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THREE VESTED GERMAN PAINTINGS

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HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 12543

A BILL TO AMEND THE TRADING WITH THE ENEMY ACT TO PROVIDE FOR THE TRANSFER OF THREE PAINTINGS TO THE FEDERAL REPUBLIC OF GERMANY IN TRUST FOR THE WEIMAR MUSEUM

SEPTEMBER 19, 1966

Serial No. 89–46

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THREE VESTED GERMAN PAINTINGS

MONDAY, SEPTEMBER 19, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2123, Rayburn Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The committee will come to order.

The Subcommittee on Commerce and Finance is meeting today to hold hearings on H.R. 12543 filed by the chairman of the full committee, Congressman Staggers of West Virginia, to amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum.

(The bill, H.R. 12543, and department reports thereon, follow:)

[H.R. 12543, 89th Cong., 2d sess.]

A BILL To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 39 of the Trading With the Enemy Act, as amended (62 Stat. 1246; 50 U.S.C. App., sec. 39) is amended by adding at the end thereof the following subsection:

"(e) Notwithstanding any of the provisions of subsections (a) through (d) of this section, the Attorney General is hereby authorized to transfer the three paintings vested under Vesting Order Numbered 8107, dated January 28, 1947, to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

DEPARTMENT OF STATE,
Washington, D.C., March 1, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: I refer to your communication of February 10, 1966, requesting a report on H.R. 12543, a bill "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum."

This bill is identical to the legislation which the Department of State recommended be enacted in a letter dated January 31, 1966, from the Secretary of State to the Speaker of the House of Representatives. The views of the Department in support of this legislation are set forth in that letter.

Sincerely,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., April 11, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 12543, a bill "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum."

This bill was introduced at the request of the Department of State and would authorize the Attorney General to transfer certain paintings to the Federal Republic of Germany to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accordance with the terms of an agreement to be made between the United States and the Federal Republic of Germany.

The three paintings, which were vested under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) by Vesting Order No. 8107, dated January 28, 1947, are:

1. Rembrandt: Self Portrait.
2. Terborch: Portrait of a Man.
3. Tischbein: Portrait of a Young Woman.

These three paintings were stolen from the Weimar Museum on April 18, 1922 by two unidentified German soldiers. They were eventually sold in 1934 by a German merchant seaman to a Dayton, Ohio, businessman, who kept them in his home until July 1945, when they were taken to Siegfried R. Weng, Director, Dayton Art Institute, for appraisal.

Mr. Weng advised the Federal Bureau of Investigation of his suspicion that these paintings had been stolen from the German museum and, upon confirmation, Vesting Order No. 8107 was issued. It does not seem appropriate that this Department have a public sale of paintings known to have been stolen from the Weimar Museum. For this reason and because of the close relationship now existing between this country and the Federal Republic of Germany and, finally, since these paintings constitute part of the cultural heritage of the German people, their return in the manner proposed is deemed to be in the best interest of the foreign relations of the United States.

Pursuant to Section 5(b) of the Trading With the Enemy Act, all vested alien property, such as these three paintings, must be liquidated, sold "or otherwise dealt with in the interest of and for the benefit of the United States." However, it is the Department's view that the authority of the Attorney General to deal with vested property "in the interest of and for the benefit of the United States" is limited by Section 39 of the Act, as amended, which requires that the net proceeds remaining upon the completion of administration, liquidation, and disposition of vested property shall be covered into the Treasury for deposit in the War Claims Fund. Thus, even without the prohibition against return of vested property to Germany or a national thereof which is contained in Section 39(a) of the Act, it is necessary for legislation to be enacted authorizing the Attorney General to transfer these paintings to the Federal Republic of Germany in trust for the Weimar Museum.

Accordingly, the Department of Justice favors the enactment of H.R. 12543.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 27, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of February 10, 1966, requesting the views of the Bureau of the Budget regarding H.R. 12543, "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum."

The situation which has elicited this bill has been discussed at length in a letter the Secretary of State sent the Speaker of the House of Representatives on January 31, 1966, recommending legislation identical to this bill and also in the report which the Department of Justice is making on this bill.

For the reasons outlined in those letters, the Bureau of the Budget would favor enactment of H.R. 12543.

Sincerely yours,

WILFRED H. ROMMEL,
Acting Assistant Director for Legislative Reference.

Mr. MACDONALD. The paintings are a "Self Portrait" by Rembrandt, a "Portrait of a Man" by Terborch, and a "Portrait of a Young Woman" by Tischbein.

The legislation before us is supported by the Department of State and the Attorney General of the United States, and I understand that witnesses from these Departments are present and will testify.

The first witness we will hear will be from the Department of State, Mr. Ely Maurer, Assistant Legal Adviser.

STATEMENT OF ELY MAURER, ASSISTANT LEGAL ADVISER; ACCOMPANIED BY ROBERT G. SHACKLETON, OFFICE OF GERMAN AFFAIRS, DEPARTMENT OF STATE

Mr. MAURER. Mr. Chairman, members of the committee, I am pleased to be here on behalf of the Department of State to speak on H.R. 12543. I have with me Mr. Robert Shackleton, also of the Department of State, of the Office of German Affairs, who will be ready with me to answer any questoins that the committee may have.

The Department of State and the Department of Justice support the passage of H.R. 12543, "To amend the Trading With the Enemy Act to provide for the transfer of three paintings to the Federal Republic of Germany in trust for the Weimar Museum." The purpose of this bill is to authorize the Attorney General on behalf of the United States to transfer certain paintings to the Federal Republic of Germany to be held in trust for eventual return to the Weimar Museum, Weimar, State of Thuringia, Germany, in accordance with the terms of an agreement which will be made between the United States and the Federal Republic of Germany if the legislation is enacted.

The three paintings consist of a "Self Portrait" by Rembrandt, the "Portrait of a Man" by Terborch, and the "Portrait of a Young Woman" by Tischbein, and are of substantial artistic and historical importance.

The paintings in question were stolen on April 18, 1922, from the Weimar Museum by two unidentified German soldiers. The paintings were brought by a German merchant seaman to this country in 1934 where they were acquired by a U.S. citizen who resided in Dayton, Ohio.

The Office of Alien Property, learning in 1946 of the presence of these paintings in the United States and their background, vested the paintings on the basis they were German owned.

The Department of Justice considers that it cannot return the paintings to Germany under existing legislation even though they were stolen, but is required to sell them. The Department of State is of the view that it would be prejudicial to our foreign relations for these paintings, which are part of the German cultural heritage, to be sold.

The paintings, as valuable works of art, should go back to the German people. Since these paintings cannot be returned under present U.S. legislation, it is necessary that return be authorized by the legislation in question.

Since the Weimar Museum is in East Germany, and is subject to a regime which the United States does not recognize as a legitimate government, the legislation provides for the return of the paintings to the Federal Republic of Germany to be held in trust for eventual return to the Weimar Museum.

This committee has received from the State Department draft copies of the proposed exchange of notes under which the Federal Republic of Germany would agree with the United States to hold the paintings in trust for such eventual return.

These notes would be exchanged between the two Governments as soon as the legislation was enacted. It is planned that prior to the return of these paintings to the Federal Republic of Germany there will be a public showing at the National Gallery of Art for the artistic and cultural benefit of the citizens of the United States.

The Department of State has been in communication with the representatives of the Federal Republic of Germany. They fully concur in the proposed legislation and proposed exchange of notes.

The Department of State strongly urges enactment of the proposed bill in the best interests of the foreign relations of the United States.

Thank you.

Mr. MACDONALD. Thank you very much, Mr. Maurer. I just have a few questions. Do you know of any objections to the proposed transfer?

Mr. MAURER. No; at present we know of none.

Mr. MACDONALD. What value has been placed on the paintings?

Mr. MAURER. I think that is a question that may perhaps be better answered by the Office of Alien Property representative who is now present because they did in fact try to ascertain the value. We think they are valuable, but not of great value.

Mr. MACDONALD. Do you know if they are insured or not?

Mr. MAURER. Yes, we understand from the Office of Alien Property that they are insured.

Mr. MACDONALD. How much are they insured for?

Mr. MAURER. $140,000 is what they have been insured for.

Mr. MACDONALD. On the bottom part of your statement I just had a question where you say that under existing legislation these paintings could not be returned to Germany even though they were stolen, but existing legislation makes it necessary for them to be sold.

Could you clear that up, for me, at least? I don't quite understand why.

Mr. MAURER. Well, this is another matter in which I think the Office of Alien Property can speak most authoritatively on, but, as we understand the Trading With the Enemy Act, it speaks in terms of the office or agency designated by the President to liquidate German assets and to dispose of them and put the proceeds in the war claims fund, and, as I understand, subject to what the representative of the Office of Alien Property further says, they feel that they have the mandate for German property to seize it, liquidate it, sell it and put the proceeds in the war claims fund.

Mr. MACDONALD. But this goes back to the theft, if I recall your testimony correctly; it was stolen in 1922?

Mr. MAURER. Right.

Mr. MACDONALD. So I don't really see how it falls under Trading With the Enemy. The relationship between the United States and German Republic, if it was a republic in 1922, was a friendly one, was it not?

Therefore, I don't see where Trading With the Enemy comes in. I mean I am not making any big to-do about it. I would just like to have it cleared up for the record.

Mr. MAURER. Our understanding is this: That, while it was stolen in 1922, it was brought here and was here in fact in 1946 in the possession of an American citizen, but the Office of Alien Property analyzing the legal situation found that, although it was in the possession of an American citizen, it was still owned by the original German owner.

They felt they had a duty whenever they found property in the United States owned by a German owner, no matter what its origin, whether it came here by theft or stealing, that they had a duty at that time to vest it and they did vest it in 1946 at a time when we had been through a war with Germany, and they vested it acting under the Trading Witb the Enemy Act.

Then they also felt that under the Trading With the Enemy Act they had a mandate to sell it and to put the proceeds in the war claims fund.

This, too, they can expand on and the Office of Alien Property representative can speak to when he appears before you.

Mr. MACDONALD. Thank you. Mr. Adams?

Mr. ADAMS. Who owned the property in 1946? Was the determination made? You say an American citizen held it, and then was the ownership decreed to be in the Republic of Germany.

Mr. MAURER. My understanding is that the Office of Alien Property had a legal memo written by its General Counsel which went to the point that the ownership was in the Weimar Museum for the two paintings, excluding the Rembrandt, and ownership was probably in the Weimar Museum for the third painting, the Rembrant, with a possibility that with respect to the third painting there might be some vestigial interest in the Duke of Weimar Saxon.

Mr. ADAMS. They were not individually owned by Germany and citizens of a particular German Government? Is that what you are telling me?

Mr. MAURER. That is what I am telling you, with the possible exception of the Rembrandt, but I think our own feeling and the feeling of the Office of Alien Property is that this was very improbable that the real ownership was really in the Weimar Museum.

Mr. ADAMS. Just one last question. It is still the legal opinion of the Department of Justice that they cannot transfer this, assuming that we have a friendly state relationship now with the German Government and, as Mr. Macdonald pointed out, had an original friendly state relationship with the Republic of Germany?

It is still their legal opinion that they cannot transfer it to a friendly government?

Mr. MAURER. Yes, sir.

Mr. ADAMS. Thank you.

Mr. MACDONALD. Mr. Springer.

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Mr. SPRINGER. I want to ask this question. In the bill they used these words: "to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

I want to be sure that there is no doubt that we are vesting the title in the Federal Republic of Germany. Are we doing that?

Mr. MAURER. I think I may answer in this way. There is no question that we are turning over the paintings to the Federal Republic of Germany to hold in trust for eventual return to the Weimar Museum.

Mr. SPRINGER. All right. These words are awfully important, "in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

Is that the kind of agreement you are going to make?

Mr. MAURER. Yes. We have given the text of that agreement as an enclosure to the letter that we sent in recommending the passage of this legislation.

Mr. SPRINGER. Are you going to vest title then in the Federal Republic of Germany in trust?

Mr. MAURER. We are going to transfer it in trust.

Mr. SPRINGER. I just want to be sure of this because I don't want to get over to the floor and have someone raise the question of whether we are transferring this to a Communist country.

We would just be in all kinds of soup. That is the kind of thing we run into on the floor and someone is going to ask it, and I want to be sure that we are going to transfer this to the Federal Republic of Germany to transfer it at their discretion. And I take it they are not going to transfer it until they get some kind of an agreement between the two countries with reference to these matters, and I suspect the first thing that will come out from East Germany will be an attack that we are refusing to return their stolen property.

This will be another approach to this, and you know as well as I do, having been in East Germany, the tactics they use over there on these kinds of things.

But there is no doubt that you are returning this and vesting title in the Federal Republic of Germany in trust?

Mr. MAURER. Yes, sir. That is clear, and that is in fact the language we have in the agreement.

Mr. SPRINGER. All right.

Mr. MAURER. I can read that to you. The language we have in the letter to the Federal Republic of Germany is: "I have the honor to propose that upon transfer by the Attorney General of the title and possession of three paintings to the Federal Republic, the following terms shall apply. The Federal Republic shall hold the paintings in trust for eventual transfer to the Weimar Museum."

Mr. SPRINGER. That is enough. Thank you.

Mr. MACDONALD. Along that line, if the committee does not mind my interjecting myself again at this point, I take it from your answers to Mr. Springer that the Weimar Museum in the State of Thuringia, Germany, is in East Germany.

Mr. MAURER. Yes, it is in East Germany.

Mr. MACDONALD. How can anyone be held to know that eventually the Federal Republic of West Germany is going to deal with East Germany so it will be transferred to East Germany?

As I understand it, at the moment the feeling between the two Germanys is not exactly cordial.

Mr. MAURER. I think certainly nobody can predict exactly what may happend in the relations between the Federal Republic and East Germany, but I think Mr. Shackleton may be best qualified to talk to that point.

Mr. SHACKLETON. Well, sir, I believe that one must assume that reunification will someday take place and at that point the Federal Republic as the Government of Germany will return these to the museum.

Mr. MACDONALD. Has the State Department cleared this with the Russians?

Mr. SHACKLETON. No, sir.

Mr. MACDONALD. I think that is a pretty big assumption, that they are going to be reunified.

Mr. SHACKLETON. Sir, it would be impossible for me to say when this will take place. In fact I don't know that one can say that it will take place, but the assumption of all of our policy is that Germany will be reunified. This is a major aim of course of our foreign policy.

Mr. MACDONALD. And since this is a subcommittee of the Committee on Interstate and Foreign Commerce, I just don't want to get in the foreign relations field, but does the State Department feel it was necessary to include that language "for eventual transfer to the Weimar Museum" in East Germany?

Mr. SHACKLETON. Yes, sir. We could not return it to the Soviet Zone because we have no relations with it. The Federal Republic of Germany is the only Government authorized to speak for all the German people.

Therefore, the only authority in Germany to which we could return the paintings would be the Federal Republic in Bonn.

Mr. MACDONALD. I just raise this because, as Mr. Springer indicated, we may have to defend this on the floor and I would rather ask you the questions now and have it in the record so that we can have something to defend, but actually the Federal Republic of Germany is not the rightful owner; is it?

Mr. SHACKLETON. No, sir.

Mr. MACDONALD. And then aren't we returning something to somebody who never had original property rights in it?

Mr. MAURER. This is so, but you understand that we view that we have made the proper adjustment for a situation which exists; namely, we believe this painting really belongs to the German people, if you will.

The Federal Republic of Germany is the representative of the German people, that we consider the representative of the German people. We consider that we are acting perfectly appropriately in turning them over to the Federal Republic of Germany in trust for eventual return.

In other words, there is a recognition that ultimately this should go to the Weimar Museum. When that will take place would be when the conditions are ripe for it and when unification takes place or there is something of a similar nature.

Mr. MACDONALD Mr. Farnsley.

Mr. SPRINGER. May I ask one question.

Mr. MACDONALD. Mr. Springer.

Mr. SPRINGER. You reduce this to the irreducible. The Federal Republic of Germany is the only legal German Government that we recognize. Is that correct?

Mr. SHACKLETON. Yes, sir.

Mr. SPRINGER. So, therefore, the only legal party to whom you can return it is them. Is that correct?

Mr. SHACKLETON. Yes, sir.

Mr. SPRINGER. Now, you admit that the Weimar Museum is the proper owner of it; is that correct?

Mr. SHACKLETON. Yes, sir.

Mr. SPRINGER. But you are returning it to them to be held in trust until such time as that Government either comes under the Federal Republic of Germany or Germany is so united that there is a government that can return it to the proper owner. That is in effect what you are saying; is that correct?

Mr. SHACKLETON. That is correct.

Mr. SPRINGER. I just want to be sure about this vesting in trust since you have it to just one party that we recognize.

Mr. MACDONALD. I would just like to point out that the reporter can't see your head nod. You better have it in the record. Your answer was in the affirmative to all those questions?

Mr. SHACKLETON. We could not, in other words, return this to the Government of the German Democratic Republic for return to the Weimar Museum. We do not have relations with the German Democratic Republic.

Mr. MACDONALD. Mr. Farnsley.

Mr. FARNSLEY. I think I know the answer, but why not just give this to the West German Government? Why add the "in trust"?

Mr. MAURER. I think the answer to that is that we think this is something which does belong to the Weimar Museum and that in terms of getting it back to the Weimar Museum it was most appropriate to give it in trust for eventual return.

I think that must be the answer.

Mr. FARNSLEY. That is just saying we think this is right. Is that part of our policy of trying to unite the two Germanys that we are putting it in trust? If we think the West German Government represents Germany as far as we know why not give it to them and let them decide what to do about it?

I am not arguing. I am not advocating this. I am just asking. Maybe it is something you can't tell me. Maybe it is a secret.

Mr. MAURER. No, I don't believe there is any particular secret in it. It happens that this may be of a little help in trying to cement the two Germanys, but frankly we don't think it has much leverage, if you will, and it is basically on the notion that we deal with the Federal Republic of Germany and we feel that it is proper to give it to them in trust for eventual return, and the Federal Republic of Germany has not itself said, "Give it to us in clear and free title."

They have themselves gone along with and concurred in this manner of dealing.

Mr. SHACKLETON. There is a question of where the rightful ownership lies.

Mr. FARNSLEY. What is the question?

Mr. MAURER. In view of the fact that our view is that the Weimar Museum is the rightful owner, then we would feel perhaps reluctant

to give it in full title and complete title rather than in trust to the Federal Republic of Germany.

Mr. FARNSLEY. Thank you.

Mr. MACDONALD. Are there any further questions?

Mr. CURTIN. Mr. Chairman.

Mr. MACDONALD. Yes, Mr. Curtin.

Mr. CURTIN. I notice by your statement that this American citizen acquired these paintings in 1934 but it was in 1946 when the Office of Alien Property got in the act. What triggered this?

Mr. MAURER. I think the Office of Alien Property representative may be able to give you the particulars. I gather that he attempted somehow in 1945 or 1946 to dispose of the paintings and in the course of inquiries which the museum raised that he was trying to dispose of two—I think it was the Dayton Museum—it came to the attention of the Office of Alien Property that there was this background and history and then they took investigating action.

Mr. CURTIN. That is what I am curious about. What was the intention of the study?

Mr. MAURER. Perhaps the Office of Alien Property custodian can talk to that particular.

Mr. CURTIN. He is here?

Mr. MAURER. Yes.

Mr. CURTIN. Thank you.

Do you know what the American citizen paid for these paintings?

Mr. MAURER. There was a curious story that forms part of the record. The seaman is supposed to have gone out on a night on the town with a Dayton, Ohio, citizen and at the end of the night on the town the Dayton, Ohio, citizen found he didn't have his wallet, but he had the paintings.

Mr. CURTIN. This is a curious story.

That is all.

Mr. MACDONALD. Thank you.

Would the next witness, who I believe is Mr. Anthony Mondello, come forward please, Mr. Mondello, representing the Department of Justice.

STATEMENT OF ANTHONY L. MONDELLO, CHIEF, OFFICE OF ALIEN PROPERTY, DEPARTMENT OF JUSTICE

Mr. MONDELLO. Mr. Chairman, I have no prepared statement as such. I am available for whatever questions any of the members would like to ask.

Mr. MACDONALD. The previous witness referred several questions to you so you can start by answering those.

Mr. MONDELLO. I will try to field them as best I can.

I do have with me a copy of the opinion rendered in 1947 by John Ward Cutler, Acting General Counsel of the Office of Alien Property, in which he took up the question of the title to these paintings that might have been in the person who possessed them in 1945 and 1946.

He ran an inquiry into the law of two States, the law of the State of New York where the so-called purchase transaction took place, whatever that may have been, and the law of the State of Ohio where by prescription a thief conceivably could have obtained title to the paintings or a taker from the thief might have done so.

Mr. MACDONALD. I just would like to interrupt at that point. Basically, that is just not possible to obtain title by way of thievery under U.S. law.

Mr. MONDELLO. Under Ohio law—perhaps I stated that badly, Mr. Chairman—if a thief steals property and takes it away from the locale in which he stole it and ultimately sells it off to a purchaser who has no knowledge of the theft, it is possible and permissible for that purchaser, according to the law of wherever he resides, if he holds this property openly and notoriously or if he returns to the place from which it was stolen and holds it openly and notoriously and during that period, whatever it is in the State of Ohio—I believe the period was 6 or 10 years—had it been done for that extensive period it is possible that as against all the world because of the prescription of time he might have held good title.

Mr. ADAMS. You are comparing the prescription doctrine to the adverse possession doctrine in real property; is that correct?

Mr. MONDELLO. No, sir; this relates only to personal property.

Mr. ADAMS. I know, but I say you are applying prescription, which is the personal property equivalent of adverse possession in real property.

Mr. MONDELLO. Yes, sir; I think so.

Mr. ADAMS. And it is 6 to 10 years in Ohio. I mean that length of time passed.

Mr. MONDELLO. There is a specific period of time. What the General Counsel's opinion is, though, is a comment on the circumstances relating to these paintings which were held by him in his attic.

They were not openly and notoriously held in any fashion and the time period had not run under the State of Ohio, so that he could not conceivably have obtained title by virtue of his possession of these objects outside the State where he got them and in the State where he resided.

The examination also took into account the New York cases, which haven't changed to this day, which indicated that no purchaser from a thief there could have gotten title to these paintings.

By the way, your question, sir, was how did the Office of Alien Property learn of these things. I believe we learned it initially from an FBI report which was furnished to the Office of Alien Property at the time the paintings were first brought to the Dayton Art Institute and nobody knew what they were and the Director of the Institute reported both to the FBI because he was suspicious of what they might be, and he also make inquiry of the Metropolitan Art Museum and other museums in order to achieve some identification of the paintings because he did not in fact know whether they were authentic originals.

Mr. CURTIN. If I may interrupt you, do I understand that these paintings were offered to some art gallery for sale and that is what brought the whole thing to light?

Mr. MONDELLO. We are informed, and this is hearsay evidence in our hands, but we are informed by the couple who possessed the painting that the individual who got it in New York, for example, while he was still in New York went to a number of galleries to determine what it was that he had because when he received it he had learned from the German seaman that this purported to be an original Rembrandt.

He did not get the verification he desired in New York and when he went back to Ohio he simply put it in a footlocker and left it in his attic for a number of years.

It wasn't until about 1945 that his wife discovered it with the other paintings and began to try to authenticate it. She thought she had from some literature she read and then she then took it to the Dayton Art Institute for complete verification and in assisting this lady to verify that these were authentic originals it got a little more notorious even than was intended.

The FBI learned of it and the Office of Alien Property learned of it and then because of the General Counsel's opinion that, No. 1, these people did not have title to the paintings and that title probably resided in German nationals, then the impact of the Trading With the Enemy Act almost required that these properties be vested and placed with all of the other vested property, and liquidate or do whatever had to be with such property.

Mr. CURTIN. Was there any reason why the names of these people could not be disclosed. I notice you mentioned this person and that person.

Mr. MONDELLO. I would like not to disclose them. I have no idea whether this can be damaging to the reputation of a man who may by this time be a prominent businessman somewhere and it would just be unseemly on our part I believe to divulge this information.

In the hearing before the Senate and in the consequent publication of a confidential print of their report it hasn't seemed desirable to put it in.

The matter did come up and I suggested this to the staff of the Senate subcommittee and it was decided by them that it would be inadvisable to repeat the names.

Mr. CURTIN. The method of acquisition from this German sailor by this American citizen whom you don't want to name seems almost incredible. They were out on the town and instead of paying a bar bill turned over these paintings, one of which was a Rembrandt.

Mr. MACDONALD. No, those are not the facts. The facts are that they went out on the town, according to the testimony, and then the next morning apparently, the seaman had left and he left with the American citizen's wallet, and therefore, he felt that he had purchased these paintings because the seaman took the wallet——

Mr. CURTIN. And left the paintings.

Mr. MACDONALD. Which presumably contained money and left the paintings instead of the money.

Mr. MONDELLO. Yes. Mr. Chairman, if I may add a slight note to that, apparently the seaman attempted to sell these to the American citizen the day prior.

They were apparently in each other's company for a couple of days and the American citizen just was not buying and then they did have their night on the town and the story is, as we get it from the couple themselves, is that when he woke up the next morning after having rejected the offer to sell, he found that he did in fact possess the paintings and did not in fact possess his wallet or the money in it.

Mr. CURTIN. By a rather strange coincidence. Was there a very large sum of money in that wallet?

Mr. Mondello. He does not say so and we have no idea what the amount was.

Mr. MACDONALD. Before you get off the subject of money, the question was referred to you as to the value of the paintings, both individually and then collectively.

Mr. MONDELLO. First of all, I would like to correct the record as to the value for which they had been insured. The Rembrandt is insured at a value of $140,000, Terborch is insured at a value of $2,000, and the "Portrait of a Young Woman," by Tischbein, is insured at a value of $1,200—the grand total being $143,200.

We have tried in the past to inquire into the value of the paintings and I do not believe that, short of an actual sale, you are going to ever come out with much more than expert valuations if you procure them.

Our files do not contain a record of an appraisal. I am also told by the person who restored these paintings—I am sorry, I don't have the pictures of them, the before and after pictures we had, but I should explain these things were not well taken care of.

The Rembrandt, for example, which is about 2 feet wide by 3 feet long, was rolled on itself with the paint on the inside and the backing of the canvas on the outside, so that cracks appeared completely across the painting in the process of the creasing that took place when it was rolled and, apparently, placed under something and pressed.

All three paintings were slightly damaged, but the Rembrandt more severely than the other two. The Office of Alien Property some years ago hired the restorer who works for the National Gallery of Art, who did in fact restore them, and, to my unexpert eye, he did a tremendous job.

They looked like the kind of paintings you see that are in the museum that appear as though they just had not been touched since they had been painted.

There are two schools of thought I am told about how this kind of restoration affects valuation. There is a school that believes that paintings of this character should never be touched, that no paint should be added 300 years later to one of these original works of art.

The other school suggests that the only way you can tell the true kind of painting it was is to restore it. I asked at the gallery about what effect restoration would have on value. I was talking to two people then, both of whom are presumably expert, one of whom was the actual restorer who did the work, and they differ as to whether the price would be enhanced or the price would go down.

You can read in the press about old masters being sold from time to time at auction and see the price that they bring, but there is no way to tell, short of putting this to sale, I don't suppose, just where it fits in the general scheme of things.

I have no way of knowing whether this is one of Rembrandt's best works, worse works, or whatever.

Mr. MACDONALD. I have two questions and then will turn to the committee for whatever questions they might have to fill out your statement.

I still am not clear in my own mind, and I would hate to, under the present conditions, defend on the floor, why the Alien Property Act is invoked in this instance.

From my facts—you correct me if I am wrong—in 1922 we had friendly relations with Germany and in 1946 we did. Therefore, I do not quite understand how it gets invoked.

Mr. MONDELLO. Well, I would like to try to answer this slightly in backward fashion, if you will. There is in the Trading With the Enemy Act, section 39 which prohibits returns of vested property to Germany and its nationals as well as to Japan and its nationals, and that same provision, section 39, requires that the net proceeds remaining upon completion of the admission, liquidation, and dispossession of vested property shall be covered into the Treasury for deposit in the War Claims Fund.

Mr. MACDONALD. And this includes stolen goods too?

Mr. MONDELLO. It does not specifically mention stolen goods. It simply applies across the board to vested property.

Mr. MACDONALD. That takes me to my second question. I did not follow the title to the paintings very clearly. The two German soldiers stole the paintings in what year?

Mr. MONDELLO. 1922.

Mr. MACDONALD. 1922. And then we are lost as to what happened to the paintings until this merchant seaman showed up in the United States with them. What year was that?

Mr. MONDELLO. 1934.

Mr. MACDONALD. 1934?

Mr. MONDELLO. Yes, sir.

Mr. MACDONALD. And in 1934 somebody in New York took possession of the paintings?

Mr. MONDELLO. Yes, sir.

Mr. MACDONALD. And then they got to two other people in Ohio?

Mr. MONDELLO. No. The person who took possession in New York was a Dayton, Ohio, citizen and he simply took the paintings back home with him.

Mr. MACDONALD. And it is that person and his wife who called it to the attention of the Dayton Art Institute?

Mr. MONDELLO. Yes, sir.

Mr. CURTIN. Will the gentleman yield?

Mr. MACDONALD. Yes.

Mr. CURTIN. I understood that the husband got out of the picture and then the wife found these and then she proceeded. Is that correct, or do I have a misunderstanding?

Mr. MONDELLO. I think you understood. Our information is that while these paintings were still in the possession of the husband, he simply had them in the attic and the wife was simply the moving party of the two.

Mr. CURTIN. The husband is still in the picture?

Mr. MONDELLO. Yes, sir.

Mr. CURTIN. One other question. Did this couple in Ohio file any type of legal protest about the taking of this property from their possession by the Alien Property Custodian?

Mr. MONDELLO. No, sir; they never did. We were in communication with them. They knew that we had taken the paintings. They had a copy of the vesting order, as a matter of fact, sent to them which described why we took it, which answers your question more directly.

In 1946 the vesting power was still in existence. The President did not exercise his discretion not to vest until 1953 and in 1946 there were any number of investigations taking place with respect to property which was believed to be property of German or Japanese citizens and which was physically located in this country.

This merely became one of many investigations. Once the determination was made that title to this property was in German citizens, it then became like all other property available to be vested and it was vested on the basis that title was either in the Weimar Museum or in that then regal family that had given possession to the Weimar Museum and was a long time ago contesting with the Weimar Museum as to who owned it, whether the family did or the museum.

We did not seek to disturb that title or anything except what it meant to us was since only Germans could conceivably own it, under that set of circumstances then we had the power, probably the duty at that time, to vest it and so it was vested.

The vesting order makes recitations of that sort.

Mr. MACDONALD. Well, yes; but once again being the devil's advocate, because I might have to defend this on the floor, and you know more about it than I do. If we are giving it back to the museum in a country that we don't recognize——

Mr. MONDELLO. Well, we are actually giving it back to the Federal Republic.

Mr. MACDONALD. It gets a little complicated.

Mr. MONDELLO. It may get complicated, sir, but I suggest this. If we take these paintings on the basis that it would be helpful to our foreign policy because they are part of the cultural heritage of Germany and give them to that part of the German nation which we do recognize, we give it only in trust.

We make no attempt to interfere with whoever owns that painting in Germany. There is no doubt that it was publicly held, and what we would be doing in effect is what the German's would be doing if the situation were reversed and gave to the U.S. Government in trust until such time as it could give over to a State, or to the public museum in a State, a valuable work of American art.

Mr. MACDONALD. What State does the Federal Government not recognize? Mississippi?

Mr. MONDELLO. We don't have the war situation and what has happened with the cold war in Germany, but this is as close as you can come to setting up a parallel.

Mr. MACDONALD. I don't think it is a very clear analogy, frankly. I am bothered about the fact that, as I stated to the previous witness—I would like your comment about it—that we are giving it to a government in trust to be turned over to a museum when the two countries become one, and I think that is quite a presumption.

Mr. SHACKLETON. Sir, may I make a statement?

Mr. MACDONALD. I think you did already, Mr. Shackleton. I would be happier to hear from you after I hear Mr. Mondello.

Mr. MONDELLO. I am afraid, sir, this is beyond my competence. I know nothing about foreign policy except what I read in the newspapers and I can tell you what the Trading With the Enemy Act requires, but I have no notion.

Mr. MACDONALD. Yes, Mr. Shackleton.

Mr. SHACKLETON. Sir, the Weimar Museum was a public authority and as such in order to return them to that museum today it would require our turning the paintings over to the authority for the so-called German Democratic Republic, with which, of course, we do not have relations.

Therefore, logically, we must give it to the Federal Republic of Germany. Now, if the Federal Republic of Germany, sir, were to

decide to give it to the Weimar Museum today, I believe that it could after receiving the paintings from us; but this is a legal question and I could not go into it in detail.

Mr. CURTIN. Will the gentleman yield?

Mr. MACDONALD. Yes, I would be happy to in just a minute. Does West Germany have relations with East Germany?

Mr. SHACKLETON. No, sir.

Mr. MACDONALD. How could they turn them over to some place that does not exist?

Mr. SHACKLETON. I raise the hypothetical point that if the Federal Republic were to decide to do this, I assume that they could under the terms by which we would give them the paintings.

Mr. MACDONALD. Mr. Curtin?

Mr. CURTIN. I have just one question. Do I understand that you have previously said that there is some dispute in Germany as to whether these paintings are owned by the Weimar Museum or by some couple that placed them in the Weimar Museum?

Mr. MONDELLO. We understand that there was a dispute. As a matter of fact, I can tell you what our information is on it very briefly. We were fortunate in having at the Fogg Museum in Harvard a person by the name of William Koehler, who is the former director of the Weimar Museum, but by the time the war broke he came out and he was in this country.

He says this in a letter to us back on September 27, 1946:

> The Rembrandt portrait was lent to the museum by the Grand Duke of Saxon Weimar around the year 1909 and remained his property until after the revolution of 1918.
>
> At that time the highest court of the state of Thuringia, Oberlandsgericht, acting as an arbitration committee agreed upon by both the representatives of the state of Thuringia and those of the Grand Duke's family, decided that, in exchange for certain concessions in other matters, the works of art lent by the Grand Duke to the museum should remain permanently in the custody of the state, among them the Rembrandt portrait.

I better read on:

> I do not entirely trust my memory in regard to the wording of the arbitration. I am not sure whether a full transfer of ownership was decreed or a permanent custody by the State involving only practical loss of ownership on the part of the Grand Duke's family.

Now, I tried to determine whether we could find in the Library of Congress or other repositories of foreign legal documents, and case reports, and so on, a copy of an arbitration decree of any sort about that.

I was unsuccessful and I don't know that it exists anywhere in the United States. So we do not yet get the terms, but that is a German legal title question that certainly the Office of Alien Property need have no concern with.

So long as both are Germans we could vest and that is what we did.

Mr. MACDONALD. On that point, and I hate to keep coming back to it, you are not returning it to the person or the association that held title to it. You are returning it to an alien government as far as the two Germanys are concerned.

That is what puzzles me. It does not puzzle me because I know what you want to do and I am in accord with what you want to do, but that is a difficulty that certain Members of the House who want to harass it will bring up.

I would like some ammunition to answer them when they ask what seems to me to be a reasonable question.

Mr. MONDELLO. I would like to suggest this. We are friendly with the West German Government, the Federal Republic of Germany. To the extent that the problem arises by virtue of giving the object to someone that does not have title to it and just placing it in trust is concerned, this is a question I think you can fairly leave to a rather refined judicial system in Germany.

If people in Weimar want to try to get at the paintings, I presume that they can sue the German Government if there is a basis for suit and standing and all the various consents, just as anyone here in this country could litigate a question of title of this sort in a suit.

It is not a question we have to determine. In fact, it is not a question we could.

Mr. MACDONALD. What is the difference between our passing this bill or passing a bill saying that we are going to give these paintings back to the Government of Italy for the Weimar Museum in trust until such a time that East Germany becomes reunited with West Germany?

Do you follow my question?

Mr. MONDELLO. Yes, sir, and I think we have the power to do that. When we took title under the Trading With the Enemy Act our title is defensible in this country. Our title is defensible against all comers. I don't know what the situation would be if we would give it to Italy under the terms you suggest and then somehow the matter could be subjected to litigation in Italy.

Mr. ADAMS. Would the gentleman yield?

Mr. MACDONALD. Yes.

Mr. ADAMS. I want to follow directly on this point.

We have already made a legal determination as to title. This is what is bothering Mr. Macdonald. It was bothering me. When we say that this is given to the West German Government in trust for the Weimar Museum, the U.S. Government has stated that they have made a determination as to who owns this painting.

It goes back to Mr. Farnsley's question and we are trying to ride two horses at the same time. We either give it to the German Government and they decide between litigants within their system, or we give it to the individual directly.

We aren't doing either in this case here. We are giving it to the German Government, but saying, "No, you can't decide where it goes." It really belongs to the Weimar Museum, and this is bothering us because we have made this determination and it could be used certainly as a defense, I would say, by the German Government to giving it to anyone except the Weimar Museum.

Mr. MONDELLO. I don't think anything that has been done in the proposed language of this bill constitutes a determination of title.

Mr. ADAMS. Then you would have no objection to doing what Mr. Farnsley asked, which would be just to strike the portion in here that says "to be held in trust for eventual transfer to the Weimar Museum"?

Mr. MONDELLO. I think what we did by that language was to suggest that the custody of these paintings which had been taken from the Weimar Museum should be restored to the Weimar Museum. From that point on let anybody fight about title that wanted to, but

we didn't think we should make that determination. I don't think the statutory language does it.

Mr. ADAMS. The bill does.

Mr. MONDELLO. I don't think so.

Mr. ADAMS. It says "to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum." We are constituting that Government trustee with the equitable interest in the Weimar Museum. Now, I don't want to quibble about the legal terms, but I worry about, and I think it is justifiable, that you are riding two horses.

We just want to know which one to end up on if we have to choose between one of the two.

Mr. MONDELLO. I think a former version of this proposed statutory language did include use of the word "title" and it was deleted on the suggestion that we should not be making a determination of title and it was left open so that we could simply restore custody as it was in 1922.

Mr. MACDONALD. I would just like to add a third course because the language also says that what we have been discussing would be done, "in accord with the terms of an agreement to be made," so actually we are just giving out a blank check.

How do we know what the agreement is going to be?

Mr. MONDELLO. The State Department can speak to that. The terms of the agreement are known.

Mr. MAURER. Let me speak to one or two of the points that have been made.

Mr. MACDONALD. Would you answer that one first because it is in my mind.

Mr. MAURER. Yes, I think I can answer that one first. The terms of the agreement are already cleared, as it were, between us and the Federal Republic of Germany and they are reflected in the documents we have given the staff and which we gave to the Senate committee, and they are that title and possession do go to the Federal Republic of Germany and the Federal Republic of Germany shall hold the paintings in trust for eventual transfer to the Weimar Museum on the same basis such paintings were held by the museum prior to April 18, 1922.

That is the language. Now, we are fully confident on the basis of the studies that we have made that really the Weimar Museum was possessed of full title of two of the paintings and we think was possessed of full title of the third painting, the Rembrandt, with the possibility that the Weimar Museum had what you might call was permanent custody with a vestigial interest in the Duke of Saxon Weimar, so that we think by this language that we are getting it back to the state it was in 1922 and that is the way it should be.

Mr. MACDONALD. If that is so, sir, why don't we strike the words "in accord with the terms of an agreement" and why don't we strike "to be made"?

Mr. MAURER. We have given you the text of the agreement. The text of the agreement is known and the agreement allows us——

Mr. MACDONALD. Why then, if you will permit me, shouldn't it read "in accord with the terms of an agreement between the United States and the Federal Republic of Germany"?

Mr. MAURER. I am sorry.

Do I understand that all you are suggesting is putting in the terms "between the United States and the Federal Republic of Germany"?

Mr. MACDONALD. It is all I am saying. On line 4 on page 2 of the bill strike "to be made", which is a clause in between "agreement" and "between."

Mr. MAURER. The bill reads "in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany" and are you suggesting the dropping of "to be made"?

Mr. MACDONALD. Yes. That is what strike means.

Mr. MAURER. Well, but I don't think that would change it in any respect in the sense that the agreement is still to be made. It doesn't exist at the present time. We haven't exchanged notes with the Federal Republic of Germany yet.

Mr. MACDONALD. You just read from the agreement.

Mr. MAURER. We read from the text of the proposed agreement.

Mr. MONDELLO. Without the legislation we have no authority.

Mr. MACDONALD. All right.

Mr. MAURER. These notes would be exchanged after the legislation had passed. I think I have answered one question of yours.

The second question was rather than turn it over to the Federal Republic of Germany to be held in trust for an agreement to be made, why don't we turn it over to the Italian Government.

Mr. MACDONALD. I was using that by way of illustration.

Mr. MAURER. The only point I would make as to that is that the appropriateness it seems to us is quite clear of turning it over to the Federal Republic of Germany, which in the meantime until it decides about eventual return to Weimar may very well keep this painting in its own museum, show it to its own people, and it seems totally appropriate to let them be the holder for the meantime.

Now, a third suggestion which has been made, and I think in a sense this runs the gamut of possibilities, is why don't we just give it in fee simply to the Federal Republic of Germany. This is Mr. Farnsley's suggestion and it is one of the things that I say we considered, but frankly we reached a decision that this belongs to the Weimar Museum.

We would prefer to give it to the Federal Republic of Germany to be held in trust. We think it appropriate because that is where the title, we think, resides, rather than give it in fee simple title to the Federal Republic of Germany.

Now, you also raise the question—let me say this—why not give it to the individuals concerned, and I think there have been two answers to that. One, that the individual here is a public institution, the Weimar Museum. It is under the German Democratic Republic and we don't recognize that regime and we look to the Federal Republic of Germany as the authorized representative of the German people, and this is not such a heterodoxical situation, as I might point out by one example.

For instance, when the U.S. Government deals with the Polish Government with respect to American claimants we could make an agreement by which the Polish Government will pay the American claimant itself, but the agreement that we generally make is we get $40 million or $20 million from the Polish Government and then we set up the Foreign Claims Settlement Commission to distribute the claims amongst American claimants.

In other words, we act in terms of talking to governments generally and in terms of their seeing out for the best interests of their people, and I think this must be considered as being part of the situation with respect to the particular solution which we have embodied in this legislation.

Mr. CURTIN. Will the gentleman yield?

Mr. MACDONALD. Yes.

Mr. CURTIN. Assuming that we turn these paintings over in the manner that you are indicating, supposing eventually that the Government of the West German Republic does not recognize it and they hold them in trusteeship, but really say that they have fee simple title to them and then eventually when the two countries are joined put them in a German museum and say that is where they are going to stay.

Would not the American Government, under those circumstances, be responsible to the Weimar Museum for the value of those paintings because we recognize the Weimar Museum owned them at the time we turned them over to another party?

Mr. MAURER. I think maybe one or two answers.

First, the agreement to be made with the Federal Republic of Germany is an international agreement——

Mr. CURTIN. It wouldn't affect the Weimar Museum.

Mr. MAURER. Which binds the Federal Republic of Germany to us and if the Federal Republic of Germany did something in transgression of the international agreement we would have all the rights that we could vindicate in the International Court, if you will, so that I think basically we have an agreement with the Federal Republic of Germany which we think will be complied with by the Federal Republic of Germany and if it should not be we would have the right in international forum, but we really don't contemplate that the Federal Republic of Germany would do anything that will be in violation or in breach of what it has committed us to.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Are there any further questions?

Mr. ADAMS. Yes. I just wanted to know from the Alien Property Custodian what is your general policy when you are returning property that has been vested in the United States, in the Alien Property Custodian, to another government?

Don't you ordinarily, for example, if we have something out of a museum—well, let us stick with Italy—and we seized it during hostilities, just simply return this to the Government of Italy and let them deal with their citizens about it?

Mr. MAURER. I think this is the answer. Normally we have procedures under the Trading With the Enemy Act whereby individuals file claims with the Trading With the Enemy——

Mr. ADAMS. You deal government to government?

Mr. MAURER. No. Wait. I think this will clarify it.

If anybody has a claim before the Office of Alien Property they file a claim with the Office of Alien Property and if it is an individual he gets the property directly and if it should be in some case a government—for instance, we may have vested by mistake something belonging to the Government of the Netherlands, or maybe we vested something relating to the Italian Government.

Now, in that case it might be that we would give it just merely under the procedures of the Trading With the Enemy Act. I think in the case of Italy there might have been some difficulties and they entered into an international agreement with us, but it isn't to my knowledge unorthodox for an ordinary claim by Government to be submitted to the Office of Alien Property and for the Office of Alien Property to make a simple return to the Government involved.

Mr. ADAMS. All right. I anticipate somebody will ask these two questions.

One, was this actually vested before the cessation of hostilities, the official cessation of hostilities between the United States and the German Government?

Mr. MONDELLO. Yes. That occurred in October, I believe, of 1951.

Mr. ADAMS. That is what I thought. This was during the continuation of hostilities in official form so there is no problem about our title there.

Second, if the question is asked, Does this follow the general form under the Trading With the Enemy Act for the return of property to a claimant? what do we answer, yes or no?

Mr. MONDELLO. I think the answer has to be "No." This is a relatively unusual development. In normal course what we do is——

Mr. ADAMS. Ordinarily you just have title. You could give it to anybody you want or you could sell it, couldn't you?

Mr. MONDELLO. Well, yes, but we normally are in the business of making returns of dollars because we have already liquidated the property.

In this case we hadn't done so. If the claimant caught us early enough so that we could make a return in kind and he was eligible for a return, we would give him the property back.

If it was shares of stock he would get the shares of stock. Whatever it was he would have gotten it back.

Mr. ADAMS. Did we do this?

Mr. MONDELLO. Yes; we did,

Mr. ADAMS. Generally if a German claimant, say in West Germany, came in and said, "This is my painting" and you still had it you would or wouldn't have given it to him? He sold it so you have got it.

Mr. MONDELLO. If you change the example from a German to, say, one of the overrun countries, the answer is "Yes."

Mr. ADAMS. I want to stay with the enemy.

Mr. MAURER. Let me answer that question. I think I have the answer.

Mr. Mondello has not been as specific as I think the situation warrants. If the property belonged to an enemy country like Germany there have been no returns at all.

Mr. ADAMS. They don't get anything back.

Mr. MAURER. They don't get anything back.

Mr. ADAMS. If it is a German citizen?

Mr. MAUER. He gets nothing back if it is a German citizen. So that what we are dealing with here is something which is admittedly German-owned, but which we believe is part of the cultural heritage of Germany, so that we need legislation to return the property.

Mr. ADAMS. That gets down to the final point.

You ordinarily do not return property to the enemy. It has been sold and gone. In this case you are returning it and for a specific pur-

pose—you mentioned cultural heritage—only you are not returning it to the country that has control of it now.

Now, do you feel that you should say in this case because it is so unusual that it could go in trust for the individual as opposed to just giving it because you never usually give it to the government at all for anybody.

Mr. MONDELLO. I think that is right.

Mr. MACDONALD. Just a final question.

Mr. Shackleton, you raised something that these people always seeing Communists under the bed might raise.

You said, if I recall your statement correctly, that in your opinion once we turned this over to the West German Government they then, if they wanted to, could turn it over to the museum in East Germany.

In effect, if what you say is so, and I would like the comment of your counsel about this, wouldn't that have us indirectly deal with a Communist country which we don't recognize?

Mr. SHACKLETON. I don't think that we would be dealing indirectly with them, sir, but we seek to return them to the German Federal Republic Government because it is the only legal authority that we recognize for all of Germany.

Mr. MACDONALD. I am not talking about that. I am talking about your statement that they then within a week or 2 weeks could, if they saw fit, turn around and hand it over to the Communist regime in East Germany.

Mr. SHACKLETON. I raise that only as a theoretical possibility, sir.

Mr. MACDONALD. It is a theoretical possibility and it would be an embarrassing theoretical possibility to be raised on the floor and I would like your counsel's comment about it.

Mr. MAURER. Yes. We have been rather explicit in the note which we presented to you on this very situation.

Mr. MACDONALD. I haven't seen the note.

Mr. MAURER. I have read it to you already about holding in trust for eventual return on and the same basis such paintings were held by the museum prior to April 18, 1922.

The next sentence reads:

> The Federal Republic shall determine when conditions are appropriate for the transfer of the three paintings to the Weimar Museum. The Federal Republic shall notify the Department of State in advance of a transfer to the Weimar Museum.

So we have set forth exactly the situation. Now, it is theoretically possible for the Federal Republic of Germany the next week to deal and then merely to notify, but the realities of the situation are quite clearly different.

They would consult with us before and we would be indicating what our views might be.

Mr. MACDONALD. What would the State Department say?

Mr. MAURER. First of all, they wouldn't be thinking of turning it over tomorrow, and then if they did we would probably say we think that is a little bit ill advised.

The other thing I would like to say in answer to your question is, the Federal Republic of Germany, as Mr. Shackleton will confirm, maintains informal relations with the German Democratic Republic on certain matters. They are trade matters and things of that type. We have low-level informal contact. We don't think they are going

to be bringing this up in any of these informal contacts, but we don't believe at all that by reason of their bringing it up that somehow they are representing us or that we are talking with them, and let me put it this way.

I think you must be apprised of the realities of some of these matters. We maintain informal contacts in Warsaw with the Communist Chinese, if you will, which we don't recognize, and I think there is a certain little give and take here.

Mr. ADAMS. Mr. Chairman, I suggest that the drafts of the notes of the agreement be supplied and be made a part of the record.

Mr. MACDONALD. Without objection, it is so ordered.

(The information referred to above follows:)

(TO AMBASSADOR OF FEDERAL REPUBLIC OF GERMANY).

EXCELLENCY: I have the honor to refer to discussions between representatives of the Department of State and the Embassy of the Federal Republic of Germany with respect to the disposition of three paintings by Rembrandt, Terborch and Tischbein vested by U.S. Vesting Order No. 8107, January 28, 1947, which belonged originally to the Weimar Museum. The three paintings are:

1. Rembrandt: Self Portrait
2. Terborch: Portrait of a Man
3. Tischbein: Portrait of a Young Woman

I enclose herewith a copy of the legislation which the United States Congress recently passed authorizing the United States Attorney General to transfer the three paintings to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thurigia, Germany, "in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany."

I have the honor to propose that, upon transfer by the Attorney General of the title and possession of the three paintings to the Federal Republic, the following terms shall apply:

1. The Federal Republic shall hold the paintings in trust for eventual transfer to the Weimar Museum on the same basis such paintings were held by the Museum prior to April 18, 1922. The Federal Republic shall determine when conditions are appropriate for the transfer of the three paintings to the Weimar Museum. The Federal Republic shall notify the Department of State, in advance, of a transfer to the Weimar Museum.

2. Until the transfer is made, the Federal Republic shall hold, care for and safeguard the taree paintings in the same way as it would art treasures of its own.

If the foregoing proposal is acceptable to the Federal Republic of Germany, Your Excellency's reply to that effect and this note shall constitute an agreement effective on the date of the reply.

Accept, Excellency, the renewed assurances of my highest consideration.

SECRETARY OF STATE (or for the Secretary of State).

EMBASSY, FEDERAL REPUBLIC OF GERMANY.

(TO THE SECRETARY OF STATE).

EXCELLENCY: I have the honor to refer to your note of concerning the disposition of three paintings by Rembrandt, Terborch and Tischbein, vested under U.S. Vesting Order No. 8107, January 28, 1947, which belonged originally to the Weimar Museum, Weimar, State of Thuringia, Germany.

My Government has advised that the proposal contained in your Excellency's note is acceptable.

It is my understanding that this reply and your Excellency's note of
constitute an agreement effective on the date of this reply.

Accept, Excellency, the renewed assurances of my highest consideration.

AMBASSADOR,
Federal Republic of Germany.

Mr. FARNSLEY. I am not advocating this. I am just asking. What would you think if we put in the bill "for eventual transfer to the Weimar Museum in the event of a merger?"

Somebody said you wanted East and West Germany to get together and conceivably they could make a little deal. We say that we can transfer after they have merged.

Mr. MAURER. I think if the committee or the Congress felt that it was desirable to pin that down that way the State Department would go along with it and I think we would in fact want to consult with the Federal Republic of Germany on it, but we have thought that that is a straitjacket type of provision or we think it is too strict in view of the uncertainties as to what in the next 10 or 20 years may emerge, and we view this as a long-range agreement.

Mr. FARNSLEY. You are straightjacketing the Weimar Museum. Nobody knows what will become of the Weimar Museum. Somebody may steal the whole museum and title. You want a straightjacket that it goes to the museum but you don't want a straightjacket that it goes after they merge, although you are very anxious for them to merge, and you won't give them to the Weimar Museum now and you suspect that they won't merge.

Mr. MACDONALD. Will the gentleman yield to me?

Mr. FARNSLEY. Yes.

Mr. MACDONALD. This perhaps is none of my concern or business, but I don't think that the State Department through any representations wants to go on record as saying that the State Department and the administration favor a reunification of Germany.

Mr. MAURER. Oh, I am sorry, I think we definitely do go on record as saying we favor the reunification of Germany. This is a standard ironclad policy of the State Department.

Mr. SHACKLETON. Indeed, that is the policy.

Mr. MACDONALD. That is the official American policy?

Mr. SHACKLETON. That we favor the reunification of Germany, indeed, sir. Sir, may I make a comment to Mr. Farnsley?

Mr. MACDONALD. Even though the Russians might, if this were put into effect, take over all of Berlin? The French obviously are afraid of it, and all the people in Europe who suffered under a militant unified Germany are certainly opposed to that position, aren't they?

Mr. SHACKLETON. Sir, we favor a reunification of Germany under peaceful means under a democratic government. I am not sure that I understand your question exactly, sir.

Mr. MACDONALD. My question is that it was my opinion, and I am glad I learn something every day here in Washington, that the reunification of Germany is a very thorny subject which the administration has never publicly stated, that I have ever seen, that they favor because there are so many countries in Western Europe with whom we are trying to maintain friendly relationships who fear a reunification of Germany.

Am I incorrect in that?

Mr. MAURER. No; I think you are not correct in the sense that the State Department has as one of its standard policies now from the end of the war the reunification of Germany. The reunification would be on terms which would mean that the people who constitute the majority of the German people would be in control, and we have not any feeling ourselves that that would mean it would be the Democratic Republic in control of all of Germany, and one of the things which we have constantly emphasized, and Mr. Shackleton can confirm it, is that reunification would be accomplished by free elections in which the Ger-

man people would express their view, and we have full confidence that a democratic German Government would emerge and this would be the most hoped for consummation of the difficulty.

Mr. MACDONALD. I am glad I came to the hearings this morning. I learned not only about paintings, but I learned something about State Department policy. Are there any further questions of the witnesses?

Thank you all very much.

Mr. MAURER. Thank you very much.

Mr. MACDONALD. The hearing is adjourned.

(Whereupon, at 11:23 a.m., the hearing was adjourned to reconvene subject to the call of the Chair.)

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