

LAW OFFICE OF RONALD L. KUBY

ATTORNEYS AT LAW
119 WEST 23RD STREET, SUITE 900
NEW YORK, NEW YORK 10011

TELEPHONE: (212) 529-0223

FAX: (212) 529-0644

WWW.KUBYLAW.COM

RONALD L. KUBY
GEORGE WACHTEL

LEAH BUSBY

STAFF
SUSAN BAILEY
PROCESS SERVER
LUIS R. AYALA 1952-2012

April 14, 2015

William J. Bratton
Police Commissioner, City of New York
One Police Plaza
New York, NY

BY HAND

Re: Return of *Prison Ship Martyrs' Monument 2.0*, a/k/a
The Edward Snowden Bust.

Dear Commissioner Bratton:

I represent the three artists who own the sculptured bust of Edward Snowden, lent to patrons of Fort Greene Park on April 6, 2015. The artists chose to display this valuable artwork on one of the Doric columns on the perimeter of the Prison Ship Martyrs' Monument, the latter being a tribute to the 11,500 American Revolutionary War prisoners who died onboard British prison ships. The location was chosen to illustrate the connection between those martyrs who suffered for our freedom over two centuries ago, and those who, such as Edward Snowden, suffer for the cause of freedom today. As the artists noted in their public statement: "All too often, figures who strive to uphold these ideals have been cast as criminals rather than in bronze...Our goal is to bring a renewed vitality to the space and prompt even more visitors to ponder the sacrifices made for their freedoms."

The bust was made of high-grade, weather-resistant, fiberglass reinforced hydrocal (FGR95). From its bronze color to its nameplate, it was designed to complement the style of other sculpture and monuments in the Park. It was carefully affixed to its supporting column with an adhesive designed for removal without harming the supporting structure. The loan was made in accordance with the spirit of the artistic mission statement of the Park's Department's Art in the


Park Program: “The New York City Department of Parks & Recreation has consistently fostered the creation and installation of temporary public art in parks throughout the five boroughs.” <http://www.nycgovparks.org/art-and-antiquities/temporary-guidelines>. Admittedly, the artists did not cross every procedural “t” and dot every procedural “i” suggested in the Temporary Public Outdoor Art Guidelines. *Id.* However, representatives of the artists are in the process of filing a complete application in accordance with those guidelines, so that this important discussion about the nature of liberty and treason may continue.

However, in light of the fact that the NYC Parks Department and the NYPD chose to summarily cover and then remove this artistic loan, the artists would like the sculpture returned to them, forthwith. Attached to this letter please find non-public photographs of the sculpture as it was being assembled, to prove the *bona fides* of their claims of ownership. I would be happy to work with you should other proof of ownership be requested. I understand that the sculpture is presently at the 88th Precinct, and not accessible to public viewing. <http://www.foxnews.com/us/2015/04/06/bust-edward-snowden-sneaked-into-new-york-park-officials-remove-it-shortly/>. I would be happy to have members of my staff retrieve the artwork.

As you are aware, “due process requires that the property [seized by the police] be returned upon demand unless the government can establish a . . . basis for its detention.” Matter of DeBellis v. Property Clerk of the City of New York, 79 N.Y.2d 49, 57 (Ct. App., 1992). The sculpture is not contraband in nature; it is neither *malum in se* nor *malum prohibitum*. It is not the “fruit” or “instrumentality” of a crime. The sculpture itself has no evidentiary value in proving the Class B misdemeanor of trespass that may be alleged against the artists for being in the park after closing hours. Therefore, there appears to be no basis for the NYPD to continue to possess this sculpture.

Even if the NYPD could delay the *return* of this sculpture to its owners, it has no basis, save an improper, censorious one, in preventing the *display* of this artwork. My clients have agreed that you may transfer physical custody of the piece to one Magdalena Sawon, of the Postmasters Gallery, named as the best gallery of 2014 by the Village Voice. Ms. Sawon intends to submit the piece in a show, commencing May 10, 2015, at the Boiler Space. The theme of the show, fittingly enough, is privacy and surveillance. The Gallery has agreed to reconstruct the Doric column on which the bust was placed for display in the show. My clients are happy to provide a plaque indicating that the piece is “On Loan From The NYPD Property Clerk,” if you would like.

Please contact me at your earliest convenience so that we may facilitate the display of this important piece of art.

Sincerely,


Ronald L. Kuby

cc: Property Clerk, NYPD
Cpt. Peter Fiorollo, 88th Precinct
Corporation Counsel, NYC

(enclosures/attachments)