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HAS "THE LOST MUSEUM" BEEN FOUND?
DECLASSIFICATION OF GOVERNMENT
DOCUMENTS AND REPORT ON HOLOCAUST
ASSETS OFFER REAL OPPORTUNITY TO "DO
JUSTICE" FOR HOLOCAUST VICTIMS ON THE
ISSUE OF NAZI-LOOTED ART

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IX. CONCLUSION
I. INTRODUCTION

More than fifty years after World War II, a 17th century Flemish painting by Frans Snyders began its journey home to the descendants of Holocaust survivors who lost the painting to the Nazis during one of the darkest periods in our world’s history. On November 20, 2000, the National Gallery of Art in Washington, D.C. announced its decision to return the painting entitled: “Still Life With Fruit and Game” after concluding it had been looted by the Nazis during the Second World War. The National Gallery’s announcement came after a year and a half of research into the painting’s provenance. The painting’s previous owners included Luftwaffe commander Hermann Goering, Adolf Hitler’s second in command in the Nazi regime, and Karl Haberstock, one of the Nazis’ principal art dealers. In 1990, the painting was donated to the National Gallery, as part of its 50th anniversary celebration, by a New York art dealer, Herman Shickman, himself a Jewish refugee who had fled Nazi Germany nearly fifty years earlier.

While there are numerous government and private resources that house some information on stolen artwork, there is no central registry. As a result, original

2. Dobbs, supra note 1. The definition of “provenance” is:
[a] chronological history of a work of art traced to the creator by tracking the chain of transfer of ownership and possession, location, publication, reproduction, and display . . . . Provenance can impart information about, inter alia, authenticity and ownership but no uniform guidelines exist to determine it, to document it, or to disclose it.
3. HECTOR FELICIANO, THE LOST MUSEUM: THE NAZI CONSPIRACY TO STEAL THE WORLD’S GREATEST WORKS OF ART 32 (1997) [hereinafter FELICIANO]. Feliciano’s book provides an excellent historical and investigative look into Nazi art-looting that took place during the Second World War. The author focuses on the private collections of five French Jewish families or art dealers: the Rothschilds, the Rosenbergs, the Bernheim-Jeune, the David-Weills, and the Schlosses, in part, due to the size and importance of these collections. Id. at 3. Goering created the Nazis’ first concentration camp at Oranienburg. Id. at 32. See also Dobbs, supra note 1.
4. Dobbs, supra note 1, see also COMMISSION REPORT, infra note 26, at 15.
6. The World Jewish Congress formed the Commission for Art Recovery (CAR), whose mission is to identify and locate Nazi stolen art and register claims for the victims, at http://www.comwjc-artrecovery.org (last visited Oct. 7, 2001); the Holocaust Art Restitution Project (HARP), which documents, researches and tracks Jewish cultural losses during the Holocaust, at http://www.lostart.org (last visited Oct. 7, 2001); the Art Newspaper, which in January 1999 published on its website a list of individuals involved in the Nazi art trade that was originally

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owners have no efficient way to look for their stolen artwork and legitimate sellers and good faith purchasers have no efficient method of ascertaining whether the work they want to sell or purchase has been reported stolen. Claimants must rely on bills of sale, insurance records, exhibition catalogs, and provenance to prove title. Plaintiffs whose artwork was looted during the Holocaust face enormous administrative difficulties in proving ownership. Thefts, in these cases, occurred more than fifty years ago and, since then, these works of art may have crossed international borders and changed hands numerous times. Plaintiffs may also have to prove that there was no prior sale, that they did not voluntarily relinquish title, and that the art was in fact looted. As a result, Holocaust survivors are often put in the difficult position of having to engage in exhaustive and expensive historical and factual research. The history of the Snyders painting illustrates the complex issues surrounding these cases and the difficulties involved in locating Nazi-looted artwork and restoring it to its rightful owners.

In 2000, heirs of Edgar Stern, a prominent French Jewish art collector, contacted officials at the National Gallery after learning that the museum had the Snyders painting from the National Gallery’s website. The heirs provided the gallery with evidence “linking the painting to one that had been seized from the Stern family collection in Paris in early 1941, soon after the Nazi takeover of northern France.” The National Gallery’s research was part of an overall effort to investigate the more than 3,000 paintings in its collection, “including 1,600 that were in Europe between 1933 and 1945 and [thus] could conceivably have passed through Nazi hands.”

The gallery first discovered a problem with the painting in April 1999 when museum researchers discovered it in a catalogue of paintings that had once belonged to Karl Haberstock. The Haberstock connection concerned National Gallery curators because Haberstock, “[k]nown for his opulent lifestyle and anti-Semitic views, . . . had a string of Nazi clients, including Hitler and Goering . . . .” Haberstock “was the most important art dealer in the Third Reich, [according to] Jonathan Petropoulos, an art historian at Claremont-McKenna College in California and one of the world’s leading experts on Nazi-looted art.” According to documents unearthed by Petropoulos, Haberstock first began selling artwork to Hitler in 1936 and shortly thereafter became part of “the inner sanctum” of Nazi art dealers.

issued in 1946 by the United States Office of Strategic Services (OSS) (The Art Trade Under the Nazis: The Not So Secret List), at http://www.theartnewspaper.com; the Art Loss Register, which maintains a computer database of stolen and missing works of art, antiques, and valuables and assists law enforcement agencies on an international level to help recover stolen art, discourage art theft, and prevent fraud, at http://www.artloss.com (last visited Oct. 9, 2001); and the International Foundation for Art Research (IFAR), which maintains a database of stolen art and offers a comprehensive authentication service to assist researchers in the resolution of questions, at http://www.ifar.org (last visited Oct. 9, 2001). Interpol and the Federal Bureau of Investigation (FBI) also have databases but they are not accessible to the general public. See also Kelly Diane Walton, Article: Leave No Stone Unturned: The Search For Art Stolen By the Nazis and The Legal Rules Governing Restitution of Stolen Art, 9 FORDHAM INT’L. PROP. MEDIA & ENT. L.J. 549, Appendix (1999) (author lists additional sites that provide information on art theft).

7. Dobbs, supra note 1; see also COMMISSION REPORT, infra note 26, at 15.
9. Id.
10. Id.
11. Id.
12. Id. Jonathan Petropoulos also served as Research Director, Art/Cultural Property to the Commission. See COMMISSION REPORT infra note 26, at 51, and accompanying text.
of Nazi bureaucrats.” Archival records revealed that a Snyders still life, matching the description of the Snyders in the National Gallery’s collection, had been registered in 1941 at the Jeu de Paume in Paris, the museum used by Goering as the main repository for stolen artwork.

The painting, according to Nazi records, had been confiscated from Edgar Stern’s widow, Marguerite, who had remained in Paris throughout the war. The Nazis were meticulous about labeling and cataloguing looted artwork using the initials “ST” as an identifying mark. Scrawled across the back of the Snyders canvas were the initials ST, a further indication that it had been looted by the Nazis. In addition, the Stern heirs were able to provide the curators of the museum with photographs of the backs of other Stern paintings which had been confiscated by the Nazis bearing similar markings, thereby substantiating their claim.

Exactly what happened to the painting following the war is not clear, although researchers believe Haberstock passed the painting on to a close collaborator, Baron von Pöllnitz. In 1968, von Pöllnitz sold the Snyders to Shickman, the Manhattan dealer who had fled Nazi Germany thirty years earlier, and in 1990, Shickman donated the painting to the National Gallery.

The museum’s decision to return the only Snyders in its collection is one of the more recent in a string of cases forcing museums to grapple with the issue of what to do with artwork in their collections that may have been stolen by the Nazis during the Holocaust. The primary reason for the increase in Nazi-looted art claims of late is that records and documents that have been locked away in government archives for more than half a century are only just now becoming available to the public. In the past decade, governments in Germany, the former Soviet Union, France, and Switzerland have begun to declassify government archives and documents which were closely held during the Cold War. How much of this artwork wound up in American collections following the war is unclear. Over the past few years, however, a number of museums including the Museum of Fine Arts in Boston, the Seattle Art Museum, and the Art Institute of Chicago have determined that works in their collections were in fact looted by the Nazis during the Holocaust and have either negotiated financial settlements with the families or returned the works to them.

These cases may involve state, federal, and international law and raise questions about the rights of original owners and good faith purchasers. They have

14. Celestine Bohlen, National Gallery to Return a Family’s Painting Looted by the Nazis, N.Y. TIMES, Nov. 21, 2000 at E1, 2000 WL 28283205; see also Feliciano, supra note 3, at 36.
16. Id.
17. Id.
18. Id.
19. Id. See also Commission Report infra note 26, at 15.
generated much discussion among legislators, courts, and the art community about: (1) how to establish ownership or title; (2) when must a demand be made and what is the relevant statute of limitations to make it; (3) what rights, if any, does a bona fide purchaser have in a stolen or looted work of art and; (4) what claims run against professional sellers such as art dealers who bought and/or sold stolen or looted art. The law is far from straightforward on these issues. At least one commentator has predicted that “as the generation that lived through World War II shrinks, works of art that made their way out of Nazi-controlled Europe [that could not be easily sold or transported] will begin to resurface through donations or dispositions by heirs . . . [and] make for a growing number of looted art claims in the coming years.”

In the final days of President Clinton’s administration, the Presidential Advisory Commission on Holocaust Assets in the United States issued its report entitled: Plunder and Restitution: The U.S. and Holocaust Victims’ Assets. The report purports to be “the most comprehensive examination ever conducted of the federal government’s handling of the assets of Holocaust victims that came into its

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25. Feliciano et al., supra note 24, at 73. See also Howard N. Spiegel, Recovering Nazi-Looted Art: Report from the Front Lines, 16 CONN. J. INT’L L. 297 (2001) (Mr. Spiegel is a partner in New York’s Herrick, Feinstein LLP, an international law firm with expertise in art-related cases. The firm has extensive experience in representing foreign governments, heirs of victims of the Holocaust, families of renowned artists and other claimants in connection with the recovery of art and antiquities.).

26. PLUNDER AND RESTITUTION: THE U.S. AND HOLOCAUST VICTIMS’ ASSETS, FINDINGS AND RECOMMENDATIONS OF THE PRESIDENTIAL ADVISORY COMMISSION ON HOLOCAUST ASSETS IN THE UNITED STATES AND STAFF REPORT 15 (2000), available at http://www.pcha.gov/PlunderRestitution.html [hereinafter COMMISSION REPORT]. The Presidential Advisory Commission on Holocaust Assets in the United States was created by P.L. 105-186, which passed the Congress by unanimous support and was signed into law by President Clinton on June 23, 1998. Id. at 1. The Commission was directed to:

— “conduct a thorough study and develop a historical record of the collection and disposition of the assets [of Holocaust victims] if such assets came into the possession or control of the Federal government . . .”

— “review comprehensively any research” by others “into the collection and disposition” of assets of Holocaust victims “to the extent that such research focuses on assets that come into the possession or control of private individuals, private entities, or non-Federal government entities within the United States;” and

— “submit a final report to the President that shall contain any recommendation for such legislative, administrative, or other action as it deems necessary or appropriate.”

The President then “shall submit to the Congress any recommendations” that he “considers necessary or appropriate.”

Id. (internal footnotes omitted). The Commission consisted of 21 members, including eight Members of Congress, representatives of the Departments of the Army, Justice, State, and Treasury, the Chair of the Holocaust Memorial Council, and eight members of the general public from across the United States. See http://www.pcha.gov/aboutpcha.htm (last visited Oct. 8, 2001). For a complete list of Commission members, see COMMISSION REPORT, supra note 26, at iii.

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possession or control" after the war. The Commission's primary purpose was: (1) to investigate the truth about assets of Holocaust victims that came into the possession or control of the United States government and (2) to recommend actions to pursue justice for Holocaust victims and their families. Edgar M. Bronfman, Chairman of the Commission, in his letter to President Clinton, accompanying the Commission's final report, said:

The Commission has approached its tasks with a seriousness born of the understanding of the critical importance of achieving justice for the victims of the immeasurable crimes of the Nazi era, and with the knowledge that its work has occurred in the context of many parallel efforts by other national commissions around the world. The Commission has identified a number of policy initiatives that will maintain U.S. leadership in the effort to achieve justice for Holocaust victims. The Commission firmly believes that an organized Federal role in implementing these initiatives must be maintained, although it is equally of the belief that the Federal government should not, and cannot, accomplish these goals by itself. For this reason, the Commission recommends the creation of a Federally-sponsored public/private Foundation to serve as an institutional focal point and coordinator of efforts that will involve the private sector, the States, and individual citizens both in the United States and abroad. Through its research, the Commission developed important information about Holocaust-era assets now held by Federal institutions; our Findings and Recommendations make several suggestions regarding policy initiatives that we believe are appropriate in light of this new knowledge. As a result of its other activities, the Commission has also concluded ground-breaking agreements with both Federal and non-Federal insti-

27. Commission Report, supra note 26, at i.
28. Hearing Before the Senate Foreign Relations Committee, 106th Cong. (2000) (testimony of Edgar M. Bronfman, Chairman, Presidential Advisory Commission on Holocaust Assets in the United States) [hereinafter Senate Foreign Relations Hearing 2000] (testimony of Edgar M. Bronfman), 2000 WL 19302922. At the time the legislation was passed, U.S. officials were pressuring European nations to settle outstanding claims regarding Swiss bank accounts of Holocaust victims and slave laborers exploited by German industry and the legislation was, in part, intended to answer foreign critics who argued that the U.S. was "quick to point a finger." Rob Grossman and William Neikirk, U.S. Mismanaged Nazi Loot of Holocaust, Panel Says; Commission Finds Poor Tracking of Items Stolen in War, CHICAGO TRIBUNE, Jan. 17, 2001, 2001 WL 4030929. See also Commission Report supra note 26, at 2 stating:

[A] review of the American historical record is important because Americans should know how their government dealt with the assets looted from victims of the Nazis that came into its possession. Such an accounting is consistent with the moral imperative to remember, and learn from, the darkest period in modern times. This work may also ultimately assist some victims or their heirs to recover property stolen from them years ago. Thus, the Commission's very existence is significant, helping our country, in President Clinton's words, to "begin this new millennium standing on higher ground."

Id. "[T]his history . . . suggests that a series of actions . . . be taken now . . . to provide a modicum of justice to Holocaust victims and their heirs. It is the desire to do justice that animates American policy in this area, including [the] Commission's recommendations." Id. at 7. See also Statement on Signing the U.S. Holocaust Assets Commission Extension Act of 1999, 35 Weekly Comp. Pres. Doc. 2558 (Dec. 13, 1999), in which President Clinton stated:

[We] in the United States are willing to hold ourselves to the same high standard of truth about Holocaust assets to which we have held other nations. The extension of the Presidential Advisory Commission sends a strong message, both at home and abroad, that we are committed to examining difficult aspects of our history and determining how to build a better world for our children in the next millennium.

Id.
tutions regarding best practices to be followed in the identification, recognition and restitution of Holocaust assets to their rightful owners.29

Part II of this Comment reviews the historical background of Nazi-looted art during World War II including the Commission’s findings about U.S. policies leading up to, during, and following the war. Part III criticizes various legal doctrines that the courts have applied to date in stolen art cases, as they do not adequately address the unique and complex issues involved in Nazi-looted art claims. These doctrines include adverse possession, the due diligence rule, and the demand and refusal rule. Similarly, Parts IV and V look at some legislative efforts and international approaches which, for various reasons, have also proved ineffective in addressing the unique circumstances involved in art claims made by Holocaust survivors. Part VI considers more recent efforts of Congress and the international community. Part VII details agreements the Commission reached with federal and non-federal institutions and its policy recommendations to the President on how our government should proceed on the issue of Nazi-looted art based on the Commission’s research. Part VIII analyzes a number of the Commission’s recommendations and Part IX concludes by urging the Bush administration and the Congress to continue the important work done by the Commission by establishing a central art registry database containing the archival information that is now being released from government archives. A central registry represents the best method of giving original owners and their heirs the ability to locate artwork that was stolen from them during the Holocaust. At the same time, it will make it easier for good faith purchasers to investigate the artwork’s history and may better prevent the sale of stolen artwork.

II. HISTORICAL BACKGROUND

This section considers the problem of Nazi stolen art during the Second World War in view of new information, uncovered by the Commission, regarding U.S.

29. COMMISSION REPORT, supra note 26, at i-ii. The letter went on to note that:
The Commission Report . . . includes the Commission’s unanimously approved Findings and Recommendations and the historical report written by the Commission staff upon which these Findings and Recommendations are largely based . . . .
The fundamental conclusion of the Commission is that our government performed in an unprecedented and exemplary manner in attempting to assure the restitution of the assets of victims of the Holocaust. However, even the best intentioned and most comprehensive policies were unable, given the unique circumstances of the times, to assure that all victims’ assets were restituted . . . .
The restitution of Holocaust-era assets involves not only the material restitution of what was stolen, but also the moral restitution that is accomplished by confronting the past honestly and internalizing its lessons. While in theory closure can be obtained on material restitution, moral restitution is an open-ended process that ought not to be limited in time, as there can be no point at which we stop trying to confront the past honestly. Indeed, a commitment to telling the truth about the past has been, and must remain, a fundamental component of American democracy’s pursuit of justice and human dignity . . . .
Speaking for the Commission, I would like to express thanks for your leadership, as well as that of the Congress, on this commitment. It is my urgent request, and that of the Commission, that the support that has been offered to the Commission’s work will be the beginning and not the end, of our government’s effort to achieve justice for Holocaust victims and their heirs.

Id. at i-ii.
policies leading up to, during, and following the war. While the Commission found that the U.S. government made extraordinary efforts to locate, safeguard, identify, and restitute assets taken by the Nazis, well intentioned government polices were unable, given the unique circumstances at the time, to see that Holocaust victims’ assets were fully restituted.30

A. Looting on an Unprecedented Scale

“The Holocaust was an immeasurable human tragedy . . . a profound moral failure . . . [and] the greatest mass theft in history.”31 No briefing about Nazi atrocities could have prepared American troops for what they were going to find as they entered German occupied territories following the war to liberate the Nazi concentration camps: “railroad cars packed with corpses, piles of incinerated skeletons, and emaciated prisoners” so weak they were barely able to lift their heads to see the faces of their liberators.32 Dwight Eisenhower said of his experience entering the Buchenwald concentration camp the day it was liberated: “I never at any time experienced an equal sense of shock.”33

After gaining power in 1933, the Nazi Party began to implement the racial ideology Hitler proposed in his autobiography, Mein Kampf, that of “the natural law” based on the “supremacy” of the Aryan race and the “inferiority” of other races that must be eliminated.34 Nazi policies “escalated from forced emigration, to the ‘Aryanization’ of business enterprises, and culminated in the ‘Final Solution’ of [the] genocide” of millions of people.35 For Hitler, part of the institutional dehumanization of the Jews consisted of first stripping them of whatever they owned.36 The liberation of the Buchenwald concentration camp provides a chilling example of the extent of Hitler’s effort in this respect. In a quarry located on

30. Id. at 5-6.
31. Id. at SR-3. Stuart E. Eizenstat, then Deputy Treasury Secretary, during congressional testimony before the House Banking Committee on September 14, 1999, updating Congress on the work of the Commission at that time, told Congress that:

The full dimensions of what happened, during this era of depravity, underscore the importance of trying to do justice, however belated, to the survivors of the Holocaust, many of whom are United States citizens. It imposes an obligation on the Administration, the Congress and state and local governments to help secure a measure of justice before it is too late. Israel Singer, the President of the World Jewish Congress, has reminded us that each year ten percent of Holocaust survivors pass away. We must not let a biological solution complete Hitler’s evil plans for a “final solution.”

32. COMMISSION REPORT, supra note 26, at SR-13. The “extermination centers” at Auschwitz, Majdanek, Treblinka, Sobibor, Belzec and Chelmo were responsible for the deaths of an estimated 2.7 to 2.9 million people before they ceased operations. Id. at SR-18. Some 6 million people perished overall.

33. Id. at SR-13.
34. Id. at SR-33.
35. Id.
the camp's outskirts, buried deep beneath a bunker, American forces uncovered "313 suitcases, wooden boxes and barrels, filled with gold bars, U.S. currency, gold coins, diamonds, . . . boxes of silver spoons, watches, . . . and other items [including hundreds of wedding bands and thousands of gold teeth] weighing an estimated twenty-one tons."37

As the Germans swept across Europe, they also systematically looted artwork on a scale unprecedented in history.38 "In twelve years . . . as many works of art were displaced, transported, and stolen as during the entire Thirty Years War or all the Napoleonic Wars,"39 As soon as the Nazis occupied an area, officials began identifying and confiscating assets, creating what has been called a "plundering bureaucracy" for art and cultural property to supplement the Nazi regime.40 Hitler formed an organization to collect artwork for his pet project, a grand museum in his hometown of Linz, Austria.41 The museum was to reflect not only his personal artistic tastes but to glorify his views of the Aryan race,42 to serve as a showpiece of Nazism.43 Hitler appointed Alfred Rosenberg as head of the Einsatzstab Reichsleiter Rosenberg (ERR), the Nazi organization responsible for confiscating and shipping back to Germany valuable artworks taken as part of the German invasion of European countries.44 "Between January 1942 and August 1944, the ERR raided 71,619 Jewish dwellings in the western occupied territories," loaded up property worth $1.5 billion and "transported it—in 29,436 railroad cars full of containers sometimes marked 'Jewish goods'—to the Reich."45 In an effort to protect what they had seized from U.S. bombing attacks, the Nazis moved much of the seized property to hiding places in more remote areas which were less likely to be attacked.46 While the exact number of hiding places containing Nazi stolen

37. COMMISSION REPORT, supra note 26, at SR-98.
38. Feliciano, supra note 3, at 23.
39. Id.
40. COMMISSION REPORT, supra note 26, at SR-17.
41. Id. See also Reports on Hitler's Museum and Hermann Goering's art collection. Such reports are reproduced on the Presidential Advisory Commission on Holocaust Assets in the United States' website, available at http://www.holocaustassets.gov/linz/linztable.html and http://www.holocaustassets.gov/goering/goeringtable.html (last visited Oct. 8, 2001) (The reports, drafted by art experts in the Office of Strategic Services (OSS), and more specifically, members of the Art Looting Investigatory Unit (ALIU), which researched Nazi plundering of cultural property in Europe, are among the most valuable resources available on Nazi art-looting programs.).
43. Feliciano, supra note 3, at 21. Hitler put Dr. Hans Posse, an art historian, in charge of acquiring works for the museum. By 1940, at the time France was invaded, Posse informed Hitler that he had acquired 465 paintings in one year alone. Id. at 21-22.
44. Turner, supra note 22, at 1514. After confiscating thousands of paintings from across Europe, the Einsatzstab Reichsleiter Rosenberg fur die Besetzten Gebiete (ERR) inventoried, catalogued, and photographed each work of art. Id. Rosenberg was sentenced to death at Nuremberg in 1945 for crimes against humanity and war crimes which included his responsibility for a system of organized plunder of both public and private property throughout the invaded countries of Europe. Robert K. Paterson, Hitler and Picasso—Searching for "The Degenerate," 33 U. BRIT. COLUM. L. REV. 91, 94 (1999).
45. COMMISSION REPORT, supra note 26, at SR-17.
46. Id. at SR-97.
artwork "falling under U.S. control remains unknown, in September 1948, [the U.S. Office of Military Government] estimated that U.S. forces had found about 1,500 repositories of art and cultural objects in Germany . . . contain[ing] approximately 10.7 million objects worth an estimated $5 billion."47 While looting has always been a part of war, for Hitler, both the acquisition and cleansing of art was a central part of his plan for a pure Germanic race, his goal being "to eradicate a race by extinguishing its culture as well as its people."48

B. Lifting the Restrictions on Art Entering the United States

Aware of Nazi looting, the United States government imposed strict rules on the importation of art into the country during the war.49 The Office of Strategic Services (OSS), the Central Intelligence Agency's (CIA) predecessor, kept a list of art dealers in Europe who were helping the Nazis funnel looted paintings and sculptures into international art markets.50 Postal inspectors and the Federal Bureau of Investigation (FBI) monitored communications between the European art dealers and their Nazi connections or galleries in Latin America out of concern that looted art was being "smuggled along a clandestine route that lead from Nazi-occupied Europe through neutral Switzerland to the Americas."51

In 1944, the FBI was monitoring links between New York art dealers and Hans Wendland, a Switzerland art dealer with Nazi connections.52 In a report now in the National Archives an FBI agent reported: "[e]vidence one picture smuggled into [the United States] via Diplomatic Pouch."53 That same year, postal inspectors intercepted correspondence between dealers in New York and Mexico about arrangements to "surreptitiously bring a painting by the Italian Renaissance artist Pisanello into the U.S."54 Yet by 1946, both our government and the art world wanted to be free of import regulations: New York had become the center of the art market following the war, and American museums were eager "to fill gaps in their collections with works from Europe."55 Despite vigorous objections made by Ardelia Hall, the State Department's arts and monuments advisor, import regulations were suspended by the U.S. government.56

47. Id. at SR-97.
50. Id.
51. Id. See also COMMISSION REPORT, supra note 26, at SR-213 (discussing the possible role Latin American countries and Switzerland may have played in looted artwork coming into the United States and noting the important work the Argentine Commission of Enquiry into the Activities of Nazism in Argentina (CEANA) has done in this area). See generally FELICIANO, supra note 3, at 155.
52. Grossman, supra note 23.
53. Id. (internal citations omitted).
54. Id. In the letter to his counterpart, the New York dealer emphasized the need for secrecy, cautioning that "even the name of the painter of the 'Pink Lady' is not to appear in future correspondence." Id.
55. Id. For example, Francis Taylor, director of the Metropolitan Museum of Art, in a letter to the governmental agency charged with monitoring looted art, said that the continuation of customs controls "[would] lead to frustration and enmity on the part of the trade which will result in disadvantage to all the institutions involved." Id.
56. Id.
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C. U.S. Restitution Policy After the War—Successes and Failures

Following the war, the Allies had the daunting task of organizing the return of confiscated art works to their countries of origin and to their rightful owners. To carry out this task, the Allies created the Monuments, Fine Arts and Archives (MFA&A) section of the Office of Military Government for Germany, United States (OMGUS).\(^{57}\) The MFA&A was charged with locating and cataloguing confiscated art and preventing it from being damaged or looted.\(^{58}\) As part of these collection efforts, the U.S. Army established "collecting points" to process the looted assets.\(^{59}\) However, the sheer volume of confiscated assets in Germany overwhelmed the skeletal staff charged with protecting them\(^{60}\) and, consequently, some assets "fell prey to thieves or were damaged by the elements."\(^{61}\)

Jonathan Petroupolos, in testimony before the House Banking Committee on February 10, 2000, told Congress that his research indicated that between 1933-1945, the Germans stole 600,000 pieces of artwork.\(^{62}\) Between 1945-1950, the Americans and British restituted 2.5 million cultural objects, 468,000 of which were paintings, drawings, and sculptures; "[t]he Americans alone returned 250,000 objects via the Central Collecting Point in Munich."\(^{63}\)

While these efforts were remarkable, a number of factors frustrated restitution efforts. "As early as 1946, the State Department notified museums and other institutions that stolen art was entering the country, but in the years following the war

\(^{57}\) Commission Report, supra note 26, at SR-90.

\(^{58}\) Id. at 11, SR-90-92.

\(^{59}\) Id. at SR-106. In July of 1945, U.S. forces established two central collecting points in Munich and Wiesbaden, and several subordinate collecting points in Bad Wildungen, Heilbronn, Kochendorf, Marbury, Nuremberg, Oberammergau and Offenbach. Id. The Munich collecting point initially was staffed by about 200 personnel, and by September it had become the main site for looted artworks found in Austria and Germany awaiting restitution. Id.

\(^{60}\) Id. at 11.

\(^{61}\) Id. at SR-123.

\(^{62}\) Hearing Before the House Banking Committee, 106th Cong. (2000) (testimony of Jonathan Petroupolos, Associate Professor of History, Claremont McKenna College; Research Director for Art and Cultural Property, Presidential Advisory Commission on Holocaust Assets in the United States) [hereinafter House Banking Hearing 2000] (testimony of Jonathan Petroupolos), 2000 WL 149471 (F.D.C.H.) available at: http://www.house.gov/banking/21000pet.htm. Petroupolos testified that the 600,000 figure included some 200,000 works in Germany and Austria, some 100,000 in Western Europe, and 300,000 objects from Eastern Europe and the Soviet Union. Id.


The Soviets restituted to the German Democratic Republic and other Warsaw Pact countries between 1955-1958: 1.5 – 1.6 million.

The Russians today still have in storage depots: 200,000. This number is somewhat sketchy. Some believe the number to be even higher.

The number of French MNRS (works held in trusteeship by the French government: 2,000 (1,000 of which are paintings)).

The Germans have today 1,532 paintings (1,076 of which hang in museums and the remainder in government offices and embassies) that came from collections of Hitler, Goering, Bormann, and other leaders, and were deemed not to have come from victims' collections.

The number of displaced works still missing from World War II apart from those

in Russian depots: 10,000 to 110,000.

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it was not the standard practice for museums, collectors or dealers to investigate the provenance of works they acquired." Moreover, many Holocaust victims lacked the information or the resources necessary to locate and pursue claims to recover their stolen property. Entire families disappeared during the war and the heirs who survived often had more important issues to deal with than recovering lost art. Some Holocaust victims realize today that "they were too relieved at having survived the war to worry about reclaiming material possessions." 

Edgar Bronfman, Chair of the Commission, in his letter to the President, accompanying the Commission's report, provided a number of reasons which made restitution difficult after the war ended:

In the case of assets recovered by our Armed Forces in Europe, a number of factors intervened to limit restitution, including: (1) the overwhelmingly chaotic situation in post-war Europe as the United States tried to bring our soldiers home and Europe grappled with the dislocation and destruction caused by years of war; (2) the international legal precedent of restituting recovered loot to governments and not individuals; (3) U.S. concerns about the cost of post-war involvement in Europe, coupled with the strategic desire to rebuild the economies and re-constitute the governments of Germany and Austria along democratic lines; and (4) developing Cold War concerns.

Rather than restituting individual owners or heirs, the United States generally restituted victims' assets to the national government of their country of origin and, as a result, it was the recipient government's responsibility to locate the rightful owner and return the property. However, the Commission "found no evidence that the United States monitored the recipient countries' compliance with these responsibilities." In addition, the Commission consulted with other national historical commissions and none of them reported having "found evidence of inventories of assets received by their governments from the United States, or of agreements with the United States to effect individual restitution."

D. What Happened to Holocaust Victims' Claims Following the War

By 1950, the Army, winding up efforts to return looted art in post-war Europe, shipped claim forms which had been filed by Holocaust survivors off to government storage in military archives. The State Department's Ardelia Hall intended to make the information publicly available to alert art dealers and museums to Nazi looted art which she feared was entering the American art market; however,

64. COMMISSION REPORT, supra note 26, at 17.
65. Id.
66. FELICIANO, supra note 3, at 218.
67. Id.
68. COMMISSION REPORT, supra note 26, at ii.
69. Id. at 8, 12. Records show that by 1943, the U.S. State Department had created an Interdivisional Committee on Reparation, Restitution, and Property Rights to formulate the "general bases of governmental policy on the questions of reparation, restitution and related matters." Id. at SR-139-40. It was agreed that restitution would be made to governments, rather than individuals, because it was believed that "no international commission could attempt to deal with the complicated questions of individual ownership" and "only the government of the territory could untangle the question of title." Id.
70. Id. at 8, 12.
71. Id. at 12.
other government officials were eager to put the war behind them and the project never happened.\textsuperscript{73} Instead, the records went into government storage, but not before Ms. Hall had those claims transferred to her office where they were copied onto thirty-five rolls of microfilm.\textsuperscript{74} There they have remained largely unknown, except to a handful of experts who themselves found them difficult to use because the claim forms were never organized or indexed.\textsuperscript{75}

E. Restitution Claims Procedures Were Flawed

Pursuant to a number of Executive Orders issued in 1941 and 1942, "any property within the United States owned or controlled by a designated enemy country or national thereof could be transferred . . . to the Alien Property Custodian (operating within the Executive Office of the President) as . . . necessary for the national interest."\textsuperscript{76} There was no exception made for foreign nationals who were Holocaust victims.\textsuperscript{77} As a result, Holocaust survivors had until April 1955 to file claims to have their property returned, however, because of the expense and difficulty in filing, many Holocaust victims did not submit claims before the deadline.\textsuperscript{78}

According to the Commission, there appears to have been no relaxation of the rules for Holocaust victims and, in some cases, the process was drawn out so long that the claimant died while the claim was pending.\textsuperscript{79} In 1953, a Senate Judiciary Subcommittee, reviewing the activities of the Office of Alien Property, issued sharp criticism of the agency for its "lack of good business practices" in the manner in which it conducted its affairs singling out in particular the "inefficient and dilatory" manner in which the agency processed claims.\textsuperscript{80} The average time for resolving a claim in 1952 was more than three years.\textsuperscript{81}

F. Looting by U.S. Soldiers—The "Gold Train"

Despite valiant efforts by the MFA&A, not all U.S. efforts were beyond reproach. "For decades, the case of the notorious Gold Train has remained one of the murkiest episodes in post-World War II occupation of Europe by American forces."\textsuperscript{82} In May 1945, the U.S. Army seized a train near Werfen, Austria.\textsuperscript{83} The Gold Train, as it was called by U.S. authorities, consisted of 24 rail cars of gold, jewelry, works of art, household items, and other property, much of which had been seized from Jewish people in Hungary.\textsuperscript{84} Despite considerable evidence that linked the property to the Hungarian Jewish population, these assets were classi-
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fied as "enemy government" property and, as a result, items on the train were subject to requisition by American officials and, in some cases, the property was never returned. In July 1945, for example, Major General Harry J. Collins, Commander of the 42nd Division in western Austria, took rugs and paintings for his headquarters and china, silverware, glasses, and linens for his home.

III. LEGAL DOCTRINES APPLIED TO NAZI-LOOTED ART CLAIMS HAVE PROVED INEFFECTIVE

This section considers various property law doctrines that have proved unworkable with respect to Nazi looted art cases given the unique nature of these cases. The principles of adverse possession and due diligence, for example, are not appropriate for claims made by Holocaust survivors because the stolen artwork may have crossed international borders, may have changed hands numerous times, and may have been privately displayed thereby complicating would-be plaintiffs' efforts to locate stolen works of art and demand their return. Moreover, the records that would have helped Holocaust survivors and their heirs to locate their art have been hidden away in government archives for more than half a century, frustrating due diligence efforts.

A. The Common Law Rule Regarding Stolen Property

At common law, a thief cannot convey good title. As a result, the original owner retains title to property that has been stolen even if there have been several subsequent purchases by individuals who were unaware that they were buying stolen goods. Holocaust victims, therefore, retain title to artwork despite the fact that innocent purchasers later acquire the art. A plaintiff seeking the return of stolen property files a replevin suit that requires the defendant to return the property, rather than pay damages.

B. Statute of Limitations

Some courts, however, have carved out an exception to the common law rule by imposing a statute of limitations to limit the time in which a plaintiff possesses the legal right to assert a valid claim for the stolen property in court. As a result, a stolen piece of artwork may be recovered if the claim is filed within the statute of limitations period. The primary public policy reason for having a statute of limitations period is fairness to the defendant. The theory is that "a defendant 'should be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations' and he ought not to be called on to resist a claim where 'the evidence has been lost, memories have faded, and witnesses have disappeared.'"

85. Id.
87. Kunstsammlungen zu Weimar v. Elicofon, 678 F.2d 1150, 1160 (2d Cir. 1982).
88. Black's Law Dictionary 1302 (7th ed. 1999). Replevin is "an action whereby the owner or person entitled to repossess of goods or chattels may recover those goods or chattels from one who has wrongfully . . . taken . . . such goods or chattels." Id.
90. Id. (quoting Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1185).
There is also a need to protect the judicial system from the burden of adjudicating stale and groundless claims. Statutes of limitations vary from state to state but are generally just a few years. However, in certain jurisdictions, New York for example, a suit brought more than fifty years after the theft may still be timely because of the concept of accrual which delays the timing of when the statute of limitations period begins to run.

1. Adverse Possession

The traditional statute of limitations was based on adverse possession. While the doctrine of adverse possession was historically applied to real property, courts have also applied it to disputes involving personal property. Under the adverse possession doctrine, a possessor who has actual, open, notorious, exclusive, and adverse possession of land under a claim of right for the statutory period can take good title and thus defeat the original owner’s claim. The statute of limitations begins to run when these elements are satisfied. The adverse possession doctrine punishes the original owner’s delay, protects the possessor’s expectations, and avoids evidentiary problems caused by stale claims. The doctrine is ill suited, however, for Nazi stolen art claims because the artwork has often crossed international borders, changed hands numerous times and has been displayed privately.

Recognizing these problems, the court in O’Keeffe v. Snyder rejected the application of adverse possession to stolen art disputes. Georgia O’Keeffe brought suit to recover three paintings which had been stolen in 1946 from a New York gallery owned by her husband, Alfred Stieglitz. The paintings were displayed in the home of a private collector until 1973 and Barry Snyder purchased them in 1975. The court reasoned that since the paintings had been displayed privately since 1946, the possession was not sufficiently open and notorious to constitute adverse possession so O’Keeffe’s claim was not barred. The court stated:

It may be time for the art world to establish a means by which a good faith purchaser may reasonably obtain the provenance of a painting. An efficient registry of original works of art might better serve the interests of artists, owners of art, and bona fide purchasers than the law of adverse possession with all of its uncertainties. Although we cannot mandate the initiation of a registration system, we can develop a rule for the commencement and running of the statute of limitations that is more responsive to the needs of the art world than the doctrine of adverse possession.

As a result, most jurisdictions have rejected the use of adverse possession in stolen art claims and have moved instead to a case by case balancing test of the duties owed by the original owners and good faith purchasers. Some courts have adopted the due diligence standard that places the burden on the true owner to prove that he or she diligently tried to recover the artwork while other courts have adhered to the demand-and-refusal rule that requires a true owner to file suit

91. Turner, supra note 22, at 1536.
92. BLACK’S LAW DICTIONARY 54 (7th ed. 1999).
94. Id. at 864-65.
95. Id. at 865-66.
96. Id. at 872 (internal citation omitted).
within a certain period after he or she has demanded return of the artwork and the current owner has refused.98

2. The Discovery Rule and Due Diligence

The due diligence rule requires a plaintiff to make demand for the return of stolen property and take affirmative steps to locate the property. In DeWeerth v. Baldinger,99 the Second Circuit dismissed as time barred a claim by a German woman, Gerda Dorothea DeWeerth, to “Champs de Blé à Vetheuil,” a painting by Claude Monet, allegedly taken from her collection at the end of World War II by American soldiers.100 In 1943, DeWeerth had entrusted the painting to her sister for safekeeping and two years later, the sister discovered it was missing from her castle in southern Germany shortly after the castle was occupied by American soldiers.101 Between 1945 and 1957, the plaintiff took some steps to locate the painting: she contacted military authorities; she communicated with her lawyer concerning insurance claims on the lost property; she consulted an art expert; and she contacted the West German Federal Bureau of Investigation.102 None of these efforts proved fruitful and she did nothing further after 1957.103

Then in 1981, DeWeerth’s nephew and heir located the painting in a catalogue raisonne104 of Monet’s works. The catalogue raisonne identified galleries where the painting had been exhibited, and, through litigation against one of those galleries, DeWeerth was able to identify Baldinger, the owner of the painting at that time. The district court awarded DeWeerth custody of the painting.105 On appeal, the Second Circuit reversed and held the claim was time-barred by the applicable New York statute of limitations.106 The Second Circuit acknowledged that under New York’s demand-and-refusal rule, the statute of limitations did not begin to run in a replevin action until a demand was made for the chattel and that demand was refused.107 While the court noted that there was no disputing the fact that the complaint was filed well within the three years following the demand and refusal, New York law also required that demand could not be unreasonably delayed.108 The question for the court was whether the doctrine of unreasonable delay applied to a demand by a complainant who did not know the identity of the person to whom she needed to demand the return of the painting.109

The Second Circuit concluded that the doctrine of unreasonable delay did apply and found that DeWeerth had unreasonably delayed her demand.110 The court

99. 836 F.2d 103 (2nd Cir. 1987).
100. Id. at 104-05.
101. Id. at 105.
102. Id.
103. Id.
104. A “catalogue raisonne” is a “definitive listing and accounting of the works of an artist . . . [it usually] depicts each [of the artist’s] work[s] in chronological order and sets forth each work’s provenance—a history of its ownership, exhibitions in which it has been shown, and published references to it.” Id. at 112.
105. Id. at 106.
106. Id. at 112 n.7. The New York statute of limitations governing actions for recovery of stolen property required that suit be brought within three years of the time the action accrued. Id. at 106 (citing N.Y. C.P.L.R. § 214(3) (McKinney 1972)).
107. Id. at 106.
108. Id. at 107.
109. Id.
110. Id. at 111-12.
concluded that because she had stopped all efforts to find the painting in 1957, DeWeerth had failed to conduct a continuous and diligent search.\textsuperscript{111} Having found the claim time barred, the Second Circuit reversed the judgment.\textsuperscript{112}

The problem with the due diligence rule as it applies to Nazi-looted art claims is that it fails to recognize that even an original owner who conducts an extensive search may not be able to locate the art. As the lower court pointed out in DeWeerth, an individual in search of stolen art may not have the knowledge or the resources to successfully locate the work.\textsuperscript{113} This is certainly true in the case of Holocaust survivors at the end of World War II. Additionally, the court in DeWeerth gave no real guidelines as to what satisfies the due diligence requirement. Instead, the court imposed a burden on the plaintiff to continue to search or hire someone to search, even after ten years of searching had proven ineffective.\textsuperscript{114} Moreover, many of the records necessary for locating artwork that belonged to Holocaust survivors are only just now being declassified and made available to the public. Until now, these important documents have been largely inaccessible to art historians, scholars, lawyers, Holocaust victims, and their heirs, making due diligence efforts that much more difficult. Victims of art theft that occurred during the Holocaust should not be penalized under the due diligence rule because they had no way to access these records. Lastly, this rule ignores any duty on the purchaser to research the title history of artwork that may have been stolen during the Second World War.

\section{3. The Demand-and-Refusal Rule}

Under the demand-and-refusal rule, an owner's cause of action against a bona fide purchaser does not accrue until the owner demands that the purchaser return the property and the purchaser refuses.\textsuperscript{115} The rationale for the rule is that the

\textsuperscript{111} Id. at 112. The court noted that DeWeerth had failed to make use of the various mechanisms available after the war for the reclamation of stolen art and took no steps to publicize her loss. Id. at 111. The court also found particularly inexcusable the failure to consult the Monet catalogue raisonne because when it was finally consulted it led promptly to the identification of the painting's present owner. Id. at 112. The court was also troubled by the erosion of proof caused by the passage of time, the deaths of witnesses, faded memories, and lost key documents. Id.

\textsuperscript{112} Id. at 112-13. The court also noted that it was unnecessary to reach the equitable defense of laches because it had based its decision on the New York statute of limitations. Id. at 112 n.7.


\textsuperscript{114} DeWeerth v. Baldinger, 836 F.2d at 112.

\textsuperscript{115} Menzel v. List, 267 N.Y.S.2d 804, 809 (N.Y. Sup. Ct. 1966). The court pointed to a basic principle in the law: "a thief conveys no title [ ] against the true owner." Id. at 819. The Nazis took a Marc Chagall painting from the owner's house in 1941 when the family fled Brussels. Id. at 806. The whereabouts of the painting, entitled: "Le Paysan a l'Echelle" (the Peasant on the Ladder) were unknown from 1941 until 1955 when List purchased the painting from the Perls Gallery and it was not until 1962 that the Menzels located their painting in the possession of List. Id. at 806-08. The court held that the statute of limitations did not begin at the time the plaintiffs fled Belgium but when the Menzels demanded the painting and List refused to return it. Id. at 809. In conclusion, the court noted that the "plaintiff [was] . . . the sole and rightful owner of the painting. [The plaintiff] never abandoned it but that it was pillaged and plundered by the Nazis. No title could have been conveyed by them as against the rightful owners. The law stands as a bulwark against the handiwork of evil, to guard to rightful owners the fruits of their labors." Id. at 820.
bona fide purchaser, unlike the thief, does not do anything wrong by holding the property, he or she is simply unaware of any wrongful possession, and should, therefore, not be liable until he or she is actually made aware of the owner’s claim.\textsuperscript{116} The rule protects the bona fide purchaser by postponing liability until after the purchaser learns about the theft and refuses to honor the victim’s claim.\textsuperscript{117}

The rule has been applied to a number of cases involving stolen art. In \textit{Kunstsammlungen Zu Weimar v. Elico fon},\textsuperscript{118} for example, the court held that the statute of limitations began tolling when the plaintiff’s demand for the return of two paintings by Albrecht Dürer was refused.\textsuperscript{119} The paintings had been hidden away in a castle in East Germany for safekeeping during World War II, stolen from the castle in 1945, and resurfaced in Brooklyn, New York in the home of Edward Elico fon, an American citizen, in 1966.\textsuperscript{120} The court rejected the defendant’s argument that the action was time-barred because the statute of limitations began when the defendant purchased the painting, and held that the statute of limitations began running when the defendant refused plaintiff’s demand.\textsuperscript{121} Since most states have a statute of limitations for recovery of personal property between two and four years from the accrual of the cause of action, the crucial question in cases involving stolen art is when does the cause of action accrue.\textsuperscript{122}

4. \textit{Laches}

The doctrine of laches is an equitable defense used to mitigate the harsh effects of a statute of limitations when defendants have been prejudiced by plaintiffs who “slumber[ed] on their rights.”\textsuperscript{123} A defendant can prevail on the laches defense when he or she can establish a plaintiff’s unreasonable delay caused him undue prejudice.\textsuperscript{124} \textit{Greek Orthodox Patriarchate of Jerusalem v. Christie’s Inc.}\textsuperscript{125} involved a 10\textsuperscript{th} century manuscript known as the “Archimedes Palimpsest.”\textsuperscript{126} The original manuscript contained two of Archimedes’ most significant works but the text was washed away in the 12\textsuperscript{th} or 13\textsuperscript{th} century and a Greek liturgical text was written over it.\textsuperscript{127} For centuries, the manuscript was stored in a monastery in Constantinople owned by the Greek Orthodox Patriarchate of Jerusalem, an order

\textsuperscript{116} Steven Bibas, Note, \textit{The Case Against Statutes of Limitations for Stolen Art}, 103 \textit{Yale L.J.} 2437, 2445 (1994).
\textsuperscript{117} Id.
\textsuperscript{118} 678 F.2d 1150 (2d Cir. 1982).
\textsuperscript{119} Id. at 1161.
\textsuperscript{120} Id. at 1152-53. Elico fon had displayed the paintings in his home for over twenty years.
\textsuperscript{121} Id. at 1161.
\textsuperscript{122} Stephanie Cuba, \textit{Stop the Clock: The Case to Suspend the Statute of Limitations on Claims for Nazi-Looted Art}, 17 \textit{Cardozo Arts & Ent. L.J.} 447, 455-56 (1999); see also generally Bibas, supra note 116.
\textsuperscript{123} \textit{Blacks Law Dictionary} 875 (6th ed. 1990). Laches is based on the maxim that “equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.” Id. (citation omitted). \textit{See also} Walton, supra note 6, at 581.
\textsuperscript{125} No. 98 Civ. 7664 (KMW), 1999 WL 673347, at *1 (S.D.N.Y. Aug. 30, 1999).
\textsuperscript{126} Id. A palimpsest is “a text from which the original writing has been washed away so that the paper can be reused.” Id. at *2. Archimedes was a Greek scientist and philosopher. Id.
\textsuperscript{127} Id. at *1.
of monks.\textsuperscript{128} Sometime in the 1920s, a French businessman acquired the manuscript and it descended through his family until it was auctioned by Christie's in 1998.\textsuperscript{129} The Patriarchate claimed the work was stolen but offered no proof of theft and the good faith purchaser could not prove a legitimate transfer of title through a bill of sale or any other means.\textsuperscript{130}

The court, applying French law, decided that the family had good title to the work through the doctrine of prescriptive possession which conferred good title on an owner who enjoys open and uninterrupted possession of a chattel for thirty years.\textsuperscript{131} The court also concluded that even if U.S. law applied, the Patriarchate's claim would be barred by the doctrine of laches.\textsuperscript{132} The judge applied the DeWeerth due diligence standard to the laches defense in the case, noting that the plaintiffs had done nothing to pursue the property for nearly seventy years.\textsuperscript{133}

The laches doctrine was also discussed in Solomon R. Guggenheim Foundation \textit{v. Lubell}.\textsuperscript{134} At issue in \textit{Guggenheim} was a claim by the Guggenheim Museum to recover a Marc Chagall gouache, which was allegedly stolen from the museum in the 1960s by a mailroom employee and which later turned up in the possession of a private collector in 1986.\textsuperscript{135} The private collector who had purchased the work from a dealer in 1967 defended his claim on the grounds that the claim was barred by laches and the New York statute of limitations because the museum had done nothing to locate the work during the twenty years it had been missing.\textsuperscript{136} The court of appeals dismissed the statute of limitations defense,\textsuperscript{137} but said the laches defense remained available.\textsuperscript{138} The court explained that the burden of a laches defense was greater than that imposed by the statute of limitations.\textsuperscript{139} Although a statute of limitations defense only required a showing of unreasonable delay, the laches defense required both a showing of unreasonable delay and prejudice to the defendant flowing from the delay.\textsuperscript{140} Because the fac-

\textsuperscript{128} Id.
\textsuperscript{129} Id. at *2-3.
\textsuperscript{130} Id. at *2.
\textsuperscript{131} Id. at *5-7.
\textsuperscript{132} Id. at *7.
\textsuperscript{133} Id. at *10-11. The court noted that while the law in New York favored the rights of original owners, it nevertheless allowed a significant role for the laches defense. \textit{Id.} at *9 (citing Steven A. Bibas, \textit{Note, The Case Against Statutes of Limitations for Stolen Art}, 103 \textit{Yale L.J.} 2437, 2467-68 (1994) ("If an owner took no significant steps to report a theft . . . and this silence prejudiced the buyer, laches should bar recovery."); Sydney M. Drum, \textit{Comment, DeWeerth \textit{v. Baldinger: Making New York a Haven for Stolen Art}, 64 \textit{N.Y.U. L. Rev.} 909, 942 (1989) ("Laches would limit the troubling possibility . . . that owners, knowing the relevant facts, could wait idly for decades, or even centuries, before any legal obligation arose to pursue their claims."); Andrea E. Hayworth, \textit{Note, Stolen Artwork: Deciding Ownership is No Pretty Picture}, 43 \textit{Duke L.J.} 337, 375 (1993) ("[T]he [Lubell] rule provides protection for original owners, as well as defenses for innocent purchasers, through the application of laches and the availability of other causes of action.").
\textsuperscript{134} 569 N.E.2d 426 (N.Y. 1991).
\textsuperscript{135} Id. at 427.
\textsuperscript{136} Id.
\textsuperscript{137} Id. at 431.
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id. at 429, 431.
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tual record underlying a laches defense had not been developed, the court remanded the case for consideration of that defense.141

These cases illustrate the various legal standards that the courts have applied in Nazi-looted art cases. However, they have proved largely ineffective in helping Holocaust victims recover stolen artwork. In addition to the lack of uniformity by the courts in addressing the ownership issues involved in these cases, the litigation process is often very time consuming and expensive.

IV. A NUMBER OF LEGISLATIVE EFFORTS HAVE ALSO PROVEN INEFFECTIVE

A. National Stolen Property Act

The National Stolen Property Act (NSPA) was passed by Congress in 1934 to curb the growth of organized crime.142 Congress intended to give the states power to prosecute "fences"—"professional receiver[s] of and dealer[s] in stolen, embezzled, or fraudulently obtained merchandise."143 "The NSPA forbids the transportation 'in interstate or foreign commerce [of] any goods, . . . of the value of $5,000 or more,' with knowledge that such goods were 'stolen, converted or taken by fraud.'"144 Thus, federal prosecutors are able to pursue those who transported, sold, or received stolen goods in interstate or foreign commerce. While the act carries criminal penalties, it is not really helpful to Holocaust victims because there is no provision to return the stolen property to the former owner.145

B. Anti-Seizure Protection for Borrowed Art


The Federal Immunity From Seizure Act (FISA), which became law in 1965, was passed in order to promote the display or exhibition of works of art and other items of cultural significance in the United States.146 It allows museums and other non-profit organizations in the U.S. to import artworks from other countries, on a temporary basis, to display to the public without the risk that the work will be seized by the American judicial system while they are in the country.147 Specifically, the law provides:

[when]ever any work of art or other object of cultural significance is imported into the United States from any foreign country . . . providing for the temporary exhibition or display . . . without profit . . . no court of the United States, any

141. Id. at 427, 431.
143. Bengs, supra note 142, at 520 (citing H.R. Rep. No. 2528, 70th Cong., 2d Sess. 2 (1929)).
144. Id. (citing 18 U.S.C.S. § 2314 (1991)).
147. Id.
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State, the District of Columbia, or any territory or possession of the United States may issue or enforce any judicial process, or enter any judgment, decree, or order, for the purpose or having the effect of depriving such institution . . . of custody or control of such object if before the importation of such object the President or his designee has determined that such object is of cultural significance and that the temporary exhibition or display . . . is in the national interest, and a notice to that effect has been published in the Federal Register. 148

The legislation grants the President, or his designee, the power to immunize from seizure works of art on loan to the U.S. from foreign nations. 149 Provided the President finds the works of art being borrowed to be of "cultural significance" and "the temporary exhibition . . . is in the national interest" of the United States, a notice is published in the Federal Register and the artworks would be immune from seizure by judicial proceedings in the United States. 150 If the artwork qualifies for federal protection under the statute, the scope of that protection is broad: it protects against both civil and criminal seizures, thus assuring lenders that the works they loan for temporary display will not be seized while on exhibition in the U.S. 151

The application for protection asks for information regarding any reasons that "the artwork might be attached when in the United States" and if there is no reason, outside the information provided, to believe that there is any problem with the artwork, the government will likely grant the immunity. 152 Thus, the provenance of the artwork is not independently verified.

2. New York State Law: Arts & Cultural Affairs Law

Similarly, three years after the federal government passed the Federal Immunity From Seizure Act, the New York Legislature passed the Arts and Cultural Affairs Law (ACAL) to prevent foreign-loaned artwork from being seized while on loan to New York nonprofit institutions. 153 The New York law, however, differs from the federal law in various respects: the New York law provides automatic immunity whereas the federal anti-seizure law requires an application process; the New York law does not require that the work of art be "culturally important" or in the "national interest" as required under the federal law; and protection by the New York law simply requires that "the artwork be borrowed from an out of

149. Id.
150. Id.
151. Sarraf, supra note 146, at 734.
152. Id.
153. Id. at 735. At the time of this case, ACAL 12.03 provided that:
[n]o process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon any work of fine art while the same is enroute to or from, or while on exhibition or deposited by a nonresident exhibitor at any exhibition held under the auspices or supervision of any museum, college, university or other nonprofit art gallery, institution or organization within any city or county of this state for any cultural, educational, charitable or other purpose not conducted for profit to the exhibitor, nor shall such work of fine art be subject to attachment, seizure, levy or sale, for any cause whatever in the hands of the authorities of such exhibition or otherwise.
state source and temporarily exhibited in New York for non-profit purposes.”

The statute was intended to promote the free exchange of artwork by assuring lenders of their safe return and “maintain [New York’s] pre-eminent position in the arts.”

a. MoMA Case

The New York statute came under scrutiny in 1998 when the first seizure of foreign artwork on loan to an American museum occurred. In 1997, more than 150 works by Egon Schiele, the Austrian expressionist, were loaned to the Museum of Modern Art (MoMA) in New York for a three-month exhibit by the Leopold Foundation in Vienna. Just five days before the exhibition was to close, the Museum received two letters claiming that two of the paintings, “Portrait of Wally” and “Dead City III,” had been stolen during the Nazi annexation of Austria. In response, the Museum noted that “while ... sympathetic to the ownership claims ... [the Museum] had a contractual obligation to return the entire Leopold collection to the lender after the exhibition closed” and pointed to the New York law as its authority.

The New York County District Attorney’s office served the Museum with a Grand Jury subpoena, demanding that the Museum turn over the two paintings because a Grand Jury had been convened to investigate whether they had been stolen by the Nazis and, if so, whether the paintings presence in New York violated the state’s criminal possession of stolen property statute. The Museum moved to quash the subpoena arguing that it was invalid pursuant to the New York anti-seizure law forcing the court to decide whether the anti-seizure law protected against subpoenas in a criminal investigation. The court granted the Museum’s motion to quash the subpoena, holding that “[New York’s anti-seizure statute] exempted the paintings from [the] Grand Jury process.” The Appellate Division reversed, holding that “the statute applied only to civil disputes and therefore did not limit a Grand Jury’s subpoena powers.” In September 1999, the Court of Appeals of New York, New York’s highest court, reversed the Appellate Division order holding that the New York Statute protects items from both civil and criminal seizures.

154. Sarraf, supra note 146, at 737.
155. Id. at 736.
156. In re Grand Jury Subpoena Duces Tecum Served on Museum of Modern Art, 719 N.E.2d 897, 898 (N.Y. 1999) [hereinafter In re Museum of Modern Art]. The collection was on a worldwide tour and had been exhibited in England, Germany, Switzerland, and Japan the three years prior to the exhibition in New York City. Id.
157. Id.
158. Id. at 899.
159. Id.
160. Id.
161. Id.
162. Id. at 899.
163. Id. at 899-900. The court upon a plain reading of the statute noted that:

[T]he unconditional language preceding and following this clause—"no process" and "or any kind of seizure"—in no way suggests that the Legislature meant the delineated terms to be either exclusive or exhaustive. Indeed, there is no limiting language in section 12.03; the words are unqualified ... [and] we are confident that the words—unrestricted as they are—are not limited to civil processes. The legislative history ... supports [this] interpretation ... [the] legislative intent [was] to promote artistic
thus granting the Museum’s motion to quash the subpoena.163

Although New York’s highest court granted the museum’s motion, the United States Department of Justice moved to bar the return of the Schiele paintings by commencing a forfeiture proceeding in September 1999 that required any claimant, including the Leopold Foundation, to prove ownership of the painting.164 The complaint alleged that “the Foundation never acquired good title” to the painting and therefore the painting should be considered “stolen” under the National Stolen Property Act, the federal statute which criminalized the transportation of stolen property in interstate and foreign commerce.165 Thus, importation of the painting into the United States, the government argued, was unlawful.166

and cultural exchanges by creating a climate in New York free from the threat of seizure by judicial process and by encouraging nonresidents to share their works of art with the public. The essence of the legislation is perhaps best captured in Governor Rockefeller’s Memorandum of Approval which states that many exhibitions in New York State: “rely in most instances on loans of works of art for their success. The promotion and continuation of these events is necessary to maintain New York’s status as the art center of the Nation and is beneficial to the general cultural atmosphere of the State . . . . [This bill] by exempting such works of art from [the] legal process where their presence in the State of New York is solely by the generosity of the exhibitor and not for any commercial purpose, will go far to allay the fears of potential exhibitors and enable the State of New York to maintain it pre-eminent position in the arts.” [In sum] “[t]he statute’s intent is twofold: to insulate nonresident lenders from seizures [in a] legal process and . . . to protect State cultural institutions that depend upon the free flow of art for the benefit of the people of the State of New York.


The Attorney General added: “the increased fear of harassment of nonresident artists and collectors regarding seizures could reap ‘incalculable harm’ for New York’s cultural institutions if the bill did not become law.” Id. at 901. The Attorney General also “questioned the wisdom of creating loopholes in the statute, reasoning that such exemptions would force potential good faith lenders to seek legal advise before lending artwork to museums” and thereby defeat the bill’s purpose. Id. As a result, the court reasoned that the legislative history, “coupled with the [plain] language of the statute, demonstrate[d] a clear mandate from the legislature” that ACAL section 12.03 was not limited to the civil process. Id.

164. Marilyn Phelan, ABA, International Legal Development in Review: 1999 Public International Law, 34 Int’l Law 697, 699, 702 (2000). “Since the New York District Attorney’s office served the museum with the subpoena in January of 1998, there has been a significant increase in the number of museums applying for exemption from seizure of their loan exhibitions under the federal law.” Id. at 700.

Another fallout of the MoMA case has been the work of an interagency group that includes the State Department to establish guidelines for museums to follow when providing information about works of art to the government. Id.

The Department of State now processes these applications and requires each applicant to submit a certification that the applicant has undertaken professional inquiry into the provenance or chain of title, of the objects proposed for determination of cultural significance and national interest. The applicant further must certify that it does not know or have reason to know of any circumstances with respect to any of the objects in the loan that would indicate the potential for competing claims of ownership.

Id. at 701.


166. Id. at 53.
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b. New York Legislature’s Response

Following the court’s decision, the New York Legislature passed controversial legislation, which became law in 2000, eliminating the protection from seizure provided under New York’s Art and Cultural Affairs Law in cases where the artwork is criminally seized.167 The legislation, strongly opposed by New York City museums, was backed by a coalition of leading Jewish organizations, including the World Jewish Congress and Manhattan District Attorney Robert Morgenthau.168

V. INTERNATIONAL COOPERATIVE AGREEMENTS HAVE ALSO PROVEN INEFFECTIVE

Since World War II, three major international conventions have attempted to address the issue of Nazi-looted art, however, they have all proved largely ineffective because none of the conventions has been widely accepted.169 In addition, they have “focused on protecting nationally owned cultural property,” not that of “private citizens . . . seeking to reclaim individually-owned property looted in the course of war.”170

A. The Hague Convention

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict is the primary multilateral treaty which seeks to protect cultural property during wartime.171 “[T]he Hague Convention expressly prohibits signatory countries from damaging and stealing cultural property in times of war, and . . . requires them to instill a sense of respect for cultural property in their armed forces.”172 Cultural property, however, is defined as “movable or immovable property of great importance to the cultural heritage of every people . . . .”173 In addition, it provides for sanctions and penalties but does not provide a mechanism for settling disputes.174 As a result, the Convention language seems to only

167. Fredric V. Dicker, New Law Targets Nazi-Stolen Art, NEW YORK POST, May 26, 2000, 2000 WL 19655590. The law will expire after a two-year trial period. Id.
168. Id. Alternatively, the Texas legislature has now enacted legislation to prohibit a court from seizing any work of art “while its (1) en route to an exhibition; or (2) in the possession of the exhibitor or on display as part of the exhibition.” See Tex. Civ. Prac. & Rem. Code Ann. § 61.081(a) (Supp. 2001). However, the exemption from seizure does not apply if “theft of the work of art from its owner is alleged and found proven by the court.” Id. at § 61.081(d). A number of Canadian provinces and France have similar protection statutes. In British Columbia, an anti-seizure provision protects temporarily displayed artwork from any proceeding.
170. Falconer, supra note 169, at 387.
171. Steele, supra note 169, at 688. See also Edwards, supra note 169, at 939.
172. Steele, supra note 169, at 689.
173. Falconer, supra note 169, at 388.
174. Id.
refer to nationally owned property, not privately owned property, which is often the case in Nazi-looted art claims.\textsuperscript{175}

**B. UNESCO Convention**

In 1983, the United States ratified the 1970 United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention on Cultural Property which imposes an obligation on its member states to protect cultural resources during times of both war and peace.\textsuperscript{176} Signatories must establish agencies, enact laws to prohibit domestic institutions from acquiring cultural property that has been illegally obtained, compile inventories of important works of cultural influence, publicize thefts, and set up cultural educational programs.\textsuperscript{177} However, the UNESCO Convention only addresses broad obligations of its members to combat the illegal export or import of art and it, like the Hague Convention, does not provide for art which is privately held.\textsuperscript{178}

**C. UNIDROIT Convention**

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects offers some help as it provides for claims by private individuals.\textsuperscript{179} However, because “claims must be brought ‘within a period of fifty years from the time of the theft,’ the UNIDROIT Convention, . . . [also] fails to provide a solution for settling claims to Nazi-looted art.”\textsuperscript{180} In addition, most countries have refused to ratify the Convention further limiting the scope of possible relief.

**VI. MORE RECENT CONGRESSIONAL AND INTERNATIONAL EFFORTS**

**A. Provenance Problems Discussed**

In February of 1998, the House Banking and Financial Services Committee held hearings to look into how the art community determines provenance of works in its collection and how it deals with claims alleging that a particular work was stolen by the Nazis during the Holocaust.\textsuperscript{181} Glenn Lowry, Director of the Museum of Modern Art (MoMA) in New York, told Congress that “the challenge of sifting through successive layers of ownership is enormously complex” in part, because “[t]here is no comprehensive list of art stolen by the Nazis to which museums can refer.”\textsuperscript{182} Until recently, he noted, many of the documents regarding the

\textsuperscript{175} Id.

\textsuperscript{176} Id. at 388-89; see also Steele, supra note 169, at 690.

\textsuperscript{177} Falconer, supra note 169, at 389; see also Steele, supra note 169, at 690.

\textsuperscript{178} Falconer, supra note 169, at 389.

\textsuperscript{179} Id.

\textsuperscript{180} Id. at 389-90.


\textsuperscript{182} House Banking Hearing 1998, supra note 181 (testimony of Glenn Lowry).
Nazi misappropriation of cultural treasures were not available.\textsuperscript{183} With the end of the Cold War, however, came the "opening of archives in Eastern Europe, the revelation of the trophy art collections in Russia, and declassification of U.S. and Allied records relating to restitution efforts after the war."\textsuperscript{184} Documents that survived the war, however, may exist in libraries, offices, and homes throughout Europe making them difficult to acquire. In addition, they may be written in any number of different languages, including German, French, Italian, Polish, and Dutch.\textsuperscript{185} In many cases there are gaps in the provenance filled with the term "Private Collection" because many who were buying and selling art during this period preferred to remain anonymous.\textsuperscript{186}

\textbf{B. The Washington Conference}

In late 1998, forty-four nations held a conference in Washington, D.C. (the Washington Conference on Holocaust-Era Assets) sponsored by the U.S. State Department and the U.S. Holocaust Memorial Museum to address the problem of how to deal with Nazi stolen assets including art.\textsuperscript{187} This was the first major international gathering to address the fate of looted assets.\textsuperscript{188} The Conference aimed at "forg[ing] an international consensus on how governments and other entities can cooperate to redress grave injustices" remaining from the Holocaust era.\textsuperscript{189} The delegates agreed on eleven comprehensive principles intended to identify artwork looted by Nazis during World War II, locate pre-war owners and settle conflicting claims to property worth billions of dollars in today's market.\textsuperscript{190} While

\begin{itemize}
\item \textsuperscript{183} Id. "Locked away in archives, sometimes behind the Iron Curtain, the records that survived the war were not accessible to scholars, art historians, or heirs of Holocaust victims."
\item \textsuperscript{184} Turner, supra note 22, at 1520.
\item \textsuperscript{185} House Banking Hearing 1998, supra note 181 (testimony of Glenn Lowry).
\item \textsuperscript{186} Id.
\item \textsuperscript{187} House Banking Hearing 1999, supra note 31 (testimony of Stuart E. Eizenstat).
\item \textsuperscript{188} Commission Report, supra note 26, at 5.
\item \textsuperscript{189} Falcconer, supra note 169, at 390.
\item \textsuperscript{190} House Banking Hearing 2000, supra note 62 (testimony of Jonathan Petropoulos). Specifically, the principles stated:
\begin{enumerate}
\item Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
\item Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
\item Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.
\item In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.
\item Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-war owners or their heirs.
\item Efforts should be made to establish a central registry of such information.
\item Pre-war owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.
\item If the pre-war owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken
\end{enumerate}
\end{itemize}
the guidelines called for a “just and fair solution” and imposed on nations a moral commitment to identify and publicize stolen works to aid in the return of these works to their original owners, the guidelines were not legally binding. They have, however, led to a number of positive developments. For example, in February of 1999, Austria agreed to return to the Rothschild family over $40 million in art pursuant to an Austrian restitution law enacted the previous year.

C. Museum Community’s Guidelines Concerning Works of Questionable Provenance

The American Association of Art Museum Directors (AAMD) and the American Association of Museums (AAM) issued guidelines in 1999 designed to facilitate the process of identifying works of questionable provenance—these guidelines asked museums to do more than what the Washington principles recommended. The guidelines asked museums to do more in identifying works with problematic provenance and in disclosing to the public any evidence of unlawful appropriation. They also contemplated that museums could “waive legitimate legal defenses to claims for recovery of once-looted art works ‘in order to achieve an equitable and appropriate resolution of claims.’” But again, the guidelines were only voluntary.

D. Stockholm and Vilnius International Forums

The Stockholm International Forum on the Holocaust held in January 2000 and the Vilnius International Forum on Holocaust Era Looted Cultural Assets held in October 2000 “reflect the continued commitment of the world to focus attention expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

[9] If the pre-war owners of art that is found to have been confiscated by the Nazis or their heirs, cannot be identified, steps should be taken expeditiously to achieve a just and fair solution.

[10] Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

[11] Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

Id.

191. Id.

192. Id. Additional developments that came out of the conference include:

[1] In March [of 1999], Britain’s National Gallery issued a list of 120 paintings in its collection that it [was] investigating to make sure they were not confiscated or stolen in the Nazi era[;]

[2] In April [of 1999], France returned to the Rosenberg family a Monet painting that had been loaned to the Museum of Fine Arts in Boston and exhibited there[; and]

[3] In June [of 1999], the Prussian Cultural Heritage Foundation—the German Foundation that runs many of Berlin’s most prominent museums—agreed to return a van Gogh drawing to the heirs of Max Silverberg . . . and the Seattle Art Museum agreed to return a Matisse to the Rosenberg family, following an independent investigation into the work’s provenance.

Id.

193. Id.

194. Id.

195. Id.

196. Id.
on the Holocaust and increase efforts to recognize the scope of its crimes. 197 Twenty-four countries, including Argentina, Austria, Germany, Sweden, Lithuania and Portugal, created government sponsored commissions, similar to the Presidential Advisory Commission in the United States, for purposes of examining their own records and twenty-two other nations established less formal mechanisms with the same goal. 198

E. Presidential Advisory Commission on Holocaust Assets in the U.S.

A number of bills were introduced in Congress relating to the Holocaust. As noted earlier, the legislation establishing the Presidential Advisory Commission on Holocaust Assets in the United States became law in 1998. 199 The Commission’s mission was to examine the role of the United States in the collection and disposition of Holocaust era assets and recommend legislative, administrative and other actions it deemed necessary or appropriate to do justice for Holocaust victims. 200

F. Holocaust Victims Redress Act

The Holocaust Victims Redress Act, which also became law in 1998, expressed the sense of Congress that all governments make good faith efforts to aid in the return of Nazi confiscated assets to legitimate owners. 201 More specifically it authorized the President to commit the United States to contribute up to $25 million over three years to an international fund to benefit Holocaust survivors, commit $5 million for archival research and translation services to assist in the restitution of assets looted or extorted from victims of the Holocaust, and commit Congress to seek appropriate means for addressing the issue of restituting private property including works of art. 202

G. Nazi War Crimes Disclosure Act

The Nazi War Crimes Disclosure Act, passed in October 1998, called for a Nazi War Criminal Records Interagency Working Group (IWG) to make public

197. COMMISSION REPORT, supra note 26, at 5.
198. Id. at SR-1 & app. D. Research has helped shed light on collection and restitution efforts of Holocaust victims’ assets.

Policymakers from countries as diverse as Argentina, France, Lithuania, and Sweden realized the importance of revisiting painful episodes from their pasts if history was to be properly served. Numerous other countries in Europe and Latin American convened commissions to examine the records of their governments, banks and other institutions. In 1997, many of those countries gathered for the London Conference on Nazi Gold, and the following year the United States convened the Washington Conference on Holocaust-Era Assets. . . . The United States has been and remains a leader in these international efforts. The work of the Presidential Advisory Commission continues this country’s quest for the truth and demonstrates that the United States has asked of itself no less than it has asked of the international community.

Id. at 4-5 (footnotes omitted). For a complete list of the countries and commissions addressing the issue of Holocaust victims’ assets, see Appendix D of the Commission Report. Id. at 53.

199. Id. at 1.
200. Id.
202. Id.
Nazi war criminal records. By declassifying information, the legislation aimed to acknowledge the horrors of the Holocaust and to achieve justice for survivors and their heirs. The Commission, working with the Nazi War Criminal Records Interagency Working Group (IWG), helped facilitate the declassification of 400,000 pages of Nazi related records by the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the National Security Council, the Justice Department, the State Department, the Department of Defense, and other branches of the United States Government with the hope of offering "a clearer picture of the policies and actions of our government before, during, and after the Holocaust."  

VII. AGREEMENTS AND RECOMMENDATIONS THAT EMERGED FROM THE COMMISSION'S EFFORTS

At the end of 2000, The Presidential Advisory Commission on Holocaust Assets in the United States issued its final report entitled: Plunder and Restitution: The U.S. and Holocaust Victims' Assets. The report details the history of how the United States government handled gold, securities and other valuables—including artwork—that it controlled during, or after, the war. The report makes a number of recommendations regarding policy initiatives which the Commission believed appropriate in view of new information uncovered by the Commission and in recognition of the work left undone by our government's policies during the war. The Commission was also able to "reach agreements with Federal and non-Federal institutions regarding best practices to be followed in the identification, recognition and restitution of Holocaust assets to their rightful owners."

A. Agreements Reached to Better Investigate Provenance

1. The Museum Community

The Commission, the Association of Art Museum Directors ... and the American Association of Museums ... agreed that the museum community would affirm its commitment to a series of standards to govern provenance research about art from the Holocaust era, including full disclosure and publication of that research on the Internet in a central and accessible registry.

205. COMMISSION REPORT, supra note 26.
206. Id. at i.
207. Id. at i–ii.
208. Id. at ii.
209. Id. at 3. At a hearing held by the Commission in New York on April 12, 2000, American museums committed themselves to providing public access to information about Holocaust era works in their collections. Id. at 18. The directors present agreed to full disclosure, which means:

(1) all Holocaust-era works will be identified and disclosed and all provenance information in the possession of the museums regarding those works will be disclosed;

(2) such provenance information will be disclosed, even where there are no known gaps; and

(3) provenance research by museums will be a continuing process with additional information disclosed as it becomes known.
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The museum community also agreed to restitution in cases where claims could clearly be established, noting that a number of museums, including the Seattle Art Museum, the North Carolina Museum of Art and the Denver Art Museum, have returned valuable works that the museums had in their collections to the families of the original owners.\footnote{210}

The Commission's work contributes to the ongoing effort to improve art provenance research in two ways:

1. through the posting on [the Commission's] website of two American intelligence reports on the Hermann Goering and Adolf Hitler [art] collections; and

2. through the development of a database for outstanding claims for [artwork and other] cultural property collected between 1952-1956 by Ardelia Hall, the Arts and Monuments Advisor in the Department of State.\footnote{211}

2. The Library of Congress

The Commission reached a similar agreement with the Library of Congress.

\footnote{210. \textit{Id.} at 18. The Commission also pointed out that "[t]he Boston Fine Arts Museum recently settled a claim under a part purchase, part donation agreement with the heirs that allowed the museum to keep the painting." \textit{Id.} In a letter to the Commission from Edward H. Aile, Jr., President and CEO of the American Association of Museums (AAM), the AAM stated: \begin{quote}
I hope you are left with no doubt that the museum community completely agrees to the goal of "full disclosure" as set forth in the Commission's findings. The American Association of Museums is committed to helping museums achieve this goal through the publication of instructional information on provenance research, dissemination of sample policies and procedures, and development of website standardization and a searchable central registry.
\end{quote}
We look forward to working with you on some of these topics as we move forward in this effort.

We have reviewed the text of the draft findings and recommendations related to museums and we support them completely and are prepared to work toward implementing the provisions it includes.

\textit{Id.} at 59. In a similar letter to the Commission from Katherine Lee Reid, President of the Association of Art Museum Directors, the Association stated:

Thank you and the Commission for your continued efforts to resolve one of the most difficult issues of our time—the restitution of Nazi looted art to its rightful owners. The goal of the AAMD is consistent with the Commission's, but even more importantly is responsive to the obligations we all share to survivors, their families and others who suffered the horrors and injustices of Nazi aggression. Our commitment has long been to focus resources on researching the provenance of our collections following a process that recognizes these individuals as priorities. In that spirit, we have reviewed the Commission's finding and recommendations and are in complete agreement with the goals of full disclosure as set forth in the Commission's findings and we support completely the Commission's findings and recommendations and we commit ourselves to working toward implementing the provisions included in the findings and recommendations.

Since 1998 AAMD members have been researching their collections for gaps in provenance of works that might have been Nazi-looted and have made this research available on their Web sites. A broader assessment of all relevant works acquired by our museums since the beginning of the Nazi era continues, and will ultimately encompass our collections as a whole.

\textit{Id.} at 60.

\footnote{211. \textit{Id.} at 3-4.}
After World War II, the Jewish Cultural Reconstruction, Inc. (JCR)\textsuperscript{212} distributed books that the Nazis had looted, to American libraries, including the Library of Congress.\textsuperscript{213} As part of the Commission's research into the history of the JCR, the Commission learned that "between July 1, 1949 and January 31, 1952 the [organization] transferred about 158,000 items to libraries in the United States."\textsuperscript{214} The documents, examined by the Commission, reveal that the JCR sent nearly 6,000 books and periodicals to the Library of Congress and the JCR defined 107 of those books and periodicals as rare.\textsuperscript{215} Other items looted by the Nazis were suspected by the Commission to have also made their way to the Library of Congress but through other channels.\textsuperscript{216} Following months of discussions with the Commission, the Library of Congress agreed to recognize the provenance of certain books in its collection that had been looted by the Nazis.\textsuperscript{217}

B. Commission Recommendations

1. A Foundation Should be Established to Carry On the Commission's Work

The Commission urged Congress to establish a Foundation to carry on the important work that has been accomplished to date.\textsuperscript{218} The Foundation would promote further research and education in the area of Holocaust-era assets and restitution policy, and promote innovative solutions to contemporary restitution policy issues.\textsuperscript{219} It would be authorized to accept private contributions, which would be tax deductible, as well as appropriated funds, and the Foundation would "sunset" in ten years.\textsuperscript{220} The Foundation would provide centralized repositories for research and information about Holocaust-era assets.\textsuperscript{221} This would include compiling and publishing a report that integrates, synthesizes and supplements the

\textsuperscript{212} \textit{Id.} at 13. The JCR is an organization created in 1947 to preserve cultural assets of the Jewish people and property that was identified as having been looted from Jewish people or Jewish communal institutions, but was unclaimed. \textit{Id.}

\textsuperscript{213} \textit{Id.} Among the libraries that received books were Harvard University, Johns Hopkins University, New York University, the University of Iowa, Brandeis University, Hebrew College, and the Jewish Institute of Religion. \textit{Id.}

\textsuperscript{214} \textit{Id.}

\textsuperscript{215} \textit{Id.}

\textsuperscript{216} \textit{Id.} at 13.

\textsuperscript{217} \textit{Id.} Following a meeting between the Commission and the Librarian of Congress, the library agreed to sample its Hebraic collection of approximately 165,000 volumes that could have been looted because they were published before 1945 and were in Europe between 1933 and 1945. \textit{Id.} at 13. The survey found about 2,300 books and periodicals that it had received a few years after the war from JCR and another 200 that were clearly looted from Jewish victims of the Holocaust and came to the Library of Congress by other means. \textit{Id.} The library plans to create a "virtual library" of JCR titles and related books that the public will be able to search online. \textit{Id.} at 14. The Library is also setting up a system that will allow users to go to a single site to search every title in this special collection and plans to "make the list available to agencies, organizations and individuals involved in the restitution of Holocaust era assets and will restitute any of these volumes upon establishment of a legitimate claim." \textit{Id.}

\textsuperscript{218} \textit{Id.} at 21.

\textsuperscript{219} \textit{Id.}

\textsuperscript{220} \textit{Id.} "The Foundation should coordinate its activities with governmental and nongovernmental organizations and individuals and provide that any of its responsibilities that are ongoing at the time of the Foundation's sunset be absorbed into another entity." \textit{Id.}

\textsuperscript{221} \textit{Id.}
research on the Holocaust-era assets prepared by various commissions in other countries.222

In addition, the Foundation would be responsible for developing tools to aid both individuals and institutions in determining ownership of Holocaust victims’ assets.223 This would include implementing the agreement reached with the American Association of Museums and the Association of Art Museum Directors. Moreover, the Commission recommended that the Foundation “cooperate with the museum community to provide for the establishment and maintenance of a searchable central registry of Holocaust-era cultural property in the United States.”224 The registry would have uniform standards for data entry and would make all provenance information accessible over the Internet.225 The Commission recommended that museums disclose the provenance information regarding the works in their collections that is known currently, that they continue to supplement that information with new information as it becomes available, and that Congress provide the necessary funds to assist in establishing and maintaining the registry.226 The Foundation would also work with the private sector to develop and promote common

222. Id. at 21. The Foundation would also review the degree to which foreign governments have implemented the principles adopted at the Washington Conference on Holocaust-Era Assets and the Vilnius International Forum on Holocaust-Era Looted Cultural Property, and should encourage the signatories that have not yet implemented those principles to do so . . . [and] provide for coordinated and centralized dissemination of information about restitution programs, working with such organizations as the Conference on Material Claims Against Germany and others.

Id.

223. Id.

224. Id. at 22.

225. Id.

226. Id. In addition, the Foundation would:
- Make grants to encourage the creation and expansion of mechanisms—including publicizing the availability of such resources—to assist claimants in obtaining speedy resolution of claims (grants would not cover attorney’s fees);
- Encourage the use of alternative dispute resolution (ADR) by making grants to enable claimants who cannot otherwise afford such services to make use of them (again, attorney fees would not be covered);
- Provide a grant to an appropriate institution or institutions to establish and maintain a computerized, searchable database of Holocaust victims’ claims for the restitution of personal property;
- Support the museum community in its efforts to implement full disclosure of Holocaust-era provenance research . . . [and] regularly publish lists of Holocaust-era artworks returned to claimants by museums in the United States;
- Cooperate with appropriate institutions, such as the Institute for Museum and Library Services, to fund grants to museums, libraries, universities, and other institutions holding Holocaust cultural property for the conduct of satisfactory provenance research;
- Fund a cross match of records developed by the 50 states of unclaimed property from the Holocaust-era that has escheated against databases of victims names, including the database of victims, maintained by Yad Vashem, the Holocaust Martyrs’ and Heroes’ Remembrance Authority in Israel and others. The results should be widely publicized to enable people with legitimate claims to seek return of their assets.

Id. at 21-22.
standards and best practices for research on Holocaust-era assets.\textsuperscript{227}

2. Review Artwork in Federal, State, and Private Institutions

The Commission recommended that the President require a thorough review of Holocaust-era assets in federal, state and private institutions, including military bases and other Department of Defense (DoD) installations both here and abroad, similar to the reviews now going on in museums and the Library of Congress.\textsuperscript{228} Government buildings would be required to subsequently return any Nazi-looted assets to victims or their heirs.\textsuperscript{229} Commending the Library of Congress for recognizing the unique provenance of the books it received from the JCR, the Commission urged other libraries in receipt of books from the JCR to follow the Library of Congress’ example.\textsuperscript{230} The Commission also commended the National Gallery of Art for its research into the provenance of Holocaust-era art in its collection.\textsuperscript{231}

The Commission further recommended that the President require DoD to “develop, in concert with veterans’ service organizations, a program to promote the voluntary return of victims’ assets that may have been taken by members of the Armed Forces as war souvenirs.”\textsuperscript{232} The Commission also encouraged private institutions holding similar assets to be diligent in their attempts to locate the rightful owners, or their heirs, and return these assets once legitimate claims have been established.\textsuperscript{233}

3. Encourage Archival Research

The Commission stressed the need to preserve archival records of the Holocaust era and facilitate research into such records.\textsuperscript{234} Along these lines, the Commission also recommended that the IWG, which has been working to declassify

\textsuperscript{227} Id. at 23. This would include monitoring the implementation of the Commission’s agreement with the museum community regarding full disclosure. Id.

\textsuperscript{228} Id. at 23.

\textsuperscript{229} Id.

In the event that an asset located in a federal institution is found to be a looted asset for which no claim by a legitimate owner is known, the asset should be left where it is located and its history acknowledged with immediate appropriate public notice and recognition that remains in place until such time as a successful claim is made with respect to the asset.

Id. Federal institutions should be diligent in their attempts to identify the rightful owner or heirs of any looted assets and then work to return them to their rightful owners. Id.

\textsuperscript{230} Id. The Commission also commended the National Gallery of Art for its research into the provenance of Holocaust-era art in its collection. Id.

\textsuperscript{231} Id.

\textsuperscript{232} Id. at 24.

\textsuperscript{233} Id.

\textsuperscript{234} Id. at 24. More specifically, the Commission urged the federal government to establish and appropriately fund a comprehensive effort to preserve Holocaust-era records under its control. Id. The Commission recommended that the federal government “establish and maintain maximum public access to national archives containing documents and other materials related to Holocaust-era assets by providing Federal funds to support the development and publication of research guides and finding aids for Holocaust-era materials by the National Archives and Records Administration (NARA) and other federal and nonfederal institutions.” Id.
remaining Nazi era documents throughout the U.S., be fully funded to continue its operations until January 2005. 235

4. Set DOD Policies for Future Conflicts

The Commission recommended that DoD make preparations to ensure that these issues will be addressed in future conflicts. 236

5. Continue to Promote International Commitment to Addressing Asset Restitution

The Commission also urged the United States to continue its leadership role in promoting the international community’s commitment to addressing asset restitution issues. 237

235. Id. The IWG is comprised of representatives of the public, the National Archives, the FBI, the CIA, the DOD, the National Security Council, the Department of Justice, the Department of State and the Holocaust Memorial Museum. House Banking Hearings 2000, supra note 62.

236. Commission Report, supra note 26, at 24. Specifically, the Commission recommended that DOD:

[R]evie...rency and personal assets consistent with operational requirements. The Department of Defense should be encouraged to work cooperatively with the Foundation and other relevant institutions to develop or refine training for U.S. service members and Department of Defense civilians to prepare U.S. forces to meet the challenges and responsibilities while deployed on operational missions overseas when they encounter national and/or individual property. Such training would ensure that deploying U.S. forces understand and can apply the critical lessons learned from their actions during World War II.

Id. at 24-25.

237. Id. at 25. The Commission recommended that:

* The United States should establish as a factor in its bilateral relations with nations to which the United States restituted looted assets the identification and publication of information regarding the degree to which the governments of those nations restituted such assets to the rightful owners or their heirs.
* The President should maintain the positions of Special Envoy for Holocaust Issues at the State Department with the rank of Ambassador and Special Representative of the President and Secretary of State for Holocaust Issues. The Office of Holocaust Issues at the State Department be maintained with adequate resources to assist these positions.
* The President should instruct the Special Envoy for Holocaust Issues at the State Department to continue to encourage foreign governments to make their archives open and accessible and to cooperate with the worldwide archival reproduction program of the United States Holocaust Memorial Museum, as well as to restitute communal and personal property in a nondiscriminatory way.

Id.
6. Congressional Action

In addition, the Commission also recommended that "the President should urge Congress to pass legislation that removes impediments to the identification and restitution of Holocaust victims' assets."\(^{238}\) Specifically, the Commission advocated amending the Federal Immunity from Seizure Act to provide that "an importer of Holocaust-era cultural property seeking immunity from seizure of that property must provide notice of the application to a designated organization representing Holocaust victims and/or their heirs."\(^{239}\) With respect to the artwork for which immunity is sought, the application for immunity should state that the artwork in question is not the subject of a claim listed on the comprehensive claims database being proposed by the Commission.\(^{240}\)

The Commission went on to recommend that Congress amend the National Stolen Property Act to "preclude as a defense in a forfeiture action involving the Act that the Holocaust-era art or cultural property lost its status as stolen property (a) when it was recovered by law enforcement or military authorities or (b) when title was transferred in a country whose laws provide that stolen property loses its status as such when a sale or transfer occurs."\(^{241}\)

Finally, the Commission urged Congress to "reopen the claims process for victims and their heirs whose property was vested in the Alien Property Custodian but not returned . . . authorize the Foreign Claims Settlement Commission to adjudicate any such claims and . . . provide an appropriation adequate to fund any awards."\(^{242}\)

VIII. DISCUSSION OF THE COMMISSION'S RECOMMENDATIONS

A. Central Registry is Long Overdue

Records including a list of claims made immediately after the war for missing works of art have been hidden away in government archives for over fifty years, frustrating efforts of Holocaust survivors and the art world to track down thousands of paintings and cultural treasures looted by the Nazis. The Commission had been working to produce information in a way that would be easily accessible, but its congressional mandate ran out before it could complete the database on its own. As a result, the Commission has recommended that additional measures be taken to ensure its completion and continuing this project will require additional federal funding. The records that the Commission had been using to build the database are contained in the thirty-five rolls of microfilm made by State Department employee Ardelia Hall and they contain thousands of pages of claims filled out in half a dozen languages immediately after the war by Holocaust survivors and museums whose collections were pillaged during the Nazi occupation of Europe. These documents record Nazi looting of furniture, household effects, rare books, Jewish religious materials, musical instruments, antiques, stamp and butterfly collections and fine art and they contain key information regarding signifi-

\(^{238}\) Id.
\(^{239}\) Id.
\(^{240}\) Id. at 25-26.
\(^{241}\) Id. at 26.
\(^{242}\) Id. at 26.
HAS "THE LOST MUSEUM" BEEN FOUND?

Paul Rosenberg was a leading Parisian art dealer and represented a number of important artists including Matisse and Picasso. The Rosenberg Gallery was a prime target of Nazi looters after the fall of France in 1940 and since the war, the Rosenberg family has been searching for missing works, such as Matisse's "Odalisque," which was recently returned by the Seattle museum. In 1995, Hector Feliciano published "The Lost Museum," one of the first books to address the problem of Nazi-looted art. Paul Rosenberg's daughter-in-law, Elaine Rosenberg, provided a photograph of the family's missing Matisse for the book. Her daughter showed the book to a friend who was the nephew of the Seattle collector who had purchased the painting and donated it to the Seattle Museum. The Rosenberg family might have been able to recover the Matisse much earlier if these documents had been available to art galleries and auction houses immediately following the war. The painting passed through the Knoedler Gallery in New York in 1954 before making its way to the Seattle collector. The gallery might have been less willing to handle the painting if information had been available making it "public knowledge that the painting had been looted during the Nazi era." The central registry will serve to put purchasers on notice that a problem with title may exist. Such notice will penalize buyers who purchase art under suspicious circumstances and fail to adequately investigate title.

Numerous historians, art experts, commentators and some courts have noted the benefits of a central registry. Posting this information in a searchable form on the Internet will help museum officials research the provenance of works in their collections and help claimants recover lost or stolen art. The registry would go a long way toward facilitating the settlement of looted art claims, making it easier for Holocaust victims to pursue their claims. As a result, the Bush administration, at the very least, should supply additional federal funding to ensure that the important work of creating the central registry is completed.

B. Provenance Reviews in Federal Buildings, Libraries, Private Art Galleries, and Auction Houses

A central registry will also make it easier for provenance research, similar to that which is now occurring in public museums, to take place in federal buildings, other libraries, private art galleries, and auction houses. The Commission did not have time to reach a similar disclosure agreement with all of these groups. As a result, similar efforts with commercial galleries should be pursued.

C. Lessons Learned From WWII Restitution Policy

Problems with U.S. restitution policy following the war illustrate the need to ensure that DoD polices for future conflicts include training regarding looting during wartime and the need for swifter restitution to the victims of war. The Com-

243. See generally Feliciano, supra note 3.
244. Id.
246. Id.
247. Id.
248. Id.
mission also recommended doing more research into the roles of Latin America and Switzerland in trafficking and providing a haven for stolen art that eventually found its way into American collections. This research will help to facilitate an understanding of how artwork was smuggled into this country and perhaps how to prevent it in the future.

D. Integration of Similar Commission Activity in Other Countries

The single most important research task, according to the Commission’s report, is “the integration of the Commission’s research findings with those of all the other historical Commissions around the world that have been at work on related issues.” The Commission recommends synthesizing the work that has been done by other commissions to produce the most comprehensive and detailed history of the Holocaust that has ever been assembled. Additional research is warranted with respect to archival records in the United States that were incomplete at the time the report was finished and supplementary information that may be available in foreign archives which is often more restricted than those here in the United States. One of the most important untapped resources is Russia—United States access to Russian archives has been spotty and unpredictable according to the Commission. Continuing to push for the declassification of additional documents will further restitution efforts.

E. Recent Case Illustrates the Value of a Central Registry

Looted works might have been returned to their former owners decades earlier had the claim forms, which were filled out by Holocaust survivors when the war ended, been available to the public in the immediate postwar years. Early in 2001, Yale University announced that it had received a claim alleging that “Le Grand Pont,” a painting by Gustave Courbet, which has been hanging in the University’s Art Gallery for twenty years, had been stolen by the Nazis. The Chicago Tribune, after an examination of records at the National Archives, discovered that another claim on the painting had been filed in 1948 “in a letter to the U.S. occupation forces in Germany from an attorney representing Josephine Weinmann, the mother of the current claimants.” Her claim was one of those

250. Id. at SR-213.
251. Id. at 20, SR-215.
252. Id.
253. Id. at 19.
254. Id. at 19. Similar problems exist in other countries—at the Stockholm Conference held in January 2000 an official joint statement recognized archival access as an important issue, and then Deputy Secretary Eizenstadt called for the opening of all records relating to the Holocaust. House Banking Hearings 2000, supra note 62.
256. Id. The 1948 letter states that Weinmann, who then lived in New York, notified the Americans that she had purchased the Courbet at an auction in Berlin in the 1930s and upon fleeing Germany, she left the painting with the family’s secretary who was to send it abroad. Id. The letter shows that the family made their claim promptly following the war and addressed it to the proper authorities as required. Id. Weinmann and her family had remained in Germany after the Nazis came to power feeling protected by their Czechoslovakian citizenship, but when Hitler moved to take over Czechoslovakia, his mother decided it was time to leave. Id. at 4. In 1939, a year after the Weinmanns left Berlin, the Nazis confiscated their villa as “alien property.” Id.
HAS "THE LOST MUSEUM" BEEN FOUND?

that Ardelia Hall wanted to make public to American art museums after the war, however, it, like thousands of others, remained buried in government archives.257 The facts surrounding this case, which have just recently come to light due to the declassification of these documents, demonstrates just how useful the central database, proposed by the Commission, may be in resolving these types of claims.

Nazi records show that in 1933, Dr. Herbert Schaefer, who had recently graduated from law school, joined the Sturmbteilung, or S.A., a paramilitary Nazi organization "devoted to street fighting against the party's political enemies and enforcing boycotts against Jewish-owned businesses."258 Schaefer, who is now 90 years old and living in Spain, allegedly bought the painting in Berlin in the late 1930's but declined to provide details on who he purchased it from.259 In 1947, he asked his housekeeper to transport the painting, along with two others, to Sweden because of the "generally insecure situation in Berlin."260 According to court records, the bus she was traveling on was stopped by British soldiers, the art was confiscated, and the British turned the Courbet over to the art museum in Hamburg, Germany.261 Twenty years later, Schaefer successfully brought suit to recover the Courbet and later put his collection on long-term loan to Yale.262 When it was on exhibit, a friend of one of Weinmann's heirs saw the painting prompting the family's legal claim.263

Further complicating this case, the records also show that in the 1920s and 1930s, "Le Grand Pont" was owned by Max Silberberg, whose collection, according to art historians, was sold off at a forced sale by the Nazis.264 Weinmann indicated she bought the painting in 1932, but her son believes it may have been later than that, in which case, she may have bought it at an auction, which scholars believe disposed of the Silberberg collection.265 According to a stolen art detective, who was hired by the Weinmanns, the auction catalog "contain[ed] the cryptic notation 'from the collection of S.'"266 The attorney for the Weinmanns, at the time of the writing of this Comment, hoped to discuss a settlement with Yale and Schaefer was planning on defending his right to the painting in court.267

IX. CONCLUSION

Before the Commission's term expired, it sent copies of its report to President George H. Bush and every Member of Congress. From a public policy standpoint, the growth of the Internet268 has made it easier than ever before for would be

257. Id.
258. Id.
259. Id.
260. Id.
261. Id. Records show the art was confiscated because the housekeeper could not produce an export license. Id.
262. Id.
263. Id.
264. Id.
265. Id.
266. Id.
267. Id.
268. The Court in Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) defined the Internet as:

[A]n international network of interconnected computers. It is the outgrowth of what began in 1969 as a military program called "ARPANET." [Advanced Research Project
purchasers of valuable art to conduct reasonable investigations into the provenance of artwork they wish to acquire. Access to documents that have been hidden from public view in government archives for more than half a century may provide the key to resolving some of the mysteries of what happened to important works of art that still remain missing so many years after the end of World War II. Governments have an obligation to do what is necessary to return these works to their original owners or their heirs. Representative James Leach, Chairman of the House Banking Committee that held hearings on the issue of Holocaust Assets, noted in 1998 that: “stolen property must be returned. Pillaged art cannot come under a statute of limitations.”

There has been a renewed effort over the past few years to provide a measure of justice to survivors of the Holocaust all around the world while they are still alive. Ten percent of Holocaust survivors are dying each year. As President Clinton noted in 1998: “There can be no way to deliver full justice for the many millions of victims of Nazi persecution, and we know that the ‘unspeakable losses of all kinds that they suffered will never be made whole.’ Yet we may be able to provide some relief by hastening the restitution they undeniably deserve. The problem of Nazi-looted artwork has a complicated history and there are no easy solutions. The declassification of government documents and the recommendations made by the Commission provide a real opportunity to bring Holocaust survivors some measure of justice, albeit in a small way given the atrocities these people suffered. Establishing a central art registry database containing the information that is now being released from government archives will better enable

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Agency which was designed to enable computers operated by the military, defense contractors, and universities conducting defense-related research to communicate with one another by redundant channels even if some portions of the network were damaged in a war. While the ARPANET no longer exists, it provided an example for the development of a number of civilian networks that, eventually linking with each other, now enable tens of millions of people to communicate with one another and to access vast amounts of information from around the world. The Internet is “a unique and wholly new medium of worldwide human communication.”

Id. at 849-50.


270. Commission Report, supra note 26, at 4. The Commission points to a variety of factors which have contributed to this heightened awareness:

[T]he inscrutability of Swiss banks, the activities of European insurance companies, the recognition of the experiences of slave and forced laborers, the fall of communism and the commitment to democratic and open societies in formerly communist countries. There is also a general sense that the closing of the millennium demands that Western society seek to effect the maximum measure of justice possible for the victims of Nazi crimes. As a result, many governments, non-governmental organizations, businesses and individuals began or renewed efforts to grapple with aspects of their records regarding the collection and restitution of the assets of Holocaust victims.

Id.

271. House Banking Hearing, supra note 31 (testimony of Stuart E. Eizenstat).

original owners and their heirs to locate their lost art. At the same time, a central registry will make it easier for good faith purchasers to investigate the art’s history and may better prevent the sale of stolen artwork. The Bush administration and Congress should continue the important work done by the Commission and the international community.

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