prove that any of the purchases belonged to victims of the Holocaust. Other suspicious transactions, for example, could include the purchase of porcelain with a memo that it comes from the Petschek collection, a reference to the prepared purchases of part of the Mannheimer collection in The Haag, or all transfers of pictures arranged by financial authorities.

In conclusion, I would like to express my conviction that even in regional museums and galleries possibilities also exist for the identification and restitution of works of art belonging to Holocaust victims.[1] Nevertheless, this remains contingent upon a thorough and expertly qualified examination of all available archive resources, including atypical sources (e.g., financial documents), comparing information from central and regional archives, perhaps even from archives that are a considerable distance from where the collections have been deposited, rigorous and repeated checks of records of collection acquisitions and postwar confiscations as well as comparisons of records with period archive materials, and the identification of all suspicious acquisitions, their registration, and public accessibility. This would facilitate the search for sought-after works and their original owners on an international level.

1 Borák, Mečislav. "Identifying the Items of Holocaust Victims in the Collections of Museums and Galleries in the Czech Republic." (Identifikace předmětů po obětech Holocaustu ve sbírkách muzeí a galerií ČR). *The Silesian Regional Museum's Magazine (Časopis Slezského zemského muzea)*, series B, 55, 2006, pp. 285–287.

▶ **Anna Rubin**
HOLOCAUST CLAIMS PROCESSING OFFICE, USA

PRESUMPTIONS: APPLYING LESSONS LEARNED FROM COMPENSATION PROGRAMS

Good afternoon, Friends and Colleagues:

Thank you for the opportunity to appear before you today. Those in the field of restitution are aware that even extensive research cannot always provide a complete provenance for artworks looted during the Holocaust. As Director of the Holocaust Claims Processing Office (HCPO), I would like to share with you our experience working with numerous international restitution organizations and to suggest that practices of other restitution processes could provide valuable guidelines with respect to filling provenance gaps.

In the late 1990s, disputes over Holocaust-era dormant Swiss bank accounts and unpaid life insurance policies focused international attention on myriad issues concerning unresolved claims for assets lost during the Holocaust era. As a result, numerous agreements allocating funds for restitution were reached, and processes to disburse payments were established.[2] However, no

2 Take for example the Holocaust Victim Assets litigation in the US District Court for the Eastern District of New York, Chief Judge Edward R. Korman presiding, and the Claims Resolution Tribunal (CRT); the Washington Agreement between the United State and France and the Commission for the Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in Force during the Occupation (CIVS); the Memorandum of Understanding, between European insurers, United States insurance regulators and others, and the International Commission on Holocaust Era Insurance Claims (ICHEIC); the Foundation "Remembrance, Responsibility, and the Future" (German Foundation) and the Property Loss Claims Commission as well as Slave and Forced Labor programs; the Washington Agreement between the United State and Austria and the General Settlement Fund (GSF); the Enemy Property Claims Assessment Panel (EPCAP); and the Belgian Jewish Community Indemnification Commis-

roadmap existed to guide the newly created restitution organizations in setting parameters by which they could accomplish their missions. Thus a network of frequently overlapping claims processes developed and was so complex that it became nearly impossible for an individual claimant to proceed unaided.

New York State, which has been at the forefront of efforts to obtain just resolution for the theft of property during the Holocaust, recognized the need for an agency to assist individuals attempting to navigate the emotionally charged maze of Holocaust-era asset restitution. As a result, in June 1997, the Holocaust Claims Processing Office was established as a division of the New York State Banking Department. Though initially intended to help individuals hoping to recover assets deposited in Swiss financial institutions, by the end of 1998 the HCPO expanded its mission to assist in the recovery of assets held in non-Swiss banks, proceeds from Holocaust-era insurance policies, and works of art that were lost, looted, or sold under duress between 1933 and 1945.

The HCPO is currently the only government agency in the United States that assists individuals, regardless of their background and current residence, with a variety of restitution processes worldwide. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered. As such, the HCPO is able to pursue a claim regardless of the value of the object, and successful resolution is not dependent on the item's recovery. The goal of the HCPO is to advocate for claimants by helping to alleviate any cost and bureaucratic hardships they might encounter in trying to pursue claims on their own.

sion. These are but a few of the agreements and claims processes which were created at the end of the 1990s and early 2000s.

Since its inception, the HCPO has received claims from nearly 4,800 individuals from 45 US states and 38 countries; of these claimants, 155 individuals from 19 states and 10 countries are seeking to recover missing works of art. To date, the combined total of offers extended to HCPO claimants for bank accounts, insurance policies and other material losses amounts to over USD 138 million, and 36 works of art have been restituted to HCPO claimants or were the subject of settlements between HCPO claimants and current possessors.

Over the past 12 years, the HCPO has worked closely with nearly all restitution and compensation agencies in existence today, acquiring extensive knowledge of multiple restitution processes and their submission and processing guidelines. This unique experience allowed the HCPO to develop a multifaceted approach to handling claims, as claimants frequently sought the recovery of more than one asset, and research for one item often led to the discovery of another.

The agencies with which we work share the same goal — to resolve claims for Holocaust-era looted property fairly; however, the methods for achieving the common goal of a just resolution are as varied as the organizations involved. Through experience and observation, the HCPO has identified specific practices — Best Practices — that reliably accomplish this objective. No single claims processor utilizes all of these practices, but all claims processes share the use of relaxed standards of proof for Holocaust-era claims, because they acknowledge that the passage of time and ravages of war left many individuals without documentation to substantiate their claims. Thus, this evidentiary standard was incorporated into present-day restitution agreements and further developed in the resulting claims processes procedural guidelines.

For example, under the Processing Guidelines of the International Commission on Holocaust Era Insurance Claims (ICHEIC), claimants were allowed "to provide non-documentary and unofficial documentary evidence for assessment," while companies were "not to demand, unreasonably, the production of any document or other evidence which has likely been destroyed, lost, or is unavailable to the claimant."[1] Similarly, the standard adopted by the German Foundation Property Loss Claims Commission did not require claimants to submit the stringent evidence that a court of law would demand; instead, claimants were only expected to "credibly demonstrate" what they were asserting.[2]

The Claims Resolution Tribunal (CRT) established and continues to utilize a plausibility standard where "[e]ach claimant shall demonstrate that it is plausible in light of all the circumstances that he or she is entitled in whole or in part, to the claimed Account."[3] Other examples include, but are not limited to, the law[4] establishing the Austrian General Settlement Fund (GSF) and the Washington Agreement[5] between the United States and France which, respectively, stipulated that the GSF Claims Committee and the Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force During the Occupation (CIVS) investigate and consider claims on the basis of relaxed standards of proof.

Though the definition of "relaxed standards of proof" differs from one entity to the next, they fundamentally all endorse the same principle: a claim cannot be rejected on the grounds that the claimant lacks complete documentary evidence. This does not suggest that proof is unnecessary: claimants are still required to demonstrate that they are entitled to inherit the asset as an heir to the original owner, that the property was owned by their predecessor in interest at the time of its loss, and that the owner was subject to Nazi persecution. However, the application of relaxed standards of proof protects the claimant from unreasonable demands for documentation that is impossible to obtain or may simply no longer exist.

In applying relaxed standards of proof compensation organizations adopted certain *presumptions*. A presumption requires that in the absence of substantial evidence to the contrary, if one fact can be established then another may be derived from it. Examples in the milieu of Holocaust-era asset claims include the CRT's adoption of presumptions to govern joint accounts, certain closed accounts, and values for accounts with unknown or low values; and ICHEIC's use of a "deemed date" of confiscation, creating the presumption that after the specified date any payment on a policy was made into a blocked account or confiscated.

Unlike Holocaust-era bank, insurance, and other material loss claims, claims for looted art do not lend themselves

1 "Holocaust Era Insurance Claims Processing Guide, First Edition—June 22, 2003." International Commission on Holocaust Era Insurance Claims. <http://www.icheic.org/pdf/ICHEIC_CPG.pdf>. For additional information on ICHEIC'S Relaxed Standards of Proof please see "Standards of Proof, July 15, 1999." International Commission on Holocaust Era Insurance Claims. <http://www.icheic.org/pdf/ICHEIC_SP.pdf>.

2 "Supplemental Principles and Rules of Procedure." Property Claims Commission. German Forced Labor Compensation Program Remembrance, Responsibility and Future. <http://www.compensation-for-forced-labour.org/content/PCC_rules_e_final.pdf>.

3 "Rule Governing the Claims Resolution Process (As Amended)." Holocaust Victims Assets Litigation (Swiss Banks). Claims Resolution Tribunal. <http://www.crt-ii.org/_pdf/governing_rules_en.pdf>.

4 "Rules of Procedure of the Claims Committee." National Fund of the Republic of Austria. General Settlement Fund. <http://www.en.nationalfonds.org/sites/dynamic.pl?ln=&id=news20070111003410005>.

5 Agreement between the Government of France and the Government of the United State of American Concerning Payments for Certain Losses Suffered during World War II, January 18, 2001, USA-Fr., annex B. <http://untreaty.un.org/unts/144078_158780/12/3/4519.pdf>.

to comprehensive, centralized settlements. Nonetheless, the best practices learned from financial and material loss compensation programs, specifically the use of relaxed standards of proof and presumptions, could be applied to art claims. For example, analogous to the "deemed dates" established by the CRT and ICHEIC, unless proven otherwise, the date on which the Third Reich gained control over the art collector's country of residence could be established as the date on which the art collector conceivably lost control over his/her property due to persecution by the Nazi regime.

The application of presumptions is a longstanding element of international jurisprudence, and adopting a presumption of duress based on "deemed dates" for Holocaust-era looted art claims is not new in this context. On the contrary, the Allies not only intended for such a presumption to be implemented when assessing a claim for restitution, they included it in postwar restitution laws.

Article 3 of Military Government Law No. 59: Restitution of Identifiable Property in the United States Area of Control of Germany ("MG Law No. 59") established a presumption that specified that transactions involving the sale of personal property made after January 30, 1933 by a resident of Germany persecuted under the Nazi regime was an "act of confiscation" and required all persons, including purchasers in good faith, to return confiscated property to the original owners.[1]

[1] The restitution laws for the Western Zones and sectors of Berlin were all fairly similar. In the French Zone Decree No. 120, based on French legislation regarding the same matter, was passed. A law similar to that in US Zone was enacted in the British Zone and was also called Military Government Law No. 59.

Article 3

Presumption of Confiscation

1. It shall be presumed in favor of any claimant that the following transactions entered into between 30 January 1933 and 8 May 1945 constitute acts of confiscation within the meaning of Article 2:

(a) Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;

(b) Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.[2]

Restitution laws enacted in the immediate postwar period in other countries adopted similar presumptions to MG Law No. 59. For example, under the 106th Federal Act of May 15, 1946 Concerning the Annulment of Legal Transactions and other Legal Acts during the German Occupation of Austria, any legal transactions or acts as of March 13, 1938 that were carried out in an attempt to despoil individuals of their property rights were deemed null and void.[3]

[2] United States. Courts of the Allied High Commission for Germany. "Court of Restitution Appeals Reports." Nuremberg, Germany: United States High Commission for Germany, 1951. <http://pds.lib.harvard.edu/pds/view/6347670?n=1&imagesize=600&jp2Res=0.25>.

[3] BGBl No. 106/1946 §1 Nichtigkeitsgesetz. <http://www.ris.bka.gv.at/Dokumente/BgblPdf/1946_106_0/1946_106_0.pdf>.

A successful modern-day application of this presumption is illustrated by the case of Jan Wellens de Cock's *Flight into Egypt*, which was originally owned by the Düsseldorf art dealer Dr. Max Stern.

The 70-year journey of this painting, from Stern's collection to its return to his Estate is (as are all cases) a unique and interesting story. In August 1935, less than a year after Dr. Stern inherited Galerie Julius Stern from his father, he was prohibited from buying and/or selling art by the Reich Chamber for the Visual Arts (*Reichskammer der bildenden Künste* or RKbdK), a sub-chamber of the Reich Chamber of Culture.

Just two weeks later, the Nürnberg Laws of September 1935 were passed, which deprived German Jews of their citizenship rights thereby reducing their status to "subjects" in Hitler's Reich. More than 120 laws, decrees, and ordinances were enacted after the Nürnberg Laws, which further eroded the rights of German Jews. Consequently, Dr. Stern began to liquidate his gallery stock and started making arrangements to leave Germany to establish a new life in exile.

Dr. Stern's efforts to overturn this prohibition were futile, and on September 13, 1937, he received the final irrevocable order that he was forbidden to deal in cultural property and immediately had to sell the gallery's remaining inventory through a Nazi-approved RKdbK dealer. In compliance with the September 1937 order, Dr. Stern consigned and liquidated over two hundred pictures with *Kunsthaus Lempertz* ("Lempertz") in Cologne. The November 13, 1937 Lempertz sale of Dr. Stern's paintings was a forced "Jewish auction," in which his paintings sold for a fraction of their fair market value.

Based on extensive research conducted at the Netherlands Institute for Art History (*Rijksbureau voor Kunsthistorische* or RKD) the HCPO confirmed that Dr. Stern owned *Flight into Egypt* in February 1936. Unfortunately, the destruction caused by the war and the passage of time left unclear the fate of the painting from the time Dr. Stern inquired with the RKD in 1936 to when it appeared in Christie's June 26, 1970[1] auction.

Since 1970, the painting was exhibited once in 1971 and, as best we could reconstruct, resurfaced on the art market three times: in 1992 under a different attribution, again in 1993 reattributed to de Cock; and most recently, when Christie's traced the painting's provenance back to 1936 with links to the Galerie Stern. Upon this discovery, Christie's notified the consignor, the HCPO and Dr. Stern's Estate at which point negotiations for the return of the de Cock commenced.

The undisputed known facts of the provenance of *Flight into Egypt* clearly placed the painting in Dr. Stern's possession after the beginning of his persecution by the Nazi regime. Despite exhaustive efforts to provide a complete ownership history of the painting, its whereabouts between 1936 and 1970 remained enigmatic. However, based on the facts at hand and without evidence to the contrary, both parties acknowledged that Dr. Stern lost possession of this painting under duress, thus fulfilling the intention of Allied restitution laws. In so doing, through candid, reasoned dialogue the parties cordially reached a settlement.

While restitution laws in the immediate postwar period included language that clearly articulated specific presumptions, present-day programs rely on the notion of relaxed standards of proof and leave defining those standards and any resulting presumptions

1 Christie's auction entitled "Highly Important Pictures from the collection formed by the late Chancellor Konrad Adenauer, the property of Heinz Kisters, Esq. and others," June 26, 1970, London.

to the creators of the claims organizations. In line with contemporary compensation programs, the drafters of the Washington Conference Principles on Nazi-Confiscated Art ("Washington Conference Principles") understood that a complete accounting of a work of art's ownership history may not be possible.

Documenting the prewar ownership, wartime loss and a claimant's postwar entitlement to an object is one major hurdle we face as part of the looted art claims process. This problem is compounded by the fact that some claimants seek the return of items that may be of great emotional and/or spiritual meaning to them, but of low monetary worth or historical significance. After all, Nazi spoliation was not limited to museum quality pieces but included works by lesser-known artists, decorative arts, and Judaica. This often means that research materials referencing these items can be scant to non-existent, and like the objects themselves, have often ended up scattered across the globe.

Even under ideal circumstances, provenance research is a difficult task for a number of reasons: attributions, titles, and even dimensions can change over time creating confusion in tracking documentation; the same artist may have authored multiple, highly similar works on the same theme; objects are bought and sold anonymously; past owners die without disclosing where they obtained the works in their collections; and the records of dealers and auction houses can be incomplete. Few cases are well documented, and often, even after considerable research has been done, there are gaps in the provenance of any artwork.

The fourth point of the Washington Conference Principles explicitly calls attention to the fact that at this point in time, decades after the Nazi spoliation of property occurred, certain facts will remain unknown, and this should be taken into account when evaluating the ownership history of a work of art.

> "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."[1]

This point suggests that relaxed standard of proof similar to those utilized by restitution organizations should be applied in evaluating claims for Holocaust-era looted art. Practice, however, has been somewhat different. Point IV notwithstanding, gaps in ownership history, even those that occur after the loss took place, often cause a delay in reaching a settlement or lead to a stalemate in negotiations. This is not unexpected, as present possessors, who are more often than not good faith purchasers and so the second victims of Nazi spoliation, grapple with learning the dubious history of works in their collections.

In keeping with the Washington Conference Principles, the "General considerations" that the Restitutions Committee[2] of the Netherlands takes into account when assessing claims specifically address the issue of information lost to time and establish a relaxed standard of proof.

> "The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained,

---

1 Bindenagel, J. D. (ed.). "Washington Conference Principles on Nazi-Confiscated Art." Washington Conference on Holocaust-Era Assets November 30 – December 3, 1998, Proceedings. 1999, pp. 971–972. <http://www.state.gov/www/regions/eur/Holocaust/heacappen.pdf>.

2 Advisory Committee on the Assessment for Items of Cultural Value and the Second World War.

that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply."[1]

In addition, similar to the processing guidelines of the CRT and ICHEIC, the Ekkart Committee's[2] advice to the Dutch government on restitution policy dated April 26, 2001 articulates a presumption in accordance with the notion of relaxed standards of proof. That being:

> "The Committee recommends that sales of works of art by Jewish private persons in the Netherlands from 10 May 1940 onwards be treated as forced sales, unless there is express evidence to the contrary. The same principle should be applied in respect of sales by Jewish private persons in Germany and Austria from 1933 and 1938 onwards, respectively."[3]

This presumption establishes a "deemed date" for the Netherlands. Therefore, as per the definition of a presumption, unless proven otherwise, sales by Jews in the Netherlands are deemed forced sales as of May 10, 1940, the day the Nazis began their invasion of the region.

---

1 "General Considerations." 9 Feb. 2009. Advisory Committee on the Assessment for Items of Cultural Value and the Second World War. <http://www.restitutiecommissie.nl/images/stories/algovw-eng.pdf>.

2 The Ekkart Committee, chaired by R.E.O. Ekkart, supervises the provenance research of objects in the NK collection and also makes recommendations to the Dutch government.

3 The Origins Unknown Agency. "Interim Report III." Feb. 2002. <http://www.originsunknown.org/download/deelrapp3.pdf>.

The restitution of J.S. van Ruysdael's *Wooded Landscape with Herd Near a Pond* to the heirs of Markus Meyer (aka Max) Rothstein exemplifies the positive effect that the application of relaxed standards of proof and a nationally endorsed presumption of duress could have on a claim for Holocaust-era looted art.

The Ruysdael painting originally belonged to Max Rothstein, a Berlin banker and art collector. In 1937, after four years of depredation at the hands of the Nazis, Mr. Rothstein was forced to resign from his position as co-managing director of the Willy Rosenthal Jr. & Co. bank and in 1938, the Rothstein family fled Germany for Amsterdam. Not long thereafter, the Nazis occupied the Netherlands and the Rothstein family once again had to flee persecution. To support his family, subsidize their life in exile and fund their emigration first from Germany and then the Netherlands, Mr. Rothstein was forced to sell some of his artwork.

Research carried out by the HCPO revealed that Mr. Rothstein consigned some of his artworks to Dr. Heppner, an art dealer, in Amsterdam in 1939 and again in the spring of 1940. Further investigation confirmed that the Ruysdael was among these. The HCPO subsequently searched the Origins Unknown Agency's database of the *Nederlands Kunstbezit-collectie* ("NK Collection") and discovered *Wooded Landscape with Herd Near a Pond* among the works listed. The provenance of the painting as reconstructed by the Origins Unknown Agency revealed that painting had been with Rothstein in February 1939 and then sold by Heppner to Goudstikker/Miedl on July 18, 1940, more than two months after the Nazis occupied the Netherlands.

After discovering that the Ruysdael was part of the NK Collection, the HCPO, on behalf of the Rothstein heirs, submitted a

restitution claim to the Minister for Education, Culture and Science of the Netherlands ("Minister") who in turn referred the case to the Restitutions Committee for advice.

In the case of the Ruysdael, the Restitutions Committee's recommendations conceded that Rothstein owned the painting at the time of its sale to Miedl in 1940 and applied the Dutch national policy, articulated in the third recommendation of the Ekkart Committee mentioned above, of presuming that the sale was made under duress as it occurred after May 10, 1940. Based on these recommendations, the Minister honored the Rothstein heirs' restitution request and returned the painting.

The Rothstein case demonstrates how a relaxed standard of proof combined with a formally established presumption of duress based on a "deemed date" could resolve claims without placing an undue burden on claimants.

As the preceding suggests, stated public policy strongly supports efforts to right the wrongs of the Holocaust and to provide restitution to victims of Nazi persecution, who not only suffered unspeakable acts of discrimination and brutality, but were also stripped of their livelihoods and property. Consequently, as seen by the use of relaxed standards of proof by numerous compensation organizations, public policy encourages measures that facilitate restitution of Holocaust-era looted assets.

In the case of art restitution, widespread adoption of relaxed standards of proof and presumptions could enable the resolution of claims where research cannot provide a complete ownership history. While a gap in provenance does not necessarily suggest that a painting was lost under duress, equally the same gap does not indicate that a painting was legitimately acquired.

The inevitability of provenance gaps coupled with the events of the Holocaust and the Second World War — during which many claimants lost everything and everyone, entire communities perished, cities were demolished, and both systematic and opportunistic looting were commonplace — require that inferences be drawn based on available information. The acceptance of relaxed standards of proof by all parties could enable the resolution of Holocaust-era looted art claims that are mired in disputes over fragmentary provenance information.

As seen from the experience of organizations handling claims for financial assets, universally accepted relaxed standards of proof and a presumption of duress could not only provide a missing piece of the puzzle but could ease the path for Holocaust victims and their heirs to resolve claims swiftly and amicably.

▶ **Miriam Friedman Morris**
DAVID FRIEDMANN ART, USA

ARTIST DAVID FRIEDMANN: A DAUGHTER'S SEARCH FOR LOST AND STOLEN ART

The media has publicized the enormous amount of art looted by the Deutsches Reich. Great attention has been focused on the loss and return of Old Masters and million-dollar lawsuits by heirs of prosperous art collectors and art dealers. Neglected are the obscure Jewish artists who achieved a measure of fame. They were stripped of the opportunity to become world renowned; their promising careers were cut short and their fates changed forever because of the Deutsches Reich. The Nazis did not necessarily destroy their art unless they