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Prudent Provenance – Looking Your Gift Horse in the Mouth

Shirley Foster*

I. INTRODUCTION

The frustrated Seattle Art Museum (SAM) returned a two million dollar Henri Matisse painting that it had held in public trust for nearly a decade, yet emotions were bittersweet because SAM knew it was doing the right thing.¹ Donors had purchased the valuable painting in 1954 from a reputable New York art gallery, Knoedler & Co., and it had remained in the state of Washington since then. “The Seattle Art Museum received *Odalisque* in 1991. With the conclusion of [extensive] research, evidence indicated that *Odalisque* was one of the paintings that the Nazis stole from Paul Rosenberg, a prominent Jewish art dealer in Paris at the time, and that it was never returned to him.”²

Much to the shock of Seattle citizens, the Seattle Art Museum has displayed Nazi war booty for nearly a decade. The horrors of the Nazi period are well known.

From the time the Nazi regime came into power in 1933 through the end

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¹ Mimi Gardner Gates, SAM Director, “It was important for the Seattle Art Museum to restore the painting to the Rosenberg heirs and to have pursued questions relating to its provenance on behalf of our donors. We are pleased that the museum and Knoedler Gallery have resolved their dispute.” Martha Lufkin, *U.S. Dealers and Seattle Museum Settle*, THE ART NEWSPAPER, Nov. 2000, at 3.

² Press Release, Seattle Art Museum, SAM to Return Matisse *Odalisque* to Rosenbergs (June 14, 1999) (on file with Association of Art Museum Directors).

of World War II in 1945, it orchestrated a system of theft, confiscation, coercive transfer, looting, pillage, and destruction of objects of art and other cultural property in Europe on a massive and unprecedented scale. Millions of such objects were unlawfully and often forcibly taken from their rightful owners, who included private citizens, victims of the Holocaust; public and private museums and galleries; and religious, educational, and other institutions.³

The plaintiffs, heirs of the famous Jewish art dealer Paul Rosenberg, demanded their lost two million dollar heirloom back. SAM found itself in the middle of costly litigation generating controversy and negative publicity, not unlike other museums that once believed they had “innocently” acquired valuable art pieces, only to have later discovered that chilling histories and faulty titles surrounded stolen art on their premises. Worldwide, art museums are implementing plans to investigate questionable art provenance if discovered gaps in chains of title coincide with the Nazi World War II period, as well as policies to return suspect art pieces to their rightful owners, or their heirs,⁴ upon presentment of proof of ownership.

The Seattle Art Museum (SAM) spent over a quarter million dollars litigating the matter. Before bequeathing the valuable painting, the Bloedels had owned *Odalisque* for decades. They had purchased it in good faith from a well-regarded American art gallery. Proud to receive, display, and hold the painting in trust for the public good, suddenly SAM was faced with a demand to return it to heirs of a deceased art dealer whose paintings were stolen by the Nazis years ago. Did SAM legally have to return *Odalisque*? Could SAM assert equitable defenses of laches or adverse possession law?⁵ It is well established in

³ American Association of Art Museums (AAM), *Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era*, at <http://www.aam-us.org> (last visited Dec. 19, 2000).

⁴ “The International Forum on Holocaust Looted Cultural Assets, which is a follow up to the important Washington, D.C. conference two years ago reflects growing concerns over the problem of war loot. Thirty-seven nations signed the final communique, including members of the Council of Europe and the U.S., addressing the fate of works of art which had belonged to Jewish victims.” Martin Bailey, *Report on the Vilnius Forum on Holocaust-Era Looted Art*, THE ART NEWSPAPER, Nov. 2000, at 1.

⁵ “As to acquisition of stolen art, the principle would be that the statute of limitations would start to run on the date of the museum’s innocent acquisition, unless

American law that thieves cannot pass good title. Thus, even though the Matisse painting was purchased in good faith and subsequently bequeathed to SAM, the transferred right of ownership, "like a stream, cannot rise higher than its source. The bona fide purchaser from a thief gets nothing."⁶ Legality aside, did SAM have an ethical duty to return the two million dollar painting, considering the specific circumstances of its disappearance and subsequent discovery? Finally, regarding its public trust duties, what can SAM do in the future to prevent wasting museum funds if faced with similar litigation?

In light of worldwide developments, this inquiry is timely and important because the ethical and economic concerns presented by the *Odalisque* incident could foreseeably resurface, potentially impacting museum funds, future donations, and the status of accessioned art. The probability of similar claims is foreseeable, since "the art market is the only economic sector in which one runs a 90% risk of receiving stolen goods," and "85% of all stolen art is hanging on the walls or sitting on the pedestals of unsuspecting collectors."⁷ SAM cannot afford to risk millions of dollars in inventory and legal costs in another similar occurrence, therefore steps should be implemented to avoid such exposure.

International art theft and related trafficking has been and continues to be a multi-billion dollar a year industry. Works of art plundered during the World War II era also increasingly are returning to the market and being found in decedent's estates. The lax commercial conventions that apply at all stages of the art market enable trusting private collectors to acquire stolen works and to donate them to charitable organizations.⁸

"tacking" was applied. An acquisition of stolen art constitutes a separate act of conversion which [theoretically] starts the statute of limitations running anew." Ward, *Adverse Possession of Loaned and Stolen Objects*, LEGAL PROBLEMS OF MUSEUM ADMINISTRATION (A.L.I.-A.B.A. 1980) 83, 96-97.

⁶ O'Keeffe v. Snyder, 416 A.2d 862, 882 (1980).

⁷ Letter from Lloyd P. Goldenberg, Managing Member of Trans-Art International, L.C., to IFAR J., Autumn 1998, at 3. Mr. Goldenberg's letter cited the Oct. 1997 position paper on the not-for-profit Society to Prevent Trade in Stolen Art citing quotations from Elizabeth des Portes, Secretary General of the International Council of Museums and Constance Lowenthal, former Executive Director of IFAR.

⁸ *Id.*

To avoid future collection losses and ensuing negative publicity, SAM must not be lax in reviewing the provenance of accessioned art. Verifying authenticity of art as well as insuring artwork usually requires tracing an item's history as thoroughly as possible. Thus, investigating provenance is beneficial and practical for many reasons.

This Article examines a timely ethical and legal dilemma that any prominent American museum could find itself thrust into without proper planning. The discussion is divided into five main parts. Part II briefly traces background events increasing one's probability of possessing stolen art. Part III highlights the Seattle Art Museum's *Odalisque* litigation. Part IV seeks proactive solutions by examining the game plans of other world-class museums and analyzing how Seattle might apply similar strategies within the American legal environment. Finally, Part V summarizes the author's proposed action plan for investigating provenance of accessioned artwork, in hopes of preventing future surprises.

II. BACKGROUND

The world's history abounds with tales of war, pillage, and victory booty. Napoleon stocked the Louvre with war treasures from numerous conquering battles. Rome was not built in a day, but the treasures of fallen nations helped build its splendor. Historically, after the war dust settles, victors take their earned loot home. National pride, morale, and economics justify the winner retaining national treasures once prized by the now-conquered nation. Art has commonly changed hands as war booty.

Even before the Romans took their pick of Greek statues, art was treated as war booty. Throughout Europe's turbulent history, art works regularly changed hands through armed conflict or political domination and from the 19th century, the Europeans began bringing Asian, African, and Latin American treasures into their museums – to save them, it was claimed, from destruction.⁹

American museums have acquired and continue to house many artistic and cultural heritage items, which originated from other countries. Not acquired as the spoils of war, many of these pieces were purchased or donated via legal transactions. A young nation, the

⁹ Alan Riding, *Are Finders Keepers?*, N.Y. TIMES, Mar. 12, 1995 at 3.

United States is not nearly as “art-rich” as European countries such as England, Germany, Italy, and France. A dear painting worth several million dollars is certainly a feather in the cap of a local museum. In emphasizing “humanity’s common interest in its past, the cultural heritage of all mankind is [best shared] when cultural objects are relatively free to circulate for scientific, educational, and cultural purposes in order to enrich the cultural life of all peoples and inspire mutual respect and appreciation among nations.”¹⁰ From such a “culturally internationalistic”¹¹ perspective, allowing an American museum to display a French masterpiece enables global awareness of art and its inspirational benefit, while leaving the originating nation still very well stocked in its own collections for public display. “Whenever possible, cultural objects ought to be shared internationally as part of a common heritage of humankind, so long as their countries of origin have a representative collection of kindred heritage.”¹² In the matter of private ownership, however, global benefit makes way for personal wealth or idiosyncratic sentiment.

Benthamite universal utilitarianism tells us that an optimum result is achieved when the “aggregated goodness is increased, even when some individuals suffer losses in order to facilitate greater gains by others.”¹³ Although far more people benefit from SAM’s public display of the *Odalisque*, as opposed to private display in the home of Rosenberg’s heirs, seeking to serve the aggregate common good did not justify SAM’s retention of the stolen painting. However, in returning the stolen painting, SAM serves the greater common good in an even more prolific sense. SAM shows respect for property ownership rights, the cornerstone of civilized societal values. From the U.S. Constitution¹⁴ to Robespierre¹⁵ to Madison¹⁶, “virtually all legal sys-

¹⁰ JOHN A. MERRYMAN, *LAW, ETHICS AND THE VISUAL ARTS* 71 (3rd ed., 1998).

¹¹ *Id.*

¹² James A.R. Nafziger, *Towards a More Collaborative Regime of Transnational Cultural Property Law*, PRIVATE L. IN THE INT’L ARENA 504 (2000).

¹³ BAILEY KUKLIN, *FOUNDATIONS OF THE LAW* 6 (1994), discussing Jeremy Bentham on utilitarianism.

¹⁴ See U.S. CONST. amend. XIV and V. “No person shall be deprived of ... property without due process of law. ... nor shall private property be taken for public use, without just compensation.”

¹⁵ Inspired by Rousseau, Robespierre’s theory of property which he shared with

tems propose that each person is entitled to exclusive control of his property, free from invasions by other individuals.”¹⁷ A person must feel confident that when he leaves his property for the day he is certain to return home to it. Liberty and certainty are the jewels of American justice. “One expression of individual liberty is the acquisition of property.”¹⁸ In returning a stolen painting to the family that lost it as helpless victims of wartime looting, SAM respects property ownership rights and supports the values that underscore civility, thus benefiting society overall. “By tracking down, finding, and finally recovering [stolen family heirlooms], the families retrieve a part of the soul of the past. That might help them assuage the bleak part of the past that haunted them for so many years. They are also exercising an elementary right to justice.”¹⁹

In order to avoid similar potential demands for return of other entrusted artwork, considering the significant wealth of privately collected art in the Seattle area and the potential for future questionable donated works to eventually amass in SAM’s collections, SAM needs a damage control strategy which it can implement immediately. The Association of Art Museum Directors (AAMD) ethical code recommends investigating provenance and returning art acquired through questionable means.²⁰ An AAMD member, SAM should follow the lead of major museums worldwide and commence investigating provenance of other works presently in its collection, as well as invoke

French citizens included, “property is the right that each citizen has to enjoy and to dispose of the portion that is guaranteed to him by law.” See Frédéric Bastiat, *Property and Law*, in *LIBERTY, PROPERTY, AND THE LAW* 197 (Richard A. Epstein ed., 2000).

¹⁶ JAMES MADISON, *PROPERTY* 102-103 (1792). “A just government impartially secures to every man, whatever is his own.... The United States will equally respect the rights of property, making themselves a pattern to all other governments.”

¹⁷ *LIBERTY, PROPERTY, AND THE LAW* 1 (Richard A. Epstein ed., 2000).

¹⁸ *LIBERTY, PROPERTY, AND THE LAW* ix (Richard A. Epstein ed., 2000).

¹⁹ HECTOR FELICIANO, *THE LOST MUSEUM* 189 (1st ed. 1997).

²⁰ “The purpose of the Association of Art Museum Directors is to aid its members in establishing and maintaining the highest professional standards for themselves and the museums they represent, thereby exerting leadership in increasing the contribution of art museums to society.” AAMD, AAMD Task Force Report, at <http://www.aamd.org> (June 4, 1998).

a policy precluding acceptance of donated art lacking good title. In the event that this might have the effect of discouraging donations, SAM should at least commit to investigate the unknown provenance of all future donated works.

In the age of the worldwide web, investigating an art piece's provenance has become easier. In 1997, the World Jewish Congress established a worldwide database dedicated to revering stolen art.

The Commission for Art Recovery in New York compiled a series of databases. One of these is an ongoing compilation of pre-War European ownership information gathered from insurance policies, inventories, exhibition catalogues, and other documentary sources. The database can be readily cross-checked with other databases including routinely-computerized lists of works of art claimed by Holocaust survivors or their heirs to have been stolen. That can also be readily compared with lists of works scheduled for auction or held in public collections.²¹

Then in 1998, the Art Loss Register (ALR), "listed losses in its computerized database of stolen or missing art works. Insurance companies, museums, and dealers frequently check ALR's database of 100,000 items before taking a consignment or making an acquisition. The register has helped recover about \$575 million worth of stolen goods in the last seven years."²²

Also in 1998, pursuant to heightened Holocaust victim awareness, political movements, and the reopening of "long-closed archives"²³ worldwide,

the Association of Art Museum Directors (AAMD), an organization that represents 175 directors of the major art museums across the United States, Canada, and Mexico, announced it will require its members to review the provenance or ownership history of the works of art in their

²¹ Stephen E. Weil, *The American Legal Response to the Problem of Holocaust Art*, 4 ART ANTIQUITY AND LAW 298 (Dec. 1999).

²² Judith Dobrzynski, *Pledge on Artistic Provenance*, N.Y. TIMES, June 5, 1998, at E5.

²³ Note also that the "lifting of the Iron Curtain enabled museums to initiate new research. As long-closed archives began to open and historians and researchers published several seminal investigative works, American museums have been able to accelerate their provenance research." Press Release, AAMD, AAMD Statement on the Issuance of the Report by the President's Commission on Holocaust Assets in the U.S. (Jan. 16, 2001) (on file with AAMD).

permanent collections to ascertain whether any had been unlawfully confiscated during the Nazi era. It will also require that similar scrutiny be given to future gifts, bequests, purchases, and loans. When claims are asserted against a museum, it recommends that every effort be made to settle these by mediation rather than through the more costly route of litigation.²⁴

SAM should heed the ethical guidelines set out in the AAMD's Task Force Report, which can be viewed at its website.²⁵

Other countries are also implementing Holocaust art return strategies. In Canada, the National Gallery of Canada has "published the images of art on its website allowing people around the world, especially European Jews and their descendants, to easily examine and possibly lay claim to the works. The paintings and sculptures all have gaps in their provenance, or history of ownership, from 1933 to 1945."²⁶ Additionally, the Montreal Museum of Fine Arts "has begun tracing the origins of about 350 works amid concerns its collection might include pieces stolen by the Nazis. The laborious job of contacting art galleries, dealers, other museums, even embassies is expected to take as long as a year to trace all 350 pieces."²⁷ Also, in 1999 the Parliamentary Assembly of the Council of Europe adopted a

²⁴ *Id.*

²⁵ The Association of Art Museum Directors (AAMD) worldwide website address is <http://www.aamd.org>. The AAMD guides its members "to begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted. Member museums should search their own records thoroughly, and, in addition, should take all reasonable steps to contact established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/World War II era provenance information. As part of standard research on each work of art, member museums should ask donors of works of art (or executors in the case of bequests) and sellers of works of art to provide as much provenance information as possible with regard to the Nazi/World War II era. If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action."

²⁶ Lisa Schmidt, *Nazi Plunder in National Art Gallery?*, WINNIPEG FREE PRESS, Dec. 30, 2000, at B2.

²⁷ Michelle MacAfee, *Art Museum Decides to Trace Art Afterall*, GLOBE AND MAIL, Jan. 10, 2001, at A7.

“Draft Resolution on Looted Jewish Cultural Property.”²⁸ Global consensus illustrates support for return of Nazi-looted artwork to its pre-war-time owners.

After the enactment of the U.S. Holocaust Assets Commission Act of 1998,²⁹ American museums have been working to make Nazi-era provenance information on their collections available to the public.³⁰

Although a linked database of all museum holdings throughout the United States does not exist at this time, individual museums are establishing web sites with collections information are making their holdings accessible through printed publications or archives. Consistent with current museum practice, AAMD member museums should publish, display, or otherwise make accessible all recent gifts, bequests, and purchases thereby making them available for further research, examination, and study. When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims.³¹

Following the initiatives of other major museums, and as an AAMD member, SAM should adopt the AAM/AAMD uniform ethical guidelines for posting information on Holocaust-era works into its operating policy. Whenever new pieces of art are donated, bequeathed, or purchased, SAM should initiate provenance checks to ensure good title.³²

²⁸ Patrick J. O’Keefe, “*The Draft Resolution on Looted Jewish Cultural Property Produced by the Parliamentary Assembly of the Council of Europe*”, 4 ART ANTIQUITY AND LAW 313 (1999).

²⁹ U.S. Holocaust Assets Commission Act of 1998, Pub. L. No. 105-186, §1, 112 Stat. 611 (1998).

³⁰ As noted by the American Association of Museums, some of these museums include the Art Institute of Chicago, Cleveland Art Museum, Harvard University Art Museums, J. Paul Getty Museum, Los Angeles County Museum of Art, Metropolitan Museum of Art, Museum of Fine Arts Boston, National Gallery of Art. AAM, at <http://www.aam-us.org> (last visited Dec. 19, 2000).

³¹ AAMD, AAMD Task Force Report at <http://www.aamd.org> (June 4, 1998).

³² “Organizations that maintain databases on stolen artworks include (1) the International Foundation for Art Research (IFAR), based in New York, and the Art Loss Register (ALR) based in London, which are connected; (2) the Federal Bureau of Investigation (FBI); (3) the International Criminal Police Organization (INTERPOL); and the Art Dealers Association of America. For example, the Metropolitan Museum of Art in New York City has a formal policy of checking major acquisitions with the Art Loss Register.” RALPH E. LERNER, ART LAW 1434 (2nd ed. 1998).

If gaps in the chain of title or history of an art piece coincide with the Nazi World War II looting era, SAM should make an effort to inventory and publish the names and descriptions of suspect art pieces, similar to the current efforts of other prominent, well-respected American museums.

III. STATEMENT OF THE CASE

“A 1928 painting by Henry Matisse, known as *Odalisque*, was purchased by Virginia and Prentice Bloedel from Knoedler in 1954. In 1991, the Bloedels gave the painting to the Seattle Art Museum (SAM). It now appears that the painting was stolen by German Nazis from French art collector Paul Rosenberg during World War II.”³³ In 1997, “Rosenberg’s heirs discovered the whereabouts of *Odalisque* and filed suit against SAM for its return. SAM, in turn, sued the Knoedler gallery for breach of title, fraud, and negligent misrepresentation.”³⁴

SAM agreed to return the painting to the Rosenberg heirs in 1999 after incurring considerable legal expenses.³⁵ It attempted to apply rights that the Bloedels would have had against Knoedler for fraud, breach of implied warranty, and negligent misrepresentation, arguing that any rights the Bloedels had were transferred to SAM upon bequeath of the painting.³⁶ Western District of Washington Judge Lasnik disagreed. “SAM does not have standing to sue Knoedler for defrauding the Bloedels, nor would it have standing to assert negligent misrepresentation in the same context. Washington law provides that transferring ownership of personal property does not thereby transfer a claim for fraud associated with the purchase of that property.”³⁷ Judge

³³ Rosenberg v. Seattle Art Museum, 70 F.Supp.2d 1163, 1165 (1999).

³⁴ *Id.*

³⁵ The decision occurred not long after Seattle hosted the ALI-ABA course of study on The Legal Problems of Museum Administration in March 1999. The course was cosponsored by the Smithsonian Institution with the cooperation of the American Association of Museums and discussed legal trends towards museums returning stolen artwork. With the attendance of Ms. Gail Joice, Senior Deputy Director of SAM, as well as legal counsel from the law firm representing SAM, the course enhanced Seattle’s awareness and sensitivity regarding plundered art possession.

³⁶ *Id.*

³⁷ *Id.*

Lasnik granted dismissal of SAM's case for compensation against Knoedler.³⁸ Not only was SAM losing \$2 million in art inventory by returning *Odalisque*, it also appeared to be out hundreds of thousands of dollars in litigation costs!

On March 22, 2000, however, Judge Lasnik reconsidered and vacated his earlier dismissal of the case.³⁹

Presented with new facts, the Court finds that as a matter of equity, SAM should be permitted its day in court so that the case may be disposed of in its merits. Now that the heirs have assigned the claim to SAM, SAM might seek to reassert that claim in a new action. SAM has standing to assert the Bloedels' fraud claim because the heirs agree that the claim was bequeathed to SAM and because the claim must have been distributed to 'someone.'⁴⁰

The Seattle Art Museum threatened to "continue litigation against Knoedler, contending that the gallery, in its 1954 transaction with the Bloedels, breached warranties of title, did not have clear title to *Odalisque*, and fraudulently or negligently misrepresented the painting's provenance. SAM asked Knoedler for compensation of *Odalisque*'s full, present market value [approx. \$2 million]."⁴¹

On October 12, 2000, SAM and Knoedler reached an out of court agreement. To resolve their differences, they agreed that "Knoedler would transfer to SAM one or more significant works of art to be selected by the museum from Knoedler's holdings, or the equivalent value in cash. Knoedler will also reimburse SAM for the legal fees and costs incurred by the museum in the lawsuit."⁴² SAM withdrew its allegations of fraud and negligent misrepresentation against Knoedler.⁴³

³⁸ *Id.*

³⁹ *Rosenberg v. Seattle Art Museum*, 2000 WL 1809149, 3 (W.D. Wash.).

⁴⁰ *Id.*

⁴¹ Press Release, AAMD, Seattle Art Museum to Return Mattise *Odalisque* to Rosenbergs (June 14, 1999) (at <http://www.aamd.org> viewed Dec. 19, 2000).

⁴² Knoedler also agreed not to pursue \$96,000 in legal fees Judge Lasnik awarded against SAM in a previous phase of the suit. See Martha Lufkin, *U.S. Dealers and Seattle Museum Settle*, THE ART NEWSPAPER, Nov. 2000, at 3.

⁴³ Martha Lufkin, *U.S. Dealers and Seattle Museum Settle*, THE ART NEWSPAPER, Nov. 2000, at 3.

IV. ANALYSIS

“Property must be stable, and must be fixed by general rules.”⁴⁴ SAM had displayed *Odalisque* to the delight and enjoyment of local citizens for nearly a decade. Previously, the painting’s donors had possessed it since 1954. Is possession not “nine-tenths of ownership law?”⁴⁵ Did the Rosenberg heirs really have a claim to make after so much time had elapsed?

A. *Laches*

“Laches is an equity doctrine that unreasonable delay will bar a claim if the delay is a prejudice to the defendant. The plaintiff who delayed beyond the analogous limitation period at law harms the other party.”⁴⁶ However, laches is not specific as to how long is long enough to bar a claim. For instance, when New Jersey and New York litigated over ownership of Ellis Island, the U.S. Supreme Court did not feel that a 103 year delay in bringing the suit unfairly prejudiced New York, the defending party.⁴⁷

Small, portable, and easy to conceal when privately displayed, stolen artwork is not easy to track down. Discovery of its whereabouts could take decades. “To start running the statute of limitations at the moment of the theft is manifestly unfair.”⁴⁸ Paul Rosenberg went to extensive lengths to discover the whereabouts of his stolen property after the war. His journeys took him to numerous countries, including

⁴⁴ David Hume, *A Treatise of Human Nature, Book III*, in LIBERTY, PROPERTY, AND THE LAW 91 (Richard A. Epstein ed., 1978).

⁴⁵ “There is no legal rule that possession is nine-tenths of the law. An English court posited that a statute enacted in 1382 ‘gave rise to the old saying that possession is nine points of the law’. *Beddall v. Maitland* (1881). The modern, colloquial understanding of the maxim is applied mainly to personal property. What is often meant is that the person in possession is in the strongest position, or, as the Oxford English Dictionary describes it, holds the ‘vast majority’ of the legal points that may be raised in a legal action.” Loren Singer, *Juris Dictions: Possession is Nine-Tenths of the Law*, 6-21-96 WLN 5952 (1996).

⁴⁶ DAN B. DOBBS, HANDBOOK ON THE LAW OF REMEDIES 43 (1973).

⁴⁷ *New Jersey v. New York*, 523 U.S. 767, 769 (1998).

⁴⁸ Stephen Weil, *The American Legal Response to the Problem of Holocaust Art*, 4 ART ANTIQUITY AND LAW 291 (Dec. 1999).

Switzerland and Germany⁴⁹ in pursuit of trying to locate over four hundred paintings⁵⁰ that once had been in his possession. He hired attorneys and filed claims with authorities, such as the Commission de Récupération in France as quickly as he could after discovering his losses.⁵¹ He acted as diligently as one might reasonably expect under the extreme circumstances in attempting to recover his property. At long last, *Odalisque* was found in Seattle. Should Rosenberg's family not be entitled to immediate return of their multi-million dollar unique property?

But consider that a bona fide purchaser for value had donated the painting to SAM. Having possession, did SAM not now also have title to *Odalisque*? SAM openly displayed *Odalisque* to the world, certainly no deliberate concealment had occurred. How does American law reconcile the tension in ownership rights between the current owner who obtained possession from a bona fide purchaser for value and the owner who lost possession during wartime plunder?

Fairness dictates that the subsequent purchaser of a stolen work of art – more specifically, a good faith purchaser for value – should not remain indefinitely exposed to the risk of having to defend his right to that work which may be increasingly stale or ancient claims. Fairness requires that there should ultimately come a time when, in his ownership of that work, he can enjoy what the law calls 'repose.' This fairness principle is embodied in the statute of limitations that can be traced back to English law of the seventeenth century. These statutes are intended to prod those who may have recognizable legal claims, as well as to assure that such claims can be adjudicated fairly before evidence has been lost, memories have faded, and witnesses have disappeared.⁵²

According to Gilbert Edelson of the Art Dealers Association of America, "innocent purchasers of works later discovered to have been looted have some rights, particularly when claimants do not act with due diligence, by registering a loss or consulting the standard published catalogues."⁵³ After nearly fifty years, could the Rosenberg

⁴⁹ See LYNN H. NICHOLS, *THE RAPE OF EUROPA* 415 (6th ed. 1994).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Stephen Weil, *The American Legal Response to the Problem of Holocaust Art*, 4 *ART ANTIQUITY AND LAW* 291 (Dec. 1999).

⁵³ Martin Bailey, citing Gilbert Edelson of the Art Dealers Association of America, *THE ART NEWSPAPER*, Nov. 2000, at 3.

heirs still succeed in their ownership claim?

Richard A. Posner suggests that it is undesirable to make stolen goods more marketable, thus "tipping the balance against allowing the bona fide purchaser from a thief to acquire title."⁵⁴ Interestingly enough, sometimes in civil law countries such as France, a thief can pass good title.⁵⁵ Yet American common law is clear: a thief passes only the title he has, which is none.⁵⁶ "In comparing the equitable position of the theft victim and good faith purchaser, courts have made clear that this equitable test is weighted in favor of the victim. Under established U.S. law, collectors will be required to return stolen art they mistakenly acquired unless they can show they diligently sought to avoid acquiring stolen materials."⁵⁷ American legal perspective shows that SAM was correct to return the painting and seek damages from the New York art dealer who sold it to the Bloedels.

B. *In All Fairness*

In American law, the effect of the discovery rule⁵⁸ is that a "plaintiff's action does not accrue, and thus the statute of limitations does not commence, until the plaintiff, using due diligence, knows or should know of the identity of the possessor [of the stolen prop-

⁵⁴ RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 92 (5th ed. 1998). See also Landes & Posner, *The Economics of Legal Disputes Over the Ownership of Works of Art and Other Collectibles*, in *ESSAYS IN THE ECONOMICS OF THE ARTS* 177 (1996).

⁵⁵ Stephen E. Weil, "The American Legal Response to the Problem of Holocaust Art", 4 *ART ANTIQUITY AND LAW* 291 (1999).

⁵⁶ See MARIE C. MALARO, *A LEGAL PRIMER ON MANAGING MUSEUM COLLECTIONS* 73 (2d. 1998).

⁵⁷ Mr. Goldenberg's letter cites a *Washington Post* editorial, *Getting Back Your Gold*, Nov. 5, 1996, at A1.

⁵⁸ As opposed to the demand rule practiced in New York. With the demand rule the "statute of limitations on a cause of action for replevin does not begin to run until after refusal upon demand for the return of the goods." *Menzel v. List*, 267 N.Y.S.2d 804 (Sup. Ct. 1966), *aff'd* as modified, 279 N.Y.2d 608 (App. Div. 1966). Under the discovery rule, however, "the plaintiff's cause of action accrues when she first knew, or should have known through the exercise of due diligence, of the cause of action, including the identity of the possessor of the paintings." *O'Keeffe v. Snyder*, 416 A.2d 862, 869 (1980).

erty].”⁵⁹ Therefore, if the Rosenbergs could not identify the whereabouts of the stolen painting or the identity of the persons possessing it, how could they possibly bring suit for its return? Although many years had transpired since the painting went missing, their claim was not barred by the statute of limitations.

If an art museum acquires, through gift or purchase, an artwork for accession and later determines that it is stolen property, the museum may lose the artwork to the true owner. Unless the statute of limitations in the state in which the museum is located has expired or the museum is successfully able to assert the claim of laches against the aggrieved original owner (that is, the aggrieved original owner, with knowledge of the artwork’s whereabouts, delayed unreasonably to the museum’s detriment in seeking its return), or the museum has obtained title through adverse possession, which is difficult to establish in the case of personal property, title generally remains vested in the aggrieved original owner.

On demand, that owner may reclaim possession of the artwork or its present value. Neither a thief nor any purchaser from a thief, including an innocent purchaser who subsequently transfers art to a museum, can convey good title. If a museum is required either to return art works purchased by it to the aggrieved original owner or to pay the aggrieved original owner its present value, the museum may generally seek recourse from the seller based on the basis of the sales contract.⁶⁰

Public policy allows discretionary application of equitable defenses when the “wrong result” might occur. For instance, “the doctrine of estoppel is flexible in application, turning largely on the circumstances involved in the ‘total situation,’ turning perhaps on the relative innocence or culpability of the plaintiff and the defendant, for the law may aid one who is comparatively the more innocent.”⁶¹

A thorough balancing of the equities has been followed specifically to adjudicate the competing claims for misappropriated works of art. In

⁵⁹ Symeon Symeonides, *On the Side of the Angels: Choice of Law and Stolen Cultural Property*, PRIVATE L. IN THE INT’L ARENA 750 (2000). In his article, Symeonides discusses Professor Siehr’s Draft Convention on the Return of Stolen Works of Art and on Illegally Removed Objects of National Cultural Heritage, presented at The Hague in 2000. See also *Autocephalous v. Feldman*, 917 F.2d 278 (7th Cir. 1990).

⁶⁰ RALPH E. LERNER, ART LAW 1432 (2nd ed. 1998).

⁶¹ *O’Keeffe v. Snyder*, *supra* note 58 at 882.

Porter v. Wertz,⁶² the court held that the defendant art gallery was not entitled to statutory estoppel under U.C.C. §2-403(2), finding that the gallery was not a person acting in good faith in purchasing the Utrillo painting because it had not exercised the conjunctive statutory requirements of ‘honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. The gallery was indifferent as to the provenance of the painting. The *Porter* court concluded that the gallery should have investigated the provenance of the painting to qualify as a good faith purchaser. The court decried ‘commercial indifference to ownership or the right to sell facilitates traffic in the stolen works of art.’⁶³

Although *Odalisque* was donated to SAM, as an ethically responsible museum SAM should avoid appearing indifferent to the chain of title of the art it accepts from donors. Otherwise SAM, too, could be viewed as facilitating the easy disposal of stolen works of art or even perceived as negligent in its spending of entrusted operating funds should subsequent litigation ensue over an item it should have known belonged to someone else.

C. *Due Diligence*

“As experts, the court will expect museums to be more familiar with how to go about checking provenance⁶⁴ than the average innocent purchaser.”⁶⁵ For example, in *Autocephalous Greek-Orthodox Church v. Goldberg and Feldman Fine Arts*,⁶⁶ the court held gallery owner, dealer, and art expert Peggy Goldberg to a higher standard of due diligence. Deemed an expert by the court, she lost her one million dollar investment for not diligently investigating the provenance of 11th century church mosaics she acquired.⁶⁷ The court declared, “as

⁶² *Porter v. Wertz*, 68 A.D.2d 141, 149 (1979).

⁶³ *O’Keeffe v. Snyder*, *supra* note 58 at 884.

⁶⁴ “The Art Loss Register holds the world’s largest private sector tracking service for stolen art and antiques, with trained art historians searching a database of 100,000 registered stolen items.” ALR, *Buyer Beware – Stolen Art*, THE ART NEWSPAPER, Nov. 2000, at 85. Victims of art theft can call the New York or London office to “report a theft or search for good title.”

⁶⁵ *O’Keeffe v. Snyder*, *supra* note 58 at 884.

⁶⁶ *Autocephalous Greek-Orthodox Church of Cyprus and the Republic of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*, 917 F.2d 278, 293 (7th Cir. 1990).

⁶⁷ *Id.*

Byron's poem laments, war can reduce our grandest and most sacred temples to mere 'fragments of stone.' Only the lowest of scoundrels attempt to reap personal gain from this collective loss."⁶⁸ The court suggested that in Goldberg's case, due diligence would have included proactive initiatives such as "a formal IFAR search; a documented authenticity check by disinterested experts; a full background search of the seller and his claim of title; insurance protection and a contingency sales contract."⁶⁹ In exercising due diligence described by the court, museums can avoid the fate of Ms. Goldberg. "If Goldberg had pursued such methods, perhaps she would have discovered in time what she has now discovered too late: the Church has a valid, superior, and enforceable claim to these Byzantine treasures, which therefore must be returned to it."⁷⁰ Ms. Goldberg's lack of due diligence cost her over one million dollars. Let that never happen to SAM.

D. Ethics

Legality aside, museums are expected to conform to ethical guidelines within their trade. Tension between keeping collections intact which are held in public trust, and returning property stolen in another country over fifty years ago, not to mention the expense of conducting the investigations, hinder museums in their desire to "do the right thing." In countries such as England, art and cultural property held in national museums are the inalienable property of the people. Even if the museums felt ethically compelled to return discovered stolen artwork in their collections, they are not permitted to do so under British law.⁷¹

In the United States, major museum associations have urged that provenance be examined for faults before accepting valuable donated

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Most British museums "are forbidden by Acts of Parliament to deaccession works except under certain conditions, and superior claims to title appear not to be one of the conditions. See for example, the British Museum Act 1963, section 5; the National Heritage Act 1983, section 6; the Museums and Galleries Act 1992, section 4 (for the Tate)." Emily Pocock, *Spoilation of Works of Art During the Holocaust and World War II Period: A Commentary on the National Museum Director's Conference Report*, 5 ART ANTIQUITY AND LAW 83 (Mar. 2000).

or bequeathed art. The American Association of Art Museums (AAM) Code of Ethics states that the “stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility, and responsible disposal. When faced with the possibility that an object in a museum’s custody might have been unlawfully appropriated, the museum’s responsibility to practice ethical stewardship is paramount.”⁷²

E. ADR

In addition to implementing a policy to investigate provenance of currently held art as well as new acquisitions, SAM should establish a policy to seek alternative dispute resolution whenever possible versus traditional litigation in the event that future ownership disputes arise. In seeking win-win negotiation objectives, alternatives suitable to both parties might best resolve disputes.

There are a variety of ways to resolve disputes: negotiation, mediation, conciliation, arbitration, and court process. The great advantage of mediation for the claimant is that it can get around the problem of the museum or other holder being legally unable to return an object. The holder may wish to do so on moral grounds or to avoid adverse publicity but is constrained by legislation, the rules on trusteeship, or inalienability. In these circumstances, the parties may be able to agree on a cash payment or some other form of compensation although this in turn may need to be endorsed by the government.⁷³

An appealing example of a compromise arrangement was reached at Britain’s Tate Museum concerning “*The Elder*” painting, which was stolen by the Nazis during World War II. Upon discovery of its stolen status, instead of removing the painting from the Tate,⁷⁴ the heirs were compensated and a small plaque was affixed near the painting acknowledging its history. In this way, the public still benefits from the accessible display of the painting, yet the heirs have been restituted for

⁷² American Association of Art Museums (AAM), *Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era*, at <http://www.aam-us.org> (last viewed Dec. 19, 2000).

⁷³ *Id.*

⁷⁴ Per British law the cultural artifacts in the national museums are inalienable property of the people.

their family's misfortune.

The British government agreed to pay [over \$100,000 USD] compensation to three elderly Londoners for a painting their mother had been forced to sell during their escape from the Nazis in the Second World War. The painting, the 1710 view of Hampton Court Palace by Jan Griffier, "*The Elder*" has been in the Tate Gallery since 1961, when it was purchased in good faith for 400 pounds. It had been owned by a Duesseldorf man who was murdered by the Nazis. His wife was forced to sell it for scraps of food while in hiding in occupied Brussels. Their three children, who wish to remain anonymous, will receive an *ex gratia* payment. The case marked the first time that a British collection had been confronted with a claim from an individual.

Museums and galleries around Britain are currently researching the provenance of hundreds of works whose exact whereabouts cannot be confirmed during the era of Nazi Germany's Third Reich. Although few original owners may be alive and their heirs may not wish to go through the tortuous process of proving they were stolen, the Griffier could be the first of several payouts. Each case will be taken on its merits but works by Picasso and Monet, which could fetch millions on the open market, are among those with gaps in their provenance.⁷⁵

Alternative dispute resolution initiatives, such as mediation, have economic advantages over traditional litigation, as well as give the parties an opportunity to participate in the final outcome of their dispute. Oftentimes, parties can create a win-win resolution by working together rather than subject themselves to the rigid and at times unjust confines of complex courtroom law. Alternative solutions to the "one party takes all" outcomes often observed in litigated matters might include cash settlements in exchange for outright ownership of the property; time-shared display arrangements;⁷⁶ trading ownership of one desired art piece for another; "renting" the work from the owners for renewable fixed-term display periods; or retention of first right options when and if the owners consider selling the art. Courts support the freedom of parties to contract as they wish. SAM might give some thought to these alternatives should another dispute arise.

As an alternative to returning the painting to private possession,

⁷⁵ Dalya Alberge, *Payout for Tate's Nazi Spoils*, THE TIMES OF LONDON, Jan. 21, 2001 at 9.

⁷⁶ If the risk of damage to the art does not preclude shipping the art from location to location.

perhaps Paul Rosenberg himself would have supported donating *Odalisque* to SAM, a public museum? Previously grateful for the return of looted items from Germany, Rosenberg “donated thirty-three works to the French museums and promised others to the Louvre.”⁷⁷ Perhaps Rosenberg’s appreciation for the public display of artwork would have benefited Seattle had he still been alive when *Odalisque* was found? Interestingly enough, based on the Rosenberg negotiation for return of *Deux danseuses* in 1970, does the recent return of the *Odalisque* place the heirs in a similar position to repay the German government reparations already received for lost paintings which they reported unrecovered? In 1970, a German lawyer whose clients had Rosenberg’s missing Degas painting, *Deux danseuses*, contacted Alexandre Rosenberg. Thereafter,

The Rosenbergs had several options: they could go to court and try to get it back, and if they did, repay the German government for its value; they could buy it back; or they could accept a payment from the new owners and transfer title to them. Alexandre, tired of the endless process, chose the latter course.⁷⁸

SAM might have paid the heirs market value to retain *Odalisque* as an alternative to returning it. Perhaps a first right option to purchase in the event that the heirs decide to sell *Odalisque* in the free market would partially reward SAM for doing the right thing? It is unknown whether the Rosenberg heirs have repaid reparations to the German government now that their lost Matisse has been returned.

F. *Obstacles*

This suggested plan of action presents some concerns which implementing museums, such as SAM, must consider. First of all, in publishing collection inventory and advertising gaps in chain of title, SAM might expose itself to fraudulent claims of ownership or even innocently confused inquirers believing that they are entitled to retake what they mistakenly surmise is their family heirloom. After all, one need not spend the morning at Paris’ Le Musée Marmottan viewing its spectacular Monet collection to realize Monsieur Monet painted hundreds of water lily images. Of course, no two paintings are exactly

⁷⁷ LYNN H. NICHOLS, *THE RAPE OF EUROPA* 415 (6th ed. 1994).

⁷⁸ *Id.* at 421.

alike, but to the amateur eye confused “recognition” is foreseeable. It would be easy enough for one to confuse Monet’s swirls of sugary pink on indigo with more swirls of his brush displayed across town at Le Musée d’Orsay. Similarly, when visiting the University of Oxford’s Ashmolean Museum’s half a billion dollar jaw-dropping treasures, one happened to gaze at a priceless bronze horse, could the item stir memories of one’s Danish grandfather’s den, where, after grandfather took one down from his knee to go light his pipe, one crept over to his private desk to stroke the neck of his prized bronze horse, which looked “just like” the one in the Ashmolean? If the chain of title was subsequently advertised as questionable, would one feel moved to file a complaint to retake possession of “grandfather’s prized horse?” In anticipating issues of proving ownership, SAM needs to exercise caution in responding to inquiries regarding “lost or stolen” art. With the passage of time, one painting might look very similar to the one dear great aunt Esther used to display at her Cologne estate, but in reality the paintings are likely unique, unconnected, and separately owned.

Secondly, considering SAM holds its collection in trust for the public’s educational benefit and enjoyment, SAM must reconcile tension between its fiduciary duties and its goodwill intent to “do the right thing”⁷⁹ when faced with returning an art piece to those claiming ownership rights to it.

American art museums hold 14,000,000 works in public trust. They therefore have the responsibility to look after the public interest, but to do so in a timely and sensitive manner, especially when it comes to Holocaust survivors and their heirs. When new information is brought forward through a museum’s own efforts or those of a claimant, the museum needs to double-check and confirm this information before it returns a work of art. A museum has only one opportunity to do the right thing when it comes to returning a work of art. Should a work be returned to the wrong claimant, the museum could be liable. A museum could also be liable should there be multiple claimants, all with legitimate claims. Unfortunately, verification takes time and there are no

⁷⁹ “We are pleased to return the *Odalisque* to its rightful owners,” said Mimi Gardner Gates, Seattle Art Museum’s Director. “By our action today, the Seattle Art Museum is drawing a clear ethical line [and we are] committed to doing the right thing.” Press Release, Seattle Art Museum, SAM to Return Matisse *Odalisque* to Rosenbergs (June 14, 1999) (published on the AAMD website at <http://www.aamd.org/r061499.html>).

short cuts.⁸⁰

Although the AAM/AAMD ethical guidelines are not the law, they do reflect a spirit of fairness considering the extremely horrific circumstances of wartime plunder.

Thirdly, inventory and provenance endeavors can be painstakingly laborious and time consuming.⁸¹ Can SAM devote personnel time and fiscal resources to such a project, let alone to expanding its website to display specific items in its collections?⁸² Additionally, if inquiries are generated, does SAM have resources to appropriately investigate the ownership claims and respond?

Finally, considering the enormous stakes in today's art marketplace, the means employed by SAM to verify art provenance must be reliable. Aware of its fiduciary duties, SAM only returned *Odalisque* after commissioning an independent background investigation.

The museum reached its decision at a special meeting of its Board of Trustees, following a thorough and independent investigation into the painting's past ownership. That process concluded with the release of a report on the painting's provenance. The investigation was conducted by the Holocaust Art Restitution Project (HARP), a Washington, D.C. based independent research organization that provides Holocaust victims with the best possible information on the origins and ownership of valuable works of art that disappeared or changed hands during World War II. As an institution that holds its works in the public trust, the Seattle Art Museum needed to fully research the claim that the Rosenbergs filed in 1997 before determining a course of action.⁸³

⁸⁰ Press Release, AAMD, AAMD Statement on the Issuance of the Report by the President's Commission on Holocaust Assets in the U.S. (Jan. 16, 2001) (on file with AAMD).

⁸¹ Michelle MacAfee, *Art Museum Decides to Trace Art Afterall*, GLOBE AND MAIL, Jan. 10, 2001, at A7.

⁸² The answer to the latter is likely yes. Within SAM Director Ms. Gardner Gates' network is Mr. Bill Gates. "Since 1990 Bill Gates of Microsoft Corporation and Corbis, its publishing subsidiary, have built what Gates hopes to be one of the largest library of digitized images in the world. Gates purchased digital rights to the Seattle Art Museum's collections. Gates' enterprise has created a new ownership right in art, that of digital reproduction." JOHN A. MERRYMAN, LAW, ETHICS AND THE VISUAL ARTS 340 (3rd ed., 1998).

⁸³ Press Release, AAMD, Seattle Art Museum to Return Matisse *Odalisque* to Rosenbergs (June 14, 1999) (viewed at <http://www.aamd.org>).

Caution and prudence go hand in hand. Therefore, in harmonizing goals of economic efficiency, fair results, and avoiding embarrassment generated by another *Odalisque* scenario, SAM's most effective policy is to investigate all titles from day one. SAM should investigate the provenance of presently held works of considerable interest, utilizing the many databases available to art experts in New York and elsewhere. Inquiries should be dealt with in a careful but timely manner, invoking independent expert opinions that confirm asserted origin and ownership claims before relinquishing possession of valuable collection inventory.

Despite these concerns, the AAM/AAMD museum ethical guidelines should be adopted and implemented by SAM if it continues to strive to "do the right thing."⁸⁴ In the last three years, of the six Nazi-seized paintings found in American museum collections, three heirs have allowed the works to remain at the museums for the public good."⁸⁵ By taking the right precautionary steps, SAM can be confident in its ownership of the art it possesses.

V. CONCLUSION

SAM could have initiated its own provenance investigation of *Odalisque* either prior to accepting it or while displaying the valuable work, thus avoiding all appearances that it was playing the waiting game, that is, forestalling investigation and return of a costly painting that SAM did not rightfully own. To prevent similar potential controversies, SAM should develop a strict policy to investigate provenance of donated and bequeathed works as well as insist on warranties of title for art purchases. In the meantime, SAM should investigate the background of other works in its collection to uncover potential gaps in chain of title during the Nazi and World War II era. The museum could also post any suspect works on a website to accelerate potential owner inquiries. In this manner, SAM will act in a reasonably diligent manner as trustee of art held for public education and enjoyment.

In summary, to prevent future million dollar litigation expenses,

⁸⁴ See *supra* note 79 quoting Mimi Gardner Gates in SAM's June 14, 1999 press release.

⁸⁵ AAMD, Statement on the Issuance of the Report by the President's Commission on Holocaust Assets in the U.S. (Jan. 16, 2001) (on file with AAMD).

SAM should:

1. Adopt the AAM/AAMD ethical guidelines⁸⁶ and practice prudent provenance investigations from now on with all donated and purchased art
2. Seek warranties of good title on purchased art⁸⁷
3. Take inventory of its present collection and, if economically feasible, publish a suspect works list should gaps in provenance surface, which will assist Holocaust or other victims searching for their stolen property, and
4. Consider alternative dispute resolution initiatives, such as mediation, negotiated display-time sharing, "renting", or cash settlements to retain public accessibility to prized art, should dis-

⁸⁶ It is the position of AAM that museums should address claims of ownership asserted in connection with objects in their custody openly, seriously, responsively, and with respect for the dignity of all parties involved. Each claim should be considered on its own merits. Museums should review promptly and thoroughly a claim that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution.

In addition to conducting their own research, museums should request evidence of ownership from the claimant in order to assist in determining the provenance of the object.

If a museum determines that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution, the museum should seek to resolve the matter with the claimant in an equitable, appropriate, and mutually agreeable manner.

If a museum receives a claim that a borrowed object in its custody was unlawfully appropriated without subsequent restitution, it should promptly notify the lender and should comply with its legal obligations as temporary custodian of the object in consultation with qualified legal counsel.

When appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims that an object was unlawfully appropriated during the Nazi era without subsequent restitution.

AAM acknowledges that in order to achieve an equitable and appropriate resolution of claims, museums may elect to waive certain available defenses. AAM, Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era at <http://www.aam-us.org> (last visited Dec. 19, 2000).

⁸⁷ "When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims." AAMD, AAMD Task Force Report at <http://www.aamd.org> last visited Jan. 6, 2001.

putes arise.

Ultimately, as a responsible community friend, SAM has a “moral obligation to cooperate in provenance research and to respond to inquiries for specific information whenever it is possible to do so.”⁸⁸ Looking each gift horse in the mouth may prevent future deep bites into the museum’s tender pocketbook.

⁸⁸ Martin Bailey, *The Vilnius Declaration*, quoting Gilbert Edelson of the Art Dealers Association of America, *THE ART NEWSPAPER*, Nov. 2000 at 3.

