to state:

"[t]he nature of a crime such as concealing and retaining stolen property, where possession is the essence of the offense, is such that congress must have intended it to be treated as a continuing offense.  
Fleetwood, supra., at 132.

In the case at hand, the defendant should not be rewarded for his successful concealment of the Vatican stolen property for almost eight years. Assuming for the purposes of this discussion that we adopt defendant's argument that he obtained the stolen property in 1987, the property does not become "unstolen" by virtue of a five year statute of limitations. Possession of drugs, illegal firearms, and stolen property is always illegal.<sup>3</sup> Effective concealment should not yield protection from further prosecution.

Toussie, supra., and other cases cited by defendant, mention "staleness" of evidence as one justification for applying the statute of limitation in non-continuing course of conduct cases. However, where prohibited conduct is still occurring and the subject contraband is still in possession, staleness is not a key issue. In the case at hand, the government's responsibility

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<sup>3</sup>See also the pre-Toussie, supra., case Eichelberger v. United States, 252 F.2d 184 (9th Cir. 1958), holding that possession of firearms was a continuing offense. Possessing firearms, like stolen property or drugs, should not become "unprosecutable" after five years.

will be to establish that all the elements of the crime occurred on the dates charged.

In recent years the Sixth Circuit has addressed whether possessory crimes constitute a course of conduct. In United States v. Jones, 533 F.2d 1387 (6th Cir. 1976) cert. denied, 431 U.S. 964, 97 S.Ct. 2919 53 Lad. 2d 1059 (1977), this Circuit held that possession of the same firearm at several different points of time constituted a continuing course of conduct. The Court noted that possession is a course of conduct, not an act and that if congress had desired to punish an act of dominion, it could have done so easily by forbidding the act of dominion instead of the course of conduct. See Jones, supra., at 1391.

In United States v. Del Percio, 870 F.2d 1090, (6th Cir. 1989), the Sixth Circuit recognized its holding in Jones and went on to find the failure to comply with pertinent safety regulations cannot serve as the basis for a conclusion that a possessory type crime occurred for statute of limitations purposes. Indeed, the Court went on to say that under different circumstances, a possessory crime could constitute a continuing offense based upon the nature of defendant's actions. In other words, Del Percio is inappropriately relied upon by defendant. The failure to find a "continuing offense" in those circumstances has little to do with possession and concealment of stolen property.

In 1994, the Sixth Circuit once again addressed the statute of limitations issue in United States v. Dandy, 998 F.2d 1344, (6th Cir. 1993), cert. denied 114 S.Ct. 1188 (1994). In

Dandy the defendant argued that the statute of limitations for tax fraud should have begun to run on the date each tax return was filed. The Sixth Circuit held that the statute of limitations does "not begin to run until the last affirmative evasive acts occurred which could not be beyond the statute of limitations." Dandy, supra., at 1355.

The Court reasoned:

"to hold otherwise would only reward a defendant for successfully evading discovery of his tax fraud for a period of six years subsequent to the date the returns were filed." Dandy, supra., at 1355.

In United States v. Walker, 871 F.2d 1298 (6th Cir. 1989), the discovery of a bank fraud occurred after the statute of limitations had arguably expired. The Sixth Circuit held the conspiracy continued until its discovery because of acts of concealment.

In the current case, it should be remembered that no one knows exactly when the defendant acquired the Vatican's property. However, even if it was eight years ago, the defendant effectively hid the documents for the entire time. Because of his efforts, no one, with the exception of defendant, knew the whereabouts of the stolen manuscript pages between 1987 and 1995. In 1995, defendant did several things with the stolen items. He stored, concealed, possessed and arguably bartered or sold them. Significantly, 18 U.S.C. §2315 prohibits possessing, storing, bartering, selling, or disposing of stolen goods. In other words, while it is possible, the act of receipt may be barred by the statute of limitations, surely the acts of possession, concealment, storage, bartering,

selling, or disposing of the stolen property are still ripe for prosecution if that conduct took place in 1995.

In conspiracies where a main objective has not been obtained or abandoned or abandonment and concealment is essential to the success of that objective, attempts to conceal the conspiracy are made in furtherance of the conspiracy. United States v. Howard, 770 F.2d 57, 61 (6th Cir. 1985), cert. denied 475 U.S. 1022 (1986). Walker, supra., at 1307.

After concealment of the stolen property for 8 years, defendant's conduct in 1995 should not be given "limitation" protection.

**The Passage of Time, After A Hypothetical Entry Date, Does Not Give the Defendant the Right to Conceal, or Traffic, or Transport Smuggled Property With Impunity.**

Defendant has no cases on point in support of their proposition that the statute of limitations should prohibit the prosecution in this case under 18 U.S.C. §545. Ironically, two of the cases cited by defendant, United States v. Cunningham, 891 F.Supp. 460 N.D. Illinois 1995 (Cunningham I) and United States v. Cunningham, 902 F.Supp. 166 (Northern District Illinois 1995) (Cunningham II) merely stand for the proposition that when the United States prosecutes under Postal Service laws, more than five years after mail was illegally detained, the appropriate charge is brought under 18 U.S.C. §1708, for unlawful possession of the United States mail.<sup>4</sup> Crimes involving concealment have been held

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<sup>4</sup>Cunningham II also notes the Fourth Circuit holding that concealing and retaining stolen property is a continuing offense. Cunningham II then states that with respect to concealment of stolen mail, (18 U.S.C. §1708) that concealment is a discrete offense. Blizzard, supra., is the only Court of Appeals to consider the issue and they found that concealment and retention of

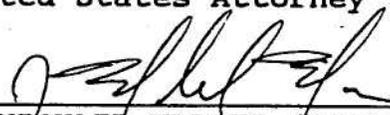
to be "continuing". Besides Blizzard, supra., in United States v. Culoso, 461 F. Supp. 128 (S.D.N.Y. 1978), aff'd., 607 F.2d 999 (2nd Cir. 1979), the court held that a violation of 18 U.S.C. §1001, which involved aiding the application for a government loan without disclosing certain material facts and improperly causing checks to be issued, was a continuing offense.

The specifics of how, and when and who smuggled the Vatican's documents into the country may never be publicly known. Now the putative smuggler is declaring an "entry date" in hopes of escaping post-smuggling prohibitions. In fact, he should be prosecuted.

If the defendant, in May 1995, concealed, bought, sold, or in any manner facilitated the transportation, concealment, or sale of the Vatican's property after it was illegally imported, then the prohibited conduct which is defined in 18 U.S.C. §545 has occurred within the statute of limitations period.

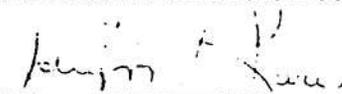
Respectfully submitted,

EDMUND A. SARGUS, JR.  
United States Attorney



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J. MICHAEL MAROUS (0015322)  
Assistant United States Attorney



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ROBYN R. JONES (0022733)  
Assistant United States Attorney

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stolen government property is, in fact, an ongoing crime.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**FILED**

AUG 13 1996

KENNETH J. MURPHY, Clerk  
COLUMBUS, OHIO

UNITED STATES OF AMERICA

Plaintiff,

:

No. CR-2-96-11  
and CR-2-96-  
JUDGE DLOTT

vs.

ANTHONY MELNIKAS

Defendant.

PLEA AGREEMENT

Plaintiff, United States of America, and defendant,  
ANTHONY MELNIKAS, hereby enter into the following Plea Agreement  
pursuant to Rule 11(e) of the Federal Rules of Criminal  
Procedures and Section 6B1.1 of the United States Sentencing  
Guidelines.

1. Defendant, ANTHONY MELNIKAS, will enter a plea of  
GUILTY to Counts 1, 2, and 5 of the Superseding Indictment and  
Count 1 of the Bill of Information filed herewith charging him  
with the unlawful receipt, possession, and storage of stolen  
goods which have crossed a United States or State boundary, in  
violation of 18 U.S.C. §2315.

2. Defendant, ANTHONY MELNIKAS, will enter a plea of  
GUILTY to Counts 3, 4, and 6 of the Superseding Indictment  
charging him with, fraudulently and knowingly, receiving,  
selling, and concealing and facilitating the transportation and

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concealment and sale, after importation, of merchandise, which merchandise Defendant, ANTHONY MELNIKAS, knew was imported and brought into the United States contrary to law, in violation of 18 U.S.C. §§545 and 2.

3. Defendant, ANTHONY MELNIKAS, will enter a plea of GUILTY to Count 2 of the Bill of Information filed herewith which charges him with the illegal offering for sale items protected by the Archaeological Resource Protection Act, in violation of 16 U.S.C. §470ee(c).

4. Defendant, ANTHONY MELNIKAS, understands that the penalty which may be imposed for each violation of 18 U.S.C. §2315 pursuant to his plea of guilty to Counts 1, 2, and 5 of the Superseding Indictment and Count 1 of the Bill of Information is a term of imprisonment of up to 10 years, a fine of up to \$250,000 pursuant to 18 U.S.C. §3571, and a 3 year term of supervised release pursuant to 18 U.S.C. §3583.

5. Defendant, ANTHONY MELNIKAS, understands that the penalty that may be imposed for each violation of 18 U.S.C. §545 pursuant to his plea of guilty to Counts 3, 4, and 6 of the Superseding Indictment is a term of imprisonment of up to 5 years, a fine of up to \$250,000 pursuant to 18 U.S.C. §3571, and a 3 year term of supervised release pursuant to 18 U.S.C. §3583.

6. Defendant, ANTHONY MELNIKAS, understands that the penalty that may be imposed pursuant to his plea of guilty on

Count 2 of the Bill of Information is a term of imprisonment of up to 2 years and a fine of up to \$20,000 and a 1 year term of supervised release, pursuant to 18 U.S.C. §3583.

7. The defendant, ANTHONY MELNIKAS, will pay a special assessment of \$50.00 per count, totalling \$400.00, as required by 18 U.S.C. §3013. This assessment shall be paid by the defendant before sentence is imposed and defendant will furnish a receipt at sentencing. The payment shall be paid to the United States District Court, at the Clerk's Office, 85 Marconi Blvd., Columbus, OH 43215.

8. If such a plea of guilty is entered and not withdrawn and defendant acts in accordance with all other terms of this agreement, the U.S. Attorney for the Southern District of Ohio agrees not to file additional charges against defendant, ANTHONY MELNIKAS, based upon his receipt, concealment, storage, possession or attempted sale of stolen manuscript pages in the Southern District of Ohio, occurring prior to the date of the Superseding Indictment and Bill of Information, with respect to items delivered to the United States Attorneys Office or to the United States Customs Service, which were previously stolen and to which defendant provides a full explanation as to origin. Nothing in this agreement prevents the United States Attorney for the Southern District of Ohio from filing additional charges with respect to items or manuscript pages which the defendant has not disclosed pursuant to this Plea Agreement.

9. Defendant, ANTHONY MELNIKAS, agrees to testify truthfully and completely concerning all matters pertaining to the Superseding Indictment and Information filed herein, and to provide any and all information he has pertaining to the origins of medieval manuscripts that are or have been in the possession of ANTHONY MELNIKAS, or to which ANTHONY MELNIKAS has knowledge. Defendant further agrees to submit to supplemental debriefings on such matters, on reasonable notice, whenever requested by the authorities of the United States, whether before or after his plea is entered. In particular, defendant, ANTHONY MELNIKAS, agrees to provide explanations of origin, and access to, any manuscript pages remaining in his possession at the time that he signs this Plea Agreement and any manuscript pages, or partial pages, if any, supplied to others for any purpose.

If, pursuant to this provision, Defendant ANTHONY MELNIKAS makes any false statement to any government agent or testifies untruthfully before any Grand Jury or any other court proceeding, he may be prosecuted for making such false statements or for perjury. Further, should defendant fail to comply fully with the terms and conditions set forth herein, this agreement is voidable at the election of the United States Attorney for the Southern District of Ohio, and Defendant, ANTHONY MELNIKAS, may be subject to prosecution as if the agreement had never been made.

10. Pursuant to Section 1B1.8 of the United States Sentencing Guidelines, the government agrees that any self-incriminating information provided as a result of this Plea Agreement will not be used against the defendant in determining the applicable guideline range for sentencing, or as a basis for upward departure from the guideline range, or as a basis for additional charges, so long as defendant's disclosures are complete and truthful.

11. Defendant, ANTHONY MELNIKAS, by signing this Plea Agreement, relinquishes all rights of ownership and claims to all of the manuscript pages, and partial pages, identified in the Superseding Indictment, the Bill of Information, the documents supplied by defendant's counsel to U.S. Customs on June 4, 1996, the partial manuscript page provided by the defendant to a third party on or about March 26, 1994, in Akron, Ohio and all other manuscript pages, if any, provided pursuant to this agreement.

12. It is further agreed by the parties hereto, that for the purposes of sentencing, relevant conduct to be considered by the Court pursuant to Section 1B1.3 of the United States Sentencing Guidelines will include the four (4) manuscript pages identified in the Superseding Indictment and the two (2) additional manuscript pages identified in the Bill of Information filed herewith.

13. It is further agreed by the parties hereto that the applicable offense conduct is governed by United States Sentencing Guidelines §2B1.1.

14. It is further agreed by the parties hereto, that for the purpose of sentencing, pursuant to United States Sentencing Guidelines Section 2B1.1(b), the value of the manuscript pages described in paragraph 12 is more than \$120,000 and less than \$200,000.

15. It is further agreed by the parties hereto, that for the purposes of sentencing, pursuant to United States Sentencing Guidelines §2B1.1(b)(4)(A), the offenses described in the Superseding Indictment and the Bill of Information filed herewith involved more than minimal planning.

16. The United States believes that the defendant has accepted responsibility as that term is defined in Section 3E1.1 of the United States Sentencing Guidelines and is thus entitled to a two point reduction in offense level. However, the defendant and the United States agree that if the defendant's offense level prior to the operation of Section 3E1.1(a) is level 16 or greater, both parties reserve the right to present argument to the Probation Department or the Court on the application the one point reduction in offense level pursuant to United States Sentencing Guidelines §3E1.1(b).

17. Except as otherwise provided in this agreement, both parties represent that they will not take a position with

respect to the application of Chapter 3 adjustments of the United States Sentencing Guidelines. Nonetheless, in the event either party determines it necessary to address any finding or ruling of the Probation Office or the Court during the sentencing or appellate stages, the opposing party may respond to the position taken.

18. The parties understand that the agreements set forth in this Plea Agreement with respect to sentencing calculation under the United States Sentencing Guidelines are in no way binding on this Court in reaching the final determination of the applicable guideline range for defendant's sentence. The defendant understands that the ultimate sentence imposed in this case rests solely in the discretion of this Court.

19. The defendant, ANTHONY MELNIKAS, is aware that his sentence will be imposed in accordance with the United States Sentencing Guidelines. The defendant is further aware that the District Court has jurisdiction and authority to impose any sentence within the statutory maximum set forth for the offenses to which defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence and that the United States Probation Office has not conducted a pre-sentence investigation. The defendant is also aware that any estimate of the probable sentencing range under the United States Sentencing Guidelines that the defendant may have received from the defendant's counsel, the United States, or may receive from the United States Probation Office, is a prediction, not a promise,

and is not binding upon the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw the guilty plea based upon the actual sentence imposed.

20. Defendant, ANTHONY MELNIKAS, acknowledges by signing this Plea Agreement that he is waiving all rights to contest by appeal or motion any issues previously raised with this Court in this matter, including but not limited to any pending motions. The defendant reserves the right to object to and/or appeal only those matters related to his actual sentencing.

21. Defendant, ANTHONY MELNIKAS, further represents that he will pay for the costs associated with the return, delivery, and restoration of all the manuscript pages, identified in the Superseding Indictment, Bill of Information, or otherwise provided to a third party on or about March 26, 1994, in Akron, Ohio, or provided through his counsel, or provided pursuant to this Plea Agreement. These costs are estimated to be \$10,000 and will be paid within thirty days of notice to defendant's attorney or defendant from the United States Probation Office.

22. The defendant understands that he has the right to persist in his plea of not guilty to the charges against him in CR-2-96-11 in the United States District Court for the Southern District of Ohio, and to proceed to a trial by jury with the assistance of counsel. At such trial the defendant would have

the right to confront and cross-examine witnesses against him, the right not to incriminate himself, and the right to compel witnesses to testify in his defense. The defendant understands by pleading guilty to Counts 1-6 of the Superseding Indictment and to Counts 1 and 2 of the Bill of Information, he waives those rights and if the guilty plea is accepted by the Court there will not be a trial of any kind.

23. The defendant understands and acknowledges that he is entering into this plea agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance on any representations or discussions not contained in this agreement and that there have been no threats, coercion, or intimidation of any kind. The defendant acknowledges his complete satisfaction with the representation of counsel and the advice he has received in connection with this plea agreement.

24. No additional promises, agreements or conditions have been made relative to this matter other than those expressly set forth herein and none will be made unless in writing and signed by all parties.

EDMUND A. SARGUS, JR.  
United States Attorney

BY:



J. MICHAEL MAROUS (0015322)  
ROBYN R. JONES (0022733)  
Assistant United States Attorneys

8/12/96  
Dated

I have read this Plea Agreement and I have discussed it with my attorneys. I fully understand the Plea Agreement and accept and agree to its terms without reservation. I enter into this Plea Agreement voluntarily and of my own free will. No threats have been made to me nor am I under any influence that would affect my ability to understand this Plea Agreement. I affirm that no promises or understandings have been made except for those contained in this agreement. I am satisfied with the services of my attorneys.

8/12/96  
Date

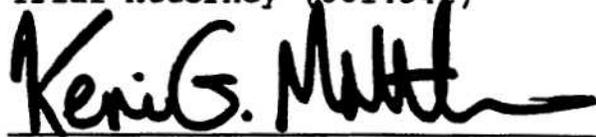
Anthony Melnikas  
Anthony Melnikas, Defendant

We have read this Plea Agreement and have discussed it with our client. The Plea Agreement accurately sets forth the entirety of the agreement between the United States and the defendant.

8/12/96  
Date



James E. Phillips  
Trial Attorney (0014542)



Kevin G. Matthews (pro hac vice)  
(0064657)

ATTORNEYS FOR DEFENDANT ANTHONY MELNIKAS

Vorys, Sater, Seymour & Pease  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008

## GOVERNMENT'S STATEMENT OF FACTS

The Government maintains that if this case were brought to trial, the following facts would be established. These facts are chronological, therefore, I am beginning with 1994.

### Indictment Counts 5 and 6

On March 26, 1994, DEFENDANT, then an Ohio State University History of Art Professor, consigned to Bruce Ferrini, an Akron, Ohio, art dealer, two 14th century manuscript folios, (Pages). DEFENDANT was a resident of Franklin County and he provided the documents in Akron, Ohio. DEFENDANT said he had obtained them in Spain from a print seller who was using them as dividers in a print bin. These folios were published in Mr. Ferrini's Catalog #3 as: Offering #15, King Freeing Slave, Offering #16, Dog and Man Fighting. A price of \$15,000 to \$20,000 for the King Freeing Slave folio was agreed to by the DEFENDANT. At this time DEFENDANT also spoke of owning a "very important 14th century Italian folio".

Both folios had signs of having been cut from a manuscript and in the case of the King Freeing Slave, evidence of being folded once vertically and once horizontally. The Dog and Man Fighting folio has been sold to a collector in Europe. The King Freeing Slave folio has been in the custody of the U.S. Customs Service since May 24, 1995.

The folio Dog and Man Fighting is being held by a collector in Europe pending return to its parent library.

In May 1996, confirmation was received from Spanish Law Enforcement Authorities as well as through the Pierpont Morgan Library, NY, that the King Freeing Slave folio, had been identified as folio #235, of manuscript #32-13, and had been stolen from the Cathedral Library in Toledo, Spain. It was further confirmed that this folio was intact in the manuscript in 1963 or 1964 when the manuscripts of the library were inventoried and numbered, and was missing in 1975 when the manuscript was microfilmed. The DEFENDANT visited the Toledo library in 1965 requesting to study manuscripts of this type. Permission was not obtained to remove the folio. By the early 1970's the folio had been transported to Franklin County, Ohio from Toledo, Spain and was on display in DEFENDANT's Upper Arlington home. Between 1964 and the early 1970's the stolen folio was brought into the United States.

### Indictment Counts 1-4

On May 4, 1995, at the invitation of DEFENDANT, Mr. Ferrini attended DEFENDANT's art class in Columbus, Ohio as a guest lecturer. After class, Mr. Ferrini accompanied DEFENDANT to DEFENDANT's residence in Upper Arlington, where DEFENDANT provided

two folios to Mr. Ferrini. These two folios were the folios DEFENDANT had referred to on March 26, 1994, when he made reference to "Very important Italian folios". DEFENDANT explained to Mr. Ferrini that these two folios and the two folios published in Ferrini's catalog, were obtained in approximately 1948 from a poet who visited the art gallery in Rome where DEFENDANT worked.

DEFENDANT also said he may have obtained the two folios from an unknown print seller as well as indicating they were part of his wife's inheritance.

DEFENDANT advised he was certain an agreement on offering price would be reached through "A concordance of discordances". Mr. Ferrini returned home with these two folios.

Soon thereafter, Mr. Ferrini provided photos and xerox copies of these two folios to Dr. James Marrow, Professor, Department of Art and Archeology, Princeton University. Dr. Marrow's research (consisting of a matter of hours) revealed these two folios to be folio #98, and folio #140 of Manuscript Vat. Lat. 2193 belonging to The Vatican Library. Father Leonard Boyle, Prefect of the Vatican Library, confirmed these two folios were missing and confirmed that folios #98 and #140 were intact in the manuscript in 1973 when the manuscript was last microfilmed. Vatican records showed ANTHONY MELNIKAS as having requested the manuscript in 1987.

On May 18, 1995, I learned that Father Boyle had determined that a third folio, folio #114, was also missing from Vat. Lat. 2193.

On May 19, 1995, a search warrant was obtained for 2207 Yorkshire Road, Upper Arlington, Ohio, the residence of ANTHONY MELNIKAS. Prior to executing the search warrant, DEFENDANT was interviewed. During the interview DEFENDANT was shown a transparency of folio #140. DEFENDANT first advised us he had obtained the folio depicted in the transparency from a poet (Libero de Libero) in 1947/49. DEFENDANT then provided various additional explanations as to how he obtained the pages. DEFENDANT also said he purchased these two folios from a flea market in Rome a few years prior to the present.

The DEFENDANT provided folio #114 and then provided a sworn written statement as follows: "As far as I can remember, during one of my visits to the Vatican Library I found these three (3) leafs of manuscripts loose and they ended up in my possession in the other papers-research notes. But, now that I see edges being with signs of being cut out. It could be that I have done it." All three of these folios had an unevenly cut left margin and had been folded.

In this investigation I learned that, since 1970 (and earlier), the DEFENDANT has visited The Vatican Library hundreds of times. The DEFENDANT was considered like one of the family or a piece of the furniture around the library. DEFENDANT in fact collaborated with The Vatican Library in publishing his 1975 three volume work, "Corpus of the Miniature in the Manuscripts of Decretum Gratiani". In 1987 DEFENDANT was also collaborating with The Vatican Library to publish a work which would translate from abbreviated manuscript Latin to modern Latin the manuscripts of Decretum Gratiani belonging to The Vatican. Because of this relationship, DEFENDANT, had been afforded, for years, special access and privilege at The Vatican Library. The Vatican Library is normally closed from the middle of July to the Middle of September. This however, is also the time when DEFENDANT would normally visit, enabling DEFENDANT to often be virtually alone and unsupervised in the manuscript reading room.

The Vatican Library has never given permission to anyone to remove folios #98, #114, and #140.

The Vatican Library security procedures are as follows:

1. The reader must be a scholar.
2. The reader must demonstrate a need to use the resources of the library.
3. The reader must demonstrate a reason why the work must be done at the library.

After meeting the preceding prerequisites to obtain a reader card, the reader must:

1. Sign in at the front door of the library.
2. Obtain a key to a locker.
3. Store all belongings (briefcases, overcoats, etc.).
4. Only then may the reader proceed to the manuscript reading room with only their notes or lap top computer.

Once in the manuscript reading room the reader must:

1. Fill out a manuscript request slip requesting a particular manuscript.
2. The request slip is then given to an attendant at a large desk at the front of the reading room who retrieves the requested manuscript from an underground vault.

3. The reader then studies the manuscript under the supervision of normally two library staff, one in the front of the room, the other in the back of the room.
4. When the library closes for the day, the reader must return any manuscripts to the front desk.
5. The reader may, however, request the manuscript be maintained at the front desk for subsequent days of study by the reader and there is no limit to number of days a reader may have the manuscript maintained as such.

Inspection of folios #98, #114, and #140 not only indicate they have been cut, but also that they have been folded. The size of these folios is larger than a normal sheet of notepaper. At some point in time, since 1987, the stolen folios were transported from Vatican City to Columbus, Ohio.

Upon close inspection of manuscript Vat. Lat. 2193, I observed evidence of cut marks on the folios preceding the folios removed. In the case of folio #98, folio #97 was heavily damaged and almost entirely cut from the manuscript and there are cut marks as well on folio #96. In the case of folio #140, folio #139 was heavily damaged and almost cut from the manuscript and folio #138 was damaged by cut marks as well. In the case of folio #114, only folio #113 has been damaged by cut marks.

I have provided copies of the stolen Vatican folios to several experts around the world. All of them have stated that both individually and collectively, the folios are worth more than \$5,000.

#### Information Counts 1, and 2

On March 26, 1994, DEFENDANT offered to Mr. Ferrini the Toledo, Spain, folio described above, to include in Mr. Ferrini's sale catalog. In May 1995, when Mr. Ferrini was provided folios #98 and #140 of Vat. Lat. 2193 from the Vatican Library, DEFENDANT also showed Mr. Ferrini two other folios. Mr. Ferrini took photographs of these two folios. On or about May 28, 1996, confirmation was received from Spanish Law Enforcement Authorities as well as through the Pierpont Morgan Library, NY, that these two folios Mr. Ferrini had photographed, were in fact folio #176 of manuscript #3, and folio #260 of manuscript #239, both manuscripts being from the Cathedral Library in Tortosa, Spain. Both folios #176 and #260 had been stolen from the manuscript prior to 1973, when the manuscript was microfilmed and the folios were first known to be missing. The Tortosa Library did not give permission for their removal.

The index of DEFENDANT'S three volume publication, "Corpus of the Miniature in the Manuscripts of Decretum Gratiani," published in 1975 contains reference to manuscripts #3 and #239 from the Cathedral Library in Tortosa, Spain. Thus, DEFENDANT had access to this library prior to 1975. On May 29, 1996, I obtained a search warrant for 2207 Yorkshire Rd., Upper Arlington, Ohio, the residence of the DEFENDANT, authorizing a search for folios #176 and #260. On May 30, 1996, folios #176 and #260 were obtained from DEFENDANT with the assistance of his counsel. The evidence suggests that these two stolen folios entered the United States between 1965 and 1975.

Folios #176 and #260 from Tortosa are partial pages containing the illumination (picture) and partial text cut from the center of the respective pages. Through my investigation, I have learned they were also created in the 1300's, probably in Italy. The estimated market value for these pages is \$15,000.

This concludes the statement of facts.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
NOV 25 PM  
1996

UNITED STATES OF AMERICA, : CR-2-96-011 and CR-2-96-107  
 : Judge Dlott  
 Plaintiff, :  
 :  
 v. : SENTENCING JUDGMENT AND  
 : ORDER  
 ANTHONY MELNIKAS :  
 :  
 Defendant. :

The Defendant appeared with counsel, James E. Phillips and Kevin G. Matthews, before the Court for sentencing on November 15, 1996.

The Defendant has entered a plea of **GUILTY** to Counts 1 through 6 of the Superseding Indictment and Counts 1 and 2 of the Bill of Information. Accordingly, the Defendant is adjudged **GUILTY** of:

- (1) FOUR Counts of POSSESSION OF STOLEN PROPERTY, a violation of 18 U.S.C. § 2315, a Class C felony;
- (2) THREE Counts of CONCEALING SMUGGLED PROPERTY, a violation of 18 U.S.C. §§ 545 and 2, a Class D felony; and
- (3) ONE Count of ILLEGALLY OFFERING FOR SALE ITEMS PROTECTED BY THE ARCHAEOLOGICAL RESOURCE PROTECTION ACT, a violation of 16 U.S.C. § 470ee(c), a Class E felony. Count Fourteen of the Indictment.

Pursuant to 18 U.S.C. § 3553 the Court makes the following findings of relevant facts significant to the imposition of sentence.

The Defendant is guilty of violating:

- (1) 18 U.S.C. § 2315, a Class C Felony, which subjects the Defendant to a maximum of 10 years imprisonment, a \$250,000 fine, up to 3 years supervised release, and a \$50 special assessment for each count.

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- (2) 18 U.S.C. §§ 545 and 2, a Class D felony, which subjects the Defendant to a maximum 5 years imprisonment, a \$250,000 fine, up to 3 years supervised release, and a \$50 special assessment for each count.
- (3) 16 U.S.C. § 470ee(c), a Class E felony, which subjects the Defendant to a maximum 2 years imprisonment, a \$250,000 fine, up to 1 year supervised release, and a \$50 special assessment.

However, Sentencing Guideline § 2B1.1. controls the determination of the sentence in this case.

At the time of sentencing there remained one objection to the presentence report. Defense counsel objected to the inclusion of the information in Paragraph Nos. 98 through 100 on the grounds that the factors cited in these sections do not warrant departure and thus should not be included in the report.

It is the responsibility of the Probation Department to bring to the Court's attention any factors they uncover -- based on their investigation -- that may warrant a departure from the guidelines. This responsibility is especially acute in light of the Supreme Court's recent decision in Koon v. United States, 116 S.Ct. 2035 (1996). The Court greatly appreciates the Probation Department's inclusion of this information and finds it relevant to the Court's determination of sentence. The Defendant's objection is therefore **DENIED**.

With regard to the merits of an upward departure, however, the Court finds that such a departure is not warranted in this case. The Court is persuaded that the appraisals submitted by the experts in the field of medieval manuscripts present a fair estimation of the value of the folios in question. Specifically, the Court finds there is no basis to conclude that the uniqueness of the folios was not taken account by the experts' appraisals. Accordingly, the Court will not depart upward in this case.

The Court adopts the findings of fact contained in the presentence report.

The Court thus finds that the proper application of the guidelines establishes **13** as the total offense level, **I** as the criminal history category, and **12 to 18** months as the sentencing range.

The plea agreement does not provide for any sentence.

The Court finds that Counts 1 through 6 of the Superseding Indictment and Counts 1 and 2 of the Information are grouped together pursuant to U.S.S.G. § 3D1.2(d), because they are offenses of a character where the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of substance involved, or some other measure of aggregate harm.

Since the applicable guideline range is in Zone D of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment. U.S.S.G. § 5C1.1(f).

Under the guidelines, the Court shall order a term of supervised release when a term of more than 1 year imprisonment is imposed. Otherwise a term of supervised release is optional. U.S.S.G. § 5D1.1(a) and (b). The authorized term of supervised release for Counts 1 through 6 of the Indictment and Count 1 of the Information is 2 to 3 years; the authorized term for Count 2 of the Information is 1 year. U.S.S.G. § 5D1.2(a)(1).

The maximum statutory fine in this case is \$250,000. 18 U.S.C. § 3571(b)(3). The fine range under the guidelines is \$3,000 to \$30,000. U.S.S.G. §§ 5E1.2(c)(1) and (c)(2).

Under § 5E1.1 of the guidelines, restitution to the victims of the offense shall be ordered. Under the statute, restitution of up to \$10,000 may be ordered. 18 U.S.C. § 3663.

A special assessment of \$400 is mandatory under 18 U.S.C. § 3013.

Based upon the record in this case, including the information contained in the presentence report, the Court accepts the Rule 11(e)(1)(A) plea agreement, specifically finding that the agreement adequately reflects the seriousness of the actual offense behavior and that accepting the plea agreement will not undermine the statutory purposes of sentencing.

The Defendant is hereby sentenced as provided in pages one through seven of this Judgment pursuant to the Sentencing Reform Act of 1984 as follows:

The Defendant, Anthony Melnikas, shall be committed to the custody of the United States Bureau of Prisons for a term of **FOURTEEN (14) MONTHS** on Counts 1 through 6 of the Indictment and Counts 1 and 2 of the Information, all sentences to be served concurrently. Upon release, the Defendant shall be placed on **SUPERVISED RELEASE** for a term of **TWO (2) YEARS** on Counts 1 through 6 of the Indictment and Count 1 of the Information and a term of **ONE (1) year** on Count 2 of the Information, all terms to be served concurrently. The Defendant shall abide by the following special conditions of supervised release:

- (1) the Defendant shall obey all federal, state and local laws;
- (2) the Defendant shall not own a firearm or other dangerous device;
- (3) the Defendant shall not possess a controlled substance; •
- (4) within 72 hours of release from custody of the Bureau of Prisons, the Defendant shall report to the Probation Office in the district to which he is released;
- (5) the Defendant shall perform 250 hours of community service during the period of supervised release, pursuant to 18 U.S.C. § 3553(a)(2) and 18 U.S.C. § 3563(b)(13), on projects to be determined by the Probation Department in consultation with the Court. It is the Court's hope that the community service will be done in the Columbus Public Schools.

The Court FINDS that the Defendant does have the ability to pay a fine and one in the

amount of \$3,000 is ordered. This fine shall be paid immediately.

The Defendant IS ORDERED to make restitution in an amount equal to the cost of the return, delivery and restoration of all of the stolen property to the victims of his offenses within 30 days of notification from the U.S. Probation Officer. The cost of this restoration is presently estimated at \$10,000.

IT IS ORDERED, that the Defendant pay a special assessment in the amount of \$400 which shall be due immediately.

The Court STRONGLY RECOMMENDS to the Bureau of Prisons that the Defendant be incarcerated at the minimum security camp facility in Ashland, Kentucky. The Court further recommends that the Defendant be released to a community program and/or home detention at his earliest eligibility date.

The Defendant is further ORDERED to abide by the standard conditions of supervised release, modified as follows, for the Southern District of Ohio:

- (1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- (2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- (3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) the defendant shall support his dependents and meet other family responsibilities;
- (5) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- (6) the defendant shall refrain from the excessive use of alcohol;

- (7) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (8) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (9) the defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- (10) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- (11) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- (12) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Both parties are notified by this Court that they have a right to appeal this sentence. If the Defendant is unable to pay the cost of an appeal, he has a right to apply to this Court for leave to proceed in forma pauperis. If the Defendant is indigent and cannot retain a lawyer, the Defendant may apply and one will be appointed to represent the Defendant on appeal.

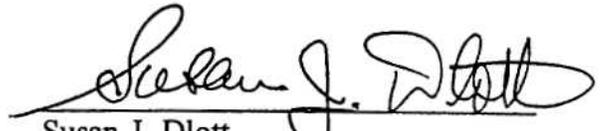
Both parties are further advised that, in accordance with the provisions of Rule 4(b) of the Rules of Appellate Procedure, a party wishing to appeal must file a notice of appeal with the Clerk of the United States District Court within 10 days of the filing of this Order.

The Court hereby advises the Defendant that if you so request, the Clerk of this Court will prepare and file forthwith a notice of appeal on your behalf. It is further ordered that the Defendant shall notify the United States Attorney for the Southern District of Ohio within thirty

days of any change in resident or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons at a time and date designated by the Bureau of Prisons, but no earlier than January 6, 1997.

**IT IS SO ORDERED.**

  
Susan J. Dlott  
United States District Judge

November 25, 1996

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# Medieval Manuscript Mystery

*Assistant United States Attorney J. Michael Marous\*  
Southern District of Ohio*

Imagine that someone walks up to you outside of the Library of Congress, hands you three random pages, and tells you to find out which books they're from, where they've been for the past 500 years, and which laws were broken in getting them. Then, suppose that instead of one library, there were hundreds of libraries and cathedrals in Europe as possible crime scenes. Where would you start? For the average Assistant United States Attorney such a case brings into play some seldom-used and little understood legal principles, and complicates usual issues such as evidence gathering, verification, and custody. It also provides a unique opportunity to work with the Department's Office of International Affairs (OIA), U.S. Embassy staffs (attaches), INTERPOL, foreign governments, and other international agencies.

In May 1995, our office was asked to assist U.S. Customs to prepare an unusual search warrant—unusual because it sought a single folio (or page) from a medieval manuscript prepared for the Italian Renaissance Philosopher, Francisco Petrarch.

## What are Manuscripts?

Manuscripts are hand-made books about a variety of topics, including religious, legal, and practical subjects. The parent manuscript involved in our initial investigation contained chapters on both war and agriculture. Manuscripts were hand printed, often by monks, on treated sheep or goat leather called vellum. Many works of the 1300s, such as the manuscript in question—Vatican Library Manuscript #2193 (or "Vat. Lat. #2193")—were simply copies of earlier works. At the completion of the written text portion of the manuscript, artists drew tiny paintings on the pages of text, usually depicting something that had to do with the subject of the page. These paintings often used gold leaf and fine detail and are known as "miniatures" or "illuminations."

*\*Co-counsel on the case was Assistant United States Attorney Robyn Jones and the lead U.S. Customs Service Agent was Mark Beauchamp.*

## The Vatican Connection

The subject of the search warrant was an Ohio State University professor who was less than a month from retirement. He had visited the Vatican Library on more than 100 occasions, and published a book on medieval manuscripts with the Vatican Press in 1975. In 1973, the Vatican manuscript was microfilmed and completely intact. In 1987, the defendant visited the Vatican Library and signed out Vat. Lat. #2193.

In May 1995, the professor presented two manuscript pages to an Akron, Ohio, art dealer. After receiving a less than adequate explanation of their origin and noticing their pristine condition, the dealer contacted a Princeton University art historian for assistance in identifying the documents' provenance (origin). The art historian examined them and determined that they were written in ancient Latin shorthand. He partially translated the pages, determined the author, and then traced them, through a series of phone calls and faxes, to the Vatican library. The art historian also determined, through his communications with the Vatican, that a third page was missing from Vat. Lat. #2193.

Once the art dealer learned that the two manuscript pages provided by the defendant were stolen, he immediately contacted U.S. Customs. U.S. Customs then approached our office for assistance with the search warrant. The search warrant was never executed. When the U.S. Customs agents arrived at the defendant's house to execute the search warrant, he immediately provided a statement to them and voluntarily provided the third manuscript page. In the course of the interview, the suspect provided various explanations as to how he obtained the manuscript pages, including a 1948 purchase in Rome and a more recent flea market purchase.

In the course of the investigation, U.S. Customs determined that in March 1994, the professor provided the art dealer with two other manuscript pages, which had supposedly been obtained in Rome in 1948, and the professor had additional non-Vatican manuscript pages at his home.

By the end of 1995, our efforts were focused in two very different areas. First, we were trying to identify all the necessary witnesses and documents for the eventual indictment and trial pertaining to the three Vatican manuscript pages. Second, we were trying to determine the origins of the non-Vatican manuscript pages.

Lay and expert witnesses for the Vatican case would be needed from Italy, the Vatican, England, and the U.S. We were quick to learn that employees of the Justice Department and the U.S. Customs Service cannot simply pick up the phone, contact citizens of other countries, purchase plane tickets, and travel to foreign countries on official business. On the other hand, almost immediately one of the professor's defense attorneys traveled to the Vatican, spoke with the head of the Vatican Library, and viewed the victim manuscript and crime scene.

For every Assistant United States Attorney who works on an international art work or stolen property case, we recommend an early phone call to OIA. Their attorney responsible for the appropriate country will facilitate and expedite the challenging process of obtaining evidence through international channels.

In most circumstances, when a foreign, lay, or expert witness needs to be interviewed, it is best to have your investigative agency's attache notify the foreign law enforcement agency. If a DOJ representative or investigative agency is traveling to a foreign country, a brief but essential authorization form must be filed with OIA well in advance and, for Assistant United States Attorneys, an authorization must be filed with the Executive Office for United States Attorneys so it can be forwarded through State Department channels.

## Obtaining Foreign Documents

The Vatican officials were very cooperative. Their business records established the dates of our defendant's library visits and his handling of the victim parent manuscript. We also planned to introduce Vatican statutes governing the original theft offense and, because the Vatican cooperated in our investigation and preparation for trial, involuntary production issues did not arise.

Authentication and hearsay issues still needed to be addressed. For authenticating foreign public documents, Federal Rule of Evidence (F.R.E.) 902(3) spells out a

two-stage process. Our hope was that the Vatican Library official who would testify could also meet the authentication requirements for the documents pursuant to F.R.E. 901(b)(1) as testimony of a knowledgeable witness.

In order to overcome hearsay issues, we initially looked at F.R.E. 803(6), Records of Regularly Conducted Activity, and F.R.E. 803(16), Statement in Ancient Documents. (Some records were more than 20 years old.) However, as we continued to prepare the case we were pleased to discover 18 U.S.C. § 3505, Foreign Records of Regularly Conducted Activity.

## The Spanish Folios

The most significant challenge in this case was the search for the origins of the non-Vatican manuscript pages. While the defendant insisted that some of the items had been purchased in 1948, U.S. Customs' agents, prosecutors, and many art history professionals were convinced they were stolen. The defendant had visited libraries and reviewed hundreds of manuscript books throughout Europe.

We consulted with medieval manuscript experts in Europe and the U.S. The content and artistry of the manuscript pages were examined to identify a time period and geographic location when the original manuscript was created. Using this information, experts attempted to identify libraries in Europe that were likely to hold manuscripts from the appropriate era and authorship. Finally, microfilm was examined in an attempt to match manuscript pages with similar kinds of artwork and content. We had academic assistance from Princeton, Michigan State, the University of California at Berkeley, and libraries and museums in Europe.

We also consulted with the Medieval Manuscript Society and they established a \$5,000 reward for anyone able to connect the suspicious pages with their manuscript. With this incentive, in May 1996, a graduate student working at the Pierpont Morgan Library in New York City was able to trace the mystery manuscript pages to two cathedrals in Spain. Then, in another stroke of luck, we found that in 1964 a monk in the Cathedral Library of Toledo, Spain, had manually counted the pages in the victim manuscript and all pages were accounted for. In 1965, the defendant had "studied" the

manuscript. In 1975, when the manuscript was micro-filmed, the stolen page was missing. Similarly, we were able to trace two additional manuscript pages to another cathedral in Tortosa, Spain, also visited by the defendant in 1965. The Tortosa manuscript pages were then seized through the execution of a search warrant.

## Maintaining Custody of Stolen Artwork

The defendant's attorneys did not contest the Vatican's right of ownership for the first three manuscript pages. However, prior to the May 1996 discovery, they continued to insist that the two manuscript pages provided to the Akron art dealer in 1994 were, in fact, legitimately obtained by the defendant in 1948. The attorneys were so convinced of their position that they sent a threatening demand letter to the art dealer. By this time, one 1994 manuscript page was in the possession of U.S. Customs and the other was being held by a prospective buyer in Austria. Importantly, beyond our suspicions we had little evidence that these pages were stolen and we could not identify a victim library.

More difficulty can arise at the conclusion of a criminal case. A victimized museum or foreign government obviously wants its property returned. However, a criminal case may not necessarily terminate an American citizen's claim of ownership of an item of previously stolen foreign property. Because our case was concluded through a plea agreement, the defendant waived claim of ownership of all the manuscript pages identified in our investigation.

If you are unable to obtain a waiver of this sort, the U.S. Customs' law at 19 U.S.C. § 1595 provides confiscation provisions for property brought into the U.S. contrary to law. Similarly, the civil forfeiture provisions of 18 U.S.C. § 981(a)(1)(C) enable the Government to obtain property entering the country in violation of 18 U.S.C. § 545. Foreign governments can also request return of property through letters rogatory under the provisions of 28 U.S.C. § 1782. Finally, assistance can be obtained through the Cultural Property Implementation Act, 19 U.S.C. §§ 2602 to 2613.

## The Conviction

In January 1996, the defendant was indicted on four counts—two charges for possession of stolen property, 18 U.S.C. § 2315, and two charges for concealment and sale of previously smuggled property, 18 U.S.C. § 545. In May 1996, when the Toledo documents were finally identified two weeks prior to the scheduled trial date, a superseding indictment was handed down. The defendant was charged with one additional count of possession of stolen property and one additional count of concealment of smuggled property.

Approximately one week later the Tortosa, Spain, documents were identified and seized.

On August 13, 1996, the defendant pled to the six-count superseding indictment and to two additional charges pertaining to the Tortosa documents—one for a violation of the Archaeological Resource Protection Act (ARPA), 16 U.S.C. § 470. The ARPA is typically applied to property that has been looted from public lands; however, one provision of the act prohibits trafficking of archeological resources in interstate or foreign commerce, the receipt of which is a violation of state or local law. This is probably the first time this provision has been applied to an international case involving artifacts of foreign origin.

## Conclusion

If you are ever presented with an international art case, consider the following tips:

- Call OIA at (202) 514-0000, as soon as possible.
- Determine if the U.S. has a treaty with the country or countries involved that pertains to artwork, property, evidence gathering, or use at trial, double jeopardy, or extradition—and read it.
- Be sure your passport is current.
- Have the investigative agency contact the appropriate attache for the country you are working with and find an accessible and affordable translator.
- Seize your "art" as evidence but be prepared to defend claims of ownership.
- Read 18 U.S.C. § 3505.

*continued on page 17*

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# Fear of Foreign Prosecution and the Privilege Against Self-Incrimination

*Assistant United States Attorney David S. Mackey  
District of Massachusetts*

District courts are divided about whether the Fifth Amendment privilege against self-incrimination applies to the fear of foreign prosecution. Two cases are now pending in the Courts of Appeal which will address the issue, both arising in the context of investigations into the immigration to the United States of persons suspected of collaborating with the Nazis during World War II. See *United States v. Balsys*, appeal docketed, No. 96-6144 (2d Cir.); *United States v. Gecas*, appeal docketed, No. 93-3291 (11th Cir.). This article describes the litigation of that issue in a recent denaturalization case also involving a Nazi collaborator. Nonetheless, the scope of the Fifth Amendment testimonial privilege also has potential significance for any case pending in an American court in which a defendant may assert fear of prosecution by a foreign government. It also has important implications for the United States' ability to compel testimony through a grant of immunity in some cases of transnational criminal activity, especially in the terrorism and narcotics trafficking areas.



*Naturalization photo of Aleksandras Lileikis.*

## Background

In September 1994, the U.S.<sup>1</sup> filed suit against Aleksandras Lileikis, a law-school educated Lithuanian who entered the U.S. in 1955 and was naturalized in 1976. The Complaint sought to strip Lileikis of his American citizenship under Section 340(a) of the

Immigration and Naturalization Act, 8 U.S.C. § 1451(a). The Complaint alleged that Lileikis, as Chief of the Lithuanian Security Police in Vilnius Province, Lithuania, during World War II, was implicated in the murder of much of the Jewish population of Vilnius, Lithuania. By the end of the war, fewer than 5,000 of the 60,000 pre-war Jewish inhabitants of Vilnius remained alive.

*continued on page 18*

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## Medieval Manuscript Mystery

*continued from page 16*

Finally, we found that Assistant United States Attorneys can be the best source of practical advice. We recommend consulting with Assistant United States

Attorney Carol Johnson of the Eastern District of Texas at (803) 868-9454 and Assistant United States Attorney Evan Barr of the Southern District of New York at (212) 791-1978 for cases involving possession and/or sale of stolen, foreign art. ❖

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<sup>1</sup> The *Lileikis* prosecution was a collaborative effort by the United States Attorney's office for the District of Massachusetts and the Office of Special Investigations, Criminal Division, Department of Justice.

JUDGE SPITZ

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
By: EVAN T. BARR (ETB-1438)  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007  
Telephone: (212) 791-1978

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :

Plaintiff, :

- v. - :

AN ARCHAIC ETRUSCAN POTTERY :  
CEREMONIAL VASE C. LATE 7TH :  
CENTURY, B.C. AND A SET OF RARE :  
VILLANOVAN AND ARCHAIC ETRUSCAN :  
BLACKWARE WITH BUCCHERO AND :  
IMPASTO WARE, C. 8TH-7TH CENTURY, :  
B.C., LOCATED AT ANTIQUARIUM, LTD., :  
948 MADISON AVENUE, NEW YORK, :  
NEW YORK, 10021, :

Defendants-in-rem. :  
-----X

VERIFIED COMPLAINT

96 CIV. 9437

CONFORMED COPY  
ORIGINAL FILED

DEC 16 1996

USDC SDNY

Plaintiff United States of America, by its attorney,  
Mary Jo White, United States Attorney for the Southern District  
of New York, for its complaint alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action brought by the United States of  
America pursuant to 16 U.S.C. § 470gg (Archaeological Resources  
Protection Act) seeking the forfeiture of all right, title and  
interest in personal property described as AN ARCHAIC ETRUSCAN

001281

POTTERY CEREMONIAL VASE C. LATE 7TH CENTURY, B.C. AND A SET OF RARE VILLANOVAN AND ARCHAIC ETRUSCAN BLACKWARE WITH BUCCHERO AND IMPASTO WARE, C. 8TH-7TH CENTURY, B.C., LOCATED AT ANTIQUARIUM, LTD., 948 MADISON AVENUE, NEW YORK, NEW YORK, 10021 ("defendants-in-rem").

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355. Venue is proper because the defendants-in-rem are located in the Southern District of New York.

#### I. PROBABLE CAUSE FOR FORFEITURE

3. From in or about June 1987 through in or about July 1987, archaeologists working under the auspices of the Archaeological Government Office of Rome (Soprintendenza Archeologica di Roma) made a series of excavations in and around a protected archaeological zone in Rome which includes the ancient town of Crustumerium and its necropolis ("Crustumerium Protected Archeological Zone"). These excavations led to the discovery of numerous vases and metal objects of archaeological interest.

4. All authorized excavations in the Crustumerium Protected Archaeological Zone were completed in or around July 1987.

5. At least 50 illegal excavations in the Crustumerium Protected Archaeological Zone have been detected by officials of the Archaeological Government Office of Rome.

6. In or about October-November 1987, Antiquarium, Ltd., a gallery located at 948 Madison Avenue, New York, New York, purchased the defendants-in-rem from Edoardo Almagia,

001282

Antiquities and Medieval Works of Art, 136 E. 56th Street, New York, New York, along with certain other items, for approximately \$24,500.

7. The defendants-in-rem were included by Antiquarium, Ltd. in a sale entitled "The Art of Ancient Italy: Archaic to Roman 1000 B.C. to 400 A.D." which opened at Antiquarium on or about November 17, 1988. Photographs of the defendants-in-rem were included in a catalogue issued by Antiquarium, Ltd. in connection with the sale. The Antiquarium, Ltd. catalogue is generally distributed nationally and internationally.

8. The defendants-in-rem were not sold.

9. On or about March 6, 1996, Francesco Di Gennaro, an Archeologist Inspector at the Archeological Government Office of Rome, reviewed the photographs in the catalogue described in ¶ 7 above.

10. Di Gennaro identified the defendants-in-rem as having been excavated from the Crustumerium Protected Archaeological Zone based on his experience in supervising excavations at that site and on his expertise in the field of Etruscan archeology.

11. On or about March 11, 1996, Giovanni Colonna, a Professor of Etruscology and Italic Archaeology at the University of Rome, identified the defendants-in-rem from the catalogue photographs as having originated from a Latin necropolis of the VII century, B.C., most likely the Crustumerium Protected

Archaeological Zone. Colonna based this determination on certain identifying characteristics and the apparent state of preservation of the defendants-in-rem.

12. On or about December 9, 1996, Antiquarium, Ltd. was provided formal notice that the defendants-in-rem were stolen property, and a demand was made for their return. Antiquarium, Ltd. remains in possession of the defendants-in-rem.

## II. FIRST CLAIM FOR FORFEITURE

13. Incorporated herein are the allegations contained in paragraphs 1 through 12 of the Verified Complaint.

14. The statutory provisions pursuant to which the defendants-in-rem are subject to seizure and forfeiture are as follows:

a. 16 U.S.C. § 470ee(c) provides in relevant part:

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

b. 16 U.S.C. § 470bb(1) provides in relevant part:

The term "archaeological resource" means any material remains of past human life or activities which are of archeological interest, as determined under uniform regulations promulgated pursuant to this chapter. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings,

intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items .... No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

c. . New York Penal Law § 165.45 provides in relevant part:

A person is guilty of criminal possession of stolen property in the fourth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

d. 16 U.S.C. § 470gg(b) provides in relevant part:

All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 470ee of this title occurred and which are in the possession of any person ... may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon ...

(3) a determination by any court that such archaeological resources ... were involved in such violation.

15. By reason of the above, the defendants-in-rem became and are subject to forfeiture to the United States of America pursuant to 16 U.S.C. § 470gg(b).

WHEREFORE, plaintiff United States of America prays that process be issued to enforce the forfeiture of the defendants-in-rem and that all persons having an interest in the defendants-in-rem be cited to appear and show cause why the forfeiture should not be decreed, and that this Court decree forfeiture of the defendants-in-rem to the United States of

America for disposition according to law, and that this Court grant plaintiff such further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York  
December 12, 1996

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
Attorney for the Plaintiff  
United States of America

BY:

  
EVAN T. BARR  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007  
Telephone: (212) 791-1978

VERIFICATION

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:  
SOUTHERN DISTRICT OF NEW YORK )

BONNIE GOLDBLATT, being duly sworn, deposes and says that she is a special agent with the United States Customs Service, and as such has responsibility for the within action, that she has read the foregoing complaint and knows the contents thereof, and that the same is true to the best of her own knowledge information and belief.

The source of her information and the grounds of her belief are official records and files of the United States and Mexico as well as information obtained during an investigation in connection with a letters rogatory request for judicial assistance pursuant to 28 U.S.C. § 1782.



BONNIE GOLDBLATT  
Special Agent  
United States Customs Service

Sworn to before me this  
12<sup>th</sup> day of December, 1996



NOTARY PUBLIC

LESLEY B. GLENN  
Notary Public, State of New York  
No. 31400-0007  
Qualified in New York County  
Commission Expires 6/30/97

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