

1-1-1990

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### Recommended Citation

Birnholz, Alan C. (1990) "Looking at Art and the Law," *UB Law Forum*: Vol. 5 : No. 1 , Article 10.  
Available at: [https://digitalcommons.law.buffalo.edu/ub\\_law\\_forum/vol5/iss1/10](https://digitalcommons.law.buffalo.edu/ub_law_forum/vol5/iss1/10)

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*Left to right: Douglas G. Schultz, of the Albright-Knox, Stephen Weil of the Hirshhorn Museum and Alan C. Birnholz.*

## Looking at Art and the Law

*By Alan C. Birnholz*

*Alan C. Birnholz, Ph.D., an associate professor of art history at UB, is a third-year law student.*

**A**s popular interest both in arts and in the law has steadily grown over the past 20 years, a new legal specialty — art law — has come into its own. Art law casebooks are being written and law schools now routinely include art law courses among their electives. Recognizing these developments, UB Law School, together with the University's Department of Art History and the Albright-Knox Art Gallery, sponsored a series of four lectures on "Art and the Law" last spring. More than 200 people filled the gallery's auditorium to hear nationally known ex-

perts discuss some of the legal ramifications surrounding works of art and the individuals who create, sell, purchase and experience those works.

The series opened with Stephen Weil, deputy director of the Hirshhorn Museum and Sculpture Garden, Smithsonian Institution, who led the audience through what he called the "strange intersections" where art and the law meet. Weil raised general questions (Is art speech? Is art always property?), spotlighted situations almost certain to raise thoughts about legal implications (art that desecrates the flag or damages the subject's reputation;

art someone alters after the artist completes it), noted the expansion of statutory law with respect to art and artists (California's Art Preservation Act, New York's Artists' Authorship Rights Act, and the movement toward legislating "moral rights"), and explained how particular works in the Albright-Knox could be seen as rich in form, color, texture, content — and law.

What rights and whose rights, Weil asked, come into play in Wesselmann's "Still Life #20," a work that is all Wesselmann and also part Mondrian — or, to be correct, also part Mondrian reproduction.

After Weil laid out the art-law territory, the next two speakers focused on specific themes. Gilbert Edelson, administrative vice president and counsel for the Art Dealers Association of America, took a critical look at the art market and at the prices the market generates for noteworthy paintings and sculptures.

Van Gogh's "Irises," for example, recently sold for an astonishing \$54 million. A Monet that five years ago would bring in \$2 million to \$3 million now costs four to five times as much. Edelson listed some causes for these skyrocketing prices.

Collecting great art has never been a poor man's hobby, he observed. It has always been expensive. Also, the Japanese are aggressively buying art today. Not to be overlooked is the social cachet art has, which many people continue to prize. And institutions like Sotheby's do not just sell art — they auction it off at dramatic events that push prices ever upward.

Yet most art does not appreciate in value, Edelson cautioned. Nor does the artist's death tend to lift the prices that his or her works can command — a popular myth. Edelson also pointed out the paltry sums the overwhelming majority of artists earn in the art market. According to Edelson, attempts in California and in the U.S. Congress to bring a percentage of resale profits back to the original artist have not been successful.

Counterfeit art — fakes, forgeries and copies — was the topic of John Merryman, Sweitzer Professor of Law, Emeritus, at Stanford University. Merryman inveighed against counterfeit art as not authentic, as likely to mislead our efforts to gain a sense of our past and therefore of ourselves. Despite the harm that counterfeit artworks cause, there is a widespread tendency to romanticize the counterfeiter, he said.

As examples, Merryman cited books such as Clifford Irving's *Fake!* and Tom Keating's *The Fake's Progress*. Merryman also noted how judges sometimes romanticize and even excuse the counterfeiter, citing Justice Arnold Fein's comments about David Stein in *State v. Wright Hepburn Webster Gallery, Ltd.*, 64 Misc.2d



*Mr. Weil lays out art law territory.*

423, 314 N.Y.S.2d 661 (Sup. Ct. 1970).

Today, counterfeit artworks abound in the most legitimate settings, according to Merryman. Nelson Rockefeller promoted them, museum shops sell them, and contemporary artists such as Elaine Sturtevant and Mike Bidlo make their mark by making copies of other artists' works.

The final lecture, by Barbara Hoffman, honorary counsel, College Art Association of America, returned to a broad overview of art law. Hoffman spoke at a time when art law was in the news. A few days before this lecture, and after years of controversy and legal battles, Richard Serra's "Titled Arc" was dismantled and removed from Federal Plaza in New York. According to Hoffman, a decision by the Second Circuit Court of Appeals in May 1988 (847 F.2c 1045) permitted the General Services Administration to take so unusual and ominous a step.

Hoffman noted, however, that paintings and sculptures have been at the center of similar controversy and attack in the recent past. Alan Sonfist's "Time Landscape of St. Louis" was bulldozed. David Nelson's portrait of Chicago's late

Mayor Harold Washington in drag was seized and damaged. "Avant-garde art is, by its nature, difficult, often offensive, and likely to raise thorny constitutional questions," she said.

"Is art speech? An answer in the negative becomes tempting for those who are put off by art's difficulty, have little love for art's offensiveness, and wish to divest art of the freedom of expression that the First Amendment guarantees," she said.

In the first lecture, Stephen Weil wondered if the combination of art, intimately bound to feelings, and law, embodying rules of conduct, constituted an oxymoron. By the time Hoffman ended the series, many in the audience began to realize how much art and law overlapped. While these lectures revealed what the law does — and might do — for art, it would be interesting to explore what art does — and might do — for the law. ■

*In addition to the sponsors listed in the article, the lecture series also received generous financial support from the SUNYAB Faculty Institute of Arts and Letters and two law firms — Saperston & Day, P.C., and Hodgson, Russ, Andrews, Woods and Goodyear.*