and companies of the United States, can reject foreign judgments when evidence exists that the judgment was influenced by corrupt forces.[178] Section 482 of the Restatement (Third) of Foreign Relations Law supports this conclusion by stipulating that if a foreign court fails to be fair or impartial, the United States court is not bound to follow it.[179] Here, FBJ produced evidence of impropriety on the part of the Russian courts. Several documents detailed a meeting between the deputy chairman of the Russian Federation and a representative from the Arbitrazh where the litigation between SMS and FSUESMS, as well as the need to protect state interests, were addressed.[180] The documents demonstrated improper influence and justified the United States court's decision not to defer to the Russian judgment.

F. Holding of the Court

The Court denied Berov's motion for reconsideration, basing its determination on the flawed logic of the court and viable allegations of judicial misconduct.[181]

G. Conclusion

In declining to defer to the Arbitrazh's decision and acknowledging the political corruption of the Arbitrazh, the Court highlighted the paramount importance of United States business interests and the judiciary's protectionist role in international law. In addition, by refusing to defer to the Russian decision, the Court made a political point and demonstrated its intolerance for judicial corruption.

P. Carey Kulp

VI. NATIONAL STOLEN PROPERTY ACT

United States of America v. Schultz

A. Introduction

In *United States of America v. Schultz*, the United States Court of Appeals for the Second Circuit examined whether conspiring to take

178. *Films By Jove*, 250 F. Supp.2d at 207.

179. *Id.* (*citing* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 482 cmt. b (1987)).

180. *Id.* at 208.

181. *Id.* at 216.

antiquities that were owned by the Government of Egypt under Egyptian Law 117 violates the National Stolen Property Act [hereinafter NSPA].[182] In analyzing this issue, the Second Circuit analyzed the law of Egypt- Law 117, the meaning of the term stolen, and the Fifth Circuit's definition of the NSPA.[183] The Second Circuit found in this case that the Egyptian antiquities were stolen within the meaning of 18 U.S.C. § 2315, NSPA.[184] To support this finding, the Second Circuit stated that property stolen from a foreign government that has ownership of the property under valid patrimony law is considered stolen under the NSPA.[185] The Second Circuit has not properly reviewed the NSPA prior, so in analyzing this case, they applied NSPA law from other circuits.[186]

B. Parties

The plaintiff in this case is the United States of America.[187] The defendant, Frederick Schultz [hereinafter Schultz] was a successful art dealer in New York City.[188] Schultz was indicted on "one count of conspiring to receive stolen" Egyptian antiquities "that had been transported in interstate and foreign commerce, in violation of 18 U.S.C. § 371" and 18 U.S.C. § 2315, NSPA.[189]

C. Facts

In 1991, Schultz met Jonathan Parry, a British national, who showed Schultz a photograph of ancient Egyptian sculptures.[190] One particular sculpture, the head of Pharaoh Amenhotep III, interested Schultz, they devised a plan to get this sculpture to the United States for Schultz to sell in his art gallery.[191] In order to sell the head, Schultz and Parry invented a fictional collection called the "Thomas Alcock Collection" and eventually sold the sculpture to Robin Symes" [hereinafter Symes] for $1,200,000.[192] Three years later, Symes learned that the Egyptian government was pursuing the sculpture, and asked

182. *United States of America v. Schultz*, 333 F.3d 393, 401 (2d Cir. 2003).
183. *Id.* at 401.
184. *Id.* at 399.
185. *Id.* at 416.
186. *Id.* at 404.
187. *Schultz*, 333 F.3d at 393.
188. *Id.* at 395.
189. *Id.*
190. *Id.* at 396.
191. *Id.*
192. *Schultz*, 333 F.3d at 396.

Schultz to offer more information as to the origins of the artwork.[193] Schultz failed to provide any additional information to Symes.[194]

Parry and Schultz became partners, and together smuggled and sold approximately six items under the alias the Thomas Alcock Collection.[195] Parry was eventually caught by the British officials, but was able to free himself by bribing corrupt members of the Egyptian antiquities' police to erase his name from all records.[196] Then, Parry smuggled three more items out of Egypt and sent them to Schultz.[197]

Parry was arrested again in 1994 in Great Britain for dealing in stolen antiquities.[198] Although Parry had been taken into custody in Britain, he continued to have dealings with Schultz to obtain the three Egyptian limestone slabs.[199] The communication and letters exchanged between Schultz and Parry had always indicated that they were aware of the great legal risk they were taking.[200] This awareness was shown in the content of the letters and in code or even languages other than English.[201]

D. Discussion

The Second Circuit notes that issues or foreign law are questions of law.[202] Therefore, in the analysis of Egypt Law 117 of 1983, the court reviews this law *de novo*.[203] The standard of review in this case is for plain error because Schultz did not object to the charge at trial.[204] "To establish plain error, a court must find 1) an error, 2) that it is plain, 3) that affects substantial rights."[205] "If the error meets these three considerations then the court considers whether or not to exercise its discretion to correct the error."[206]

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193. *Schultz*, 333 F.3d at 396.
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*
198. *Schultz*, 333 F.3d at 398.
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.* at 401; FED.R.CRIM.P. 26.1 (2003)(*citing* parallel rule FED.R.CIV.P. 44.1).
203. *Schultz*, 333 F.3d at 401.
204. *Id.* at 413, *citing* United States v. Bala, 236 F.3d 87, 94 (2d.Cir. 2000); *see also* FED.R.CIV.P. 56 (b).
205. *Id.* at 413, *citing* United States v. Kague, 318 F.3d 437, 441- 42 (2d. Cir. 2003).
206. *Id.* at 413.

i. Egypt's Law 117

Egypt's Law 117–enacted in 1983 and entitled "The Law on the Protection of Antiquities"–declared all antiquities discovered after the enactment of the statute to be property of the Egyptian government.[207] The statute requires all privately owned antiquities prior to 1983 to be registered with the Egyptian government, and prohibits the removal of any registered items from Egypt.[208] Thus the law states, in the sanctions section of the law, "that a person who unlawfully smuggles an antiquity outside the Republic or participates in such an act shall be liable to a prison term with hard labor and a fine of not less than 5,000 and not more than 50,000 pounds."[209]

Schultz states Law 117 does not apply because it is not within the policy of the United States "to enforce the export restrictions of foreign nations."[210] The Second Circuit responded to this argument by finding that Schultz offered no evidence on support of this assertion and even if his assertions proved to be accurate, the outcome of this case will still not differ.[211] Furthermore in analyzing Law 117, the Second Circuit stated that the law not an export- restriction law, it is an ownership law.[212] This "law is used in Egypt to prosecute people for trafficking in antiquities within Egypt's borders."[213] Although smuggling antiquities within Egypt is different than smuggling them out of Egypt, they are both prohibited under Law 117.[214]

ii. Application of the definition of "stolen" to the NSPA

The Second Circuit also analyzed in this case as to whether the NSPA applies to cases in which an object was stolen in violation of the patrimony laws, differs from an object that are stolen in the familiar use of the word.[215] In looking at the meaning of stolen in this case, the Second Circuit looked to the Supreme Court definition found in *United States v. Turley* since no definition had been adopted in that circuit under the NSPA.[216] *Turley* stated that the term "stolen" has no accepted

207. *Schultz*, 333 F.3d at 398.
208. *Id.* at 399.
209. *Id.*
210. *Id.* at 407.
211. *Id.*
212. *Schultz*, 333 F.3d at 407.
213. *Id.* at 393.
214. *Id.* at 409.
215. *Id.* at 398–99.
216. *Id.* at 409 (*citing* United States v. Turley, 352 U.S. 407 (1957)).

common law meaning.[217] Furthermore, the Second Circuit accepted from *Turley* that the NSPA covers a broader class of crimes than those contemplated by common law.[218] Thus, the Second Circuit stated that goods that belong to a person or entity without consent are "stolen" in every sense of the word.[219] Schultz's actions violated the NSPA because the antiquities he received were not given consent for Schultz to take them.[220] The entity to give "consent" in this case is the nation of Egypt.[221]

iii. United States v. McClain analysis in the Second Circuit

The Second Circuit has rarely addressed the NSPA, so for the purposes of this case they looked at the Fifth Circuit's views.[222] In *United States v. McClain* [hereinafter *McClain*], the Fifth Circuit was one of the only federal appeals court to have addressed whether the NSPA applies to stolen property under foreign patrimony Law.[223]

The defendants in *McClain* were convicted for violating the NSPA for importing Mexican artifacts.[224] The Fifth Circuit decided that the objects were "stolen" within the terms of the NSPA and they stated:

This conclusion is a result of our attempt to reconcile the doctrine of strict construction of criminal statutes with the broad significance attached to the word "stolen" in the NSPA. Were the word to be so narrowly construed as to exclude coverage, for example, with respect to pre-Columbian artifacts illegally exported from Mexico after the effective date of the 1972 [patrimony] law, the Mexican government would be denied protection of the [NSPA] after it had done all it reasonably could do [to vest] itself with ownership to protect its interests in the artifacts. This would violate the apparent objective of Congress: the protection of owners of stolen property. If, on the other hand, an object were considered "stolen" merely because it was illegally exported, the meaning of the term "stolen" would be stretched beyond its conventional meaning. Although "stealing" is not a term of art, it is also not a word bereft of meaning. It should not be expanded at the government's will beyond the connotation depriving an owner of its

217. *Schultz*, 333 F.3d at 409 (*citing* United States v. Turley, 352 U.S. 407 (1957)).
218. *Id.*
219. *Id.* at 409.
220. *Id.* at 407.
221. *Id.*.
222. *Schultz*, 333 F.3d at 403.
223. *Id.* at 404.
224. *Id.* at 403.

rights in property conventionally called to mind.[225]

The Second Circuit has never decided whether the holding of *McClain* should be the law in the Second Circuit.[226] In this case, the Second Circuit rejected the *McClain* analysis because the facts in McClain and this case were too distinguishable.[227]

F. Holding of the Court

The Second Circuit concluded in this case that the "NSPA applies to property that is stolen from a foreign government, where that government asserts actual ownership of the property pursuant to a valid patrimony law."[228] They found Schultz's other claims to have no merit.[229] Thus, the findings of the lower court that convicted Schultz in United States District court for the Southern District of New York is affirmed.[230] The lower court further found that Schultz violated 18 U.S.C. § 371 by conspiring "to receive stolen property that had been transported in interstate and foreign commerce."[231] Schultz was sentenced to a term of thirty-three months of imprisonment.[232]

G. Conclusion

In this case the United States Court of Appeals for the Second Circuit interpreted the NSPA and how it applied to foreign patrimony law.[233] Although many circuits have analyzed the NSPA, the relevant act for stolen foreign goods, the Second Circuit has rarely looked at these laws.[234] In looking at this statute, the Second Circuit contemplated Egypt's Law 117, the definition of the term stolen, and Fifth Circuit's analysis of the NSPA.[235] In looking at these factors, the Second circuit decided that Egypt's Law 117, does apply to the NSPA because Egypt's law is clear; the Egyptian government wants to have absolute ownership of all antiquities found after 1983.[236] Furthermore, the Second Circuit decided that the term stolen does not have a common

225. Schultz, 333 F.3d at 404.
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*
230. *Schultz*, 333 F.3d at 404.
231. *Id.* at 395.
232. *Id.* at 398.
233. *Id.* at 393.
234. *Id.* at 404.
235. *Schultz*, 333 F.3d at 416.
236. *Id.* at 400.

law meaning and thus is not in violation of foreign patrimony law and the NSPA.[237] Finally, the Second Circuit rejected the Fifth Circuit's analysis of the NSPA, because they stated that the facts in the Fifth Circuit *McClain* case are distinguishable from this case.[238]

Pooja Sethi

VII. CONVENTION AGAINST TORTURE AND HABEAS CORPUS PETITION

Wang v. Ashcroft

A. Introduction

In *Mu-Xing Wang v. John Ashcroft,* the United States Court of Appeals for the Second Circuit announced that they had not set forth a test as to how the Board of Immigration Appeals should apply the facts to the relevant law in habeas review petitions.[239] A specific test was not outlined, because the court decided that the Board of Immigration Appeals [hereinafter BIA] applied the facts properly to the law in Wang's Convention Against Torture claim.[240] Furthermore, on the due process claim, in looking at whether Wang has been denied his due process rights under the Fifth Amendment of the United States Constitution, the Second Circuit analyzed this claim as one of substantive rather than procedural due process.[241] This analysis varies from how the lower court analyzed the claim; however, the Second Circuit still denied that there has been a violation of Wang's due process rights.[242]

B. Parties

The plaintiff, Mu-Xing Wang [hereinafter Wang], a thirty- one year old Chinese immigrant, entered the United States without being lawfully admitted.[243] The Superior Court of New Haven Connecticut convicted Wang of robbery and unlawful restraint and sentenced him to ten years imprisonment.[244] Wang sought relief and brought action

237. *Schultz*, 333 F.3d at 408.
238. *Id* .at 404.
239. *Wang v. Ashcroft*, 320 F.3d 142 (2d Cir. 2003).
240. *Id.* at 142.
241. *Id.* at 144.
242. *Id.*
243. *Id.* at 134.
244. *Wang,* 320 F.3d at 134.