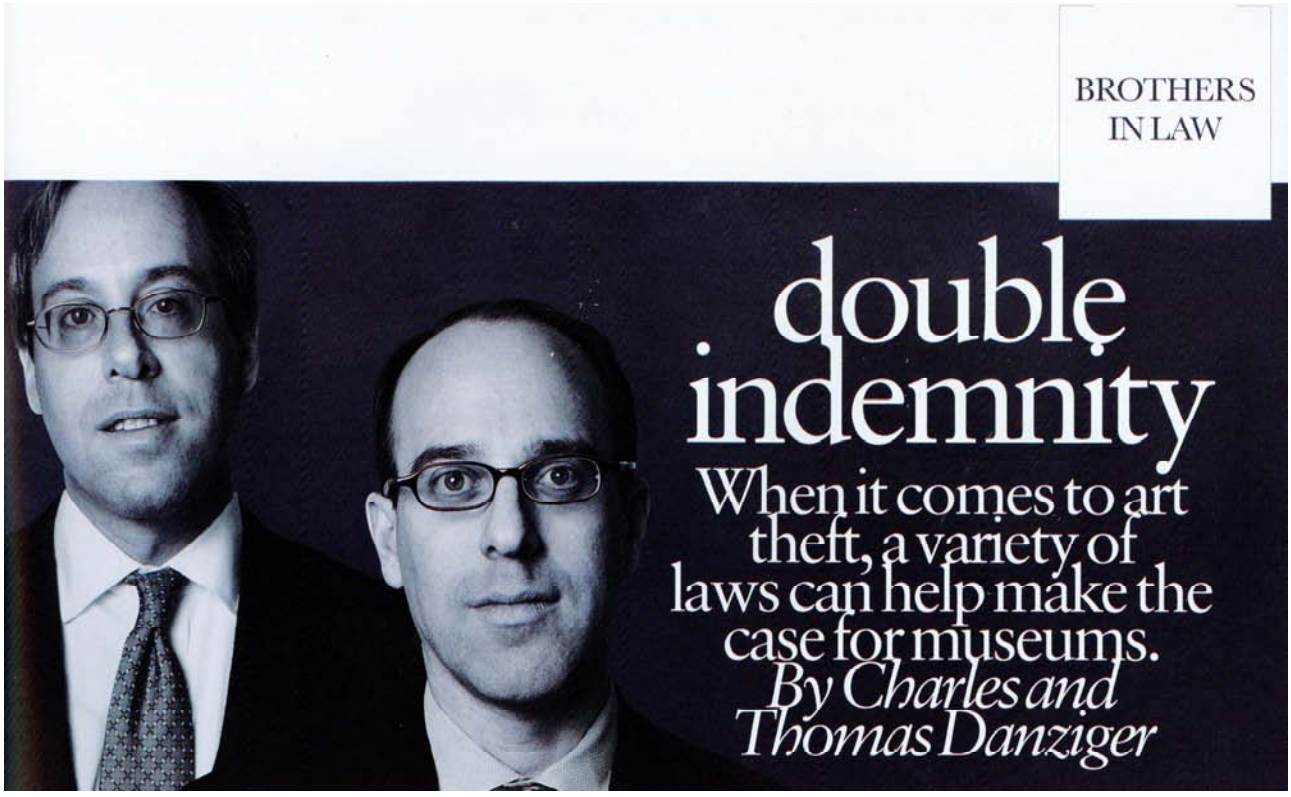

By Thomas & Charles Danziger

It was close to midnight when Paulie showed, and he hadn't come alone. Next to him, in the shadowy corner of a midtown gin mill, slouched a young moll wearing too much lipstick and not enough skirt. "Our assistant curator for collections," Paulie rasped by way of introduction.

We knew Paulie's type: a museum director with the false bravado of a nun gone bad. A tough guy who was afraid of his board of trustees, the press and probably his own shadow. The dame – well, we'd just have to see about her. Paulie got right to the point: "Some louse stole a painting from our museum, and we want you to help us get it back."

The curator had brought the museum's insurance records, which we had to review quickly because some policies require notification of loss within a certain period. The papers showed that while embezzlement from the museum's retail shop was covered, the collection itself was not insured. ("Too expensive," Paulie muttered.) This is not unusual; the $300 million worth of artworks stolen in the infamous 1990 heist at the Isabella Stewart Gardner Museum in Boston had also reportedly been uninsured. That haul included paintings by Vermeer, Rembrandt and Manet.

In our client's case, the missing picture was valued at more than $200,000, so its theft violated a 1994 federal law commonly known as the Museum Statute. This law, passed in the wake of the Gardner theft, makes stealing an object of cultural heritage from a U.S. museum a federal crime punishable by up to 10 years in prison. The law defines an object of cultural heritage as worth at least $100,000, or worth more than $5,000 and over 100 years old. One advantage to prosecutors is that they do not have to prove that a stolen object was transported across state or national boundaries in order to convict a thief. Another key advantage: the law criminalizes "receiving, concealing, exhibiting or disposing" of a stolen work,

which would permit prosecution of a knowing buyer of a "hot" artwork.

The Museum Statute was applied in the 2003 case *United States v. Pritchard*, in which a curator, Russ Pritchard Jr., was convicted of stealing a Civil War officer's uniform valued at $45,000 from the Hunt-Phelan Home Foundation, a historic house in Memphis. A federal court rejected Pritchard's argument that the statute didn't apply to him since the house was technically not a "museum" in the sense that it didn't own the objects inside.

Because the Museum Statute has such particular parameters, art theft is more commonly prosecuted under the National Stolen Property Act, which criminalizes the interstate transportation of stolen goods worth more than $5,000. The NSPA has a short statute of limitations – five years from the date of theft, compared with 20 years under the Museum Statute – but it is not limited to thefts from cultural institutions.

The good news for us was that thefts of art under both the Museum Statute and the NSPA come under the purview of the FBI. Among other tools, the FBI maintains the National Stolen Art File, a computerized database of stolen art and cultural property much like the better-known one maintained by the Art Loss Register.

The bad news was our client himself. Paulie was worried that if we called in the FBI, the press might get wind of the theft, which could cost him his job. He was adamant: No one must learn of the crime. We pointed out that this approach might violate his fiduciary obligation to the public to protect the museum's assets, but Paulie insisted that we solve the crime ourselves.

As it happened, he had a suspect in mind: a night watchman who had recently enrolled in the NetJets program. We agreed this was suspicious. Paulie wanted to subject him to a lie-detector test, but we noted that courts generally don't admit the results of such tests into evidence, because they are often unreliable. And before such a test could even be administered, various conditions would have to be met, including those imposed by the museum's union. Checking the watchman's police record was also risky, since some states restrict employers from basing employment decisions (including termination) on arrests that have not resulted in convictions.

Paulie's curator ("Stop calling me a dame," she snapped) proposed searching the watchman's home for the missing picture. We nixed this idea, reminding them that the Fourth Amendment to the U.S. Constitution guards against unreasonable searches and seizures. This very principle was discussed in a 1989 case, *State v. Kennedy*, involving the theft of Japanese and Korean pottery and ivory carvings from Connecticut's Slater Museum. The court held that even with a search warrant, the police had violated the defendant's reasonable expectation of privacy by breaking into his family's locked garage. We ignored Paulie's final suggestion for getting information from the watchman ("use a rubber hose on the guy") and left our client and his caustic curator in the bar near daybreak.

A week later, new evidence turned up suggesting that the thief was, in fact, Professor Pinfalb, a respected scholar who had been conducting research in the museum. Although Paulie seemed strangely troubled by this development, he set up another midnight meeting to see if there was a "misunderstanding" about the missing painting. When we confronted Pinfalb by a

decaying pier in Chelsea, he first claimed that he had purchased the picture from someone who was now deceased (a so-called "dead man's provenance") but then changed his story and admitted removing it from the museum "for inspection." He argued that his actions didn't amount to theft, because the picture was actually a worthless forgery.

But Pinfalb was wrong on the law. In the 1978 case *United States v. Tobin*, defendants were convicted of trying to sell stolen sculptures by Federic Remington and Emile Picault to a customer who was actually an undercover FBI agent – for $15,000, even though the Remington later turned out to be fake. The court said that the value of the work should be calculated as the price a willing seller would pay a willing buyer at the time when the property was taken. In fact, the value of a stolen work doesn't diminish the intent to commit a crime, only the degree of larceny – and thus the amount of time the thief will spend in prison.

As we recounted the *Tobin* decision, Pinfalb started to crumble like an old Schnabel painting, but Paulie silenced him with a startling confession: Based on his own investigation, the museum did not have proper title to the picture and so couldn't pursue its return. "Case closed," Paulie said with a smirk.

"Not so fast," we countered. As a matter of law, a victim need not prove ownership of a work for it to be considered stolen. For instance, in the 2001 case *United States v. Crawford*, a defendant who worked at UCLA falsely claimed that a painting in her California office had been removed for restoration when , in fact, she had sold it in New York. The court was unmoved by the woman's argument that the university lacked title to the picture, which was owned by a UCLA affiliate that had since been dissolved.

As we left the pier, the question of whether Pinfalb would actually return the painting remained as murky as the Hudson River. But a few months later, the mystery was solved by a private dick hired by the museum board. The newspapers reported that Paulie himself had stolen the picture in cahoots with the professor, who agreed to return the work. And the dame? She took over as the new director – and fired us as the museum's lawyers.